



KeyCite Yellow Flag - Negative Treatment

Proposed Regulation

Baldwin's Ohio Administrative Code Annotated

3745 Environmental Protection Agency (Refs & Annos)

Chapter 3745-400. Construction and Demolition Debris Facilities (Refs & Annos)

OAC 3745-400-56

3745-400-56 Financial assurance for final closure of processing facilities

Currentness

(A) Final closure cost estimate. The owner or operator of a processing facility shall prepare a written final closure cost estimate calculated in current dollars that is not less than the sum of the following, adjusted as provided in paragraphs (C) and (D) of this rule:

(1) A fixed amount calculated as follows:

(a) For a processing facility with a horizontal limits of construction and demolition debris processing of two thousand five hundred square feet or less, one thousand dollars.

(b) For a processing facility with a horizontal limits of construction and demolition debris processing of greater than two thousand five hundred square feet but less than 4.9 acres, ten thousand dollars.

(c) For a processing facility with a horizontal limits of construction and demolition debris processing of 4.9 acres but less than 10.0 acres, twenty-five thousand dollars.

(d) For a processing facility with a horizontal limits of construction and demolition debris processing of 10.0 acres or greater, fifty thousand dollars.

(e) For a processing facility that meets all of the criteria in paragraphs (A)(2) (b)(i) to (A)(2)(b)(vi) of this rule, zero dollars.

(2) A fixed per cubic yard amount calculated by multiplying the maximum volume of mixed construction and demolition debris authorized to accumulate on-site at the processing facility in accordance with [paragraph \(E\)\(2\) of rule 3745-400-52 of the Administrative Code](#) by one of the following:

(a) Thirty-five dollars.

(b) Eight dollars and twenty-five cents if all of the following apply:

(i) The processing facility is located immediately adjacent to a licensed construction and demolition debris facility.

(ii) The owner or operator of the processing facility has applied for a registration in accordance with Section 4 of Amended Senate Bill 2 of the 132nd General Assembly.

(iii) The processing facility was in operation on the effective date of this rule.

(iv) All mixed C&DD at the processing facility will be located within five hundred feet of the facility boundary of the adjacent licensed construction and demolition debris facility.

(v) The processing facility and adjacent licensed construction and demolition debris facility have the same operator.

(vi) The owner or operator of the adjacent licensed construction and demolition debris facility has designated in the facility license sufficient constructed and certified airspace for the maximum volume of mixed C&DD authorized to accumulate on-site at the processing facility.

(B) Establishment of financial assurance.

(1) The owner or operator of a processing facility shall establish and maintain financial assurance in an amount not less than the final closure cost estimate calculated in accordance with paragraph (A) of this rule prior to issuance of the initial license for the processing facility using a financial assurance mechanism specified in [paragraphs \(B\) to \(E\) of rule 3745-400-13 of the Administrative Code](#).

(2) The owner or operator of a processing facility may satisfy the requirement of paragraph (B)(1) of this rule by establishing one or more of the financial assurance mechanisms specified in [paragraph \(B\), \(C\), or \(E\) of rule 3745-400-13 of the Administrative Code](#), except that it is the combination of mechanisms, rather than each single mechanism, which shall provide financial assurance for an amount not less than the most recently adjusted final closure cost estimate, adjusted in accordance with paragraph (D) of this rule. If an owner or operator of a processing facility uses a trust fund in combination with a surety bond or a letter of credit, the trust fund may be used as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The director or approved board of health, as applicable, may invoke use of any or all of the mechanisms, in accordance with [paragraphs \(B\), \(C\), and \(E\) of rule 3745-400-13 of the Administrative Code](#), to provide for final closure of the processing facility.

(3) The owner or operator of a processing facility may use a financial assurance mechanism for multiple processing facilities or a combination of facilities and processing facilities if the amount of funds available through the financial assurance mechanism is not less than the combined final closure cost estimates for each facility and processing facility. The owner or operator of the processing facility using one financial assurance mechanism for multiple processing facilities or a combination of facilities and processing facilities shall submit documentation to the director that includes the following for each facility or processing facility:

- (a) The name of each facility or processing facility.
- (b) The address of each facility or processing facility.
- (c) The secondary identification number of each facility or processing facility.
- (d) The amount of funds for final closure assured by the financial assurance mechanism.

(4) Paragraphs (B)(1) to (B)(3) of this rule are not applicable to the owner or operator of a processing facility with a final closure cost estimate equal to five thousand five hundred dollars or less.

(C) Inflation adjustment. An adjustment shall be made as specified in this paragraph using the preceding February inflation factor derived from the annual implicit price deflator for gross domestic product as published by the U.S. department of commerce. The owner or operator of a processing facility shall adjust the fixed per cubic yard amount of the final closure cost estimate calculated in accordance with paragraph (A)(2) of this rule for inflation as follows:

(1) The first adjustment is made by multiplying the fixed per cubic yard amount of the final closure cost estimate calculated in accordance with paragraph (A)(2) of this rule by the inflation factor. The result is the adjusted fixed per cubic yard amount of the final closure cost estimate.

(2) Subsequent adjustments are made annually by multiplying the most recently adjusted fixed per cubic yard amount of the final closure cost estimate by the most recent inflation factor.

(D) Review of final closure cost estimate. The owner or operator of a processing facility shall review and adjust the most recently adjusted final closure financial assurance at a minimum as follows:

(1) Within thirty days of issuance of a permit to install for a modification to an existing processing facility.

(2) Annually in conjunction with the processing facility license renewal. The financial assurance provided in a current unexpired license may be utilized to fulfill the financial assurance requirements of an application for a license renewal if the dollar amount of the financial assurance is equal to or greater than the final closure cost estimate in the license application calculated and adjusted in accordance with paragraphs (A), (C), and (D) of this rule.

(E) The permitting authority shall notify the owner or operator of the processing facility of deficiencies with the final closure cost estimate and final closure financial assurance not later than thirty days after receipt of an application for a modification to the processing facility. The notification shall identify any adjustment in the final closure financial assurance amount being considered by the permitting authority. The permitting authority may adjust the amount of financial assurance in conjunction with the issuance of the permit provided the permitting authority identifies the deficiencies in the final closure cost estimate.

(F) The licensing authority shall notify the owner or operator of the processing facility of deficiencies with the closure cost estimate or closure financial assurance not later than thirty days after receipt of the license application. The notification shall identify any adjustment in the closure financial assurance amount being considered by the licensing authority. The director or approved board of health may adjust the amount of financial assurance in conjunction with the issuance of the annual license provided the director or approved board of health identifies the deficiencies in the final closure cost estimate.

(G) The owner or operator of a processing facility, or any other person authorized to perform final closure on behalf of the owner or operator of the processing facility, may request and receive authorization for reimbursement of all remaining funds or release from the financial assurance requirements of this rule only after the processing facility final closure is deemed complete in accordance with [paragraph \(C\) of rule 3745-400-60 of the Administrative Code](#).

Credits

HISTORY: 2021-22 OMR pam. # 10 (E), eff. 4-18-22.

Periodic review date(s): 4-18-27

Rules and appendices are current through June 17, 2022. Emergency rules are more current.

OAC 3745-400-56, OH ADC 3745-400-56