
Financial Assurance

Financial Assurance Mechanisms

Hazardous waste facilities must use one of the following financial assurance mechanisms:

- ❑ Trust fund
- ❑ Surety bond
- ❑ Letter of credit
- ❑ Insurance
- ❑ Financial test/corporate guarantee
- ❑ Or a combination of the above mechanisms

And for non-RCRA regulated facilities only:

- ❑ Alternative mechanism

Alternative Financial Mechanisms

- Alternative mechanisms are proposed financial mechanisms that are not listed in regulation.
 - Must be:
 - At least equivalent to the mechanisms in regulation
 - provides certainty of availability of funds
 - the amount of funds that will be available
 - The typical alternative mechanisms:
 - Certificates of deposit
 - Restricted savings accounts
 - Alternative mechanisms must be pre-approved by DTSC
 - Cannot be used for RCRA regulated facilities (e.g., closure at landfill)
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FR Forms

- Proposed FR rulemaking at DTSC
 - Rulemaking will codify required text into regulation
 - Make the use of DTSC Forms optional
 - DTSC intends to maintain forms for use by owners/operators.
- Current electronic versions are currently available
 - pdf versions posted on DTSC's website

DTSC Financial Assurance

- As of June 30, 2005, DTSC holds approximately \$1.6 billion of financial assurance.
- More than half represents liability assurance.

Liability	53%
Postclosure	22%
Closure	18%
Corrective Action	7%

DTSC Financial Assurance

Closure

Financial Test	39%
Insurance	31%
Trust Fund	12%
Letter of Credit	10%
Alternative Mechanism	4%
Surety Bond	1%
Multiple Mechanisms	1%

DTSC Financial Assurance

Postclosure

Financial Test	56%
Insurance	30%
Letter of Credit	8%
Trust Fund	5%
Multiple Mechanisms	<1%

DTSC Financial Assurance

Corrective Action

Financial Test	98%
Insurance	<1%
Letter of Credit	<1%
Trust Fund	<1%

DTSC Financial Assurance

Liability

Insurance	65%
Financial Test	32%
Letter of Credit	1%
Surety Bond	<1%
Trust Fund	<1%

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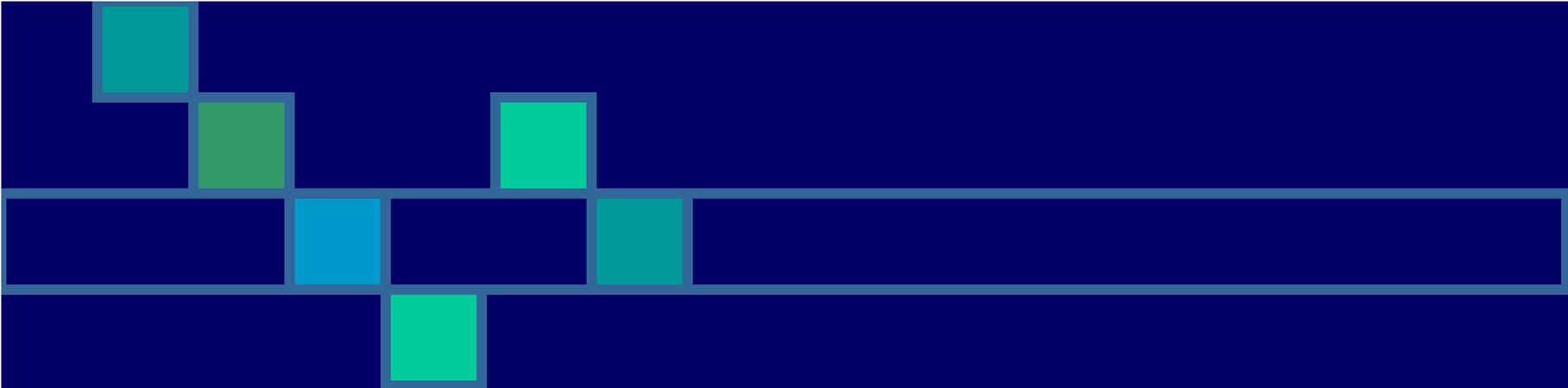
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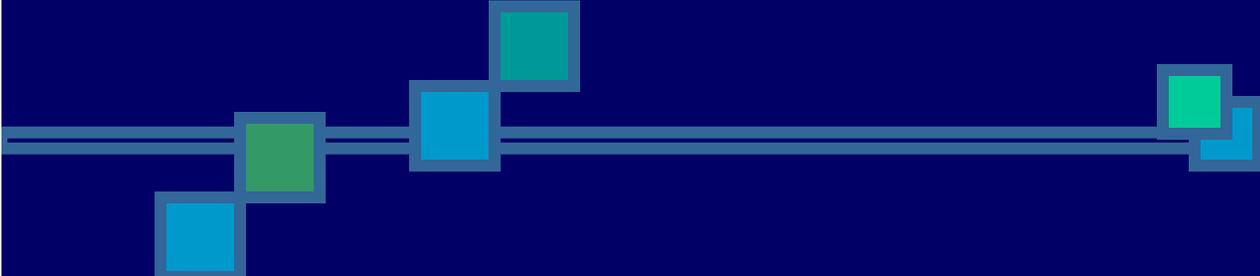
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FINANCIAL ASSURANCE COST ESTIMATES FOR RCRA/HAZARDOUS WASTE FACILITIES

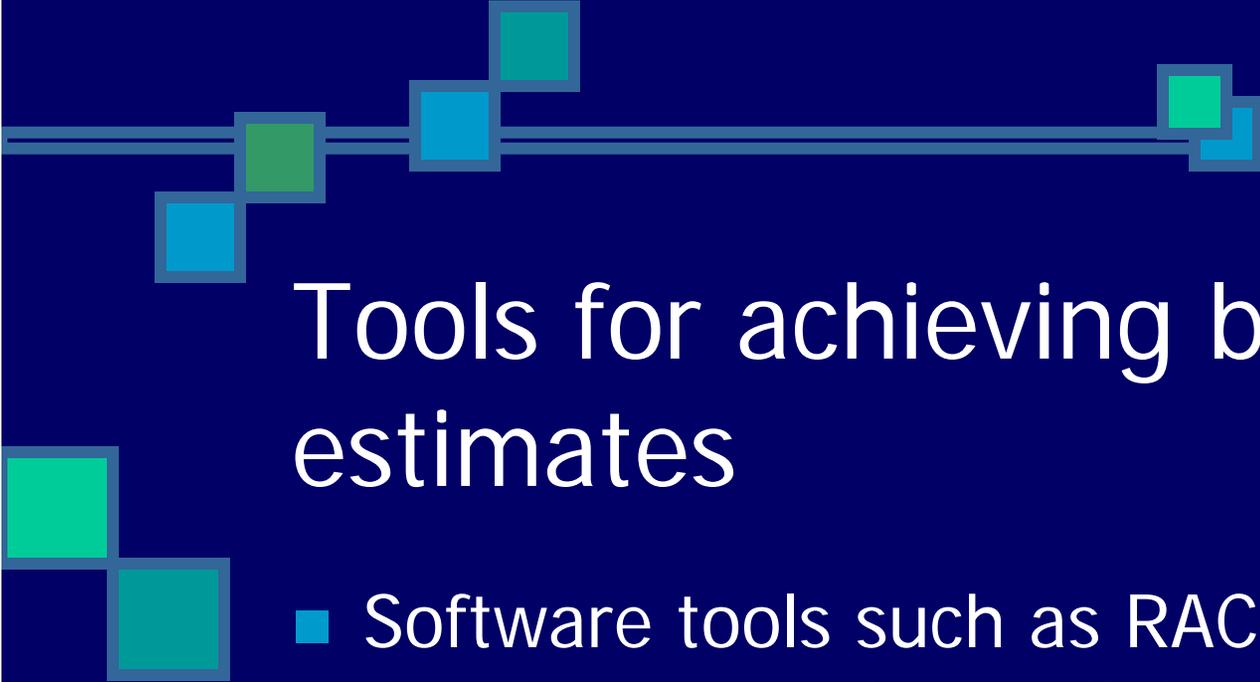


Raymond Leclerc, P.E.
California Environmental Protection Agency
Department of Toxic Substances Control



Facilities are Required to have Financial Assurance for :

- For Interim Status and Permitted facilities
 - Closure and postclosure of regulated Units
 - Corrective action after remedy selection for permitted and solid waste management units
 - California has over \$2 billion dollars in financial assurance for permitted and interim status facilities.
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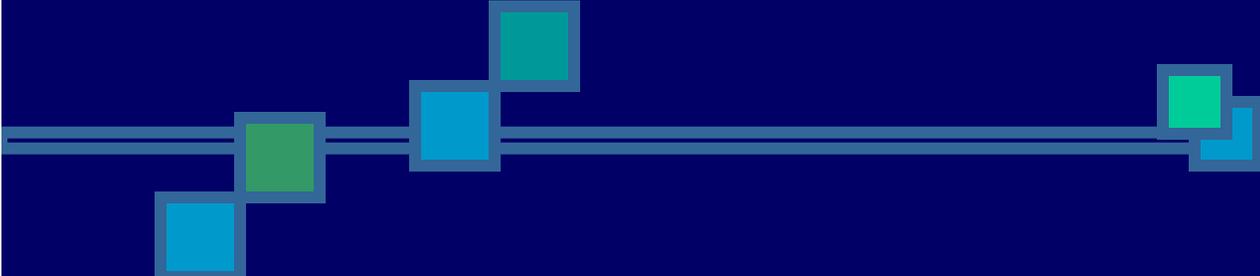
Tools for achieving better cost estimates

- Software tools such as RACER and CostPro streamline building cost estimate dramatically and produce well organized reports.
 - Large/complex facilities may prefer to use site-derived cost data.
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Department of Toxics Approach

- California is the only State to develop an extensive program to update cost estimates and ensure updated mechanisms are in place
- Program initiated in 1999



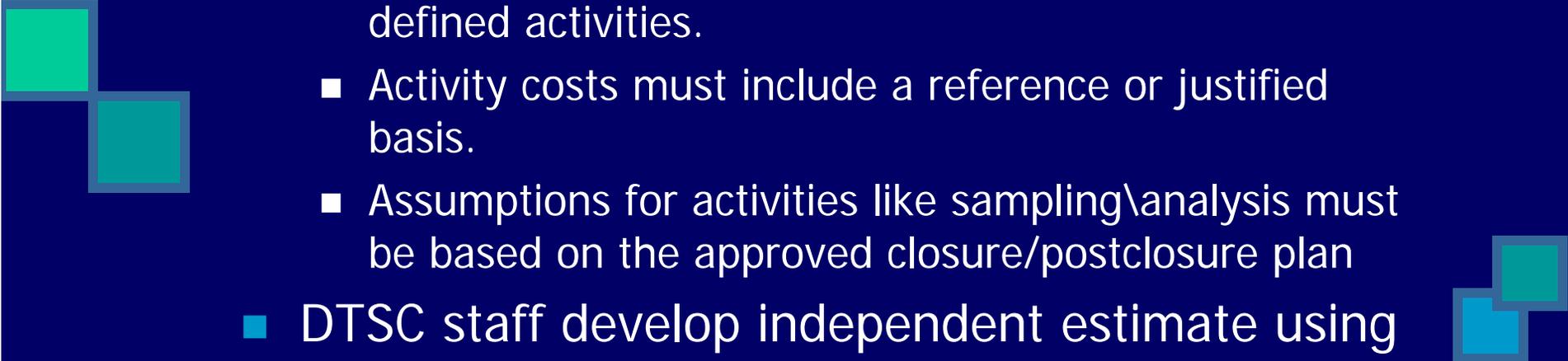


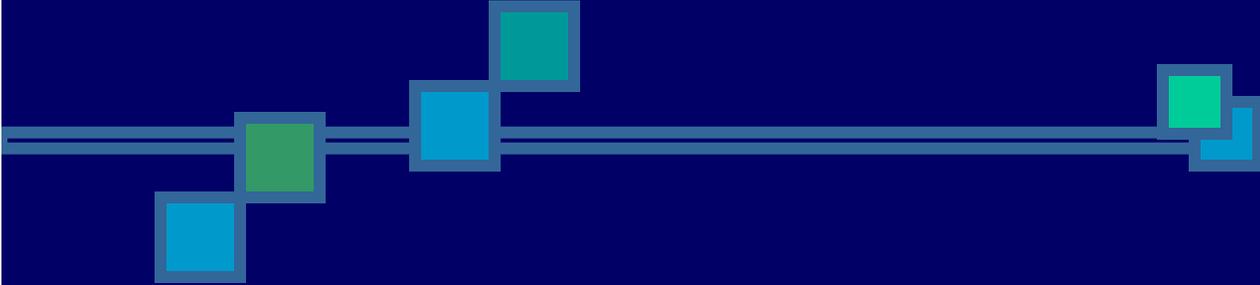
Department of Toxics Approach

- Facilities submit cost estimates as part of permit application, closure plan, permit modification, or DTSC request
 - DTSC has a universe of 157 cost estimates with 143 completed reviews and 110 revised estimates have been implemented and have updated Financial Assurance.
 - We should be complete with all reviews by next year. Getting the mechanisms in place may take a little longer.
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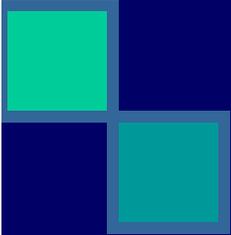
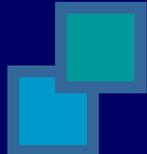


DTSC approach continued..

- Cost estimates are reviewed for completeness
 - Estimates must have tasks broken up into easily defined activities.
 - Activity costs must include a reference or justified basis.
 - Assumptions for activities like sampling\analysis must be based on the approved closure/postclosure plan
 - DTSC staff develop independent estimate using closure/postclosure plan or remedy selection assumptions and industry standard costs.
 - Comparison of the two estimates will generally reveal differences that must be reconciled.
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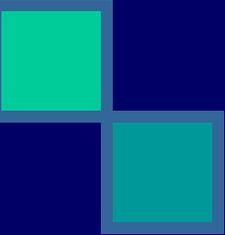


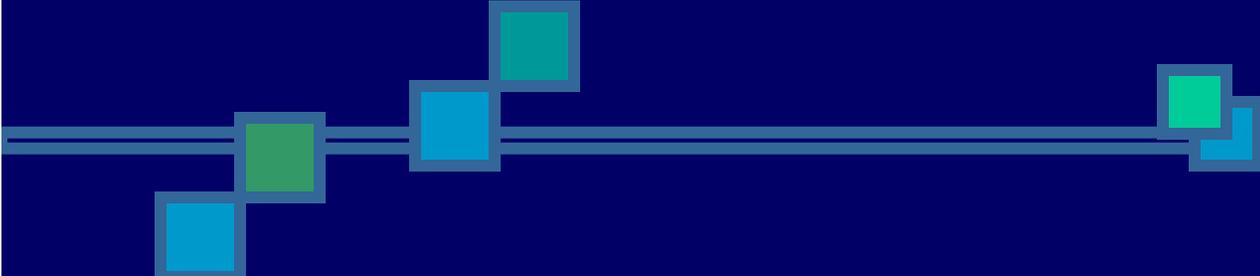
DTSC approach continued..

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- Differences can often be reconciled by examining site specific conditions, equipment, or operations.
 - DTSC staff will meet with facilities to discuss differences and potential deficiencies with the facility estimate.
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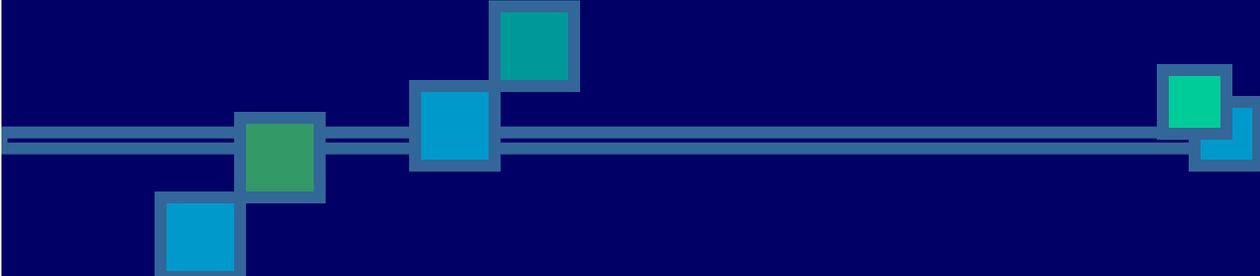
DTSC approach continued..

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- DTSC would prefer that facility revise its own estimate as the result of DTSC comments and mutual discussions.
 - DTSC will move forward with DTSC derived estimate if facility is unwilling to revise the facility estimate to address DTSC concerns.
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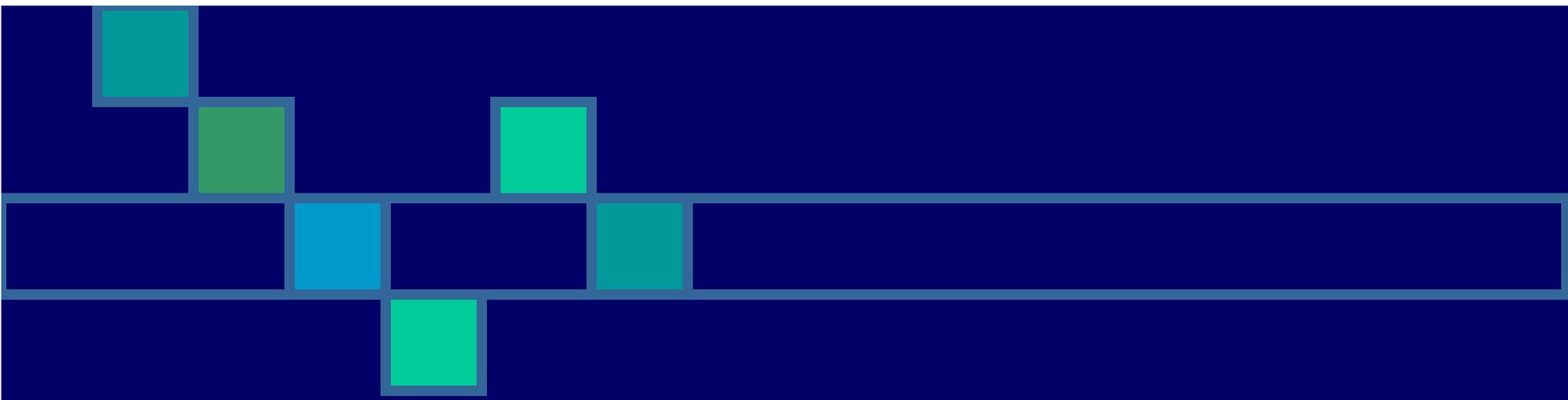
Summary of California's Approach - Implementation

- Ideally estimates are approved as part of a permit action – new, renewal, class 2/3 mod
 - Otherwise facility can initiate a Class I* mod or DTSC use an agency-initiated mod process
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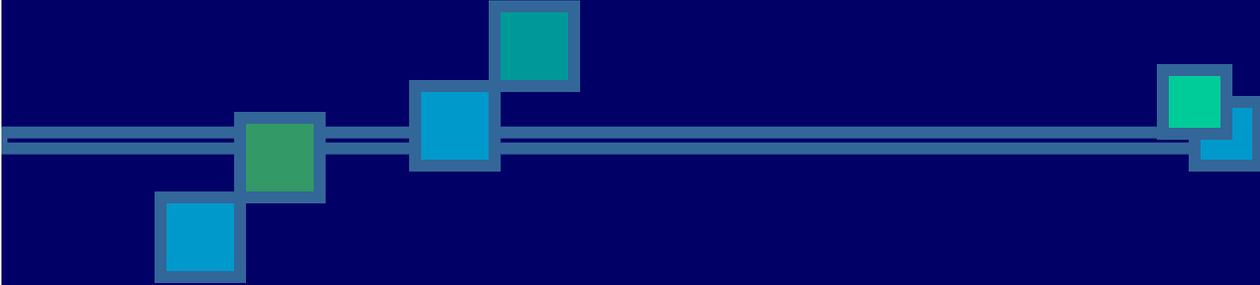
Summary of California's Approach-Estimates

- DTSC staff review facility cost estimates
 - DTSC staff complete independent estimate
 - Reconcile differences between estimates
 - If differences cannot be reconciled –we will use DTSC estimate
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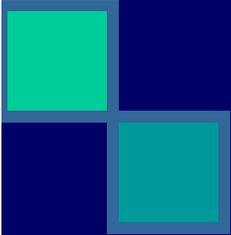
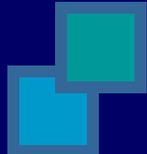


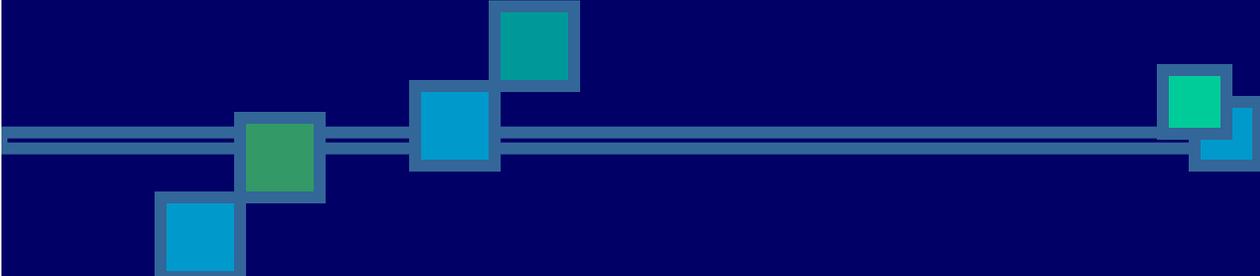
POSTCLOSURE PERIOD





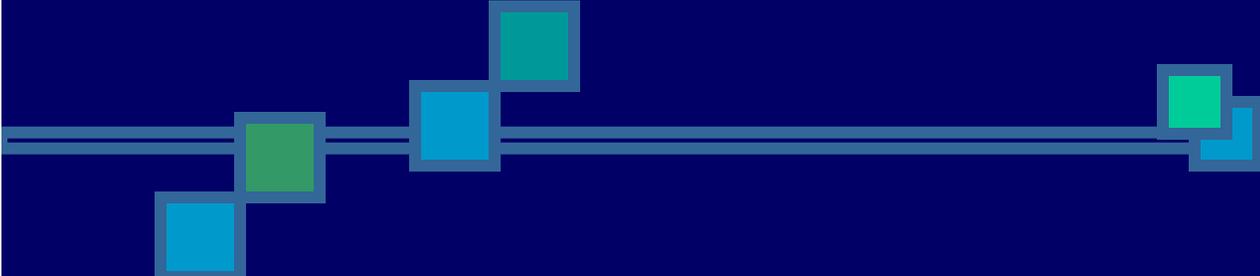
CURRENT APPROACH

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- DTSC initially uses a thirty year postclosure period for land disposal facilities where waste remains in place.
 - This thirty year period is reviewed and is reset to thirty years during permit renewal – every ten years- based on existing waste, “rolling 30-year PC period.”
 - For other facilities that require PC or long-term O&M, period is based on site-specific factors.
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PROBLEM WITH CURRENT APPROACH

- At any point in time a land disposal facility has only between 20 and 30 years of financial assurance to cover ongoing costs that will continue much longer.
 - If the company declares bankruptcy or becomes non-viable, the waste generators and/or taxpayers are forced to pay for the remaining postclosure costs.
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POSTCLOSURE BEYOND 30 YEARS WILL/CAN INCLUDE:

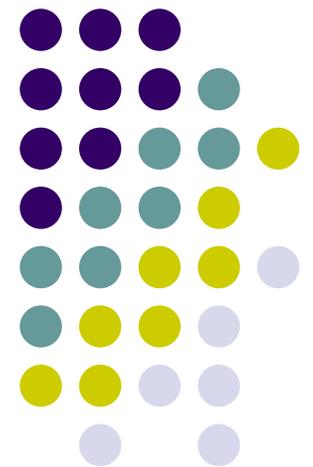
- Groundwater/surface water monitoring,
 - Cover and drainage maintenance,
 - Inspections and administration
 - Operation and maintenance of leachate/groundwater/vapor extraction and treatments systems,
 - Replacement of closure structures such as covers, drainage, wells, treatment systems.
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POSTCLOSURE BEYOND 30 YEARS

- Will require future projection similar to 30 years estimates and may entail long-term “Superfund-like” settlements.
 - Alternative financial mechanisms ? Could some alternative fill the “gap” for land disposal facilities? Or, a combination of known mechanisms?
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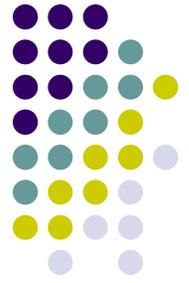
RCRA Financial Test and Corporate Guarantee



Financial Test and Corporate Guarantee



Based upon current financial condition, it is assumed a facility owner/operator will have the financial capacity to fund future closure and post-closure work and corrective action activities as they become necessary.



Alternative I Criteria

- tangible net worth of at least \$10 million;
- assets located in the United States amounting to at least 90 percent of total assets
- or at least six times the sum of the current closure and post-closure cost estimates;

AND TWO OF THREE OF THE FOLLOWING RATIOS

- total liabilities to net worth less than 2.0
sum of net income plus depreciation, depletion and amortization to total liabilities greater than 0.1
- current assets to current liabilities greater than 1.5
- Net working capital and tangible net worth each at least six times the sum of the current closure and postclosure cost estimates



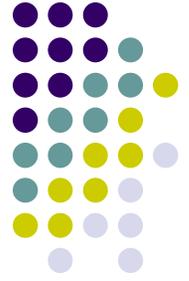
Alternative II Criteria

- Standard and Poor's rating of AAA, AA, A or BBB or Moody's rating of Aaa, Aa, A or Baa for most recent bond issuance

AND

- Tangible net worth at least six times the sum of the current closure and post-closure cost estimate
- tangible net worth of at least \$10 million;
- assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates;

Risk Factors Associated with the Financial Test



- Only mechanism which does not involve an independent third party ensuring the sufficiency and availability of funds for completing required work
- All other mechanisms, require both the facility owner/operator and the independent third party to fail at the same time in order to present a risk of having use to public funds to complete the required work
- Current financial condition does not guarantee sufficient resources will be available in the future
- Recent corporate accounting problems have negatively impacted the reliability of audited financial statements
- Bankruptcy process is drawn out and public funds would likely be required in the interim

Possible Changes to the Financial Test



- Increase in tangible net worth amount
- Adoption of bankruptcy prediction model such as Altman's Z Score
- Eliminate assets used as security for other liabilities from tangible net worth
- Ensure amounts included on Line 1 of DTSC financial test forms include amounts for all financial test obligations
- Allow the financial test to be used for only a portion of obligations

Contact Information



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Captive Insurance

What is “Captive Insurance?”

“A ‘captive insurance company’ is a corporation organized for the purpose of insuring the liabilities of its owner. At one extreme is the case presented here, where the insured is both the sole shareholder and only customer of the captive. There may be other permutations involving less than 100% ownership or more than a single customer, although at some point the term “captive” is no longer appropriate.”

Clougherty Packing Co. v. Commissioner, 811 F.2d 1297 (9th Cir.1987).

The Problem with “Captives”

- In a “pure” or “single parent” captive insurer, the financial stability of the third party is completely dependent on the financial health of the parent.
- Assets = unsecured obligations of the parent
- Failure of parent = failure captive insurer
- The State of Vermont requires a paid in capital and surplus of only \$250,000.

The Problem with “Captives”

- Captive insurance provide the same form of financial assurance as financial test, that is first party assurance.
- Captive insurance does not provide the same safeguards as the financial test.
 - no annual review of financial health
 - no independent assessment by a third party accountant
 - and no minimum net worth or financial ratios required
- Captive insurance lacks the essential characteristics of true insurance: risk-shifting and risk-distribution.

The Problem with “Captives”

- Commonly, captive insurance is not assignable (transferable) to a new owner.
 - Recent insurance policies provide that assignment may be made with the consent of the insurer.
 - However, Vermont Insurance Code prohibits assignment.
- Financial assurance is most important when the facility is unable to provide for liability or closure from its own resources. It is exactly at this time that captive insurance fails.

What approach should DTSC take?

- Status Quo
- Allow captives that are licensed by California Department of Insurance (CIWMB approach)
- Allow captives that also pass the financial test (Alabama approach)
- Allow captives that meet other requirements (e.g., bond ratings – Tennessee and Washington)
- Prohibit the use of captives (New Hampshire and Delaware/Washington –solid waste)
- Others

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