

CITY OF SOUTH BEND, INDIANA
AGREED-UPON PROCEDURES REPORT
LOCAL GOVERNMENT FINANCIAL ASSURANCE TEST
UNDER 329 IAC 10-39-2(6)

Dated June 4, 2019



now joined with
Springsted and Umbaugh

CITY OF SOUTH BEND, INDIANA

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June 4, 2019

now joined with
Springsted and Umbaugh

Honorable Peter Buttigieg, Mayor
Mr. Daniel Parker, Controller
City of South Bend
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South Bend, IN 46601

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INDEPENDENT ACCOUNTANTS' REPORT ON APPLYING
AGREED-UPON PROCEDURES

**LOCAL GOVERNMENT FINANCIAL ASSURANCE TEST
UNDER 329 IAC 10-39-2(6)**

We have completed our engagement to perform the procedures enumerated below, which were agreed to by the City of South Bend, Indiana (the "City") solely to assist you with respect to your evaluation of the ability of the City to meet the Local Government Financial Assurance Tests under 329 IAC 10-39-2(6). This agreed upon procedures engagement was made in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of those parties specified in the report. Consequently, we make no representation regarding the sufficiency of the procedures described below, either for the purpose for which this report has been requested or for any other purpose. At the request of the Indiana Department of Environmental Management ("IDEM"), the financial tests included within this report have been prepared using data obtained from the most recent audited financial information for the City as a whole.

Our procedures and findings are as follows:

- (1) We inspected the State of Indiana Gateway System, the Municipal Securities Rulemaking Board ("MSRB") Electronic Municipal Market Access ("EMMA") System and the City's 2017 Comprehensive Annual Financial Report ("CAFR") and confirmed the City has no outstanding General Obligation Bonds rated below investment grade.
- (2) We prepared and sent a confirmation letter to the City requesting representation that the City does not have outstanding General Obligation Bonds rated below investment grade. We received positive confirmation from the City stating that the City does not have outstanding General Obligation Bonds rated below investment grade. (See Exhibit B.)
- (3) We prepared and sent a confirmation letter to the Registrar/Paying Agent, U.S. Bank National Association, for the City's outstanding general obligation bonds requesting representation that the City is current on all principal and interest payments on the outstanding general obligation bonds and thus not in default as to payment. We received positive confirmation from U.S. Bank National Association stating that all payments of principal and interest on the City's outstanding general obligation bonds are current. (See Exhibit C.)

Honorable Peter Buttigieg, Mayor
Mr. Daniel Parker, Controller
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- (4) We inspected the 2017 CAFR for the City, which is the most recent CAFR containing audited financial statements of the City as of the date of this report, and found that the State Board of Accounts issued an unqualified opinion on the City's financial statements. The City follows accounting principles generally accepted in the United States of America (GAAP) as applicable to governmental units.
- (5) We compared the City's cash and marketable securities to the total expenditures (as defined under part B(i)(DD)) and found that the ratio exceeds the 0.05 minimum under Part B(i)(AA)(bb)(1). (See Exhibit A.)
- (6) We compared the City's annual debt service to total expenditures and found that the ratio does not exceed the 0.20 maximum under Part B(i)(AA)(bb)(2). (See Exhibit A.)
- (7) We inspected the City's operating deficit/income for the two most recent calendar years and found that the City had an income for calendar year 2016 and 2017, therefore during both years the City did not have a deficit exceeding the calculated maximum under Part B(i)(CC)(cc). (See Exhibit A.)
- (8) We calculated the amount of costs the City may assure for closure, post closure, and corrective action costs under Part C (ii) and found that the City can assure up to \$100,141,012 of these costs as of the calendar year ended December 31, 2017. (See Exhibit A.)

We were not engaged to, and did not perform an examination, the objective of which would be the expression of an opinion on the financial assurance tests. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is issued solely for the information of, and assistance to, the addressees of this report. Additionally, this report should not be used by those who have not agreed to the procedures and taken responsibility for the sufficiency of the procedures for their purposes. Under the terms of our engagement, we have no obligation to update this report because of events or transactions occurring subsequent to the date of this report.

Baker Tilly Virchow Krause, LLP

CITY OF SOUTH BEND, INDIANA

LOCAL GOVERNMENT FINANCIAL ASSURANCE TEST

329 IAC 10-39-2(6)

PART B(i)(AA)(aa)

The City of South Bend has no outstanding General Obligation Bonds rated below investment grade. This was reaffirmed June 3, 2019.

PART B(i)(AA)(bb)(1)

Ratio of Cash Plus Marketable Securities to Total Expenditures

	<u>Calendar Year 2017</u>
Test > = 0.05	
Cash & marketable securities	\$254,453,054 (1)
Divided by: Total expenditures	<u>191,241,070 (1)</u>
RATIO	<u>1.3305</u>

PART B(i)(AA)(bb)(2)

Ratio of Annual Debt Service to Total Expenditures

	<u>Calendar Year 2017</u>
Test < = 0.20	
Annual debt service	\$25,585,420 (2)
Divided by: Total expenditures	<u>191,241,070 (1)</u>
RATIO	<u>0.1338</u>

PART B(i)(BB)

The most recent CAFR prepared for the City of South Bend was for Calendar Year 2017. The City follows accounting principles generally accepted in the United States of America (GAAP) as applicable to governmental units.

(1) Per 2017 City of South Bend CAFR dated June 30, 2018.

(2) Per amortization schedules listed on the State of Indiana Gateway System.

Note: At the request of IDEM, the calculations shown in Exhibit A relate to the City of South Bend as a whole.

(Continued on next page)

(Subject to the comments in the attached report dated June 4, 2019 of Baker Tilly)

CITY OF SOUTH BEND, INDIANA

LOCAL GOVERNMENT FINANCIAL ASSURANCE TEST

PART B(i)(CC)(aa)

The City of South Bend has no outstanding General Obligation Bonds that are currently in default. This was reaffirmed June 3, 2019.

PART B(i)(CC)(bb)

The City of South Bend has no outstanding General Obligation Bonds rated below investment grade. This was reaffirmed May 20, 2019.

PART B(i)(CC)(cc)

Test = operating deficit not greater than five percent or more of total annual revenue in each of the past two fiscal years.

	<u>Calendar Year 2016</u>	<u>Calendar Year 2017</u>
Total annual revenue	\$228,208,502 (1)	\$232,886,074 (2)
Times: -5%	<u>-5%</u>	<u>-5%</u>
Maximum operating deficit	<u>(\$11,410,425)</u>	<u>(\$11,644,304)</u>
Total operating income (deficit)	<u>\$29,621,821 (1)</u>	<u>\$1,322,668 (2)</u>

PART C(ii)

Financial Assurance for Closure, Post Closure, and Corrective Action Costs

Test = the entity can make a financial assurance for these costs up to 43% of the local government permittee's total annual revenue.

	<u>Calendar Year 2017</u>
Total annual revenue	\$232,886,074 (2)
Times: 43%	<u>43%</u>
Maximum assurance	<u>\$100,141,012 (3)</u>

(1) Per 2016 City of South Bend CAFR dated June 30, 2017.

(2) Per 2017 City of South Bend CAFR dated June 30, 2018.

(3) Maximum amount City can assure for costs associated with the landfill plus other costs for any applicable items under Part C(ii).

Note: At the request of IDEM, the calculations shown in Exhibit A relate to the City of South Bend as a whole.

(Subject to the comments in the attached report dated June 4, 2019 of Baker Tilly)

1200N COUNTY-CITY BUILDING
227 W. JEFFERSON BLVD.
SOUTH BEND, INDIANA 46601-1830



PHONE 574.235.9216
FAX 574.235.9928

CITY OF SOUTH BEND PETE BUTTIGIEG, MAYOR

DEPARTMENT OF ADMINISTRATION AND FINANCE

May 20, 2019

Baker Tilly Municipal Advisors, LLC
8365 Keystone Crossing
Suite 300
Indianapolis, Indiana 46240

Re: City of South Bend, Indiana
IDEM – Annual Financial Assurance Test

In conjunction with your engagement to apply agreed upon procedures to the test of Compliance by the City of South Bend, Indiana (the “City”), we confirm that the City does not have any outstanding General Obligation Bonds rated below Baa as issued by Moody’s or BBB as issued by Standard and Poor’s, as of the date of this letter.

A handwritten signature in black ink, appearing to read "Daniel Parker", is written over a horizontal line.

Daniel Parker
City Controller



Global Corporate Trust Services
10 West Market Street, Suite 830
Indianapolis, IN 46204

usbank.com

June 3, 2019

Baker Tilly Virchow Krause, LLP
8365 Keystone Crossing
Suite 300
Indianapolis, Indiana 46240

Re: City of South Bend, Indiana
IDEM – Annual Financial Assurance Test

For your information and in conjunction with the completion of the City's IDEM – Annual Financial Assurance Test, we confirm that all interest and principal on the City's outstanding general obligation bonds listed below and presented for payment through this bank, have been paid to date as scheduled.

- City of South Bend Park District Bonds, Series 2017 (A-K)
- City of South Bend Redevelopment District Bonds, Series 2018
- City of South Bend General Obligation Bonds, Series 2018

Sincerely,

A handwritten signature in black ink that reads "Scott Fesler".

T. Scott Fesler
Vice President
Global Corporate Trust
scott.fesler@usbank.com

 SOLID WASTE LAND DISPOSAL FACILITIES

(f) The requirements of this section apply to permittees of all solid waste land disposal facilities except permittees who are state or federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States. (*Solid Waste Management Division; 329 IAC 10-39-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1918; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1864, eff Apr 1, 2004; filed May 14, 2014, 11:02 a.m.: 20140611-IR-329110454FRA*)

329 IAC 10-39-2 Closure; financial responsibility

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 8-1-2; IC 13-20; IC 36-9-30

Sec. 2. (a) The permittee shall establish financial responsibility for closure of all the permitted acreage for the solid waste land disposal facility before waste placement, except as provided in subsection (b). The permittee shall choose from the following options:

- (1) The trust fund option, including the following:
 - (A) The permittee may satisfy the requirements of this section by doing as follows:
 - (i) Establish a trust agreement on:
 - (AA) forms provided by the commissioner; or
 - (BB) other forms approved by the commissioner.
 - (ii) Submit an original signed copy and a duplicate copy of the trust agreement to the commissioner.
 - (B) All trust agreements must contain the following:
 - (i) Identification of solid waste land disposal facilities and corresponding closure cost estimates covered by the trust agreement.
 - (ii) The establishment of a trust fund in the amount determined by subsection (b) and guarantee payments from that fund either:
 - (AA) reimbursing the permittee for commissioner-approved closure work done; or
 - (BB) making payments to the commissioner for accomplishing required closure work.
 - (iii) The requirement of annual evaluations of the trust to be submitted to the commissioner.
 - (iv) The requirement of successor trustees to notify the commissioner, in writing, of their appointment at least ten (10) days before the appointment becoming effective.
 - (v) The requirement of the trustee to notify the commissioner, in writing, of the failure of the permittee to make a required payment into the fund.
 - (vi) The establishment that the trust is irrevocable unless terminated, in writing, with the approval of the:
 - (AA) permittee;
 - (BB) trustee; and
 - (CC) commissioner.
 - (vii) A certification that the signatory of the trust agreement for the permittee was duly authorized to bind the permittee.
 - (viii) A notarization of all signatures by a notary public commissioned to be a notary public in the state of Indiana at the time of notarization.
 - (ix) The establishment that the trustee is:
 - (AA) authorized to act as a trustee; and
 - (BB) an entity whose operations are regulated and examined by a federal and state of Indiana agency.
 - (x) The requirement of:
 - (AA) initial payment into the fund be made within thirty (30) days of the commissioner's approval of the trust agreement; and
 - (BB) any subsequent payments be made annually not later than June 15.
- (2) The surety bond option, including the following:
 - (A) The permittee may satisfy the requirements of this section by doing as follows:
 - (i) Establish a surety bond on:
 - (AA) forms provided by the commissioner; or

SOLID WASTE LAND DISPOSAL FACILITIES

- (BB) other forms approved by the commissioner.
- (ii) Submit an original signed copy and a duplicate of the surety bond to the commissioner.
- (B) Choose from one (1) of the following types of surety bonds:
 - (i) A financial guarantee surety bond.
 - (ii) A performance surety bond.
- (C) All surety bonds must contain the following:
 - (i) The establishment of penal sums in the amount determined by subsection (b).
 - (ii) Provision that the surety:
 - (AA) will be liable to fulfill the permittee's closure obligations upon notice from the commissioner that the permittee has failed to do so; and
 - (BB) may not cancel the bond without first sending notice of cancellation by certified mail to the permittee and the commissioner at least one hundred twenty (120) days before the effective date of the cancellation.
 - (iii) Provision that the permittee may not terminate the bond without prior written authorization by the commissioner.
- (D) The permittee shall establish a standby trust fund to be utilized in the event the:
 - (i) permittee fails to fulfill closure obligations; and
 - (ii) bond guarantee is exercised.

The standby trust fund must be established in accordance with the requirements of subdivision (1). Under the terms of the bond, all payments made if the bond is utilized must be deposited by the surety directly into the standby trust fund in accordance with instructions from the commissioner.
- (E) The surety company issuing the bond must be:
 - (i) among those listed as acceptable sureties for federal bonds in Circular 570 of the United States Department of the Treasury; and
 - (ii) authorized to do business in Indiana.
- (F) The surety will not be liable for deficiencies in the performance of closure by the permittee after the commissioner releases the permittee in accordance with section 6 of this rule.
- (3) The letter-of-credit option, including the following:
 - (A) The permittee may satisfy the requirements of this section by doing as follows:
 - (i) Establish a letter-of-credit on:
 - (AA) forms provided by the commissioner; or
 - (BB) other forms approved by the commissioner.
 - (ii) Submit an original signed copy and a duplicate of the letter-of-credit to the commissioner.
 - (B) All letters of credit must contain the following:
 - (i) The establishment of credit in the amount determined by subsection (b).
 - (ii) Irrevocability.
 - (iii) An effective period of at least one (1) year and automatic extensions for periods of at least one (1) year unless the issuing institution provides written notification of cancellation by certified mail to both the permittee and the commissioner at least one hundred twenty (120) days before the effective date of cancellation.
 - (iv) Provision that, upon written notice from the commissioner, the institution issuing the letter-of-credit will:
 - (AA) state that the permittee's obligations have not been fulfilled; and
 - (BB) deposit funds equal to the amount of the letter-of-credit into a standby trust fund to be used to ensure the permittee's closure obligations are fulfilled.
 - (C) The permittee shall establish a standby trust fund to be utilized in the event the:
 - (i) permittee fails to fulfill its closure obligations; and
 - (ii) letter-of-credit is utilized.

The standby trust funds must be established in accordance with the requirements of subdivision (1). Under the terms of the letter-of-credit, all amounts paid pursuant to a commissioner's request in the event the permittee fails to fulfill its closure obligations must be deposited by the issuing institution directly into the standby trust fund in accordance

SOLID WASTE LAND DISPOSAL FACILITIES

- with instructions from the commissioner.
- (D) The issuing institution must be an entity:
- (i) that has the authority to issue letters of credit; and
 - (ii) whose letters of credit operations are regulated and examined by a federal or Indiana agency.
- (4) The insurance option, including the following:
- (A) The permittee may satisfy the requirements of this section by doing as follows:
- (i) Provide evidence of insurance on:
 - (AA) forms provided by the commissioner; or
 - (BB) other forms approved by the commissioner.
 - (ii) Submit a certificate of closure insurance to the commissioner.
- (B) All insurance must include the following requirements:
- (i) Be in the amount determined by subsection (b).
 - (ii) Provide that, upon written notification to the insurer by the commissioner that the permittee has failed to perform final closure, the insurer shall make payments:
 - (AA) in any amount, not to exceed the amount insured; and
 - (BB) to any person authorized by the commissioner.
 - (iii) Provide that the permittee shall maintain the policy in full force and effect unless the commissioner consents in writing to termination of the policy.
 - (iv) Provide for assignment of the policy to a transferee permittee.
 - (v) Provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure of the permittee to pay the premium. No policy may:
 - (AA) be canceled;
 - (BB) be terminated; or
 - (CC) fail to be renewed;unless at least one hundred twenty (120) days before the event the commissioner and the permittee are notified by the insurer in writing.
- (C) The insurer shall either be:
- (i) licensed to transact the business of insurance; or
 - (ii) eligible to provide insurance as an excess or surplus lines insurer;
- in one (1) or more states.
- (5) The financial test for restricted waste sites option, including the following:
- (A) This financial test is only available for restricted waste sites. To be deemed to have established financial responsibility, the permittee must meet one (1) of the following requirements:
- (i) All items in clause (B) if the permittee currently has a bond rating issued by Standard and Poor's or Moody's.
 - (ii) Clause (B)(i) and either clause (B)(ii) or (B)(iii) if the permittee:
 - (AA) is a public utility operating in Indiana subject to the jurisdiction of the Indiana utility regulatory commission under IC 8-1-2; and
 - (BB) remits annual financial information to the commission under IC 8-1-2-16.The remitted financial information is subject to examination and audit by the Indiana utility regulatory commission under IC 8-1-2-17 and IC 8-1-2-18.
 - (iii) Clause (B)(i) and (B)(ii) if the permittee currently does not have a bond rating issued by Standard and Poor's or Moody's.
- (B) The following criteria will be used to establish financial responsibility:
- (i) Less than fifty percent (50%) of the company's gross revenues are derived from waste management.
 - (ii) The permittee meets the following four (4) tests:
 - (AA) Two (2) of the following three (3) ratios are met:
 - (aa) A ratio of total liabilities to net worth less than two (2.0).
 - (bb) A ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than one-tenth (0.1).

SOLID WASTE LAND DISPOSAL FACILITIES

- (cc) A ratio of current assets to current liabilities greater than one and one-half (1.5).
- (BB) Net working capital and tangible net worth each at least six (6) times the sum of the current closure and current post-closure cost estimates.
- (CC) Tangible net worth of at least ten million dollars (\$10,000,000).
- (DD) Assets located in the United States amounting to at least ninety percent (90%) of the permittee's total assets or at least six (6) times the sum of the current closure and current post-closure costs estimates.
- (iii) The permittee meets the following four (4) tests:
 - (AA) A current rating for the permittee's most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's.
 - (BB) Tangible net worth of at least six (6) times the sum of the current closure and current post-closure cost estimates.
 - (CC) Tangible net worth of at least ten million dollars (\$10,000,000).
 - (DD) Assets located in the United States amounting to at least ninety percent (90%) of the permittee's total assets or at least six (6) times the sum of the current closure and current post-closure estimates.
- (C) To demonstrate the financial test has been met, the permittee shall submit the following documents to the commissioner to establish financial assurance and annually within ninety (90) days after the close of each fiscal year:
 - (i) A letter signed by the permittee's chief financial officer, demonstrating the applicable criteria have been met.
 - (ii) A copy of an independent certified public accountant's report examining the permittee's financial statements for the latest completed fiscal year.
 - (iii) A special report from the permittee's independent certified public accountant to the permittee stating the following:
 - (AA) The certified public accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in the financial statements.
 - (BB) In connection with that procedure, no matters came to the attention of the certified public accountant that caused the certified public accountant to believe that the specified data should be adjusted.
- (D) If at any time the permittee fails to meet the financial test, the permittee shall establish one of the financial assurance mechanisms described in subdivisions (1) through (4) or an alternate mechanism described in clause (G) within one hundred twenty (120) days after the end of the fiscal year for which the year-end financial data shows that the permittee no longer meets the requirements.
- (E) The commissioner may disallow use of this test on the basis of qualifications in the opinion expressed in the independent certified public accountant's report examining the permittee's financial statements. An adverse opinion or a disclaimer of opinion will be cause for disallowance. Other qualifications may be cause for disallowance if, in the opinion of the commissioner, they indicate the permittee does not meet the requirements of this subdivision. The permittee shall establish one of the financial assurance mechanisms described in subdivisions (1) through (4) or an alternate mechanism described in clause (G) within thirty (30) days after notification of the disallowance.
- (F) If a permittee using clause (B)(iii) for the financial test has a current bond rating of BBB- as issued by Standard and Poor's or Baa3 as issued by Moody's for the permittee's most recent bond issuance, the commissioner may request that the permittee submit the following information to the department on a quarterly basis until the bond rating is upgraded:
 - (i) The current bond rating of the most recent issuance.
 - (ii) The name of the rating service.
 - (iii) The date of issuance of the bond.
 - (iv) The date of maturity of the bond.
 - (v) The last credit rating action.
 - (vi) An explanation of any events such as a decrease in the bond ratings, as well as inclusion on a negative credit watch list.

This quarterly update will supplement the annual financial update specified in clause (C). On the basis of the submitted information, if the commissioner finds that the permittee no longer meets the restricted waste financial test

SOLID WASTE LAND DISPOSAL FACILITIES

requirements, the permittee shall provide alternate financial assurance.

(G) A permittee may propose a financial assurance mechanism for restricted waste sites other than those listed in subdivisions (1) through (4) and clauses (A) through (F) in accordance with the following:

(i) The permittee must demonstrate to the satisfaction of the commissioner that the proposed mechanism provides equivalent or greater financial responsibility for closure of all the permitted acreage than the listed mechanisms.

(ii) Any proposed mechanism is subject to the approval of the commissioner.

(6) The local government financial test option, including the following:

(A) This financial test is only available for permittees that are local governments. As used in this subdivision, "local government" means a county, municipality, township, or solid waste management district.

(B) A local government permittee that satisfies the following requirements may demonstrate financial assurance up to the amount specified in clause (C):

(i) The local government permittee shall meet the following financial component requirements:

(AA) The local government permittee shall satisfy the following as applicable:

(aa) If the local government permittee has outstanding, rated general obligation bonds that are not secured by insurance, a letter-of-credit, or other collateral or guarantee, the local government permittee shall have a current rating of:

(1) Aaa, Aa, A, or Baa as issued by Moody's; or

(2) AAA, AA, A, or BBB as issued by Standard and Poor's;

on all the general obligation bonds.

(bb) The local government permittee shall satisfy the following financial ratios based on the local government permittee's most recent audited annual financial statement:

(1) A ratio of cash plus marketable securities to total expenditures greater than or equal to five-hundredths (0.05).

(2) A ratio of annual debt service to total expenditures less than or equal to two-tenths (0.20).

(BB) The local government permittee shall:

(aa) prepare the local government permittee's financial statements in conformity with generally accepted accounting principles (GAAP) for governments; and

(bb) have the financial statements audited by an independent certified public accountant or the state board of accounts.

(CC) A local government permittee is not eligible to assure the local government permittee's obligations under this subdivision if any of the following applies to the local government permittee:

(aa) The local government permittee is currently in default on any outstanding general obligation bonds.

(bb) The local government permittee has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's.

(cc) The local government permittee has operated at a deficit equal to five percent (5%) or more of total annual revenue in each of the past two (2) fiscal years.

(dd) The local government permittee receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant or the state board of accounts auditing its financial statement as required under subitem (BB). The commissioner may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the commissioner deems the qualification insufficient to warrant disallowance of use of the test.

(DD) As used in this subdivision, the following terms apply:

(aa) "Cash plus marketable securities" means all the cash plus marketable securities held by the local government permittee on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations, such as pensions.

(bb) "Debt service" means the amount of principal and interest due on a loan in a given time period, typically the current year.

SOLID WASTE LAND DISPOSAL FACILITIES

- (cc) "Deficit" means total annual revenues minus total annual expenditures.
- (dd) "Total expenditures" means all expenditures, excluding capital outlays and debt repayment.
- (ee) "Total revenues" means revenues from all taxes and fees but does not include the proceeds from borrowing or asset sales, excluding revenues from funds managed by the local government permittee on behalf of a specific third party.

(EE) If the permittee using the local government financial test has a current bond rating of BBB- as issued by Standard and Poor's or Baa3 as issued by Moody's for the permittee's most recent bond issuance, the commissioner may request that the permittee submit the following information to the department on a quarterly basis until the bond rating is upgraded:

- (aa) The current bond rating of the most recent issuance.
- (bb) The name of the rating service.
- (cc) The date of issuance of the bond.
- (dd) The date of maturity of the bond.
- (ee) The last credit rating action.
- (ff) An explanation of any events such as decrease in the bond ratings, as well as inclusion on a negative credit watch list.

This quarterly update will supplement the record keeping and report requirements specified in item (iii). On the basis of the submitted information, if the commissioner finds that the permittee no longer meets the local government financial test requirements, the permittee shall provide alternate financial assurance in accordance with this rule.

- (ii) The local government permittee shall meet the following public notice component requirements:
 - (AA) The local government permittee shall place a reference to the closure and post-closure care costs assured through the financial test into the local government permittee's next comprehensive annual financial report (CAFR) at the time of the next required local government financial test annual submittal or before the initial receipt of waste at the facility, whichever is later. Disclosure must include the following:
 - (aa) Nature and source of closure and post-closure care requirements.
 - (bb) Reported liability at the balance sheet date.
 - (cc) Estimated total closure and post-closure care cost remaining to be recognized.
 - (dd) Percentage of landfill capacity used to date.
 - (ee) Estimated landfill life in years.
 - (BB) A reference to corrective action costs must be placed in the CAFR not later than one hundred twenty (120) days after the corrective action remedy has been selected in accordance with the requirements of 329 IAC 10-21-13.
 - (CC) For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the facility's operating record until issuance of the next available CAFR if timing does not permit the reference to be incorporated into the most recently issued CAFR or budget.
 - (DD) For closure and post-closure costs, conformance with Government Accounting Standards Board Statement 18 assures compliance with this public notice component.
- (iii) The local government permittee shall meet the following record keeping and reporting requirements:
 - (AA) The local government permittee shall place the following items in the facility's operating record:
 - (aa) A letter signed by the local government permittee's chief financial officer that completes the following:
 - (1) Lists all of the current cost estimates covered by a financial test as described in clause (C).
 - (2) Provides evidence and certifies that the local government permittee meets the conditions of item (i)(AA) through (i)(CC).
 - (3) Certifies that the local government permittee meets the conditions of item (ii) and clause (C).

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- (bb) The local government permittee's independently audited year-end financial statements for the latest fiscal year (except for local government permittees where audits are required every two (2) years when unaudited statements may be used in years when audits are not required), including the unqualified opinion of the auditor, who shall be an independent certified public accountant, or the state board of accounts that conducts equivalent comprehensive audits.
- (cc) A report to the local government permittee from the local government permittee's independent certified public accountant or the state board of accounts based on performing an agreed upon procedures engagement relative to the:
- (1) financial ratios required by item (i)(AA)(bb), if applicable; and
 - (2) requirements of item (i)(BB), (i)(CC)(cc), and (i)(CC)(dd).
- The independent certified public accountant's or state board of accounts' report must state the procedures performed and the findings.
- (dd) A copy of the CAFR used to comply with item (ii) or certification that the requirements of General Accounting Standards Board Statement 18 have been met.
- (BB) The items required in subitem (AA) must be placed in the facility operating record as follows:
- (aa) In the case of closure and post-closure care, either at the time of the next required local government financial test annual submittal or before the initial receipt of waste at the facility, whichever is later.
 - (bb) In the case of corrective action, not later than one hundred twenty (120) days after the corrective action remedy is selected in accordance with the requirements of 329 IAC 10-21-13.
- (CC) After the initial placement of the items in the facility's operating record, the local government permittee shall:
- (aa) update the information; and
 - (bb) place the updated information in the operating record;
- within one hundred eighty (180) days following the close of the local government permittee's fiscal year.
- (DD) The local government permittee is no longer required to meet the requirements of this item when either the local government permittee:
- (aa) substitutes alternate financial assurance as specified in this rule; or
 - (bb) is released from the requirements of this rule in accordance with section 6 or 11 of this rule.
- (EE) A local government permittee shall satisfy the requirements of the financial test at the close of each fiscal year. If the local government permittee no longer meets the requirements of the local government financial test, the local government permittee shall, within one hundred twenty (120) days following the close of the local government permittee's fiscal year, complete the following:
- (aa) Obtain alternative financial assurance that meets the requirements of this rule.
 - (bb) Place the required submissions for that assurance in the facility's operating record.
 - (cc) Notify the commissioner that the local government permittee no longer meets the criteria of the financial test and that alternate assurance has been obtained.
- (FF) The commissioner, based on a reasonable belief that the local government permittee may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government permittee at any time. If the commissioner finds, on the basis of the reports or other information, that the local government permittee no longer meets the requirements of the local government financial test, the local government permittee shall provide alternate financial assurance in accordance with this rule.
- (GG) The commissioner may disallow use of this test on the basis of qualifications in the opinion expressed in the state board of accounts' annual financial audit of the local government permittee. An adverse opinion or a disclaimer of opinion is cause for disallowance. Other qualifications may be cause for disallowance if, in the opinion of the commissioner, the qualifications indicate the local government permittee does not meet the requirements of this subdivision. The local government permittee shall choose an alternate financial responsibility mechanism within ninety (90) days after notification of the

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disallowance.

(C) The local government permittee shall complete the calculation of costs to be assured. The portion of the closure, post-closure, and corrective action costs for which a local government permittee can assure under this subdivision is determined as follows:

(i) If the local government permittee does not assure other environmental obligations through a financial test, the local government permittee may assure closure, post-closure, and corrective action costs that equal up to forty-three percent (43%) of the local government permittee's total annual revenue.

(ii) If the local government permittee assures other environmental obligations through a financial test, including those associated with:

(AA) underground injection control (UIC) facilities under 40 CFR 144.62;

(BB) petroleum underground storage tank facilities under 329 IAC 9-8;

(CC) polychlorinated biphenyls (PCB) storage facilities under 40 CFR 761; and

(DD) hazardous waste treatment, storage, and disposal facilities under 329 IAC 3.1-14 or 329 IAC 3.1-15;

the local government permittee shall add those costs to the closure, post-closure, and corrective action costs the local government permittee seeks to assure under this subdivision. The total that may be assured must not exceed forty-three percent (43%) of the local government permittee's total annual revenue.

(iii) The local government permittee shall obtain an alternate financial assurance instrument for those costs that exceed the limits set in this clause.

(7) The local government guarantee option, including the following:

(A) A permittee may demonstrate financial assurance for closure, post-closure, and corrective action, as required by sections 2, 3, and 10 of this rule, as follows:

(i) Obtain a written guarantee provided by a local government.

(ii) Submit an original signed copy and a duplicate of the written guarantee to the commissioner.

(B) The guarantor shall meet the requirements of the local government financial test in subdivision (6) and shall comply with the terms of a written guarantee as follows:

(i) The guarantee must be effective:

(AA) before the initial receipt of waste or at the time of the next required local government financial test annual submittal, whichever is later, in the case of closure and post-closure care; or

(BB) not later than one hundred twenty (120) days after the corrective action remedy has been selected in accordance with the requirements of 329 IAC 10-21-13.

(ii) The guarantee must provide the following:

(AA) If the permittee fails to perform any combination of closure, post-closure care, or corrective action of a facility covered by the guarantee, the guarantor shall:

(aa) perform or pay a third party to perform any combination of closure, post-closure care, or corrective action as required under this subitem; or

(bb) establish a fully funded trust fund as specified in subdivision (1) in the name of the permittee.

(BB) The guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the permittee and to the commissioner. Cancellation must not occur during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the permittee and the commissioner as evidenced by the return receipts.

(CC) If a guarantee is canceled under subitem (BB), the permittee shall, within ninety (90) days following receipt of the cancellation notice by the permittee and the commissioner, complete the following:

(aa) Obtain alternate financial assurance under this rule.

(bb) Place evidence of that alternate financial assurance in the facility operating record.

(cc) Notify the commissioner.

(DD) If the permittee fails to provide alternate financial assurance within the ninety (90) day period under subitem (CC), the guarantor shall complete the following:

(aa) Provide alternate assurance within one hundred twenty (120) days following the guarantor's

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notice of cancellation.

(bb) Place evidence of the alternate assurance in the facility operating record.

(cc) Notify the commissioner.

(C) The permittee shall complete the following record keeping and reporting requirements:

(i) The permittee shall place a certified copy of the guarantee along with the items required under subdivision (6)(B)(iii) into the facility's operating record:

(AA) before the initial receipt of waste or at the time of the next required local government financial test annual submittal, whichever is later, in the case of closure and post-closure care; or

(BB) not later than one hundred twenty (120) days after the corrective action remedy has been selected in accordance with 329 IAC 10-21-13.

(ii) The permittee is no longer required to maintain the items specified in this clause when the permittee:

(AA) substitutes alternate financial assurance as specified in this rule; or

(BB) is released from the requirements of this rule in accordance with section 6 or 11 of this rule.

(iii) If a local government guarantor no longer meets the requirements of subdivision (6), the permittee shall, within ninety (90) days, complete the following:

(AA) Obtain alternative assurance.

(BB) Place evidence of the alternate assurance in the facility operating record.

(CC) Notify the commissioner.

If the permittee fails to obtain alternate financial assurance within the ninety (90) day period, the guarantor shall provide that alternate assurance within the next thirty (30) days.

(b) Financial responsibility closure cost estimate requirements must be as follows:

(1) For purposes of establishing financial responsibility, the permittee shall have a detailed written estimate of the cost of closing the facility based on the following:

(A) The closure costs derived under:

(i) 329 IAC 10-22-2(c);

(ii) 329 IAC 10-30-4(b); or

(iii) 329 IAC 10-37-4(b).

(B) One (1) of the closure cost estimating standards under subdivision (3).

(2) As used in this section, "establishment of financial responsibility" means submission of financial responsibility to the commissioner in the form of one (1) of the options under subsection (a).

(3) The permittee shall use one (1) of the following closure cost estimating standards:

(A) The entire solid waste land disposal facility closure standard is an amount that equals the estimated total cost of closing the entire solid waste land disposal facility, less an amount representing portions of the solid waste land disposal facility that have been certified for partial closure in accordance with:

(i) 329 IAC 10-22-3;

(ii) 329 IAC 10-30-5; or

(iii) 329 IAC 10-37-5.

(B) The incremental closure standard is an amount that, for any year of operation, equals the total cost of closing the portion of the solid waste land disposal facility dedicated to the current year of solid waste land disposal facility operation, plus all closure amounts from all other partially or completely filled portions of the solid waste land disposal facility from prior years of operation that have not yet been certified for partial closure in accordance with:

(i) 329 IAC 10-22-3;

(ii) 329 IAC 10-30-5; or

(iii) 329 IAC 10-37-5.

(c) Until final closure of the solid waste land disposal facility is certified, the permittee shall annually review and submit to the commissioner the financial closure estimate derived under this section annually not later than June 15. The submittal must also include a copy of the existing contour map of the solid waste land disposal facility that delineates the boundaries of all areas into which waste has been placed as of the annual review and certified by a registered professional engineer or registered land surveyor. In addition, as part of the annual review, the permittee shall revise the closure estimate as follows:

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(1) For inflation, using an inflation factor derived from the annual implicit price deflator for gross national product as published by the United States Department of Commerce in its Survey of Current Business. The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year as follows:

(A) The first revision is made by multiplying the original closure cost estimate by the inflation factor. The result is the revised closure cost estimate.

(B) Subsequent revisions are made by multiplying the latest revised closure cost estimate by the latest inflation factor.

(2) For changes in the closure plan, whenever the changes increase the cost of closure.

(d) The permittee may revise the closure cost estimate downward whenever a change in the closure plan decreases the cost of closure or whenever portions of the solid waste land disposal facility have been certified for partial closure under:

(1) 329 IAC 10-22-3;

(2) 329 IAC 10-30-5; or

(3) 329 IAC 10-37-5.

(Solid Waste Management Division; 329 IAC 10-39-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1919; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2817; filed Feb 26, 1999, 5:45 p.m.: 22 IR 2228; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3866; errata filed Sep 8, 1999, 11:38 a.m.: 23 IR 27; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1864, eff Apr 1, 2004; filed Jul 10, 2007, 2:26 p.m.: 20070808-IR-329050167FRA; filed May 14, 2014, 11:02 a.m.: 20140611-IR-329110454FRA; errata filed Aug 6, 2014, 3:12 p.m.: 20140827-IR-329140303ACA; errata filed Feb 19, 2018, 10:06 a.m.: 20180228-IR-329180109ACA)

329 IAC 10-39-3 Post-closure; financial responsibility

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-20; IC 36-9-30

Sec. 3. (a) The permittee shall establish financial responsibility for post-closure care for all the permitted acreage of the solid waste land disposal facility before waste placement, except as provided by subsection (b). The permittee shall choose from the following options:

(1) The trust fund option, including the following:

(A) The permittee shall do as follows:

(i) Establish a trust agreement on:

(AA) forms provided by the commissioner; or

(BB) other forms approved by the commissioner.

(ii) Submit an original signed copy and a duplicate of the trust agreement to the commissioner.

(B) All trust agreements must conform to the requirements detailed in section 2(a)(1)(B) of this rule, with the exception that the term "post-closure" be substituted for the term "closure".

(2) The surety bond option, including the following:

(A) The permittee shall do as follows:

(i) Establish a surety bond on:

(AA) forms provided by the commissioner; or

(BB) other forms approved by the commissioner.

(ii) Submit an original signed copy and a duplicate of the surety bond to the commissioner.

(B) Choose from either of the following types of surety bonds:

(i) A financial guarantee surety bond.

(ii) A performance surety bond.

(C) All surety bonds must conform to the requirements detailed in section 2(a)(2)(C) through 2(a)(2)(F) of this rule, with the exception that the term "post-closure" be substituted for the term "closure".

(3) The letter-of-credit option, including the following:

(A) The permittee shall do as follows:

(i) Establish a letter-of-credit on:

(AA) forms provided by the commissioner; or

(BB) other forms approved by the commissioner.