



ADMINISTRATIVE RULES OF MONTANA



17.50.540 FINANCIAL ASSURANCE REQUIREMENTS FOR CLASS II LANDFILLS

- (1) The requirements of this rule apply to owners and operators of all Class II landfill units, except owners or operators who are state or federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States. Subdivisions of state government, such as counties, cities or towns, whose debts and liabilities are not directly the debts and liabilities of the state, are subject to this rule.
 - (a) The requirements of this rule are effective April 9, 1997, except:
 - (i) small, dry, or remote landfills which meet the "small community exemption" criteria set forth in ARM 17.50.1203, have until October 9, 1997, to comply; and
 - (ii) the department may waive financial assurance requirements for up to 1 year until April 9, 1998, for cause, if the owner or operator demonstrates to the department's satisfaction:
 - (A) that the April 9, 1997, effective date does not provide sufficient time to comply with the requirements of this rule; and
 - (B) that such a waiver will not adversely affect human health and the environment.
- (2) The following financial assurance for closure is required:
 - (a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of hiring a third party to close the area of the Class II landfill that the department determines to be the largest active portion in the facility requiring a final cover as required under ARM 17.50.1403 during the active life of the facility in accordance with the closure plan. The owner or operator must submit a copy to the department and place the estimate in the operating record.
 - (i) The cost estimate must equal the cost of closing the largest active portion during the active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (see ARM 17.50.1403(4)(b)) .
 - (ii) During the active life of the Class II landfill unit, the owner or operator must annually adjust the closure cost estimate for inflation and any other changes and submit this information to the department as part of the annual report required under ARM 17.50.412.
 - (iii) The owner or operator must increase the closure cost estimate and the amount of financial assurance provided under (2)(b) below if changes to the closure plan or Class II landfill unit conditions increase the maximum cost of closure at any time during the remaining active life.

- (iv) The owner or operator may reduce the closure cost estimate and the amount of financial assurance provided under (2)(b) below if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of the Class II landfill unit. The owner or operator must obtain the approval of the department for the reduction of the closure cost estimate and the amount of financial assurance required. Copies of the demonstration and department approval must be placed in the operating record.
 - (b) The owner or operator of each Class II landfill unit must establish financial assurance for closure of the Class II landfill unit in compliance with (5). The owner or operator must provide continuous coverage for closure until released from financial assurance requirements by demonstrating compliance with ARM 17.50.1403(10).
- (3) The following financial assurance for post-closure care must be provided:
 - (a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care for the Class II landfill unit in compliance with the post-closure plan developed under ARM 17.50.1404. The post-closure cost estimate used to demonstrate financial assurance in (3)(b) must account for the total costs of conducting post-closure care, including annual and periodic costs as described in the post-closure plan over the entire post-closure care period. The owner or operator must submit a copy of the estimate to the department and place a copy in the operating record. Estimates must meet the following requirements:
 - (i) The cost estimate for post-closure care must be based on the most expensive costs of post-closure care during the post-closure care period.
 - (ii) During the active life of the Class II landfill unit and during the post-closure care period, the owner or operator must annually adjust the post-closure cost estimate for inflation.
 - (iii) The owner or operator must increase the post-closure care cost estimate and the amount of financial assurance provided under (b) below if changes in the post-closure plan or Class II landfill unit conditions increase the maximum costs of post-closure care.
 - (iv) The owner or operator may reduce the post-closure cost estimate and the amount of financial assurance provided under (b) below if the cost estimate exceeds the maximum costs of post-closure care remaining over the post-closure care period. The owner or operator must obtain approval from the department for the reduction of the post-closure cost estimate and the amount of financial assurance and place a copy of the justification in the operating record.
 - (v) Any changes required above under (ii), (iii), or (iv) above must be reported to the department as part of the report required under ARM 17.50.412.
 - (b) The owner or operator of each Class II landfill unit must establish, in a manner in accordance with (5) of this rule, financial assurance for the costs of post-closure care as required under ARM 17.50.1404. The owner or operator must provide continuous coverage for post-closure care until released from financial assurance requirements for post-closure care by demonstrating compliance with ARM 17.50.1404(5).
- (4) The following financial assurance for corrective action must be provided:

- (a) An owner or operator of a Class II landfill unit required to undertake a corrective action program under ARM 17.50.1310 must 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 ARM 17.50.1310. The corrective action cost estimate must account for the total costs of corrective action activities as described in the corrective action plan for the entire corrective action period. The owner or operator must submit the estimate to the department for approval and place a copy in the operating record. The estimate must meet the following requirements:
 - (i) The owner or operator must annually adjust the estimate for inflation until the corrective action program is completed in accordance with ARM 17.50.1310.
 - (ii) The owner or operator must increase the corrective action cost estimate and the amount of financial assurance provided under (b) below if changes in the corrective action program or Class II landfill unit conditions increase the maximum costs of corrective action.
 - (iii) The owner or operator may reduce the amount of the corrective action cost estimate and the amount of financial assurance provided under (b) below if the cost estimate exceeds the maximum remaining costs of corrective action. The owner or operator must receive approval from the department for the reduction of the corrective action cost estimate and the reduction in the amount of financial assurance. The justification for the reduction of the corrective action cost estimate and the amount of financial assurance must be placed in the operating record.
 - (b) The owner or operator of each Class II landfill unit required to undertake a corrective action program under ARM 17.50.1310, must establish, in a manner in accordance with this rule, financial assurance for the most recent corrective action program. The owner or operator must provide continuous coverage for corrective action until released from financial assurance requirements for corrective action by demonstrating compliance with ARM 17.50.1310.
- (5) The mechanisms used to demonstrate financial assurance under this rule must ensure that the funds necessary to meet the costs of closure, post-closure care, and corrective action for known releases will be available whenever they are needed. Owners and operators must choose from the options specified in (a) through (g).
- (a) An owner or operator may satisfy the requirements of this rule by establishing a trust fund which conforms to the requirements of this rule.
 - (i) The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. A copy of the trust agreement must be placed in the facility's operating record.
 - (ii) Payments into the trust fund must be made annually by the owner or operator over the remaining life of the Class II landfill facility, in the case of a trust fund for closure or post-closure care, or over one-half of the estimated length of the corrective action program in the case of corrective action for known releases. These periods are referred to as the pay-in periods.
 - (iii) For a trust fund used to demonstrate financial assurance for closure and post-closure care, the first payment into the fund must be at least equal to the current cost estimate for closure or post-closure care, divided by the number of years in the pay-in

period as defined in (ii) above. The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = (\text{CE}-\text{CV}) / Y$$

where CE is the current cost estimate for closure or postclosure care (updated for inflation or other changes) , CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

- (iv) 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 of the current cost estimate for corrective action, divided by the number of years in the corrective action pay-in period as defined in (ii) above. The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = (\text{RB}-\text{CV}) / Y$$

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

- (v) The initial payment into the trust fund must be made before the initial receipt of waste or before the applicable effective date of this section, as specified in (1)(a), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of ARM 17.50.1309.
 - (vi) If the owner or operator establishes a trust fund after having used one or more alternate mechanisms specified in (5)(f) of this rule, the initial payment into the trust fund must be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of (5)(a) above, as applicable.
 - (vii) The owner or operator, or other person authorized to conduct closure, post-closure care, or corrective action activities may request reimbursement from the trustee for these expenditures. Requests for reimbursement will be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure, post-closure care, or corrective action, and if justification and documentation of the cost is approved by the department. The owner or operator must provide the department with the documentation of the justification for reimbursement for approval and records of any reimbursement.
 - (viii) The trust fund may be terminated by the owner or operator only if the owner or operator substitutes alternate financial assurance as specified in this section or if he is no longer required to demonstrate financial responsibility in accordance with the requirements of (2)(b), (3)(b), or (4)(b) of this rule.
- (b) A surety bond may be used to guarantee payment or performance under the following circumstances:
- (i) An owner or operator may demonstrate financial assurance for closure or post-closure care by obtaining a payment or performance surety bond which conforms to the requirements of this paragraph. An owner or operator may demonstrate financial

assurance for corrective action by obtaining a performance bond which conforms to the requirements of this paragraph. The bond must be effective before the initial receipt of waste or before the applicable effective date of this section, as specified in (1)(b), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of ARM 17.50.1309. The owner or operator must submit a copy of the bond to the department and place a copy in the operating record. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury and licensed to do business in Montana.

- (ii) The penal sum of the bond must be in an amount at least equal to the current closure, post-closure care, or corrective action cost estimate, whichever is applicable, except as provided in (5)(g) below.
 - (iii) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.
 - (iv) The owner or operator must establish a standby trust fund. The standby trust fund must meet the requirements of (5)(a) except the requirements for initial payment and subsequent annual payments specified in (5)(a)(ii) through (v) above.
 - (v) Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund. Payments from the trust fund must be approved by the trustee.
 - (vi) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner and operator and to the department 120 days in advance of cancellation. If the surety cancels the bond, the owner or operator must obtain alternate financial assurance as specified in this section.
 - (vii) The owner or operator may cancel the bond only if alternate financial assurance is substituted as specified in this section or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with (2)(b), (3)(b), or (4)(b) of this rule.
- (c) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this section.
 - (i) The letter of credit must be effective before the initial receipt of waste or before the effective date of this section, whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of ARM 17.50.1309. The owner or operator must supply the department with a copy of the letter of credit and place a copy of the letter of credit in the operating record. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.
 - (ii) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the name and address of the facility, and the amount of funds assured, must be included with the letter of credit in the operating record.

- (iii) The letter of credit must be irrevocable and issued for a period of at least 1 year in an amount at least equal to the current cost estimate for closure, post-closure care, or corrective action, whichever is applicable, except as provided in (5)(a) above. The letter of credit must provide that the expiration date will be automatically extended for a period of at least 1 year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner and operator and to the department 120 days in advance of cancellation. If the letter of credit is canceled by the issuing institution, the owner or operator must obtain alternate financial assurance.
 - (iv) The owner or operator may cancel the letter of credit only if alternate financial assurance is substituted as specified in this rule or if the owner or operator is released from the requirements of this rule in accordance with (2)(b), (3)(b), or (4)(b) of this rule.
- (d) An owner or operator may demonstrate financial assurance for closure and post-closure care by obtaining insurance which conforms to the requirements of this subsection (d).
 - (i) The insurance must be effective before the initial receipt of waste or before the effective date of this rule (April 9, 1994), whichever is later. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states, specifically including Montana. Proof of insurance must be supplied to the department.
 - (ii) The closure or post-closure care insurance policy must guarantee that funds will be available to close the Class II landfill unit whenever final closure occurs or to provide post-closure care for the Class II landfill unit whenever the post-closure care period begins, whichever is applicable. The policy must also guarantee that once closure or post-closure care begins, the insurer will be responsible for the paying out of funds to the owner or operator or other person authorized to conduct closure or post-closure care, up to an amount equal to the face amount of the policy.
 - (iii) The insurance policy must be issued for a face amount at least equal to the current cost estimate for closure or post-closure care, whichever is applicable, except as provided in (5)(a) above. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.
 - (iv) An owner or operator, or any other person authorized to conduct closure or post-closure care, may receive reimbursements for closure or post-closure expenditures, whichever is applicable. Requests for reimbursement will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure or post-closure care, and if justification and documentation of the cost is placed in the operating record and written approval is received from the department in advance. The owner or operator must file the documentation of the justification for reimbursement with the department and place it in the operating record. Notice that reimbursement has been received must also be filed with the department and placed in the operating record.

- (v) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused.
 - (vi) The insurance policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner and operator and to the department 120 days in advance of cancellation. If the insurer cancels the policy, the owner or operator must obtain alternate financial assurance as specified in this section.
 - (vii) For insurance policies providing coverage for post-closure care, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85% of the most recent investment rate or of the equivalent coupon-issue yield announced by the US Treasury for 26-week treasury securities.
 - (viii) The owner or operator may cancel the insurance policy only if alternate financial assurance is substituted as specified in this subsection (d) or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements of (2)(b), (3)(b), or (4)(b) of this rule.
- (e) Local governmental entities who are owners or operators may satisfy the requirements of this subsection (e) through their taxing and bonding authority as long as there is a commitment by local governmental entity or entities, approved by the department, that meets criteria specified in (5)(h) below. A demonstration must be made to the department and placed in the operating record, of the ability of the governmental entity or entities to fully fund liabilities under this section. Such a demonstration should include, but is not limited to:
- (i) excess bonding capability available;
 - (ii) bond rating of the entity or entities;
 - (iii) excess taxation capability available under any governmental tax limitation laws;
 - (iv) voter prior approval of any tax increases, if required; and
 - (v) any other information that will make it possible for the department to accurately assess the ability to meet the criteria specified in (5)(h) below.
- (f) An owner or operator may satisfy the requirements of this rule by obtaining any other mechanism that meets the criteria specified in (5)(h) below, and that is approved by the department.
- (g) An owner or operator may satisfy the requirements of this rule by establishing more than 1 financial mechanism per facility. The mechanisms must be as specified in (5)(a) through (f) above, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current cost estimate for closure, post-closure care or corrective action, whichever is applicable. The

financial test and a guarantee provided by a corporate parent, sibling, or grandparent may not be combined if the financial statements of the 2 firms are consolidated.

- (h) The language of the mechanisms listed in (5)(a) through (f) must ensure that the instruments satisfy the following criteria:
 - (i) the financial assurance mechanisms must ensure that the amount of funds assured is sufficient to cover the costs of closure, post-closure care, and corrective action for known releases when needed;
 - (ii) the financial assurance mechanisms must ensure that funds will be available in a timely fashion when needed;
 - (iii) the financial assurance mechanisms must be obtained by the owner or operator by the effective date of these requirements or prior to the initial receipt of solid waste, whichever is later, in the case of closure and post-closure care, and no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of ARM 17.50.1309, until the owner or operator is released from the financial assurance requirements under (2)(b), (3)(b), or (4)(b) of this rule.
 - (iv) The financial assurance mechanisms must be legally valid, binding, and enforceable under state and federal law.

Authorizing statute(s): 75-10-204, MCA

Implementing statute(s): 75-10-204, MCA

History: NEW, 1993 MAR p. 1645, Eff. 4/9/94; AMD, 1993 MAR p. 2672, Eff. 11/11/93; AMD, 1995 MAR p. 665, Eff. 4/28/95; TRANS, from DHES, 1995 MAR p. 2253; AMD, 1997 MAR p. 689, Eff. 4/22/97; AMD, 2025 MAR, 17-448, Eff. 1/11/25.