

Standard Operating Procedures for Reviewing Financial Assurances

Bureau of Waste Management



Revised 4/21/2014

Standard Operating Procedures (SOPs)¹ for Reviewing Financial Assurances

This SOP describes the procedures by which staff in the Waste Management Program will conduct and coordinate the review of financial assurance documents with the Central Office Bonding Section.

Review of Financial Assurance Documents Associated with a Municipal or Residual Waste Facility

I. Completeness Review

During the completeness review of a permit application, the Application Manager will determine whether bonding is necessary based on the operation proposed and its potential impact to the environment. For facilities that require bonding, the permitting staff will also determine that necessary bonding worksheets, supporting documentation, and calculations have been submitted and that the submission is technically adequate. If necessary information is missing or deficient, the application manager will notify the applicant that the application is incomplete. This determination will be done in accordance with Chapter 271, Subchapter D of the Municipal Waste Regulations, 25 Pa Code §§271.301-271.397, or Chapter 287, Subchapter E of the Residual Waste Regulations, 25 Pa Code §§287.301-287.375, whichever is applicable.

Permitting staff should follow the completeness review procedures in the appropriate permitting SOP to determine if the application is complete and technically adequate. If an applicant fails to submit necessary bonding worksheets, etc., the application should be considered incomplete.

II. Permit Decision

If the application is determined to be complete, meets all applicable regulatory and statutory requirements with no remaining deficiencies, and is recommended for approval, the application manager will send the bond call-in letter to the applicant (see Attachment 1), providing the applicant with 30 calendar days (21 business days) to complete and submit the appropriate bond forms to the Central Office (CO) Bonding Section. At a minimum, the Section Chief of the CO Bonding Section will be copied on the letter.

A. Responsibilities of the CO Bonding Section

Upon receipt of any bond forms, the CO bonding staff will:

¹ DISCLAIMER: The process and procedures outlined in this Standard Operating Procedure (SOP) are intended to supplement existing requirements. Nothing in the SOP shall affect regulatory requirements.

The process, procedures and interpretations herein are not an adjudication or a regulation. There is no intent on the part of DEP to give the rules in this SOP that weight or deference. This document establishes the framework within which DEP will exercise its administrative discretion in the future. DEP reserves the discretion to deviate from this policy statement if circumstances warrant.

1. Log the bond and applicable information in the appropriate file in the “Bonding Log” shared folder.
2. Make a copy of the bond and send the copy electronically to the appropriate regional office staff.
3. If the appropriate forms and a financial assurance in the correct amount are submitted within the 30 calendar days (21 business days) afforded in the bond call-in letter, or other due date provided by the Department (i.e., 15 calendar days given in a deficiency letter or during the elevated review process), conduct a review of the bonding documents. Upon completion of the review, provided that no deficiencies are noted, the CO Bonding staff will proceed in accordance with Section D.2, below.
4. If the financial assurance documents are submitted after the due date required by the Department, contact the appropriate regional office for guidance on whether a review of the documents should be conducted or the documents should be returned.
5. If incomplete, incorrect or deficient financial assurance documents are received, follow the procedures in Section C, below.

B. Responsibilities of Application Managers

1. Upon receipt of financial assurance documents from the CO Bonding Section, the application manager will:
 - a. Review the bond amount to ensure the bond is sufficient for the applicant’s operation and that no increases or decreases to the bond amount are necessary.
 - b. Complete the Waste Management Bond Submittal Form (See Attachments 2 and 3) and send a completed transmittal form to the CO bonding staff within 15 calendar days (11 business days). If the application manager determines that a bond increase or decrease is appropriate, the application manager will provide a comment on the transmittal form stating that the bond change is acceptable.
2. If the correct bond and associated forms are not submitted within 30 calendar days (21 business days), the application manager will:
 - a. Send the applicant a letter (see Attachment 4) that:

- i. Requests the correct bond and associated forms be submitted within 15 calendar days (11 business days); and
 - ii. Copies the Section Chief of the CO Bonding Section.
- b. Start the “Elevated Review Process” as outlined in the appropriate permit application processing SOP.

C. Insufficient Bond Submittal

When financial assurance documents are incorrect, incomplete or submitted with deficiencies, the CO bonding staff, at its discretion, will proceed as follows:

1. If the application contains minor deficiencies or omissions that can be easily corrected, contact the applicant by telephone or email to discuss the deficiencies and request that the corrected or additional information be submitted within 5 calendar days.
2. If the CO Bonding staff is unable to contact the applicant, if the application contains major deficiencies or omissions, or if no response from paragraph C.1, above, is received within 5 calendar days, the CO Bonding staff will send the applicant a deficiency letter (see Attachment 5) that:
 - a. Specifies where the bond is deficient;
 - b. Gives the applicant 15 calendar days to submit the bond and associated forms; and
 - c. Copies the application manager in the appropriate regional office. Upon receiving a copy of the deficiency letter, the application manager will enter a subtask of “SDN” (Send Deficiency Notice/Receive Response) into eFACTS with a start date corresponding to the date of the deficiency letter.
3. If the applicant submits the bond and associated forms within the deadline given in the deficiency letter, the CO bonding staff and application manager will follow the procedures outlined within Sections II.A.1-3 and II.B.1, respectively.
4. If the applicant fails to submit the financial assurance documents in response to the deficiency letter, or if the submission fails to correct the deficiencies noted in the deficiency letter, the application manager will:

- a. Check the bonding log to determine if the bonding forms were submitted to CO.
- b. If the log shows that the bonding forms were not submitted, contact the CO bonding staff to ensure that the bonding forms were not submitted.
- c. If the CO bonding staff states that bonding forms were not submitted or that the submission is deficient, the application manager will follow the "Elevated Review Process" as outlined in the appropriate Permit Application Processing SOP and proceed in accordance with Section D or E below, whichever is applicable.

Note: Some bond deficiencies that have prompted a deficiency letter to be sent to the applicant may not be within the control of the applicant. For instance, issues relating to the letter of credit, missing certificate of deposit receipt, and missing signatures must be corrected by the applicant's financial institution, and therefore, cannot be corrected by the applicant. During the elevated review process, the application manager should take into consideration whether the applicant or the applicant's financial institution is responsible for correcting the deficiency.

5. If the applicant submits the bond and associated forms to the CO bonding staff during the elevated review process, the CO bonding staff will contact the application manager to determine the status of the application. The CO bonding staff will discontinue its review of the submitted bond and associated forms until it has been notified of the determination made by the regional office on the application or action.

D. Approval of Application/Bond Review:

1. Based on the outcome of the elevated review process, if the Regional Office decides that the application will not be denied or that an enforcement action will not be taken, the CO bonding staff and the application manager will resume their review of the submitted paperwork; follow the course of action agreed upon during the elevated review process, or follow the procedure outlined in Section II.A.1-3 and II.B.1, above.
2. Once the CO Bonding Section has completed its review of the financial assurance and no deficiencies remain, the CO Bonding Section will send a bond approval letter to the applicant and copy the application manager in the appropriate regional office.

3. Upon receiving a copy of the bond approval letter, the application manager will follow the procedures in the appropriate permitting SOP to complete the permit review process. The application manager will copy the CO Bonding Section on the letter issuing the permit.

E. Denial of Application/Bond Review:

1. If the determination is made during the elevated review process that an enforcement action will be taken or the application will be denied, the application manager will notify the CO bonding staff of the decision and provide instructions on the appropriate management of any financial assurance documents that were received (i.e., return the documents to the applicant). The application manager will follow the procedure for permit denial in the appropriate permitting SOP. The CO bonding section will be copied on the permit denial letter or correspondence regarding the Department's enforcement action.
2. If a bond or associated forms were submitted, the CO bonding staff will return the documents along with a letter (a template can be found in the Bureau's "Template Letters" shared folder) that:
 - a. States why the applicant's submission is being returned; and
 - b. Copies the application manager.

_____ REGIONAL OFFICE

CERTIFIED MAIL:

Name
Address
City, State, Zip

RE: Bonding/Financial Assurances
-
-
- Township
- County
I.D. No.
APS No.
Authorization No.

Dear _____:

The Department of Environmental Protection (DEP) has reviewed the referenced application for _____ presented for _____. The total bond liability associated with this permit and calculated by the bond worksheets pursuant to 25 Pa. Code Section _____ is _____.

The required bond forms that must be submitted relative to this matter and corresponding sample letters may be accessed from the ‘eLibrary’ on DEP’s website at <http://www.dep.state.pa.us> and must be completed in accordance with the following instructions. Both the completed bond forms and collateral/surety must be submitted and approved by DEP before a permit can be issued.

All spaces requiring the applicant or permittee’s name must contain the same name used on other forms in the permit application. In the case of corporations, the applicant or permittee’s name must exactly be the same as the name that appears on the corporate seal, including abbreviations and punctuation.

Bonds may be submitted in the form of collateral or surety.

- a. Collateral bonds may be supported by the following types of securities: cash, certified checks, irrevocable bank letters of credit, automatically renewable certificates of deposit,

Regional Office Address

Regional Office Phone# Fax#

www.dep.state.pa.us

or negotiable bonds of the types specified in Section 505(a) of the Solid Waste Management Act.

Total amount of bond liability should be submitted within thirty (30) calendar days of receipt of this letter and paid in full prior to permit issuance.

The wording and format of letters of credit must be identical to the sample letters of credit found in “eLibrary” at <http://www.elibrary.dep.state.pa.us/dsweb/View/Collection-10379> . Letters of credit cannot contain an expiration date unless such a date is followed by the phrase “...or annually thereafter if the credit is not terminated as provided herein.” Certificates of deposit must be accompanied by an assignment document (see DEP’s website). Certificates of deposit must be “automatically renewable” and this fact must be stated on the certificate. A certificate may not contain any language indicating it is “not transferable.” All such language must be deleted or changed to read as follows: “Not transferable except as recorded on the books of the bank.” Any deletions or typed additions to the Certificate must be individually and specifically acknowledged by the signature of an authorized bank official (see below).

In the case of corporations, all bond documents must be executed by two corporate officials. The only corporate officials who may execute a bond document are the president, vice-president, secretary of the corporation, assistant secretary of the corporation, treasurer or assistant treasurer. One corporate officer from each column below must execute the document. Appropriate titles of all signers must be on the document.

Column A

President

Vice-President

Column B

Treasurer

Assistant Treasurer

Secretary of the Corporation

Assistant Secretary of the Corporation

All assignment documents must be executed by two bank officials from those listed above (same as for corporations) with the addition of cashier or assistant cashier for national banks.

- b. Surety bonds executed by a permittee and a corporate surety licensed to do business in the Commonwealth are acceptable for purposes of bonding solid waste management facilities.

Such surety bond submittals shall be on forms provided by DEP (see DEP’s Website).

Required corporate signatures are the same as outlined in the columns above for collateral bonds, except that the surety company is required to supply an attorney in fact’s signature plus a “power of attorney” for the surety company. The date of the “power of attorney” must be the same as that of the surety bond.

When existing surety or collateral is replaced or when there is a change in the permittee, a new bond form will need to accompany the collateral/surety.

Regional Office Address

Regional Office Phone# Fax#

www.dep.state.pa.us

Please submit any documents pertaining to a surety or collateral bond within 30 calendar days to the following address:

*Division of Contracts, Procurement and Bonding
Bureau of Office Services
Department of Environmental Protection
Attn: [CO CONTACT]
PO Box 8766
Harrisburg, PA 17105-8473*

If you do not submit the required financial assurance within thirty (30) calendar days of receipt of this letter, your application may be denied.

If you have any questions regarding specific financial assurance requirements or bonding forms, please contact [CO CONTACT] by telephone at 717.783.9707, or by email at RA-ep-CPBMining@pa.gov.

Sincerely,

Bureau of Waste Management

cc: County
Township
CO Bonding Staff

bcc: Region
Chron

Regional Office Address

Regional Office Phone# Fax#

www.dep.state.pa.us

BOND SUBMITTAL FORM INSTRUCTIONS

The Bond Submittal form is an internal document and is the communication mechanism between the program staff and the bonding staff including the bonding attorney. The form provides the bonding staff with the information necessary to proceed with the bond review. The form also insures that the program staff is aware of what actions the operator is taking regarding its bonds.

Section A is the operator's information; name (name must match the name on the permit), permit number, the original permit date, contact name and phone number, and the facility name and location.

Section B describes the purpose of the bond. Please only check one unless a release is involved. If a release is involved up to two boxes may be checked if the Department is releasing financial assurance AND taking another action.

Section C is information regarding a release or replacement. Information required is the name of the financial institution that issued the collateral/surety to be released or replaced, the type (Surety or Letter of Credit, Check, Certificate of Deposit, Negotiable) and the number assigned to the collateral/surety by the issuing institution, the date the instrument was issued and the amount. This section must be reviewed and signed by the regional program manager. The form must be emailed to the CO Bonding Section in pdf format. The original signed submittal form must be sent via interoffice mail to the CO Bonding Section.

Section D is the comment section. Program Staff must include a comment in this section. Transmittal forms submitted without a comment may result in excessive delays or questions from the reviewing attorney. The comment must include information regarding the reason for the bond action and that the bond amount is sufficient for the applicant's operation. For example, bond increase is a result of expansion of facility, additional activity at facility, etc. Following the comments please indicate the region, reviewing staff name, dollar amount and date received.

Section E refers to the bond obligation. Bond required is the total bond obligation including the current increase or decrease. The amount on deposit refers to the dollar amount being held at the time of submittal and the amount due should match the amount being submitted, including any increase or decrease.

Section F identifies the collateral or surety that is being submitted. Section a) is the number the surety company issues, followed by the name of the surety company, the date of the surety and the amount. b) is the type of Collateral (Cash, Letter of Credit, Certificate of Deposit, Negotiable), name of the issuer, date the collateral was issued and the amount. The total should match the amount due.

Section G is completed by the bonding staff and tracks the progress of the review. When the bond is accepted it is signed and dated by the CPB Division Chief.

Regional Office Address

Regional Office Phone# Fax#

www.dep.state.pa.us

CERTIFIED MAIL:

Name
Address
City, State, Zip

RE: Bureau of Waste Management
[NAME]
Permit No.
Surety Bond No.
[ISSUING INSTITUTION] – [DATE]

Dear _____:

The Department of Environmental Protection (Department) requested financial assurance documents for the above-referenced application on [INSERT DATE OF CALL-IN LETTER]. As of the date of this letter, the Department has not received the financial assurance documents requested for the above-referenced facility. Please submit documents pertaining to a surety or collateral bond within 15 calendar days to the following address:

*Division of Contracts, Procurement and Bonding
Bureau of Office Services
Department of Environmental Protection
Attn: Tammy Jefferson
PO Box 8766
Harrisburg, PA 17105-8473*

If you do not submit the required financial assurance within fifteen (15) calendar days of receipt of this letter, your application may be denied.

If you have any questions regarding specific financial assurance requirements or bonding forms, please contact [CO CONTACT] by phone at 717.783.9707, or by email at RA-ep-CPBMining@pa.gov.

Sincerely,

Bureau of Waste Management

cc: County
Township
CO Bonding Staff

bcc: Region
Chron

Regional Office Address

Regional Office Phone# Fax#

www.dep.state.pa.us

CERTIFIED MAIL:

Name
Address
City, State, Zip

RE: Bureau of Waste Management
[NAME]
Permit No.
Surety Bond No.
[ISSUING INSTITUTION] – [DATE]

Dear _____:

I am returning the enclosed material that was submitted for bonding. We were unable to process the request for the following reasons:

[LIST REASONS]

Please send the correct surety bond to me along with the enclosed LLC Acknowledgement within 15 calendar days. Failure to do so may result in Department action which may include enforcement and/or denial of your application.

If you have any questions regarding this matter, please contact [REGIONAL CONTACT] by telephone at [PHONE], or by email at [EMAIL ADDRESS].

Sincerely,

Tammy Jefferson
Administrative Assistant
Division of Contracts, Procurement & Bonding

Enclosures

cc: BWM – [REGION] – [REGIONAL CONTACT NAME]

Regional Office Address

Regional Office Phone# Fax#

www.dep.state.pa.us