

WAC 173-304-467 Financial assurance for public facilities. (1)

Applicability.

(a) These standards apply to all new and expanded landfill disposal facilities, and to existing landfill disposal facilities that have not been closed on or before November 27, 1989. Landfill disposal facilities include:

(i) All solid waste facilities operated as landfills under WAC 173-304-460, including limited purpose landfills under WAC 173-304-460(5);

(ii) Facilities operated as surface impoundments under WAC 173-304-430 that are closed with the waste remaining in place and therefore required to meet the requirements of WAC 173-304-407; and

(iii) Woodwaste landfills operated under WAC 173-304-462;

(b) For the purposes of this section, landfill disposal facilities are divided into the following ownership/use categories:

(i) A privately owned facility that accepts waste from the general public;

(ii) A publicly owned facility that accepts waste from the general public.

(c) For the purposes of this section, publicly owned or operated facilities may set up one account for both closure and post-closure care of each facility.

(2) Cost estimate for closure.

(a) Each owner or operator shall prepare a written closure cost estimate as part of the facility closure plan. The closure cost estimate shall be in current dollars and represent the cost of closing the facility in accordance with the closure requirements in WAC 173-304-407.

(i) The cost estimate shall be based on a reasonable cost estimate for completing design, purchase, construction, and other activities as identified in the facility closure plan as required under WAC 173-304-407;

(ii) The closure plan shall project intervals for withdrawal of closure funds from the closure financial assurance instrument to complete the activities identified in the approved closure plan;

(iii) The closure cost estimate shall not be reduced by allowance for salvage value of equipment, waste, or the resale value of property or land;

(b) Each owner or operator shall prepare a new closure cost estimate in accordance with (a) and (c) of this subsection whenever:

(i) Changes in operating plans or facility design affect the closure plan;

(ii) There is a change in the expected year of closure that affects the closure plan; or

(iii) The jurisdictional health department directs the owner or operator to revise the closure plan or closure cost estimate.

(c) Each owner or operator shall review the closure cost estimate annually thirty days prior to the anniversary date of the first closure cost estimate. The review will examine all factors, including inflation, involved in estimating the closure cost. Any cost changes must be factored into a revised closure cost estimate and submit the revised cost estimate to the jurisdictional health department for review and approval.

(d) During the operating life of the facility, the owner or operator shall make the latest closure cost estimate prepared in accordance with (a) and (b) of this subsection, and when this estimate has

been adjusted in accordance with (c) of this subsection, made available for review.

(3) Financial assurance account for closure. Each owner or operator of an applicable landfill disposal facility shall establish a financial assurance account in an amount that, over the life of the facility, will accumulate funds to be equal to the closure cost estimate prepared in accordance with subsection (2) of this section unless otherwise specified.

(a) Landfill disposal facilities that accept waste from the general public shall choose from the following options or combination of options for accounting for the financial assurance account:

(i) For landfill disposal facilities owned or operated by municipal corporations, the closure and post-closure reserve account shall be handled in one of the following ways:

(A) Cash and investments accumulated and restricted for closure with an equivalent amount of fund balance reserved in the fund accounting for solid waste activity; or

(B) The cash and investments held in a nonexpendable trust fund.

(C) Other approved method.

(ii) Closure trust fund established with 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. The wording of the trust agreement must be acceptable to the local health department. The purpose of the closure trust fund is to receive and manage any funds paid by the owner or operator and to disburse those funds only for closure activities as identified in the approved closure plan.

(b) For private disposal facilities that accept public waste, established closure financial assurance accounts shall not constitute an asset of the facility owner or operator.

(c) During the operating life of the facility, the owner or operator must review the closure cost estimate thirty days before each anniversary of the date on which the first closure cost estimate was prepared. The review shall examine all factors, including inflation, involved in estimating the closure cost estimate. Any changes in costs shall be factored into a revised closure cost estimate. The new estimate shall be submitted to the jurisdictional health department for review and approval.

(d) For disposal facilities of this section, any income in excess of the closure cost estimate accruing to the established closure financial assurance account will be at the owner's discretion as to the use of said funds.

(e) Excess moneys remaining in the closure financial assurance account after the completion of all identified closure activities will be released to the facility owner or operator.

(4) Cost estimate for post-closure.

(a) Each owner or operator shall prepare a written post-closure cost estimate as part of the facility post-closure plan. The post-closure cost estimate shall be in current dollars and represent the total cost of completing post-closure activities for the facility for at least a twenty-year post-closure period in accordance with the post-closure requirements in WAC 173-304-407.

(i) The post-closure cost estimate shall be based on a reasonable cost estimate for completing post-closure monitoring, maintenance, and other activities identified in the approved facility post-closure plan as required under WAC 173-304-407;

(ii) The post-closure plan shall project annual or other intervals for withdrawal of post-closure funds from the post-closure finan-

cial assurance instrument to complete the activities identified in the approved post-closure plan;

(iii) The post-closure cost estimate shall not be reduced by allowance for salvage, value of equipment, waste, or resale value of property or land.

(b) Each owner or operator shall prepare a new post-closure cost estimate for the remainder of the post-closure care twenty-year period in accordance with (a) and (c) of this subsection, whenever:

(i) Change in the post-closure plan increases or decreases the cost of post-closure care; or

(ii) The jurisdictional health department directs the owner or operator to revise the post-closure plan or post-closure cost estimate.

(c) During the operating life of the facility, the owner or operator shall review the post-closure cost estimate thirty days prior to each anniversary of the date on which the first post-closure cost estimate was prepared. The review shall examine all factors, including inflation, involved in estimating the post-closure cost estimate. Any changes in costs must be factored into a revised post-closure cost estimate. The new estimate must be submitted to the jurisdictional health department for approval.

(d) During the operating life of the facility, the owner or operator shall keep the latest post-closure cost estimate prepared in accordance with (a) and (b) of this subsection, available for review.

(5) Financial assurance account for post-closure. Each owner or operator of a landfill disposal facility shall establish a financial assurance account in an amount equal to the post-closure cost estimate prepared in accordance with subsection (4) of this section.

(a) Applicable landfill disposal facilities that accept waste from the general public shall choose from the following options or combinations of options for accounting for the financial assurance account:

(i) For landfill disposal facilities owned or operated by municipal corporations, the post-closure reserve shall be handled in one of the following ways:

(A) Cash and investments accumulated and restricted for post-closure with an equivalent amount of fund balance reserved in the fund accounting for solid waste activity;

(B) Cash and investments held in a nonexpendable trust fund.

(C) Other approved method.

(ii) Post-closure trust fund established with 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. The wording of the trust agreement must be acceptable to the department of ecology. The purpose of the post-closure trust fund is to receive and manage any funds paid by the owner or operator and to disburse those funds only for post-closure activities as identified in the approved post-closure plan.

(b) For disposal facilities as categorized in subsection (1)(b) of this section, established post-closure financial assurance accounts shall not constitute an asset of the facility owner or operator.

(c) For applicable disposal facilities of this section any income accruing to the established post-closure financial assurance account will be at the owner's discretion as to the use of said excess funds.

(d) Excess moneys remaining in the post-closure financial assurance account after the completion of all identified post-closure activities shall be released to the facility owner or operator.

(6) Closure/post-closure financial assurance account establishment and reporting.

(a) Closure and post-closure financial assurance funds shall be generated at each facility by transferring a percentage of the facility user fees to the selected financial assurance instrument at the schedule specified in the closure and post-closure plans, such that adequate closure and post-closure funds will be generated to ensure full implementation of the approved closure and post-closure plans.

(b) Each facility owner or operator must establish a procedure with the financial assurance instruments trustee for notification of nonpayment of funds to be sent to the jurisdictional health department and the department of ecology.

(c) Each owner or operator shall file with the department of ecology an annual audit of the financial assurance accounts established for closure and post-closure activities, and a statement of the percentage of user fees, as applicable, diverted to the financial assurance instruments.

(i) For landfill disposal facilities owned and operated by municipal corporations, the closure reserve account shall be audited according to the audit schedule of the office of state auditor and shall be filed with the department of ecology, including each of the post-closure care years.

(ii) For landfill disposal facilities not owned or operated by municipal corporations:

(A) Annual audits shall be conducted by a certified public accountant licensed in the state of Washington, and shall be filed with the department of ecology no later than March 31 of each year for the previous calendar year, including each of the post-closure care years.

(B) The audit shall also include calculations demonstrating the proportion of closure completed during the preceding year as specified in the closure and post-closure plans.

(d) Existing landfill disposal facilities may submit a written request with their annual audit to the department of ecology requesting a waiver from utilizing user fees to generate the moneys necessary for the closure and/or post-closure financial assurance account.

(i) The waiver request should provide documentation to demonstrate the facility user fees are prohibitively high, and include alternate method(s) for funding the facility's closure and/or post-closure financial assurance account;

(ii) The waiver request review procedure will be according to WAC 173-304-700.

(7) Authorization for financial assurance account fund withdrawal for closure and post-closure activities.

(a) Each owner or operator will withdraw funds from the closure and/or post-closure financial assurance instrument as specified in the approved closure/post-closure plans;

(b) If the withdrawal of funds from the financial assurance instrument exceeds by more than five percent the withdrawal schedule stated in the approved closure and/or post-closure plan, the closure and/or post-closure plan shall be amended.

[Statutory Authority: RCW 70.95.215. WSR 88-20-066 (Order 88-28), § 173-304-467, filed 10/4/88.]