

1 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

2 Solid and Hazardous Waste Commission/Hazardous Materials and  
3 Waste Management Division

4 6 CCR 1007-2

5 PART 1 - REGULATIONS PERTAINING TO SOLID WASTE SITES AND FACILITIES  
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7

8 Amendment of the Section 4 Financial Assurance Regulations  
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10  
11 1) Section 4 of the Table of Contents of the Solid Waste Regulations is being  
12 amended by revising Section 4.6.9 to read as follows:  
13

14  
15 PART 1 - REGULATIONS PERTAINING TO SOLID WASTE SITES AND FACILITIES  
16  
17

18 TABLE OF CONTENTS  
19

20  
21 PART B  
22 REQUIREMENTS AND INFORMATION CONCERNING  
23 ALL SOLID WASTE DISPOSAL SITES AND FACILITIES  
24 IN THE STATE OF COLORADO  
25

26 \*\*\*\*\*

27  
28 SECTION 4 FINANCIAL ASSURANCE REQUIREMENTS  
29

30 \*\*\*\*\*

31  
32 4.6 Financial Assurance Requirements

- 33 4.6.1 General Requirements
- 34 4.6.2 Trust Funds
- 35 4.6.3 Letters of Credit
- 36 4.6.4 Surety Bonds Guaranteeing Performance or Payment
- 37 4.6.5 Insurance
- 38 4.6.6 Corporate Financial Test
- 39 4.6.7 Local Government Financial Test
- 40 4.6.8 Corporate Guarantee
- 41 4.6.9 ~~Reserved~~ Cash Deposit Holding Account
- 42 4.6.10 Certificates of Deposit
- 43 4.6.11 Use of Multiple Financial Mechanisms
- 44 4.6.12 Use of a Financial Mechanism for Multiple Sites
- 45 4.6.13 Release of the Owner or Operator from the Requirements of this Section

46 \*\*\*\*\*  
47  
48  
49

50 **2) The Appendices section of the Table of Contents of the Solid Waste**  
51 **Regulations is being amended by revising Appendix A to read as follows:**

52  
53  
54 **PART 1 - REGULATIONS PERTAINING TO SOLID WASTE SITES AND FACILITIES**

55  
56  
57  
58 **TABLE OF CONTENTS**

59  
60 \*\*\*\*\*

61  
62 **PART B**  
63 **REQUIREMENTS AND INFORMATION CONCERNING**  
64 **ALL SOLID WASTE DISPOSAL SITES AND FACILITIES**  
65 **IN THE STATE OF COLORADO**

66  
67 \*\*\*\*\*

68  
69 **APPENDICES**

70 **APPENDIX A - ~~Financial work sheet~~ Financial assurance instrument language**  
71 **APPENDIX B - Ground water monitoring**  
72 **APPENDIX I - Detection monitoring parameters**  
73 **APPENDIX II- Assessment monitoring parameters**

74  
75 \*\*\*\*\*

76  
77  
78 **3) The Table of Contents for Section 4 (Financial Assurance Requirements) is**  
79 **amended by revising the listing for section 4.6.9 to read as follows:**

80  
81  
82 **SECTION 4 FINANCIAL ASSURANCE REQUIREMENTS**

83  
84 \*\*\*\*\*

85  
86 **4.6 Financial Assurance Requirements**  
87 4.6.1 General Requirements  
88 4.6.2 Trust Funds  
89 4.6.3 Letters of Credit  
90 4.6.4 Surety Bonds Guaranteeing Performance or Payment  
91 4.6.5 Insurance  
92 4.6.6 Corporate Financial Test  
93 4.6.7 Local Government Financial Test  
94 4.6.8 Corporate Guarantee  
95 4.6.9 ~~Reserved~~ Cash Deposit Holding Account  
96 4.6.10 Certificates of Deposit  
97 4.6.11 Use of Multiple Financial Mechanisms  
98 4.6.12 Use of a Financial Mechanism for Multiple Sites  
99 4.6.13 Release of the Owner or Operator from the Requirements of this Section

100 **4) Section 4.5.1 is amended to read as follows:**

101  
102 **4.5 Revising Closure, Post-Closure, and Corrective Action Cost Estimates**

103  
104 **4.5.1 Annual Inflation Revision:** During the active life of the solid waste disposal site and facility, the  
105 owner or operator must annually revise the ~~closure, post-closure, and any corrective action cost~~  
106 ~~estimate~~financial assurance instrument to account for inflation and must submit ~~this~~the revised estimate  
107 to the Financial Assurance Manager for approval~~for department approval~~. This ~~estimate must revised~~  
108 financial assurance instrument must be submitted to the department annually by April 30t. occur at least  
109 sixty (60) days prior to the anniversary date of the establishment of the financial instrument(s) used to  
110 comply with this Section 4. For owners and operators using the financial test or guarantee, the revised  
111 cost estimate must be updated for inflation within thirty (30) days after the close of the entity's fiscal year  
112 and submitted for department approval. The annual adjustment may be made by recalculating the  
113 maximum costs of closure, post-closure, and/or corrective action in current dollars, or by using an inflation  
114 factor derived from the most recent Implicit Price Deflator for Gross National Product as published by the  
115 U.S. Department of Commerce in its Survey of Current Business. The inflation factor is the result of  
116 dividing the latest published annual Deflator by the Deflator for the previous year.

117  
118 (A) The first adjustment is made by multiplying the original cost estimate by the inflation factor. The  
119 result is the revised cost estimate.

120  
121 (B) Subsequent adjustments are made by multiplying the latest revised cost estimate by the latest  
122 inflation factor.

123  
124

125 **5) Section 4.6.1(D) is amended by adding paragraph (D)(9) to read as follows:**

126  
127

**4.6 Financial Assurance Requirements**

128 **4.6.1: General Requirements**

129 \*\*\*\*\*

130 (D) The following are allowable financial assurance mechanisms and instruments that an owner  
131 or operator may use, alone or in combination, subject to approval by the department:

132

- 133 (1) Trust fund
- 134 (2) Letter of credit
- 135 (3) Surety bond
- 136 (4) Insurance
- 137 (5) Corporate financial test
- 138 (6) Local government financial test
- 139 (7) Corporate guarantee
- 140 (8) Certificate of Deposit
- 141 (9) Cash Deposit Holding Account

142

143 \*\*\*\*\*

144

145 **6) Section 4.6.4 is amended by revising paragraph (F) to read as follows:**

146  
147 **4.6.4 Surety Bonds Guaranteeing Performance or Payment**

148 \*\*\*\*\*

149  
150  
151 (F) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation  
152 through email to the Financial Assurance Manager and by certified mail, or other trackable delivery  
153 service, to the owner or operator and to the department. Cancellation may not occur until one hundred  
154 twenty (120) days after the notice of cancellation has been received by both the owner or operator and  
155 the department, as evidenced by return receipts. The department will notify the local governing authority  
156 of any such cancellation.

157  
158  
159 **7) Section 4.6.5 is amended by revising paragraphs (A), (J) and (K), and adding**  
160 **new paragraph (P) to read as follows:**

161  
162 **4.6.5 Insurance**

163  
164 (A) Subject to department approval, an owner or operator may satisfy the requirements of this Section by  
165 obtaining insurance which conforms to the requirements of this paragraph and submitting a certificate of  
166 such insurance to the department. An owner or operator of a new facility must submit a copy of the  
167 insurance policy and all endorsements to the department at least ninety (90) days before the date on  
168 which waste is first received. If an owner or operator wants to changes or replace a current insurance  
169 policy, the owner or operator must submit a copy of the proposed insurance policy and all endorsements  
170 to the department at least ninety (90) days before changing or replacing the insurance policy.

171 \*\*\*\*\*

172  
173  
174 (J) The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except  
175 for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the  
176 insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the  
177 premium, the insurer may elect to cancel the policy by sending notice of cancellation by email and  
178 certified mail, or other trackable delivery service, to the owner or operator and the departmentFinancial  
179 Assurance Manager, one hundred twenty (120) days in advance of cancellation. The department will  
180 notify the local governing authority of any such notice of cancellation. However, cancellation, termination,  
181 or failure to renew may not occur and the policy, which shall contain a provision with the following terms  
182 and conditions, will remain in full force and effect in the event that on or before the date of expiration:

- 183  
184 (1) The department, after Consultation with the local governing authority, deems the facility  
185 abandoned; or  
186  
187 (2) The certificate of designation is terminated or revoked or a new certificate of designation is  
188 denied; or  
189  
190 (3) Closure is ordered by the department or the local governing authority or court of competent  
191 jurisdiction; or  
192  
193 (4) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11  
194 (bankruptcy), U.S. Code; or  
195  
196 (5) The premium due is paid by any person.  
197

198 (K) If the insurer cancels the policy, the owner or operator must obtain replacement financial assurance  
199 as required in Subsection 4.6.1(D) before the end of the 120-day period, as required by this Section 4.

200 \*\*\*\*\*

201  
202  
203 (P) The owner or operator of the facility must submit a copy of the insurance policy and all endorsements  
204 as requested by the department.

205  
206  
207 **8) Section 4.6.9 is amended to read as follows:**

208  
209 **4.6.9 ~~Reserved~~ Cash Deposit Holding Account**

210  
211 (A) Subject to the department approval, an owner or operator may demonstrate financial assurance by  
212 securing funds in the department's cash deposit holding account. The owner or operator may deposit  
213 money in the account by cashier's check, personal check or wire transfer.

214  
215 (B) The wording of the cash deposit holding account must be identical to the wording in Appendix A.

216  
217  
218 **9) The Irrevocable Standby Letter of Credit language in Section II of Appendix A is**  
219 **amended to read as follows:**

220  
221 **II. Irrevocable Standby Letter of Credit.**

222  
223 *A letter of credit, specified in these regulations, must be worded as follows, except that instructions in*  
224 *brackets are to be replaced with the relevant information and the brackets deleted:*

225  
226 **Irrevocable Standby Letter of Credit**

227  
228 Director  
229 Colorado Department of Public Health and Environment  
230 ~~Hazardous Materials and Waste Management~~ Division of Environmental Health and Sustainability  
231 Mail Code: DEHS – A2  
232 4300 Cherry Creek Drive South  
233 Denver, Colorado 80246-1530

234  
235 Dear Sir or Madam:

236  
237 We hereby establish our irrevocable standby letter of credit no. \_\_\_\_\_ in your favor, at the request and  
238 for the account of [owner's or operator's name and address] up to the aggregate amount of [in words]  
239 U.S. Dollars \$ \_\_\_\_\_, available upon presentation of:

240  
241 (1) Your sight draft bearing reference to this letter of credit no. \_\_\_\_\_, and

242  
243 (2) Your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant  
244 to regulations issued under authority of the Colorado Solid Wastes Disposal Sites and Facilities Act as  
245 amended."

246  
247 This letter of credit is effective as of [date] and shall expire on [date at least 1 year later], but such  
248 expiration date shall be automatically extended for a period of [at least 1 year] on [date] and on each  
249 successive expiration date, unless, at least 120 days before the current expiration date, we notify both  
250 you and [owner's or operator's name] by certified mail, or other trackable delivery service, that we have  
251 decided not to extend this letter of credit beyond the current expiration date. In the event you are so

252 notified, any unused portion of the credit shall be available upon presentation of your sight draft, for 120  
253 days after the date of receipt by both you and [owner's or operator's name], as shown on the signed  
254 return receipts.

255  
256 Whenever this letter of credit is drawn on under and in compliance with the terms of this letter of credit,  
257 we shall duly honor such draft upon presentation to us, and we shall deposit the specified amount of the  
258 draft directly into the mechanism established by the State of Colorado to directly receive monies.

259  
260 We certify that the wording of this letter of credit is identical to the wording specified as such regulations  
261 were constituted on the date shown immediately below.

262  
263 [Signature(s) and title(s) of official(s) of issuing institution]

264  
265 Signature: \_\_\_\_\_

266  
267 Printed: \_\_\_\_\_

268  
269 Title: \_\_\_\_\_

270  
271 Date: \_\_\_\_\_

272  
273  
274 This letter of credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for  
275 Documentary Credits, published by the International Chamber of Commerce," or "the Uniform  
276 Commercial Code"].

277  
278  
279 **10) The Surety Bond language in Section III of Appendix A is amended to read as  
280 follows:**

281  
282 **III. Surety Bond**

283  
284 *A surety bond guaranteeing payment, as specified in these regulations, must be worded as follows,  
285 except that instructions in brackets are to be replaced with the relevant information and the brackets  
286 deleted:*

287  
288 Surety Bond

289 Date bond executed: \_\_\_\_\_

290 Effective date: \_\_\_\_\_

291 Principal: [legal name and business address of owner or operator] \_\_\_\_\_

292 \_\_\_\_\_

293 \_\_\_\_\_

294  
295 Type of organization: [insert "individual", "joint venture", "partnership", or "corporation"] \_\_\_\_\_

296 \_\_\_\_\_

297 State of incorporation: \_\_\_\_\_

298 Surety(ies): [name(s) and business address(es)] \_\_\_\_\_

299 \_\_\_\_\_

300 \_\_\_\_\_

301

302 Name, address, and closure and/or post-closure, corrective action amount(s) for each facility guaranteed  
303 by this bond: [Indicate closure and/or post-closure and/or corrective action amount separately] \_\_\_\_\_

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Total penal sum of bond: \$ \_\_\_\_\_  
Surety's bond number: \_\_\_\_\_

Know all persons by these presents, that we, the principal and surety(ies) hereto are firmly bound to the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division (the "department") in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the surety(ies) are corporations acting as co-sureties, we, the sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or action against any or all of us, and for all other purposes each surety binds itself, jointly and severally with the principal, for the payment of such sum only as is set forth opposite the name of such surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said principal is required, under the Colorado Solid Wastes Disposal Sites and Facilities Act, to have a certificate of designation in order to own or operate each solid waste management facility identified above, and

Whereas said principal is required to provide financial assurance for closure, or closure and post-closure care, as a condition of the certificate of designation, and

Whereas said principal is required to provide financial assurance for any corrective action required at solid waste disposal sites and facilities.

Now, therefore, the conditions of the obligation are such that if the principal shall faithfully, before the beginning of final closure of each facility identified above, provide funding directly to the department in the amount(s) identified above for the facility,

Or, if the principal shall fund in such amount(s) within 15 days after an order to begin closure is issued by the department or a U.S. District court or other court of competent jurisdiction,

Or, if the principal shall provide alternate financial assurance, as specified in these regulations and obtain the department's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the principal and the department from the surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The surety(ies) shall become liable on this bond obligation only when the principal has failed to fulfill the conditions described above. Upon notification by the department that the principal has failed to perform as guaranteed by this bond, the surety(ies) shall place funds in the amount guaranteed for the facility(ies) as directed by the department.

The liability of the surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the surety(ies) hereunder exceed the amount of said penal sum.

The surety(ies) may cancel the bond by sending notice of cancellation through email to the Financial Assurance Manager and by certified mail, or other trackable delivery service, to the principal and to the department, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the principal and the department, as evidenced by the return receipts.

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All notices required under this bond shall be sent to:

Financial Assurance Manager  
Colorado Department of Public Health and Environment  
Mail Code: DEHS – A2  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530  
  
Email: [cdphe\\_haz\\_financialassurance@state.co.us](mailto:cdphe_haz_financialassurance@state.co.us)

The principal may terminate this bond by sending written notice to the surety(ies), provided, however, that no such notice shall become effective until the surety(ies) receive(s) written authorization for termination of the bond by the department.

*[The following paragraph is an optional rider that may be included but is not required:]*

The principal and surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure, post-closure and/or corrective action amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the department.

In witness whereof, the principal and surety(ies) have executed this surety bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the principal and surety(ies) and that the wording of this surety bond is identical to the wording specified in the applicable regulations were constituted on the date this bond was executed.

Principal \_\_\_\_\_

[Signature(s)] \_\_\_\_\_

[Name(s) and Titles] \_\_\_\_\_

[Corporate seal] \_\_\_\_\_

Corporate Surety(ies) \_\_\_\_\_

[Name and address] \_\_\_\_\_

State of incorporation: \_\_\_\_\_

Liability limit: \$ \_\_\_\_\_

[Signature(s)] \_\_\_\_\_

[Name(s) and title(s)] \_\_\_\_\_

[Corporate seal]

*[For every co-surety, provide signature(s), Corporate seal, and other information in the same manner as for surety above.]*



410 Bond premium: \$

411

412

413 **11) The Performance Bond language in Section IV of Appendix A is amended to**  
414 **read as follows:**

415

416

417 **IV. Performance Bond**

418

419 *A surety bond guaranteeing performance of closure and/or post-closure care, or corrective action as*  
420 *specified, must be worded as follows, except that the instructions in brackets are to be replaced with the*  
421 *relevant information and the brackets deleted.*

422

Performance Bond

423 Date bond executed: \_\_\_\_\_

424 Effective date: \_\_\_\_\_

425 Principal: [*legal name and business address of owner or operator*] \_\_\_\_\_

426 \_\_\_\_\_

427 \_\_\_\_\_

428 \_\_\_\_\_

429

430 Type of organization: [*insert "individual", "joint venture", "Partnership", or "corporation"*] \_\_\_\_\_

431 State of incorporation: \_\_\_\_\_

432

433 Surety(ies): [*Name(s) and business address(es)*] \_\_\_\_\_

434 \_\_\_\_\_

435 \_\_\_\_\_

436

437 Name, address, and closure and/or post-closure corrective action amount(s) for each facility guaranteed

438 by this bond (indicate closure and post-closure amounts separately): \_\_\_\_\_

439 \_\_\_\_\_

440 \_\_\_\_\_

441

442 Total penal sum of bond: \$ \_\_\_\_\_

443

444 Surety's bond number: \_\_\_\_\_

445

446

447 Know all persons by these presents, that we, the principal and surety(ies) hereto are firmly bound to the

448 Colorado Department of Public Health and Environment (the "department") , in the above penal sum for

449 the payment of which we bind ourselves, our heirs, executors, administrators successors, and assigns

450 jointly and severally; provide that, where the surety(ies) are corporations acting as co-sureties, we, the

451 sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action

452 or actions against any or all of us, and for all other purposes each surety binds itself, jointly and severally

453 with the principal, for the payment of such sum only as is set forth opposite the name of such surety, but if

454 no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

455

456 Whereas said principal is required, under the Colorado Solid Wastes Disposal Sites and Facilities Act as

457 amended, to have a certificate of designation in order to own or operate each solid waste disposal site

458 and facility identified above; and

459

460 Whereas said principal is required to provide financial assurance for closure, or closure and post-closure

461 care, as a condition of the certificate of designation; and

462

463 Whereas said principal is required to provide financial assurance for any corrective action required at  
464 Solid Waste Disposal Sites and Facilities.

465  
466 Now, therefore, the conditions of this obligation are such that if the principal shall faithfully perform  
467 closure, whenever required to do so, of each facility for which this bond guarantees closure, in  
468 accordance with the closure plan and other requirements of the certificate of designation as such plan  
469 and certificate of designation may be amended, pursuant to all applicable laws, statutes, rules, and  
470 regulations, as such laws, statutes, rules, and regulations may be amended.

471  
472 And, if the principal shall faithfully perform post-closure care of each facility for which this bond  
473 guarantees post-closure care, in accordance with the post-closure plan and other requirements of the  
474 certificate of designation, as such plan and certificate of designation may be amended, pursuant to all  
475 applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be  
476 amended.

477  
478 Or, if the principal shall provide alternate financial assurance as specified in these regulations, and obtain  
479 the department's written approval of such assurance, within 90 days after the date notice of cancellation  
480 is received by both the principal and the department from the surety(ies), then this obligation shall be null  
481 and void, otherwise it is to remain in full force and effect.

482  
483 The surety(ies) shall become liable on this bond obligation only when the principal has failed to fulfill the  
484 conditions described above.

485  
486 Upon notification by the department that the principal has been found in violation of the closure  
487 requirements of these regulations, for a facility for which this bond guarantees performances of closure,  
488 the surety(ies) shall either perform closure in accordance with the closure plan and other certificate of  
489 designation requirements or deposit the closure amount guaranteed for the facility as directed by the  
490 department.

491  
492 Upon notification by the department that the principal has failed to provide alternate financial assurance  
493 as specified in these regulations, and obtain written approval of such assurance from the department  
494 during the 90 days following receipt by both the principal and the department of a notice of cancellation of  
495 the bond, the surety(ies) shall deposit funds in the amount guaranteed for the facility(ies) as directed by  
496 the department.

497  
498 The surety(ies) hereby waive(s) notification of amendments to closure plans, permits, applicable laws,  
499 statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their)  
500 obligation on this bond.

501  
502 The liability of the surety(ies) shall not be discharged by any payment or succession of payments  
503 hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of  
504 the bond, but in no event shall the obligation of the surety(ies) hereunder exceed the amount of said  
505 penal sum.

506  
507 The surety(ies) may cancel the bond by sending notice of cancellation through email to the Financial  
508 Assurance Manager and by certified mail, or other trackable delivery service, to the owner or operator  
509 and to the department provided, however, that cancellation shall not occur during the 120 days beginning  
510 on the date of receipt of the notice of cancellation by both the principal and the department, as evidenced  
511 by the return receipts.

512  
513 All notices required under this bond shall be sent to:

514  
515 Financial Assurance Manager  
516 Colorado Department of Public Health and Environment  
517 Mail Code: DEHS – A2

518 [4300 Cherry Creek Drive South](https://www.cdphe.state.co.us/locations/4300-Cherry-Creek-Drive-South-Denver-CO-80246-1530)  
519 [Denver, Colorado 80246-1530](https://www.cdphe.state.co.us/locations/4300-Cherry-Creek-Drive-South-Denver-CO-80246-1530)

520  
521 [Email: cdphe\\_haz\\_financialassurance@state.co.us](mailto:cdphe_haz_financialassurance@state.co.us)  
522

523 The principal may terminate this bond by sending written notice to the surety(ies), provided, however, that  
524 no such notice shall become effective until the surety(ies) receive(s) written authorization for termination  
525 of the bond by the department.

526  
527 *[The following paragraph is an optional rider that may be included but is not required.]*  
528

529 Principal and surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a  
530 new closure and/or post-closure and corrective action amount, provided that the penal sum does not  
531 increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without  
532 the written permission of the department.

533  
534 In witness whereof, the principal and surety(ies) have executed this performance bond and have affixed  
535 their seals on the date set forth above.

536  
537 The persons whose signatures appear below hereby certify that they are authorized to execute this surety  
538 bond on behalf of the principal and surety(ies) and that the wording of this surety bond is identical to the  
539 wording specified in the applicable regulations.

540  
541 Principal \_\_\_\_\_  
542 *[Signature(s)]* \_\_\_\_\_  
543 *[Name(s) and Title(s)]* \_\_\_\_\_  
544

545 *[Corporate seal]*  
546

547  
548 Corporate Surety(ies)  
549 *[Name and address]*  
550 State of incorporation:  
551 Liability limit: \$  
552 *[Signature(s)]*  
553 *[Name(s) and title(s)]*  
554

555 *[Corporate seal]*  
556

557  
558 *[For every co-surety, provide signature(s), Corporate seal, and other information in the same manner as*  
559 *for surety above.]*

560  
561 Bond premium: \$  
562

563  
564 **12) The Insurance language in Section V of Appendix A is amended to read as**  
565 **follows:**  
566

567 **V. Insurance**

568 (1) The standard insurance industry certificate of insurance form (ACORD form), as prescribed by the  
569 Colorado Insurance Commission, shall be used to evidence closure and/or post-closure care and/or  
570 corrective action coverage. The following information is to be included in the certificate of insurance:

- 571 (A) Name, address, email and telephone number of agency; and the underwriter  
572 (B) Name of facility being covered (if list is too long additional pages may be attached).  
573 (C) Indication of type of coverage (closure, post-closure and/or corrective action).  
574 (D) Amount of coverage (closure, post-closure and/or corrective action).  
575 (E) A statement of certification, in the comment section, worded as follows, except that instructions in  
576 brackets are to be replaced with the relevant information and the brackets deleted:

577 "This certificate certifies that the policy to which this certificate applies, provides [insert and/or  
578 closure and/or post-closure care or corrective action coverage] in connection with the insured's  
579 obligation to demonstrate financial responsibility under Section 4.6.5 of the regulations pertaining  
580 to Solid Waste Disposal Sites and Facilities 6 CCR 1007-2, as amended.

581 (F) Authorized company representatives' signature

582 (2) Cancellation of this policy, whether by the insurer or the insured, will be effective only upon written  
583 notice and only after the expiration of sixty (60) days after a written notice of cancellation is received by  
584 the department. Notice of cancellation must be sent through email to the Financial Assurance Manager  
585 and by certified mail, or other trackable delivery service to the department, as evidenced by the return  
586 receipts.

587  
588 (3) All notices required under this policy shall be sent to:

589 Financial Assurance Manager  
590 Colorado Department of Public Health and Environment  
591 Mail Code: DEHS- A2  
592 4300 Cherry Creek Drive South  
593 Denver, Colorado 80246-1530

594 Email: [cdphe\\_haz\\_financialassurance@state.co.us](mailto:cdphe_haz_financialassurance@state.co.us)  
595

597  
598  
599 **13) The Certificate of Deposit language in Section VI of Appendix A is amended to**  
600 **read as follows:**

601  
602  
603 **VI. Certificate of Deposit**  
604

605 COLLATERAL ASSIGNMENT OF CERTIFICATE OF DEPOSIT

606 Instructions: The Colorado Department of Public Health and Environment requires an original signed  
607 copy with Italic text replaced.

608 Bank and Assignor may also require original signed copies.

609 (Note: No individual certificate of deposit or the total of all deposits of the assignor at any individual  
610 savings institution should exceed \$250,000 or the maximum insurable amount by F.D.I.C).

611

PART I

612

(To: be completed by Assignor)

613 The undersigned assignor (the "Assignor"), as responsible operator or owner for (*Name and Address of*  
614 *Facility*) ("the Facility"), does hereby assign, transfer to, and pledge to the Director of the Hazardous  
615 Materials and Waste Management Division of the Colorado Department of Public Health and Environment  
616 ("the department"), right, title, and interest in and to the Certificate of Deposit issued by or carried  
617 with \_\_\_\_\_, and its successors or assigns, with an office located at (*Address and*  
618 *Telephone Number of Bank or Savings Institution*) and identified as Certificate of Deposit  
619 # \_\_\_\_\_ ("CD") including its principal amount and any interest that will accrue or already has  
620 accrued on the CD ("Assignment"). This Assignment is binding on Assignor, its/his/her/their heirs,  
621 devisees, personal representatives, successors, and assigns.  
622

623 **PURPOSE**

624 This Assignment is made as, and shall constitute, collateral security for closure, post-closure, and  
625 corrective action costs associated with the Facility in accordance with section 30-20-104.5, C.R.S. and 6  
626 CCR 1007-2, § 4.0. Pursuant to 6 CCR 1007-2, § 4.5, the aforesaid costs shall be updated every five (5)  
627 years, adjusted annually to account for inflation or deflation by using the implicit price deflator for the  
628 gross domestic product or its successor as published by the U.S. Department of Commerce ("Cost  
629 Estimate"), or as requirements change at the Facility.

630 The principal amount of the CD shall be equal or greater to the current Cost Estimate. If the Cost  
631 Estimate increases to an amount greater than the principal amount of the CD, the owner or operator,  
632 during the seven (7) day grace period after the maturity date of the CD ("Grace Period"), shall contribute  
633 additional funding to the CD so that the principal amount of the CD is at least equal to the Cost Estimate.  
634 In the alternative, the Facility may implement another financial assurance mechanism as set forth in 6  
635 CCR 1007-2, § 4.6.1(D) to satisfy the disparity between the principal amount of the CD and the Cost  
636 Estimate. The owner and operator shall provide confirmation that the principal amount of the CD or the  
637 alternative financial mechanism covers the Cost Estimate to the department within ten (10) days of the  
638 aforesaid contribution or establishment of other financial assurance mechanism.

639 During every Grace Period, the owner or operator of the Facility shall increase the principal amount of the  
640 CD to account for the inflationary adjustment as determined pursuant to 6 CCR 1007-2, § 4.5 and shall  
641 provide written notice of such increase to the department within ten (10) days thereafter.

642 If the Cost Estimate decreases during the operating life of the Facility or during post-closure, the principal  
643 amount of the CD may be reduced to the amount of the Cost Estimate following the department's  
644 consultation with the local governing authority and written approval by the department.

645 Upon request by the department, the Assignor shall provide within ten (10) days to the department a  
646 complete copy of the most recent account statement of the CD, which, at a minimum, shows its principal  
647 amount and accrued interest. The Assignor also irrevocably consents and authorizes  
648 \_\_\_\_\_ to release any information regarding the CD and a recent account  
649 statement to the department if the department should contact this bank directly.  
650

651 **DURATION OF ASSIGNMENT**

652 This Assignment shall be for a period from the date hereof until the department declares this Assignment  
653 to be terminated by written notice to \_\_\_\_\_ and Assignor. Consequently, the  
654 CD shall be automatically renewed for successive new terms identical to the CD's original term unless  
655 and until \_\_\_\_\_ receives written notice of termination of the Assignment.  
656 Assignor hereby agrees to not cancel or otherwise act on the CD without the department's written

657 approval and that Assignor is liable for any fees or penalties associated with any payment of the CD to  
658 the department.  
659

660 **CDPHE'S RIGHT TO DRAW UPON CERTIFICATE OF DEPOSIT**

661 Following a determination by the department that the owner or operator has failed to perform final closure  
662 or post-closure or corrective action in accordance with the closure or post-closure or corrective action  
663 plan and other certificate of designation requirements, if applicable, the department may draw on the CD  
664 without further notice to or the consent of Assignor.

665 The undersigned hereby constitutes and appoints the department as Power of Attorney of the  
666 undersigned to demand, collect, and receive all amounts that may become due under the terms of this  
667 Assignment, and to endorse the CD for payment or negotiation and to endorse any commercial paper  
668 given in payment of the CD.  
669

670 **PRESENTATION OF CERTIFICATE OF DEPOSIT**

671 The undersigned represents and warrants that a receipt for the CD is contemporaneously being delivered  
672 to the department with the execution of this Assignment; that the CD is to remain assigned to the  
673 department until authorized for release pursuant to 6 CCR 1007-2, § 4.4.6.13; that the CD is genuine and  
674 is in all respects what it purports to be; that the undersigned is the owner thereof free and clear of all liens  
675 and encumbrances of any nature whatsoever; and that the undersigned has full power, right, and  
676 authority to execute and deliver this Assignment.  
677

678 **NOTICES**

679 All notices required under this Assignment shall be sent to:

680  
681 Financial Assurance ~~Program~~ Manager  
682 Colorado Department of Public Health and Environment  
683 Mail Code: ~~DEHS - A2HMWMD-SWP-B2~~  
684 4300 Cherry Creek Drive South  
685 Denver, Colorado 80246-1530  
686

687 [Email: cdphe\\_haz\\_financialassurance@state.co.us](mailto:cdphe_haz_financialassurance@state.co.us)

688 The undersigned further represents and warrants that any assignments of this CD made while the CD is  
689 pledged to the department shall be subordinate to this Assignment.  
690

691 **ASSIGNOR:** (Name of the Owner or Operator of the Facility)

692  
693 \_\_\_\_\_  
694 Name (Print) Title  
695  
696 \_\_\_\_\_  
697 Signature Date  
698

699 PART II

700 (To be completed by bank or savings institution)

701

702 **SIGNATURE GUARANTEE AND UNDERTAKING BY THE FINANCIAL INSTITUTION**

703  
704 The signature of the Assignor appearing on PART I of this document was made in the presence of the  
705 undersigned officer of \_\_\_\_\_ and such signature is herewith guaranteed  
706 by \_\_\_\_\_.

707  
708 This institution is an association/bank doing business in this state whose accounts are insured by the  
709 Federal Deposit Insurance Corporation. The above Assignment carries with it the right in and to the  
710 insurance of this account provided by the Federal Deposit Insurance Corporation.

711  
712 \_\_\_\_\_ hereby certifies that the CD identified on page one (1) has a  
713 principal amount of \$\_\_\_\_\_; that the signature of the Assignor above is comparable to  
714 signatures on file with \_\_\_\_\_; and that  
715 \_\_\_\_\_ has no knowledge of any other lien, encumbrance, right,  
716 hold, claim to, or obligation on the assigned CD.

717  
718 The CD is issued for a period of \_\_\_\_ year(s), beginning on \_\_\_\_\_, \_\_\_\_\_ and shall  
719 be automatically renewable for a like term and at Bank's standard interest rate in effect as of the  
720 applicable renewal date for a CD of such term and principal amount, with interest automatically  
721 rolling into the principal on each maturity date. In accordance with 6 CCR 1007-2, § 4.6.10(H),  
722 \_\_\_\_\_ shall provide a thirty (30) day written notice of maturity of  
723 the CD to the Assignor and will make a good faith effort to provide same notice to the  
724 department. \_\_\_\_\_ may elect at any time not to renew the CD  
725 as of a particular maturity date, subject to the requirement that, at least sixty (60) days before  
726 the applicable maturity date, \_\_\_\_\_ shall notify the Assignor and  
727 the department by certified mail or other trackable delivery service, of such decision. Such  
728 notice shall be effective upon receipt. Upon maturity of the CD following  
729 \_\_\_\_\_'s notice of non-renewal,  
730 \_\_\_\_\_ shall disburse all funds as directed by the department.

731  
732 \_\_\_\_\_ understands and agrees that the procedures governing  
733 the forfeiture of this CD are specified in 6 CCR 1007-2, § 4.6.10(J), and that, upon  
734 \_\_\_\_\_'s receipt of written notice from the department that the  
735 Facility has not complied with its requisite final closure or post-closure or corrective action plan,  
736 \_\_\_\_\_ will forward to the department within ten (10) days the  
737 principal amount of the CD plus any accrued interest, less any early withdrawal penalty, without  
738 further notice to the Assignor.

739  
740 On this date, the maximum penalty for early withdrawal of this Certificate of Deposit is:  
741 \$\_\_\_\_\_. Any penalty shall be deducted from interest  
742 accrued, and if to the extent that such amount is insufficient, shall be deducted from the  
743 principal of the CD.

744  
745 \_\_\_\_\_ herein states that so long as this agreement remains in  
746 effect, it has no other interests in this CD other than its sole responsibility to act as the agent for  
747 the purpose of holding the CD for the department's exclusive use until otherwise approved by  
748 the department in writing, and agrees not to act on the CD except as otherwise provided in this  
749 agreement or pursuant to written approval by the department.

750 \_\_\_\_\_ agrees that any claim or lien, which may result from this  
751 Assignment, or which it may acquire in the future against the Assignor, will be subordinate and  
752 junior to the department's interest in the CD.

753  
754 \_\_\_\_\_ agrees that except as otherwise provided in this  
755 agreement, no modification will be made to the terms and conditions of the CD which would  
756 affect the interest of the department under this assignment, without first notifying and obtaining  
757 written approval from the department. Written notice of any proposed modification or change in  
758 the terms or conditions of this CD shall be provided to the Financial Assurance Program  
759 Manager at the address listed in PART I above.

760  
761 \_\_\_\_\_ understands that this Certificate of Deposit is being  
762 pledged to the department by the Assignor as financial assurance under 6 CCR 1007-2, § 4.0.  
763 \_\_\_\_\_ has retained a copy of this Assignment and has properly  
764 documented this Assignment in the appropriate records of this institution.

765  
766  
767 \_\_\_\_\_  
768 Name of Financial Institution

769  
770  
771 \_\_\_\_\_  
772 Name (Print) Title

773  
774 \_\_\_\_\_  
775 Signature Date

776  
777  
778 Accepted By:  
779 Colorado Department of Public Health and Environment

780  
781  
782 \_\_\_\_\_  
783 Signature Date  
784 Division Director  
785 Hazardous Materials and Waste Management Division

786  
787



788 **14) New Cash Deposit Holding Account language is added to Section VII of**  
789 **Appendix A to read as follows:**

790

791

792

VII. Cash Deposit Holding Account

793

794

Cash Deposit Holding Account

795

796

A Cash Deposit Holding Account, as specified in these regulations, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

797

798

799

Cash Deposit Agreement

800

801

Date executed: \_\_\_\_\_

802

803

Principal: [legal name and business address of owner or operator]

804

805

Type of organization: [insert "individual", "joint venture", "partnership", or "corporation"]

806

807

808

Name, address, and closure and/or post-closure and/or corrective action amount(s) for each facility guaranteed by this bond: [Indicate facility location and closure and/or post-closure and/or corrective action amount separately]

809

810

811

812

Whereas, the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division ("the department"), a regulatory agency of the State of Colorado, has established certain regulations requiring that an owner or operator ("principal") of a solid waste disposal site and facility shall provide assurance that funds will be available when needed,

813

814

815

816

817

Whereas said principal is required, under the Colorado Solid Wastes Disposal Sites and Facilities Act and the Colorado Solid Waste Regulations (6 CCR 1007-2, Part 1) § 4.1.2 to establish financial assurance in order to own or operate each solid waste management facility or corrective action site identified above, and

818

819

820

821

822

Now, therefore, the principal shall provide funding directly to the department in the amount(s) identified above for the facility, in the amount of \$ \_\_\_\_\_.

823

824

825

The Principal may only request the release of funds held in the cash deposit account after an alternate mechanism is approved in writing by the department, if the facility is released by the department in writing from the financial assurance requirement, or if the Principal submits documentation that a lessor or greater amount of financial assurance will be required at the facility and the department agrees to the changed amount in writing.

826

827

828

829

830

831

All requirements of Section 4 of the Solid Waste Regulations, 6 CCR 1007-2, Part 1, apply to the funds held in this Cash Deposit Holding Account.

832

833

834

All notices under this agreement shall be sent to:

835

836

Financial Assurance Manager

837

Colorado Department of Public Health and Environment

838

Mail Code: HMWMD-DEHS - A2

839 4300 Cherry Creek Drive South  
840 Denver, Colorado 80246-1530

841  
842 Email: [cdphe\\_haz\\_financialassurance@state.co.us](mailto:cdphe_haz_financialassurance@state.co.us)  
843

844 The persons whose signatures appear below hereby certify that they are authorized to execute this  
845 agreement on behalf of the principal.  
846

847  
848 Principal \_\_\_\_\_

849  
850 [Signature(s)] \_\_\_\_\_

851  
852 [Name(s) and Title(s)] \_\_\_\_\_

1 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

2  
3  
4 Solid and Hazardous Waste Commission

5  
6 Hazardous Materials and Waste Management Division  
7 6 CCR 1007-2

8  
9 STATEMENT OF BASIS AND PURPOSE AND  
10 SPECIFIC STATUTORY AUTHORITY FOR

11  
12 Amendment to the Regulations Pertaining to Solid Waste Sites and Facilities (6 CCR 1007-2,  
13 Part 1) - Appendices (Table of Contents), Section 4.6.4 (Surety Bonds Guaranteeing  
14 Performance or Payment) and Appendix A (Wording for Financial Assurance Mechanisms).

15  
16  
17 **Basis and Purpose**

18  
19 I. **Statutory Authority**

20  
21 These amendments to 6 CCR 1007-2, Part 1 are made pursuant to the authority granted  
22 to the Solid and Hazardous Waste Commission in § 30-20-104.5, C.R.S and § 30-20-109,  
23 C.R.S.

24  
25 II. **Purpose of revised regulations**

26  
27 The purpose of Section 4.0 of the solid waste regulations is to provide assurance that  
28 funds will be available to the Department when needed for adequate closure and post-  
29 closure of, and corrective action at, solid wastes disposal sites and facilities should the  
30 owner and operator become financially insolvent. These regulations require the owners  
31 and operators to secure financial instruments to demonstrate adequate coverage until a  
32 release is granted by the department.

33  
34 The proposed changes to the financial assurance regulations is to correct  
35 typographical errors, revise deadlines to improve timeliness for annual reporting  
36 requirements. Update the list of allowable mechanisms, and enhance terms and  
37 conditions for both insurance and surety bond mechanisms.

38  
39 **Discussion of Regulatory Proposal**

40  
41 1) **Table of Contents - Appendices - Appendix A - Amended**

42 Proposed correction of Appendix A title as it appears in the Table of Contents.  
43 This will replace “Financial work sheet” with “Financial Assurance Instrument” as  
44 specified in Appendix A.  
45  
46

47 2) **Section 4.5.1 - Annual Inflation - Amended**  
48 This section requires the owner or operator to annually revise the closure, post-  
49 closure, and any corrective action cost estimate for inflation and must submit this  
50 estimate sixty (60) days prior to the anniversary date of the establishment of the  
51 financial instruments for the department approval.

52 *Proposed revisions will standardize the annual inflation submission deadline to April*  
53 *15<sup>th</sup>.*

54 3) **Section 4.6.1 Allowable Financial Assurance Mechanism - New**  
55 This section identifies the various mechanisms that the owner and operators may use  
56 to demonstrate financial assurance.

57 *Proposed revisions to Section 4.6.1 (D) will add an alternative instrument, Cash*  
58 *Deposit Holding Account, which the owner and operator may use to demonstrate*  
59 *financial assurance.*

60 4) **Section 4.6.4 Surety Bonds Guaranteeing Performance or Payment - Amended**  
61 Subsection 4.6.4 (F) states the surety may cancel the bond by sending notice of  
62 cancelation by certified mail, or another trackable delivery service, to the owner or  
63 operator and to the department. A cancelation may not occur until one hundred  
64 twenty (120) days after the notice of cancelation has been received by both the  
65 owner or operator and the department, as evidenced by return receipts.

66 *Proposed revisions will add specific contact information for whom the cancelation*  
67 *notices must be sent.*

68 5) **Section 4.6.5 Insurance - Amended**  
69 Subsection 4.6.5 (J) requires the insurer to cancel the policy by sending notice of  
70 cancellation by certified mail, or another trackable delivery service, to the owner  
71 or operator and the department.

72 *Proposed revisions will add specific contact information for whom the cancelation*  
73 *notices must be sent.*

74 Subsection 4.6.5 (K) requires the owner and operator to obtain a replacement  
75 mechanism is the insurer cancels the policy.

76 *Proposed revision will require the owner and operator to replace the financial*  
77 *assurance mechanism before the end of the 120-day period.*

78 *Proposed addition of Subsection 4.6.5 (P) to require the owner and operator to*  
79 *provide a copy of the insurance policy and endorsements as requested by the*  
80 *Department.*

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92

93 **6) Appendix A - Financial Assurance Instrument Language - Amended**

94 Section III. Surety Bond and Section IV. Performance Bond amended to align with  
95 the proposed changes described in Section 4.6.4 (F) in list item number 4 above.

96  
97 Section V. Insurance amended to align with the proposed changes described in  
98 Section 4.6.5 (J) in list item number 4 above.

99  
100 Section VII. Approved Wording for Cash Deposit Holding Account

101  
102 **Issues Encountered During Stakeholder Process:**

103  
104 Virtual stakeholder meeting on April 4, 2022:

- 105 • An invitation was extended to 105 people, including internal employees, Surety
- 106 Bond firms, Insurance companies, and Solid Waste Landfill owner/operators. Only
- 107 49 people registered for the meeting out of a total of 105.
- 108 • The deadline for feedback/questions/concerns was April 13, 2022.
- 109 • 23 comments, questions, and concerns were received.

110  
111 Questions/Comments/Concerns/Answers

112  
113 1) Section 4.5.1 - Annual Inflation - Amended:

114  
115 Q: Could the annual inflation rate increase be posted on the CDPHE website and sent  
116 out with The new regulation changes?

117 A: These rates are posted on the Solid waste financial assurance page. In the future,  
118 we plan to send all facilities annual notices of rate change and reminders for the  
119 annual submission.

120  
121 Q: The annual inflation revision will now be due by April 15th. Would we provide the  
122 new financial assurance instrument at the same time?

123 A: Yes, the revised mechanism should be submitted to us and we will extend the  
124 proposed deadline from April 15th to April 30th. The idea of this deadline is that if  
125 the U.S. Department of Commerce provides the implicit price deflator by the end  
126 of February, we will post it on our website the first week of March. Then the  
127 facility should have ample time to update their mechanism.

128  
129 Q: The interpretation of the current provision was during the active life of the solid  
130 waste disposal site and facility, the owner or operator must annually revise the  
131 closure, post- closure, and any corrective action cost estimate for inflation and  
132 must submit this estimate for department approval.

133 A: If you have specific questions about the FA or need to confirm numbers, we can  
134 have those conversation prior to adjusting the mechanism. If it's just an annual  
135 inflation adjustment, then the mechanism should be submitted by April 30th. In  
136 practice, facilities seldom submit the update separately from the modified  
137 instrument, preferring to include it in their yearly inflation adjustment.

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184

Q: We might give our cost estimate but until [a facility] knows that the State approves a certain amount we won't get the bond in that new amount until we know it's correct and agreed upon by both the State and the company.

A: There are a few facilities who present the proposed cost estimates prior to adjusting the mechanisms. Other facilities will adjust the mechanism and submit it to the division. If there are changes in construction of new cells or other landfill facilities that increase or decrease financial assurance cost requirements. Note that this is not an annual adjustment but rather an actual recalculation of the cost estimate using current unit costs and operational assumptions. Please work with the solid waste program permitting staff in this regard.

Q: Since there appeared to be varying interpretations among the regulated community regarding the timing for submitting the financial assurance instrument, would it be helpful to clarify in Section 4.5.1 when the instrument should be provided to the department?

A: The division has agreed to amend the language and share it to our stakeholders prior to the Commission Meeting on May 16th to better explain what needs to be submitted.

Q: It might also be helpful if the Financial Assurance renewal requirement is part of a checklist on the annual permit renewal forms. I have permits in multiple States and in all of them, except Colorado, the required updated Financial Assurance is always mentioned in the renewal paperwork.

A: Program will add a reminder to the Waste Tire Facility Annual Report which is due March 1<sup>st</sup>. For landfill inspections, the Financial Assurance is already included in the checklist.

Q: Are we trying to get everyone to the April 30th deadline by 2023?

A: Owners/operators using the local government financial test are not required to meet the April deadline. This is because, in 2020, we proposed changes to the local government financial test, and so those annual submissions are due to us seven (7) months after fiscal year end has closed.

## 2) Section 4.6.4 Surety Bonds Guaranteeing Performance or Payment - Amended:

Q: Concern for CDPHE's added language/requirements for insurance/bond companies that is not now a standard is that there will be additional cost from those providers to meet these requirements. Has that been researched on your end?

A: Amending existing terms and agreements would make it so the bonds would all need to go through new approval processes. If the bonding company objects to the language they will issue notice that they are giving 30 days notice that they will no longer provide the bond and at that point we would have to look for another company to write the bond that may very well charge higher rates for the bonds. There is an additional cost to the principal whenever the bond amount increases.

185 CDPHE will remove the proposed language requiring CDPHE approval prior to bond  
186 cancellation. We will improve the contact information for where the cancelation  
187 notices must be sent, rather than requiring CDPHE approval prior to bond  
188 cancellation.

189  
190 3) Section 4.6.5 Insurance - Amended:  
191

192 Q: A question from our financial folks (captive insurance) is it's not typical to include  
193 a regulatory body as an additional insured as it's mostly seen, for example, in the  
194 case of a landlord being an additional insured on a renter's policy. In our policies  
195 and here's an excerpt from one of our policies that we have for, I believe, all of  
196 our Colorado sites under the terms of the policy for the coverages, "to pay on  
197 behalf of the insured to any authorized party at the direction of the regulatory  
198 body only those reasonable and necessary expenses for which the insured becomes  
199 legally obligated", and that would be for both closure and post-closure costs. So,  
200 it's believed that we have the adequate assurances in our language and the policy  
201 to cover that and it seems like an additional requirement that our folks have  
202 typically have not seen.

203  
204 A: Naming CDPHE as an additional insured seems to place a greater burden on  
205 regulated entities and their insurers. This proposed change has been removed from  
206 the regulations.

207  
208 2<sup>nd</sup> Virtual stakeholder meeting on June 6, 2022:

- 209 • An invitation was extended to 105 people, including internal employees, Surety
- 210 Bond firms, Insurance companies, and Solid Waste Landfill owner/operators. Only
- 211 28 people registered and only 18 people attended the meeting.
- 212 • The deadline for feedback/questions/concerns was June 20, 2022.
- 213 • Only one comment was received prior to the stakeholder meeting.

214  
215 Questions/Comments/Concerns/Answers

216  
217 1) Section 4.6.5 Insurance - Amended:  
218

219 Q: We noticed that you've retained the requirement to replace an insurance policy within  
220 7 days after cancelation. Could you explain why CDPHE retained this short  
221 window? We are surprised at this timing, given the many steps needed to secure a  
222 new financial assurance mechanism, and given the much longer windows, in the  
223 current regulations, to secure new financial assurance after the cancelation of other  
224 mechanisms.

225  
226 A: The seven-day period is unrealistic to secure a new mechanism and we propose new  
227 language: 4.6.5 (K) If the insurer cancels the policy, the owner or operator must  
228 obtain replacement financial assurance as required in Subsection 4.6.1 (D) before  
229 the end of the 120-day period.  
230

231 **Regulatory Alternatives**

232

233 No other regulatory alternatives were evaluated.

234

235 **Cost/Benefit Analysis**

236

237 A cost-benefit analysis will be performed if requested by the Colorado Department of  
238 Regulatory Agencies.