

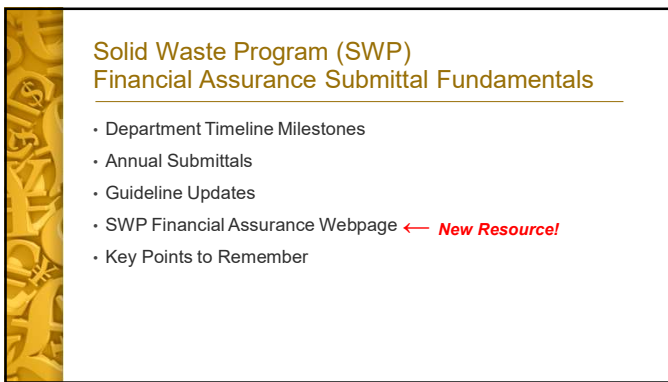
Financial Assurance Submittal Fundamentals

NDDEQ – Solid Waste Program
May 2022

NORTH Dakota | Environmental Quality
Be Legendary.

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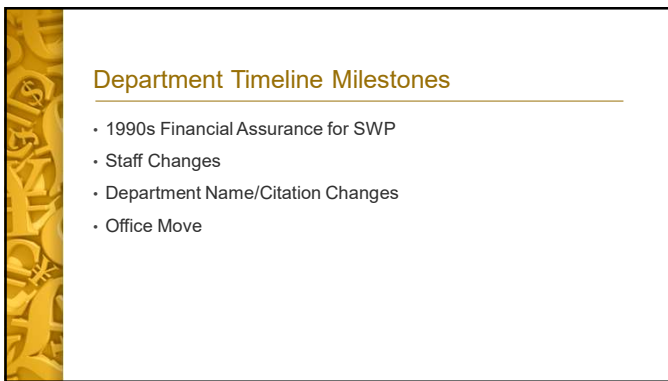


Solid Waste Program (SWP)
Financial Assurance Submittal Fundamentals

- Department Timeline Milestones
- Annual Submittals
- Guideline Updates
- SWP Financial Assurance Webpage ← **New Resource!**
- Key Points to Remember

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Department Timeline Milestones

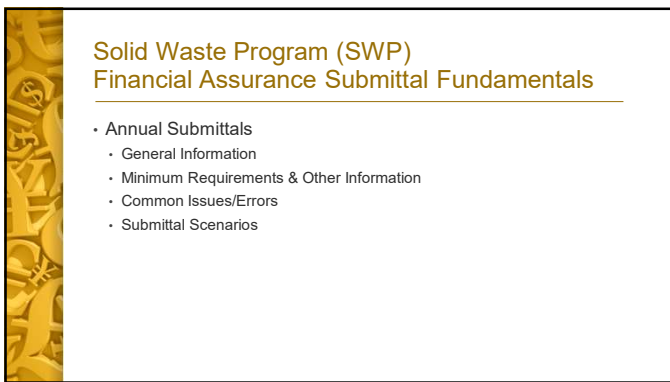
- 1990s Financial Assurance for SWP
- Staff Changes
- Department Name/Citation Changes
- Office Move

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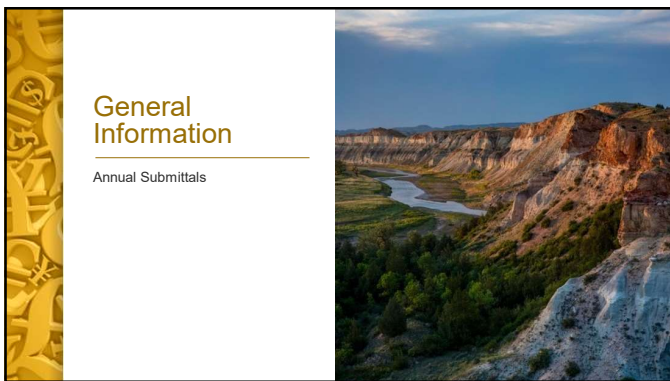
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Annual Submittals – General Information

- Some Department Basics
- Facility Financial Assurance (FA) Contacts
- Annual Cost Estimate Adjustments

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Some Department Basics

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Annual Submittals – General Information


- The Department has implemented several new processes and additional resources to help streamline the annual submittals and reviews.
- *Why?*
 - There are currently 52* permits within the Solid Waste Program that require financial assurance and at least 3* new permits in process.
 - One Solid Waste Staff Member is assigned to address all financial assurance annual submittals with some assistance from facility-assigned SWP staff.
- On-going process development

*As of 5/4/22

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Annual Submittals – General Information

- North Dakota Administrative Code (NDAC) Chapter 33.1-20-14 Financial Assurance Requirements
- Financial Assurance (FA) is due no later than August 31 of each year (NDAC Section 33.1-20-14-04)
 - Each annual submittal must include current information on several items



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Annual Submittals – General Information

- NDAC Subsection 33.1-20-14-04(2)
 - Updated inflation adjusted closure cost estimate and postclosure cost estimate;
 - A summary of financial assurance in place;
 - The submittal date of the most recent detailed cost estimates for closure and postclosure;
 - The maximum allowed open area and quantities;
 - Current estimated open area and quantities; and
 - The mechanisms in use.

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Annual Submittals – General Information

- The Department will have a fillable form available on the webpage to fulfill NDAC Subsection 33.1-20-14-04(2)

Why?

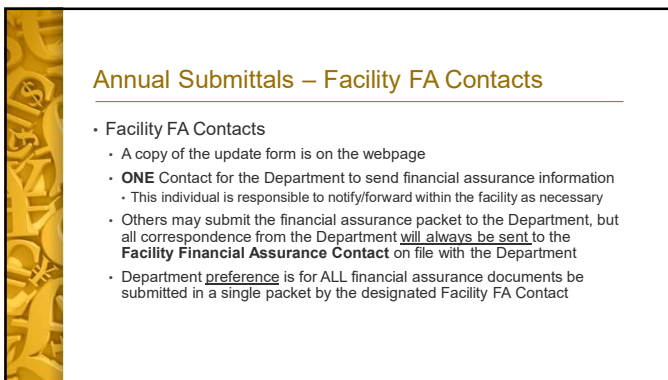
- *Uniformity in information format is essential to streamline this aspect of the reviews*

- A form **must** be submitted for each permit

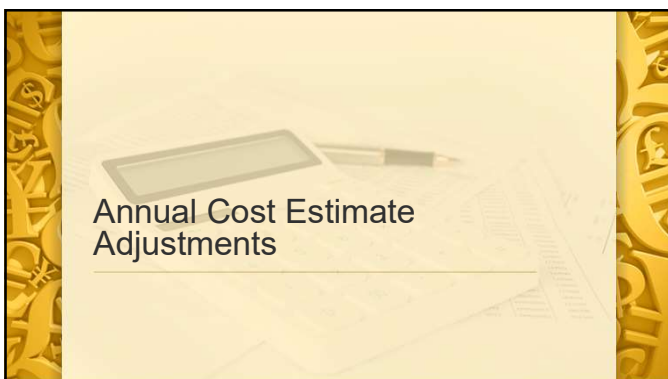
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Annual Submittals – Annual Cost Estimate Adjustments

- Annual Cost Estimate Adjustments – Inflation Factor
 - Derived from federal statistics
 - Price Deflator for Gross National Product published by US Department of Commerce *Survey of Current Business*
 - The Department has no control on the release of the data!
 - Solid Waste Program Financial Assurance must be in current dollars (NDAC Section 33.1-20-14-02) **therefore** the first quarter needs to complete before we can get the data for the calculation.
 - Department release of annual memos: plan for the beginning of June each year.

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Annual Submittals – Annual Cost Estimate Adjustments

- Annual Cost Estimate Adjustments – Detailed Cost Estimates
 - Solid Waste Program (SWP) Financial Assurance (FA) must be in current dollars (NDAC Section 33.1-20-14-02) → two options
 - Apply Inflation Factor to previous year's numbers
 - Provide New cost estimate in current dollars
 - A "New" cost estimate (even if submitted in the current year) utilizing the previous year's bid prices will still need to utilize the inflation factor

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Minimum Requirements & Other Information

Annual Submittals



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Annual Submittals Minimum Requirements & Other Information

- The following information illustrates the minimum requirements for each mechanism.
- It **also** briefly outlines some submittal variables that can be associated with each mechanism and require additional items.
- Many facilities utilize more than one mechanism. Be sure to carefully review and correlate your facility's minimum needs based on the mechanism(s) you utilize!
 - For Closure/Postclosure
 - For Liability Coverage

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Annual Submittals

- Cover Letter
 - Please identify " 20XX Annual Solid Waste Program Financial Assurance"
 - A cover letter should contain a list/bullets of **ALL** submittal elements!
 - Explanation if cost estimates show a change of $\pm 10\%$
- Annual Financial Assurance Summary Form (*New this year!*)
 - NDAC Subsection 33.1-20-14-04(2) requirements
 - Completed per permit
- Updated Mechanism(s) Items

Note: All submittal elements should come from the Facility as one packet.

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Annual Submittals – The Mechanisms

- The following financial assurance mechanisms are allowed (NDAC Subsection 33.1-20-14-03(4)):
 - Trusts*
 - Bond*
 - Irrevocable Letter of Credit (LOC)*
 - Insurance Policy*
 - Financial Test
 - Corporate Guarantee

*Multiple mechanisms may be established per facility to satisfy financial assurance requirements. (NDAC Subsection 33.1-20-14-03(3))

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Annual Submittals – The Mechanisms

- Some Typical Combinations and Stand-alone Mechanisms
 - Insurance Policy
 - Funded Trust
 - Financial Test
 - Financial Test / Corporate Guarantee
 - Standby Trust with Bond and/or Letter of Credit
 - Funded Trust with Bond and/or Letter of Credit

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Annual Submittals – Trusts

- Two types of Trusts*
 - Funded Trust
 - Standby Trust
- Updated Schedule A
- Updated Schedule B

*Guideline 18: Closure/Postclosure
*Guideline 19: Liability Coverage

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Annual Submittals – Trusts (cont.)

- *Why annual updates on these?*
- Schedule A contains the inflation-adjusted closure, postclosure, and total cost estimate numbers (per permit). This needs to reflect the current dollars.
- Schedule B contains the mechanism reference(s) and the cost estimate funding from that/those reference(s). This needs to cover the current dollars that are listed in Schedule A.

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Annual Submittals – Trusts (cont.)

- **If** there is a change in Department Staff (Division of Waste Management Director), **OR** a change in Facility staff listed, **OR** a change in address: Also need an Updated Exhibit A
- *Why?*
- This Exhibit identifies the person(s) able to issue instructions to the Trustee (Name, Title, Address)
 - Charles Hyatt **OR** Department Authorized Staff
 - Division Director, Division of Waste Management – North Dakota Department of Environmental Quality
 - 4201 Normandy Street, Bismarck, ND 58503-1324

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Annual Submittals – Trusts (cont.)

EXAMPLE:

EXHIBIT A

The following persons, acting singly or collectively, shall have the right to issue instructions to the Trustee pursuant to Section 14 of the Agreement:

Original Trust Agreement date: [xx/xx/xxxx]
Exhibit Revision date: [xx/xx/xxxx]

Name	Title	Address
Charles Hyatt	Division Director, Division of Waste Management – North Dakota Department of Environmental Quality	4201 Normandy Street Bismarck, ND 58503-1324

[Other Authorized Name] [Title] [Address]

[Bracketed items to be replace with relevant information, if applicable, and brackets deleted]

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Annual Submittals – Trusts (cont.)

- **If** the facility wishes to change the Trust company*:
 - New Trustee must be able to do business in ND.
 - Trust operations must be regulated & examined by a federal or state agency.
 - New trust **must** be in place **before** the old trust will be released by the Department.

*This can be addressed at any time of year. If addressed during annual submittal, be sure the inflation factor adjusted amounts are utilized.

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Annual Submittals – Trusts (cont.)

- To change the Trust company:
 - Option 1: New Trust documentation
 - Preferred Department verbiage in Guideline 18
 - The old trust will be released via written correspondence by the Department after the New Trust is set up, and any correlating mechanism updates, have been completed.
 - Option 2: Section 13 Successor Trustee (within preferred trust verbiage)
 - Typically handled with a series of letters

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Annual Submittals – Bonds

- A bond for Closure/Postclosure Care must be associated with a Standby Trust* (NDAC Subdivision 33.1-20-14-07(2)(c))
- If continuing the same bonding company
 - Amendment/rider updating the costs
 - Any other needed updates (i.e., company name, Department updates)
 - Standby Trust updates

*Bond for industrial liability coverage can be stand-alone (Guideline 19)

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Annual Submittals – Bonds (cont.)

- If changing the bonding company*
 - New Bond
 - Standby Trust update(s)
 - Schedule B must be updated
 - Schedule A may or may not, depending on timing with annual inflation update
 - The old bond will be released via written correspondence by the Department after both the New Bond and Standby Trust update(s) have been completed.

*This can be addressed at any time of year. If addressed during annual submittal, be sure the inflation factor adjusted amounts are utilized.

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Annual Submittals – Irrevocable Letter of Credit

- A Letter of Credit (LOC) (Closure/Postclosure Care) must be associated with a Standby Trust (NDAC Subdivision 33.1-20-14-07(3)(d))*
- If continuing with the same Bank**
 - LOC update (See next slide)
 - Standby Trust updates

* LOC for industrial liability coverage can be stand-alone or associated with a stand-by trust (Guideline 19)

**This can be addressed at any time of year. If addressed during annual submittal, be sure the inflation factor adjusted amounts are utilized.

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Annual Submittals – Irrevocable LOC (cont.)

- Due to the nature of a Letter of Credit (LOC), the Department will not release the original letter without its replacement in hand. Also, a Bank will typically not release a new LOC until they have the original in hand.
 - Option 1: A courier (typically from the Bank) must coordinate a time to meet with Department staff at the Department's office to exchange the old letter for the new one.
 - Option 2: An original amendment to the original letter (held at the Department), which updates the applicable dates and costs may be submitted. These amendments are typically just mailed to the Department.

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Annual Submittals – Insurance Policy

- Amendment/rider to increase costs as per updated Closure/Postclosure care costs.

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Annual Submittals – Financial Test

- Financial Test
 - Alternate I *or* Alternate II
 - Recent updates (Guidelines 18 & 19) as of 05/2022 to better reflect the Solid Waste Program rules
- Copy of Independent Certified Public Accountant's Report
- Report from Independent Certified Public Accountant to Owner or Operator

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Annual Submittals – Corporate Guarantee

- All items listed above for the Financial Test *plus:*
- Written corporate guarantee

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Common Issues/Errors

Annual Submittals



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Common Issues/Errors - General

- Math
- Department Name, Citations, and Address not updated
- Solid Waste Program Contact has changed!
- Other annual letter updates (i.e. year)
- Not including all listed submittal items
- Clarity where the submittal needs to go
 - Solid Waste Program vs. other Division of Waste Management Programs

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Common Issues/Errors – NDDEQ Name & Citations

From:	To:
• North Dakota Department of Health (NDDoH)	• North Dakota Department of Environmental Quality (NDDEQ)
• NDCC Chapter 23-29	• NDCC Chapter 23.1-08
• NDAC Article 33-20	• NDAC Article 33.1-20

**Be sure to check ALL pages in your documents!*

**Be sure to address ALL articles, chapters, sections, subsections, et al.*

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Common Issues/Errors – Solid Waste Program NEW FA Contact

- Solid Waste Program Financial Assurance Contact:
A.J. Delzer – Bismarck Office
701-328-5282
adelzer@nd.gov
- Mailing address:

NDDEQ
Attn: Solid Waste Program ← **VERY Important!**
4201 Normandy St.
Bismarck, ND 58503-1324

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Common Issues/Errors – Trusts

- Addition errors and/or juxtaposing numbers
 - Schedule A: separate Closure and Postclosure are not listed
 - Schedule A: multiple permits are combined into one Closure listing and one Postclosure listing with a grand total of all combined
 - Schedule A: the Closure and Postclosure don't add up to the Total (typ. Postclosure numbers are just annual instead of the full 30 years)
 - Schedule B: Different typed cost (\$2.00) vs. written cost (Three dollars)
- Missing Schedule A and/or Schedule B (mostly Schedule B!)

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Common Issues/Errors – Trusts


- Department Name, Citations, Address, and/or Division Director (Exhibit A) still not fully updated
- Using an Original Trust (before the Department name change et al.) or a different ND agency's trust to set up a New Trust
 - Trust references incorrect facility/type

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Common Issues/Errors – Bonds

- Juxtaposing numbers
- Illustrate incorrect inflation adjustment
- Department Name, Citations, and/or Address still not fully updated
- Bond amendment not submitted


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Common Issues/Errors – Letters of Credit (LOC)

- Juxtaposing numbers
- Illustrate incorrect inflation adjustment
- Department Name, Citations, and/or Address still not fully updated


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Common Issues/Errors – Insurance Policy

- Illustrate incorrect inflation adjustment
- Department Name, Citations, and/or Address still not fully updated
- Policy references incorrect facility/type (amendment/rider)

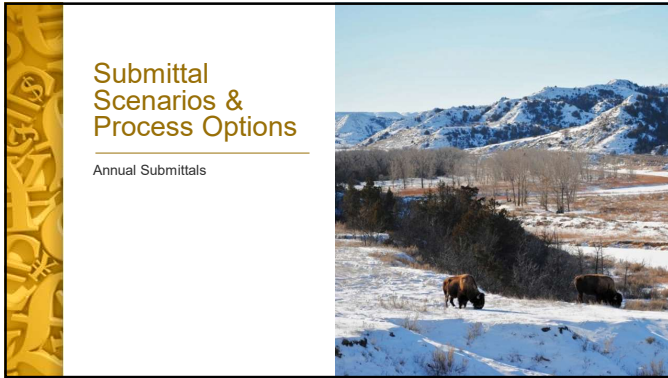
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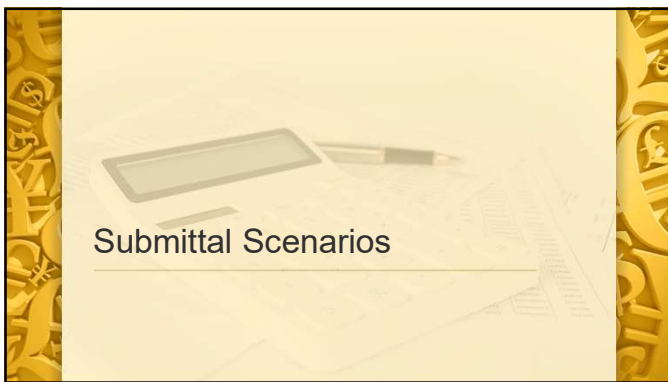
Common Issues/Errors – Financial Tests/Corporate Guarantees

- Addition errors and/or juxtaposing numbers
- Missing one/some of the required calculations
- Not utilizing the most current available audits (or at least not updating the reference in the cover letter!)
- Government Entities: using only the 'business' financials instead of the entity's total financials
- Department Name, Citations, and/or Address still not fully updated
- Missing one of the requirements from the CPA
- Entity did NOT pass the Financial Test/Corporate Guarantee

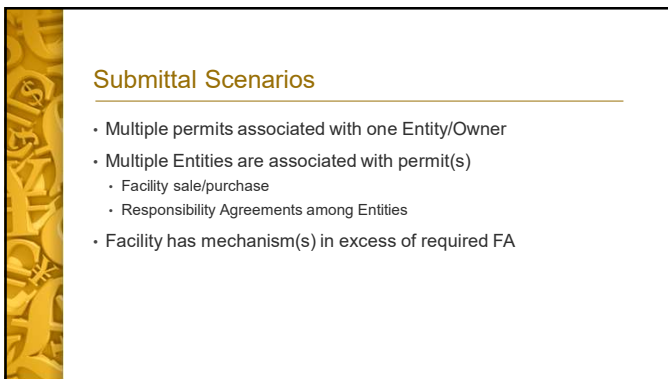
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Submittal Scenarios

Multiple permits associated with one Entity/Owner

- Annual Financial Assurance Summary form must be completed for each permit.
- Financial Assurance must cover the sum total of all permits.

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Submittal Scenarios

Multiple Entities are associated with permit(s) [Facility sale/purchase]

- Entity purchasing facility does NOT need to provide the same mechanisms
- Financial assurance of new Entity must be in place before the Department will release financial assurance from the previous Entity.

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Submittal Scenarios

Multiple Entities are associated with permit(s) [Responsibility Agreements]

- All Entities should provide each part to one designated contact who will submit **ONE** packet to the Department for the annual submittal
- Each permit should have one Annual Summary Form
 - The Closure, Postclosure, and Total Financial Assurance listings should be for the permit.
- A separate breakdown summary, illustrating what each Entity is responsible for, will also need to be included. For example:
 - Entity A (40%) Closure= \$X, Postclosure= \$X, Total= \$X
 - Entity B (60%) Closure= \$X, Postclosure= \$X, Total= \$X
- Additional information summary guidance is located on the website

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Submittal Scenarios

Facility has a mechanism in excess of required FA

- Typically, a Bond or Letter of Credit (LOC) in conjunction with a Standby Trust.
- Could be an Insurance Policy
- May be due to a revised cost estimate
 - Example: Maximum open area has decreased, and the facility has decided to maintain existing FA levels.
- May be initially set up by facility exceeding required FA

More on next page...

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Submittal Scenarios

Facility has a mechanism in excess of required FA

- Submittal should include:
 - Cover letter
 - Identify that the Bond/LOC exceed(s) the FA required by "X" amount for the current submittal
 - **At a minimum** include original submittal date of applicable mechanism/amendment!
 - Summary Information Page (form)
 - Applicable mechanism(s)
 - Standby Trust Updates
 - Schedule A
 - Schedule B photocopy (this is tied directly to the Bond/LOC)

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Submittal Process Options

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Submittal Process Options

- Submittal Option Processes
 - Digital Signatures
 - Submittal Identification
 - Digital Submittal vs. Hard Copy Submittal

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Submittal Process Options

- Digital Signatures
 - Department does allow digital signatures*
 - Typing your name in a different font is NOT a digital signature!


*Be sure all notary public requirements are followed.

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Submittal Process Options

- Submittal Identification
 - Always indicate the year you are submitting i.e.:
If due August 31, 2022 → it is the 2022 Annual Solid Waste Program Financial Assurance Submittal
 - Please utilize *specific* subject lines for financial assurance whether the cover letter or the subject line of an email:
 - Facility Name (0###) YEAR Annual Solid Waste Program Financial Assurance Submittal
Somewhere Landfill (0000) 2022 Annual Solid Waste Program Financial Assurance Submittal


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Submittal Process Options

- Submittal Option Processes – Digital Submittal (email)*
 - Searchable electronic copy (pdf) of packet
 - Submittal identification (subject line)
 - Provide a brief summary in body of email →detail in cover letter within packet!
 - Send to: solidwaste@nd.gov **AND** copy adelzer@nd.gov


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Submittal Process Options

- Submittal Option Processes – Digital Submittal (email)
 - Financial Tests & Corporate Guarantees
 - Facility Name (0###) YEAR Annual Solid Waste Program Financial Assurance Submittal
 - Somewhere Landfill (0000) 2022 Annual SWP FA Submittal
 - All Trusts, Bonds, and Insurance Policies
 - CONFIDENTIAL: Facility Name (0###) YEAR Annual Solid Waste Program Financial Assurance Submittal
 - CONFIDENTIAL: Somewhere Else Landfill (0999) 2022 Annual Solid Waste Program Financial Assurance Submittal

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Guideline Updates



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Guideline Updates

- Guideline 18 – Financial Assurance Mechanisms for Closure and Post-Closure for Solid Waste Facilities and Management Units
- Guideline 19 – Wording of Liability Mechanisms for Industrial Waste Landfills
- Guideline 20 – Closure and Post-Closure Care Cost Estimates for Solid Waste Facilities and Management Units

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Guideline Updates

- All financial assurance (FA) guidelines have been updated as of May 2022
- All include general clarifications, grammar, and typo updates
- All include updated Department address

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Guideline 18 Updates

- Mechanisms section added: Lists all available mechanisms and identifies the use of single or multiple
- Trust addition: Exhibit A, Schedule A, and Schedule B all now include:
 - Original Trust Agreement date:
 - Exhibit/Schedule Revision date:
- Trust Exhibit A addition: Formatted Department information
- Bonds: No other significant changes

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Guideline 18 Updates (cont.)

- Letter of Credit (LOC): Removed LOC-specific cover letter
- Insurance: No other significant changes
- Financial Test and Corporate Guarantee: Changes to BOTH Alternative I (Alt 1) and Alternative II (Alt 2)
 - Both now have Solid Waste rule calculations in the same order as the rules
 - Solid Waste Rules have only ONE difference in Alt 1 vs Alt 2 → Alt 2 now is very similar to Alt 1
 - Multiple permits in ONE test/guarantee

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Guideline 19 Updates

- Mechanisms section added: Lists all available mechanisms and identifies the use of single or multiple for liability coverage
- Trust addition: Exhibit A, and Schedule A now include:
 - Original Trust Agreement date:
 - Exhibit/Schedule Revision date:
- Trust Exhibit A addition: Formatted Department information
- Trust clarification: Schedule B reflects this is a funded trust and has an Original Trust Agreement date

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Guideline 19 Updates (cont.)

- Surety Bond: Cleaned up table formatting
- Letter of Credit (LOC): Removed LOC-specific cover letter
 - Liability Coverage LOC can be standalone or paired with a standby trust
 - Standby Trust verbiage included with LOC
- Insurance: No other significant changes
- Financial Test and Corporate Guarantee
 - Reflects SWP updates in both Closure/Postclosure alternatives
 - Includes verbiage to combine Liability Coverage and Closure/Postclosure Care in one test

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Guideline 20 Updates

- Re-ordered bid elements and included some additional line items
- Inflation updates clarified (both closure and postclosure numbers have the factor applied and then added together)
- Rounding section added

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Annual Submittals – Annual Cost Estimate Adjustments

- Annual Cost Estimate Adjustments – Rounding
 - Amount of funds assured is adequate to cover costs... (NDAC Section 33.1-20-14-01)
 - Mechanism(s) must be at least equal to the current financial assurance... (NDAC Section 33.1-20-14-03)
 - Amounts must be 'to the pennies' or more therefore, any rounding must be UP
 - This is discussed in more detail in Guideline 20

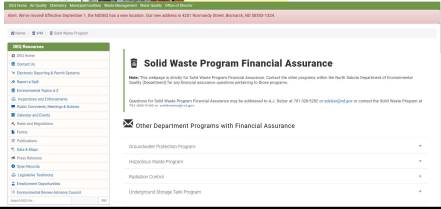
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Solid Waste Program (SWP) Financial Assurance Webpage

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Financial Assurance Webpage

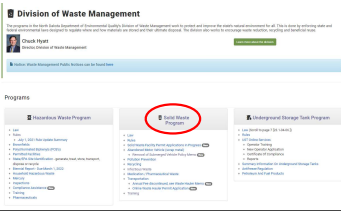
- Specific to SOLID WASTE PROGRAM!
- **Under Construction** → more to come!



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Financial Assurance Webpage

- Go to the Solid Waste Program block on Division of Waste Management webpage: <https://deq.nd.gov/WM/>
- A Financial Assurance link will be added when public



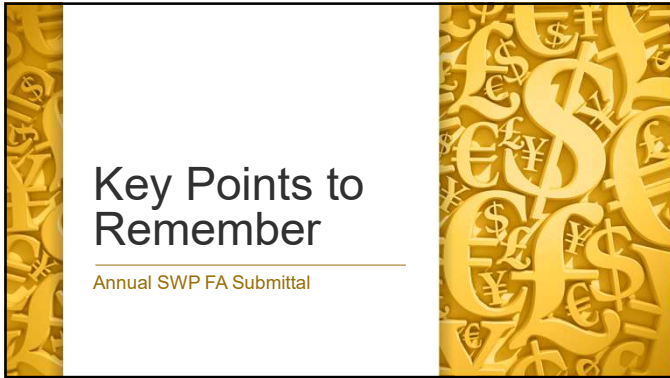
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Financial Assurance Webpage

- Current Sections*:
 - Other Department Programs with Financial Assurance
 - Financial Assurance
 - Important Information
 - Policy Memos and Guidance Documents
 - Forms and Templates
 - Common Submittal Errors and Omissions
 - FAQ / Additional Information
 - Rules and Regulations
 - Other Resources
 - Links

**Not every section will have information right away and expect changes as the webpage develops!*

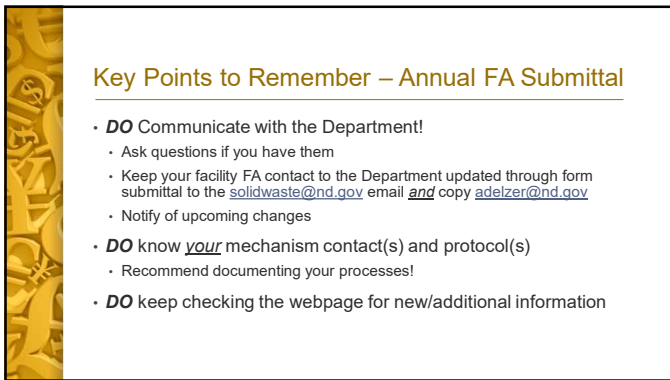
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Key Points to Remember

Annual SWP FA Submittal

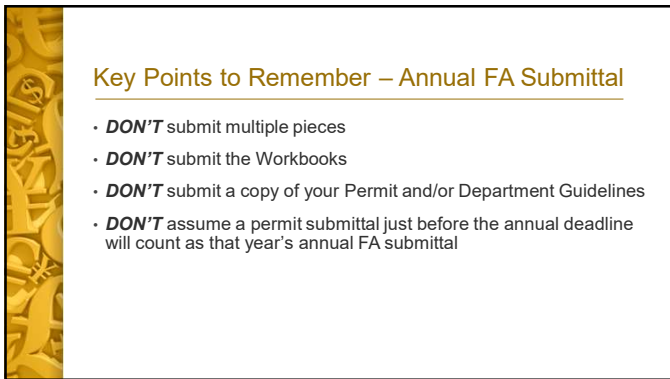
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Key Points to Remember – Annual FA Submittal

- **DO** Communicate with the Department!
 - Ask questions if you have them
 - Keep your facility FA contact to the Department updated through form submittal to the solidwaste@nd.gov email **and** copy adelzer@nd.gov
 - Notify of upcoming changes
- **DO** know your mechanism contact(s) and protocol(s)
 - Recommend documenting your processes!
- **DO** keep checking the webpage for new/additional information

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Key Points to Remember – Annual FA Submittal

- **DON'T** submit multiple pieces
- **DON'T** submit the Workbooks
- **DON'T** submit a copy of your Permit and/or Department Guidelines
- **DON'T** assume a permit submittal just before the annual deadline will count as that year's annual FA submittal

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A graphic with a gold background featuring various currency symbols like the dollar sign (\$), euro (€), yen (¥), and pound sterling (£).

**Solid Waste Program
Financial Assurance Contact:**

A.J. Delzer – Bismarck Office
701-328-5282
adelzer@nd.gov

Questions?

NDDEQ – Solid Waste Program
May 2022

NORTH
Dakota | Environmental Quality
Be legendary.
