

Bold = new language

~~Strikeout~~ = existing language deleted in this rulemaking

TITLE 329 SOLID WASTE MANAGEMENT DIVISION

DRAFT RULE

LSA Document #20-20

DIGEST

Amends 329 IAC 10-39-1, 329 IAC 10-39-2, 329 IAC 10-39-3, 329 IAC 10-39-10, 329 IAC 11.5-3-1, 329 IAC 11.5-8-1, 329 IAC 11.6-9-1, and 329 IAC 11.7-9-1 concerning requirements for financial assurance at solid waste facilities. Effective 30 days after filing with the Publisher.

HISTORY

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Date of First Hearing: May 12, 2021.

329 IAC 10-39-1; 329 IAC 10-39-2; 329 IAC 10-39-3; 329 IAC 10-39-10; 329 IAC 11.5-3-1; 329 IAC 11.5-8-1; 329 IAC 11.6-9-1; 329 IAC 11.7-9-1.

DRAFT RULE

SECTION 1. 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~~ **under** 329 IAC 10-11-1; ~~and~~
- (2) ~~apply~~ **submit an application** for a permit; ~~after April 13, 1996,~~ or
- (3) have ~~an~~ **a currently effective** 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~~ **may** not continue to operate unless the permittees have established financial responsibility for post-closure by:

(1) choosing a financial assurance mechanism under section 3(a) of this rule; and ~~by~~

(2) funding the ~~same~~ **mechanism** under section 3(b) of this rule.

(d) Solid waste land disposal facilities that have operating permits in effect ~~must~~ **may** not continue to operate unless the permittees have established financial responsibility for closure by:

(1) choosing a financial assurance mechanism under section 2(a) of this rule; and ~~by~~

(2) funding the ~~same~~ **mechanism** 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~~ **under** 329 IAC 10-11-2.5(a)(4) **in accordance with the following:**

(1) 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,~~

(2) 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~~ **the state of Indiana** 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 2. 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 8-1-13; 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 doing as follows:

(i) Establish a trust agreement on

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

- ~~(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 for~~ annual evaluations of the trust to be submitted to the commissioner.
 - (iv) The requirement ~~of for~~ 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 for~~ 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~~ **A provision** 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~~ **where notarization occurs** at the time of notarization.
 - (ix) ~~The establishment~~ **requirement** 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 agency or~~ state ~~of Indiana~~ agency.
 - (x) The requirement ~~of for~~:
 - (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 doing as follows:
 - (i) Establish a surety bond on
 - ~~(AA) forms provided by the commissioner; or~~
 - ~~(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.
- (C) All surety bonds must contain the following:
 - (i) The establishment of penal sums in the amount determined by subsection (b).
 - (ii) **If a performance surety bond is established**, provision that the surety **company shall do either of the following:**
 - (AA) ~~will be liable to fulfill~~ **Perform** the permittee's closure obligations upon notice from the commissioner that the permittee has failed to do so. ~~and~~
 - (BB) **Comply with the requirements in item (v).**
 - (iii) **Provision that the surety company** 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)~~ (iv) Provision that the permittee may not terminate the bond without prior written authorization by the commissioner.
 - (v) **Provision that, upon written notice from the commissioner that the permittee has failed to fulfill the closure obligations for the facility, the surety company shall do either of the following:**
 - (AA) **Deposit the amount that provides for closure into a standby trust fund, as directed by the commissioner.**
 - (BB) **If the financial assurance amount is less than twenty thousand dollars (\$20,000) and a standby trust fund is not established, submit all payments directly to the department for the purpose of accomplishing required closure work.**
- (D) **If the financial assurance amount determined under this rule is twenty thousand dollars (\$20,000) or more**, the permittee shall establish a standby trust fund **in accordance with the requirements of subdivision (1)** 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 **company** directly into the standby trust fund in accordance with instructions from the commissioner.
- (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.
- (F) The surety ~~will~~ **company is 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 doing as follows:

(i) Establish a letter-of-credit on

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

~~(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 **that the permittee has failed to fulfill the closure obligations for the facility**, the institution issuing the letter-of-credit ~~will~~ **shall do either of the following:**

~~(AA) state that the permittee's obligations have not been fulfilled;~~
and

~~(BB)~~ **(AA) 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.**

(BB) If the financial assurance amount is less than twenty thousand dollars (\$20,000) and a standby trust fund is not established, submit all payments directly to the department for the purpose of accomplishing required closure work.

(C) If the financial assurance amount determined under this rule is twenty thousand dollars (\$20,000) or more, the permittee shall establish a standby trust fund **in accordance with the requirements of subdivision (1)** 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 **agency** or ~~Indiana state~~ **agency**.

(4) The insurance option, including the following:

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

- (i) Provide evidence of insurance on
 - ~~(AA) forms provided by the commissioner; or~~
 - ~~(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) **In one (1) or more states**, 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~~ **information** 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 **is one (1) of the following:**

- (AA) ~~is~~ A public utility operating in Indiana **that is** 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.~~

- (BB) A rural electric membership corporation that is formed**

and operating under the authority of IC 8-1-13.

(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) The following criteria ~~will~~ **must** 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~~ **cost** 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 **cost** 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 letter signed by the permittee's chief financial officer ~~demonstrating~~ **that:**

(AA) demonstrates the applicable criteria have been met; **and**

(BB) is on forms approved by the commissioner.

(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~~ **the procedure in subitem (AA)**, 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) If at any time the permittee fails to meet the financial test, the permittee shall establish one **(1)** of the financial assurance mechanisms described in subdivisions (1) through (4) or an alternate mechanism described in 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.

(E) The commissioner may disallow use of this test **in accordance with the following:**

(i) 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.

(ii) 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 establish one **(1)** of the financial assurance mechanisms described in subdivisions (1) through (4) or an alternate mechanism described in 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~~ **or** 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~~ **establish** alternate financial assurance **in accordance**

with clause (D).

(G) A permittee may propose a financial assurance mechanism for restricted waste sites other than those listed in subdivisions (1) through (4) and clauses (A) through (F) in accordance with the following:

- (i) The permittee ~~must~~ **shall** 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 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 **on all the general obligation bonds** a current rating of:

~~(1) Aaa, Aa, A, or Baa as issued by Moody's; or~~
~~(2) (1) AAA, AA, A, or BBB as issued by Standard and Poor's; or~~

(2) Aaa, Aa, A, or Baa as issued by Moody'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 or **Baa as issued by Moody'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 **local government** 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 a decrease in the bond ratings as well as or 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 **local government** permittee no longer meets the local government financial test requirements, the permittee shall provide alternate financial assurance in accordance with ~~this rule.~~ **item (iii)(EE) of this clause.**

(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.~~ **issued August 1993, meets the requirements of subitems (AA) through (CC).**

(iii) The local government permittee shall meet the following record

keeping and reporting requirements:

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

(aa) A letter signed by the local government permittee's chief financial officer that ~~completes~~ **meets** 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).

(4) Is on forms approved by the commissioner.

(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**, **issued August 1993**, have been met.

(BB) The ~~items~~ **documentation** 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~~ **documentation required in subitem (AA)** in the facility's operating record **and within one hundred eighty (180) days following the close of the local government permittee's fiscal year**, 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 accordance with~~ **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.~~ **subitem (EE).**

(GG) The commissioner may disallow use of this test **in accordance with the following:**

(aa) 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.

(bb) 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.

(HH) The local government permittee shall choose an alternate financial responsibility mechanism within ninety (90) days after notification of the disallowance **in subitem (GG)**.

(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 or~~

(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~~ **amount may** 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, 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~~ **accordance with** 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~~ **documentation** 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~~ **documentation** specified in this clause when the permittee:

(AA) substitutes alternate financial assurance ~~as specified in~~ **accordance with** 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.

(iv) If the permittee fails to obtain alternate financial assurance within the ninety (90) day period **required in item (iii)**, the guarantor shall provide that alternate assurance within the next thirty (30) days.

(b) **The following requirements apply to determining the** financial responsibility closure cost estimate: ~~requirements must be as follows:~~

(1) For purposes of establishing financial responsibility **under subsection (a)**, the permittee shall have a detailed written estimate of the cost of closing the facility based on the following:

(A) The **applicable** 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)**.

~~(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)~~ **(2)** 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 **cost** estimate derived under this section, ~~annually~~ **not later than June 15 of each year, in accordance with the following:**

~~(1)~~ **(1)** The submittal must ~~also~~ include a copy of the 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,~~

~~(2)~~ **(2)** As part of the annual review, the permittee shall revise the closure estimate as follows:

~~(1) for~~ **by making an inflation adjustment** 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~~ **(3) The permittee shall revise the closure plan, whenever cost estimate not later than thirty (30) days after the commissioner has approved changes to the closure plan if the changes increase the cost of closure. The revised closure cost estimate must be adjusted annually for inflation in accordance with subdivision (2).**

(d) The permittee shall update the amount of financial assurance provided in the financial assurance instrument within sixty (60) days after the revision to the closure cost estimate required under subsection (c)(3).

~~(d)~~ **(e)** The permittee may revise the closure cost estimate downward whenever:

(1) a change in the closure plan decreases the cost of closure; or ~~whenever~~

(2) portions of the solid waste land disposal facility have been certified for partial closure under:

~~(1)~~ **(A)** 329 IAC 10-22-3;

~~(2)~~ **(B)** 329 IAC 10-30-5; or

~~(3)~~ **(C)** 329 IAC 10-37-5.

***This document is available for viewing at <https://www.fiscal.treasury.gov/surety-bonds/circular-570.html> and may be obtained from the United States Department of the Treasury, Bureau of the Fiscal Service, Surety Bond Program, 3700 East West Highway, Room 6D22, Hyattsville, MD 20782.**

****This document is incorporated by reference. This document is available for viewing at https://www.gasb.org/jsp/GASB/Document_C/DocumentPage?cid=1176160030101&acceptedDisclaimer=true, may be obtained from Governmental Accounting Standards Board, 401 Merritt 7, P.O. Box 5116, Norwalk, CT 06856-5116, and is available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204.**

*****This document is available for viewing at <https://apps.bea.gov/scb/> and may be obtained from the United States Department of Commerce, Bureau of Economic Analysis, 4600 Silver Hill Road, Suitland, MD 20746. (*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; errata filed Aug 6, 2014, 3:12 p.m.: 20140827-IR-329140303ACA; errata filed Feb 19, 2018, 10:06 a.m.: 20180228-IR-329180109ACA*)**

SECTION 3. 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 ~~(AA) forms provided by the commissioner; or~~
~~(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
 - ~~(AA) forms provided by the commissioner; or~~
 - ~~(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.
 - (C) All surety bonds must conform to the requirements detailed in section 2(a)(2)(C) through 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
 - ~~(AA) forms provided by the commissioner; or~~
 - ~~(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
 - ~~(AA) forms provided by the commissioner; or~~
 - ~~(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~~ **shall meet** the criteria and ~~conforms to the~~ requirements set forth in section 2(a)(5)(A) through 2(a)(5)(F) or 2(a)(5)(G) of this rule ~~the permittee shall to~~ 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~~ **shall meet** the criteria set forth in section 2(a)(6)(B) and 2(a)(6)(C) of this rule ~~the permittee shall to~~ 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~~ **subdivision** shows that the permittee no longer meets the requirements.

(D) The commissioner may disallow use of this test **in accordance with the following:**

(i) 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.

(ii) 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.

(E) The permittee shall choose an alternate financial responsibility mechanism within ninety (90) days after notification of the disallowance **under clause (D).**

(7) The local government guarantee option. ~~If~~ The local government guarantor and the permittee **shall** meet the requirements of section 2(a)(7)(B) and 2(a)(7)(C) of this rule **for** the permittee ~~shall~~ **to** 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).~~ **329 IAC 10-38-3(b)(3).**

(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:

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

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.

(4) Annual funding for the trust fund mechanism must be accomplished not later than June 15 of each year.

(c) The permittee shall submit an annual update, **not later than June 15 of each year**, for the amount calculated under subsection (b) for inflation and for changes in the post-closure plan that increase the costs of post-closure ~~not later than June 15 of each year~~ to the commissioner during the active life of the landfill and until 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~~ **must** 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~~ **determined in accordance with** 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 **annually** for inflation ~~as specified~~ in **accordance with** 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) The permittee shall update the amount of financial assurance provided in the financial assurance instrument within sixty (60) days after the revision to the post-closure cost estimate required under subsection (c)(2).

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

***This document is available for viewing at <https://apps.bea.gov/scb/> and may be obtained from the United States Department of Commerce, Bureau of Economic Analysis, 4600 Silver Hill Road, Suitland, MD 20746. (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 4. 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) If the permittee of ~~each~~ a 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 permittee shall choose from the following options:

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

(A) The permittee shall demonstrate financial assurance for corrective action by doing as follows:

(i) Obtain a trust fund on

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

~~(BB) other 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 permittee shall demonstrate financial assurance for corrective action by doing as follows:

(i) Obtain a performance surety bond on

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

~~(BB) other 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)(C) through 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 permittee shall demonstrate financial assurance for corrective action by doing as follows:

(i) Obtain a letter-of-credit on

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

~~(BB) other 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 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~~ **shall meet** the criteria set forth in section 2(a)(6)(B) and 2(a)(6)(C) of this rule ~~the permittee shall~~ **to** 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~~ **subdivision** shows that the permittee no longer meets the requirements.

(D) The commissioner may disallow use of this test **in accordance with the following:**

(i) 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.

(ii) 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.

(E) The permittee shall choose an alternate financial responsibility mechanism within ninety (90) days after notification of the disallowance **under clause (D).**

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

(6) The insurance option, including the following:

(A) The permittee shall do as follows:

(i) Provide evidence of insurance on forms approved by the commissioner.

(ii) Submit a certificate of corrective action 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 "corrective action" be substituted for the term "closure".

(b) The permittee of ~~an~~ a 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 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~~ **comply with** the following, as applicable:

(1) Payments into the trust fund must be made **as follows:**

(A) Annually by the 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.

(B) 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:

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

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

(C) 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) A permittee of ~~an~~ a MSWLF required to undertake a corrective action program for ground water impacts shall **comply with the following requirements for the corrective action cost estimate:**

(1) 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.

(2) 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.

(3) The permittee shall notify the commissioner that the estimate has been placed in the operating record.

(4) The permittee shall ~~do~~ **adjust the corrective action cost estimate in accordance**

with the following:

~~(1)~~ (A) Annually adjust the estimate for inflation until the corrective action program is completed in accordance with 329 IAC 10-21-13. **The annual adjustment must use 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 current corrective action cost estimate by the inflation factor, with the result being the adjusted corrective action cost estimate.**

(ii) **Subsequent adjustments are made by multiplying the latest adjusted corrective action cost estimate by the latest inflation factor.**

~~(2)~~ (B) 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 revised corrective action cost estimate must be adjusted annually for inflation in accordance with clause (A).**

(C) The 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 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.

***This document is available for viewing at <https://apps.bea.gov/scb/> and may be obtained from the United States Department of Commerce, Bureau of Economic Analysis, 4600 Silver Hill Road, Suitland, MD 20746. (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 5. 329 IAC 11.5-3-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 11.5-3-1 Exclusions

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-11-2-258; IC 13-30-2; IC 36-9-30

Sec. 1. The following are excluded from regulation under this article:

- (1) Facilities that hold a valid permit under 329 IAC 10 or 329 IAC 11 to treat, process, store, or dispose of solid or hazardous wastes that are not described in 329 IAC 11.5-1-2.
- (2) A wastewater treatment plant as defined under IC 13-11-2-258 that has a permit as a publicly owned treatment works (POTW) or an industrial treatment works under 327 IAC 5 that has a permit to discharge and does not store solid waste.
- (3) Processing, except for digestion or gasification, of uncontaminated and untreated natural growth including sawdust, tree limbs, stumps, leaves, and grass clippings.
- (4) Facilities permitted under 329 IAC 3.1 are not required to obtain permits for the

storage, treatment, or disposal of nonhazardous solid waste ~~where such~~ **described in 329 IAC 11.5-1-2 if the** solid waste is treated or disposed of as a hazardous waste at the receiving hazardous waste facility.

(5) Wastewater discharge activities regulated by 327 IAC 5.

(6) A biomass anaerobic digestion facility or a biomass gasification facility that is a waste management system under 327 IAC 19-13-2 at a concentrated animal feeding operation (CAFO) or a confined feeding operation (CFO), ~~provided if~~ **provided if** the facility complies with the following:

(A) 329 IAC 11.5-4-1(g).

(B) 329 IAC 11.5-5.

(C) 329 IAC 11.5-6.

(D) 329 IAC 11.5-7.

(E) 329 IAC 11.5-8, if the facility ~~is accepting~~ **accepts and stores** appropriate feedstock.

(Solid Waste Management Division; 329 IAC 11.5-3-1; filed Mar 14, 2013, 2:57 p.m.: 20130410-IR-329090193FRA; readopted filed Jun 14, 2019, 2:00 p.m.: 20190710-IR-329190249BFA)

SECTION 6. 329 IAC 11.5-8-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 11.5-8-1 Financial assurance for cleanup and closure

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-14; IC 13-30; IC 36-9-30

Sec. 1. (a) ~~All owners~~ **An owner or operators operator that are is** required to register under this article shall establish financial assurance for closure of the registered facility. ~~Facilities that have a confined feeding operation (CFO) approval or a concentrated animal feeding operation (CAFO) permit are exempt from the requirement to obtain financial assurance on any biomass.~~ The financial assurance must be:

(1) provided as a surety bond ~~as specified in~~ **accordance with** subsection ~~(e); (d); and~~

(2) in the amount that ~~will provide~~ **provides** for closure of the registered facility in the event the owner or operator has failed to close the registered facility.

(b) The amount of **financial assurance** that ~~will provide~~ **provides** for closure is determined by the maximum amount in tons of biomass, appropriate feedstock, and residue that may be stored at the facility at one (1) time, multiplied by ninety dollars (\$90). ~~unless~~ **For a facility with a confined feeding operation (CFO) approval or concentrated animal feeding operation (CAFO) permit that must comply with this rule in accordance with 329 IAC 11.5-3-1(6), the determination of the amount of financial assurance is required to only include the maximum amount of appropriate feedstock and residue, but not biomass, that may be stored at the facility.**

(c) ~~Instead of the amount of financial assurance that provides for closure determined under subsection (b), an owner or owner may submit a demonstration of justified lower disposal costs is submitted for to the commissioner for approval. This approval will must:~~

- (1) be reconsidered with subsequent renewals; ~~that still must and~~
- (2) comply with the inflation calculation required by 329 IAC 11.5-4-1(d).

~~(e)~~ (d) The surety bond ~~is~~ **must be** established as follows:

(1) On forms

- ~~(A) provided by the commissioner; or~~
- ~~(B) as approved by the commissioner.~~

(2) All surety bonds must contain the following:

(A) The establishment of minimum bond amount determined by subsection (b) **or** (c).

(B) Provision that, **upon notice from the commissioner that the owner or operator has failed to close the facility under the requirements of 329 IAC 11.5-7-1, the surety will place company shall do either of the following:**

(i) **Deposit** the amount that ~~will provide~~ **provides** for closure into a standby trust fund, as directed by the commissioner. ~~upon notice from the commissioner that the owner or operator has failed to close the facility under the requirements of 329 IAC 11.5-7-1.~~

(ii) **If the financial assurance amount is less than twenty thousand dollars (\$20,000) and a standby trust fund is not established, submit all payments directly to the department for the purpose of accomplishing required closure work.**

(C) Provision that the surety **company** may not cancel the bond without first sending notice of cancellation by certified mail to the owner or operator and the commissioner at least one hundred twenty (120) days before the effective date of the cancellation.

(D) Provision that the owner or operator may not terminate the bond without prior written authorization by the commissioner.

(3) The surety company issuing the bond must be:

- (A) among those listed as acceptable sureties for federal bonds in Circular 570* of the United States Department of the Treasury; and
- (B) authorized to do business in Indiana.

(4) The surety ~~will~~ **company is** not be liable for deficiencies in the performance of closure by the owner or operator after the closure certification is deemed adequate by the commissioner.

(5) **If the financial assurance amount determined under this rule is twenty thousand dollars (\$20,000) or more,** the owner or operator shall establish a standby trust fund to be utilized in the event the owner or operator fails to fulfill closure obligations and the bond guarantee is exercised. ~~Such~~ **The** trust fund must be established in accordance with the following:

(A) On forms ~~provided by the commissioner or forms as approved by the commissioner.~~

(B) The establishment of a standby trust fund in the amount determined by subsection (b) **or** (c) for commissioner-approved work done to close the facility.

(C) The requirement ~~of~~ **for** successor trustees to notify the commissioner, in writing, of their appointment at least ten (10) days prior to the appointment

becoming effective.

(D) The requirement that the funded trust is irrevocable unless terminated in writing by the commissioner.

(E) ~~The requirement that~~ **Include a notarization of** all signatures ~~be notarized by~~ a notary public commissioned to be a notary public in the state of ~~Indiana where~~ **notarization occurs** at the time of notarization.

(F) The requirement that the trustee is:

(i) authorized to act as a trustee; and ~~is~~

(ii) an entity whose operations are regulated and examined by a federal agency ~~and a or state of Indiana~~ agency.

~~(d)~~ (e) The owner or operator may use a single surety bond to meet the requirements for more than one (1) facility. Evidence of financial assurance submitted to the commissioner must include a list showing, for each facility, the following:

(1) The ~~IDEM~~ registration number, name, and address.

(2) The amount of funds available through the surety bond that must be not less than the sum of funds that would be available if a separate surety bond had been established and maintained for each facility.

~~(e)~~ (f) An owner or operator shall do the following:

(1) Notify the commissioner by certified mail within ten (10) days from commencement of a voluntary or involuntary proceeding under bankruptcy under 11 U.S.C. 101 et seq., naming the owner or operator as debtor. An owner or operator who has a surety bond ~~shall be~~ **is** deemed to be without the required financial assurance in the event of bankruptcy of the institution issuing the surety bond.

(2) Reestablish financial assurance within sixty (60) days after ~~such~~ an event **described in subdivision (1)**. The registered facility cannot operate outside the sixty (60) day period without establishing a surety bond for the amount required under subsection (b) **or (c)**.

~~(f)~~ (g) In addition to any other penalties provided for in this article or in IC 13-14 and IC 13-30, any failure to obtain, maintain, or fund financial assurance as required by this rule within the prescribed time limits ~~shall be~~ **is** grounds for a proceeding to revoke the facility's registration or to order final closure of the registered facility.

~~(g)~~ (h) After the closure certification is deemed adequate by the commissioner, the owner or operator of the registered facility is released from the obligation of maintaining financial assurance under this article.

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SECTION 7. 329 IAC 11.6-9-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 11.6-9-1 Financial assurance for cleanup and closure

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-14; IC 13-30; IC 36-9-30

Sec. 1. (a) ~~Owners~~ **An owner** or ~~operators~~ **operator** that ~~are~~ **is** required to have financial assurance under 329 IAC 11.6-5-1(f) shall establish financial responsibility for closure of the registered facility. The financial responsibility must be:

- (1) provided as a surety bond ~~as specified in subsection (d);~~ **in accordance with subsection (c); and**
- (2) in the amount that ~~will provide~~ **provides** for closure of the registered facility in the event the owner or operator has failed to close the registered facility.

(b) The amount that ~~will provide~~ **provides** for closure is determined by multiplying the maximum amount, estimated in tons, of residue on-site at any one (1) time by seventy-five dollars (\$75).

(c) The surety bond ~~is~~ **must be** established as follows:

(1) On forms

- ~~(A) provided by the commissioner; or~~
- ~~(B) as approved by the commissioner.~~

(2) All surety bonds must contain the following:

(A) The establishment of minimum bond amount determined by subsection (b).

(B) Provision that, **upon notice from the commissioner that the owner or operator has failed to close the facility under the requirements of 329 IAC 11.6-8-1, the surety will place company shall do either of the following:**

- (i) **Deposit** the amount that ~~will provide~~ **provides** for closure into a standby trust fund, as directed by the commissioner. ~~upon notice from the commissioner that the owner or operator has failed to close the facility.~~
- (ii) **If the financial assurance amount is less than twenty thousand dollars (\$20,000) and a standby trust fund is not established, submit all payments directly to the department for the purpose of accomplishing required closure work.**

(C) Provision that the surety **company** may not cancel the bond without first sending notice of cancellation by certified mail to the owner or operator and the commissioner at least one hundred twenty (120) days before the effective date of the cancellation.

(D) Provision that the owner or operator may not terminate the bond without prior written authorization by the commissioner.

(3) The surety company issuing the bond must be:

- (A) among those listed as acceptable sureties for federal bonds in Circular 570* of the United States Department of the Treasury; and
- (B) authorized to do business in Indiana.

(4) The surety ~~will~~ **company is** not ~~be~~ liable for deficiencies in the performance of closure by the owner or operator after the closure certification is deemed adequate by the

commissioner.

(5) **If the financial assurance amount determined under this rule is twenty thousand dollars (\$20,000) or more**, the owner or operator shall establish a standby trust fund to be utilized in the event the owner or operator fails to fulfill closure obligations and the bond guarantee is exercised. ~~Such~~ **The** trust fund must be established in accordance with the following:

(A) On forms ~~provided by the commissioner or forms as~~ approved by the commissioner.

(B) The establishment of a standby trust fund in the amount determined by subsection (b) for commissioner-approved work done to close the facility.

(C) The requirement ~~of~~ **for** successor trustees to notify the commissioner, in writing, of their appointment at least ten (10) days prior to the appointment becoming effective.

(D) The requirement that the funded trust is irrevocable unless terminated in writing by the commissioner.

(E) ~~The requirement that~~ **Include a notarization of** all signatures ~~be notarized by~~ a notary public commissioned to be a notary public in the state ~~of Indiana where~~ **notarization occurs** at the time of notarization.

(F) The requirement that the trustee is:

(i) authorized to act as a trustee; and ~~is~~

(ii) an entity whose operations are regulated and examined by a federal agency ~~and or state of Indiana~~ agency.

(d) The owner or operator may use a single surety bond to meet the requirements for more than one (1) facility. Evidence of financial responsibility submitted to the commissioner must include a list showing, for each facility, the following:

(1) The registration number, name, and address.

(2) The amount of funds available through the surety bond that must be not less than the sum of funds that would be available if a separate surety bond had been established and maintained for each facility.

(e) An owner or operator shall do the following:

(1) Notify the commissioner by certified mail within ten (10) days from commencement of a voluntary or involuntary proceeding under bankruptcy under 11 U.S.C. 101 et seq., ~~October 1, 1979~~, naming the owner or operator as debtor. An owner or operator who has a surety bond ~~shall be~~ **is** deemed to be without the required financial responsibility in the event of bankruptcy of the institution issuing the surety bond.

(2) Reestablish financial responsibility within sixty (60) days after ~~such~~ an event **described in subdivision (1)**. The registered facility cannot operate outside the sixty (60) day period without establishing a surety bond for the amount required under subsection (b).

(f) In addition to any other penalties provided for in this article or in IC 13-14 and IC 13-30, any failure to obtain, maintain, or fund financial assurance as required by this rule within the prescribed time limits ~~shall be~~ **is** grounds for a proceeding to revoke the facility's registration or

to order final closure of the registered facility.

(g) After the closure certification is deemed adequate by the commissioner, the owner or operator of the registered facility is released from the obligation of maintaining financial assurance under this article.

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SECTION 8. 329 IAC 11.7-9-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 11.7-9-1 Financial assurance for cleanup and closure

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-14; IC 13-30; IC 36-9-30

Sec. 1. (a) ~~All owners~~ **An owner or operators operator that are is** required to register under this article shall establish financial assurance for closure of the registered facility. The financial assurance must be:

- (1) provided as a surety bond ~~as specified~~ **in accordance with** subsection (c); **and**
- (2) in the amount that ~~will provide~~ **provides** for closure of the registered facility in the event the owner or operator has failed to close the registered facility.

(b) The amount that ~~will provide~~ **provides** for closure is determined by the maximum amount in tons of alternative fuel or residue that may be stored at the facility and that exceeds ten thousand (10,000) tons at any one (1) time, multiplied by thirty dollars (\$30) per ton.

(c) The surety bond ~~is~~ **must be** established as follows:

(1) On forms

~~(A) provided; by the commissioner; or~~

~~(B) as approved by the commissioner.~~

(2) All surety bonds must contain the following:

(A) The establishment of minimum bond amount determined by subsection (b).

(B) Provision that, **upon notice from the commissioner that the owner or operator has failed to close the facility under the requirements of 329 IAC 11.7-8-1**, the surety ~~will place~~ **company shall do either of the following:**

(i) **Deposit** the amount that ~~will provide~~ **provides** for closure into a standby trust fund, as directed by the commissioner. ~~upon notice from the commissioner that the owner or operator has failed to close the facility under the requirements of 329 IAC 11.7-8-1.~~

(ii) **If the financial assurance amount is less than twenty thousand dollars (\$20,000) and a standby trust fund is not established, submit**

all payments directly to the department for the purpose of accomplishing required closure work.

(C) Provision that the surety **company** may not cancel the bond without first sending notice of cancellation by certified mail to the owner or operator and the commissioner at least one hundred twenty (120) days before the effective date of the cancellation.

(D) Provision that the owner or operator may not terminate the bond without prior written authorization by the commissioner.

(3) The surety company issuing the bond must be:

(A) among those listed as acceptable sureties for federal bonds in Circular 570* of the United States Department of the Treasury; and

(B) authorized to do business in Indiana.

(4) The surety ~~will~~ **company is** not be liable for deficiencies in the performance of closure by the owner or operator after the closure certification is deemed adequate by the commissioner.

(5) **If the financial assurance amount determined under this rule is twenty thousand dollars (\$20,000) or more**, the owner or operator shall establish a standby trust fund to be utilized in the event the owner or operator fails to fulfill closure obligations and the bond guarantee is exercised. The trust fund must be established in accordance with the following:

(A) On forms ~~provided by the commissioner or forms as~~ approved by the commissioner.

(B) The establishment of a standby trust fund in the amount determined by subsection (b) for commissioner-approved work done to close the facility.

(C) The requirement ~~of~~ **for** successor trustees to notify the commissioner, in writing, of their appointment at least ten (10) days prior to the appointment becoming effective.

(D) The requirement that the funded trust is irrevocable unless terminated in writing by the commissioner.

(E) ~~The requirement that~~ **Include a notarization of** all signatures ~~be notarized by~~ a notary public commissioned to be a notary public in the state ~~of Indiana where~~ **notarization occurs** at the time of notarization.

(F) The requirement that the trustee is:

(i) authorized to act as a trustee; and ~~is~~

(ii) an entity whose operations are regulated and examined by a federal agency ~~and a~~ **or** state ~~of Indiana~~ agency.

(d) The owner or operator may use a single surety bond to meet the requirements for more than one (1) facility. Evidence of financial assurance submitted to the commissioner must include a list showing, for each facility, the following:

(1) The ~~IDEM~~ registration number, name, and address.

(2) The amount of funds available through the surety bond that must be not less than the sum of funds that would be available if a separate surety bond had been established and maintained for each facility.

(e) An owner or operator shall do the following:

(1) Notify the commissioner by certified mail within ten (10) days from commencement of a voluntary or involuntary proceeding under bankruptcy under 11 U.S.C. 101 et seq., naming the owner or operator as debtor. An owner or operator who has a surety bond ~~shall be~~ is deemed to be without the required financial assurance in the event of bankruptcy of the institution issuing the surety bond.

(2) Reestablish financial assurance within sixty (60) days after ~~such~~ an event **described in subdivision (1)**. The registered facility cannot operate outside the sixty (60) day period without establishing a surety bond for the amount required under subsection (b).

(f) In addition to any other penalties provided for in this article or in IC 13-14 and IC 13-30, any failure to obtain, maintain, or fund financial assurance as required by this rule within the prescribed time limits ~~shall be~~ is grounds for a proceeding to revoke the facility's registration or to order final closure of the registered facility.

(g) After the closure certification is deemed adequate by the commissioner, the owner or operator of the registered facility is released from the obligation of maintaining financial assurance under this article.

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