

Financial Assurance for Landfills

Local Government Financial Test

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Solid Waste Program

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Environmental Health*

**Department
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Owners or operators of Class I and Class II Municipal Solid Waste Landfills are required to provide assurance to the Alaska Department of Environmental Conservation (ADEC) that the owner/operator has the ability to cover the costs of landfill closure and post-closure care at the landfill.

There are several mechanisms by which the financial assurance demonstration can be made. For landfills run by cities, boroughs, or other government entities, the most commonly chosen demonstration is the **Local Government Financial Test**.

Documentation for the Local Government Financial Test must be submitted to the ADEC in the permit application. In addition, updates must be prepared and placed in the landfill operating record each year, no later than 180 days past the close of the fiscal year.

Documentation for permits and annual updates must include:

1. An up-to-date statement of the current cost estimates for closure and post-closure care of the landfill.
2. A statement by the Chief Financial Officer (CFO) that the government meets the conditions of the local government test. A sample letter, including the required conditions, can be found on page 2.
3. The independently audited year-end financial statements for the latest fiscal year.
4. A report to the local government from the local government's independent certified public accountant (CPA) or the appropriate State agency that describes the procedures performed and the resultant findings.
5. A copy of the comprehensive annual financial report (CAFR) or certification that the requirements of General Accounting Standards Board Statement 18 have been met.

- A sample letter to meet condition #2 is on page 2.
- A copy of relevant regulations (Code of Federal Regulations, Title 40, Part 258, Section 74) is included on pages 3-5.



Local Government Financial Assurance Form

I, _____, the Chief Financial Officer for the City/Borough of _____ (local government) certify that the local government has complied with the provisions of 18 AAC 60.398 for financial assurance by complying with the following section of 40 CFR 258.74(f) [Local Government Financial Test] for fiscal year _____.

Please initial those sections that were completed to demonstrate compliance. (All five must be initialed to be in compliance.)

_____ A. The current cost estimate for:

- 1) Closure and post-closure of the landfill is \$_____.
- 2) Corrective action for the landfill is \$_____.¹

_____ B. The cost for closure, post-closure and corrective action is not greater than: (circle one)

- 1) 43 percent of the local government's total annual revenue, if the local government does not assume other environmental obligations through a financial test, **or**
- 2) 43 percent of the local government's total annual revenue for the total of all environmental obligations assured through a financial test.²

_____ C. Currently the Local Government has: (circle one)

- 1) Outstanding general obligation bonds rated no lower than Baa for Moody's or BBB for Standard and Poor, **or**
- 2) The following financial ratios:
 - i. Cash plus marketable securities to total expenditures greater than or equal to 0.05, and
 - ii. Annual debt service to total expenditures less than or equal to 0.20.

_____ D. The local government's comprehensive annual financial report was:

1. Prepared in conformity with Generally Accepted Accounting Principles for governments,
2. Audited by an independent, certified public accountant, and
3. The auditor issued an unqualified opinion for the report.

_____ E. The local government:

1. Is not currently in default on any outstanding general obligation bonds,
2. Has no outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's; and
3. Has not operated at a deficit equal to 5% or more of total revenue in each of the past two fiscal years.

Signature of Local government's Chief Financial Officer

Date

¹Corrective action costs are only required if a long term remediation project for the landfill is currently required.

²The total of all environmental obligations including landfill closure must be considered when addressing the 43% limit. This would include such things as UIC facilities under 40 CFR 144.62, petroleum underground storage facilities under 40 CFR 280, PCB storage facilities under 40 CFR 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR 264 and 265.



40 CFR 258.74 Allowable mechanisms

(f) *Local government financial test.* An owner or operator that satisfies the requirements of paragraphs (f)(1) through (3) of this section may demonstrate financial assurance up to the amount specified in paragraph (f)(4) of this section:

(1) *Financial component.* (i) The owner or operator must satisfy paragraph (f)(1)(i)(A) or (B) of this section as applicable:

(A) If the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit or other collateral or guarantee, it must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's or AAA, AA, A, or BBB, as issued by Standard and Poor's on all such general obligation bonds; or

(B) The owner or operator must satisfy each of the following financial ratios based on the owner or operator's most recent audited annual financial statement:

(1) A ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; and

(2) A ratio of annual debt service to total expenditures less than or equal to 0.20.

(ii) The owner or operator must prepare its financial statements in conformity with Generally Accepted Accounting Principles for governments and have its financial statements audited by an independent certified public accountant (or appropriate State agency).

(iii) A local government is not eligible to assure its obligations under §258.74(f) if it:

(A) Is currently in default on any outstanding general obligation bonds; or

(B) Has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's; or

(C) Operated at a deficit equal to five percent or more of total annual revenue in each of the past two fiscal years; or

(D) Receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant (or appropriate State agency) auditing its financial statement as required under paragraph (f)(1)(ii) of this section.

However, the Director of an approved State may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Director deems the qualification insufficient to warrant disallowance of use of the test.

(iv) The following terms used in this paragraph are defined as follows:

(A) *Deficit* equals total annual revenues minus total annual expenditures;

(B) *Total revenues* include revenues from all taxes and fees but does not include the proceeds from borrowing or asset sales, excluding revenue from funds managed by local government on behalf of a specific third party;

(C) *Total expenditures* include all expenditures excluding capital outlays and debt repayment;

(D) *Cash plus marketable securities* is all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions; and

(E) *Debt service* is the amount of principal and interest due on a loan in a given time period, typically the current year.



(2) *Public notice component.* The local government owner or operator must place a reference to the closure and post-closure care costs assured through the financial test into its next comprehensive annual financial report (CAFR) after the effective date of this section or prior to the initial receipt of waste at the facility, whichever is later. Disclosure must include the nature and source of closure and post-closure care requirements, the reported liability at the balance sheet date, the estimated total closure and post-closure care cost remaining to be recognized, the percentage of landfill capacity used to date, and the estimated landfill life in years. A reference to corrective action costs must be placed in the CAFR not later than 120 days after the corrective action remedy has been selected in accordance with the requirements of §258.58. For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the operating record until issuance of the next available CAFR if timing does not permit the reference to be incorporated into the most recently issued CAFR or budget. For closure and post-closure costs, conformance with Government Accounting Standards Board Statement 18 assures compliance with this public notice component.

(3) *Recordkeeping and reporting requirements.* (i) The local government owner or operator must place the following items in the facility's operating record:

(A) A letter signed by the local government's chief financial officer that:

- (1) Lists all the current cost estimates covered by a financial test, as described in paragraph (f)(4) of this section;
- (2) Provides evidence and certifies that the local government meets the conditions of paragraphs (f)(1)(i), (f)(1)(ii), and (f)(1)(iii) of this section; and
- (3) Certifies that the local government meets the conditions of paragraphs (f)(2) and (f)(4) of this section.

(B) The local government's independently audited year-end financial statements for the latest fiscal year (except for local governments where audits are required every two years where unaudited statements may be used in years when audits are not required), including the unqualified opinion of the auditor who must be an independent, certified public accountant or an appropriate State agency that conducts equivalent comprehensive audits;

(C) A report to the local government from the local government's independent certified public accountant (CPA) or the appropriate State agency based on performing an agreed upon procedures engagement relative to the financial ratios required by paragraph (f)(1)(i)(B) of this section, if applicable, and the requirements of paragraphs (f)(1)(ii) and (f)(1)(iii) (C) and (D) of this section. The CPA or State agency's report should state the procedures performed and the CPA or State agency's findings; and

(D) A copy of the comprehensive annual financial report (CAFR) used to comply with paragraph (f)(2) of this section or certification that the requirements of General Accounting Standards Board Statement 18 have been met.

(ii) The items required in paragraph (f)(3)(i) of this section must be placed in the facility operating record as follows:

(A) In the case of closure and post-closure care, either before the effective date of this section, which is April 9, 1997, or prior to the initial receipt of waste at the facility, whichever is later, or

(B) In the case of corrective action, not later than 120 days after the corrective action remedy is selected in accordance with the requirements of §258.58.



- (iii) After the initial placement of the items in the facility's operating record, the local government owner or operator must update the information and place the updated information in the operating record within 180 days following the close of the owner or operator's fiscal year.
 - (iv) The local government owner or operator is no longer required to meet the requirements of paragraph (f)(3) of this section when:
 - (A) The owner or operator substitutes alternate financial assurance as specified in this section; or
 - (B) The owner or operator is released from the requirements of this section in accordance with §258.71(b), 258.72(b), or 258.73(b).
 - (v) A local government must satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test it must, within 210 days following the close of the owner or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this section, place the required submissions for that assurance in the operating record, and notify the State Director that the owner or operator no longer meets the criteria of the financial test and that alternate assurance has been obtained.
 - (vi) The Director of an approved State, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the Director of an approved State finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of the local government financial test, the local government must provide alternate financial assurance in accordance with this section.
- (4) *Calculation of costs to be assured.* The portion of the closure, post-closure, and corrective action costs for which an owner or operator can assure under this paragraph is determined as follows:
- (i) If the local government owner or operator does not assure other environmental obligations through a financial test, it may assure closure, post-closure, and corrective action costs that equal up to 43 percent of the local government's total annual revenue.
 - (ii) If the local government assures other environmental obligations through a financial test, including those associated with UIC facilities under 40 CFR 144.62, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, it must add those costs to the closure, post-closure, and corrective action costs it seeks to assure under this paragraph. The total that may be assured must not exceed 43 percent of the local government's total annual revenue.
 - (iii) The owner or operator must obtain an alternate financial assurance instrument for those costs that exceed the limits set in paragraphs (f)(4) (i) and (ii) of this section.

