

Top Financial Assurance Tips

This list is intended to provide tips on a wide range of financial assurance issues for financial assurance programs implemented with varying levels of resources and experience. The following tips for financial assurance implementers are arranged roughly in decreasing order of importance and ascending order of difficulty within each section.

Files:

- Protect the originals that you will need to access the funds, i.e., keep the signed originals of letters of credit, surety bonds, trust agreements, insurance certificates and guarantees in a fireproof safe.
- Make sure you receive all of the documentation listed in the regulations.
- Are the files complete and maintained so documents can be accessed from a single location? For example, if a copy of a document is not in the main financial assurance file, is there a "pointer" to the needed document?
- When it becomes available, provide current financial assurance information for RCRAInfo.
- Review financial assurance files yearly. Check with technical staff for any facility changes, such as a sale, significant closure or post-closure completion, etc. Compare any significant changes to the amount held in the financial assurance documentation. Does an adjustment need to be made in the instrument's amount, for example, because of an increase in the cost estimate for inflation, or changes in the closure plan?

Instruments

General Procedures

- If you receive a notice of cancellation, immediately prepare to access the funds. Review the steps you will have to undertake if the owner or operator does not obtain a replacement within 90 days. Act promptly to avoid forfeiting the funds.
- Contact the issuing financial institution on an annual basis, confirming that the RCRA financial assurance is still in place. Banks can and do merge, bank officials may leave, so a routine check may alert the regulator of any recent or upcoming changes. Also note that a bank (or surety) name change should be reflected on the financial instrument through an 'amendment.' Make sure you have the issuing institution's full name and address as well as a contact person's (e.g., trust officer's) name and address so you can contact them quickly.
- Offer your name and telephone number for the financial institution's files. This allows a two-way communication so that the bank or surety has a direct EPA or state contact when needed.

Surety Bonds

- Check the acceptability of a surety bond on the Treasury Circular 570 web site <http://fms.treas.gov/c570/index.html> and then be sure to sign up for notification of status changes. If you receive a notification, check to determine whether it affects one of your facilities.

Insurance

- Ensure that the certificate of insurance has been properly signed and meets the regulatory requirements. Without this, a policy might not meet the other regulatory requirements, and it can be more difficult to require changes from the insurer.
- For an insurance policy that can cover more than one facility, some states require the policy to have separate sub-limits for each facility. Requiring sub-limits helps to ensure that all the facilities covered by the policy are named, and that one state's access to funds does not undermine another's funds. EPA's regulations allow a mechanism to be used for multiple facilities, require the value of the instrument to be no less than the sum that would be available if separate instruments were established and maintained for each facility, and restrict permit authorities from using funds for other facilities, unless the owner or operator agrees to the use of additional funds under the mechanism.

Financial test

- Read the business press and be aware of the finances of the companies in your state. Adverse financial news may signal that a company has lost its investment grade bond rating, or will have difficulty meeting the ratio requirements of the test. Such news could be the basis for requesting additional financial information from a company using the financial test to help determine whether they still qualify.