

Landfill Financial Assurance

Michigan Department of Environmental Quality

Upper Peninsula Solid Waste Forum

Marquette, MI

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Financial Assurance

- Objectives/benefits
- Requirements
- Room for improvement
- Recent changes
- More to come

Objectives/Benefits

- Protects taxpayers
- Internalizes environmental costs
- Level playing field and enforcement leverage
- Surrogate regulator

Requirements

- Part 115, Solid Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended
- Modeled after 40 CFR Part 258
- Financial assurance for closure, postclosure, and corrective action
- Provided with application for operating license or with a Remedial Action Plan



Key Elements

- Amount
- Financial mechanisms
- Process for accessing funds
- Enforceability

Amount

- Type II landfill
 - Itemized cost estimate
 - Combination of bonds, financial test, perpetual care fund (PCF)
 - Adjusted annually for inflation
 - Reductions for completed work
- Type III landfill
 - \$20,000 per acre; \$1M maximum
 - Bonds, separate PCF
 - No adjustments except for increased PCF

Financial Mechanisms

- Options specified in Part 115
- Wording specified or reviewed by DEQ
- Issuer of some must be overseen by financial or insurance industry regulators
- Many options for financial mechanisms with different qualities

Financial Mechanisms

- Perpetual Care Fund (PCF)
- Trust Fund
- Escrow Account
- Cash Bond
- Certificate of Deposit
- Letter of Credit
- Surety Bond
- Insurance
- Local Government Guarantee
- Corporate Guarantee
- Local Government Financial Test
- Corporate Financial Test

Access

- PCF
 - DEQ instructs custodian to pay vendor
- Bonds
 - DEQ issues Notice of Violation and 7 day notice and opportunity for hearing
 - DEQ determines whether alleged violations justify claim on financial mechanism
 - DEQ claims funds; deposited in state account or paid to vendor



Enforceability

- Required for operating license
- Original mechanism held by DEQ
- Once issued, DEQ typically must agree to reductions and termination
- Oversight by financial and insurance industry regulators
- Protection from owner/operator bankruptcy



Room for Improvement

- Over \$500 million in current financial assurances; likely over \$100 million short
- Last substantive amendments in 1996
- Recent experience taking over operation and closure of Type II and III landfills
 - Type III amount generally inadequate
 - Leachate management and gas collection costs need to be revisited



Room for Improvement (cont'd)

- Corrective action financial assurance not specified for Type IIIs
- Financial test not allowed for Type IIIs
- Inconsistent requirements (e.g., reduced PCF maximum for captive, segregated waste fills?)
- SWFAWG recommendations



Recent Changes

- SB 404 > PA 250
 - Effective December 26, 2013
 - Partially addresses SWFAWG recommendations
 - New PCF Bond
 - Special type of LOC or surety bond in lieu of cash account
 - Supposed to have same ready access for DEQ as PCF trust or escrow
 - Standby trust or escrow accounts required



Recent Changes (cont'd)

- Replaces semiannual deposits or increases in PCF with annual one by Oct 30
- Eliminates ability to pay surcharge from PCF
- Eliminates pay-in period for cash bond
- New 23(10) requires replacement of mechanism in 60 days if issuer becomes subject to bankruptcy proceedings or loses its authority
- Rescinds Section 24



Recent Changes

- DEQ developing new forms with stakeholder and AG review:
 - PCF LOC
 - PCF Surety Bond
 - Standby PCF Trust Agreement
 - Standby PCF Escrow Agreement'
 - Form for owner/operator to request switch to PCF Bond
 - Form to owner/operator, custodian, and DEQ to agree to disbursement of funds and termination of account



Stay Tuned

- DEQ will notify landfills when new forms are available (goal is April 1)
- Targeted work group for additional amendments that address remaining SWFAWG recommendations
- Also need to address:
 - Leachate management
 - Gas collection



For More Information

Financial assurance forms available at www.michigan.gov/deq by clicking on “Waste,” “Solid Waste,” and then “NEW – Solid Waste Financial Forms.”

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