

2001 DRAFTING REQUEST

Senate Amendment (SA-SB55)

Received: 05/25/2001

Received By: traderc

Wanted: Soon

Identical to LRB:

For: Legislative Fiscal Bureau

By/Representing: Bonderud

This file may be shown to any legislator: NO

Drafter: traderc

May Contact:

Addl. Drafters:

Subject: Environment - solid haz. waste

Extra Copies:

Submit via email: NO

Requester's email:

Pre Topic:

LFB:.....Bonderud -

Topic:

Solid waste disposal facilities, proof of financial responsibility

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	traderc 05/26/2001	hhagen 05/28/2001					
/1			jfrantze 05/29/2001		lrb_docadmin 05/29/2001		
/2	traderc 05/31/2001	hhagen 05/31/2001	kfollet 05/31/2001		lrb_docadmin 05/31/2001		

FE Sent For:

<END>

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1?	traderc	11 hmk 5/28/01	J 5/29	to/ps 5/29			

FE Sent For:

<END>

No. 1752 P. 7/11
JFC Approved
5/24/01 Vote 16-0

Senator Burke
Representative Kaufert
Senator Shibilski

NATURAL RESOURCES – AIR, WASTE AND CONTAMINATED LAND

Solid Waste Landfill Proof of Financial Responsibility

Motion:

↑ primarily volume + formula to convert to tons

Move to allow owners of solid waste landfills at which the majority of the solid waste disposed of is high-volume industrial waste an alternative option of methods of establishing proof of financial responsibility during the operation of the landfill and for the costs of closing the landfill and for taking long-term care of the landfill after it is closed instead of the methods included in chapter 289.41 (6) (e) and (f). Maintain the requirement that such landfill owners meet the proof of financial responsibility requirements in chapter 289.41 (6) (a) through (d) and (h) through (j). Such landfill owners could choose the option of complying with chapter 289.41 (6) (e) and (f) or of satisfying one of the following three conditions:

1. A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; or
2. A ratio of less than 1.5 comparing total liabilities to net worth; or
3. A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities.

Note:

Currently, Wisconsin statutes require the owner of a solid waste disposal facility (landfill) to provide proof of financial responsibility during the operation of the landfill and for the costs of closing the landfill and for taking long-term care of the landfill after it is closed. Companies may utilize a net worth method to establish proof of financial responsibility, under s. 289.41 (6) (a) through (j) as listed below.

- (a) Compliance. Except as provided under par. (j) or sub. (7), calculations and

determinations based on data and information provided in the opinion of the certified public accountant are required to establish that the company satisfies each of the criteria under pars. (b) to (i) in order to comply with minimum financial standards.

(b) Net worth to closure, long-term care and corrective action cost ratio. The net worth of the company at the end of its most recently completed fiscal year equals or exceeds 6 times the estimated total cost of compliance with the closure and any long-term care requirements specified in the plan of operation or the approved plan under s. 291.29 plus the costs of any corrective action required under s. 291.37.

(c) Minimum net worth. The net worth of a company at the end of its most recently completed fiscal year equals or exceeds \$10,000,000.

(d) Net fixed assets to total assets ratio. The quotient of the net fixed assets divided by total tangible assets at the end of the company's most recently completed fiscal year exceeds 0.3.

(e) Working capital to total liabilities ratio. The quotient of the working capital provided from operations divided by total liabilities at the end of the company's most recently completed fiscal year exceeds 0.1.

(f) Total liabilities to net worth ratio. The quotient of the total liabilities divided by net worth at the end of the company's most recently completed fiscal year is less than 1.5.

(g) Credit worthiness. The quotient of the total of the working capital provided from operations at the end of the company's most recently completed fiscal year plus interest payments made during that year plus rental expenses incurred during that year, used as a dividend, divided by the total of interest payments made during that year plus rental expenses incurred during that year plus the product of the sinking fund at the end of that year times the tax factor, used as the divisor, exceeds 2.0. The tax factor equals the quotient of one, used as the dividend, divided by the total of one less the sum of the average federal income tax rate plus the average Wisconsin tax rate calculated in that year, used as the divisor.

(h) Average self-financing measure. The average for the self-financing measures for the company's 5 previous fiscal years exceeds 0.8. The self-financing measure equals the quotient of the working capital provided from operations at the end of the company's fiscal year less dividend payments made during that year, used as the dividend, divided by the capital expenditures made during that year, used as the divisor.

(i) Absence of qualifiers in certified public accountant's opinion. Information provided in the opinion of the certified public accountant does not indicate any of the following qualifications: (1) Accounting practices or calculations made by or suspected to have been made by the company in its financial statements which deviate from generally accepted accounting principals; (2) Any limitation on the scope of the audit procedures; (3) Any indication that materials presented in or calculations made in the financial statement are unreliable because of future events not susceptible

to reasonable estimation.

(j) Variance from one criterion. If calculations and determinations based on data and information provided in the opinion of the certified public accountant establish that the company satisfies both the criteria under pars. (b) and (c) and all but one of the criteria under pars. (d) to (i) and if the department finds that the company meets minimum variance requirements, the department may grant a variance and issue a determination stating that the company complies with minimum financial standards. In order to meet minimum variance requirements: (1) The deviation from the criterion may not be significant; (2) The company is required to have satisfied the criterion consistently in previous fiscal years; and (3) The company is required to establish that it is likely to satisfy the criterion in future fiscal years.

The motion would allow companies that own landfills at which the majority of the solid waste disposed of is high-volume industrial waste an alternative to complying with (e) and (f). The options are included in Title 40, chapter 1 of the Code of Federal Regulations Part 258.74.

§ 258.74

40 CFR Ch. I (7-1-99 Edition)

closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States. The owner or operator must notify the State Director that a copy of the insurance policy has been placed in the operating record.

(2) The closure or post-closure care insurance policy must guarantee that funds will be available to close the MSWLF unit whenever final closure occurs or to provide post-closure care for the MSWLF unit whenever the post-closure care period begins, whichever is applicable. The policy must also guarantee that once closure or post-closure care begins, the insurer will be responsible for the paying out of funds to the owner or operator or other person authorized to conduct closure or post-closure care, up to an amount equal to the face amount of the policy.

(3) The insurance policy must be issued for a face amount at least equal to the current cost estimate for closure or post-closure care, whichever is applicable, except as provided in paragraph (k) of this section. The term *face amount* means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(4) An owner or operator, or any other person authorized to conduct closure or post-closure care, may receive reimbursements for closure or post-closure expenditures, whichever is applicable. Requests for reimbursement will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure or post-closure care, and if justification and documentation of the cost is placed in the operating record. The owner or operator must notify the State Director that the documentation of the justification for reimbursement has been placed in the operating record and that reimbursement has been received.

(5) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused.

(6) The insurance policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner and operator and to the State Director 120 days in advance of cancellation. If the insurer cancels the policy, the owner or operator must obtain alternate financial assurance as specified in this section.

(7) For insurance policies providing coverage for post-closure care, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week Treasury securities.

(8) The owner or operator may cancel the insurance policy only if alternate financial assurance is substituted as specified in this section or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements of § 258.71(b), § 258.72(b) or § 258.73(b).

(c) *Corporate financial test.* An owner or operator that satisfies the requirements of this paragraph (c) may demonstrate financial assurance up to the amount specified in this paragraph (c):

(1) *Financial component.* (1) The owner or operator must satisfy one of the following three conditions:

(A) A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; or

Environmental Protection Agency, EPA

§ 258.74

- (B) A ratio of less than 1.5 comparing total liabilities to net worth; or
- (C) A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities.

- (2) Provides evidence demonstrating that the firm meets the conditions of either paragraph (e)(1)(i)(A) or (e)(1)(i)(B) or (e)(1)(i)(C) of this section and paragraphs (e)(1)(ii) and (e)(1)(iii) of this section.

went all of (1)
A, B+C
but C is most important →

(i) The tangible net worth of the owner or operator must be greater than: (A) The sum of the current closure, post-closure care, corrective action cost estimates and any other environmental obligations, including guarantees, covered by a financial test plus \$10 million except as provided in paragraph (e)(1)(ii)(B) of this section.

(B) A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance, with the potential exception for qualified opinions provided in the next sentence. The Director of an approved State may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Director deems that the matters which form the basis for the qualification are insufficient to warrant disallowance of the test. If the Director of an approved State does not allow use of the test, the owner or operator must provide alternate financial assurance that meets the requirements of this section.

(B) \$10 million in net worth plus the amount of any guarantees that have not been recognized as liabilities on the financial statements provided all of the current closure, post-closure care, and corrective action costs and any other environmental obligations covered by a financial test are recognized as liabilities on the owner's or operator's audited financial statements, and subject to the approval of the State Director.

(iii) The owner or operator must have assets located in the United States amounting to at least the sum of current closure, post-closure care, corrective action cost estimates and any other environmental obligations covered by a financial test as described in paragraph (e)(3) of this section.

(C) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that owner or operator satisfies paragraph (e)(1)(i)(B) or (e)(1)(i)(C) of this section that are different from data in the audited financial statements referred to in paragraph (e)(2)(i)(B) of this section or any other audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

(2) Recordkeeping and reporting requirements. (1) The owner or operator must place the following items into the facility's operating record:

(A) A letter signed by the owner's or operator's chief financial officer that:

(1) Lists all the current cost estimates covered by a financial test, including, but not limited to, cost estimates required for municipal solid waste management facilities under this part 258, cost estimates required for UIC facilities under 40 CFR part 144, if applicable, cost estimates required for petroleum underground storage tank facilities under 40 CFR part 280, if applicable, cost estimates required for PCB storage facilities under 40 CFR part 761, if applicable, and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR parts 264 and 265, if applicable; and

2001

Date (time)
needed

SOON

LRB b 0418 1/1

**LFB BUDGET AMENDMENT
[ONLY FOR LFB]**

RCT: hmk

See form **AMENDMENTS — COMPONENTS & ITEMS.**

**LFB AMENDMENT
TO 2001 ASSEMBLY BILL 144 AND 2001 SENATE BILL 55**

Note

>>FOR JT. FIN. SUB. — NOT FOR INTRODUCTION<<

At the locations indicated, amend the bill as follows:

#. Page ¹⁴⁶² 1462, line [✓] 17...: after that line insert:

#. Page , line :

#. Page , line :

#. Page , line :

#. Page , line :

#. Page , line :

b0418/1

3227e

Section #. 289.41 (6) (a) of the statutes is amended to read:

~~(j)~~ or (L)

289.41 (6) (a) *Compliance*. Except as provided under par. (j) or sub. (7), calculations and determinations based on data and information provided in the opinion of the certified public accountant are required to establish that the company satisfies each of the criteria under pars. (b) to (i) in order to comply with minimum financial standards.

History: 1981 c. 374; 1983 a. 27; 1983 a. 53 s. 114; 1985 a. 29 s. 3202 (39); 1987 a. 384; 1989 a. 31, 359; 1991 a. 31, 39; 1993 a. 135; 1995 a. 63; 1995 a. 227 ss. 588, 617 to 624; Stats. 1995 s. 289.41; 1995 a. 377 ss. 1 to 3; 1997 a. 35 ss. 327, 328, 396.

Section 3227r. CR; 289.41 (6) (k)

289.41 (6) (k) ^(B) ~~(E)~~ Exception from one criterion: Paragraph

(e) does not apply to ^{company that} ~~owns~~ a solid waste facility at which more than one-half ^{↑ by volumes} of the solid waste disposed of is high-volume industrial waste if the company satisfies the criteria under pars. (b) to (d) and (f) to (i).

Section 3227s. CR; 289.41 (6) (L)

289.41 (6) (L) ^(B) ~~(E)~~ Alternative criteria for certain companies.

Paragraphs (e) and (f) do not apply to a company that owns a solid waste facility at which more than one-half ^{↑ by volumes} of the solid waste disposed of is high-volume industrial waste if the company satisfies the criteria under pars. (b) to (d) and (g) to (i) and one of the following criteria:

1. The ~~company~~ ^{company} received a

For its senior unsubordinated ⁽⁶⁰⁸⁻²⁶⁶⁻³⁵⁶¹⁾ debt
rating of "AAA," "AA," "A," or "BBB" From ^{Moody's} "A" _{"A"}

Investor Service, Incorporated, or of "Aaa," "Aa," or "Baa"

From Standard and Poor's Corporation in the most
recent issuance of ratings by either firm.

2. The quotient of the sum of ^{net} income plus depreciation,
plus depletion, ~~and~~ ^{plus} amortization, minus \$10,000,000, divided by
total liabilities at the end of the company's most recently
completed fiscal year exceeds 0.1."

(End)

Date

DN

Kendra Bolderad,

I decided to ^{use} require that more than one-half of
the waste ~~by~~ volume to determine how much of the
waste is high-volume industrial waste because
I have the impression that solid waste is usually kept
track of by volume and because it is called
"high-volume."

¶ Section 289.41 (6) (L) 1. is modeled on s. 289.41
(7) (c) and s. 289.41 (6) (L) 2. ^{is modeled} on s. 289.41 (6) (d) to (g).

Rit

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb0418/1dn
RCT:hmh:jf

May 29, 2001

Kendra Bonderud,

I decided to use volume to determine how much of the waste is high-volume industrial waste because I have the impression that solid waste is usually kept track of by volume and because it is called "high-volume."

Section 289.41 (6) (L) 1. is modeled on s. 289.41 (7) (c) and s. 289.41 (6) (L) 2. is modeled on s. 289.41 (6) (d) to (g).

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.state.wi.us



State of Wisconsin
2001 - 2002 LEGISLATURE

LRBb0418/z
RCT:hmh:jf
Staub
YMP

SOON

LFB:.....Bonderud - Solid waste disposal facilities, proof of financial responsibility

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

LFB AMENDMENT

TO 2001 SENATE BILL 55 AND 2001 ASSEMBLY BILL 144

1 At the locations indicated, amend the bill as follows:

2 1. Page 1462, line 17: after that line insert:

3 "SECTION 3227q. 289.41 (6) (a) of the statutes is amended to read:

4 289.41 (6) (a) *Compliance*. Except as provided under par. (j), (k), or (L) or sub.
5 (7), calculations and determinations based on data and information provided in the
6 opinion of the certified public accountant are required to establish that the company
7 satisfies each of the criteria under pars. (b) to (i) in order to comply with minimum
8 financial standards.

9 SECTION 3227r. 289.41 (6) (k) of the statutes is created to read:

10 289.41 (6) (k) *Exception from one criterion*. Paragraph (e) does not apply to a
11 company that owns a solid waste facility at which more than one-half, by volume,

1 of the solid waste disposed of is high-volume industrial waste if the company
2 satisfies the criteria under pars. (b) to (d) and (f) to (i).

3 **SECTION 3227s.** 289.41 (6) (L) of the statutes is created to read:

4 289.41 (6) (L) *Alternative criteria for certain companies.* Paragraphs (e) and
5 (f) do not apply to a company that owns a solid waste facility at which more than
6 one-half, by volume, of the solid waste disposed of is high-volume industrial waste
7 if the company satisfies the criteria under pars. (b) to (d) and (g) to (i) and one of the
8 following criteria:

9 1. The company received a rating for its senior unsubordinated debt of "AAA,"
10 "AA," "A," or "BBB" from Moody's Investor Service, Incorporated or of "Aaa," "Aa,"
11 "A," or "Baa" from Standard and Poor's Corporation in the most recent issuance of
12 ratings by either firm.

13 2. The quotient of the sum of net income plus depreciation, plus depletion, plus
14 amortization, minus \$10,000,000, divided by total liabilities at the end of the
15 company's most recently completed fiscal year exceeds 0.1."

16

(END)

LFB:.....Bonderud - Solid waste disposal facilities, proof of financial responsibility

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8 following criteria:

9 1. The company received a rating for its senior unsubordinated debt of “AAA,”
10 “AA,” “A,” or “BBB” from Standard and Poor’s Corporation, or of “Aaa,” “Aa,” “A,” or
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12 ratings by either firm.

13 2. The quotient of the sum of net income plus depreciation, plus depletion, plus
14 amortization, minus \$10,000,000, divided by total liabilities at the end of the
15 company’s most recently completed fiscal year exceeds 0.1.”.

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(END)