TITLE 329 SOLID WASTE MANAGEMENT DIVISION

Final Rule
LSA Document #11-454(F)

DIGEST

Amends 329 IAC 10-12-2 to correct code citations. Amends 329 IAC 10-39-1 through 329 IAC 10-39-3, 329 IAC 10-39-10, and 329 IAC 10-39-11 to update the solid waste financial assurance rules. Effective 30 days after filing with the Publisher.

HISTORY

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329 IAC 10-12-2; 329 IAC 10-39-1; 329 IAC 10-39-2; 329 IAC 10-39-3; 329 IAC 10-39-10; 329 IAC 10-39-11

SECTION 1. 329 IAC 10-12-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-12-2 Application review

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
Affected: IC 13-15-4; IC 13-18; IC 13-20-8; IC 36-9-30

Sec. 2. (a) Time periods for determination on permit application are under ~~IC 13-15-8.~~ **IC 13-15-4.**

(b) Procedures for application review are under ~~IC 13-15-8.~~ **IC 13-15-4.**

(c) Remedies are under ~~IC 13-15-8.~~ **IC 13-15-4.**

(Solid Waste Management Division; 329 IAC 10-12-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1813; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2757; filed May 14, 2014, 11:02 a.m.: 20140611-IR-329110454FRA)

SECTION 2. 329 IAC 10-39-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-39-1 Applicability

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 1. (a) This rule applies to all solid waste land disposal facilities that:
(1) are required to have a permit by 329 IAC 10-11-1; and
(2) apply for a permit after April 13, 1996, or have an operating permit in effect on April 13, 1996.

(b) The permittee for solid waste land disposal facilities regulated by this rule shall provide financial responsibility for closure and post-closure in accordance with the following:
(1) Closure and post-closure rules, including:
(A) 329 IAC 10-22 and 329 IAC 10-23;
(B) 329 IAC 10-30 and 329 IAC 10-31; or
(C) 329 IAC 10-37 and 329 IAC 10-38.
(2) Sections 2 through 5 of this rule.

(c) Solid waste land disposal facilities that have operating permits in effect must not continue to operate unless ~~they~~ **the permittees** have established financial responsibility for post-closure by choosing a financial assurance mechanism under section 3(a) of this rule and by funding the same under section 3(b) of this rule.

(d) Solid waste land disposal facilities that have operating permits in effect must not continue to operate unless ~~they~~ **the permittees** have established financial responsibility for closure by choosing a financial assurance mechanism under section 2(a) of this rule and by funding the same under section 2(b) of this rule.

(e) Solid waste land disposal facilities that apply for permits after April 13, 1996, must provide financial responsibility as required by 329 IAC 10-11-2.5(a)(4). The documents establishing both the closure and post-closure financial responsibility must be executed by and approved by the commissioner prior to operation of the facility. In addition, the financial assurance mechanism must be funded under sections 2(b) and 3(b) of this rule prior to operation.

(f) The requirements of this section apply to permittees of all solid waste land disposal facilities except permittees who are state or federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States.

(Solid Waste Management Division; 329 IAC 10-39-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1918; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1864, eff Apr 1, 2004; filed May 14, 2014, 11:02 a.m.: 20140611-IR-329110454FRA)

SECTION 3. 329 IAC 10-39-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-39-2 Closure; financial responsibility

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
Affected: IC 8-1-2; IC 13-20; IC 36-9-30

Sec. 2. (a) The permittee shall establish financial responsibility for closure of all the permitted acreage for the solid waste land disposal facility before waste placement, except as provided in subsection (b). The permittee shall choose from the following options:
(1) The trust fund option, including the following:
(A) The permittee may satisfy the requirements of this section by ~~establishing~~ **doing as follows:**
(i) Establish a trust agreement on:
~~(i)~~ **(AA)** forms provided by the commissioner; or
~~(ii)~~ **(BB)** other forms approved by the commissioner.
(ii) Submit an original signed copy and a duplicate copy of the trust agreement to the commissioner.
(B) All trust agreements must contain the following:
(i) Identification of solid waste land disposal facilities and corresponding closure cost estimates covered by the trust agreement.
(ii) The establishment of a trust fund in the amount determined by subsection (b) and guarantee payments from that fund either:
(AA) reimbursing the permittee for commissioner-approved closure work done; or
(BB) making payments to the commissioner for accomplishing required closure work.
(iii) The requirement of annual evaluations of the trust to be submitted to the commissioner.
(iv) The requirement of successor trustees to notify the commissioner, in writing, of their appointment at least ten (10) days before the appointment becoming effective.
(v) The requirement of the trustee to notify the commissioner, in writing, of the failure of the permittee to make a required payment into the fund.

(vi) The establishment that the trust is irrevocable unless terminated, in writing, with the approval of the:
(AA) permittee;
(BB) trustee; and
(CC) commissioner.
(vii) A certification that the signatory of the trust agreement for the permittee was duly authorized to bind the permittee.
(viii) A notarization of all signatures by a notary public commissioned to be a notary public in the state of Indiana at the time of notarization.
(ix) The establishment that the trustee is:
(AA) authorized to act as a trustee; and
(BB) an entity whose operations are regulated and examined by a federal and state of Indiana agency.
(x) The requirement of:
(AA) initial payment into the fund be made within thirty (30) days of the commissioner's approval of the trust agreement; and
(BB) any subsequent payments be made annually not later than June 15.

(2) The surety bond option, including the following:
(A) The permittee may satisfy the requirements of this section by ~~establishing~~ **doing as follows:**
(i) Establish a surety bond on:
~~(i)~~ **(AA)** forms provided by the commissioner; or
~~(ii)~~ **(BB)** other forms approved by the commissioner.
(ii) Submit an original signed copy and a duplicate of the surety bond to the commissioner.
(B) Choose from one (1) of the following types of surety bonds:
(i) A financial guarantee surety bond.
(ii) A performance surety bond.
~~(B)~~ **(C)** All surety bonds must contain the following:
(i) The establishment of penal sums in the amount determined by subsection (b).
(ii) Provision that the surety:
(AA) will be liable to fulfill the permittee's closure obligations upon notice from the commissioner that the permittee has failed to do so; and
(BB) may not cancel the bond without first sending notice of cancellation by certified mail to the permittee and the commissioner at least one hundred twenty (120) days before the effective date of the cancellation.
(iii) Provision that the permittee may not terminate the bond without prior written authorization by the commissioner.
~~(C)~~ **(D)** The permittee shall establish a standby trust fund to be utilized in the event the:
(i) permittee fails to fulfill closure obligations; and
(ii) bond guarantee is exercised.
The **standby** trust fund must be established in accordance with the requirements of subdivision (1). **Under the terms of the bond, all payments made if the bond is utilized must be deposited by the surety directly into the standby trust fund in accordance with instructions from the commissioner.**
~~(D)~~ **(E)** The surety company issuing the bond must be:
(i) among those listed as acceptable sureties for federal bonds in Circular 570 of the United States Department of the Treasury; and
(ii) authorized to do business in Indiana.
~~(E)~~ **(F)** The surety will not be liable for deficiencies in the performance of closure by the permittee after the commissioner releases the permittee in accordance with section 6 of this rule.

(3) The letter-of-credit option, including the following:
(A) The permittee may satisfy the requirements of this section by ~~establishing~~ **doing as follows:**
(i) Establish a letter-of-credit on:
~~(i)~~ **(AA)** forms provided by the commissioner; or
~~(ii)~~ **(BB)** other forms approved by the commissioner.
(ii) Submit an original signed copy and a duplicate of the letter-of-credit to the commissioner.
(B) All letters of credit must contain the following:
(i) The establishment of credit in the amount determined by subsection (b).
(ii) Irrevocability.
(iii) An effective period of at least one (1) year and automatic extensions for periods of at least one (1) year unless the issuing institution provides written notification of cancellation by certified mail to both the permittee and the commissioner at least one hundred twenty (120) days before the effective date of cancellation.
(iv) Provision that, upon written notice from the commissioner, the institution issuing the letter-of-credit will:
(AA) state that the permittee's obligations have not been fulfilled; and

(BB) deposit funds equal to the amount of the letter-of-credit into a **standby** trust fund to be used to ensure the permittee's closure obligations are fulfilled.

(C) The permittee shall establish a standby trust fund to be utilized in the event the:

(i) permittee fails to fulfill its closure obligations; and

(ii) letter-of-credit is utilized.

The **standby** trust funds must be established in accordance with the requirements of subdivision (1). **Under the terms of the letter-of-credit, all amounts paid pursuant to a commissioner's request in the event the permittee fails to fulfill its closure obligations must be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the commissioner.**

(D) The issuing institution must be an entity:

(i) that has the authority to issue letters of credit; and

(ii) whose letters of credit operations are regulated and examined by a federal or Indiana agency.

(4) The insurance option, including the following:

(A) The permittee may satisfy the requirements of this section by ~~providing~~ **doing as follows:**

(i) Provide evidence of insurance on:

~~(i)~~ **(AA)** forms provided by the commissioner; or

~~(ii)~~ **(BB)** other forms approved by the commissioner.

(ii) Submit a certificate of closure insurance to the commissioner.

(B) All insurance must include the following requirements:

(i) Be in the amount determined by subsection (b).

(ii) Provide that, upon written notification to the insurer by the commissioner that the permittee has failed to perform final closure, the insurer shall make payments:

(AA) in any amount, not to exceed the amount insured; and

(BB) to any person authorized by the commissioner.

(iii) Provide that the permittee shall maintain the policy in full force and effect unless the commissioner consents in writing to termination of the policy.

(iv) Provide for assignment of the policy to a transferee permittee.

(v) Provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure of the permittee to pay the premium. No policy may:

(AA) be canceled;

(BB) be terminated; or

(CC) fail to be renewed;

unless at least one hundred twenty (120) days before the event the commissioner and the permittee are notified by the insurer in writing.

(C) The insurer shall either be:

(i) licensed to transact the business of insurance; or

(ii) eligible to provide insurance as an excess or surplus lines insurer;

in one (1) or more states.

(5) The financial test for restricted waste sites option, including the following:

(A) This financial test is only available for restricted waste sites. **To be deemed to have established financial responsibility, the permittee must meet one (1) of the following requirements:**

(i) All items in clause (B) if the permittee currently has a bond rating issued by Standard and Poor's or Moody's.

(ii) Clause (B)(i) and either clause (B)(ii) or (B)(iii) if the permittee:

(AA) is a public utility operating in Indiana subject to the jurisdiction of the Indiana utility regulatory commission under IC 8-1-2; and

(BB) remits annual financial information to the commission under IC 8-1-2-16.

The remitted financial information is subject to examination and audit by the Indiana utility regulatory commission under IC 8-1-2-17 and IC 8-1-2-18.

(iii) Clause (B)(i) and (B)(ii) if the permittee currently does not have a bond rating issued by Standard and Poor's or Moody's.

(B) ~~If a permittee meets the criteria set forth in item (i) and either item (ii) or (iii), the permittee shall be deemed to have established financial responsibility. as follows:~~ **The following criteria will be used to establish financial responsibility:**

(i) Less than fifty percent (50%) of the company's gross revenues are derived from waste management.

(ii) The permittee meets the following four (4) tests:

(AA) Two (2) of the following three (3) ratios are met:

(aa) A ratio of total liabilities to net worth less than two (2.0).

(bb) A ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than one-tenth (0.1).

(cc) A ratio of current assets to current liabilities greater than one and one-half (1.5).

(BB) Net working capital and tangible net worth each at least six (6) times the sum of the current closure and current post-closure cost estimates.
(CC) Tangible net worth of at least ten million dollars ($10,000,000).
(DD) Assets **located** in the United States amounting to at least ninety percent (90%) of the permittee's total assets or at least six (6) times the sum of the current closure and current post-closure costs estimates.
(iii) The permittee meets the following four (4) tests:
(AA) A current rating for the permittee's most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's.
(BB) Tangible net worth of at least six (6) times the sum of the current closure and current post-closure cost estimates.
(CC) Tangible net worth of at least ten million dollars ($10,000,000).
(DD) Assets located in the United States amounting to at least ninety percent (90%) of the permittee's total assets or at least six (6) times the sum of the current closure and current post-closure estimates.
(C) To demonstrate the financial test has been met, the permittee shall submit the following documents to the commissioner **to establish financial assurance and annually within ninety (90) days after the close of each fiscal year:**
(i) ~~A form provided by the commissioner or other form approved by the commissioner, signed by the permittee's chief financial officer, demonstrating the applicable criteria have been met.~~ **A letter signed by the permittee's chief financial officer, demonstrating the applicable criteria have been met.**
(ii) A copy of an independent certified public accountant's report examining the permittee's financial statements for the latest completed fiscal year.
(iii) A special report from the permittee's independent certified public accountant to the permittee stating the following:
(AA) The certified public accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in the financial statements.
(BB) In connection with that procedure, no matters came to the attention of the certified public accountant that caused the certified public accountant to believe that the specified data should be adjusted.
~~(D) The permittee shall submit updated clause (C) documents to the commissioner within ninety (90) days after the close of each fiscal year.~~
~~(E)~~ **(D)** If at any time the permittee fails to meet the financial test, the permittee shall establish ~~an alternate financial responsibility mechanism~~ **one of the financial assurance mechanisms described in sections 2(a)(1) through 2(a)(4)** *[subdivisions (1) through (4)]* **or an alternate mechanism described in 2(a)(5)(G)** *[clause (G)]* within one hundred twenty (120) days after the end of the fiscal year for which the year-end financial data shows that the permittee no longer meets the requirements.
~~(F)~~ **(E)** The commissioner may disallow use of this test on the basis of qualifications in the opinion expressed in the independent certified public accountant's report examining the permittee's financial statements. An adverse opinion or a disclaimer of opinion will be cause for disallowance. Other qualifications may be cause for disallowance if, in the opinion of the commissioner, they indicate the permittee does not meet the requirements of this subdivision. The permittee shall ~~choose an alternate financial responsibility mechanism~~ **establish one of the financial assurance mechanisms described in sections 2(a)(1) through 2(a)(4)** *[subdivisions (1) through (4)]* **or an alternate mechanism described in 2(a)(5)(G)** *[clause (G)]* within thirty (30) days after notification of the disallowance.
(F) If a permittee using clause (B)(iii) for the financial test has a current bond rating of BBB as issued by Standard and Poor's or Baa3 as issued by Moody's for the permittee's most recent bond issuance, the commissioner may request that the permittee submit the following information to the department on a quarterly basis until the bond rating is upgraded:
(i) The current bond rating of the most recent issuance.
(ii) The name of the rating service.
(iii) The date of issuance of the bond.
(iv) The date of maturity of the bond.
(v) The last credit rating action.
(vi) An explanation of any events such as a decrease in the bond ratings, as well as inclusion on a negative credit watch list.
This quarterly update will supplement the annual financial update specified in clause (C). On the basis of the submitted information, if the commissioner finds that the permittee no longer meets the restricted waste financial test requirements, the permittee shall provide alternate financial assurance.
(G) A permittee may propose a financial assurance mechanism for restricted waste sites other than those listed in sections 2(a)(1) through 2(a)(4) and 2(a)(5)(A) through 2(a)(5)(F) *[subdivisions (1)*

through (4) and clauses (A) through (F)] **in accordance with the following:**

(i) The permittee must demonstrate to the satisfaction of the commissioner that the proposed mechanism provides equivalent or greater financial responsibility for closure of all the permitted acreage than the listed mechanisms.

(ii) Any proposed mechanism is subject to the approval of the commissioner.

(6) The local government financial test option, including the following:

(A) This financial test is only available for permittees that are local governments. As used in this subdivision, "local government" means a county, municipality, township, or solid waste management district.

(B) A local government permittee that satisfies the following requirements may demonstrate financial assurance up to the amount specified in clause (C):

(i) The local government permittee shall meet the following financial component requirements:

(AA) The local government permittee shall satisfy ~~either of~~ the following as applicable:

(aa) If the local government permittee has outstanding, rated general obligation bonds that are not secured by insurance, a letter-of-credit, or other collateral or guarantee, the local government permittee shall have a current rating of:

(1) Aaa, Aa, A, or Baa as issued by Moody's; or

(2) AAA, AA, A, or BBB as issued by Standard and Poor's;

on all the general obligation bonds.

(bb) The local government permittee shall satisfy the following financial ratios based on the local government permittee's most recent audited annual financial statement:

(1) A ratio of cash plus marketable securities to total expenditures greater than or equal to five-hundredths (0.05).

(2) A ratio of annual debt service to total expenditures less than or equal to two-tenths (0.20).

(BB) The local government permittee shall:

(aa) prepare the local government permittee's financial statements in conformity with generally accepted accounting principles (GAAP) for governments; and

(bb) have the financial statements audited by an independent certified public accountant or the state board of accounts.

(CC) A local government permittee is not eligible to assure the local government permittee's obligations under this subdivision if any of the following applies to the local government permittee:

(aa) The local government permittee is currently in default on any outstanding general obligation bonds.

(bb) The local government permittee has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's.

(cc) The local government permittee has operated at a deficit equal to five percent (5%) or more of total annual revenue in each of the past two (2) fiscal years.

(dd) The local government permittee receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant or the state board of accounts auditing its financial statement as required under subitem (BB). The commissioner may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the commissioner deems the qualification insufficient to warrant disallowance of use of the test.

(DD) As used in this subdivision, the following terms apply:

(aa) "Cash plus marketable securities" means all the cash plus marketable securities held by the local government permittee on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations, such as pensions.

(bb) "Debt service" means the amount of principal and interest due on a loan in a given time period, typically the current year.

(cc) "Deficit" means total annual revenues minus total annual expenditures.

(dd) "Total expenditures" means all expenditures, excluding capital outlays and debt repayment.

(ee) "Total revenues" means revenues from all taxes and fees but does not include the proceeds from borrowing or asset sales, excluding revenues from funds managed by the local government permittee on behalf of a specific third party.

(EE) If the permittee using the local government financial test has a current bond rating of BBB- as issued by Standard and Poor's or Baa3 as issued by Moody's for the permittee's most recent bond issuance, the commissioner may request that the permittee submit the following information to the department on a quarterly basis until the bond rating is upgraded:

(aa) The current bond rating of the most recent issuance.

(bb) The name of the rating service.

(cc) The date of issuance of the bond.

(dd) The date of maturity of the bond.

(ee) The last credit rating action.

(ff) An explanation of any events such as decrease in the bond ratings, as well as inclusion on a

negative credit watch list.

This quarterly update will supplement the record keeping and report requirements specified in item (iii). On the basis of the submitted information, if the commissioner finds that the permittee no longer meets the local government financial test requirements, the permittee shall provide alternate financial assurance in accordance with this rule.

(ii) The local government permittee shall meet the following public notice component requirements:

(AA) The local government permittee shall place a reference to the closure and post-closure care costs assured through the financial test into the local government permittee's next comprehensive annual financial report (CAFR) at the time of the next required local government financial test annual submittal or before the initial receipt of waste at the facility, whichever is later. Disclosure must include the following:

(aa) Nature and source of closure and post-closure care requirements.

(bb) Reported liability at the balance sheet date.

(cc) Estimated total closure and post-closure care cost remaining to be recognized.

(dd) Percentage of landfill capacity used to date.

(ee) Estimated landfill life in years.

(BB) A reference to corrective action costs must be placed in the CAFR not later than one hundred twenty (120) days after the corrective action remedy has been selected in accordance with the requirements of 329 IAC 10-21-13.

(CC) For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the facility's operating record until issuance of the next available CAFR if timing does not permit the reference to be incorporated into the most recently issued CAFR or budget.

(DD) For closure and post-closure costs, conformance with Government Accounting Standards Board Statement 18 assures compliance with this public notice component.

(iii) The local government permittee shall meet the following record keeping and reporting requirements:

(AA) The local government permittee shall place the following items in the facility's operating record:

(aa) A letter signed by the local government permittee's chief financial officer that completes the following:

(1) Lists all of the current cost estimates covered by a financial test as described in clause (C).

(2) Provides evidence and certifies that the local government permittee meets the conditions of item (i)(AA) through (i)(CC).

(3) Certifies that the local government permittee meets the conditions of item (ii) and clause (C).

(bb) The local government permittee's independently audited year-end financial statements for the latest fiscal year (except for local government permittees where audits are required every two (2) years when unaudited statements may be used in years when audits are not required), including the unqualified opinion of the auditor, who shall be an independent certified public accountant, or the state board of accounts that conducts equivalent comprehensive audits.

(cc) A report to the local government permittee from the local government permittee's independent certified public accountant or the state board of accounts based on performing an agreed upon procedures engagement relative to the:

(1) financial ratios required by item (i)(AA)(bb), if applicable; and

(2) requirements of item (i)(BB), (i)(CC)(cc), and (i)(CC)(dd).

The independent certified public accountant's or state board of accounts' report must state the procedures performed and the findings.

(dd) A copy of the CAFR used to comply with item (ii) or certification that the requirements of General Accounting Standards Board Statement 18 have been met.

(BB) The items required in subitem (AA) must be placed in the facility operating record as follows:

(aa) In the case of closure and post-closure care, either at the time of the next required local government financial test annual submittal or before the initial receipt of waste at the facility, whichever is later.

(bb) In the case of corrective action, not later than one hundred twenty (120) days after the corrective action remedy is selected in accordance with the requirements of 329 IAC 10-21-13.

(CC) After the initial placement of the items in the facility's operating record, the local government permittee shall:

(aa) update the information; and

(bb) place the updated information in the operating record;

within one hundred eighty (180) days following the close of the local government permittee's fiscal year.

(DD) The local government permittee is no longer required to meet the requirements of this item when either the local government permittee:

(aa) substitutes alternate financial assurance as specified in this rule; or

(bb) is released from the requirements of this rule in accordance with section 6 or 11 of this rule.

(EE) A local government permittee shall satisfy the requirements of the financial test at the close of each fiscal year. If the local government permittee no longer meets the requirements of the local government

financial test, the local government permittee shall, within one hundred twenty (120) days following the close of the local government permittee's fiscal year, complete the following:

(aa) Obtain alternative financial assurance that meets the requirements of this rule.

(bb) Place the required submissions for that assurance in the facility's operating record.

(cc) Notify the commissioner that the local government permittee no longer meets the criteria of the financial test and that alternate assurance has been obtained.

(FF) The commissioner, based on a reasonable belief that the local government permittee may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government permittee at any time. If the commissioner finds, on the basis of the reports or other information, that the local government permittee no longer meets the requirements of the local government financial test, the local government permittee shall provide alternate financial assurance in accordance with this rule.

(GG) The commissioner may disallow use of this test on the basis of qualifications in the opinion expressed in the state board of accounts' annual financial audit of the local government permittee. An adverse opinion or a disclaimer of opinion is cause for disallowance. Other qualifications may be cause for disallowance if, in the opinion of the commissioner, the qualifications indicate the local government permittee does not meet the requirements of this subdivision. The local government permittee shall choose an alternate financial responsibility mechanism within ninety (90) days after notification of the disallowance.

(C) The local government permittee shall complete the calculation of costs to be assured. The portion of the closure, post-closure, and corrective action costs for which a local government permittee can assure under this subdivision is determined as follows:

(i) If the local government permittee does not assure other environmental obligations through a financial test, the local government permittee may assure closure, post-closure, and corrective action costs that equal up to forty-three percent (43%) of the local government permittee's total annual revenue.

(ii) If the local government permittee assures other environmental obligations through a financial test, including those associated with:

(AA) underground injection control (UIC) facilities under 40 CFR 144.62;

(BB) petroleum underground storage tank facilities under 329 IAC 9-8;

(CC) polychlorinated biphenyls (PCB) storage facilities under 40 CFR 761; and

(DD) hazardous waste treatment, storage, and disposal facilities under 329 IAC 3.1-14 or 329 IAC 3.1-15;

the local government permittee shall add those costs to the closure, post-closure, and corrective action costs the local government permittee seeks to assure under this subdivision. The total that may be assured must not exceed forty-three percent (43%) of the local government permittee's total annual revenue.

(iii) The local government permittee shall obtain an alternate financial assurance instrument for those costs that exceed the limits set in this clause.

(7) The local government guarantee option, including the following:

(A) A permittee may demonstrate financial assurance for closure, post-closure, and corrective action, as required by sections 2, 3, and 10 of this rule, ~~by obtaining~~ **as follows:**

(i) Obtain a written guarantee provided by a local government.

(ii) Submit an original signed copy and a duplicate of the written guarantee to the commissioner.

(B) The guarantor shall meet the requirements of the local government financial test in subdivision (6) and shall comply with the terms of a written guarantee as follows:

(i) The guarantee must be effective:

(AA) before the initial receipt of waste or at the time of the next required local government financial test annual submittal, whichever is later, in the case of closure and post-closure care; or

(BB) not later than one hundred twenty (120) days after the corrective action remedy has been selected in accordance with the requirements of 329 IAC 10-21-13.

(ii) The guarantee must provide the following:

(AA) If the permittee fails to perform any combination of closure, post-closure care, or corrective action of a facility covered by the guarantee, the guarantor shall:

(aa) perform or pay a third party to perform any combination of closure, post-closure care, or corrective action as required under this subitem; or

(bb) establish a fully funded trust fund as specified in subdivision (1) in the name of the permittee.

(BB) The guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the permittee and to the commissioner. Cancellation must not occur during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the permittee and the commissioner as evidenced by the return receipts.

(CC) If a guarantee is canceled under subitem (BB), the permittee shall, within ninety (90) days following receipt of the cancellation notice by the permittee and the commissioner, complete the following:

(aa) Obtain alternate financial assurance under this rule.

(bb) Place evidence of that alternate financial assurance in the facility operating record.
(cc) Notify the commissioner.
(DD) If the permittee fails to provide alternate financial assurance within the ninety (90) day period under subitem (CC), the guarantor shall complete the following:
(aa) Provide alternate assurance within one hundred twenty (120) days following the guarantor's notice of cancellation.
(bb) Place evidence of the alternate assurance in the facility operating record.
(cc) Notify the commissioner.
(C) The permittee shall complete the following record keeping and reporting requirements:
(i) The permittee shall place a certified copy of the guarantee along with the items required under subdivision (6)(B)(iii) into the facility's operating record:
(AA) before the initial receipt of waste or at the time of the next required local government financial test annual submittal, whichever is later, in the case of closure and post-closure care; or
(BB) not later than one hundred twenty (120) days after the corrective action remedy has been selected in accordance with 329 IAC 10-21-13.
(ii) The permittee is no longer required to maintain the items specified in this clause when the permittee:
(AA) substitutes alternate financial assurance as specified in this rule; or
(BB) is released from the requirements of this rule in accordance with section 6 or 11 of this rule.
(iii) If a local government guarantor no longer meets the requirements of subdivision (6), the permittee shall, within ninety (90) days, complete the following:
(AA) Obtain alternative assurance.
(BB) Place evidence of the alternate assurance in the facility operating record.
(CC) Notify the commissioner.
If the permittee fails to obtain alternate financial assurance within the ninety (90) day period, the guarantor shall provide that alternate assurance within the next thirty (30) days.

(b) Financial responsibility closure cost estimate requirements must be as follows:
(1) For purposes of establishing financial responsibility, the permittee shall have a detailed written estimate of the cost of closing the facility based on the following:
(A) The closure costs derived under:
(i) 329 IAC 10-22-2(c);
(ii) 329 IAC 10-30-4(b); or
(iii) 329 IAC 10-37-4(b).
(B) One (1) of the closure cost estimating standards under subdivision (3).
(2) As used in this section, "establishment of financial responsibility" means submission of financial responsibility to the commissioner in the form of one (1) of the options under subsection (a).
(3) The permittee shall use one (1) of the following closure cost estimating standards:
(A) The entire solid waste land disposal facility closure standard is an amount that equals the estimated total cost of closing the entire solid waste land disposal facility, less an amount representing portions of the solid waste land disposal facility that have been certified for partial closure in accordance with:
(i) 329 IAC 10-22-3;
(ii) 329 IAC 10-30-5; or
(iii) 329 IAC 10-37-5.
(B) The incremental closure standard is an amount that, for any year of operation, equals the total cost of closing the portion of the solid waste land disposal facility dedicated to the current year of solid waste land disposal facility operation, plus all closure amounts from all other partially or completely filled portions of the solid waste land disposal facility from prior years of operation that have not yet been certified for partial closure in accordance with:
(i) 329 IAC 10-22-3;
(ii) 329 IAC 10-30-5; or
(iii) 329 IAC 10-37-5.

(c) Until final closure of the solid waste land disposal facility is certified, the permittee shall annually review and submit to the commissioner the financial closure estimate derived under this section annually not later than June 15. The submittal must also include a copy of the ~~final~~ **existing** contour map of the solid waste land disposal facility that delineates the boundaries of all areas into which waste has been placed as of the annual review and certified by a registered professional engineer or registered land surveyor. In addition, as part of the annual review, the permittee shall revise the closure estimate as follows:
(1) For inflation, using an inflation factor derived from the annual implicit price deflator for gross national product as published by the United States Department of Commerce in its Survey of Current Business. The

inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year as follows:

(A) The first revision is made by multiplying the original closure cost estimate by the inflation factor. The result is the revised closure cost estimate.

(B) Subsequent revisions are made by multiplying the latest revised closure cost estimate by the latest inflation factor.

(2) For changes in the closure plan, whenever the changes increase the cost of closure.

(d) The permittee may revise the closure cost estimate downward whenever a change in the closure plan decreases the cost of closure or whenever portions of the solid waste land disposal facility have been certified for partial closure under:

(1) 329 IAC 10-22-3;
(2) 329 IAC 10-30-5; or
(3) 329 IAC 10-37-5.

(Solid Waste Management Division; 329 IAC 10-39-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1919; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2817; filed Feb 26, 1999, 5:45 p.m.: 22 IR 2228; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3866; errata filed Sep 8, 1999, 11:38 a.m.: 23 IR 27; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1864, eff Apr 1, 2004; filed Jul 10, 2007, 2:26 p.m.: 20070808-IR-329050167FRA; filed May 14, 2014, 11:02 a.m.: 20140611-IR-329110454FRA)

SECTION 4. 329 IAC 10-39-3 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-39-3 Post-closure; financial responsibility

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
Affected: IC 13-20; IC 36-9-30

Sec. 3. (a) The permittee shall establish financial responsibility for post-closure care for all the permitted acreage of the solid waste land disposal facility before waste placement, except as provided by subsection (b). The permittee shall choose from the following options:

(1) The trust fund option, including the following:

(A) The permittee shall **do as follows:**

(i) Establish a trust agreement on:

~~(i)~~ **(AA)** forms provided by the commissioner; or

~~(ii)~~ **(BB)** other forms approved by the commissioner.

(ii) Submit an original signed copy and a duplicate of the trust agreement to the commissioner.

(B) All trust agreements must conform to the requirements detailed in section 2(a)(1)(B) of this rule, with the exception that the term "post-closure" be substituted for the term "closure".

(2) The surety bond option, including the following:

(A) The permittee shall **do as follows:**

(i) Establish a surety bond on:

~~(i)~~ **(AA)** forms provided by the commissioner; or

~~(ii)~~ **(BB)** other forms approved by the commissioner.

(ii) Submit an original signed copy and a duplicate of the surety bond to the commissioner.

(B) Choose from either of the following types of surety bonds:

(i) A financial guarantee surety bond.

(ii) A performance surety bond.

~~(B)~~ **(C)** All surety bonds must conform to the requirements detailed in section ~~2(a)(2)(B)~~ **2(a)(2)(C)** through ~~2(a)(2)(E)~~ **2(a)(2)(F)** of this rule, with the exception that the term "post-closure" be substituted for the term "closure".

(3) The letter-of-credit option, including the following:

(A) The permittee shall **do as follows:**

(i) Establish a letter-of-credit on:

~~(i)~~ **(AA)** forms provided by the commissioner; or

~~(ii)~~ **(BB)** other forms approved by the commissioner.

(ii) Submit an original signed copy and a duplicate of the letter-of-credit to the commissioner.

(B) All letters of credit must conform to the requirements detailed in section 2(a)(3)(B) through 2(a)(3)(D) of this rule, with the exception that the term "post-closure" be substituted for the term "closure".

(4) The insurance option, including the following:

(A) The permittee shall **do as follows:**

(i) Provide evidence of insurance on:

~~(i)~~ **(AA)** forms provided by the commissioner; or

~~(ii)~~ **(BB)** other forms approved by the commissioner.

(ii) Submit a certificate of post-closure insurance to the commissioner.

(B) All insurance must conform to the requirements detailed in section 2(a)(4)(B) and 2(a)(4)(C) of this rule, with the exception that the term "post-closure" be substituted for the term "closure".

(5) The financial test for restricted waste sites option, including the following:

(A) This financial test is only available for restricted waste sites.

(B) If a permittee meets the criteria **and conforms to the requirements** set forth in section ~~2(a)(5)(B)~~ **2(a)(5)(A)** through ~~2(a)(5)(D)~~ **2(a)(5)(F) or 2(a)(5)(G)** of this rule, the permittee shall be deemed to have established financial responsibility.

(6) The local government financial test option, including the following:

(A) This financial test is only available for permittees that are local governments. As used in this subdivision, "local government" means a county, municipality, township, or solid waste management district.

(B) If a permittee meets the criteria set forth in section 2(a)(6)(B) and 2(a)(6)(C)of this rule, the permittee shall be deemed to have established financial responsibility.

(C) If, at any time, the permittee fails to meet the financial test, the permittee shall establish an alternate financial responsibility mechanism within one hundred twenty (120) days after the end of the fiscal year for which the financial data required by this clause shows that the permittee no longer meets the requirements.

(D) The commissioner may disallow use of this test on the basis of qualifications in the opinion expressed in the state board of accounts' annual financial audit of the permittee. An adverse opinion or a disclaimer of opinion is cause for disallowance. Other qualifications may be cause for disallowance if, in the opinion of the commissioner, the qualifications indicate the permittee does not meet the requirements of this subdivision. The permittee shall choose an alternate financial responsibility mechanism within ninety (90) days after notification of the disallowance.

(7) The local government guarantee option. If the local government guarantor and the permittee meet the requirements of section 2(a)(7)(B) and 2(a)(7)(C) of this rule, the permittee shall be deemed to have established financial responsibility.

(b) The permittee shall choose a financial responsibility mechanism, as provided in subsection (a), that guarantees funds will be available to meet the post-closure requirements of the solid waste land disposal facility, including the following:

(1) As applicable, funding must equal the amount determined under:

(A) 329 IAC 10-23-3(c)(5) and 329 IAC 10-23-3(c)(6);

(B) 329 IAC 10-31-3(b)(4); or

(C) 329 IAC 10-38-3(b)(4).

(2) Except for the trust fund mechanism, the permittee may completely fund the post-closure care amount, as determined under subdivision (1), based on the following formula and before the placement of any waste in the permitted area that is certified to receive waste:

$$\left[\left(\frac{CA + TR_A}{TP_A} \times PC_{(o)}\right) + PC_{(f)}\right] \times C = PCF$$

Where:	CA	=	Total of existing acres certified to receive waste and acres that received waste previously.
	TP_A	=	Total permitted acres.
	TR_A	=	Total projected acres that will be certified to receive waste within the current annual update year, which is June 15 to June 15.
	$PC_{(f)}$	=	Fixed post-closure costs.
	$PC_{(o)}$	=	All other post-closure costs but fixed post-closure costs.
	C	=	Contingencies, which equals 1.25.
	PCF	=	Post-closure funding.

Fixed costs include semiannual inspections and reports, access control and benchmark maintenance, ground

water monitoring and well maintenance, and methane gas monitoring and maintenance.

(3) For only the trust fund mechanism, funding may also be accomplished by making annual payments equal to the amount determined by the formula:

$$\text{Next Payment} = \frac{CE - CV}{Y}$$

Where:	CE	=	The current total post-closure cost estimate as determined by subdivision (1).
	CV	=	The current value of the trust fund.
	Y	=	The number of years in the term of the original permit, which is five (5) years or less, or over the remaining life of the solid waste land disposal facility, whichever is shorter.

Annual funding must be accomplished not later than June 15 of each year.

(c) The permittee shall submit an annual update for the amount calculated under subsection (b) for inflation and for changes in the post-closure plan ~~which~~ **that** increase the costs of post-closure, not later than June 15 of each year to the commissioner ~~regarding post-closure financial assurance~~ **during the active life of the landfill and** until ~~final closure~~ **post-closure** certification **is deemed adequate. The permittee shall do the following:**

(1) During the active life of the facility and until post-closure certification is deemed adequate, the permittee shall adjust the post-closure cost estimate for inflation prior to June 15 of each year. The adjustment for inflation shall be done with either of the following methods:

(A) Recalculating the post-closure cost estimate in current dollars.

(B) Using an inflation factor derived from the most recent implicit price deflator for gross national product published by the U.S. Department of Commerce in its Survey of Current Business, specified as follows:

(i) The first adjustment is made by multiplying the post-closure cost estimate as specified in subsection (b) by the inflation factor, with the result being the adjusted post-closure cost estimate.

(ii) Subsequent adjustments are made by multiplying the latest adjusted post-closure cost estimate by the latest inflation factor.

(2) During the active life of the facility, the permittee shall revise the post-closure cost estimate not later than thirty (30) days after the commissioner has approved the request to modify the post-closure plan, if the change in the post-closure plan increases the cost of post-closure care. The revised post-closure cost estimate must be adjusted for inflation as specified in subdivision (1).

(3) For permittees using the financial test or guarantee, the post-closure care cost estimate must be updated for inflation annually before June 15 of each year.

(d) If the formula in subsection (b)(2) is used, the permittee shall itemize separately both the fixed costs and all other costs.

(Solid Waste Management Division; 329 IAC 10-39-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1922; filed Feb 26, 1999, 5:45 p.m.: 22 IR 2235; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3871; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1870, eff Apr 1, 2004; filed Jul 10, 2007, 2:26 p.m.: 20070808-IR-329050167FRA; filed May 14, 2014, 11:02 a.m.: 20140611-IR-329110454FRA)

SECTION 5. 329 IAC 10-39-10 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-39-10 Financial assurance for corrective action for municipal solid waste landfills

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
Affected: IC 13-20; IC 36-9-30

Sec. 10. (a) ~~The owner, operator, or~~ **If the** permittee of each MSWLF **is** required to undertake a corrective action program for ground water impacts, **the permittee** shall establish financial assurance for the most recent corrective action program. The ~~owner, operator, or~~ permittee shall choose from the following options:

(1) The trust fund option, including the following:

(A) The ~~owner, operator, or~~ permittee shall demonstrate financial assurance for corrective action by ~~obtaining~~ **doing as follows:**

(i) Obtain a trust fund on:

(AA) forms provided by the commissioner; or ~~in such~~

(BB) other ~~form~~ **forms** as approved by the commissioner.

(ii) Submit an original signed copy and a duplicate of the trust agreement to the commissioner.

(B) All trust funds must conform to the requirements detailed in section 2(a)(1)(B) of this rule, with the exception that the term "corrective action" be substituted for the term "closure".

(2) The **performance** surety bond option, including the following:

(A) The ~~owner, operator, or~~ permittee shall demonstrate financial assurance for corrective action by ~~obtaining~~ **doing as follows:**

(i) Obtain a **performance** surety bond on:

(AA) forms provided by the commissioner; or ~~in such~~

(BB) other ~~form~~ **forms** as approved by the commissioner.

(ii) Submit an original signed copy and a duplicate of the performance surety bond to the commissioner.

(B) All surety bonds must conform to the requirements detailed in section ~~2(a)(2)(B)~~ **2(a)(2)(C)** through ~~2(a)(2)(E)~~ **2(a)(2)(F)** of this rule, with the exception that the term "corrective action" be substituted for the term "closure".

(3) The letter-of-credit option, including the following:

(A) The ~~owner, operator, or~~ permittee shall demonstrate financial assurance for corrective action by ~~obtaining~~ **doing as follows:**

(i) Obtain a letter-of-credit on:

(AA) forms provided by the commissioner; or ~~in such~~

(BB) other ~~form~~ **forms** as approved by the commissioner.

(ii) Submit an original signed copy and a duplicate of the letter-of-credit to the commissioner.

(B) All letters of credit must conform to the requirements detailed in section 2(a)(3)(B) through 2(a)(3)(D) of this rule, with the exception that the term "corrective action" be substituted for the term "closure".

(4) The local government financial test option, including the following:

(A) This financial test is only available for ~~owners, operators, or~~ permittees that are local governments. As used in this subdivision, "local government" means a county, municipality, township, or solid waste management district.

(B) If ~~an owner, operator, or~~ **a** permittee meets the criteria set forth in section 2(a)(6)(B) ~~through~~ **and** 2(a)(6)(C) of this rule, the ~~owner, operator, or~~ permittee shall be deemed to have established financial responsibility.

(C) If, at any time, the ~~owner, operator, or~~ permittee fails to meet the financial test, the ~~owner, operator, or~~ permittee shall establish an alternate financial responsibility mechanism within one hundred twenty (120) days after the end of the fiscal year for which the financial data required by this clause shows that the ~~owner, operator, or~~ permittee no longer meets the requirements.

(D) The commissioner may disallow use of this test on the basis of qualifications in the opinion expressed in the state board of accounts' annual financial audit of the ~~owner, operator, or~~ permittee. An adverse opinion or a disclaimer of opinion is cause for disallowance. Other qualifications may be cause for disallowance if, in the opinion of the commissioner, the qualifications indicate the ~~owner, operator, or~~ permittee does not meet the requirements of this subdivision. The ~~owner, operator, or~~ permittee shall choose an alternate financial responsibility mechanism within ninety (90) days after notification of the disallowance.

(5) The local government guarantee option. If the local government guarantor and the ~~owner, operator, or~~ permittee meet the requirements of section 2(a)(7)(B) and 2(a)(7)(C) of this rule, the ~~owner, operator, or~~ permittee shall be deemed to have established financial responsibility.

(b) The ~~owner, operator, or~~ permittee of an MSWLF shall choose a financial responsibility mechanism that guarantees funds will be available to meet the corrective action requirements under 329 IAC 10-21-13. The ~~owner, operator, or~~ permittee shall provide continuous coverage for corrective action until released from financial assurance requirements for corrective action by demonstrating compliance with 329 IAC 10-21-13 and shall include the following, as applicable:

(1) Payments into the trust fund must be made annually by the ~~owner, operator, or~~ permittee over half of the estimated length of the corrective action program in the case of corrective action for known releases. This period is referred to as the pay-in period. For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund must be at least equal to one-half (1/2) of the current cost estimate for corrective action divided by the number of years in the corrective action pay-in period. The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = \frac{RB - CV}{Y}$$

Where: RB = the most recent estimate of the required trust fund balance for corrective action (that is, the total costs that will be incurred during the second half of the corrective action period)
CV = the current value of the trust fund
Y = the number of years remaining in the pay-in period

The initial payment into the trust fund must be made no later than one hundred twenty (120) days after the corrective action remedy has been selected in accordance with 329 IAC 10-21-13.

(2) The surety bond must be effective no later than one hundred twenty (120) days after the corrective action remedy has been selected in accordance with 329 IAC 10-21-13.

(3) The letter-of-credit must be effective no later than one hundred twenty (120) days after the corrective action remedy has been selected in accordance with 329 IAC 10-21-13.

(4) The local government financial test must be effective no later than one hundred twenty (120) days after the corrective action remedy has been selected in accordance with 329 IAC 10-21-13.

(5) The local government guarantee must be effective no later than one hundred twenty (120) days after the corrective action remedy has been selected in accordance with 329 IAC 10-21-13.

(c) ~~An owner, operator, or~~ **A** permittee of an MSWLF required to undertake a corrective action program for ground water impacts shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action in accordance with the program required under 329 IAC 10-21-13. The corrective action cost estimate must account for the total costs of corrective action activities as described in the corrective action plan for the entire corrective action period. The ~~owner, operator, or~~ permittee shall notify the commissioner that the estimate has been placed in the operating record. The ~~owner, operator, or~~ permittee shall do the following:

(1) Annually adjust the estimate for inflation until the corrective action program is completed in accordance with 329 IAC 10-21-13.

(2) Increase the corrective action cost estimate and the amount of financial assurance provided under subsections (a) and (b) if changes in the corrective action program or MSWLF conditions increase the maximum costs of corrective action.

The ~~owner, operator, or~~ permittee may reduce the amount of the corrective action cost estimate and the amount of financial assurance provided under subsections (a) and (b) if the cost estimate exceeds the maximum remaining costs of corrective action. The ~~owner, operator, or~~ permittee shall notify the commissioner that the justification for the reduction of the corrective action cost estimate and the amount of financial assurance has been placed in the operating record.

(Solid Waste Management Division; 329 IAC 10-39-10; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1925; filed Feb 26, 1999, 5:45 p.m.: 22 IR 2236; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3874; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1872, eff Apr 1, 2004; filed May 14, 2014, 11:02 a.m.: 20140611-IR-329110454FRA)

SECTION 6. 329 IAC 10-39-11 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-39-11 Release of financial responsibility obligations

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 11. As part of the ~~acknowledgement~~ **acknowledgment** of corrective action, the commissioner shall notify the ~~owner, operator, or~~ permittee that the ~~owner, operator, or~~ permittee is no longer required to maintain financial responsibility under ~~329 IAC 10-39-10~~ **section 10 of this rule** for corrective action once the requirements for corrective action have been fulfilled.

(Solid Waste Management Division; 329 IAC 10-39-11; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1926; filed Feb 26, 1999, 5:45 p.m.: 22 IR 2238; filed May 14, 2014, 11:02 a.m.: 20140611-IR-329110454FRA)

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