

**CHAPTER 14**

**FINANCIAL ASSURANCE REQUIREMENTS**

**Section 1. In General.**

(a) This Chapter is promulgated pursuant to the Wyoming Environmental Quality Act, Wyoming Statutes (W.S.) § 35-11-101 through § 35-11-2005, specifically § 306 and § 307.

(b) This Chapter governs all commercial oil field waste disposal facilities that are required to demonstrate financial assurance under W.S. § 35-11-306(c) and all commercial waste treatment, storage and disposal facilities used for the management of more than ten (10) tons of dried wastewater treatment sludges or the equivalent per operating day that are required to demonstrate financial assurance under W.S. § 35-11-307(a). This chapter does not apply to publicly owned facilities or facilities that receive non-domestic sludges.

(c) The following definitions supplement those contained in W. S. § 35-11-103 of the Wyoming Environmental Quality Act:

(i) “Closure” means the process of securing and stabilizing a regulated facility pursuant to the requirements of this Chapter and a closure plan approved by the Department.

(ii) “Corrective action” means all actions necessary to remedy, abate, and eliminate the public health threat, environmental threat, and damages from a release to the environment of pollutants from a regulated facility or from any violation of a permit, standard, rule, or other requirement established under the Wyoming Environmental Quality Act

(iii) “Monitoring” means all procedures and techniques used to systematically collect, analyze and inspect data on operational parameters of the facility or on the quality of the air, groundwater, surface water, and soil.

(iv) “Operator” means a person who owns or operates a regulated facility or a person who holds a permit to construct, install, modify, or operate a regulated facility.

(v) “Regulated facility” means a commercial sludge facility or a commercial oil field waste disposal facility as specified in Section I(b) of this chapter.

(vi) “Release” includes, but is not limited to, any spilling, leaking, pumping, pouring, emptying, emitting, discharging, dumping, addition, escaping, leaching, or unauthorized disposal of any pollutant that enters, or threatens to enter, the air, land or waters of the State.

42           **Section 2.     Requirements to Demonstrate Financial Assurance.**  
43

44           (a)     All regulated facilities shall provide financial assurance for closure, post-closure,  
45 and corrective action in compliance with this Chapter.

46  
47           (b)     No new permit shall be issued for any regulated facility unless the applicant  
48 provides financial assurance that ensures there are adequate sources of funds to provide for  
49 closure, post-closure, and corrective action.

50  
51           (i)     The Department may deny a permit application if the documentation or  
52 proposed forms of financial assurance do not ensure that adequate funds will be available to  
53 provide for closure, post-closure, and corrective action.

54  
55           (ii)    A permit may be transferred to a new permittee only if the new permittee  
56 demonstrates compliance with the financial assurance requirements of this Chapter. Construction  
57 permit ownership will be transferred in accordance with Water Quality Rules and Regulations,  
58 Chapter 3, Section 12.

59  
60           (c)     Any operator of a regulated facility that violates a permit, standard, rule, or  
61 requirement established under the Wyoming Environmental Quality Act that results in a release  
62 of pollution or waste to the air, land, or water resources of the state shall provide financial  
63 assurance for the costs of completing corrective action to remedy or abate the violation or  
64 damages caused by the violation.

65  
66           (d)     An operator shall submit documentation of the financial assurance to the  
67 Department as part of any permit application for a regulated facility and shall update  
68 documentation of financial assurance as required by Sections 3(d)(iv), 3(e)(iv), 4(d)(iv), 5(c)(ii),  
69 and 5(d)(ii) of this Chapter. The Department shall determine whether the documentation and  
70 proposed forms of financial assurance are adequate and shall notify the applicant in writing of its  
71 determination.  
72

73           **Section 3.     Closure and Post-Closure Requirements.**  
74

75           (a)     At least one hundred eighty (180) days prior to the anticipated date for initiation  
76 of closure of a regulated facility, the operator shall:

77  
78           (i)     Notify the Department in writing of the operator's intention to close a  
79 regulated facility;

80  
81           (ii)    Notify the governing body of each locality and adjacent property owners  
82 by certified or registered mail of the operator's intention to close a regulated facility;  
83

84 (iii) Post at least one (1) sign at the regulated facility notifying all persons of  
85 the anticipated closing and prohibition against further receipt of waste materials; and

86  
87 (iv) Install barriers at all access points to prevent new waste from being  
88 deposited.

89  
90 (b) An operator or permit applicant shall submit a closure plan and a post-closure  
91 plan with each permit application for a regulated facility. Additionally, a permittee shall submit a  
92 revised closure plan and revised post-closure plan to the Department whenever changes to  
93 facility operations, conditions, or anticipated closure necessitate changes to the plans.

94  
95 (c) The closure plan shall:

96  
97 (i) Describe the work necessary to minimize or eliminate, to the extent  
98 necessary to protect human health and the environment, the post-closure escape of leachate,  
99 surface runoff, or waste decomposition products to the groundwater, surface water, or the  
100 atmosphere;

101  
102 (ii) Minimize the need for post-closure maintenance and controls; and

103  
104 (iii) Include a cost estimate.

105  
106 (d) The closure plan cost estimate shall:

107  
108 (i) Include an itemized written estimate of the cost of completing all work  
109 described in the closure plan;

110  
111 (ii) Be based on the cost required for a third-party contractor to complete the  
112 work described in the closure at the most expensive point in the life of the facility;

113  
114 (iii) Account for the following factors:

115  
116 (A) The size and topography of the site;

117  
118 (B) The total waste material storage capacity at the site;

119  
120 (C) Availability of cover and fill material needed for site grading;

121  
122 (D) The type of waste to be received at the site;

123  
124 (E) Disposal method and sequential disposal plan;

125  
126 (F) The location of the site and the character of the surrounding area;

- 127
- 128 (G) Requirements for surface drainage;
- 129
- 130 (H) Operation and maintenance of the leachate collection and treatment
- 131 system, and, the off-site disposal of leachate;
- 132
- 133 (I) Environmental monitoring system;
- 134
- 135 (J) Structures and other improvements to be dismantled and removed.
- 136 Salvage values cannot be used to offset demolition costs;
- 137
- 138 (K) Site storage capacity for solid waste, incinerator residue, and
- 139 compost material;
- 140
- 141 (L) Off-site disposal requirements;
- 142
- 143 (M) Vector control requirements;
- 144
- 145 (N) A minimum of fifteen percent (15%) variable contingency fee to
- 146 cover other closure costs as determined appropriate by the Department; and
- 147
- 148 (O) Any other relevant site-specific factors.
- 149
- 150 (iv) Be updated, revised, and submitted to the Department by April 1 of each
- 151 year.
- 152
- 153 (e) The post-closure plan shall:
- 154
- 155 (i) Describe the monitoring, maintenance, and controls necessary to confirm
- 156 that:
- 157
- 158 (A) Post-closure escape of leachate, surface runoff, or waste
- 159 decomposition products to the groundwater, surface water, or the atmosphere has been
- 160 minimized or eliminated to the extent necessary to protect human health and the environment;
- 161 and
- 162
- 163 (B) The facility has been stabilized and closed in accordance with the
- 164 most recent approved closure plan.
- 165
- 166 (ii) Establish the monitoring period necessary to ensure that the regulated
- 167 facility has been stabilized and closed in accordance with the most recent approved closure plan.
- 168 The monitoring period shall continue for a minimum of five (5) years after the date of
- 169 completing closure of the regulated facility, but the Department may require a longer monitoring

170 period or extend the post-closure monitoring period if the Department determines a longer  
171 monitoring period is necessary to protect human health and the environment; and

172  
173 (iii) Include a cost estimate. However, an incinerator, resource recovery  
174 facility, compost facility, or storage surface impoundment may omit the post-closure plan cost  
175 estimate from its post-closure plan if onsite disposal of wastes or residues is not planned or  
176 required.

177  
178 (f) The post-closure plan cost estimate shall:

179  
180 (i) Include a written estimate of the cost of completing all work described in  
181 the post-closure plan;

182  
183 (ii) Be based on the cost required for a third-party contractor to complete the  
184 work described in the post-closure plan;

185  
186 (iii) Account for the following factors :

187  
188 (A) The size and topography of the site;

189  
190 (B) The type and quantity of waste that can be received;

191  
192 (C) Disposal method and sequential disposal plan;

193  
194 (D) The potential for significant leachate production and the possibility  
195 of contaminating water supplies;

196  
197 (E) Environmental monitoring systems;

198  
199 (F) Soil conditions; ;

200  
201 (G) The location of the site and the character of the surrounding area;

202  
203 (H) A minimum of fifteen percent (15%) contingency fee to cover  
204 other post-closure costs as determined appropriate by the Department; and

205  
206 (I) Other site-specific factors.

207  
208 (iv) Be updated, revised, and submitted to the Department by April 1 of each  
209 year.

210 (h) Inspection:

211

212 (i) The Department shall inspect all closed regulated facilities to determine if  
 213 the closure is complete and adequate in accordance with the approved plan after being notified  
 214 by the operator that closure has been completed. The Department shall provide written inspection  
 215 results to the operator of a closed facility after the inspection. If the closure is not satisfactory,  
 216 the Department shall specify necessary construction or such other steps that may be appropriate  
 217 to bring unsatisfactory sites into compliance with closure requirements.

218  
 219 (ii) Notification by the Department that the closure is satisfactory does not  
 220 relieve the operator of responsibility for corrective action in accordance with regulations of the  
 221 Department to prevent or abate problems caused by the regulated facility that are subsequently  
 222 discovered.

223  
 224 (i) Within sixty (60) days after receiving certification from the owner or operator that  
 225 closure has been accomplished in accordance with the closure plan and the provisions of this  
 226 Chapter, the Director shall verify that proper closure has occurred. Unless the Director has  
 227 reason to believe that closure has not been in accordance with the closure plan, the Director shall  
 228 notify the owner or operator in writing that the Director is no longer required to maintain  
 229 financial assurance for closure of the particular facility. Such notice shall release the owner or  
 230 operator only from the requirements for financial assurance for closure of the facility; it does not  
 231 release the Director from legal responsibility for meeting the closure or post-closure standards. If  
 232 no written notice or termination of financial assurance requirements or failure to properly  
 233 perform closure is received by the owner or operator within sixty (60) days after certifying  
 234 proper closure, the owner or operator may petition the Director for an immediate decision, in  
 235 which case the Director shall respond within ten (10) days after receipt of such petition.

#### 236 **Section 4. Corrective Action Requirements.**

237  
 238 (a) The Department shall notify the operator of the need to take corrective action to  
 239 remedy a violation of a permit condition, standard, rule or requirement relating to a regulated  
 240 facility. The notification shall describe the nature of the violation.

241  
 242 (i) If deemed necessary by the Department, the operator will be required to  
 243 close the facility and cease further receipt of waste materials.

244  
 245 (ii) If the facility is closed, the operator shall post one (1) sign notifying all  
 246 persons of the closing and prohibition against further receipt of waste materials. Further, suitable  
 247 barriers shall be installed at former accesses to prevent new waste from being deposited.

248  
 249 (b) Remediation Activities: In the event of a release, the operator shall:

250  
 251 (i) Initiate immediate measures to:

252  
 253 (A) Prevent further release to the environment.

254

- 255 (B) Prevent further migration of the released substance into  
256 surrounding soils and Waters of the State.  
257
- 258 (C) Identify, monitor and mitigate any safety hazards or health risks  
259 associated with the violation.  
260
- 261 (ii) Prepare a plan to conduct an investigation of the release, the release site  
262 and any surrounding area that may be affected by the release. The plan shall include:  
263
- 264 (A) A comprehensive subsurface investigation to define the extent and  
265 degree of contamination.  
266
- 267 (B) A schedule for conducting the investigation.  
268
- 269 (C) A cost estimate for a third-party to perform the tasks identified by  
270 the plan.  
271
- 272 (iii) Submit the investigation plan to the Department within thirty (30) days.  
273 The extent of contamination study should begin as soon as the plan has been approved and all  
274 necessary permits obtained.  
275
- 276 (iv) Conduct the extent of contamination study in accordance with the  
277 approved plan and submit a written report of the findings to the Department.  
278
- 279 (v) If required by the Department, develop a comprehensive plan for  
280 mitigation and clean-up. The remediation plan shall be submitted to the Department for approval.  
281 The remediation plan shall be implemented as soon as the Department has approved the plan and  
282 all necessary permits have been obtained. The remediation plan shall contain an estimate of the  
283 costs for a third-party to perform the tasks identified by the plan.  
284
- 285 (c) Cost Estimate for Corrective Action:  
286
- 287 (i) The operator of a commercial oil field disposal system regulated under  
288 W.S. § 35-11-306 or a commercial sludge facility regulated under W.S. § 35-11-307 in  
289 submitting an application for a construction permit as required by Chapter 3, Wyoming Water  
290 Quality Rules and Regulations shall include a written estimate of the cost of corrective actions to  
291 remediate a release from the facility. The estimated cost of corrective action and clean-up of a  
292 release shall be determined by the Department on a case-by-case basis considering information  
293 submitted by the operator. Such costs shall be based on the work required for a third-party  
294 contractor.
- 295 (ii) The factors to be considered in estimating the cost of corrective actions  
296 and clean-up of a release shall include the following:  
297

- 298 (A) Soils, geologic and hydrogeologic conditions at the site.
- 299
- 300 (B) The type and quantity of waste received.
- 301
- 302 (C) Disposal method and sequential disposal plan.
- 303
- 304 (D) The potential for significant leachate production and the possibility
- 305 of contaminating groundwater.
- 306
- 307 (E) Environmental monitoring systems.
- 308
- 309 (F) The location of the site and the character of the surrounding area.
- 310
- 311 (G) A minimum of fifteen percent (15%) contingency fee to cover
- 312 other corrective action and clean-up costs as determined appropriate by the Department.
- 313
- 314 (H) The ability of the facility to prevent and detect a release and to
- 315 facilitate clean-up activities. The criteria used to evaluate this ability shall include design,
- 316 construction, operation, monitoring, and contingency plans submitted as part of the application
- 317 package.
- 318
- 319 (I) The class, use, value and environmental vulnerability of surface
- 320 and groundwater resources that may be impacted by a release.
- 321
- 322 (J) Other site-specific factors.
- 323

324 **Section 5. Establishment of Financial Assurance Requirements.**

- 325
- 326 (a) The Department shall establish the amount of financial assurance required for
- 327 regulated facilities based on the plans and cost estimates for closure, post-closure, and corrective
- 328 action. Upon receipt of a cost estimate, the Department shall determine whether the cost estimate
- 329 meets the requirements of this Chapter and notify the operator in writing of its determination.
- 330
- 331 (b) If the Department determines that a cost estimate meets the requirements of this
- 332 Chapter:
- 333
- 334 (i) The Department shall establish the amount of financial assurance required
- 335 and notify the operator in writing of the amount established; and
- 336
- 337 (ii) The operator shall submit documentation of financial assurance in an
- 338 amount at least equal to the Department’s established financial assurance amount within thirty
- 339 (30) days of the Department’s establishment of the financial assurance amount.
- 340



341 (c) If the Department determines that a cost estimate does not meet the requirements  
342 of this Chapter:

343  
344 (i) The Department shall notify the operator of the deficiencies in the cost  
345 estimate, and the operator shall revise and resubmit the cost estimate to the Department within  
346 thirty (30) days of the Department’s determination; or

347  
348 (ii) The Department shall establish the amount of financial assurance required  
349 and notify the operator in writing of the amount established, and the operator shall submit  
350 documentation of financial assurance in an amount at least equal to the Department’s established  
351 financial assurance amount within thirty (30) days of the Department’s establishment of the  
352 financial assurance amount.

353 **Section 6. Forms of Financial Assurance.**

354  
355 (a) An operator of a regulated facility shall provide financial assurance in an amount  
356 at least equal to the established financial assurance amount for closure, post-closure, and  
357 corrective action in one (1) or a combination of the following:

- 358  
359 (i) Surety bond;  
360  
361 (ii) Federally insured certificates of deposit;  
362  
363 (iii) Government-backed securities;  
364  
365 (iv) Cash.

366  
367 (b) Surety Bonds:

368  
369 (i) A corporate surety shall not be considered good and sufficient for  
370 purposes of W.S. § 35-11-307 or W.S. § 35-11-306 unless:

- 371  
372 (A) It is licensed to do business in the State;  
373  
374 (B) The estimated bond amount does not exceed the limit of risk as  
375 provided for in W.S. § 26-5-110, nor raise the total of all bonds held by the applicant under that  
376 surety above three (3) times the limit of risk; and  
377  
378 (C) The surety agrees:

379  
380 (I) Not to cancel bond, except as provided for in W.S. § 35-11-  
381 307 or W.S. § 35-11-306 or where the Department gives prior written approval of a good and  
382 sufficient replacement surety with transfer of the liability that has accrued against the operator on  
383 the permit area;

384  
385 (II) To be jointly and severally liable with the permittee.

386  
387 (III) To provide immediate written notice to the Department and  
388 operator once it becomes unable or may become unable due to any action filed against it to fulfill  
389 its obligations under the bond.

390  
391 (ii) The provisions applicable to cancellation of the surety's license in W.S. §  
392 35-11- 307 or W.S. § 35-11-306 shall also apply if for any other reason the surety becomes  
393 unable to fulfill its obligations under the bond. Upon such occurrence, the operator shall provide  
394 the required notice. Failure to comply with this provision shall result in suspension of the permit.

395  
396 (c) In lieu of a bond, the facility operator shall deposit federally insured certificates of  
397 deposit payable to the Wyoming Department of Environmental Quality, cash, or government  
398 securities, or all three (3).

399  
400 (i) Securities that are unencumbered shall only include those that are United  
401 States Government securities or State Government securities that are acceptable to the Director.  
402 Government securities must be endorsed to the order of the Department and placed in possession  
403 of the Department. Possession shall be in the form of the cash value of the irrevocable trust for  
404 the full amount of the reclamation obligation and payable to the Department and federally  
405 insured.

406  
407 (ii) An operator shall satisfy the requirements of this subsection by  
408 establishing an irrevocable trust that conforms to the requirements below and submitting an  
409 originally signed duplicate of the trust agreement to the Administrator for consideration.

410  
411 (A) The irrevocable trust must be submitted to the Director on the  
412 Wyoming Department of Environmental Quality Irrevocable Trust Form and be signed by the  
413 operator or guarantor as principal and the financial institution as Trustee, and made payable to  
414 the Department;

415 (B) The Trustee must be a bank organized to do business in the United  
416 States that has the authority to act as a trustee and whose trust operations is regulated and  
417 examined by a Federal Agency;

418  
419 (C) The irrevocable trust must be cash funded for the full amount of  
420 the financial assurance obligation to be provided in the irrevocable trust before it may be  
421 approved to satisfy the requirements of financial assurance in lieu of a bond. For purposes of  
422 this subsection, "the full amount of the financial assurance obligation to be provided" means the  
423 amount of coverage for Closure, Post-Closure and Corrective Action required to be provided for  
424 the permit/facility, less the amount of financial assurance obligation that is being provided by  
425 other financial assurance mechanisms being used to demonstrate financial assurance by the  
426 operator or guarantor;

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(D) Cancellation of an irrevocable trust shall follow the same procedures detailed in W.S. §35-11-306(j) for performance bonds; and

(E) Forfeiture proceeding for an irrevocable trust shall follow the same procedures detailed in W.S. §35-11-306(m) for performance bonds.