

15A NCAC 13B .0546 FINANCIAL ASSURANCE REQUIREMENTS FOR C&DLF FACILITIES AND UNITS

(a) Owners and operators of C&DLF facilities and units must provide proof of financial assurance in accordance with the financial responsibility for landfills adopted pursuant to G.S. 130A-294(b) and 130A-309.27.

(b) Owners and operators of C&DLF facilities and units permitted under these Rules must provide proof of financial assurance to ensure closure of the site in accordance with these Rules and to cover closure, post-closure, and corrective action of the landfill. Financial assurance may be demonstrated through surety bonds, insurance, letters of credit, a funded trust, or local government financial test. Documentation of financial assurance must be kept current, and updated annually as required by changes in these Rules, changes in operation of the site, and inflation.

(c) Owners and operators of C&DLF facilities and units must demonstrate the following minimum amounts of financial assurance for closure and post-closure care:

- (1) The owner and operator must have a written estimate, in current dollars, of the cost of hiring a third party to close the entire area of all C&DLF units, which have received permits to operate, at any time during the active life in accordance with the closure plan required under Rule .0543 of this Section. A copy of the closure cost estimate must be placed in the C&DLF's closure plan and the operating record.
 - (A) The cost estimate must equal the cost of closing the entire area of all C&DLF units, which have received permits to operate, at any time during the active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan as set forth in Rule .0543 of this Section.
 - (B) During the active life of the C&DLF, the owner and operator must annually adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s). For owners and operators using the local government financial test, the closure cost estimate must be updated for inflation within 30 days after the close of the local government's fiscal year and before submission of updated information to the Division.
 - (C) The owner and operator must increase the closure cost estimate and the amount of financial assurance provided under Subparagraph (2) of this Paragraph if changes to the closure plan or C&DLF unit conditions increase the maximum cost of closure at any time during the remaining active life.
 - (D) The owner or operator may reduce the closure cost estimate and the amount of financial assurance provided under Subparagraph (2) of this Paragraph if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of the C&DLF unit. Prior to any reduction of the closure cost estimate or the amount of financial assurance by the owner or operator, a written justification for the reduction must be submitted to the Division for review. The Division shall date and stamp the justification "approved" if the conditions of this paragraph are met. The reduction justification and the Division approval must be placed in the C&DLF's operating record. No reduction of the closure cost estimate or the amount of financial assurance shall be allowed without Division approval.
- (2) The owner and operator of each C&DLF unit must establish financial assurance for closure of the C&DLF unit in compliance with Paragraph (a) of this Rule. The owner and operator must provide continuous coverage for closure until released from financial assurance requirements by demonstrating compliance with Rule .0543 of this Section for final closure certification.
- (3) The owner and operator must have a written estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care for the C&DLF unit(s) in compliance with the post-closure plan developed under Rule .0543 of this Section. The post-closure cost estimate used to demonstrate financial assurance in Subparagraph (2) of this Paragraph must account for the total costs of conducting post-closure care, including annual and periodic costs as described in the post-closure plan over the entire post-closure care period. The post-closure cost estimate must be placed in the operating record.
 - (A) The cost estimate for post-closure care must be based on the most expensive costs of post-closure care during the post-closure care period.
 - (B) During the active life of the C&DLF unit(s) and during the post-closure care period, the owner and operator must annually adjust the post-closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s). For

owners and operators using the local government financial test, the post-closure cost estimate must be updated for inflation within 30 days after the close of the local government's fiscal year and before submission of updated information to the Division.

- (C) The owner and operator must increase the post-closure care cost estimate and the amount of financial assurance provided under Subparagraph (2) of this Paragraph if changes in the post-closure plan or C&DLF unit(s) conditions increase the maximum costs of post-closure care.
 - (D) The owner or operator may reduce the post-closure cost estimate and the amount of financial assurance provided under Subparagraph (2) of this Paragraph if the cost estimate exceeds the maximum costs of post-closure care remaining over the post-closure care period. Prior to any reduction of the post-closure cost estimate by the owner or operator, a written justification for the reduction shall be submitted to the Division for review. The Division shall date and stamp the justification "approved" if the conditions of this paragraph are met. The written justification and the Division approval must be placed in the C&DLF operating record. No reduction of the post-closure cost estimate shall be allowed without Division approval.
- (4) The owner and operator of each C&DLF unit must establish, in a manner in accordance with Paragraph (a) of this Rule, financial assurance for the costs of post-closure care as required under Rule .0543 of this Section. The owner and operator must provide continuous coverage for post-closure care until released from financial assurance requirements for post-closure care by demonstrating compliance with Rule .0543 of this Section. Maintenance of financial assurance in the required amounts in Subparagraphs (c)(1) and(c)(2) of this Rule does not in any way limit the responsibility of owners and operators for the full costs of site closure and clean-up, the expenses of any on-site or off-site environmental restoration necessitated by activities at the site, and liability for all damages to third parties or private or public properties caused by the establishment and operation of the site.
- (5) An owner and operator of a C&DLF unit required to undertake a corrective action program under Rule .0545 of this Section must have a written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action. The corrective action cost estimate must account for the total costs of corrective action activities as described in the corrective action program for the entire corrective action period. The owner and operator must notify the Division that the estimate has been placed in the operating record.
- (A) The owner and operator must annually adjust the estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) until the corrective action program is completed in accordance with Rule .0545(m) of this Section. For owners and operators using the local government financial test, the corrective action cost estimate must be updated for inflation within 30 days after the close of the local government's fiscal year and before submission of updated information to the Division.
 - (B) The owner and operator must increase the corrective action cost estimate and the amount of financial assurance provided under Subparagraph (2) of this Paragraph if changes in the corrective action program or C&DLF unit conditions increase the maximum costs of corrective action.
 - (C) The owner or operator may reduce the corrective action cost estimate and the amount of financial assurance provided under Subparagraph (2) of this Paragraph if the cost estimate exceeds the maximum remaining costs of corrective action. Prior to any reduction of the corrective action cost estimate by the owner or operator, a written justification for the reduction must be submitted to the Division for review. The Division shall date and stamp the justification "approved" if the conditions of this Paragraph are met. The reduction justification and the Division approval must be placed in the C&DLF's operating record. No reduction of the corrective action cost estimate shall be allowed without Division approval. The reduction justification and the Division approval must be placed in the C&DLF's operating record.
- (6) The owner and operator of each C&DLF unit required to undertake a corrective action program under Rule .0545 of this Section must establish, in a manner in accordance with Paragraph (a) of this Rule, financial assurance for the most recent corrective action program. The owner or operator must provide continuous coverage for corrective action until released from financial assurance requirements for corrective action by demonstrating compliance with Rule .0545(m) of this Section.

*History Note: Authority G.S. 130A-294;
Eff. January 1, 2007.*