



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 these amendments are to amend Section 4.6.7 Local Government Financial Test and delete Section 4.6.9 Local Government Guarantee. Currently, local governments are required to submit multiple forms of documentation which determines whether they pass or fail the financial test. These proposed changes provide clarity and remove irrelevant language found in the current regulations. These proposed changes will enhance the efficiency of the submission/review process and will help to reduce the cumbersome administrative processes that burden local government owners and operators.

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 April 14, 2020. 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 April 25, 2020.

The proposed rulemaking materials may also be accessed at <https://www.colorado.gov/pacific/cdphe/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, May 6, 2020, 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, May 19, 2020
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

-OR-

Due to possible social distancing requirements due to COVID-19, the meeting will be held online only at:

https://zoom.us/meeting/register/v5Yvdeusrz0vvlb7_LvFlaHucqX8a1LEQ

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

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



Brandy Valdez Murphy, Administrator



1 **DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

2

3 **Solid and Hazardous Waste Commission/Hazardous Materials and**
4 **Waste Management Division**

5

6 **6 CCR 1007-2**

7 **PART 1 REGULATIONS PERTAINING TO SOLID WASTE SITES AND FACILITIES**

8

9

10 **Amendments to Section 4 Financial Assurance Requirements**

11

12

13 **1) The Table of Contents for Section 4 is being amended by deleting and reserving the**
14 **listing for Section 4.6.9 (Local Government Guarantee) to read as follows:**

15

16 **SECTION 4 FINANCIAL ASSURANCE REQUIREMENTS**

17

18 *****

19 **4.6 Financial Assurance Requirements**

20

21 *****

22

23 **4.6.8 Corporate Guarantee**

24 **4.6.9 ~~Local Government Guarantee~~Reserved**

25 **4.6.10 Certificates of Deposit**

26

27 *****

28

29

30 **2) Section 4.6.1 is being amended by revising paragraph (D) to read as follows:**

31

32 **4.6 Financial Assurance Requirements**

33

34 **4.6.1: General Requirements**

35

36 (A) All owners and operators must establish financial assurance for closure and post-closure of, and if
37 necessary corrective action at, the solid waste disposal site and facility in the amounts determined by
38 the cost estimates required in Sections 4.2 through 4.5 of these regulations.

39

40 (B) The department shall Consult with the local governing authority as required by these regulations
41 in the following circumstances:

42
43 (1) Prior to accepting a solid waste disposal site and facility's initial financial assurance via an
44 application for a Certificate of Designation or other application or department requirement.

45
46 (2) Prior to accepting initial financial assurance for corrective action.

47
48 (3) Prior to terminating a site and facility's financial assurance pursuant to Section 4.6.13.

49
50 (4) As necessary in Section 4.6.12.

51
52 (C) No local governing authority shall require an applicant for a certificate of designation to obtain any
53 financial assurance mechanism or amount in addition to that required by the provisions of these
54 regulations.

55
56 (D)The following are allowable financial assurance mechanisms and instruments that an owner or
57 operator may use, alone or in combination, subject to approval by the department:

58
59 (1) Trust fund

60 (2) Letter of credit

61 (3) Surety bond

62 (4) Insurance

63 (5) Corporate financial test

64 (6) Local government financial test

65 (7) Corporate guarantee

66 ~~(8) Local government guarantee~~

67 ~~(9) Certificate of Deposit~~

68
69 (E) All owners and operators shall annually provide, concurrently to the department and the local
70 governing authority, proof of sufficiency of the financial assurance required by these regulations.

71
72
73 **3) Section 4.6.7 (Local Government Financial Test) is being amended to read as follows:**

74
75 **4.6.7 Local Government Financial Test**

76
77 (A) Subject to department approval, an owner or operator may demonstrate financial assurance
78 at least equal to the cost estimates for closure, post-closure care and corrective action if the
79 owner or operator is a local government, ~~and meets the following:~~ The owner or operator must
80 prepare its financial statements and have them audited in conformity with generally accepted
81 accounting principles for governments and have its financial statements audited by an
82 independent certified public accountant.

83
84 ~~(1) The owner or operator must satisfy one of the following two conditions:~~

85
86 ~~(a) If the owner or operator has outstanding, rated, general obligation bonds, that are not~~
87 ~~secured by insurance, a letter of credit, or other collateral or guarantee, it must have a~~
88 ~~current rating of Aaa, Aa, or A, as issued by Moody's, or AAA, AA, or A, as issued by~~
89 ~~Standard and Poor's on all outstanding general obligation bonds; or,~~

90
91 ~~(b) The owner or operator must satisfy each of the following financial ratios based on the~~
92 ~~owner or operator's most recent audited annual financial statement:~~

93
94 (i) ~~A ratio of cash plus marketable securities to total expenditures greater than or~~
95 ~~equal to 0.05; and~~

96
97 (ii) ~~A ratio of annual debt service to total expenditures less than or equal to 0.20; and~~

98
99 (2) ~~The owner or operator must prepare its financial statements and have them audited in~~
100 ~~conformity with generally accepted accounting principles for governments and have its~~
101 ~~financial statements audited by an independent certified public accountant.~~

102
103 (3) ~~A local government is not eligible to assure its obligations under this Section 4.6.7 if it:~~

104
105 (a) ~~Is currently in default on any outstanding general obligation bonds, or~~

106
107 (b) ~~Has an outstanding general obligation bond rated lower than Baa as issued by~~
108 ~~Moody's or BBB as issued by Standard and Poor's, or~~

109
110 (c) ~~Operated at a deficit equal to five percent or more of total annual revenue in each of~~
111 ~~the past two fiscal years, unless the owner or operator demonstrates, through the~~
112 ~~submission of an auditor's statement to the department, that this deficit was caused by~~
113 ~~expenditures from specific funds previously set aside and budgeted in prior fiscal years~~
114 ~~and not by general expenditures for the applicable fiscal year exceeding total annual~~
115 ~~revenue by an amount equal to or greater than five percent, or~~

116
117 (d) ~~Receives an adverse opinion, disclaimer of opinion, or other qualified opinion from~~
118 ~~the independent certified public accountant (or appropriate State agency) auditing its~~
119 ~~financial statement as required under Subsection 4.6.7(A)(2). However, the department~~
120 ~~may evaluate qualified opinions on a case-by-case basis and allow use of the financial~~
121 ~~test in cases where the department deems the qualification insufficient to warrant~~
122 ~~disallowance of the test.~~

123
124 **(B) Public Notice Component**

125
126 The local government owner or operator must place a reference to the closure, post-closure care,
127 or corrective action costs ~~assured through the financial test~~ into its next comprehensive annual
128 financial report (CAFR) or audited financial statement after the effective date of this Section or
129 prior to the initial receipt of waste at the facility, whichever is later. Disclosure must include the
130 nature and source of closure and post-closure care requirements, the reported liability at the
131 balance sheet date, the estimated total closure and post-closure care costs remaining to be
132 recognized, the percentage of landfill capacity used to date, and the estimated landfill life in
133 years. A reference to corrective action costs must be placed in the CAFR ~~not later than one~~
134 ~~hundred twenty (120) days~~ after the corrective action remedy has been selected in accordance
135 with the requirements of these regulations. ~~For the first year after the financial test is issued to~~
136 ~~assure costs at a particular facility, T~~he reference may instead be placed in the operation record
137 until issuance of the next available CAFR if timing does not permit the reference to be
138 incorporated into the most recently issued CAFR or budget. For closure and post-closure costs,
139 conformance with Government Accounting Standards Board Statement 18 assures compliance
140 with this public notice. The reference must include the amount of each cost-estimate and the
141 year(s) in which the local government expects these costs to be incurred. References in the
142 budget must occur as budgeted line items if the activities are to occur in the period covered by

143 the budget, but may appear in a supplemental data section if the activities will not occur until after
144 the period covered by the budget.

145
146 **(C) Recordkeeping and Reporting Requirements**
147

148 (1) The local government owner or operator must place the following items in the facility's
149 operating record and submit to the Department within seven (7) months following the close of
150 the owner or operator's fiscal year deliver a copy to the department:

151
152 (a) A letter signed by the local county commissioners or the governing body of the
153 appropriate municipality government's chief financial officer that lists all the current cost
154 estimates covered by a financial test, as described in Subsection 4.6.7(B)

155
156 (i) ~~Lists all the current cost estimates covered by a financial test, as described in~~
157 ~~Subsection 4.6.7(B);~~

158
159 (ii) ~~Provides evidence and certifies that the local government meets the conditions of~~
160 ~~Subsections 4.6.7(A)(1)(a), 4.6.7(A)(1)(b), and 4.6.7(A)(1)(c); and~~

161
162 (iii) ~~Certifies that the local government meets the conditions of Subsection 4.6.7(D).~~

163
164 (b) The local government's independently audited year-end financial statements for the
165 latest fiscal year, including the unqualified opinion of the auditor who must be an
166 independent, certified public accountant or an appropriate State agency that conducts
167 equivalent comprehensive audits; and

168
169 (c) ~~A report to the local government from the local government's independent Certified~~
170 ~~Public Accountant based on performing agreed upon procedures relative to the financial~~
171 ~~ratios required by Subsection 4.6.7(A)(1), if applicable, and the requirements of~~
172 ~~Subsections 4.6.7(A)(2) and 4.6.7(A)(3). The Certified Public Accountant report should~~
173 ~~state the procedures performed and the Certified Public Accountant findings.~~

174
175 (cd) A copy of the comprehensive annual financial report used to comply with this section
176 ~~and~~ or certification that the requirements of General Accounting Standards Board
177 Statement 18 have been met.

178
179 (d) Whenever the financial assurance cost estimates are replaced (typically every five
180 years per Section 4.5.3 of these regulations), the owner or operator must ensure that the
181 updated costs are included in the next CAFR. If the effective date of the financial
182 assurance cost estimate replacement is after the balance sheet date of the next CAFR,
183 the change to the liability associated with landfill closure and post closure care costs may
184 be reported in the CAFR issued the following year.

185
186 (2) ~~The items required in Subsection 4.6.7(C)(1) must be placed in the facility operating~~
187 ~~record as follows:~~

188
189 (a) ~~In the case of closure and post-closure care, prior to the initial receipt of waste at the~~
190 ~~facility, or~~

191
192 (eb) In the case of corrective action, these cost estimates will need to be included in the
193 next available CAFR not later than one hundred twenty (120) days after the corrective

194 ~~action remedy is selected~~ in accordance with the requirements of Section 2.2 and
195 Appendix B6.
196

197 ~~(3) After the initial placement of the items in the facility's operating record, the local~~
198 ~~government owner or operator must update the information and place the updated~~
199 ~~information in the operating record within six (6) months following the close of the owner or~~
200 ~~operator's fiscal year, or as otherwise agreed to by the department.~~
201

202 (24) The local government owner or operator is no longer required to meet the requirements
203 of Subsection 4.6.7(C) when: the owner or operator is released from the requirements of this
204 Section in accordance with Section 4.6.13.
205

206 ~~(a) The owner or operator substitutes alternate financial assurance as specified in~~
207 ~~Subsection 4.6.7(C)(5); or~~
208

209 ~~(b) The owner or operator is released from the requirements of this Section in~~
210 ~~accordance with Section 4.6.13.~~
211

212 ~~(5) A local government must satisfy the requirements of the financial test at the close of each~~
213 ~~fiscal year. If the local government owner or operator no longer meets the requirements of the~~
214 ~~local government financial test it must, within two hundred ten (210) days following the close~~
215 ~~of the owner or operator's fiscal year, obtain alternative financial assurance that meets the~~
216 ~~requirements of Section 4, place the required submissions for that assurance in the operating~~
217 ~~record, and notify the department that the owner or operator no longer meets the criteria of~~
218 ~~the financial test and that alternate assurance has been obtained.~~
219

220 (36) The department, based after reviewing the CAFR submitted by the local government
221 owner or operator, on a reasonable belief that the local government owner or operator may no
222 longer meet the requirements of the local government financial test, may require additional
223 reports of financial condition from the local government at any time. If the department finds,
224 on the basis of such reports or other information, that the owner or operator no longer
225 maintains a positive net position at the end of the most recent fiscal year, meets the
226 requirements of the local government financial test, the local government must provide
227 alternate financial assurance in accordance with Subsection 4.6.7(C)(5).
228

229 ~~(D) Calculation of Costs to be Assured: The portion of the closure, post-closure, and corrective~~
230 ~~action costs for which an owner or operator can assure under this paragraph is determined as~~
231 ~~follows:~~
232

233 ~~(1) If the local government owner or operator does not assure other environmental~~
234 ~~obligations through a financial test, it may assure closure, post-closure, and corrective action~~
235 ~~costs that equal up to 43 percent of the local government's total annual revenue.~~
236

237 ~~(2) If the local government assures other environmental obligations through a financial test it~~
238 ~~must add those costs to the closure, post-closure, and corrective action costs it seeks to~~
239 ~~assure under this Subsection 4.6.7(D). The total of all environmental obligations must not~~
240 ~~exceed 43 percent of the local government's total annual revenue.~~
241

242 ~~(3) The owner or operator must obtain an alternate financial assurance instrument for those~~
243 ~~costs that exceed the limits set in Subsections 4.6.7(D)(1) and (2).~~

244 **4) Section 4.6 is amended by deleting and reserving Section 4.6.9 to read as follows:**

245 **4.6.9 Local Government Guarantee Reserved**

246
247 ~~(A) Subject to department approval, an owner or operator may meet the requirements of this~~
248 ~~Section by obtaining a written guarantee provided by a local government. The guarantor must~~
249 ~~meet the requirements of the local government financial test in Section 4.6.7, and must comply~~
250 ~~with the terms of a written guarantee.~~

251
252 ~~(B) **Terms of the Written Guarantee.** The guarantee must be effective before the initial receipt~~
253 ~~of waste or before the effective date of this Section, whichever is later, in the case of closure,~~
254 ~~post-closure care, or no later than one hundred twenty (120) days after the corrective action~~
255 ~~remedy has been selected in accordance with the requirements of these regulations. The~~
256 ~~guarantee must provide that:~~

257
258 ~~(1) If the owner or operator fails to perform closure, post-closure care, and/or corrective~~
259 ~~action of a facility covered by the guarantee, the guarantor will:~~

260
261 ~~(a) Perform, or pay a third party to perform, closure, post-closure care, and/or corrective~~
262 ~~action as required; or~~

263
264 ~~(b) Establish a fully funded trust fund as specified in Section 4.6.2 in the name of the~~
265 ~~owner or operator.~~

266
267 ~~(2) The guarantee will remain in force unless the guarantor sends notice of cancellation by~~
268 ~~certified mail, or other trackable delivery service, to the owner or operator and to the~~
269 ~~department. Cancellation may not occur, however, during the one hundred twenty (120) days~~
270 ~~beginning on the date of receipt of the notice of cancellation by both the owner or operator~~
271 ~~and the department, as evidenced by the return receipts.~~

272
273 ~~(3) If a guarantee is canceled, the owner or operator must, within ninety (90) days following~~
274 ~~receipt of the cancellation notice by the owner or operator and the department, obtain~~
275 ~~alternate financial assurance, place evidence of that alternate financial assurance in the~~
276 ~~facility operating record, and notify the department. If the owner or operator fails to provide~~
277 ~~alternate financial assurance within the 90-day period, the guarantor must provide that~~
278 ~~alternate assurance within one hundred twenty (120) days following the guarantor's notice of~~
279 ~~cancellation, place evidence of the alternative assurance in the facility operating record, and~~
280 ~~notify the department.~~

281
282 ~~(C) **Recordkeeping and Reporting**~~

283
284 ~~(1) The owner or operator must place a certified copy of the guarantee along with the items~~
285 ~~required under Section 4.6.7 into the site and facility's operating record before the initial~~
286 ~~receipt of waste or before the effective date of this section, whichever is later, in the case of~~
287 ~~closure, post-closure care, or no later than one hundred twenty (120) days after the corrective~~
288 ~~action remedy has been selected in accordance with the requirements of these regulations.~~

289
290 ~~(2) If a local government guarantor no longer meets the requirements of Section 4.6.9, the~~
291 ~~owner or operator must, within ninety (90) days following the close of the guarantor's fiscal~~
292 ~~year, obtain alternative assurance, place evidence of the alternate assurance in the facility~~
293 ~~operating record, and notify the department. If the owner or operator fails to provide alternate~~

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~~financial assurance within the 90-day period, the guarantor must provide that alternate assurance within next thirty (30) days.~~

~~(3) A local government guarantor must satisfy the requirements for the local government guarantee at the close of each fiscal year. A demonstration that the local government meets all requirements of the local government guarantee under this section of the regulations must be placed in the operating records and with the department within one hundred eighty (180) days following the close of the guarantor's fiscal year.~~

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Solid and Hazardous Waste Commission Hazardous

Materials and Waste Management Division 6 CCR 1007-2

STATEMENT OF BASIS AND PURPOSE AND SPECIFIC STATUTORY AUTHORITY FOR

Amendment to the Regulations Pertaining to Solid Waste Sites and Facilities (6 CCR 1007-2, Part 1) - Section 4 (Table of Contents), Section 4.6.7 (Local Government Financial Test) and Section 4.6.9 (Local Government Guarantee).

Basis and Purpose

I. Statutory Authority

These amendments to 6 CCR 1007-2, Part 1 are made pursuant to the authority granted to the Solid and Hazardous Waste Commission in § 30-20-104.5, C.R.S and § 30-20-109, C.R.S.

II. Purpose of revised regulations:

The purpose of the current Part 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/or operators to estimate the costs of closure, post-closure and corrective action assure financial responsibility for those costs through any of nine mechanisms: trust fund, letter of credit, surety bond, insurance, corporate financial test, local government financial test, corporate guarantee, local government guarantee, and certificate of deposit.

The purpose of revising 6 CCR 1007-2 Part 1 (the Regulations) is to provide clarity and remove language found to be irrelevant in subsections.

Discussion of Regulatory Proposal

Modifications to Section 4.6.7 - Local Government Financial Test

Section 4.6.7 allows local governments that own and/or operate a solid waste disposal site to use a financial test to demonstrate financial assurance for closure, post-closure and corrective action cost up to a specified maximum limit. As it currently stands, local governments are required to submit multiple forms of documentation which determines whether they pass or fail the financial test. To simplify this process, the CDPHE will require the submission of the Comprehensive Annual Financial Report (CAFR). The overall suggested changes will enhance the efficiency of the submission/review process and the cumbersome administrative processes that burden local government owners and operators.

The proposed rule changes consist of amending and clarifying criteria associated with the four components outlined below:

1. Financial Component

Based on this section, the local government must satisfy either the bond rating requirement or the financial ratio alternative. The proposed changes would be to eliminate the subsections (1)(a)(b)(i)(ii) and (3)(a)(b)(c)(d).

2. Public Notice Component

This section states that the local government must disclose, within its annual budget or financial report, the estimated costs of its closure, post-closure, and corrective action obligations. The proposed changes are to provide clarity and remove language found to be irrelevant in subsection (B).

3. Recordkeeping and Reporting Requirements

A local government must review its financial situation every year and must demonstrate they have the means for closure, post-closure, and corrective action costs. The local government must also place this information into the facilities operating record. The proposed changes are to provide clarity and remove language to be found irrelevant in subsection (C).

4. Calculation of Cost to be Assured

Currently, the financial test limits the amount of closure, post-closure, and corrective action costs for which a local government may demonstrate financial assurance through the use of the test, in proportion to a local government's financial capacity as represented by its annual revenues. The proposed changes would be to eliminate the subsections (D)(1)(2)(3).

Eliminate Section 4.6.9 - Local Government Guarantee

Section 4.6.9 allows local governments to guarantee the closure, post-closure and corrective action costs of other solid waste disposal site owners and operators through the use of the financial test. The local government guarantor would assume responsibility for the obligations of the owner or operator if the owner or operator fails to do so, and provide proof that it passes the financial test requirements. However, if a privately owned facility fails to operate its landfill appropriately, this would be a financial risk to the local government. The proposed changes would be to eliminate this entire section.

Description of Local Government Involvement in the Stakeholder Process

Executive Order D 2011-005 (EO5), "Establishing a Policy to Enhance the Relationship between State and Local Government" requires state rulemaking agencies to consult with and engage local governments prior to the promulgation of any rules containing mandates. Stakeholders were notified by e-mail of the revision of these regulations. We hosted one Stakeholder meeting to discuss the proposed changes on January 16, 2020. Stakeholders were given an opportunity to provide any comments. These amendments would impact local government and municipalities that own and operate a solid waste disposal site and facility, and currently use the local government financial test (Section 4.6.7) or local government guarantee (Section 4.6.9) of the Solid Waste Regulations.

Issues Encountered During Stakeholder Process:

We received positive feedback on the proposed changes from the Stakeholders. There was one suggestion to change the submission deadline from six to seven months after the local government fiscal year-end.

Regulatory Alternatives

No other regulatory alternatives were evaluated.

Cost/Benefit Analysis

A cost-benefit analysis will be performed if requested by the Colorado Department of Regulatory Agencies.