

**Resource Conservation and Recovery Act (RCRA)  
Hazardous Waste Model Permit  
Financial Requirements Module**

This module provides guidance to EPA, state, and territorial permitting authorities. The statements in this document are intended solely as guidance. This document is not intended, nor can it be relied upon, to create any rights enforceable by any party in litigation with the United States. Permitting authorities may decide to follow the guidance provided in this document, or to act at variance with the guidance based on its analysis of the specific facts presented.

When EPA releases a new or revised model permit module, it replaces the corresponding module, including the corresponding module in the 1988 Model RCRA Permit for Hazardous Waste Management Facilities (Draft).

## MODULE VII. FINANCIAL REQUIREMENTS

*{Permit Writer: This permit module contains conditions covering the financial requirements standards in 40 CFR part 264, subpart H, for closure, post-closure, and third-party liability for hazardous waste treatment, storage, and disposal facilities. Cost estimate and financial assurance requirements for corrective action are addressed in the Corrective Action for Solid Waste Management Units (SWMU) Model Permit Module.*

*The model permit conditions in this module reference federal regulations and guidance. Permit Writers should confirm their regulatory citations and their authority's guidance for each permit condition and replace (or add to) the federal citations with state analogous regulatory citations and/or references as applicable. When jointly issuing permits, the federal Permit Writer will issue the federal portion of the permit citing the federal regulations while the state Permit Writer will cite the state analogous regulatory citation in the state's jointly issued portion of the permit.*

*State Permit Writers need to add or revise permit conditions for State regulatory requirements that are broader in scope, more specific, or otherwise different from the federal requirements.*

*Permit Writers can insert the title(s) of their regulatory authority's appropriate official(s) for or in addition to instances where the module uses "Director." When jointly issuing permits, the federal Permit Writer will cite the EPA Region's appropriate official in the federal portion of the permit and the state will cite the state's appropriate official in the state's portion of the permit.}*

*Information contained in the following documents provides additional guidance in drafting this Permit Module: [RCRA Training Module: Introduction to RCRA Financial Assurance \(EPA530-K-02-018I\)](#) dated October 2001; RCRA Subtitle C Financial Assurance Instrument Fact Sheets for the [Corporate Financial Test](#), [Insurance](#), [Letter of Credit](#), [Surety Bond](#) and [Trust Fund](#); [Top Financial Assurance Tips](#). The Financial Assurance Instrument Fact Sheets, Top Financial Assurance Tips and the RCRA Training Module are provided on EPA's Hazardous Waste Financial Assurance webpage. Additional information can also be found by searching [RCRA Online](#) using the search terms "Financial Assurance" and "Hazardous Waste."}*

### **VII.A. APPLICABILITY**

VII.A.1. The Permittee must demonstrate continuous compliance with the financial requirements in 40 CFR part 264 subpart H.

## **VII.B. COST ESTIMATE FOR FACILITY CLOSURE**

*{Permit Writer: The requirements for cost estimates for facility closure, and financial assurance for facility closure, apply to owners and operators of all hazardous waste facilities, except facilities owned by States and the Federal government. States and the Federal government are exempt from the financial requirements of 40 CFR part 264, subpart H, as specified in 40 CFR 264.140(c).}*

*The Permit Writer should carefully review both the closure plan and the closure cost estimate to ensure that the cost estimate includes a cost for each activity or sub-activity outlined in the closure plan and includes direct, indirect, overheads and contingency costs. The cost estimate is used to determine the amount of financial assurance required to close the Facility. Additional guidance on closure cost estimates can be found in the following documents: [RCRA Guidance Manual for Subpart G Closure and Post-Closure Care Standards and Subpart H Cost Estimating Requirements \(EPA/530-SW-87-010\)](#) and RCRA Online [11981](#), [12172](#), [14765](#), [13676](#), [13688](#), and [12131](#). Permit Writers may also inquire with EPA about the availability of a CostPro license. CostPro is EPA software that provides states and Regions a consistent, accurate, and rapid method of evaluating cost estimates for closure and post-closure care of RCRA TSDFs.}*

VII.B.1. The Permittee's detailed written closure cost estimate prepared at the time of permit application and in accordance with 40 CFR 264.142, and, as applicable, 264.197(c)(3) and (5), 264.228(c)(2), and 264.258(c)(2), is specified in Section {XXX} of the Approved Permit Application. [Refer to 40 CFR 264.142 and 270.14(b)(15).]

VII.B.2. The Permittee must annually adjust the closure cost estimate for inflation in accordance with 40 CFR 264.142(b) within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with 40 CFR 264.143 and Permit Condition VII.C., or within 30 days of the close of the Permittee's fiscal year if using a financial test or corporate guarantee. [Refer to 40 CFR 264.142(b).]

VII.B.3. The Permittee must revise the closure cost estimate whenever there is a change in the Facility's Closure Plan if the change increases the cost of closure. If the change to the Facility's Closure Plan increases the cost of closure, the revised cost estimate shall be submitted to the {Director} for approval within 30 days after the {Director} has approved the modification to the Facility's Closure Plan. The revised cost estimate must be adjusted for inflation as outlined in Permit Condition VII.B.2. Such changes to the cost estimate will not be considered a change to this Permit and no application for Permit modification will be required. [Refer to 40 CFR 264.142(c).]

VII.B.4. The Permittee must keep at the Facility, in accordance with Permit Condition I.J.2., the latest closure cost estimate. [Refer to 40 CFR 264.142(d).]

### **VII.C. FINANCIAL ASSURANCE FOR FACILITY CLOSURE**

VII.C.1. The Permittee must demonstrate continuous compliance with 40 CFR 264.143, and as applicable 40 CFR 264.146, by providing documentation of financial assurance, as required by 40 CFR 264.143 and 264.151, or 264.149, in at least the amount of the latest cost estimate required by Permit Condition VII.B.2. and VII.B.3.

VII.C.2. Changes in financial assurance mechanisms may only occur after the Permittee submits, and the Director approves, alternate financial assurance pursuant to 40 CFR 264.143 or 264.149.

*{Permit Writer: For new facilities, the Permittee must demonstrate compliance with this permit condition by submitting the required documentation to the Director at least 60 days before first receiving hazardous waste for treatment, storage or disposal. Refer, for example, to 40 CFR 264.143(a)(1). The Permittee's financial assurance must be effective prior to the Permittee's first receipt of hazardous waste.}*

*{Permit Writer: Owners and operators of RCRA hazardous waste treatment, storage, and disposal facilities can demonstrate that funds are available to pay for closure and post-closure through the use of one or a combination of the following financial assurance mechanisms: trust fund, surety bond, letter of credit, insurance, and corporate financial test and guarantee. Note that not all of the financial mechanisms can be used in combination with each other. Specifically, 40 CFR 264.143(g) states that financial assurance mechanisms that can be used in combination are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, and insurance. Using the foregoing instruments in combination with the financial test or corporate guarantee is not allowed. The Permittee should select one or more of the financial assurance instruments described in 40 CFR 264.143(a) through (i) and identify the selected instruments in their Approved Closure Plan. The Permit Writer should carefully review the proposed financial instrument(s) to ensure that the proposed instrument can meet all the regulatory criteria in the applicable state or federal regulations. It is highly recommended that during the review of the Permit Application, the Permit Writer consult with other regulatory personnel who routinely review these types of financial instruments to ensure that all requirements are met and the appropriate wording is included in the instrument.}*

#### **VII.D. COST ESTIMATE FOR FACILITY POST-CLOSURE**

*{Permit Writer: The requirements for cost estimates for post-closure, and financial assurance for post-closure, apply to owners and operators of: (1) Disposal facilities; (2) Waste piles and surface impoundments from which the owner or operator intends to remove the wastes at closure, to the extent that these sections are made applicable to such facilities in 40 CFR 264.228 and 264.258; (3) Tank systems that are required under 40 CFR 264.197 to meet the requirements for landfills; and (4) Containment buildings that are required under 40 CFR 264.1102 to meet the requirements for landfills. States and the Federal government are exempt from the financial requirements of 40 CFR part 264, subpart H, as specified in 40 CFR 264.140(c).}*

VII.D.1. The Permittee's detailed written post-closure cost estimate prepared at the time of permit application and in accordance with 40 CFR 264.144, and as applicable 40 CFR 264.197(c)(3) and (5), 264.228(c)(2), and 264.258(c)(2), of the annual cost of post-closure monitoring and maintenance of the Facility in accordance with the applicable post-closure regulations in 40 CFR 264.117 through 264.120, 264.228, 264.258, 264.280, 264.310, and 264.603 is specified in Section {XXX} of the Approved Permit Application. [Refer to 40 CFR 264.144(a)]

VII.D.2. The Permittee 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) used to comply with 40 CFR 264.145 and Permit Condition VII.E., or within 30 days of the close of the Permittee's fiscal year if using a financial test or corporate guarantee. [Refer to 40 CFR 264.144(b).]

*{Permit Writer: The Federal requirement to annually adjust the cost estimate for inflation applies only during the "active life" of the Facility. Active life of a Facility means the period from the initial receipt of hazardous waste at the Facility until the Director receives certification of final closure. Refer to 40 CFR 260.10.}*

VII.D.3. The Permittee must revise the post-closure cost estimate whenever there is a change that increases the cost of post closure care in the Facility's Post-Closure Plan. [Refer to 40 CFR 264.144(c).]

VII.D.4. The Permittee must keep at the Facility, in accordance with Permit Condition I.J.2., the latest post-closure cost estimate. [Refer to 40 CFR 264.144(d).]

#### **VII.E. FINANCIAL ASSURANCE FOR FACILITY POST-CLOSURE**

VII.E.1. The Permittee must demonstrate continuous compliance with 40 CFR 264.145, and as applicable 40 CFR 264.146, by providing documentation of financial assurance, as required by 40 CFR 264.145 and 264.151, or 264.149, in at least the amount of the latest cost estimate required by Permit Condition VII.D.2. and VII.D.3.

VII.E.2. Changes in financial assurance may only occur after the Permittee submits alternate and the Director approves, financial assurance pursuant to 40 CFR 264.145 or 264.149.

*{Permit Writer: For new facilities, the Permittee must demonstrate compliance with this permit condition by submitting the required documentation to the Director at least 60 days before first receiving hazardous waste for treatment, storage or disposal. Refer, for example, to 40 CFR 264.145(a)(1). The Permittee's financial assurance must be effective prior to the Permittee's first receipt of hazardous waste.}*

#### **VII.F. LIABILITY REQUIREMENTS**

*{Permit Writer: The Federal regulations generally do not require the owner/operator to maintain third-party liability coverage for the Facility after receiving certifications from the owner or operator and a qualified Professional Engineer that final closure of the Facility has been completed in accordance with the Approved Closure Plan. Refer to 40 CFR 264.147(e).}*

VII.F.1. The Permittee must demonstrate continuous compliance with the requirement of 40 CFR 264.147(a) to have and maintain liability coverage for sudden and accidental occurrences arising from operations of the Facility or group of facilities in the amount of at least \$1 million per occurrence, with an annual aggregate of at least \$2 million, exclusive of legal defense costs. [Refer to 40 CFR 264.147(a).]

*{Permit Writer: For facilities containing surface impoundments, landfills, land treatment units, and disposal miscellaneous units, add the following condition.}*

VII.F.2. The Permittee must demonstrate continuous compliance with the 40 CFR 264.147(b) requirement to have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least \$3 million per occurrence, with an annual aggregate of at least \$6 million, exclusive of legal defense costs. [Refer to 40 CFR 264.147(b).]

*{Permit Writer: The Director may grant a variance from the above levels of financial responsibility in accordance with 40 CFR 264.147(c) and (d).}*

*For new facilities, the Permittee must demonstrate its compliance with this permit condition by submitting the required documentation to the Director at least 60 days before first receiving hazardous waste for treatment or storage. The Permittee's liability coverage must be effective before the Permittee's first receipt of hazardous waste.*

#### **VII.G. INCAPACITY OF OWNERS OR OPERATORS, GUARANTORS, OR FINANCIAL INSTITUTIONS**

VII.G.1. The Permittee must notify the {Director} by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding. [Refer to 40 CFR 264.148.]

*{Permit Writer: A guarantor of a corporate guarantee as specified in 40 CFR 264.143(f) and 264.145(f) must make such a notification if the guarantor or corporate guarantee is named as debtor, as required under the terms of the corporate guarantee.}*

VII.G.2. If the Permittee fulfills the requirements of 40 CFR 264.143, 264.145, or 264.147 by obtaining a trust fund, surety bond, letter of credit, or insurance policy they will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The Permittee must establish other financial assurance or liability coverage within 60 days after such an event. [Refer to 40 CFR 264.148(b).]