



NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

ENVIRONMENTAL GUIDANCE DOCUMENT

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INTRODUCTION TO FINANCIAL ASSURANCE DEMONSTRATIONS FOR SOLID WASTE FACILITIES

The Nebraska Integrated Solid Waste Management Act and Nebraska Administrative Code Title 132 – Integrated Solid Waste Management Regulations require operators/owners of solid waste management facilities to demonstrate financial responsibility for closure and/or post-closure care. The concept of financial assurance is to make sure money for closure and post-closure care is available when needed to carry out these activities. In the past, entities involved in environmentally hazardous activities have ceased operating without making sufficient effort to prevent potentially adverse impacts on human health and the environment. The result of public or private entities being unable to pay for environmental protection activities and damages following closure of solid waste disposal sites stems from two basic problems.

First, operators may encounter problems generating funds to cover liabilities, including the costs of environmental protection and remediation. This occurs because the facility no longer has income once it stops accepting waste. Second, unless entities are required by law to set aside funds planning for the costs of environmental protection, their governing bodies or board of directors may be unwilling to sacrifice other budgetary priorities to pay for the cost of future or uncertain events. The most common and practical approach to resolving these problems is to require entities, involved in potentially environmentally harmful activities, to commit funds in advance for the costs of closure and post-closure care.

A financial assurance mechanism is an arrangement whereby a party facing a potential or certain liability pledges or deposits funds so that 1) all anticipated costs will be covered; 2) all funds will be secure over time; and 3) all funds will be available when needed. Title 132 - Integrated Solid Waste Management Regulations, Chapter 8, requires that landfill owners and operators establish a mechanism as evidence of financial ability to pay for the costs of closure and post-closure care of their respective facilities. A trust fund is commonly used as the basic, comparative mechanism for financial assurance since 1) adequate funds are deposited with an independent, auditable financial entity; 2) ownership of the funds is transferred to the independent party and can only be used for the benefit of the beneficiary (NDEQ); 3) the funds are secure from the claims against or bankruptcy of the operator that may otherwise inhibit his or her ability to properly close or maintain a solid waste facility; and 4) the funds are invested with the security and liquidity necessary to ensure their availability when needed.

The other allowable mechanisms are: a Letter of Credit; a Surety Bond, a Local Government Financial Test, a Local Government Guarantee, a Corporate Financial Test, a Corporate Guarantee, Insurance, and any State-Approved mechanisms. Currently there are two approved State-Approved mechanisms, an Escrow Account and an Enterprise Fund.