

**WAC 173-306-470 Financial assurance.** (1) Applicability.

These standards apply to all new and expanded monofill facilities, and to existing monofill facilities that have not closed before or within twelve months after the effective date of this chapter.

(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 must be in current dollars and must represent the cost of closing the facility in accordance with the closure requirements in WAC 173-306-410.

(i) The cost estimate must 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 173-306-410;

(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 may not be reduced by allowance for salvage value of equipment, ash, or the resale value of property or land.

(b) Each owner or operator must 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) A change in the expected year of closure affects the closure plan; or

(iii) The 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 thirty days before the anniversary date 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. Any cost changes must be factored into a revised closure cost estimate. The revised cost estimate must be submitted to the department.

(d) During the operating life of the facility, and when the estimate has been adjusted in accordance with (c) of this subsection, the owner or operator shall make available for review the closure cost estimate prepared in accordance with (a) and (b) of this subsection.

(e) The department shall evaluate each cost estimate and may accept, or at its discretion require revision of, the cost estimate in accordance with its evaluation.

(f) The department may require the facility owner or operator to adjust the cost estimate in accordance with the department's review and direction.

(3) Financial assurance account for closure. Each owner or operator of special incinerator ash monofill facility shall establish a financial assurance account in an amount that, over the life of the facility, will accumulate funds at a rate that will enable premature closure during the monofill life. The total amount must be equal to the closure cost estimate prepared in accordance with subsection (2) of this section.

(a) Applicable monofill facilities that accept special incinerator ash must choose from the following financial assurance account options or combination of options:

(i) For monofill disposal facilities owned or operated by municipal corporations, the closure and post-closure reserve account must 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 special incinerator ash activity; or published Budget Accounting Reporting System Manual; or

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

(ii) Closure trust fund established with an entity that 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. 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 may not constitute an asset of the facility owner or operator.

(c) Any income in excess of the closure cost estimate accruing to the established closure financial assurance account will be used at the owner's discretion.

(d) Excess moneys remaining in the closure financial assurance account after the department has certified the completion of closure as identified in WAC 173-306-410 (4)(f)(i) must be returned to the 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 must be in current dollars and must represent the total cost of completing post-closure activities for the facility for a thirty-year post-closure period in accordance with the post-closure requirements in WAC 173-306-410.

(i) The post-closure cost estimate must 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 173-306-410;

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

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

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

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

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

(c) Each owner or operator shall review the post-closure cost estimate thirty days before the annual 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. Any cost changes must be factored into a revised post-closure cost estimate and the revised cost estimate must be submitted to the department.

(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 an applicable monofill 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) Owners or operators of applicable monofill facilities that accept special incinerator ash shall choose from the following options or combinations of options for accounting for the financial assurance account:

(i) For monofill disposal facilities owned or operated by municipal corporations, the post-closure reserve must 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 special incinerator ash activity; or

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

(ii) Post-closure trust fund established with an entity that 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. 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 private disposal facilities that accept public waste, established post-closure financial assurance accounts may not constitute an asset of the facility owner or operator.

(c) Any income accruing to the established post-closure financial assurance account will be used at the owner's discretion.

(d) Excess moneys remaining in the post-closure financial assurance account after the department has certified the completion of post-closure requirements identified in WAC 173-306-410 (7)(c) must be returned to the owner or operator.

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

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

(b) Each applicable facility owner or operator shall establish a procedure with the financial assurance instrument trustee for notification of nonpayment of funds to be sent to the Department of Ecology, Solid and Hazardous Waste and Financial Assistance Program, P.O. Box 47600, Olympia, WA 98504-7600.

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

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

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

(A) Annual audits must be conducted by a certified public accountant licensed in the state of Washington, and must be filed with the department 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 that demonstrate the proportion of closure completed during the preceding year as specified in the closure and post-closure plans.

(d) Owners or operators of an existing monofill disposal facility may submit to the department a written request with the annual audit asking for a waiver from applying 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 should include alternate methods for funding the facility's closure and/or post-closure financial assurance account;

(ii) The waiver request review procedure will be conducted according to WAC 173-306-900.

(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 must be amended.

[Statutory Authority: Chapter 70.138 RCW. WSR 00-19-018 (Order 00-17), § 173-306-470, filed 9/8/00, effective 10/9/00; WSR 90-10-047, § 173-306-470, filed 4/30/90, effective 5/31/90.]