Financial Assurance Submittal Fundamentals
NDDEQ – Solid Waste Program
May 2022

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

Department Timeline Milestones
• 1990s Financial Assurance for SWP
• Staff Changes
• Department Name/Citation Changes
• Office Move
Annual Submittals

Solid Waste Program (SWP) Financial Assurance Submittal Fundamentals

- Annual Submittals
  - General Information
  - Minimum Requirements & Other Information
  - Common Issues/Errors
  - Submittal Scenarios

General Information

Annual Submittals
Annual Submittals – General Information

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

Some Department Basics

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
• 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

Annual Submittals – General Information

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

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
Facility Financial Assurance (FA) Contacts

- Facility FA Contacts
  - A copy of the update form is on the webpage
  - **ONE** Contact for the Department to send financial assurance information
    - This individual is responsible to notify/forward within the facility as necessary
  - Others may submit the financial assurance packet to the Department, but all correspondence from the Department will **always be sent** to the Facility Financial Assurance Contact on file with the Department
  - Department preference is for **ALL** financial assurance documents be submitted in a single packet by the designated Facility FA Contact

Annual Cost Estimate Adjustments
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.

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

Minimum Requirements & Other Information

Annual Submittals
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

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 ±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.

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))
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

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

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.
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

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]

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.
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

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)

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.
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.

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.

Annual Submittals – Insurance Policy

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

Annual Submittals – Corporate Guarantee

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

Common Issues/Errors

Annual Submittals
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

Common Issues/Errors – NDDEQ Name & Citations

**From:**
• North Dakota Department of Health (NDoH)
• NDCC Chapter 23-29
• NDAC Article 33-20

**To:**
• North Dakota Department of Environmental Quality (NDDEQ)
• NDCC Chapter 23.1-08
• 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.

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
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)

- 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

Common Issues/Errors – Bonds

- Juxtaposing numbers
- Illustrate incorrect inflation adjustment
- Department Name, Citations, and/or Address still not fully updated
- Bond amendment not submitted
Common Issues/Errors – Letters of Credit (LOC)
- Juxtaposing numbers
- Illustrate incorrect inflation adjustment
- Department Name, Citations, and/or Address still not fully updated

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)

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
Submittal Scenarios & Process Options

Annual Submittals

Submittal Scenarios

• Multiple permits associated with one Entity/Owner
• Multiple Entities are associated with permit(s)
  • Facility sale/purchase
  • Responsibility Agreements among Entities
• Facility has mechanism(s) in excess of required FA
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.

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.

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
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…

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)

Submittal Process Options
Submittal Process Options

• Submittal Option Processes
  • Submittal Identification
  • Digital Submittal vs. Hard Copy Submittal

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.

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
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

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

Guideline Updates
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

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

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
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

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

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
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

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

Solid Waste Program (SWP) Financial Assurance Webpage
Financial Assurance Webpage

- Specific to SOLID WASTE PROGRAM!
- Under Construction ➔ more to come!

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

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!
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

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

Questions?
NDDEQ – Solid Waste Program
May 2022