

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

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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.

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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.

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

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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;
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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;

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

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

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

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124 (E) Disposal method and sequential disposal plan;

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

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- 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;
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- 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.
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- 150 (iv) Be updated, revised, and submitted to the Department by April 1 of each
- 151 year.
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- 153 (e) The post-closure plan shall:
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- 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.
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- 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:

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

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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;

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

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

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

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197 (E) Environmental monitoring systems;

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199 (F) Soil conditions; ;

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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:
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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.

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 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.

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 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.**

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 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.

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 249 (b) Remediation Activities: In the event of a release, the operator shall demonstrate to
 250 the Department compliance with Water Quality Rules and Regulations Chapter 4, Section 4 and:

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 252 (i) Initiate immediate measures to:

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 254 (A) Prevent further release to the environment.

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(B) Prevent further migration of the released substance into surrounding soils and Waters of the State.

(C) Identify, monitor and mitigate any safety hazards or health risks associated with the violation.

(ii) If the release is not exempt from Water Quality Rules and Regulations Chapter 4, Section 4(a)(ii), then the operator shall prepare a plan to conduct an investigation of the release, the release site, and any surrounding area that may be affected by the release. The plan shall include:

(A) A comprehensive subsurface investigation to define the extent and degree of contamination.

(B) A schedule for conducting the investigation.

(C) A cost estimate for a third-party to perform the tasks identified by the plan.

(iii) Submit the investigation plan to the Department within thirty (30) days. The extent of contamination study should begin as soon as the plan has been approved and all necessary permits obtained.

(iv) Conduct the extent of contamination study in accordance with the approved plan and submit a written report of the findings to the Department.

(v) If required by the Department, develop a comprehensive plan for mitigation and clean-up. The remediation plan shall be submitted to the Department for approval. The remediation plan shall be implemented as soon as the Department has approved the plan and all necessary permits have been obtained. The remediation plan shall contain an estimate of the costs for a third-party to perform the tasks identified by the plan.

(c) Cost Estimate for Corrective Action:

(i) The operator of a commercial oil field disposal system regulated under W.S. § 35-11-306 or a commercial sludge facility regulated under W.S. § 35-11-307 in submitting an application for a construction permit as required by Chapter 3, Wyoming Water Quality Rules and Regulations shall include a written estimate of the cost of corrective actions to remediate a release from the facility. The estimated cost of corrective action and clean-up of a release shall be determined by the Department on a case-by-case basis considering information submitted by the operator. Such costs shall be based on the work required for a third-party contractor.

298 (ii) The factors to be considered in estimating the cost of corrective actions
299 and clean-up of a release shall include the following:

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

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

328 (a) The Department shall establish the amount of financial assurance required for
329 regulated facilities based on the plans and cost estimates for closure, post-closure, and corrective
330 action. Upon receipt of a cost estimate, the Department shall determine whether the cost estimate
331 meets the requirements of this Chapter and notify the operator in writing of its determination.
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333 (b) If the Department determines that a cost estimate meets the requirements of this
334 Chapter:

335 (i) The Department shall establish the amount of financial assurance required
336 and notify the operator in writing of the amount established; and
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340 (ii) The operator shall submit documentation of financial assurance in an
341 amount at least equal to the Department’s established financial assurance amount within thirty
342 (30) days of the Department’s establishment of the financial assurance amount.

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

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

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

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

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

- 361 (i) Surety bond;
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- 363 (ii) Federally insured certificates of deposit;
- 364
- 365 (iii) Government-backed securities;
- 366
- 367 (iv) Cash.
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369 (b) Surety Bonds:

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

- 373 (A) It is licensed to do business in the State;
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- 375 (B) The estimated bond amount does not exceed the limit of risk as
376 provided for in W.S. § 26-5-110, nor raise the total of all bonds held by the applicant under that
377 surety above three (3) times the limit of risk; and
- 378
- 379 (C) The surety agrees:
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383 (I) Not to cancel bond, except as provided for in W.S. § 35-11-
384 307 or W.S. § 35-11-306 or where the Department gives prior written approval of a good and
385 sufficient replacement surety with transfer of the liability that has accrued against the operator on
386 the permit area;

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

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

393
394 (ii) The provisions applicable to cancellation of the surety's license in W.S. §
395 35-11- 307 or W.S. § 35-11-306 shall also apply if for any other reason the surety becomes
396 unable to fulfill its obligations under the bond. Upon such occurrence, the operator shall provide
397 the required notice. Failure to comply with this provision shall result in suspension of the permit.

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

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

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

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

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

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422 (C) The irrevocable trust must be cash funded for the full amount of
423 the financial assurance obligation to be provided in the irrevocable trust before it may be
424 approved to satisfy the requirements of financial assurance in lieu of a bond. For purposes of
425 this subsection, "the full amount of the financial assurance obligation to be provided" means the

426 amount of coverage for Closure, Post-Closure and Corrective Action required to be provided for
427 the permit/facility, less the amount of financial assurance obligation that is being provided by
428 other financial assurance mechanisms being used to demonstrate financial assurance by the
429 operator or guarantor;

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

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

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