



Oregon Department of Environmental Quality

Annual Recertification Guidance and Checklists Financial Assurance Compliance – Solid Waste Program

Each year, all DEQ permitted solid waste facilities that are required to have financial assurance for closure, post-closure care, or corrective action must submit an annual update, or an annual recertification of their financial assurance. Closure, post-closure care, and corrective action costs for a facility may be assured by different financial mechanisms. The combined costs must be fully covered by the mechanisms chosen by the permittee.

Approximately 60 days before a permittee's "annual review date," DEQ prepares, and sends out, an individual update reminder letter. In this letter, we typically include links to our guidance and templates on our website (or we provide hard copy attachments to the letters) which assist permittees in preparing their annual update.

The submittal is due on a facilities "annual review date" (which is noted in the reminder letter), or, for facilities operating under a closure permit, within 90 days of the end of the permittee's fiscal year or as otherwise required in writing by the Department.

We have 8 types of Solid Waste Facilities, Selected Solid Waste Disposal Sites and Waste Tire Facilities and/or Carriers that are required to have financial assurance. These Solid Waste Disposal Site types are further divided into 7 sub-types. These types and sub-types are:

- ◆ Municipal Solid Waste Operating Facilities
- ◆ Municipal Solid Waste Closed Facilities
- ◆ Non-Municipal Solid Waste Operating Facilities
- ◆ Non-Municipal Solid Waste Closed Facilities
- ◆ Selected Solid Waste Disposal Sites
 - Energy Recovery Facilities and Incinerators
 - Composting Facilities
 - Sludge Disposal Sites
 - Land Application Disposal Sites
 - Transfer Stations
 - Material Recovery Facilities
 - Solid Waste Treatment Facilities
- ◆ Waste Tire Storage Facilities
- ◆ Waste Tire Storage Facility/Waste Tire Carrier Combinations
- ◆ Waste Tire Carriers

The following financial assurance mechanisms are allowed for Municipal Solid Waste Operating Facilities, Municipal Solid Waste Closed Facilities, Waste Tire Storage Facilities, Waste Tire Storage Facility/Waste Tire Carrier Combinations, and Waste Tire Carriers (can secure a Surety Bond for \$5,000 or use other Mechanisms) per OAR 340-094-0145(6), OAR 340-064-0020(1)(b), OAR 340-064-0022(1-4) and OAR 340-064-0055(12-14):

For Closure and/or Post-closure Care

- Trust Fund
- Surety Bond Guaranteeing Payment, w/Standby Trust Fund Agreement
- Surety Bond Guaranteeing Performance, w/Standby Trust Fund Agreement
- Irrevocable Letter of Credit, w/Standby Trust Fund Agreement
- Insurance Policy
- Corporate Guarantee
- Local Government Financial Test
- Local Government Guarantee (note: guaranteeing government must pass the Local Government Financial Test)
- Alternative Financial Assurance, w/Third-Party Certification

For Corrective Action

All of the Above, except Surety Bond Guaranteeing Payment & Insurance Policy

The following financial assurance mechanisms are allowed for Non-Municipal Solid Waste Operating Facilities, Non-Municipal Solid Waste Closed Facilities, and Selected Solid Waste Disposal Sites per OAR 340-095-0095(6) and OAR 340-096-0001:

For Closure and/or Post-closure Care

- Trust Fund
- Surety Bond Guaranteeing Payment, w/Standby Trust Fund Agreement
- Surety Bond Guaranteeing Performance, w/Standby Trust Fund Agreement
- Irrevocable Letter of Credit, w/Standby Trust Fund Agreement
- Insurance Policy
- Corporate Guarantee
- Alternative Financial Assurance, w/Third-Party Certification (note: the Local Government Financial Test mechanism can be used as an Alternative Financial Assurance mechanism)

For Corrective Action

All of the Above, except Surety Bond Guaranteeing Payment & Insurance Policy

Trust Fund Mechanism Annual Recertification Checklist

Name and Permit No. of Facility: _____

Date: _____

Annual Recertification of Financial Assurance Document

This document must follow DEQ's template, be on the permittee's letterhead, and be signed, dated and notarized. OAR 340-094-0140(6)(e)(C) or OAR 340-095-0090(6)(d)(C)

Document was prepared, notarized and is included with this submittal. ☐ Yes ☐ No

Updated Cost Estimates

Updated cost estimates must be provided for closure and/or post-closure care. They must be updated and stamped by a Professional Engineer (P.E.) with current registration, if there was a substantial change in site development and closure and/or post-closure activities at your facility. If there was no substantial change at your facility, the cost estimates must be updated for inflation only (using our current inflation factor guidance). OAR 340-094-0140(6)(e)(A)(i)(ii) or OAR 340-095-0090(6)(d)(A)(i)(ii)

Cost estimates were updated and stamped by a P.E. or updated for inflation only and are included with this submittal. ☐ Yes ☐ No

Annual Trust Statement

This statement must be provided by the trustee and show an accounting of the amounts deposited and expenses drawn from the fund, as well as its current balance. OAR 340-094-0140(6)(e)(A)(iii) or OAR 340-095-0090(6)(d)(A)(iii)

Annual Trust Statement has been included with this submittal. ☐ Yes ☐ No

Reconciliation

The current balance in the Trust Fund must be equal to, or greater than, the total amount of the updated cost estimates for closure and/or post-closure care, as applicable.

Trust Fund balance is at least equal to the total of the updated cost estimates. ☐ Yes ☐ No

Other Trust Fund Mechanism Requirements

Does your trustee have the authority to act as a trustee and are their trust operations regulated and examined by a federal or state agency? ☐ Yes ☐ No

Is the entity acting as the trustee authorized to do business in the State of Oregon?

☐ Yes ☐ No

Are you (as the permittee) and the trustee unrelated parties? ☐ Yes ☐ No

Does the trust indenture (i.e. document) specify that the purpose of the trust is to receive and manage funds paid by the permittee, that the Department must approve disbursements from the trust or, if the Department does not respond to the trustee within 30 days from the request for the disbursement, it is deemed authorized? ☐ Yes ☐ No

Comments: _____

If any answers are no, Trust Fund Mechanism is not compliant.

Surety Bond Guaranteeing Payment (or Performance) Mechanism Annual Recertification Checklist

Name and Permit No. of Facility: _____
Date: _____

Annual Recertification of Financial Assurance Document

This document must follow DEQ's template, be on the permittee's letterhead, and be signed, dated and notarized. OAR 340-094-0140(6)(e)(C) or OAR 340-095-0090(6)(d)(C)

Document was prepared, notarized and is included with this submittal. ☐ Yes ☐ No

Updated Cost Estimates

The updated cost estimates must be provided for closure and/or post-closure care. They must be updated and stamped by a Professional Engineer (P.E.) with current registration, if there was a substantial change in site development and closure and/or post-closure activities at your facility. If there was no substantial changes at your facility, the cost estimates must be updated for inflation only (using our current inflation factor guidance). OAR 340-094-0140(6)(e)(A)(i)(ii) or OAR 340-095-0090(6)(d)(A)(i)(ii)

Cost estimates were updated and stamped by a P.E. or updated for inflation only and are included with this submittal. ☐ Yes ☐ No

Rider

The Department must be provided with an original of the rider to the bond (if required, due to an increase in the cost estimates) and the penal sum shown by the rider must be at least equal to the updated closure and/or post-closure care cost estimates. OAR 340-094-0145(6)(b) or (c) or OAR 340-095-0095(6)(b) or (c)

An original of the rider, if required, has been included with this submittal.

☐ Yes ☐ No ☐ Not required

Standby Trust Fund Agreement (STFA)

The required STFA must still be in place and active and Schedules A and B must be amended (if required, due to a change in the cost estimates). OAR 340-094-0145(6)(b) or (c) or 340-095-0095(6)(b) or (c)

The STFA is still in place and active and Schedules A and B have been amended and included with this submittal. ☐ Yes ☐ No ☐ Not required

Other Surety Bond Guaranteeing Payment (or Performance) Requirements

Is the surety company still an entity listed as acceptable in Circular 570 of the U.S. Department of the Treasury? See: www.fms.treas.gov/c570/c570.html ☐ Yes ☐ No

Will the surety become liable on the bond obligation if you (the permittee) fail to pay or perform as guaranteed by the bond? ☐ Yes ☐ No

Does the instrument state that the surety may not cancel the bond until at least 120 days after the notice of cancellation has been received by both the permittee and the Department?

☐ Yes ☐ No

Does the instrument state that if the permittee has not provided alternate financial assurance

acceptable to the Department within 90 days of a cancellation notice, the surety must pay the amount of the bond into the Standby Trust Fund Agreement account? ☐ **Yes** ☐ **No**

Comments:

If any answers are *no*, Surety Bond Mechanism is not compliant.

Irrevocable Letter of Credit Mechanism Annual Recertification Checklist

Name and Permit No. of Facility: _____
Date: _____

Annual Recertification of Financial Assurance Document

This document must follow DEQ's template, be on the permittee's letterhead, and be signed, dated and notarized. OAR 340-094-0140(6)(e)(C) or OAR 340-095-0090(6)(d)(C)

Document was prepared, notarized and is included with this submittal. ☐ Yes ☐ No

Updated Cost Estimates

The updated cost estimates must be provided for closure and/or post-closure care. They must be updated and stamped by a Professional Engineer (P.E.) with current registration, if there was a substantial change in site development and closure and/or post-closure activities at your facility. If there was no substantial changes at your facility, the cost estimates must be updated for inflation only (using our current inflation factor guidance). OAR 340-094-0140(6)(e)(A)(i)(ii) or OAR 340-095-0090(6)(d)(A)(i)(ii)

Cost estimates were updated and stamped by a P.E. or updated for inflation only and are included with this submittal. ☐ Yes ☐ No

Irrevocable Letter of Credit Adjustment

The submittal must contain an original of an amendment to the letter of credit, adjusting the amount of coverage (if required, due to an increase or decrease in cost estimates). OAR 340-094-0145(6)(d) or 340-095-0095(6)(d)

The amendment is included with this submittal. ☐ Yes ☐ No ☐ Not required

Standby Trust Fund Agreement

The required STFA must still be in place and active and Schedules A and B must be amended (if required, due to a change in the cost estimates). OAR 340-094-0145(6)(b) or (c) or 340-095-0095(6)(b) or (c)

The STFA is still in place and active and Schedules A and B have been amended and included with this submittal. ☐ Yes ☐ No ☐ Not required

Other Irrevocable Letter of Credit Requirements

Did the institution that issued the letter of credit have the authority to issue letters of credit?

☐ Yes ☐ No

Is the issuing institution's letter of credit operations audited by a Federal or State Agency?

☐ Yes ☐ No

Is the letter of credit irrevocable, is it issued for a period of at least one year and does it renew for at least one year on each successive expiration date unless the issuer notifies both the permittee and the Department at least 120 days before the current expiration? ☐ Yes ☐ No

Comments: _____

If any answers are no, Irrevocable Letter of Credit Mechanism is not compliant.

Insurance Policy Mechanism Annual Recertification Checklist

Name and Permit No. of Facility: _____

Date: _____

Annual Recertification of Financial Assurance Document

This document must follow DEQ's template, be on the permittee's letterhead, and be signed, dated and notarized. OAR 340-094-0140(6)(e)(C) or OAR 340-095-0090(6)(d)(C)

Document was prepared, notarized and is included with this submittal. ☐ Yes ☐ No

Updated Cost Estimates

The updated cost estimates must be provided for closure and/or post-closure care. They must be updated and stamped by a Professional Engineer (P.E.) with current registration, if there was a substantial change in site development and closure and/or post-closure activities at your facility. If there was no substantial changes at your facility, the cost estimates must be updated for inflation only (using our current inflation factor guidance). OAR 340-094-0140(6)(e)(A)(i)(ii) or OAR 340-095-0090(6)(d)(A)(i)(ii)

Cost estimates were updated and stamped by a P.E. or updated for inflation only and are included with this submittal. ☐ Yes ☐ No

Insurance Policy Adjustment

The total amount the insurer is obligated to pay, the face amount, must be adjusted (if required, due to an increase in the cost estimates) so that it is at least equal to the current cost estimates for closure and/or post-closure care, and documentation of the adjustment must be provided.

OAR 340-094-0145(6)(e) or OAR 340-095-0095(6)(e)

The Insurance Policy was adjusted and documentation is included with this submittal.

☐ Yes ☐ No ☐ Not required

Other Insurance Policy Requirements

Does the insurance policy guarantee that funds will be available to complete closure and/or post-closure care, and that the insurer will be responsible for paying out funds in accordance with the closure and/or post-closure care plan up to an amount equal to the face amount of the policy?

☐ Yes ☐ No

Is the policy automatically renewable and state that the insurer may not cancel, terminate, or fail to renew the policy? ☐ Yes ☐ No

In the event of non-payment of premium for renewal, does the policy state that the insurer must send written notice of non-payment and intent to non-renew to the Department?

☐ Yes ☐ No

Does the policy state that the insurer may not cancel the policy for non-payment of the premium without giving the Department 120 days notice? ☐ Yes ☐ No

Is it stated in the policy that it may not be cancelled if the Department has declared the site to be abandoned, requires immediate closure, or the permittee has declared bankruptcy?

☐ **Yes** ☐ **No**

Has the Oregon State Insurance Commission licensed the insurer to transact business as an insurer in the state of Oregon? ☐ **Yes** ☐ **No**

Are the permittee and the insurer unrelated parties and the insurer would not otherwise be considered a captive insurance company? ☐ **Yes** ☐ **No**

Comments:

If any answers are no, Insurance Policy Mechanism is not compliant.

Corporate Guarantee Mechanism Annual Recertification Checklist

Name and Permit No. of Facility: _____

Date: _____

Annual Recertification of Financial Assurance Document

This document must follow DEQ's template, be on the permittee's letterhead, and be signed, dated and notarized. OAR 340-094-0140(6)(e)(C) or OAR 340-095-0090(6)(d)(C)

Document was prepared, notarized and is included with this submittal. ☐ Yes ☐ No

Updated Cost Estimates

The updated cost estimates must be provided for closure and/or post-closure care. They must be updated and stamped by a Professional Engineer (P.E.) with current registration, if there was a substantial change in site development and closure and/or post-closure activities at your facility. If there was no substantial changes at your facility, the cost estimates must be updated for inflation only (using our current inflation factor guidance). OAR 340-094-0140(6)(e)(A)(i)(ii) or OAR 340-095-0090(6)(d)(A)(i)(ii)

Cost estimates were updated and stamped by a P.E. or updated for inflation only and are included with this submittal. ☐ Yes ☐ No

CFO Letter, Financial Test Worksheet/Form, Audit Information, Agreed-Upon Procedures Report and Listing of Other Facilities

In addition to the Annual Recertification Document and the Updated Cost Estimates, the submittal must include:

- 1) A signed letter from your company's Chief Financial Officer (CFO) that covers all required elements;
- 2) A completed Financial Test Worksheet/Form showing that your company has passed the financial test provisions for this mechanism;
- 3) Information demonstrating that the financial statements of the company have been audited by a CPA;
- 4) An agreed-upon procedures report, prepared by your CPA, specifying that the figures used to compute the financial tests were the same as in the audited financial statements or reconciled any differences; and
- 5) A list of other facilities for which similar financial tests are being used to demonstrate compliance (or noted that no other facilities were being covered with this test).

These additional documents have been prepared and provided with this submittal.

☐ Yes ☐ No

Comments:

If any answers are no, Corporate Guarantee Mechanism is not compliant.

Local Government Financial Test Mechanism Annual Recertification Checklist

Name and Permit No. of Facility: _____
Date: _____

Annual Recertification of Financial Assurance Document

This document must follow DEQ's template, be on the permittee's letterhead, and be signed, dated and notarized. OAR 340-094-0140(6)(e)(C) or OAR 340-095-0090(6)(d)(C)

Document was prepared, notarized and is included with this submittal. ☐ Yes ☐ No

Updated Cost Estimates

The updated cost estimates must be provided for closure and/or post-closure care. They must be updated and stamped by a Professional Engineer (P.E.) with current registration, if there was a substantial change in site development and closure and/or post-closure activities at your facility. If there was no substantial changes at your facility, the cost estimates must be updated for inflation only (using our current inflation factor guidance). OAR 340-094-0140(6)(e)(A)(i)(ii) or OAR 340-095-0090(6)(d)(A)(i)(ii)

Cost estimates were updated and stamped by a P.E. or updated for inflation only and are included with this submittal. ☐ Yes ☐ No

CFO Letter, Agreed-Upon Procedures Report, CAFR, and Worksheet

In addition to the Annual Recertification Document and the Updated Cost Estimates, the submittal must contain:

1. A signed letter from your Chief Financial Officer (CFO) which certifies the following:
 - a) I am the CFO of this local government and am authorized to commit our local government to the terms of this letter. This letter is in support of our local government's use of the local government financial test to demonstrate financial assurance for the closure and/or post-closure care financial requirements at the following facilities (names of facilities).
 - b) Our local government prepares its financial statements in accordance to generally accepted accounting principles (GAAP).
 - c) Our local government will disclose the existence and estimated amount of closure and/or post-closure care costs assured in our Comprehensive Annual Financial Report (CAFR) covering the current fiscal year and in each subsequent CAFR. If at any time we cannot meet any requirement of this financial test, or if we receive a qualified audit from our outside auditor, we will immediately notify the DEQ and will provide an alternate financial assurance mechanism acceptable to the DEQ within 210 days of the end of the fiscal year in which such notice is given (by January 31 if the fiscal year ends on June 30).
 - d) Our local government has not had an operating deficit greater than five percent of revenue in more than one of the two fiscal years immediately past.
 - e) Our local government is adequately liquid in that its liquid assets are equal to or

greater than five percent of expenditures.

- f) Our local government is not excessively burdened with debt. Annual debt service payments are no more than 20 percent of total expenditures.
- g) Our environmental obligations do not consume a disproportionate share of our local government revenues. All of our environmental obligations, including guarantees of third party obligations, do not exceed 43 percent of revenues.

Note: Paragraphs (a), (b) and (c) above must be included in the CFO Letter. Paragraphs (d), (e), (f) and (g) may be included in the CFO letter, or in the accompanying Agreed-Upon Procedures Report.

- 2. An Agreed-Upon Procedures Report prepared by a qualified third party which specifies that the figures used in determining the local government met the local government financial test requirements were the same as the figures in the local government's referenced CAFR.
- 3. A copy of the permittee's CAFR, which includes:
 - a) Documentation that the CAFR was audited by a CPA who issued an unqualified opinion.
 - b) Documentation that the CAFR was prepared in conformity with Generally Accepted Accounting Principles (GAAP) for governments.
 - c) A disclosure in the footnotes of the municipality's CAFR which covered closure and/or post-closure care costs for each of its facilities, in conformity with GASB Statement No. 18.
- 4. A completed Worksheet demonstrating how the environmental obligations to be assured were determined.

These additional documents have been prepared and provided with this submittal.

☐ **Yes** ☐ **No**

Comments:

If any answers are no, Local Government Financial Test Mechanism is not compliant.

Local Government Guarantee Mechanism Annual Recertification Checklist

Name and Permit No. of Facility: _____

Date: _____

Annual Recertification of Financial Assurance Document

This document must follow DEQ's template, be on the permittee's letterhead, and be signed, dated and notarized. OAR 340-094-0140(6)(e)(C) or OAR 340-095-0090(6)(d)(C)

Document was prepared, notarized and is included with this submittal. ☐ Yes ☐ No

Updated Cost Estimates

The updated cost estimates must be provided for closure and/or post-closure care. They must be updated and stamped by a Professional Engineer (P.E.) with current registration, if there was a substantial change in site development and closure and/or post-closure activities at your facility. If there was no substantial changes at your facility, the cost estimates must be updated for inflation only (using our current inflation factor guidance). OAR 340-094-0140(6)(e)(A)(i)(ii) or OAR 340-095-0090(6)(d)(A)(i)(ii)

Cost estimates were updated and stamped by a P.E. or updated for inflation only and are included with this submittal. ☐ Yes ☐ No

Documentation of Local Government Financial Test Passage, Written Guarantee

In addition to the Annual Recertification Document and the Updated Cost Estimates, the submittal must contain:

- 1) Documentation which demonstrates that the guaranteeing government has passed the Local Government Financial Test (see the submittal components for the Local Government Financial Test Mechanism); and
- 2) A written guarantee that requires the guaranteeing government to perform or pay a third party for closure and/or post-closure care, as applicable, or establish a fully funded trust to cover such costs.

These additional documents have been prepared and provided with this submittal.

☐ Yes ☐ No

Comments:

If any answers are no, Local Government Guarantee Mechanism is not compliant.

Alternative Financial Assurance Mechanism Annual Recertification Checklist

Name and Permit No. of Facility: _____

Date: _____

Annual Recertification of Financial Assurance Document

This document must follow DEQ's template, be on the permittee's letterhead, and be signed, dated and notarized. OAR 340-094-0140(6)(e)(C) or OAR 340-095-0090(6)(d)(C)

Document was prepared, notarized and is included with this submittal. ☐ Yes ☐ No

Updated Cost Estimates

The updated cost estimates must be provided for closure and/or post-closure care. They must be updated and stamped by a Professional Engineer (P.E.) with current registration, if there was a substantial change in site development and closure and/or post-closure activities at your facility. If there was no substantial changes at your facility, the cost estimates must be updated for inflation only (using our current inflation factor guidance). OAR 340-094-0140(6)(e)(A)(i)(ii) or OAR 340-095-0090(6)(d)(A)(i)(ii)

Cost estimates were updated and stamped by a P.E. or updated for inflation only and are included with this submittal. ☐ Yes ☐ No

Other Required Mechanism Documents, Third Party Certification

In addition to the Annual Recertification Document and the Updated Cost Estimates, the submittal must contain all other required mechanism documents, including the third party certification, and these documents must be provided in a format that was previously approved by the Department.

The third party certification was prepared by a qualified and independent third party, which certified that the financial assurance mechanism continued to meet all state and federal requirements and was reasonably designed to provide the required amount of financial assurance.

These additional documents have been prepared and provided with this submittal.

☐ Yes ☐ No

Comments:

If any answers are no, Alternative Financial Assurance Mechanism is not compliant.