



## Hazardous Waste Regulation Guidance

### Financial Security Requirements

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#### **Disclaimer**

This document does not supersede or replace the *Environmental Management Act* or its regulations; in the case of omissions or discrepancies, the Act and the Hazardous Waste Regulation apply. It is intended for guidance purposes only.

## 1. Purpose

This guideline has been developed to assist applicants and/or their qualified professionals in navigating through financial security requirements related to the storage and transportation of hazardous waste, assessing amounts and preparing a report supporting the calculation of the financial security.

This guideline reflects requirements of the Hazardous Waste Regulation as well as additional information that will be considered by the Director when making a statutory decision.

## 2. Legislative Authority

Financial security is provided for in the *Environmental Management Act* (EMA) and the Hazardous Waste Regulation (HWR). Section 14(1)(b) of the EMA enables the Director to use discretion in determining financial security requirements for permit holders, which would apply to most hazardous waste landfills. Section 17(2) of the Hazardous Waste Regulation enables a Director to require financial security for hazardous waste storage facilities as a performance guarantee at the Director's discretion. Section 45(4) of the HWR enables the Director to issue a transport licence with conditions necessary for the protection of the environment, including financial security. The security, if required, shall be in the amount and form, and subject to the conditions a Director may specify.

## 3. Application

In practice, the current ministry policy for requiring financial security related to storage is as follows:

- The Director will require a facility that receives and stores hazardous waste from other generators of hazardous waste to post and maintain adequate financial security.
- The Director will require a facility that stores and treats hazardous waste to post and maintain financial security.
- The Director may require a facility that generates its own hazardous waste and stores the hazardous waste generated at that facility to post and maintain financial security.

The financial security requirement for transportation is a mandatory condition for a Director issuing a licence to transport under Section 45 (4) of the Regulation, with the amount currently fixed at \$10,000.

As a general rule, government bodies, including a federal, provincial or municipal body, an agency or ministry of the Crown in right of Canada or British Columbia, are exempt from the requirements for financial security under this policy. However, exceptions may be made if a Director considers it advisable for specific circumstances.

#### **4. Compliance**

Financial security must be maintained for the complete life of the facility, including operations, closure and, if applicable, post-closure activities. The Director can require that financial security be retained longer after closure if, while reviewing the final closure report, the Director determines that there is an environmental impact associated with the facility, or that an impact may reasonably be expected to develop (e.g., monitoring wells showing an increase in contamination).

Not maintaining financial security as required is considered a non-compliance.

#### **5. Security Amount Calculation**

Since the security is required to ensure protection of the environment, the amount should reflect the worst-case scenario where a regulated party has abandoned a facility that was filled to capacity, i.e. the amount of waste indicated in the authorization (registration, permit, approval, etc.). The security amount should reflect the closure plan for the facility and all relevant information necessary to determine the cost of restoring the environment to an acceptable state as determined by a Director. This would include characterizing the various wastes at the site including bottom sludge and waste water from tanks/drums, removal and transportation of the stored waste by a licensed hazardous waste transporter to an authorized management facility, and an assessment (e.g., Contaminated Sites Regulation Preliminary Site Investigation) of the condition of the soil, groundwater, surface water and other media at the site that may have been affected by the facility's operation.

Financial information for the security calculation must be provided by companies or consultants who have sufficient knowledge and experience related to financial security calculation and hazardous waste management to produce a meaningful estimate. There are two options to determine the amount of security at a hazardous waste storage facility:

1. The applicant provides three cost estimates from third party hazardous waste management companies. The amount of security imposed will not necessarily be the median or average of the estimates.
2. The applicant hires an independent qualified professional licensed in the Province of B.C. The professional should include information about his/her qualifications and ability to provide an independent estimate of the financial security required for the facility.

**NOTE:** The financial security should not be calculated as if the applicant is doing the work themselves.

The amount of financial security should be based on:

- Cost of identifying, removing, hauling and disposing of hazardous wastes, when the facility is filled to its maximum capacity;
- Cost of decommissioning any remaining works;
- Cost of assessing the conditions of the soil, sediments, groundwater and surface water at the site;
- Cost of carrying out closure and post-closure activities;
- Cost of carrying on any environmental protection activities at the site during closure and post-closure, as applicable (e.g., environmental monitoring, sampling and analytical costs);
- Cost of any management and administrative activities associated with closure and, if applicable, post-closure;
- Cost of consultant fees and applicable taxes;
- The time when any of the closure, post-closure activities and the associated need to draw on the financial security are most expensive;
- Site specific factors, including those related to the type of management that was carried out at the site (e.g., secure landfills vs. passive storage of hazardous waste in a tank).

The applicant must submit to the Director a written report for financial security providing the cost estimate of a third party carrying out the closure plan as well as any necessary post-closure activity, unadjusted for time, inflation, return on invested funds or other financial factor. In the report, the applicant must include the proposed form of security, the calculations and the rationale for the amount of security proposed and any

supporting documentation. Where it is necessary to construct new or modified works, the applicant must ensure that the costs are accounted for in the financial security calculation.

The applicant should also propose a schedule for the review of financial security and how the amount will be adjusted to account for inflation, replacement costs, etc.

The amount of financial security required to obtain a licence to transport hazardous waste has been established by the Ministry of Environment as Cdn \$10,000 (ten thousand Canadian dollars). Therefore, there is no need to calculate the amount. Financial security is to be provided to the department responsible for issuing transport licences, which can be reached by e-mail at [hazwaste@victoria1.gov.bc.ca](mailto:hazwaste@victoria1.gov.bc.ca) or by telephone at 250-356-5044.

## **6. Forms of Financial Security**

**Note:** the Ministry will not pay interest on any form of financial security posted.

### **Acceptable and Preferred Forms of Financial Security**

1. Irrevocable Letter of Credit
2. Surety Bond

### **Other Forms of Financial Security that May be Considered**

Irrevocable Trust: Internal Trust, External Trust and Qualifying Environmental Trust (QET)

### **Unacceptable Forms of Financial Security**

1. Cash and Certified cheques
2. Convertible financial instruments issued by or guaranteed by a provincial or federal government such as treasury bills and bearer bonds
3. Guaranteed investment certificates
4. Indemnification agreements and Letters of Guarantee
5. Non-transferable investment/savings bonds
6. Joint bank accounts or bank accounts
7. Collateral or agreements for contract and other non-standard forms of security
8. Insurance policies

9. Guarantee agreements
10. Stock certificates

## **7. Certification of Financial Security Supporting Document(s)**

The report containing the calculations, rationale and supporting documentation, as applicable, should be certified by the person who prepared it. In the certification, the qualifications of the person certifying should be stated.

In addition, a similar certification statement to the one below, in italics, should be included:

*This report was prepared in accordance with and meets the requirements of the Hazardous Waste Regulation. The information contained in this document is true and complete to the best of my knowledge and the proposed financial security amount will provide sufficient funds for the protection of human health and the environment at the facility.*

## **8. Director's Approval for Financial Security**

The ministry will review the information provided and may contact the company to confirm the information submitted. The ministry will then add an amount for the ministry's involvement in assessing and overseeing the financial security implementation, which may be in the order of an additional 20%.

Once the Director is satisfied with the information in the written report and the proposed form and amount of financial security, the applicant must post the financial security in the timeline specified by the Director.

An authorization may not be issued until the financial security has been posted.

## **9. Maintaining, Reviewing and Updating the Security Amount**

### **Maintaining or Replenishing**

Financial security must be replenished and maintained throughout the life of the facility or operation, including any post-closure period, as specified by the Director. Financial security must be replenished within 30 days of its partial or full use, unless the Director specifies a different timeline.

If a regulated party continues operations without replenishing the specified amount of financial security beyond the allowable time, the regulated party will be considered to be out of compliance for his/her financial security requirements.

### **Periodic Review**

The regulated party is expected to recalculate the amount of financial security periodically for the operational life of the facility unless otherwise agreed to by the Director. This is to ensure that posted security remains adequate to protect the environment. The financial security review is not required to be submitted to the Director unless there is a change in the amount. The Director can require the regulated party to change the amount or type of security to ensure sufficient funds are available for the performance of his/her obligations under the EMA and Hazardous Waste Regulation.

If it is determined that the amount of financial security should be revised, following a review, the regulated party must submit the revised amount along with a report that supports the change. The following are examples that may affect the amount of financial security: The regulated party must review and submit the revised financial security along with a written supporting report prior to any substantive change(s) that would require an increase in the amount of financial security:

- Changes in amount or type of hazardous waste managed at the facility
- Changes in new or existing works
- Changes in the operations at the facility
- Amendments to the Operational Plan
- Amendments to the registration

A regulated party may be required to review and submit revised financial security and a written report if:

- There is non-compliance with the provisions of the EMA or the Hazardous Waste Regulation
- There is non-compliance with any conditions associated with approved Plans and Specifications or the Operational Plan

Where construction of new/modified works is a component of the closure or post-closure activities are contemplated, that component of the financial security calculation should be revised annually based on the following formula:

Revised Financial Security = Revised Construction Cost + Revised Cost  
(for closure & any post-closure) where:

- Revised Construction Cost = Original Construction Cost x Present Index/Original Index
- Index value is the “Construction Cost Index” published in the periodical “Engineering News Record”.

Alternative calculations for construction cost may be considered by the Director.

### **Effect of Inflation**

Where changes to the amount of financial security are required for whatever reason, the effect of annual inflation may need to be considered. The annual inflation rates used to amend the amount of financial security shall be drawn from Canada’s most recent Consumer Price Index (CPI) or the average of the past 10 years CPI, whichever is lower.

## **10. Use of Financial Security**

### **Conditions Causing Security to Be Called**

Section 17(2) of the Hazardous Waste Regulation states that security is for the performance of the regulated party’s obligation under the Act and this regulation. Examples of when financial security may be called for the fulfillment of a regulated party’s obligation include:

- to correct inadequate works relating to construction, operation and maintenance;
- waste abandonment;
- addressing impacts on human health and the environment if the regulated party refuses to address them;
- spill response and associated remediation.



Besides a regulated party's legal obligations, other conditions that may cause financial security to be called by the Ministry could include, but are not limited to, the following circumstances:

- the regulated party or its guarantor becomes bankrupt, files a Notice of Intent or files a Proposal under the *Bankruptcy and Insolvency Act*; or
- a notice is received for the proposed cancellation or non-renewal of security and an acceptable alternative has not been arranged.

The use of a financial security instrument (or its conversion to cash), under any circumstances, is independent of any enforcement action the ministry may choose to pursue related to the regulated discharge or possible non-compliance.

### **Conversion of Financial Security into Cash**

Financial security can be converted to cash for use under various situations, including but not limited to:

- Party defaulting
- Potential of financial security to lapse
- Company dissolution/liquidation
- On-site and off-site regulated party or third party property damage/pollution
- Receivership, bankruptcy

Conversion into cash is not tied to default. Conversion does not mean it has to be used and it can be held.

## **11. Return of Financial Security**

All or part of the financial security may be returned under the following conditions:

- a) The facility is closed to the satisfaction of the Director and all other conditions of the authorization or legislation and regulations, including any necessary post-closure activities, are met.
- b) The current regulated party is replaced by a new regulated party. Where the Director consents to the transfer of an authorization and the previous holder had posted financial security the Director may not release the security to the former holder until the appeal period in relation to the decision to transfer the authority and to require the new party to post financial security has expired. The time limit for commencing an appeal of a decision is 30 days after notice of the decision is given (EMA, Section 101).

- c) Current financial security is replaced by another financial security. The Director will ensure that existing financial security remains active and in place until the new financial security is in place and evidence of such has been received by the Ministry.
- d) The permit, regulation or order stipulates the return of the financial security
- e) The regulated party of the facility transfers the title of the property to the Crown. This applies to landfills and secure storage in a building, except for any abandoned properties that revert to the Crown.
- f) There is no longer a requirement for financial security.
- g) The Director has agreed to reduce the amount of financial security.
- h) Non-compliances have been addressed and resolved.
- i) Other circumstances as per the discretion of the Director.
- j) Cancellation or termination of an authorization by the facility owner. The Director may not release the financial security unless he/she is satisfied that the security will not be needed (condition A above is met).

Once it is determined that financial security should be returned to the regulated party or the company who issued the financial security (e.g. Surety), the financial security and, where applicable, its interest accrued by a financial institution should be returned within a reasonable time frame.

## 12. Definitions

**“authorization”** means a permit, approval, registration, order or licence

**“construction cost”** means those costs associated with purchase of equipment, installation of equipment, construction of buildings and other permanent structures, one-time consultant services, architect services, laboratory expenses, fencing, hauling, excavation, costs of expert advice, costs of environmental engineers, etc.

**“Environmental Management Act” or “EMA”** means the provincial statute governing introductions of waste into the environment. It was brought into force on July 8, 2004, replacing the former *Waste Management Act* and *Environment Management Act*.

**“facility”** includes any land or building, and any machinery, equipment, device, tank, system or other works. (EMA)

**“facility”** means any works that are designed to or do handle, store, treat, destroy or dispose of hazardous waste, and includes recycle facilities, storage facilities, treatment

facilities, incinerators, thermal treatment facilities, mobile facilities, secure landfills, piles, surface impoundments, land treatment facilities, secure buildings and in situ management facilities, but does not include an historical hazardous waste contaminated site. (HWR)

**“financial security”** means a financial mechanism by which one party guarantees its performance to another party (such as the Government).

**“irrevocable letter of credit”** means a letter of credit that neither the bank granting it nor the letter holder may cancel under any circumstances.

**“irrevocable trust”** is a trust (account in bank held by Trustee) that cannot be modified, withdrawn or terminated without permission of the beneficiary.

**“letter of credit”** means an instrument issued by a financial institution agreeing that it will pay money to a third party beneficiary, on behalf of the bank's customer, upon the happening of certain events.

**“manage”** means to handle, transport, store, treat, destroy or dispose of hazardous waste

**“pollution”** means the presence in the environment of substances or contaminants that substantially alter or impair the usefulness of the environment.

**“regulated party”** means a party who is subject to the EMA regulatory scheme by virtue of their engagement in a prescribed industry, trade, business, activity or operation. A regulated party may be subject to one or more regulations under EMA and/or a permit, approval or authorization issued under the Act.

**“regulation”** means a rule of order or code of practice having the force of law, prescribed by a superior or competent authority, relating to the actions of those under the authority's control.

**“safekeeping agreement”** means an agreement setting out the conditions for what a financial instrument or cash accepted by government can be used for in the event of any environmental damage or cleanup directly attributable to the regulated party's activities.

**“storage”** means the storage of hazardous waste with the intention to move the hazardous waste for subsequent management.

**“surety bond”** means a three-party agreement where the surety company promises to perform obligations of the bonded party or pay up to the agreed sum of money to the beneficiary if the bonded party fails to perform those obligations.