

Frequently Asked Questions: Long-Term Postclosure Maintenance and Corrective Action

Following are the frequently asked questions (FAQs) regarding the Long-Term Postclosure Maintenance and Corrective Action Cost Estimates and Financial Assurance Demonstrations for Landfills (Phase 1 and Phase 2) regulations. The regulations require corrective action financial assurance demonstrations for non-water release exposures (in addition to those already required for water release exposures) and further define the required amounts of postclosure maintenance financial assurance demonstrations. The regulations also clarify and adjust requirements for change of ownership during closure and postclosure maintenance, permit application, permit review and CalRecycle permit processing, certification of closure, closure cost estimates, and postclosure maintenance plans and cost estimates. The affected regulatory code sections include: California Code of Regulations, Title 27 (27 CCR), Division 2, Subdivision 1, Chapter 2, Article 2, Chapter 3, Subchapter 5, Article 2, Chapter 4, Subchapter 3, Article 2, Article 3.1, Subchapter 4, Subchapter 5, Chapter 6, Subchapter 2, Article 2, Article 4, Subchapter 3, Article 1, Article 2, and Appendix 3. The Office of Administrative Law (OAL) approved the Phase 1 regulations on February 25, 2008, and they became effective on the same date. OAL approved the Phase 2 regulations on April 9, 2010, and they became effective on July 1, 2010.

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Effective Dates

1. When is the effective date of the Phase 1 portions of the regulations?

February 25, 2008, was the effective date of Phase 1.

2. When will the Phase 2 portions of the regulations become effective?

July 1, 2010, was the effective date for most of the new requirements. However, the non-water release corrective action cost estimate and financial assurance requirement is not due until July 1, 2011.

Due Dates

Water Release Corrective Action Estimate and Financial Assurance

3. When is the water release corrective cost action estimate and financial assurance due?

The water release corrective action cost estimate and financial assurance has been required by State Water Resources Control Board (SWRCB) regulations since 1991. The Phase 1 and 2 regulations do not impact this requirement.

However, under new regulations, CalRecycle can no longer concur with any new or revised Solid Waste Facilities Permit (SWFP) unless the water release estimate has been submitted and the appropriate corrective action financial assurance is in effect. Further, an operator will need to submit the estimate and financial assurance at the time of permit or closure/postclosure maintenance plans review.

Non-water Release Corrective Action Estimate and Financial Assurance

Note: FAQs in this section are based on the following premise: New regulations require an operator to provide a non-water release corrective action cost estimate and financial assurance on or before the first permit review or revision occurring on or after July 1, 2011.

4. For Permit Review Applications-Does the due date apply to the scheduled review date or the application due date that is 150 days prior to the scheduled review date? (For example, if Permit Review is scheduled for July 2, 2011, does the application package submitted 150 days before require the non-water release corrective action cost estimate and financial assurance?)

Due date applies to the application due date and not the scheduled review date.

5. For Permit Revision Applications-If the operator submits a permit revision application prior to July 1, 2011, but EA does not accept the application as

complete and correct until after July 1, 2011, is the non-water release corrective action cost estimate and financial assurance due with this submittal?

No, since a valid application was submitted prior to July 1, 2011.

6. For Incomplete Application Packages-If a permit review or revision application is submitted prior to July 1, 2011, but is rejected by EA and resubmitted on or after July 1, 2011, is the non-water release corrective action cost estimate and financial assurance due with this submittal?

Yes, since the previous application was rejected, the resubmitted application is considered a new application.

7. For Incomplete Application Packages-If a permit review or revision application is submitted prior to July 1, 2011, and is accepted as incomplete by EA and the missing portion(s) of the application is provided on or after July 1, 2011, is the non-water release corrective action cost estimate and financial assurance due with this submittal?

No, since EA accepted the application that was submitted prior to July 1, 2011.

8. For a Report of Facility Information (RFI)-Will an operator be required to provide the non-water release corrective action cost estimate and financial assurances with a RFI amendment on or after July 1, 2011?

No, the operator is not required to provide a non-water release corrective action cost estimate and financial assurance with an RFI amendment. A permit review is still required during the 5-year period between July 1, 2011, and June 30, 2016, irrespective of an RFI amendment because an RFI amendment does not affect the 5-year permit review timeline, and the estimate is required to be submitted at the time of permit review.

9. Modified Permit Applications-Will an operator be required to provide the non-water release corrective action cost estimate and financial assurances with a modified permit application on or after July 1, 2011?

CalRecycle's intent for linking the submittal of the cost estimate to the permit review or revision timeline is threefold: (1) to assure that operators provide the first non-water release cost estimate and financial assurances by a time certain not later than June 30, 2016, (2) to balance workload and establish an orderly review process by

distributing the submittals over a 5-year period, and (3) to establish a recurring 5-year schedule for submittal of updated and adjusted estimates.

Pursuant to statute and regulations a full solid waste facilities permit must be reviewed and, if necessary, modified or revised at least once every 5 years.

The new regulations do not explicitly require an operator to provide a non-water release corrective action cost estimate with a permit modification; however, a permit modification could reset the 5-year permit review timeline that could result in delaying submittal of the estimate beyond June 30, 2016. CalRecycle may pursue regulatory changes, as necessary, to ensure that regulations meet the stated intent.

10. For Permitted Closed sites-For closed sites with a closure permit, when is the non-water release corrective action cost estimate and financial assurances due?

The non-water release cost estimate and financial assurance is due with either the first permit review due or the first closure/postclosure maintenance plans revision/amendment submitted on or after July 1, 2011.

11. For Non-Permitted Closed Sites-For closed sites without a closure permit, when is the non-water release corrective action cost estimate and financial assurances due?

The non-water release cost estimate and financial assurance is due in conjunction with the updated closure and postclosure maintenance plans schedule in §21865(a)(1).

12. If a landfill operator has just applied for a 5-year SWFP review, when is the estimate due?

The non-water release corrective action cost estimate and financial assurance is due with the first permit review or revision or closure/postclosure maintenance plans review on or after July 1, 2011.

13. Closed and Closing Sites-If a landfill has final closure and postclosure maintenance plans that have been approved prior to July 1, 2010, but does not complete closure activities and is not deemed certified closed until after July 1, 2011, when is the corrective action cost estimate and financial assurances due?

If a landfill has final closure and postclosure maintenance plans that have been approved prior to July 1, 2010, but does not complete closure activities and is not

deemed certified closed until after July 1, 2011, the operator shall submit the corrective action cost estimate and financial assurances consistent with the schedule in §21865(a)(1) which is on or before July 1, 2014.

Financial Assurances-General

14. What are the financial assurance requirements for landfills that stopped accepting waste prior to 1988?

CalRecycle has no closure, postclosure maintenance, or corrective action financial assurance requirements for landfills that ceased operation prior to January 1, 1988.

Financial Assurances-Corrective Action

15. Does the non-water release corrective action demonstration requirement for permit review/revision with the first year apply if RWQCB has not reviewed or approved the cost estimates?

Yes, the requirement for non-water release corrective action financial demonstration is for the most recently approved or submitted estimate, whichever is greater. If the estimate has not been approved or has been disapproved, the financial demonstration must still be submitted for the highest estimated cost—either previously approved or as most recently submitted.

16. If a closed landfill requires corrective action funds to correct problems (or deficiencies) at a site, how will the funds be replenished without the landfill operator/owner having a source of revenue?

Many landfill operators/owners have other sources of income from either other landfills, solid waste facilities or other businesses. It is incumbent on the landfill operator/owner to show a source for repayment of funds.

Site-Specific Non-Water Release Corrective Action Plans-Third Party Preparer

Note: CalRecycle is developing Best Management Practices for site-specific non-water corrective action plans; this will be completed by January 2011 and additional FAQs will be added as necessary.

17. In practice the “entity responsible for the design of the solid waste landfill” usually comprises a team of firms, consisting of a primary consultant, subconsultants, and contractors. The “entity” or engineer of record (or CEG) that signs off on the JTD/Closure Plan is typically the primary consultant. In this scenario, would the subconsultants and contractors be excluded from being on the third party team?

No. The regulations would only exclude the entity (primary consulting firm) and the engineer of record (or certified engineering geologist [CEG]).

18. In the case where a firm that designed the landfill and is the engineer of record is subsequently purchased as a subsidiary of another company, would the parent company be excluded from being a third party preparer despite not being involved in the design work?

No, the regulations would not exclude the parent company from being a third party preparer.

19. Similarly, if a parent company that designed the landfill acquires a firm that was clearly eligible to be a third party preparer prior to the acquisition, does the acquired firm lose its eligibility status under the new ownership?

This depends on how the acquisition is structured. If the acquired firm remains a separate entity, it would not lose its eligibility. If the acquired firm becomes part of the “entity responsible for the design of the solid waste landfill,” the acquired firm would lose its eligibility.

20. The regulations refer to the entity/engineer of record in the JTD/Closure Plan of the most recent SWFP. Throughout the life of a landfill, many different entities/engineers may have played a role in the design of the landfill and signed off on the JTD. Does the phrase “most recently issued SWFP” mean that previous entities/engineers that are not referenced in the most recently issued SWFP are now eligible third party preparers?

Yes, previous entities/engineers not referenced in the most recently issued SWFP would be eligible.

21. The design engineer of record would be excluded from being a third party preparer. However, that engineer does not work alone. Would an individual from

the design team be eligible as third party preparers if they left the entity and worked for another firm?

Yes, an individual from the design team would be eligible as a third party preparer if they left the entity and worked for another firm.

22. If the design engineer of record became employed at another firm, could he/she be on the third party team provided this individual did not sign off on the corrective action plan?

Yes, if the design engineer of record became employed at another firm, he/she could be on the third party team provided this individual did not sign off on the corrective action plan.

23. Although §22102 explicitly refers to JTD and Closure Plan, does the entity/engineer of record for third party eligibility determination also extend to PCMP?

Yes, although §22102 does not explicitly refer to PCM plans it does reference §21780 which applies to both closure and PCM plans.

24. For an active landfill with a certified closed area (i.e., partial final closure implemented) which firm, or both, is considered the engineer-of-record if Firm A prepared the most recent JTD and Firm B prepared the partial final closure and postclosure maintenance plans?

Firm A, the entity that prepared the current JTD (as referenced in the current SWFP) would be considered the engineer of record for the landfill. Therefore, Firm B, the entity that prepared the final closure and postclosure maintenance plans, would be eligible to prepare the site-specific corrective action plan.

Cost Estimates

25. There is a 20 percent contingency for the closure cost estimate. Is there a contingency for the postclosure maintenance estimate?

There is no required contingency for postclosure maintenance.

26. Is it permissible to utilize existing soil from the existing cover in the default final cover replacement cost estimate for non-water release corrective action? Or is importing new soil required?

Final cover replacement is a site-specific design. The landfill operator would have to demonstrate how existing soil in the cover would be utilized in the replacement design and that the replacement final cover would meet State minimum standards. Absent such a demonstration, material would need to be imported.

27. May the cost estimate reflect the lesser cost from using on-site or other readily available material for closure activities?

Yes, the cost estimate may include the use of onsite materials, provided the cost estimate is based on costs the State may incur if the State would have to assume responsibility for closure activities due the failure of the operator to properly and adequately perform any or all of those activities.

28. Does the cost documentation provided in the Caltrans Equipment Rental Rates or Standard Specifications include contractor profits?

Yes, contractor profit is included in the ‘Markups’ portion of the “Force Account Payment” section of Caltrans Standard Specifications. Current Markups are: Labor–33 percent; Material–15 percent; Rental Equipment–15 percent.

29. If an operator is utilizing previous bid amounts to develop closure cost estimates, why should the maximum bid amount be used rather than the average or minimum bid amounts, since there is a 20 percent contingency? This appears overly conservative.

Maximum bids or price quotes for closure cost estimates are recommended, especially early in the landfill life when future costs are relatively uncertain and funds are gradually built up. Average bids or price quotes may also be appropriate where there are multiple (three or more) bids or price quotes and no minimum bids significantly outside the range. The contingency (20 percent) is required for closure cost estimates to account for cost over-runs due to unforeseen events, such as adverse weather conditions or inadequate site characterization, which would result in increased closure costs. The purpose of the contingency is not to compensate for inadequate or poor estimates. Therefore, the use of maximum bids or average bids or price quotes is not overly conservative.

30. How are postclosure maintenance costs assigned to second/third parties (e.g., LFG to energy systems) handled within the cost estimate?

The responsible party for providing financial assurance to the State is the permitted operator or owner of the landfill. This responsibility cannot be assigned by an operator/owner to a non-permitted party since the State has no authority over these parties. Therefore, the permitted operator/owner is required to calculate all postclosure maintenance costs, including those borne by other parties, in the cost estimate and provide the commensurate level of financial assurance.

31. How are emergency response (postclosure) costs related to and handled within corrective action costs?

The Emergency Response Plan required under § 21130 identifies the events which could require the implementation of emergency response actions. The corrective action plan identifies the events which may require significant corrective action (or remediation) of the landfill to restore it to pre-event conditions. While some of the events (e.g., earthquake, fire, flood, etc.) may be both emergency and corrective action events, the postclosure maintenance cost estimate only includes the immediate costs to initially respond to an event (i.e., temporary measures). The corrective action cost estimate reflects the longer-term remediation and repair costs.

Financial Assurance Draw-Down

32. If a landfill has approved final closure and postclosure maintenance plans on or before July 1, 2010, but does not complete closure activities and is not deemed certified closed until after July 1, 2011, is the landfill eligible for the postclosure maintenance multiplier drawdown?

Landfills which have approved final closure and postclosure maintenance plans approved on or before July 1, 2010, are eligible for the postclosure maintenance multiplier draw-down even if closure activities are not completed until after July 1, 2011.

33. If an operator has already completed more than 15 years of postclosure maintenance, does the operator still have to maintain an equivalent of 15 years of postclosure maintenance financial assurance?

Yes, the minimum multiplier for postclosure maintenance financial assurance is 15.

Proactive Monitoring

34. Are proactive monitoring plans required for all landfills?

No. Proactive monitoring plans are voluntary. They are only required for those landfills that wish to qualify for and maintain a reduced multiplier (step-down) for postclosure maintenance financial assurances.

Furthermore, landfills that have final closure and postclosure maintenance plans approved by all agencies on or before July 1, 2010, are eligible for multiplier draw-downs without performing proactive monitoring.

35. When does an operator need to implement a proactive monitoring program to qualify for a step-down of its financial assurances?

The proactive monitoring program will have to be initiated at least five (5) years prior to requesting a step-down, because the program must have been performed for the entire five-year period subject to the step-down request.

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