



Ohio Administrative Code

Rule 3701:1-54-11 Land disposal - financial assurance.

Effective: February 6, 2006

(A) Each applicant shall show that it either possesses the necessary funds or has reasonable assurance of obtaining the necessary funds, or by a combination of the two, to cover the estimated costs of conducting all licensed activities over the planned operating life of the project, including costs of construction and operation.

(B) The licensee shall satisfy the disposal site closure and stabilization funding requirements identified below.

(1) The applicant shall provide assurances prior to the commencement of operations that sufficient funds will be available to carry out disposal site closure and stabilization, including:

(a) Decontamination or dismantlement of land disposal facility structures; and

(b) Closure and stabilization of the disposal site so that following transfer of the disposal site to the site owner, the need for ongoing active maintenance is eliminated to the extent practicable and only minor custodial care, surveillance, and monitoring are required.

(2) These assurances shall be based on department-approved cost estimates reflecting the department-approved plan for disposal site closure and stabilization. The applicant's cost estimates must take into account total costs that would be incurred if an independent contractor were hired to perform the closure and stabilization work.

(3) The licensee's surety mechanism will be annually reviewed by the department to assure that sufficient funds are available for completion of the closure plan, assuming that the work has to be performed by an independent contractor.

(4) The amount of the licensee's financial or surety arrangement shall change in accordance with changes in the predicted costs of closure and stabilization. Factors affecting closure and stabilization



cost estimates include inflation, increases in the amount of disturbed land, changes in engineering plans, closure and stabilization that has already been accomplished, and any other conditions affecting costs. The financial or surety arrangement shall be sufficient at all times to cover the costs of closure and stabilization of the disposal units that are expected to be used before the next license renewal.

(5) The financial or surety arrangement shall be either open-ended or be written for a specified period of time and shall be automatically renewed unless the person who issues the surety notifies the department, the beneficiary (the site owner), and the principal (the licensee) not less than ninety days prior to the renewal date of its intention not to renew. In such a situation, the licensee must submit a replacement surety within thirty days after notification of cancellation. If the licensee fails to provide a replacement surety acceptable to the department, the beneficiary may collect on the original surety.

(6) Proof of forfeiture shall not be necessary to collect the surety so that, in the event that the licensee could not provide an acceptable replacement surety within the required time, the surety shall be automatically collected prior to its expiration. The conditions described above shall be clearly stated on any surety instrument.

(7) Financial or surety arrangements shall satisfy the requirements identified in rule 3701:1-40-17 of the Administrative Code.

(8) The licensee's financial or surety arrangement shall remain in effect until the closure and stabilization program has been completed and approved by the department, and the license has been transferred to the site owner.

(C) The licensee shall provide financial assurances for institutional controls as recorded below.

(1) Prior to the issuance of the license, the applicant shall provide for department approval a decommissioning funding plan that ensures that sufficient funds will be available to cover the costs of monitoring and any required maintenance during the institutional control period. The decommissioning funding plan shall be reviewed every five years by the department to ensure that changes in inflation, technology, and disposal facility operations are reflected in the arrangements.



(2) Subsequent changes to the decommissioning funding plan specified in paragraph (C)(1) of this rule relevant to institutional control shall be submitted to the department for prior approval.

(3) For the purposes of the decommissioning funding plan required in paragraph (C)(1) of this rule the types of acceptable financial guaranties shall include bonds issued by fidelity or surety companies authorized to do business in the state, certificates of deposit, deposits of government securities, irrevocable letters or lines of credit, trust funds, escrow accounts, or similar types of arrangements, but shall not include any arrangements that constitute self-insurance.

(4) Financial or surety arrangements shall satisfy the requirements identified in rule 3701:1-40-17 of the Administrative Code.