Hazardous Waste Facility Permitting Criteria

New Financial Assurance Regulations

Effective January 1, 2019

The Department of Toxic Substances Control (DTSC) has adopted regulations that will strengthen protections for public health and the environment at hazardous waste facilities and increase DTSC’s transparency and accountability.

The new regulations will impose stronger financial assurance requirements to ensure adequate and timely cleanup of contaminated facilities and conserve taxpayer funds.

### Things to Know

1. The regulations take effect on January 1, 2019.
2. These financial assurance requirements may impact any hazardous waste facility, facilities undergoing site cleanup, electronic/universal waste handlers which treat hazardous waste, generators conducting on-site hazardous waste treatment, and Permit by Rule facilities.

### Amended Financial Assurance Requirements

#### Insurance

Only an insurer licensed to transact the business of insurance in California can provide insurance to satisfy financial assurance requirements.

The insurer must be an admitted carrier, or a nonadmitted carrier eligible to provide insurance as an excess or surplus lines insurer in California, placed through a California licensed broker and underwritten by a surplus line insurer on the California Department of Insurance’s List of Approved Surplus Line Insurers.

#### Financial Test

The owner or operator must have tangible net worth of at least $20 million.

- The owner or operator must submit a copy of its corporation’s financial statements.
- The owner’s or operator’s sum of cost estimates for closure/post-closure and corrective action must include all the hazardous waste facilities regulated/overseen by DTSC in determining whether the amount of net assets located in the U.S. is greater than six times the sum of the cost estimate.
- The special report from the owner’s or operator’s independent certified public accountant must identify and describe the specific accounting standards and guidance relied upon to prepare the report.
- The owner or operator may not rely on any assets to meet the requirements of the financial test/corporate guarantee if those same assets serve as the basis for satisfying any other financial assurance or financial guarantee requirement imposed by DTSC or any other government agency.
• The owner or operator who uses Alternative I of the financial test/corporate guarantee must also submit a current corporate credit rating of AAA, AA, A, or BBB as issued by Standard and Poor’s, or Aaa, Aa, A, or Baa as issued by Moody’s.

Corrective Action

• A financial assurance mechanism for corrective action is required to be submitted to DTSC within 90 days of DTSC’s approval of a corrective measures implementation workplan or a DTSC-approved equivalent.
• The financial assurance mechanism must consist of one of the options specified in California Code of Regulations, title 22, section 66264.143.
• If an owner or operator chooses to use the financial test or corporate guarantee as the financial assurance mechanism for corrective action, the owner or operator shall also establish a process that allows DTSC access to the funds.
• Each facility is required to have sufficient financial assurance for combined estimated costs of closure, post-closure, and corrective action.
• The amount of funds available shall be no less than if a separate mechanism was used for closure, post-closure care, and corrective action.
• Any financial assurance mechanism or process proposed by the owner or operator shall be subject to DTSC’s approval.

Benefits of the New Regulations

Enhancing financial assurance requirements will protect against changing economic conditions and inflation, thus helping ensure adequate and timely cleanup of contaminated facilities and conserve taxpayer funds.

Links and Contact Information

If you have questions about the regulations or the applicability of the financial assurance requirements, please contact Julie Mullins at (916) 255-3678 or Julie.mullins@dtsc.ca.gov.

DTSC's hazardous waste regulations are located in the official version of the California Code of Regulations at Title 22 Social Security, Division 4.5, Environmental Health Standards for the Management of Hazardous Waste. (These links go to the Westlaw website and will open in a new tab/window.)

For a quick reference guide to the amended financial assurance regulations in Division 4.5 of Title 22 of the California Code of Regulations, see the following:

<table>
<thead>
<tr>
<th>Chapter 10</th>
<th>Chapters 14 and 15</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Section 66260.10</td>
<td>• Section 66264.101</td>
</tr>
<tr>
<td></td>
<td>• Sections 66264.143 &amp; 66265.143</td>
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<tr>
<td>Chapter 20</td>
<td>• Sections 66264.144 &amp; 66265.144</td>
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<tr>
<td>• Section 66270.14(b)(22)</td>
<td>• Sections 66264.145 &amp; 66265.145</td>
</tr>
<tr>
<td></td>
<td>• Sections 66264.146 &amp; 66265.146</td>
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<tr>
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<td>• Sections 66264.147 &amp; 66265.147</td>
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<tr>
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<td>• Sections 66264.151</td>
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Disclaimer: This fact sheet addresses select provisions of the amended regulations using plain language. Nothing in this fact sheet is meant to replace or revise any regulatory provisions or any other part of the California Code of Regulations or the California Health and Safety Code.