



Financial Assurance Mechanisms

Ensuring compliance with financial assurance requirements is a high priority for Ohio EPA

Who needs financial assurance?

The owners/operators of the following facilities types of facilities would need financial assurance:

- Permitted or registered solid waste facilities (including **municipal solid waste landfills**, **transfer facilities**, **incinerators**, and Class I and Class II **composting** facilities)
- **Residual waste** facilities
- **Industrial waste** facilities
- **Scrap tire** facilities (except scrap tire collection facilities)
- Scrap tire transporters

Types of Acceptable Mechanisms

Trust Funds: "Funded" or "Standby"

The financial assurance funded trust fund works like a trust fund for a child: money goes into an account and a Trustee invests and manages the money. If there are expenses, the Trust can pay them as long as the required balance is maintained. Standby trust funds are required to be set up if an entity utilizes a payment bond, a performance bond, or a letter of credit as the primary mechanism.

Payment Bond

A payment bond is also known as a surety bond guaranteeing payment. These are secured through a bonding company. The entity and the bonding company would sign a contract and the entity would pay the bonding company a premium. The bonding company would sign a document that basically promises that the entity will do the closure (or post-closure or corrective action cleanup) like they are supposed to. If they don't, the bonding company promises to pay the amount of the cost estimate. The money would go into a standby trust fund and then it would work just like a normal trust fund. Payment bonds are not as common as they used to be, but there are still some companies that offer them. A standby trust agreement is also required for this form of financial assurance.

Performance Bond

A performance bond is the same thing as a surety bond guaranteeing performance and is very similar to a payment bond. The difference between a performance bond and a payment bond is what the bonding company promises to do. With a performance bond, the bonding company still promises that the entity will do the closure (or post-closure or corrective action cleanup). If they don't, the bonding company gets a choice: they can either pay the amount of the bond into the standby trust fund (just like the payment bond) or they can choose to hire a contractor and do the work themselves. A standby trust agreement is also required for this form of financial assurance.

Letter of Credit

Easy to find, fairly inexpensive, but requires good credit. A letter of credit promises that the bank will pay the amount of the letter of credit if Ohio EPA says it is due. Banks generally charge an annual fee of between two and five percent of the face value for a letter of credit, plus collateral. A standby trust agreement is also required for this form of financial assurance.

What is financial assurance?

Financial assurance is a financial instrument provided by an entity to ensure that resources are available to pay for the cost of closure, post-closure care, and corrective measures if the owner or operator of a regulated facility is unable or unwilling to pay. The requirement for using standardized wording for the financial assurance instruments ensures that the State will be able to draw on the funds the instruments provide to pay for the cost of closing a facility properly and in a timely manner. In addition, the cost to the owner/operator of maintaining financial assurance should provide an incentive for good operating practices, because of the potential loss of collateral to the owner/operator if the instrument is drawn on.

Contact

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Financial Assurance Mechanisms

[Insurance](#)

Insurance can be hard to find for closure, post-closure, or corrective action financial assurance for solid waste-regulated entities. Most insurance mechanisms are from captive insurance companies. Using insurance for closure, post-closure, or corrective action is more complicated and more difficult to find. Most insurance companies don't write these policies anymore.

If a facility would like to use insurance for financial assurance, Ohio EPA must approve the terms of the policy. This type of financial assurance does not need a standby trust agreement. This is NOT the same as an ACORD Form certificate of insurance routinely used in the insurance industry.

[Financial Test](#)

Straightforward, least expensive option but only available to big companies.

The financial test is basically a form of self-insurance. It is limited to the biggest and most financially stable companies. Almost all companies that use the financial test to meet their financial assurance obligations are traded on the stock exchange. Smaller companies probably won't qualify to use this option. The financial test requires a company to meet very strict financial performance standards. If a company is so healthy that there's virtually no chance they'll go bankrupt in the next year, they can use this test to meet the legal requirements for financial assurance. Companies that use this option must submit three components: a mandatory form, a copy of their audited financial statements for the previous year, and a special report from their accountants (the Agreed Upon Procedures report). Getting the Agreed Upon Procedures report from an auditor usually costs extra, but the rest of the forms are free.

[Corporate Guarantee](#)

The corporate guarantee is almost the same as the financial test. The big difference between the two is which company meets the financial test requirements. If a company is part of a larger corporate family, the company can have their parent company pass the financial test instead. Companies that choose this option must also provide an extra document from the parent company (the corporate guarantee recital) that promises to cover the necessary expenses.

[Local Government Financial Test](#)

Similar to a financial test but for government entities only. Guarantees the local government doing the test (usually county governments) has enough funds available in their budget to perform closure/post-closure/corrective measures. Consists of three components: Letter from the Chief Financial Officer of a Local Government; the Agreed Upon Procedures Report; and a Note in the Annual Financial Report. Due to new program rules, composting facilities and transfer stations utilizing the local government financial test also require a distinct fund in their budget earmarked specifically for financial assurance.