

15A NCAC 13B .1803 FINANCIAL ASSURANCE COST ESTIMATE REQUIREMENTS FOR POST-CLOSURE CARE

(a) Owners and operators of sanitary landfills that are required to establish financial assurance in accordance with this Section shall submit to the Division with the permit application a cost estimate for financial assurance for post-closure care of the facility that contains an itemized cost estimate of the cost of hiring a third party to conduct post-closure care for the sanitary landfill in compliance with the post-closure care plan developed in accordance with this Subchapter. The post-closure care cost estimate shall be adjusted in accordance with Subparagraphs (b)(1) and (b)(2) of this Rule. The post-closure care cost estimate used to demonstrate financial assurance shall account for the total costs of conducting post-closure care for any closed and active portions of the facility, including annual and periodic costs as described in the post-closure care plan over the entire post-closure care period. The cost estimate for post-closure care shall be based on the most expensive costs of post-closure care during the post-closure care period. The post-closure care cost estimate shall be placed in the operating record.

(b) Owners and operators shall meet the following requirements for adjustments to the post-closure care cost estimate and the amount of financial assurance:

- (1) During the active life of the facility, the owner and operator shall annually adjust the post-closure care cost estimate and the amount of financial assurance for inflation. Owners and operators using the local government financial test or the capital reserve fund as set forth in Rule .1805(e) of this Section shall submit the adjusted financial assurance mechanism to the Division prior to December 31, after the end of the local government's fiscal year. Owners and operators using the corporate financial test or corporate guarantee as set forth in Rule .1805(e) of this Section shall submit the adjusted financial assurance mechanism to the Division no more than 90 calendar days following the close of the corporate entity's fiscal year that is stated in the mechanism. Owners and operators using a financial assurance mechanism set forth in Rule .1805(e) of this Section other than the local government financial test, capital reserve fund, corporate financial test, or corporate guarantee shall submit the adjusted financial assurance mechanism to the Division no less than 60 calendar days before the anniversary of the initial date the financial assurance mechanism was established.
- (2) The owner and operator shall increase the post-closure care cost estimate and the amount of financial assurance and submit the revised post-closure care cost estimate to the Division if changes to the post-closure care plan or facility conditions increase the maximum cost of post-closure care at any time during the remaining active life of the facility.
- (3) The owner and operator may request to reduce the post-closure care cost estimate and the amount of financial assurance if the cost estimate exceeds the maximum cost of post-closure care at any time during the active life of the facility by submitting a revised post-closure care cost estimate and a written justification for the reduction to the Division for approval no less than 180 calendar days prior to the anniversary of the date the financial assurance mechanism was established. No reduction of the post-closure care cost estimate or the amount of financial assurance shall be allowed without written approval from the Division. The reduction justification and the Division approval shall be placed in the facility's operating record. In making the determination on approval of the request, the Division shall consider the following factors for the facility:
 - (A) changes to operations, post-closure care activities, or other circumstances;
 - (B) changes to third party post-closure care costs;
 - (C) compliance status of the owner and operator; and
 - (D) environmental monitoring data.

(c) Owners and operators of solid waste management facilities that are required to establish financial assurance in accordance with this Section shall establish financial assurance for post-closure care of the facility in compliance with G.S. 130A-295.2(f). The owner and operator shall provide continuous coverage for post-closure care until released from financial assurance requirements for post-closure care by demonstrating compliance with the facility's permit and post-closure care plan, with the closure letter issued to the facility by the Division, and with Rule .0543 of this Subchapter for construction and demolition landfill facilities and Rule .1627(d) of this Subchapter for municipal solid waste landfill facilities.

(d) Maintenance of financial assurance in the amounts required by this Rule does not limit the responsibility of owners or operators for the full cost of site closure and clean up, the expenses of any on-site or off-site environmental restoration necessitated by activities at the facility, and liability for all damages to third parties or private or public properties caused by the establishment and operation of the facility.

*History Note: Authority G.S. 130A-294; 130A-295.2;
Eff. July 1, 2020.*