

1 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

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4 Solid and Hazardous Waste Commission

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

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

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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).

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17 **Basis and Purpose**

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19 I. **Statutory Authority**

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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.

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25 II. **Purpose of revised regulations**

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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.

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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.

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39 **Discussion of Regulatory Proposal**

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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.
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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 *15th.*

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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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.

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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.

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100 Section VII. Approved Wording for Cash Deposit Holding Account

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102 **Issues Encountered During Stakeholder Process:**

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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.

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111 Questions/Comments/Concerns/Answers

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113 1) Section 4.5.1 - Annual Inflation - Amended:

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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.

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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.

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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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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 1st. 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.

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190 3) Section 4.6.5 Insurance - Amended:
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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.

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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.

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208 2nd 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.

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215 Questions/Comments/Concerns/Answers

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217 1) Section 4.6.5 Insurance - Amended:
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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.
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231 **Regulatory Alternatives**

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233 No other regulatory alternatives were evaluated.

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235 **Cost/Benefit Analysis**

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