

COMPLIANCE CHECKLISTS

FINANCIAL ASSURANCE MECHANISMS

Note: 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.

Types of Solid Waste Facilities, Disposal Sites and Waste Tire Facilities and/or Carriers:

- ◆ **Municipal Solid Waste Operating Facility**
- ◆ **Municipal Solid Waste Closed Facility**
- ◆ **Non-Municipal Solid Waste Operating Facility**
- ◆ **Non-Municipal Solid Waste Closed Facility**
- ◆ **Selected Solid Waste Disposal Sites**
 - includes the following:
 - **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 Facility**
- ◆ **Waste Tire Storage Facility/Waste Tire Carrier Combination**
- ◆ **Waste Tire Carrier**

Financial Assurance Mechanisms allowed for each type of permittee:

- ◆ **Municipal Solid Waste Operating Facility**
- ◆ **Municipal Solid Waste Closed Facility**
- ◆ **Waste Tire Storage Facility**
- ◆ **Waste Tire Storage Facility/Waste Tire Carrier Combination**
- ◆ **Waste Tire Carrier (can secure a Surety Bond for \$5,000 or use other Mechanisms)**
Oregon Administrative Rule (OAR) 340-094-0145(6)

For Closure and/or Post-closure Care

Trust Fund
Surety Bond Guaranteeing Payment, w/Standby Trust Fund
Surety Bond Guaranteeing Performance, w/Standby Trust Fund
Irrevocable Letter of Credit, w/Standby Trust Fund
Insurance Policy
Corporate Guarantee
Local Government Financial Test
Local Government Guarantee (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

- ◆ **Non-Municipal Solid Waste Operating Closed Facility**
- ◆ **Non-Municipal Solid Waste Closed Facility**
- ◆ **Selected Solid Waste Disposal Sites**
OAR 340-095-0095(6)

For Closure and/or Post-closure Care

Trust Fund
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Surety Bond Guaranteeing Performance, w/Standby Trust Fund
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Corporate Guarantee
Alternative Financial Assurance, w/Third-Party Certification

For Corrective Action

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

Trust Fund Checklist:

Does the 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

Do the permittee and the trustee appear to be 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

Are there sufficient funds in the trust to cover all remaining costs of closure, post-closure care or corrective action?

Yes No

IF ALL ANSWERS ARE YES – TRUST FUND MECHANISM IS COMPLIANT

IF ANY ANSWERS ARE NO – TRUST FUND MECHANISM IS NOT COMPLIANT

Surety Bond Guaranteeing Payment Checklist:

Is the Department provided with a rider?

Yes No

Is the surety company 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

Has a standby trust fund been established?

Yes No

Is the penal sum of the bond at least equal to the current closure and/or post-closure care cost estimate?

Yes No

Does the bond guarantee that the permittee will either fund the standby trust fund in an amount equal to the penal sum of the bond before the site stops receiving waste, or 15 days after an order to begin closure is issued by the Department, or by a court order?

Yes No

Will the surety become liable on the bond obligation if the permittee fails to 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 account?

Yes No

IF ALL ANSWERS ARE YES – SURETY BOND MECHANISM IS COMPLIANT

IF ANY ANSWERS ARE NO – SURETY BOND MECHANISM IS NOT COMPLIANT

Surety Bond Guaranteeing Performance Checklist:

Is the Department provided with a rider?

Yes No

Is the surety company 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

Has a standby trust fund been established?

Yes No

Does the bond guarantee that the permittee will either perform final closure, post-closure maintenance or corrective action activities, as applicable, or provide financial assurance acceptable to the department within 90 days after receipt of notice of cancellation of the bond from the surety?

Yes No

Does the bond guarantee that the surety shall become liable on the bond obligation if the permittee fails to 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 account?

Yes No

IF ALL ANSWERS ARE YES – SURETY BOND MECHANISM IS COMPLIANT

IF ANY ANSWERS ARE NO – SURETY BOND MECHANISM IS NOT COMPLIANT

Irrevocable Letter of Credit Checklist:

Does the institution that issued the letter of credit have the authority to issues letters of credit, and is it regularly 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

Has a standby trust fund been established by the permittee, the purpose of which is to receive any funds resulting from a draw on the letter of credit by the Department?

Yes No

Was the letter of credit issued for an amount equal to the current cost estimate for closure, post-closure care or corrective action?

Yes No

Is the issuing institution authorized to do business in the State of Oregon?

Yes No

Does it appear that the permittee and the issuing institution are unrelated parties?

Yes No

IF ALL ANSWERS ARE YES – LETTER OF CREDIT MECHANISM IS COMPLIANT

IF ANY ANSWERS ARE NO – LETTER OF CREDIT MECHANISM IS NOT COMPLIANT

Insurance Policy Checklist:

Is the total amount the insurer is obligated to pay, the face amount, equal to the current cost estimate for closure, post-closure care or corrective action?

Yes No

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

Yes No

Does the policy contain a provision allowing assignment of the policy to successor owners or operators, which consent cannot be unreasonably withheld provided the insurer receives 60 days prior written notice of such intent to assign?

Yes No

Is the policy automatically renewable and state that the insurer may not cancel, terminate, or fail to renew the policy?

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 that 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

If the permittee has received funds from the policy as reimbursement for closure or post-closure care costs, has the Department been notified?

Yes No

If the permittee has received funds from the policy as reimbursement for closure or post-closure care costs, is the remaining value of the policy sufficient to cover the remaining cost estimate for closure and post-closure care?

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

IF ALL ANSWERS ARE YES – INSURANCE POLICY MECHANISM IS COMPLIANT

IF ANY ANSWERS ARE NO – INSURANCE POLICY MECHANISM IS NOT COMPLIANT

Corporate Guarantee Checklist:

Has the guaranteeing entity passed the Financial Test provisions contained in OAR 340-094-0145(6)(f)(A)(i) – (iv) or OAR 340-095-0095(6)(f)(A)(i) – (iv) or the Alternative Financial Test provisions contained in OAR 340-094-0145(6)(f)(B)(i)-(ii) or OAR 340-095-0095(6)(f)(B)(i) – (ii)?

Yes No

(A) Financial Test. To pass the financial test, the permittee must have:

- (i) Two of the following three ratios: A ratio of total liabilities to tangible net worth less than 1.5; a ratio of the [(sum of net income plus depreciation, depletion, and amortization) minus \$10 million] to total liabilities greater than 0.1; or a ratio of current assets to current liabilities greater than 1.5;

Yes No

- (ii) Net working capital equal to at least four times and tangible net worth equal to at least six times the sum of the current cost estimates covered by the test;

Yes No

- (iii) Tangible net worth of at least \$10 million exclusive of the costs being guaranteed; and

Yes No

- (iv) Assets in the United States amounting to at least the sum of the current closure, post-closure and corrective action cost estimates covered by the test, plus any other environmental obligations guaranteed by permittee.

Yes No

(B) Alternative Financial Test. To pass the alternative financial test, the permittee must have:

- (i) Tangible net worth at least \$10 million exclusive of the costs being guaranteed; and

Yes No

- (ii) Two of the following three ratios:

- (I) Times Interest Earned (earnings before interest and taxes) divided by interest) of 2.0 or higher;

Yes No

(II) Beaver's Ratio of 0.2 or higher ([internally generated cash] divided by [total liabilities]). Internally generated cash is obtained from taxable income before net operating loss, plus credits for fuel tax and investment in regulated investment companies, plus depreciation plus amortization plus depletion, plus any income on the books not required to be reported for tax purposes if it is likely to be recurring, minus income tax expenses. Total liabilities includes all long- and short-term debt; or

Yes No

(III) Altman's Z-Score of 2.9 or higher.

Yes No

Did the permittee pass the Financial Test at the time the financial assurance plan was filed?

Yes No

Did the permittee reconfirm passage within 90 days of the end of each corporate year by means of a letter signed by the Chief Financial Officer (CFO), that:

a) Provides information to document passing the test:

Yes No

b) Guarantees availability of funds;

Yes No

c) Guarantees closure, post-closure or corrective action activities will be completed according to the applicable plan;

Yes No

d) Guarantees a substitute financial mechanism will be funded if required;

Yes No

e) Guarantees the CFO will notify the Department within 15 days of no longer meeting the Financial Test or enters bankruptcy; and

Yes No

f) Acknowledges the guarantee is a binding obligation and that the CFO has the authority to bind the corporation.

Yes No

Have the financial statements of the guaranteeing entity been audited by a CPA?

Yes No

Has the permittee's CPA prepared an agreed-upon procedures report specifying the figures used to compute the financial tests are the same as in the audited financial statements or reconciles any differences?

Yes No

Has the permittee provided a list of other facilities for which similar financial tests are being used to demonstrate compliance?

Yes No

IF ALL ANSWERS ARE YES – CORPORATE GUARANTEE MECHANISM IS COMPLIANT

IF ANY ANSWERS ARE NO – CORPORATE GUARANTEE MECHANISM IS NOT COMPLIANT

Local Government Financial Test Checklist:

Were the local government financial statements audited by a CPA who issued an unqualified opinion?

Yes No

Have the local government financial statements been prepared in conformity with Generally Accepted Accounting Principles (GAAP) for governments?

Yes No

Is the ratio of cash plus marketable securities to expenditures greater than or equal to 0.05?

Yes No

Is the ration of annual debt service to total expenditures less than or equal to 0.20?

Yes No

The municipality is not eligible to assure its own obligation if it fails any of the following requirements:

a) All of its general obligation bonds are rated higher than Moody's Baa or Standard and Poor's BBB;

Yes No

b) Received only an unqualified opinion on it annual audit; or

Yes No

c) Has operated at a deficit less than five percent of its annual revenue in each of its last two fiscal years.

Yes No

Do the footnotes in the municipality's Comprehensive Annual Financial Report (CAFR) contain a disclosure covering closure and post-closure care cost in conformity with Government Accounting Standards Board (GASB) Statement No. 18?

Yes No

Are the current cost estimates for closure, post-closure care and corrective action along with any other environmental obligations covered by a financial test, if any, less than or equal to 43% of the local government's annual revenue?

Yes No

If financial obligations exceed 43% of the local government's annual revenue, has an alternate financial assurance mechanism been obtained to cover the excess?

Yes No

Has the CFO signed a letter that:

a) Lists all current cost estimates covered by the current financial test;

Yes No

b) Certifies that the local government has made the disclosure required by GASB Statement No. 18; and

Yes No

c) Certifies that current cost estimates do not exceed 43% of annual revenue.

Yes No

Has the local government's CPA prepared an agreed-upon procedures report relative to the required financial ratios?

Yes No

Has the CFO's certification and the CPA's agreed-upon procedures report been placed in the facility operating record by September 30, of each fiscal year?

Yes No

If the local government has failed to meet the financial tests, has alternative financial assurance been obtained by January 31 following the fiscal year of failure?

Yes No

IF ALL ANSWERS ARE YES – LOCAL GOVERNMENT FINANCIAL TEST MECHANISM IS COMPLIANT

IF ANY ANSWERS ARE NO – LOCAL GOVERNMENT FINANCIAL TEST MECHANISM IS NOT COMPLIANT

Local Government Guarantee Checklist:

Has the guaranteeing government passed the Local government financial test?

Yes No

Has a written guarantee been provided by the local government?

Yes No

Is the amount guaranteed less than the debt limitation allowed by the Oregon Constitution?

Yes No

Does the written guarantee require the local government to perform or pay a third party for closure, post-closure care or corrective action costs, or establish a fully funded trust to cover such costs?

Yes No

If the local government that provided the written guarantee has failed to meet the financial tests, has alternative financial assurance been obtained by September 30, following the fiscal year of failure?

Yes No

IF ALL ANSWERS ARE YES – LOCAL GOVERNMENT GUARANTEE
MECHANISM IS COMPLIANT

IF ANY ANSWERS ARE NO – LOCAL GOVERNMENT GUARANTEE
MECHANISM IS NOT COMPLIANT

Alternative Financial Assurance Checklist:

Has the Department given approval of the financial assurance mechanism?

Yes No

Has a third-party certification been provided which certifies that the financial assurance mechanism meets all state and federal requirements and is reasonably designed to provide the required amount of financial assurance?

Yes No

Has the permittee made payments in the frequency and amount as required by the financial assurance plan and financial assurance mechanism?

Yes No

IF ALL ANSWERS ARE YES – ALTERNATIVE FINANCIAL ASSURANCE
MECHANISM IS COMPLIANT

IF ANY ANSWERS ARE NO – ALTERNATIVE FINANCIAL ASSURANCE
MECHANISM IS NOT COMPLIANT