



Division of Solid and Infectious Waste Management

Response to Comments

Rule Package: Multi-Program Financial Assurance Rules - OAC 3745-503

Agency Contact for this Package

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Ohio EPA held a public comment period on from August 1, 2006, to November 1, 2006. This document summarizes the comments and questions received during the comment period.

Ohio EPA reviewed and considered all comments received during the public comment period. By law, Ohio EPA has authority to consider specific issues related to protection of the environment and public health.

In an effort to help you review this document, the questions are grouped by topic and organized in a consistent format. The name of the commenter follows the comment in parentheses. Many comments were paraphrased and combined with similar comments, therefore the comment may not appear exactly as submitted.

Chapter 3745-503 General comment

Comment 1: **Financial assurance: There are no current requirements for financial assurance for exempt waste facilities. There was no information provided by OEPA for review that indicated why financial assurance should now be required at these facilities. Thus, industrial excluded waste facilities should not be subject to the financial assurance requirements of the proposed rules. (Gary Haney, First Energy)**

Response 1: DSIWM will not be promulgating the Industrial Waste Rules at this time; therefore these requirements have been removed from the rule.

3745-503-01 Financial assurance – applicability. (new rule)

This rule was added to the second interested party draft to ensure that the applicability of this financial assurance chapter is clearly stated in the rules.

3745-503-01 Financial assurance - definitions and relationship with other rules.

*The rule number and title of this rule has been change to:
3745-503-02 Financial assurance – definitions.*

No comments were received on this rule.

3745-503-05 Financial assurance for a solid waste facility or scrap tire transporter closure.

Comment 2: This section refers to “sanitary landfill” facility sometimes and other times “solid waste” facility. Although this is a minor comment, it would be best to have “solid waste” facility throughout to remain consistent.

Paragraph (B) Implementation:

- (1) Delete the words “and fund” in the first line. Is “permit to install,” correct in the second line?
- (2) Delete the words “and fund” in the first line. Is “permit to install” correct in the second line?
- (3) Delete the words “and fund” in the second line.
- (4) Delete the words “and fund” in the first line.

Paragraph (C) Closure financial assurance instrument:

(1)(a) and (5) both require the FA instrument to contain an itemized written cost estimate. Since this itemized estimate should be in the closure plan it self and not in the FA instrument language, I would recommend the following changes:

(1)(a) – First sentence only “The penal sum of the instrument for a solid waste landfill facility, solid waste transfer facility, solid waste incinerator, or Class I composting facility shall be at least equal to the itemized written estimate, in current dollars, of the cost of closure. The closure cost estimate...”

(5) – First sentence only. “The penal sum of the instrument for an industrial facility shall be at least equal to the itemized written estimate, in current dollars, of the cost of closure. The closure cost estimate...”

Paragraph (F) Closure Trust Fund:

(d) Should be deleted in its entirety. Financial assurance for closure should not guarantee liability or sudden, accidental occurrences.

Paragraph (G) Surety bond guaranteeing payment into a closure trust fund:

Change (4)(a) to read “For solid waste or industrial facilities, performs closure in accordance with the closure plan, permit or registration requirements, and applicable rules.”

Delete (4)(b) and replace with “For scrap tire transporters, removes and properly disposes of any scrap tires in the scrap tire transporter’s possession or which have been open dumped by the scrap tire transporter.”

Delete (4)(c) in its entirety.

Move (4)(d) to (4)(c).

Paragraph (H) Surety bond guaranteeing performance of closure:

(4)(a) Delete “or post-closure”.

(4)(b)(iii) Delete in its entirety. The surety bond does not provide coverage for sudden, accidental occurrences.

(5) Delete “or post-closure care” in lines 5 and 7.

Paragraph (I) Closure Letter of Credit:

(8)(a) Delete “or post-closure”.

(4)(b)(iii) Delete in its entirety. The surety bond does not provide coverage for sudden, accidental occurrences.

Paragraph (J) Closure Insurance

(5) Delete “or post-closure care” from line 5.

(8)(a) Delete “or post-closure care” from line 5.

Paragraph (K) Financial Test and Corporate Guarantee

(1) Delete requirement that less than fifty per cent of gross revenues are derived from solid waste disposal, solid waste transfer facility operations, and industrial facility or scrap tire transporter.

(Kathy Trent, Waste Management)

Response 2:

Reference is made to sanitary landfill facilities and other times to solid waste facilities, because certain criteria only pertain to a sanitary landfill facility and not to all solid waste facilities.

Paragraph (B)

A request to delete “and fund” was made. However, not all instruments are funded when they are executed. Therefore, this wording will remain. The wording “permit to install” has been deleted.

Paragraph (C)

Because the cost estimates may change from when a permit is issued that includes the closure plan, a current itemized cost estimate will remain as part of the financial assurance instrument.

Paragraph (F)

(d) is a statutory requirement and cannot be deleted.

Paragraph (G)

The surety bond company becomes liable on the bond obligation only when the owner/operator does not do the following, etc. This only shows

who is liable. It doesn't mean that automatically the bond will be drawn on.

Paragraphs (H), (I), and (J)

A change was made to these paragraphs to read the "final closure/post-closure care plan" to be consistent with other rules which refer to this "plan."

Paragraph (K)

The requirement that less than fifty percent of gross revenues are derived from solid waste disposal operations will remain as this provides an added guarantee that if the solid waste industry softens, a corporation utilizing this test has another part of its business to rely upon to meet its financial obligations.

3745-503-10

Financial assurance for a solid waste facility or industrial facility post-closure care.

This rule is not being sent out for interested party at this time, since this multi-program chapter will be made applicable by the composting rules and composting facilities do not have post-closure care requirements.

3745-503-20

Wording of financial assurance instruments.

Comment 5:

**Paragraph (B) Surety bond guaranteeing payment into a trust fund:
Delete the fifth and sixth paragraphs in their entirety and replace with**

**–
“Now Therefore, for a facility, the conditions of this obligation are such that if the principal shall faithfully perform closure, post-closure care and/or corrective action whenever required to do so, of each facility identified above for which this bond guarantees payment for closure, post-closure care and/or corrective action, in accordance with the closure and/or post-closure care plan and other requirements of the license as such plan and license may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended.**

Now Therefore, for a scrap tire transporter, if the principal shall faithfully perform the activities specified in paragraph (H)(4)(b) of rule 3745-503-05 of the Administrative Code for which this bond guarantees, pursuant to all applicable laws, statutes, rules and regulations, as such laws, statutes, rules, and regulations may be amended” Replace “fund the standby trust fund in such an amount” in the first line of the seventh paragraph with “begin closure”.

(Kathy Trent, Waste Management)

Response 5: The surety bond company becomes liable on the bond obligation only when the owner or operator does not do the following, etc. This only shows who is liable. It doesn't mean that automatically the bond will be drawn on. In the actual wording of the bond, although the obligation will be with the surety, the surety doesn't have to fund the trust until the Director notifies the surety bond company that the principal has failed to perform as guaranteed by this bond. The Director would only notify the surety bond company to fund the trust when closure or post-closure care is not being done.

End of Response to Comments