

Financial Assurance Primer

**Deliberative - For Work Group Discussion
Purposes Only**

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Context . . .

- Congress and State legislatures have mandated that owners and operators provide financial guarantees for the safe management of activities that may result in environmental harm.
 - **Intent.** Polluter Pays' principle.
 - **Intent.** Minimize the number of orphaned/abandoned facilities.
 - **Intent.** Minimize environmental risks from facility releases.
- Financial responsibility presumes that the project developer is an active business entity. Capable of setting aside funds today to pay for future expected environmental obligations.

Market Impacts of Effective FA

- **Capital Investment.** Encourage firms to design and site facilities to minimize adverse environmental costs, and thereby maximize financial returns.
- **Deterrence & Precaution.** Foster operating decisions that consider risk, and reduce the likelihood of environmental injury and attendant damages.
- **Optimal Pricing & Consumption.** Stimulate firms to appropriately internalize costs, and thereby prevent excessive consumption of environmentally damaging goods.

Financial Assurance Design Considerations

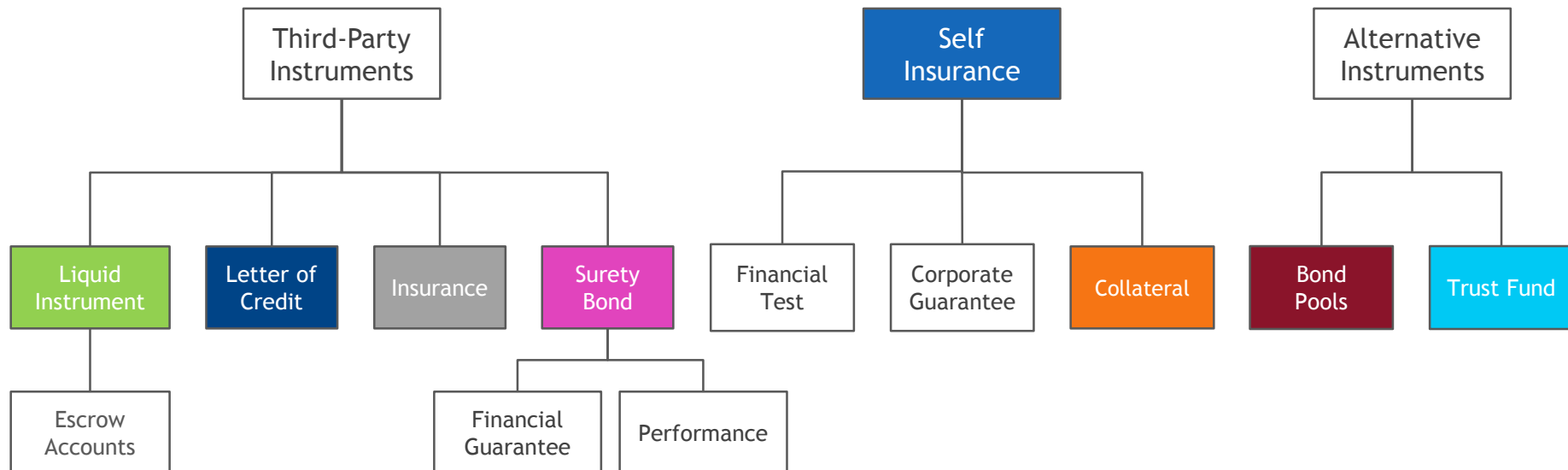
- Effective financial assurance will support activities in an economically efficient, yet safe and environmentally sound manner by encouraging sound site selection and sound operational behavior.
- An effective framework will assure funds are available to:
 - **Pay for activities necessary to detect problems** before they adversely impact public welfare or the environment.
 - **Finance remedial action** should such action become necessary.
- It also will establish minimum standards for companies that choose to self-insure, or for financial institutions managing funds or underwriting risk; and should ensure continuity of financial assurances, when ownership of sites is transferred.

Environmental Laws with FA Requirements

Statute	Activities Covered	CFR Citation
SDWA	Plugging and Abandonment	40 CFR 144.63
UIC Class VI	Criteria and Standards Applicable to Class VI Wells	40 CFR 146
RCRA Subtitle C	Hazardous Waste Closure, Post Closure, Corrective Action, and Third Party Liability	40 CFR 264.143 40 CFR 264.145 40 CFR 264.147
RCRA Subtitle D	MSWLF Closure, Post Closure, and Corrective Action	40 CFR 258.74
RCRA Subtitle I	Corrective Action and Third-Party Compensation	40 CFR 280.93
TSCA	PCB Storage Facility Closure	40 CFR 761.65.g
CERCLA	Hazardous Waste Remedial Action	Section 108(b)
SMCRA	Surface Coal Mining and Reclamation	30 CFR 800

} Foundation of Federal Financial Assurance

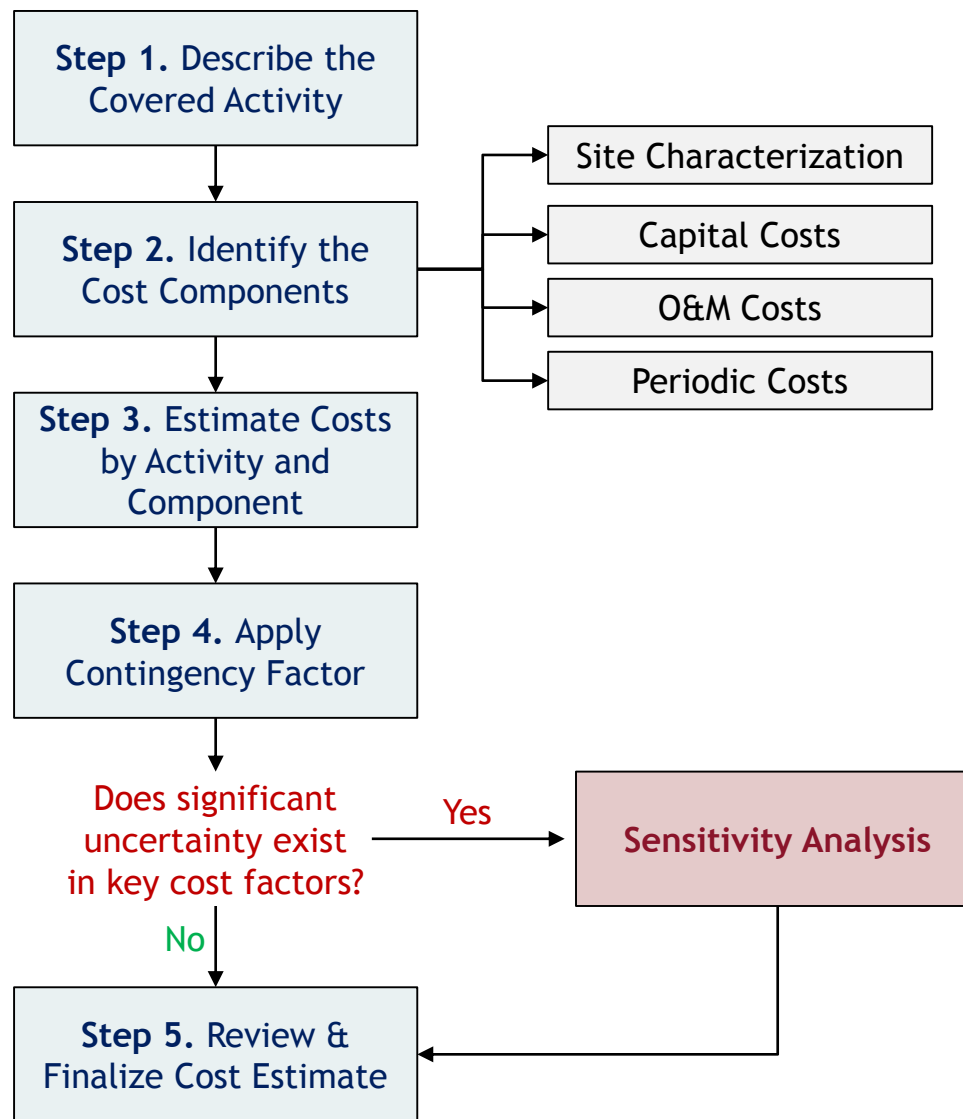
Standard Financial Assurance Instruments



The Principles of Cost Estimation for Financial Assurance

- Accurate and current cost estimates are essential to ensuring effective financial assurance.
 - Identify the site characteristics, conditions and factors that drive the estimated costs of each required activity.
 - Understand the timeframe over which activities will occur.
 - Estimate the dollar amount(s) required to complete the array of required activities.
 - Ensure sufficient funds are available in the timing and amounts necessary.
- In general, costs are a function of plant design and location, and must be estimated on a site-specific basis.

Cost Estimation for Purposes of Evidencing FA



FA & Risk Management

Financial Responsibility Mechanisms	Site Life Cycle		
	Active Operations	Closure / Post-Closure	Long-Term Stewardship (<u>after</u> defined post-closure period)
1. Third-Party Instruments (Trust Funds, LOCs, Insurance, Bonds)	✓	✓	Maybe (monitoring, remedial action)
2. Self-Insurance (Financial Test, Corporate Guarantee)	✓	✓	No
3. Public/Private Risk Sharing (Compensation Funds, Risk Pooling Models, Insurance Mutuals)	No	No	✓ (compensatory damages)