

# Guidance on Requirements for Proof of Financial Responsibility for Non-landfill Solid Waste Facilities

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Waste and Materials Management Program  
P. O. Box 7921  
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## Purpose and Background

Owner financial responsibility (OFR, or financial assurance) requirements ensure the owners/operators of a solid waste facility has sufficient funds to close the facility and to conduct any required long-term care (LTC) (e.g., maintenance or monitoring) following closure. Owner financial responsibility requirements also ensure funding from owners/operators of solid waste facilities are available for the Department of Natural Resources' Waste and Materials Management Program (WA Program) to perform necessary site closure activities and LTC at solid waste facilities in the rare instances where the owner/operator does not fulfill the requirements themselves. Requiring OFR enables the department to minimize the potential risk to the environment and ensure the costs of necessary site closure activities remain the responsibility of the owner/operator. Because non-landfill facilities typically do not need LTC or maintenance after closure, OFR is typically limited to closure costs, however the department could require OFR for LTC if necessary.

When OFR is required for a facility, the facility's owner/operator must establish an OFR "proof mechanism" before an operating license is issued. The OFR proof mechanism shall equal or exceed the cost estimate of closure, which is approved in the plan of operation. After the original establishment of an OFR proof mechanism, the mechanism needs adjustments to ensure it continues to equal or exceed the cost estimate. Annual adjustments are required to account for inflation. Approved cost estimates also need to be revised at least every ten years to reflect current market values or when changes in the plan of operation impact the cost estimate. Once a facility has complied with all requirements for site closure, as verified and approved by the department, proof of OFR will no longer be required and the OFR proof mechanism will be released / returned to the facility's owner/operator. For additional information go to [dnr.wi.gov](http://dnr.wi.gov) and search "owner financial responsibility."

## Authority

Requiring OFR for solid waste facilities is authorized under s. 289.41, Wis. Stats. Requirements and obligations for OFR are outlined in s. NR 502.04(6), Wis. Adm. Code, and ch. NR 520, Wis. Adm. Code. The DNR requires OFR in the plan of operation approval for all solid waste processing, incinerator and combustor facilities. The DNR also requires OFR for storage and transfer facilities that handle certain wastes requiring special management, such as infectious waste, tires, and most electronics. Large or unique composting facilities may also be required to establish OFR. The DNR is authorized to require OFR for any non-landfill solid waste facility that is required to obtain a plan of operation approval.

**NR 500.03(174), Wis. Adm. Code:** *"Plan of operation" means a report submitted for a solid waste facility that describes its location, design, construction, documentation, monitoring, sanitation, operation, maintenance, closing and long-term care.*

**NR 502.04(6), Wis. Adm. Code: *Financial Responsibility.*** *The department may require the owner or operator of any facility for which a plan is required under this chapter to provide proof of financial responsibility for the cost of closure of the facility. The department may require the owner or operator to submit closure cost estimates for removal, transport, and ultimate disposal of the wastes. If proof of financial responsibility is required by the department, it shall be submitted prior to licensing of the facility, or as otherwise specified by the department.*

**NR 520.05, Wis. Adm. Code: *Financial responsibility for closure, long-term care, and remedial actions.*** (1) *Owner's responsibility. The owner of any landfill is responsible for its closure, for any remedial actions required by the department, and for its perpetual long-term care. Owners of landfills or other solid waste facilities shall provide proof of financial responsibility as determined by Table 1 and the remainder of this chapter. Those facilities required to provide proof of financial responsibility shall submit the proof as part of their operating license and annually thereafter for the period of active facility life, or longer where required, to ensure compliance with closure, long-term care or remedial actions.*

**NR 520.06, Wis. Adm. Code: *Methods of providing proof of financial responsibility.*** “*Financial assurances for closure, long-term care and remedial actions where required, shall be established separately. The owner shall specify, as part of the plan of operation submittal, which method of providing proof of financial responsibility will be used for closure and for long-term care.*” (Note: The owner may change their mechanism, but not more than once per year.)

**NR 520.07, Wis. Adm. Code: *Cost estimates.*** “*The owner shall estimate the total cost in current dollars of closure for the point in time during operation of the facility when the extent and manner of its operation make closure most expensive, estimate the annual cost in current dollars for each year of the long-term care proof of owner responsibility period for the facility and submit the estimated closure and long-term care costs together with all necessary justification to the department for approval as part of the plan of operation submittal. The costs shall be based on a third party performing the work and reported on a per unit basis. The source of estimates shall be indicated.*”

**NR 520.08, Wis. Adm. Code: *Calculating the amount of the proof of financial responsibility.*** *The owner shall, as part of the plan of operation submittal, calculate the necessary amounts of proof of financial responsibility for both closure and long-term care based on the chosen methods of providing proof of financial responsibility. (Note: If assistance is needed, please work with the WA Program’s OFR Specialist to perform the appropriate calculation.)*

## **Closure Costs for Non-landfill Facilities Licensed under ch. NR 502**

It is important that estimates of closure costs for establishing OFR cover all the costs that would be incurred if the DNR had to step in and contract for site closure in place of a non-performing owner/operator. At a minimum, closure cost estimates must include all necessary work to remove waste and materials from intake areas, processing lines, and treated material and byproduct areas. Costs of site closure include equipment and materials, recycling or disposal tipping fees, transportation, labor, supervision, overhead costs, and taxes; decontamination; equipment decommissioning and a 10% contingency. Closure cost estimates must be based on the maximum storage capacity approved for the facility, the estimated price for a one-time site restoration, and should be calculated using market costs for hiring of a third-party contractor to perform the work. If a facility has contracted rates for work elements, those prices may only be used if the contract states that the prices would extend to the department for closure of the site and the contract is submitted to the department for review as part of the OFR cost estimate.

Positive-value items (such as unprocessed waste or processed materials, like aluminum, copper, corrugated cardboard, or compost) cannot be used in the cost estimate to offset estimated closure costs, except that their value can be considered in estimating the cost element associated with disposing of the material itself. Positive-value item cost estimates must still consider the costs of loading and transporting the material. The value of these items is generally subject to market variations. The facility owner/operator must be able to prove the materials have shown a positive value for several years. Additionally, if the cost estimate does not include a disposal tipping fee, the owner/operator must be able to demonstrate the availability of multiple markets for these items.

## **Inflation Factors**

The WA Program’s OFR Specialist will publish a rate of inflation each year for use in OFR estimates. Until a new annual inflation rate is published, the most recently published rate should be used. The owner/operator must adjust the facility’s OFR cost estimate (and the amount of its OFR mechanism) by Dec. 31 each year.

Once every 10 years during the active life of the facility, the facility’s owner/operator must prepare and submit a new cost estimate, using current dollars, to the DNR via a plan modification.

## Financial Assurance Mechanisms

If required to maintain proof of financial responsibility, in accordance with s. 289.41, Wis. Stats., the facility owner/operator may use one of the standard mechanisms listed below as the OFR mechanism:

- **Fee-Based Mechanisms:** (owner/operator pays fee to third-party, third-party guarantees funds to the DNR if necessary)
  - surety bond
  - irrevocable letter of credit
  - insurance policy
- **Interest-Bearing Mechanisms:** (owner/operator provides funds up-front, which earn interest; the DNR can access if necessary)
  - deposit with the department
  - escrow account
  - irrevocable trust

A facility owner/operator may also be able to provide a net worth test in lieu of a standard mechanism (and resubmit documentation annually). The DNR will also consider proposals to use an alternative mechanism but is not obligated to accept an alternative to the mechanisms listed above.

## Process for Establishing an Acceptable OFR Mechanism

To provide a standard OFR mechanism (other than a deposit with the DNR), the facility owner must use the department's form (available on the OFR webpage or provided by the WA Program's OFR Specialist). The mechanism shall be:

- established for the benefit of the department;
- in an amount equal to or greater than the minimum required amount calculated in accordance with s. NR 520.08, Wis. Adm. Code; and
- acknowledged by the department

The original, final OFR proof mechanism with wet signature(s) (and any amendments) should be mailed to the address below, with a cover letter clearly noting the facility name, address, FID (Facility Identification) number, and that this is in reference to OFR for a specific facility.

Wisconsin Department of Natural Resources  
OFR Specialist – WA/5  
101 S. Webster St.  
P.O. Box 7921  
Madison, WI 53707-7921

The beneficiary's name and address should be written as:

State of Wisconsin Department of Natural Resources  
P.O. Box 7921  
Madison, WI 53707

## Estimated Closure Cost Worksheet Example

	A	B	C	D	E	F	G	H	I	J
Material	Max Tons On-Site	Tons of Material/Semi Loads <sup>1</sup>	# of Semi Loads (C = A/B) rounded up to a whole load	Loading, Transportation and Unloading Hours per Load <sup>2</sup>	Hours of Work (E=C*D)	Cost of Loading and Transportation Equipment and Labor per Hour <sup>3</sup>	Cost of Equipment and Labor (G=E*F)	Gate Tipping Fee at Landfill or Secondary Processor per Ton <sup>4</sup>	Tipping Fee (I=A*H)	OFR <sup>5</sup> (J=G+I)
Unprocessed and in-process material										
Processing Residuals										
Processed Material										
								<b>Subtotal:</b>		
								<b>10% contingency:</b>		
								<b>Final cost estimate<sup>6</sup>:</b>		

<sup>1</sup> For a baseline estimate use a 53' walking floor semi-trailer.

<sup>2</sup> Unless a contract that extends to the department is provided, this should be estimated using operating costs that would be provided to the department by third parties.

<sup>3</sup> The department may honor a contract rate if the contract extends the rate to the Department of Natural Resources in a closure situation.

<sup>4</sup> If the OFR for a specific material is a negative number, the OFR should be changed to \$0.

<sup>5</sup> If waste is stored in a contracted dumpster or roll-off, enter collection fee in column J.

<sup>6</sup> Costs estimated in [current year] dollars. Specify year

Contact [DNRWasteMaterials@wisconsin.gov](mailto:DNRWasteMaterials@wisconsin.gov) for further information.

**Disclaimer:** This document is intended solely as guidance and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.

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