



COLORADO

Solid & Hazardous
Waste Commission

Department of Public Health & Environment

NOTICE OF PROPOSED RULEMAKING HEARING BEFORE THE COLORADO SOLID AND HAZARDOUS WASTE COMMISSION

SUBJECT:

For consideration of the amendments to 6 CCR 1007-2, Part 1, Section 4, along with the accompanying Statement of Basis and Purpose, the following will be considered:

Amendment of 6 CCR 1007-2, Part 1, Section 4 - Regulations Pertaining to Solid Waste Sites and Facilities - Amendments to Solid Waste Financial Assurance

These modifications are made pursuant to the authority granted to the Solid and Hazardous Waste Commission in Sections 30-20-104.5 and 30-20-109, C.R.S.

The purpose of Section 4 of the solid waste regulations is to provide assurance that funds will be available to the Department when needed for adequate closure and post-closure of, and corrective action at, solid wastes disposal sites and facilities should the owner and operator become financially insolvent. These regulations require the owners and operators to secure financial instruments to demonstrate adequate coverage until a release is granted by the department.

The proposed amendments to the financial assurance regulations are to correct typographical errors, revise deadlines to improve timeliness for annual reporting requirements. Update the list of allowable mechanisms, and strengthen terms and conditions for both insurance and surety bond mechanisms.

Any information that is incorporated by reference in these proposed rules is available for review at the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division and any state publications depository library.

Pursuant to C.R.S. §24-4-103(3), a notice of proposed rulemaking was submitted to the Secretary of State on July 12, 2022. Copies of the proposed rulemaking will be mailed to all persons on the Solid and Hazardous Waste Commission's mailing list on or before the date of publication of the notice of proposed rulemaking in the Colorado Register on July 25, 2022.

The proposed rulemaking materials may also be accessed at:

<https://cdphe.colorado.gov/shwc-rulemaking-hearings>

WRITTEN TESTIMONY



Any alternative proposals for rules or written comments relating to the proposed amendment of the regulation will be considered. The Solid and Hazardous Waste Commission will accept written testimony and materials regarding the proposed alternatives. **The commission strongly encourages interested parties to submit written testimony or materials to the Solid and Hazardous Waste Commission Office, via email to cdphe.hwcrequests@state.co.us by Wednesday, August 4, 2022, at 11:59 p.m. Written materials submitted in advance will be distributed to the commission members prior to the day of the hearing. Submittal of written testimony and materials on the day of the hearing will be accepted, but is strongly discouraged.**

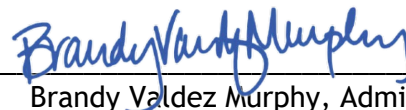
HEARING SCHEDULE:

DATE: Tuesday, August 16, 2022
TIME: 9:00 a.m.
PLACE: Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Building A, Sabin Conference Room
Denver, CO 80246
(Due to ongoing COVID-19 health and safety restrictions, only Commissioners and staff are able to meet in person. All other attendance is welcomed virtually via Zoom.)
-OR-
Due to COVID-19, the meeting will be held online only at:

<https://us02web.zoom.us/meeting/register/tZAtfuqprjgvHNTv33-MS-GHfQd6-mdFdjC9>

Please check for the official location of the meeting on the commission's website:
<https://cdphe.colorado.gov/shwc-meeting-information>

Oral testimony at the hearing regarding the proposed amendments may be limited.



Brandy Valdez Murphy, Administrator



1 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

2 Solid and Hazardous Waste Commission/Hazardous Materials and
3 Waste Management Division

4 6 CCR 1007-2

5 PART 1 - REGULATIONS PERTAINING TO SOLID WASTE SITES AND FACILITIES
6
7

8 Amendment of the Section 4 Financial Assurance Regulations
9

10
11 1) Section 4 of the Table of Contents of the Solid Waste Regulations is being
12 amended by revising Section 4.6.9 to read as follows:
13

14
15 PART 1 - REGULATIONS PERTAINING TO SOLID WASTE SITES AND FACILITIES
16
17

18 TABLE OF CONTENTS
19

20
21 PART B
22 REQUIREMENTS AND INFORMATION CONCERNING
23 ALL SOLID WASTE DISPOSAL SITES AND FACILITIES
24 IN THE STATE OF COLORADO
25

26 *****

27
28 SECTION 4 FINANCIAL ASSURANCE REQUIREMENTS
29

30 *****

31
32 4.6 Financial Assurance Requirements

- 33 4.6.1 General Requirements
- 34 4.6.2 Trust Funds
- 35 4.6.3 Letters of Credit
- 36 4.6.4 Surety Bonds Guaranteeing Performance or Payment
- 37 4.6.5 Insurance
- 38 4.6.6 Corporate Financial Test
- 39 4.6.7 Local Government Financial Test
- 40 4.6.8 Corporate Guarantee
- 41 4.6.9 ~~Reserved~~ Cash Deposit Holding Account
- 42 4.6.10 Certificates of Deposit
- 43 4.6.11 Use of Multiple Financial Mechanisms
- 44 4.6.12 Use of a Financial Mechanism for Multiple Sites
- 45 4.6.13 Release of the Owner or Operator from the Requirements of this Section

46 *****
47
48
49

50 **2) The Appendices section of the Table of Contents of the Solid Waste**
51 **Regulations is being amended by revising Appendix A to read as follows:**

52
53

54 **PART 1 - REGULATIONS PERTAINING TO SOLID WASTE SITES AND FACILITIES**

55
56
57

58 **TABLE OF CONTENTS**

59
60 *****

61
62

63 **PART B**
64 **REQUIREMENTS AND INFORMATION CONCERNING**
65 **ALL SOLID WASTE DISPOSAL SITES AND FACILITIES**
66 **IN THE STATE OF COLORADO**

67 *****

68
69

69 **APPENDICES**

70

APPENDIX A - ~~Financial work sheet~~ Financial assurance instrument language

71

APPENDIX B - Ground water monitoring

72

APPENDIX I - Detection monitoring parameters

73

APPENDIX II- Assessment monitoring parameters

74

75 *****

76

77

78 **3) The Table of Contents for Section 4 (Financial Assurance Requirements) is**
79 **amended by revising the listing for section 4.6.9 to read as follows:**

80
81

82 **SECTION 4 FINANCIAL ASSURANCE REQUIREMENTS**

83

84 *****

85

86 **4.6 Financial Assurance Requirements**

87

4.6.1 General Requirements

88

4.6.2 Trust Funds

89

4.6.3 Letters of Credit

90

4.6.4 Surety Bonds Guaranteeing Performance or Payment

91

4.6.5 Insurance

92

4.6.6 Corporate Financial Test

93

4.6.7 Local Government Financial Test

94

4.6.8 Corporate Guarantee

95

4.6.9 ~~Reserved~~ Cash Deposit Holding Account

96

4.6.10 Certificates of Deposit

97

4.6.11 Use of Multiple Financial Mechanisms

98

4.6.12 Use of a Financial Mechanism for Multiple Sites

99

4.6.13 Release of the Owner or Operator from the Requirements of this Section

100 **4) Section 4.5.1 is amended to read as follows:**

101
102 **4.5 Revising Closure, Post-Closure, and Corrective Action Cost Estimates**

103
104 **4.5.1 Annual Inflation Revision:** During the active life of the solid waste disposal site and facility, the
105 owner or operator must annually revise the ~~closure, post-closure, and any corrective action cost~~
106 ~~estimate~~financial assurance instrument to account for inflation and must submit ~~this~~the revised estimate
107 to the Financial Assurance Manager for approval~~for department approval~~. This ~~estimate must revised~~
108 financial assurance instrument must be submitted to the department annually by April 30t. occur at least
109 sixty (60) days prior to the anniversary date of the establishment of the financial instrument(s) used to
110 comply with this Section 4. For owners and operators using the financial test or guarantee, the revised
111 cost estimate must be updated for inflation within thirty (30) days after the close of the entity's fiscal year
112 and submitted for department approval. The annual adjustment may be made by recalculating the
113 maximum costs of closure, post-closure, and/or corrective action in current dollars, or by using an inflation
114 factor derived from the most recent Implicit Price Deflator for Gross National Product as published by the
115 U.S. Department of Commerce in its Survey of Current Business. The inflation factor is the result of
116 dividing the latest published annual Deflator by the Deflator for the previous year.

117
118 (A) The first adjustment is made by multiplying the original cost estimate by the inflation factor. The
119 result is the revised cost estimate.

120
121 (B) Subsequent adjustments are made by multiplying the latest revised cost estimate by the latest
122 inflation factor.

123
124
125 **5) Section 4.6.1(D) is amended by adding paragraph (D)(9) to read as follows:**

126
127 **4.6 Financial Assurance Requirements**

128 **4.6.1: General Requirements**

129 *****

130 (D) The following are allowable financial assurance mechanisms and instruments that an owner
131 or operator may use, alone or in combination, subject to approval by the department:

- 132
133 (1) Trust fund
134 (2) Letter of credit
135 (3) Surety bond
136 (4) Insurance
137 (5) Corporate financial test
138 (6) Local government financial test
139 (7) Corporate guarantee
140 (8) Certificate of Deposit
141 (9) Cash Deposit Holding Account

142 *****

143
144

145 **6) Section 4.6.4 is amended by revising paragraph (F) to read as follows:**

146
147 **4.6.4 Surety Bonds Guaranteeing Performance or Payment**

148
149 *****

150
151 (F) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation
152 through email to the Financial Assurance Manager and by certified mail, or other trackable delivery
153 service, to the owner or operator and to the department. Cancellation may not occur until one hundred
154 twenty (120) days after the notice of cancellation has been received by both the owner or operator and
155 the department, as evidenced by return receipts. The department will notify the local governing authority
156 of any such cancellation.
157

158
159 **7) Section 4.6.5 is amended by revising paragraphs (A), (J) and (K), and adding**
160 **new paragraph (P) to read as follows:**

161
162 **4.6.5 Insurance**

163
164 (A) Subject to department approval, an owner or operator may satisfy the requirements of this Section by
165 obtaining insurance which conforms to the requirements of this paragraph and submitting a certificate of
166 such insurance to the department. An owner or operator of a new facility must submit a copy of the
167 insurance policy and all endorsements to the department at least ninety (90) days before the date on
168 which waste is first received. If an owner or operator wants to changes or replace a current insurance
169 policy, the owner or operator must submit a copy of the proposed insurance policy and all endorsements
170 to the department at least ninety (90) days before changing or replacing the insurance policy.
171

172 *****

173
174 (J) The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except
175 for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the
176 insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the
177 premium, the insurer may elect to cancel the policy by sending notice of cancellation by email and
178 certified mail, or other trackable delivery service, to the owner or operator and the departmentFinancial
179 Assurance Manager, one hundred twenty (120) days in advance of cancellation. The department will
180 notify the local governing authority of any such notice of cancellation. However, cancellation, termination,
181 or failure to renew may not occur and the policy, which shall contain a provision with the following terms
182 and conditions, will remain in full force and effect in the event that on or before the date of expiration:
183

- 184 (1) The department, after Consultation with the local governing authority, deems the facility
185 abandoned; or
186
187 (2) The certificate of designation is terminated or revoked or a new certificate of designation is
188 denied; or
189
190 (3) Closure is ordered by the department or the local governing authority or court of competent
191 jurisdiction; or
192
193 (4) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11
194 (bankruptcy), U.S. Code; or
195
196 (5) The premium due is paid by any person.
197

198 (K) If the insurer cancels the policy, the owner or operator must obtain replacement financial assurance
199 as required in Subsection 4.6.1(D) before the end of the 120-day period, as required by this Section 4.

200
201 *****

202
203 (P) The owner or operator of the facility must submit a copy of the insurance policy and all endorsements
204 as requested by the department.

205
206
207 **8) Section 4.6.9 is amended to read as follows:**

208
209 **4.6.9 ~~Reserved~~ Cash Deposit Holding Account**

210
211 (A) Subject to the department approval, an owner or operator may demonstrate financial assurance by
212 securing funds in the department's cash deposit holding account. The owner or operator may deposit
213 money in the account by cashier's check, personal check or wire transfer.

214
215 (B) The wording of the cash deposit holding account must be identical to the wording in Appendix A.

216
217
218 **9) The Irrevocable Standby Letter of Credit language in Section II of Appendix A is**
219 **amended to read as follows:**

220
221 **II. Irrevocable Standby Letter of Credit.**

222
223 *A letter of credit, specified in these regulations, must be worded as follows, except that instructions in*
224 *brackets are to be replaced with the relevant information and the brackets deleted:*

225
226 **Irrevocable Standby Letter of Credit**

227
228 Director
229 Colorado Department of Public Health and Environment
230 ~~Hazardous Materials and Waste Management~~ Division of Environmental Health and Sustainability
231 Mail Code: DEHS – A2
232 4300 Cherry Creek Drive South
233 Denver, Colorado 80246-1530

234
235 Dear Sir or Madam:

236
237 We hereby establish our irrevocable standby letter of credit no. _____ in your favor, at the request and
238 for the account of [owner's or operator's name and address] up to the aggregate amount of [in words]
239 U.S. Dollars \$ _____, available upon presentation of:

240
241 (1) Your sight draft bearing reference to this letter of credit no. _____, and

242
243 (2) Your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant
244 to regulations issued under authority of the Colorado Solid Wastes Disposal Sites and Facilities Act as
245 amended."

246
247 This letter of credit is effective as of [date] and shall expire on [date at least 1 year later], but such
248 expiration date shall be automatically extended for a period of [at least 1 year] on [date] and on each
249 successive expiration date, unless, at least 120 days before the current expiration date, we notify both
250 you and [owner's or operator's name] by certified mail, or other trackable delivery service, that we have
251 decided not to extend this letter of credit beyond the current expiration date. In the event you are so

252 notified, any unused portion of the credit shall be available upon presentation of your sight draft, for 120
253 days after the date of receipt by both you and [owner's or operator's name], as shown on the signed
254 return receipts.

255
256 Whenever this letter of credit is drawn on under and in compliance with the terms of this letter of credit,
257 we shall duly honor such draft upon presentation to us, and we shall deposit the specified amount of the
258 draft directly into the mechanism established by the State of Colorado to directly receive monies.

259
260 We certify that the wording of this letter of credit is identical to the wording specified as such regulations
261 were constituted on the date shown immediately below.

262
263 [Signature(s) and title(s) of official(s) of issuing institution]

264
265 Signature: _____

266
267 Printed: _____

268
269 Title: _____

270
271 Date: _____

272
273
274 This letter of credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for
275 Documentary Credits, published by the International Chamber of Commerce," or "the Uniform
276 Commercial Code"].

277
278
279 **10) The Surety Bond language in Section III of Appendix A is amended to read as
280 follows:**

281
282 **III. Surety Bond**

283
284 *A surety bond guaranteeing payment, as specified in these regulations, must be worded as follows,
285 except that instructions in brackets are to be replaced with the relevant information and the brackets
286 deleted:*

287
288 Surety Bond

289 Date bond executed: _____

290 Effective date: _____

291 Principal: [legal name and business address of owner or operator] _____

292 _____

293 _____

294
295 Type of organization: [insert "individual", "joint venture", "partnership", or "corporation"] _____

296 _____

297 State of incorporation: _____

298 Surety(ies): [name(s) and business address(es)] _____

299 _____

300 _____

301

302 Name, address, and closure and/or post-closure, corrective action amount(s) for each facility guaranteed
303 by this bond: [Indicate closure and/or post-closure and/or corrective action amount separately] _____

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Total penal sum of bond: \$ _____
Surety's bond number: _____

Know all persons by these presents, that we, the principal and surety(ies) hereto are firmly bound to the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division (the "department") in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the surety(ies) are corporations acting as co-sureties, we, the sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or action against any or all of us, and for all other purposes each surety binds itself, jointly and severally with the principal, for the payment of such sum only as is set forth opposite the name of such surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said principal is required, under the Colorado Solid Wastes Disposal Sites and Facilities Act, to have a certificate of designation in order to own or operate each solid waste management facility identified above, and

Whereas said principal is required to provide financial assurance for closure, or closure and post-closure care, as a condition of the certificate of designation, and

Whereas said principal is required to provide financial assurance for any corrective action required at solid waste disposal sites and facilities.

Now, therefore, the conditions of the obligation are such that if the principal shall faithfully, before the beginning of final closure of each facility identified above, provide funding directly to the department in the amount(s) identified above for the facility,

Or, if the principal shall fund in such amount(s) within 15 days after an order to begin closure is issued by the department or a U.S. District court or other court of competent jurisdiction,

Or, if the principal shall provide alternate financial assurance, as specified in these regulations and obtain the department's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the principal and the department from the surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The surety(ies) shall become liable on this bond obligation only when the principal has failed to fulfill the conditions described above. Upon notification by the department that the principal has failed to perform as guaranteed by this bond, the surety(ies) shall place funds in the amount guaranteed for the facility(ies) as directed by the department.

The liability of the surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the surety(ies) hereunder exceed the amount of said penal sum.

The surety(ies) may cancel the bond by sending notice of cancellation through email to the Financial Assurance Manager and by certified mail, or other trackable delivery service, to the principal and to the department, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the principal and the department, as evidenced by the return receipts.

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All notices required under this bond shall be sent to:

Financial Assurance Manager
Colorado Department of Public Health and Environment
Mail Code: DEHS – A2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Email: cdphe_haz_financialassurance@state.co.us

The principal may terminate this bond by sending written notice to the surety(ies), provided, however, that no such notice shall become effective until the surety(ies) receive(s) written authorization for termination of the bond by the department.

[The following paragraph is an optional rider that may be included but is not required:]

The principal and surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure, post-closure and/or corrective action amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the department.

In witness whereof, the principal and surety(ies) have executed this surety bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the principal and surety(ies) and that the wording of this surety bond is identical to the wording specified in the applicable regulations were constituted on the date this bond was executed.

Principal _____

[Signature(s)] _____

[Name(s) and Titles] _____

[Corporate seal] _____

Corporate Surety(ies) _____

[Name and address] _____

State of incorporation: _____

Liability limit: \$ _____

[Signature(s)] _____

[Name(s) and title(s)] _____

[Corporate seal]

[For every co-surety, provide signature(s), Corporate seal, and other information in the same manner as for surety above.]

410 Bond premium: \$

411

412

413 **11) The Performance Bond language in Section IV of Appendix A is amended to**
414 **read as follows:**

415

416

417 **IV. Performance Bond**

418

419 *A surety bond guaranteeing performance of closure and/or post-closure care, or corrective action as*
420 *specified, must be worded as follows, except that the instructions in brackets are to be replaced with the*
421 *relevant information and the brackets deleted.*

422

Performance Bond

423 Date bond executed: _____

424 Effective date: _____

425 Principal: [*legal name and business address of owner or operator*] _____

426 _____

427 _____

428 _____

429 Type of organization: [*insert "individual", "joint venture", "Partnership", or "corporation"*] _____

430 State of incorporation: _____

431 _____

432 Surety(ies): [*Name(s) and business address(es)*] _____

433 _____

434 _____

435 Name, address, and closure and/or post-closure corrective action amount(s) for each facility guaranteed

436 by this bond (indicate closure and post-closure amounts separately): _____

437 _____

438 _____

439 _____

440 Total penal sum of bond: \$ _____

441 _____

442 Surety's bond number: _____

443 _____

444 _____

445 Know all persons by these presents, that we, the principal and surety(ies) hereto are firmly bound to the

446 Colorado Department of Public Health and Environment (the "department") , in the above penal sum for

447 the payment of which we bind ourselves, our heirs, executors, administrators successors, and assigns

448 jointly and severally; provide that, where the surety(ies) are corporations acting as co-sureties, we, the

449 sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action

450 or actions against any or all of us, and for all other purposes each surety binds itself, jointly and severally

451 with the principal, for the payment of such sum only as is set forth opposite the name of such surety, but if

452 no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

453

454 Whereas said principal is required, under the Colorado Solid Wastes Disposal Sites and Facilities Act as

455 amended, to have a certificate of designation in order to own or operate each solid waste disposal site

456 and facility identified above; and

457

458 Whereas said principal is required to provide financial assurance for closure, or closure and post-closure

459 care, as a condition of the certificate of designation; and

460

461

462

463 Whereas said principal is required to provide financial assurance for any corrective action required at
464 Solid Waste Disposal Sites and Facilities.

465
466 Now, therefore, the conditions of this obligation are such that if the principal shall faithfully perform
467 closure, whenever required to do so, of each facility for which this bond guarantees closure, in
468 accordance with the closure plan and other requirements of the certificate of designation as such plan
469 and certificate of designation may be amended, pursuant to all applicable laws, statutes, rules, and
470 regulations, as such laws, statutes, rules, and regulations may be amended.

471
472 And, if the principal shall faithfully perform post-closure care of each facility for which this bond
473 guarantees post-closure care, in accordance with the post-closure plan and other requirements of the
474 certificate of designation, as such plan and certificate of designation may be amended, pursuant to all
475 applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be
476 amended.

477
478 Or, if the principal shall provide alternate financial assurance as specified in these regulations, and obtain
479 the department's written approval of such assurance, within 90 days after the date notice of cancellation
480 is received by both the principal and the department from the surety(ies), then this obligation shall be null
481 and void, otherwise it is to remain in full force and effect.

482
483 The surety(ies) shall become liable on this bond obligation only when the principal has failed to fulfill the
484 conditions described above.

485
486 Upon notification by the department that the principal has been found in violation of the closure
487 requirements of these regulations, for a facility for which this bond guarantees performances of closure,
488 the surety(ies) shall either perform closure in accordance with the closure plan and other certificate of
489 designation requirements or deposit the closure amount guaranteed for the facility as directed by the
490 department.

491
492 Upon notification by the department that the principal has failed to provide alternate financial assurance
493 as specified in these regulations, and obtain written approval of such assurance from the department
494 during the 90 days following receipt by both the principal and the department of a notice of cancellation of
495 the bond, the surety(ies) shall deposit funds in the amount guaranteed for the facility(ies) as directed by
496 the department.

497
498 The surety(ies) hereby waive(s) notification of amendments to closure plans, permits, applicable laws,
499 statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their)
500 obligation on this bond.

501
502 The liability of the surety(ies) shall not be discharged by any payment or succession of payments
503 hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of
504 the bond, but in no event shall the obligation of the surety(ies) hereunder exceed the amount of said
505 penal sum.

506
507 The surety(ies) may cancel the bond by sending notice of cancellation through email to the Financial
508 Assurance Manager and by certified mail, or other trackable delivery service, to the owner or operator
509 and to the department provided, however, that cancellation shall not occur during the 120 days beginning
510 on the date of receipt of the notice of cancellation by both the principal and the department, as evidenced
511 by the return receipts.

512
513 All notices required under this bond shall be sent to:
514
515 Financial Assurance Manager
516 Colorado Department of Public Health and Environment
517 Mail Code: DEHS – A2

518 [4300 Cherry Creek Drive South](https://www.cdphe.state.co.us/locations/4300-Cherry-Creek-Drive-South-Denver-CO-80246-1530)
519 [Denver, Colorado 80246-1530](https://www.cdphe.state.co.us/locations/4300-Cherry-Creek-Drive-South-Denver-CO-80246-1530)

520
521 [Email: cdphe_haz_financialassurance@state.co.us](mailto:cdphe_haz_financialassurance@state.co.us)
522

523 The principal may terminate this bond by sending written notice to the surety(ies), provided, however, that
524 no such notice shall become effective until the surety(ies) receive(s) written authorization for termination
525 of the bond by the department.

526
527 *[The following paragraph is an optional rider that may be included but is not required.]*
528

529 Principal and surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a
530 new closure and/or post-closure and corrective action amount, provided that the penal sum does not
531 increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without
532 the written permission of the department.

533
534 In witness whereof, the principal and surety(ies) have executed this performance bond and have affixed
535 their seals on the date set forth above.
536

537 The persons whose signatures appear below hereby certify that they are authorized to execute this surety
538 bond on behalf of the principal and surety(ies) and that the wording of this surety bond is identical to the
539 wording specified in the applicable regulations.
540

541 Principal _____
542 *[Signature(s)]* _____
543 *[Name(s) and Title(s)]* _____
544

545 *[Corporate seal]*
546
547

548 Corporate Surety(ies)
549 *[Name and address]*
550 State of incorporation:
551 Liability limit: \$
552 *[Signature(s)]*
553 *[Name(s) and title(s)]*
554

555 *[Corporate seal]*
556
557

558 *[For every co-surety, provide signature(s), Corporate seal, and other information in the same manner as*
559 *for surety above.]*

560
561 Bond premium: \$
562
563

564 **12) The Insurance language in Section V of Appendix A is amended to read as**
565 **follows:**
566

567 **V. Insurance**

568 (1) The standard insurance industry certificate of insurance form (ACORD form), as prescribed by the
569 Colorado Insurance Commission, shall be used to evidence closure and/or post-closure care and/or
570 corrective action coverage. The following information is to be included in the certificate of insurance:

- 571 (A) Name, address, email and telephone number of agency; and the underwriter
572 (B) Name of facility being covered (if list is too long additional pages may be attached).
573 (C) Indication of type of coverage (closure, post-closure and/or corrective action).
574 (D) Amount of coverage (closure, post-closure and/or corrective action).
575 (E) A statement of certification, in the comment section, worded as follows, except that instructions in
576 brackets are to be replaced with the relevant information and the brackets deleted:

577 "This certificate certifies that the policy to which this certificate applies, provides [insert and/or
578 closure and/or post-closure care or corrective action coverage] in connection with the insured's
579 obligation to demonstrate financial responsibility under Section 4.6.5 of the regulations pertaining
580 to Solid Waste Disposal Sites and Facilities 6 CCR 1007-2, as amended.

581 (F) Authorized company representatives' signature

582 (2) Cancellation of this policy, whether by the insurer or the insured, will be effective only upon written
583 notice and only after the expiration of sixty (60) days after a written notice of cancellation is received by
584 the department. Notice of cancellation must be sent through email to the Financial Assurance Manager
585 and by certified mail, or other trackable delivery service to the department, as evidenced by the return
586 receipts.

587
588 (3) All notices required under this policy shall be sent to:

589
590 Financial Assurance Manager
591 Colorado Department of Public Health and Environment
592 Mail Code: DEHS- A2
593 4300 Cherry Creek Drive South
594 Denver, Colorado 80246-1530

595
596 Email: cdphe_haz_financialassurance@state.co.us

597
598
599 **13) The Certificate of Deposit language in Section VI of Appendix A is amended to**
600 **read as follows:**

601
602
603 **VI. Certificate of Deposit**
604

605 COLLATERAL ASSIGNMENT OF CERTIFICATE OF DEPOSIT

606 Instructions: The Colorado Department of Public Health and Environment requires an original signed
607 copy with Italic text replaced.

608 Bank and Assignor may also require original signed copies.

609 (Note: No individual certificate of deposit or the total of all deposits of the assignor at any individual
610 savings institution should exceed \$250,000 or the maximum insurable amount by F.D.I.C).

611

PART I

612

(To: be completed by Assignor)

613 The undersigned assignor (the "Assignor"), as responsible operator or owner for (*Name and Address of*
 614 *Facility*) ("the Facility"), does hereby assign, transfer to, and pledge to the Director of the Hazardous
 615 Materials and Waste Management Division of the Colorado Department of Public Health and Environment
 616 ("the department"), right, title, and interest in and to the Certificate of Deposit issued by or carried
 617 with _____, and its successors or assigns, with an office located at (*Address and*
 618 *Telephone Number of Bank or Savings Institution*) and identified as Certificate of Deposit
 619 # _____ ("CD") including its principal amount and any interest that will accrue or already has
 620 accrued on the CD ("Assignment"). This Assignment is binding on Assignor, its/his/her/their heirs,
 621 devisees, personal representatives, successors, and assigns.
 622

623 **PURPOSE**

624 This Assignment is made as, and shall constitute, collateral security for closure, post-closure, and
 625 corrective action costs associated with the Facility in accordance with section 30-20-104.5, C.R.S. and 6
 626 CCR 1007-2, § 4.0. Pursuant to 6 CCR 1007-2, § 4.5, the aforesaid costs shall be updated every five (5)
 627 years, adjusted annually to account for inflation or deflation by using the implicit price deflator for the
 628 gross domestic product or its successor as published by the U.S. Department of Commerce ("Cost
 629 Estimate"), or as requirements change at the Facility.

630 The principal amount of the CD shall be equal or greater to the current Cost Estimate. If the Cost
 631 Estimate increases to an amount greater than the principal amount of the CD, the owner or operator,
 632 during the seven (7) day grace period after the maturity date of the CD ("Grace Period"), shall contribute
 633 additional funding to the CD so that the principal amount of the CD is at least equal to the Cost Estimate.
 634 In the alternative, the Facility may implement another financial assurance mechanism as set forth in 6
 635 CCR 1007-2, § 4.6.1(D) to satisfy the disparity between the principal amount of the CD and the Cost
 636 Estimate. The owner and operator shall provide confirmation that the principal amount of the CD or the
 637 alternative financial mechanism covers the Cost Estimate to the department within ten (10) days of the
 638 aforesaid contribution or establishment of other financial assurance mechanism.

639 During every Grace Period, the owner or operator of the Facility shall increase the principal amount of the
 640 CD to account for the inflationary adjustment as determined pursuant to 6 CCR 1007-2, § 4.5 and shall
 641 provide written notice of such increase to the department within ten (10) days thereafter.

642 If the Cost Estimate decreases during the operating life of the Facility or during post-closure, the principal
 643 amount of the CD may be reduced to the amount of the Cost Estimate following the department's
 644 consultation with the local governing authority and written approval by the department.

645 Upon request by the department, the Assignor shall provide within ten (10) days to the department a
 646 complete copy of the most recent account statement of the CD, which, at a minimum, shows its principal
 647 amount and accrued interest. The Assignor also irrevocably consents and authorizes
 648 _____ to release any information regarding the CD and a recent account
 649 statement to the department if the department should contact this bank directly.
 650

651 **DURATION OF ASSIGNMENT**

652 This Assignment shall be for a period from the date hereof until the department declares this Assignment
 653 to be terminated by written notice to _____ and Assignor. Consequently, the
 654 CD shall be automatically renewed for successive new terms identical to the CD's original term unless
 655 and until _____ receives written notice of termination of the Assignment.
 656 Assignor hereby agrees to not cancel or otherwise act on the CD without the department's written

657 approval and that Assignor is liable for any fees or penalties associated with any payment of the CD to
658 the department.
659

660 **CDPHE'S RIGHT TO DRAW UPON CERTIFICATE OF DEPOSIT**

661 Following a determination by the department that the owner or operator has failed to perform final closure
662 or post-closure or corrective action in accordance with the closure or post-closure or corrective action
663 plan and other certificate of designation requirements, if applicable, the department may draw on the CD
664 without further notice to or the consent of Assignor.

665 The undersigned hereby constitutes and appoints the department as Power of Attorney of the
666 undersigned to demand, collect, and receive all amounts that may become due under the terms of this
667 Assignment, and to endorse the CD for payment or negotiation and to endorse any commercial paper
668 given in payment of the CD.
669

670 **PRESENTATION OF CERTIFICATE OF DEPOSIT**

671 The undersigned represents and warrants that a receipt for the CD is contemporaneously being delivered
672 to the department with the execution of this Assignment; that the CD is to remain assigned to the
673 department until authorized for release pursuant to 6 CCR 1007-2, § 4.4.6.13; that the CD is genuine and
674 is in all respects what it purports to be; that the undersigned is the owner thereof free and clear of all liens
675 and encumbrances of any nature whatsoever; and that the undersigned has full power, right, and
676 authority to execute and deliver this Assignment.
677

678 **NOTICES**

679 All notices required under this Assignment shall be sent to:

680
681 Financial Assurance ~~Program~~ Manager
682 Colorado Department of Public Health and Environment
683 Mail Code: ~~DEHS - A2HMWMD-SWP-B2~~
684 4300 Cherry Creek Drive South
685 Denver, Colorado 80246-1530
686

687 [Email: cdphe_haz_financialassurance@state.co.us](mailto:cdphe_haz_financialassurance@state.co.us)

688 The undersigned further represents and warrants that any assignments of this CD made while the CD is
689 pledged to the department shall be subordinate to this Assignment.
690

691 **ASSIGNOR:** (Name of the Owner or Operator of the Facility)

692
693 _____
694 Name (Print) Title
695
696 _____
697 Signature Date
698

699 PART II

700 (To be completed by bank or savings institution)

701

702 **SIGNATURE GUARANTEE AND UNDERTAKING BY THE FINANCIAL INSTITUTION**

703
704 The signature of the Assignor appearing on PART I of this document was made in the presence of the
705 undersigned officer of _____ and such signature is herewith guaranteed
706 by _____.

707
708 This institution is an association/bank doing business in this state whose accounts are insured by the
709 Federal Deposit Insurance Corporation. The above Assignment carries with it the right in and to the
710 insurance of this account provided by the Federal Deposit Insurance Corporation.

711
712 _____ hereby certifies that the CD identified on page one (1) has a
713 principal amount of \$_____ ; that the signature of the Assignor above is comparable to
714 signatures on file with _____ ; and that
715 _____ has no knowledge of any other lien, encumbrance, right,
716 hold, claim to, or obligation on the assigned CD.

717
718 The CD is issued for a period of ____ year(s), beginning on _____, _____ and shall
719 be automatically renewable for a like term and at Bank's standard interest rate in effect as of the
720 applicable renewal date for a CD of such term and principal amount, with interest automatically
721 rolling into the principal on each maturity date. In accordance with 6 CCR 1007-2, § 4.6.10(H),
722 _____ shall provide a thirty (30) day written notice of maturity of
723 the CD to the Assignor and will make a good faith effort to provide same notice to the
724 department. _____ may elect at any time not to renew the CD
725 as of a particular maturity date, subject to the requirement that, at least sixty (60) days before
726 the applicable maturity date, _____ shall notify the Assignor and
727 the department by certified mail or other trackable delivery service, of such decision. Such
728 notice shall be effective upon receipt. Upon maturity of the CD following
729 _____'s notice of non-renewal,
730 _____ shall disburse all funds as directed by the department.

731
732 _____ understands and agrees that the procedures governing
733 the forfeiture of this CD are specified in 6 CCR 1007-2, § 4.6.10(J), and that, upon
734 _____'s receipt of written notice from the department that the
735 Facility has not complied with its requisite final closure or post-closure or corrective action plan,
736 _____ will forward to the department within ten (10) days the
737 principal amount of the CD plus any accrued interest, less any early withdrawal penalty, without
738 further notice to the Assignor.

739
740 On this date, the maximum penalty for early withdrawal of this Certificate of Deposit is:
741 \$_____. Any penalty shall be deducted from interest
742 accrued, and if to the extent that such amount is insufficient, shall be deducted from the
743 principal of the CD.

744
745 _____ herein states that so long as this agreement remains in
746 effect, it has no other interests in this CD other than its sole responsibility to act as the agent for
747 the purpose of holding the CD for the department's exclusive use until otherwise approved by
748 the department in writing, and agrees not to act on the CD except as otherwise provided in this
749 agreement or pursuant to written approval by the department.

750 _____ agrees that any claim or lien, which may result from this
751 Assignment, or which it may acquire in the future against the Assignor, will be subordinate and
752 junior to the department's interest in the CD.

753
754 _____ agrees that except as otherwise provided in this
755 agreement, no modification will be made to the terms and conditions of the CD which would
756 affect the interest of the department under this assignment, without first notifying and obtaining
757 written approval from the department. Written notice of any proposed modification or change in
758 the terms or conditions of this CD shall be provided to the Financial Assurance Program
759 Manager at the address listed in PART I above.

760
761 _____ understands that this Certificate of Deposit is being
762 pledged to the department by the Assignor as financial assurance under 6 CCR 1007-2, § 4.0.
763 _____ has retained a copy of this Assignment and has properly
764 documented this Assignment in the appropriate records of this institution.

765
766
767 _____
768 Name of Financial Institution

769
770
771 _____
772 Name (Print) Title

773
774 _____
775 Signature Date

776
777
778 Accepted By:
779 Colorado Department of Public Health and Environment

780
781
782 _____
783 Signature Date
784 Division Director
785 Hazardous Materials and Waste Management Division

786
787

788 **14) New Cash Deposit Holding Account language is added to Section VII of**
789 **Appendix A to read as follows:**

790

791

792

VII. Cash Deposit Holding Account

793

794

Cash Deposit Holding Account

795

796

A Cash Deposit Holding Account, as specified in these regulations, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

797

798

799

Cash Deposit Agreement

800

801

Date executed: _____

802

803

Principal: [legal name and business address of owner or operator]

804

805

Type of organization: [insert "individual", "joint venture", "partnership", or "corporation"]

806

807

808

Name, address, and closure and/or post-closure and/or corrective action amount(s) for each facility guaranteed by this bond: [Indicate facility location and closure and/or post-closure and/or corrective action amount separately]

809

810

811

812

Whereas, the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division ("the department"), a regulatory agency of the State of Colorado, has established certain regulations requiring that an owner or operator ("principal") of a solid waste disposal site and facility shall provide assurance that funds will be available when needed,

813

814

815

816

817

Whereas said principal is required, under the Colorado Solid Wastes Disposal Sites and Facilities Act and the Colorado Solid Waste Regulations (6 CCR 1007-2, Part 1) § 4.1.2 to establish financial assurance in order to own or operate each solid waste management facility or corrective action site identified above, and

818

819

820

821

822

Now, therefore, the principal shall provide funding directly to the department in the amount(s) identified above for the facility, in the amount of \$ _____.

823

824

825

The Principal may only request the release of funds held in the cash deposit account after an alternate mechanism is approved in writing by the department, if the facility is released by the department in writing from the financial assurance requirement, or if the Principal submits documentation that a lessor or greater amount of financial assurance will be required at the facility and the department agrees to the changed amount in writing.

826

827

828

829

830

831

All requirements of Section 4 of the Solid Waste Regulations, 6 CCR 1007-2, Part 1, apply to the funds held in this Cash Deposit Holding Account.

832

833

834

All notices under this agreement shall be sent to:

835

836

Financial Assurance Manager

837

Colorado Department of Public Health and Environment

838

Mail Code: HMWMD-DEHS - A2

839 4300 Cherry Creek Drive South
840 Denver, Colorado 80246-1530

841
842 Email: cdphe_haz_financialassurance@state.co.us
843

844 The persons whose signatures appear below hereby certify that they are authorized to execute this
845 agreement on behalf of the principal.
846

847
848 Principal _____

849
850 [Signature(s)] _____

851
852 [Name(s) and Title(s)] _____