

Jumbo Glacier Resort Master Plan

Appendix 5-B

Assurance Plans Under the Municipal Sewage Regulation

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Introduction

The Ministry of Water Land and Air Protection (“MWLAP”) have adopted the use of assurance plans submitted under the *B.C. Municipal Sewage Regulation* (“Regulation”), as a substitute for financial securities required by the Regulation. This paper outlines the objectives, requirements and details for an assurance plan for this project.

Under schedule 1, condition 5 of the Regulation, dischargers must provide two forms of financial security for any private residential development that has a sewage facility. In particular, subconditions (3) and (4) require:

(3) If the discharger is an individual, company or strata corporation, the discharger must not treat, reuse or dispose of municipal sewage generated by a residential development unless

(a) a capital replacement fund is established,

(b) the discharger provides, within 90 days of the end of the discharger's fiscal year, audited annual financial statements of the capital replacement fund to the manager, and

(c) the discharger ensures that the manager can act in a timely manner as set out in subcondition (7) respecting the capital replacement fund.

(4) If the discharger is an individual, company or strata corporation, the discharger must not treat, reuse or dispose of municipal sewage generated by a residential development unless

(a) security is provided, and

(b) the discharger ensures that the manager can act in a timely manner as set out in subcondition (7) respecting the security.

There are three options available to meet these conditions: post financial security in the form of a capital replacement fund and cash security; partner with local government to ensure the discharge is under a local service area bylaw; or ensure the discharge is registered or covered by an approved assurance plan, as follows:

*(10) If a discharger has submitted written proof to the manager that the discharge is registered with an **assurance plan**, approved in accordance with condition 6 (4), **subconditions (3) and (4) do not apply to the discharger***

The Terms of Reference for this project require the sewage treatment equipment provider supply the requisite financial securities required under the Regulation. Ecofluid has chosen to meet these conditions through the provision of an approved assurance plan. We acknowledge that the discharger must certify the assurance plan, and we intend to work with the Owner/Developer and Ministry staff to identify and confirm the discharger.

The assurance plan will ensure that the discharger has sufficient managerial, technical and financial resources available to provide for the ongoing operation and maintenance of the sewage facility. More specifically, the Regulation states:

... 'assurance plan' means a program, the insurance instruments of which are provided by a company registered under the Insurance Act with the Superintendent of Insurance, having sufficient quality assurance and technical, financial and management resources to provide, or warrant the provision of, repairs to, or operation, maintenance or replacement of each sewage facility registered under the program. (see Schedule 1, condition 5 subcondition (2) of the Regulation)

In keeping with the overall intent of this definition and the Regulation, the proposed assurance plan will consist of the following components:

- completed template duly authorized by a signing authority of the discharger;
- descriptions of the potential failures and planned risk mitigation measures;
- supporting documentation (e.g. relevant company policy or procedures manuals);
- evidence of insurance coverage, as selected and described in the assurance plan; and
- evidence of other financial guarantees as selected and described in the assurance plan.

Authority and Pre-requisites for Assurance Plans

Although not specifically referenced in the Terms of Reference, projects that are subject to the Regulation may choose an assurance plan as a voluntary option for providing performance and financial assurances. The assurance plan is an alternative to posting a capital replacement fund (security), or to arranging, in partnership with a local government, for a local service area.

Dischargers must comply with the requirements of the Regulation. These requirements include risk mitigation strategies, which are integral to the discharger's performance assurances. In particular, the regulatory requirements listed below must be met in order for the discharger to be in compliance with the assurance plan:

- use of qualified professionals;
- use of certified operators;
- design plan;
- operating plan;
- environmental impact study;
- monitoring; and
- Code of Practice for Water Reuse (where applicable).

Benefits of an Assurance Plan

This section outlines the Provincial objectives for, and potential interest of local governments in, assurance plans, as well as the benefits that can be realized by dischargers.

Provincial Objectives

The Ministry has four objectives for assurance plans, namely that they:

- eliminate financial risk to the Province and local governments (i.e., to the general taxpayer);
- ensure continuity of service to users of the facility;
- protect public health and the environment; and
- do not result in an unreasonable cost to the discharger submitting the assurance plan.

Local Government Interest in Assurance

Both municipalities and Regional Districts have an interest in assurance plans as a tool to support the development of private and government owned sewage facilities in their jurisdiction. This process provides standard templates and mechanisms that can augment the risk management tools of local governments in this regard.

Benefits of Assurance Planning for Dischargers

Assurance planning offers significant benefits for dischargers, their suppliers and partners. More specifically, assurance planning leads companies to take a disciplined approach to risk management, which is a key aspect of sound project management.

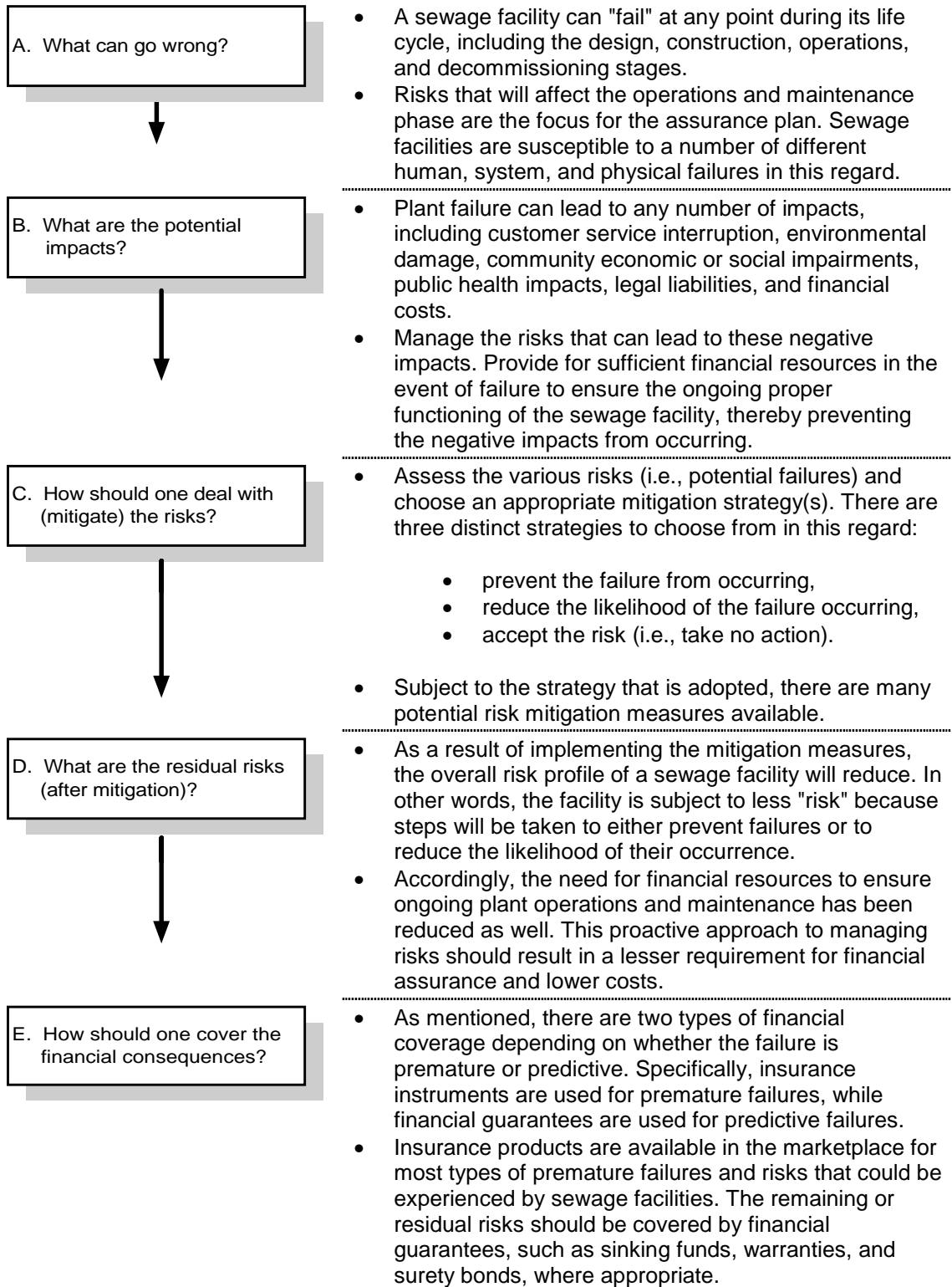
Proactive companies already undertake assurance planning in that they:

- identify potential risks of failure;
- develop and implement risk mitigation strategies;
- arrange for appropriate insurance coverage; and
- ensure financial resources will be available throughout a project's life cycle.

Companies that don't manage risks properly are susceptible to bearing the costs of damaging events and failures, which may result in them becoming financially insolvent.

Risk Management Framework

The assurance plan will be an output of risk management planning. It is important, consequently, to describe what constitutes a risk management framework. Essentially, the framework comprises five distinct steps, as follows.



Assurance Plan Process

This section sets out the process for developing, approving and maintaining the assurance plan. The process goes through three stages, as set out below and described in the following paragraphs:

- Stage 1:** Preparation of the Assurance Plan
- Stage 2:** Review and Approval of the Assurance Plan
- Stage 3:** Administration and Maintenance of the Assurance Plan

Stage 1: Preparation of the Assurance Plan

Risk Assessment and Mitigation

The first step is an assessment of the potential risks and failures that are inherent in the operation and maintenance of sewage facilities and fill out a corresponding worksheet. Assess the relevance and likelihood of each possible failure for the operation.

After assessing the risks, the types of measures that will be employed to mitigate or deal with the risks are indicated along with the rationale for the chosen measures (including when “no action” is chosen). Each mitigation measure intended to be employed will be described, and any supporting documentation will be attached.

Assessment of Residual Risks

The amount of risk remaining, assuming implementation of the mitigation measures, will be assessed and indicated. An estimate of the associated financial value of the residual risk will be provided.

The estimated financial value, will assist designing an appropriate combination of financial guarantees and insurance products. In other words, the amount of financial assurance provided by various instruments (e.g. surety bonds, guarantees) will be consistent with the estimated financial value of the residual risk.

Financial Assurance

The composition of the financial assurance package will be indicated. For each potential failure, we will identify the insurance coverage and financial guarantees being provided, as applicable.

As alluded to above, it is possible to offer more than one type of instrument for a particular failure; so as many as apply will be indicated. The options include standard insurance instruments and financial guarantees. For other types of financial assurance, the instrument and the reasoning underlying its choice will be described.

Stage 2: Review and Approval of the Assurance Plan

The Regulation requires that an expert consultant review the assurance plan. We will engage the expert consultant from an approved roster maintained by the Ministry. It is understood that the expert consultant will maintain independence and objectivity in conducting their role. To help prevent conflicts of interest, the Regulation states that:

“the [discharger] must not select a consultant from the roster that has been involved in developing the assurance plan being reviewed or has a personal or business relationship with the person requiring the review.”

The expert consultant’s findings and recommendations will be appended to the assurance plan before the plan is submitted to the Ministry for approval. The expert consultant will also send a copy of their report to the discharger for information purposes. On receipt of the assurance plan that has the findings of the expert consultant appended:

“the Director may approve the plan provided the Director is satisfied that it adequately provides for sufficient quality assurance and technical, financial and management resources to provide operations, maintenance, repairs or replacement of the sewage facilities.”

Stage 3: Administration and Maintenance of the Assurance Plan

The plan will be maintained unless it is replaced by another approved financial security option or until the users of the sewage facility no longer need the sewage treatment service. Administration and maintenance of the assurance plan will involve.

Annual Report

As stated in the Regulation, “on or before March 31 in each year, the discharger will provide to the Director an annual report detailing what quality assurance and technical, financial and management resources are in place under the assurance plan and how effective the quality assurance and technical, financial and management resources have been during the previous calendar year.”

Keeping The Assurance Plan Current

Operating and maintaining a sewage facility is not a static situation, since there is always change. New risks may emerge, potential financial impacts of failure may increase, conditions of insurance policies have to be met and premiums have to be paid. The Discharger will monitor the operating environment and current conditions and determine the implications for the assurance plan.

A key objective is to ensure that performance and financial assurances are never allowed to lapse – there should be continuous coverage. The assurance plan will evolve to reflect changes, amending the plan or taking other actions as required to keep it current. The discharger will also continue to comply with the terms of the financial instruments.

Contingency Plan for Lapsed Financial Assurance

The discharger will provide the Director with a contingency plan that will provide for ongoing financial assurance in the event of a lapse of one or more insurance or financial instruments. For example, the discharger may offer a letter of credit of sufficient value to bridge a gap in coverage or they may pay a series of insurance premiums in advance.

Notification of Changes to the Assurance Plan

The Ministry will be kept informed about changes to the assurance plan. Timing for notifying the Ministry will depend on the type of change. Any change that could jeopardize the integrity of the plan will be subject to approval by the Director.

➤ Updates and Amendments – Normal Course of Business

Where changes are made to the assurance plan to stay current, and these changes can be considered as part of the normal course of business (i.e. they do not increase a facility's overall risk profile), then they will be disclosed in the annual report.

➤ Updates and Amendments – Extraordinary Change

Where amendments to an assurance plan are the result of unforeseen events or are unplanned, and are significant in scope, then the discharger will notify the Director immediately upon becoming aware of the need for the amendment.

An extraordinary change is one where a facility's overall exposure to risk, and hence need for financial assurance, increases substantially. Examples of extraordinary changes are a significant increase in cost exposure (and, as a result, in the value of insurance required), a significant increase in insurance policy deductibles, or the substitution of one type of financial assurance instrument with another instrument. "Rolling" new phases of a sewage treatment project into an existing assurance plan would also constitute an extraordinary change.

➤ Cessation of Coverage by an Assurance Plan

A discharger with a sewage facility that is subject to the Regulation must assure,

"that the potential cost, whenever it may arise, of the full replacement of the sewage facility will be covered"

If the facility ceases to be covered by an approved assurance plan, for whatever reason, then the discharger will provide a capital replacement fund or provide for a local service area bylaw with the local government. There will never be a lapse in assurance coverage, whatever form it may take.

Cessation of coverage by an approved assurance plan can occur as a result of any number of reasons such as voluntary withdrawal from an assurance plan, termination of insurance or assurance policies, or a significant change in the financial viability of the operation.

If the cessation is planned or predictable, then the discharger will notify the Director in writing at least thirty days in advance of the date of the cessation of coverage. In any case, if the discharger's facility ceases to be covered by

an approved assurance plan, the discharger must notify the Director in writing within thirty days of the change in status.

Upon request, the discharger will arrange to make the Ministry a beneficiary on all insurance policies in which the Ministry wishes to be a beneficiary. This will provide for notification to the Ministry as well as enable it to access funds under the policy if necessary, even if the discharger no longer exists.

➤ **Change in Facility Ownership**

When the discharger transfers ownership of the sewage facility to another party, thereby effecting a change in the party responsible for the assurance plan, the discharger will report this change in ownership to the Director at least thirty days in advance of the transaction's completion date.

Change in Ownership of Facility

When ownership of the sewage facility changes, then responsibility for the facility's assurance plan is transferred to the new owner and the necessary supporting documentation must be completed. In particular, it is important that the elements of the assurance plan for a new residential subdivision are properly transferred from the developer to the strata corporation when the developer leaves the project or when the corporation is formed.

Course of Action in the Event of Failure of Assurance Plan

Assurance plans fail when they do not provide for the ongoing operation and maintenance of a sewage facility as intended. For example, they can fail because dischargers did not anticipate certain risks or they underestimated the potential impacts of a failure. Or, they can fail as a result of the discharger not properly implementing the mitigation strategies.

Ideally, dischargers in partnership with their expert consultant(s) and the Ministry will be able to identify a deficient assurance plan before it is too late (i.e., there is still enough time to take corrective action).

Compliance

A properly prepared and executed assurance plan will reduce the risk of failure of a treatment facility, thereby promoting compliance. When risks are managed appropriately, costs will be reduced, and compliance achieved.