



## Financial Assurance Tracking

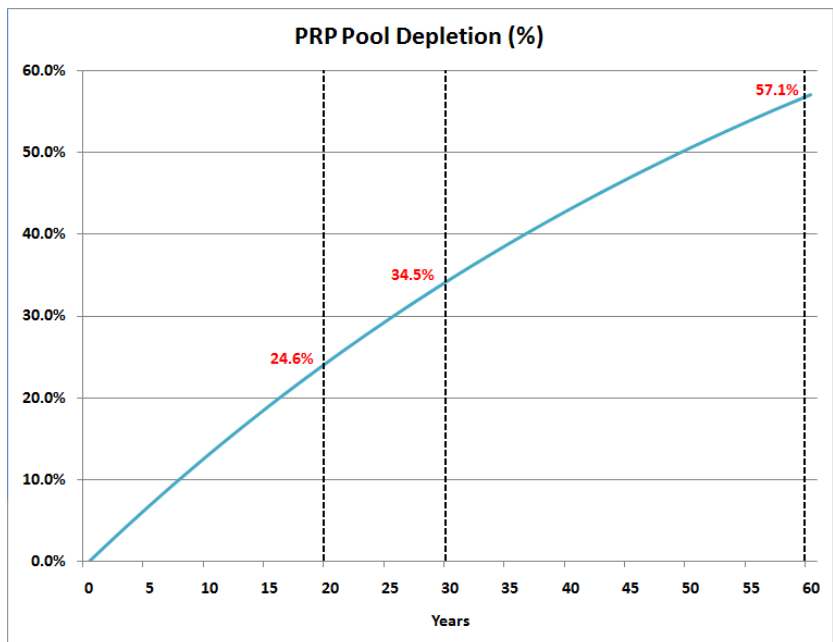
*You need this more than you may realize!*

Financial assurance (FA) is the demonstration of the ability to fund, ex ante, costs associated with environmental liabilities. Such costs include closure, post-closure, and corrective actions taken by an owner, operator, user, and any other Potentially Responsible Parties (PRPs) of a facility that poses a potential environmental hazard. FA is demanded of a wide variety of commercial operations, including but not limited to municipal landfills, ships carrying oil or hazardous cargo, hazardous waste treatment facilities, offshore oil and gas installations, underground gasoline tanks, nuclear disposal and nuclear power facilities, and mines. Furthermore, FA can take many forms including insurance, surety obligations, letters of credit from a bank, trust funds or escrow accounts. Alternatively, some regulatory programs allow compliance via the mere demonstration of an adequate asset base and high-quality bond rating or even perhaps a financial guarantee provided by a wealthy corporate parent.

In today's world of high finance, with a seemingly endless series of mergers and acquisitions, not only do companies change hands, but all of the properties owned by these companies change hands just the same. In fact, over the course of a property's history, a complex web of PRPs can develop, including numerous owners and/or operators, lessees, arrangers of disposal and/or treatment of hazardous substances and/or transporters of those substances. It is not at all unusual nowadays for there to be hundreds of PRPs for a single contaminated property. In addition, current legislation imposes both strict liability and joint and several liability to a properties' respective group of PRPs. Therefore, a PRP supposedly responsible for only a fraction of the waste at a site conceivably could be liable for up to 100% of clean-up costs should other PRPs fail to survive leaving those remaining with the full balance, i.e. burden of payment.

If for no other reason, companies must pay careful attention to the financial health of their partners, defined in the broadest of terms. Keeping a finger on the pulse of the financial health and overall solvency of these other responsible organizations can give a company tremendous advantages as it seeks to manage its own environmental liabilities.

In fact, according to the Dun & Bradstreet (D&B) Financial Stress model, a model which predicts the likelihood of a firm ceasing business without paying all creditors in full, or reorganizing or obtaining relief from creditors under state/federal law over the next year, the National Average for all firms in the United States "Incidence of Financial Stress" is 1.4%. In other words, this is the percentage of firms that discontinued operations over the past year with loss to creditors and represents the national corporate failure rate. As you can see on the chart to the right, when extrapolating this rate out over a 20 to 30 year time

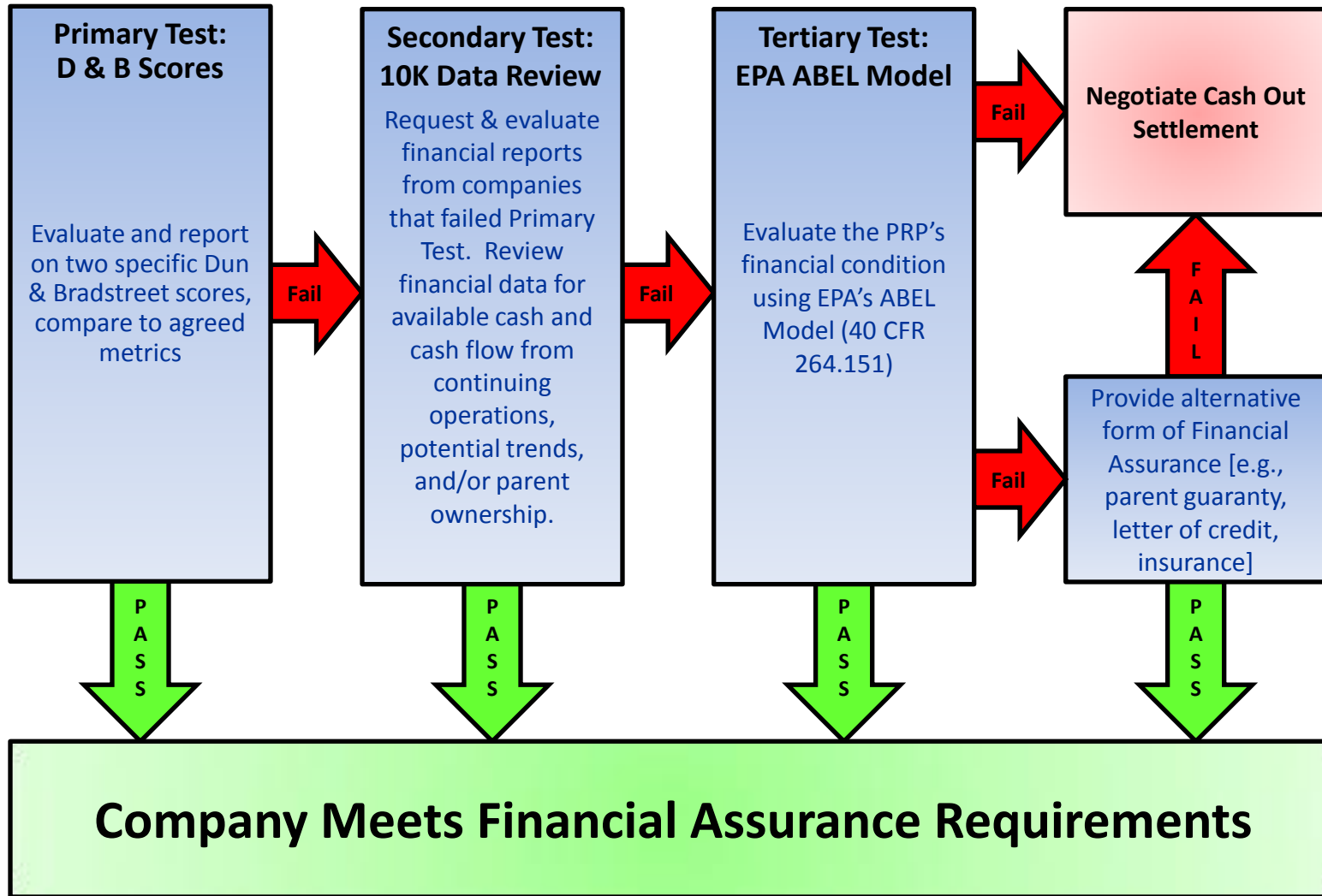


horizon, the size of the PRP pool for any given property shrinks by somewhere between 25 - 35%, therefore leaving the remaining PRPs with the full burden of 100% of the liability.

If you're eager to protect your organization and keep close tabs on your business partners, please contact your ERCI consultant today and request a proposal for ERCI's *Financial Assurance Tracking*.



# Financial Assurance Process





# Financial Assurance Monitoring

When does Financial Assurance make business sense?	How would Financial Assurance Monitoring help my company?	What does Financial Assurance Monitoring entail?
<ul style="list-style-type: none"> <li>Your company is a Potentially Responsible Party (PRP) for a site with future costs of \$25 million or more.</li> <li>Any single PRP's share of the future costs exceeds \$1 million.</li> <li>There are more than 10 PRPs named at the site.</li> <li>Remediation of the site – including O&amp;M – will not be finished for ten years.</li> </ul>	<ul style="list-style-type: none"> <li>According to the D&amp;B Financial Stress model, on average, companies discontinue operations at a rate of 1.4% per year, every year.<sup>1</sup> Financial Assurance Monitoring identifies those PRPs in financial stress prior to their filing Chapter 11.</li> <li>Financial Assurance Monitoring allows PRP groups to cash out non-viable companies prior to bankruptcy, thus preventing reallocation of the remaining financial burden to the remaining PRPs.</li> </ul>	<ul style="list-style-type: none"> <li>ERCI evaluates each PRP's financials monthly using a three-tiered system.</li> <li>If a PRP does not pass a test, they enter cash out negotiations or are required to provide additional financial assurance (e.g. letter of credit, surety obligation, parent guaranty).</li> <li>ERCI provides quarterly updates to the PRP group, indicating the financial status of each PRP.</li> <li>The cost associated with one year's monitoring rarely exceeds \$25,000.</li> </ul>

## Example: CERCLA Landfill

Company X delivered waste to a 300-acre landfill between 1970-1990. In 2000, the landfill closed and in 2005, a TCE plume was identified in the surrounding area. Future cleanup costs will be \$50 million, of which Company X is responsible for 10%. 20 major PRPs were identified, as well as over 40 deminimis parties. 18 of these 60 PRPs are already out of business. Remediation will be completed after 2021.

By 2007, eight of the remaining 42 PRPs exhibited the signs of financial stress, typical of companies considering bankruptcy. Each company either negotiated a cash-out settlement or was required to provide another form of financial assurance. As a result, the 34 remaining PRPs avoided assuming the \$3 million aggregate share of the eight risky PRPs. For Company X, with a 10% share, this would have amounted to \$300,000 of additional liability, or a 6% increase.

By tracking the financials of all related PRPs using ERCI's three-tiered system on a monthly basis, the "financially risky" companies were identified ahead of time, thereby averting incremental financial burden to the remaining PRPs. Simply by keeping a finger on the financial health of the PRPs, significant sums of money can be saved.

<sup>1</sup> Dun and Bradstreet (D&B) Financial Stress Model, "Incidence of Financial Stress"