

Topic #4: Financial Assurance

Background Information

What is Financial Assurance?

“Financial Assurance” is a way for an owner or operator of an industrial site to guarantee that a certain amount of money will be available to address environmental contamination on the site.

Certain environmental laws require financial assurance, though exact requirements differ based on the:

- type of industrial operation,
- type of contamination,
- scenario that causes the contamination,
- timescale for providing financial assurance,
- amount of money required to be guaranteed, and
- “tools” allowed to be used for financial assurance



Various “tools” are used for financial assurance. Some tools are provided by a third party, like a bank or insurance company. Example third-party tools include a trust fund, letter of credit, insurance policy, or surety bond. Other tools, called self-insurance, are provided by the owner or operator itself. Example self-insurance tools include a corporate financial test, corporate guarantee, or captive insurance.



Financial assurance comes into play when the owner or operator of the site is unable or unwilling to address the contamination. When this happens, the environmental regulator is able to access the money guaranteed by the financial assurance to address the contamination.

What does the Coastal Zone Act say about Financial Assurance?

The Act requires conversion permit applicants to provide financial assurance for **three scenarios**:

(1) Contamination on the project site at the time of application

For Scenario (1), financial assurance must guarantee sufficient funds to comply with the Delaware Hazardous Substance Cleanup Act and any other laws that relate to existing contamination on the project site.

(2) Termination, liquidation, or abandonment of heavy industry or bulk product transfer activities on the project site

(3) Future incidents that result in environmental contamination on the project site

For Scenarios (2) and (3), financial assurance must guarantee sufficient funds to minimize environmental damage and stabilize and secure the project site in either of these situations.

The applicant must submit a “concept” financial assurance plan with their permit application. If the permit is issued, a “final” plan must be approved by DNREC before operations on the project site can begin.



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Preliminary Recommendations

NOTE: The information below is only an overview of the Committee’s preliminary recommendations. For the full text of the recommendations, please see the Preliminary Recommendations Packet.

What did the Regulatory Advisory Committee recommend?

In addition to the three required financial assurance scenarios, the Committee made a preliminary recommendation to add a fourth scenario:

Maintenance or repair of the project site or infrastructure improvements to address sea level rise or coastal storms.



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How did the Committee come up with its preliminary recommendations?

In August 2018, the Regulatory Advisory Committee formed a Work Group of Delaware experts with experience in risk evaluation and financial assurance, who outlined options for the Committee to consider. The Committee deliberated these options over three meetings and made preliminary recommendations in Dec. 2018.

The Committee’s preliminary recommendations addressed the “tools” that could be allowed for the four financial assurance scenarios. These recommendations are summarized in the table below:

Other preliminary recommendations include:

- Conversion permits should take into account financial assurance that other environmental laws and regulations require on the project site.
- Because situations change over time, financial assurance tools and monetary guarantees should be reviewed on a regular basis to verify that they are appropriate as time goes on.
- Self-insurance tools are not preferred for Scenario (2) because this scenario may happen decades down the road. As such:
 - Review of self-insurance tools may require more time and cost on DNREC’s end. These extra costs would be passed along to the permit applicant.
 - During regular review of self-insurance tools, the DNREC Secretary should consider requiring an owner or operator to use only third-party tools or a blend of self-insurance and third-party tools.

	Types of Financial Assurance Tools						
	Third-Party Tools				Self-Insurance Tools		
	Trust Fund	Letter of Credit	Insurance Policy	Surety Bond	Corporate Financial Test	Corporate Guarantee	Captive Insurance
(1) Existing contamination on the project site <i>Timescale:</i> Short- or Medium-Term	●	●	●	●	●	●	● Funds Availability
(2) Termination, liquidation, or abandonment of heavy industry or bulk product transfer activities on the project site <i>Timescale:</i> Medium- or Long-Term	●	●	●	●	● Not for Long-Term Timescale	● Funds Availability	● Not for Long-Term Timescale
(3) Future incidents that result in environmental contamination on the project site <i>Timescale:</i> Short-, Medium-, or Long-Term	●	●	●	●	● Short-Term ● Medium- or Long-Term	● Short-Term ● Medium- or Long-Term	● Short-Term ● Medium- or Long-Term
(4) Maintenance or repair of the project site or infrastructure improvements to address sea level rise or coastal storms <i>Timescale:</i> Short-, Medium-, or Long-Term	●	●	●	●	● Short-Term ● Medium- or Long-Term	● Short-Term ● Medium- or Long-Term	● Short-Term ● Medium- or Long-Term

Key:

- Tool may be appropriate based on timescale and funds availability
- Tool may not be appropriate due to either timescale or funds availability
- Tool may not be appropriate due to both timescale and funds availability

For the full set of the Committee’s preliminary recommendations on financial assurance, please see the Preliminary Recommendations Packet.