7035.2750 SELF-INSURANCE.

The provisions of items A to M apply to self-insurance.

A. An owner or operator may satisfy the requirements of part 7035.2695 by providing proof that the owner or operator meets the criteria of one of the financial tests in item B. An owner or operator who wants to self-insure must also send to the commissioner one of three forms of approved security, unsubordinated debentures, municipal bonds, or warrants drawn on the owner's or operator's municipal treasury. The market value of the unsubordinated debentures and municipal bonds, and the face value of the warrants must equal or exceed the sum of the current cost estimates.

(1) An owner or operator of a new facility shall submit the self-insurance demonstrations and the securities to the commissioner along with the final permit application before the date on which waste is first received for disposal.

(2) An owner or operator of an existing facility with a remaining capacity of more than five years or 500,000 cubic yards shall submit the self-insurance demonstrations and the securities to the commissioner within 180 days of November 15, 1988.

(3) An owner or operator of an existing facility that does not meet the criterion in subitem (2) shall submit the self-insurance demonstrations and the securities to the commissioner within a year of November 15, 1988.

B. The owner or operator must meet the criteria of subitem (1), (2), or (3) to pass the financial test.

(1) The owner or operator of a privately owned facility must have:

(a) two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; or a ratio of current assets to current liabilities greater than 1.5;

(b) net working capital and tangible net worth each at least six times the current cost estimates for all owned or operated waste facilities;

(c) tangible net worth of at least $10,000,000; and

(d) assets in the United States amounting to at least 90 percent of the owner's or operator's total assets or at least six times the current cost estimates for all owned or operated waste facilities.

(2) As an alternative to subitem (1), the owner or operator of a privately owned facility must have:

(a) a current rating for its 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;

(b) tangible net worth at least six times the sum of the current cost estimates for all owned or operated facilities covered;

(c) tangible net worth of at least $10,000,000; and

(d) assets located in the United States amounting to at least 90 percent of the owner's or operator's total assets or at least six times the sum of the current cost estimates for all facilities covered.

(3) The owner or operator of a publicly owned facility must have:

(a) a current rating for its 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;

(b) a surplus of the net debt limit imposed by Minnesota Statutes, section 475.53 over existing debt that exceeds the sum of the current cost estimates;

(c) current tax levies that do not exceed the levy limits imposed by Minnesota Statutes, section 275.51; and

(d) a certification by an appropriate official that no foreseeable conditions in the coming year will cause the owner or operator to fail to meet the criteria outlined in units (a), (b), and (c).

C. To demonstrate that the criteria in the financial test are met, the owner or operator shall submit the following items to the commissioner:

(1) A letter certifying that the owner or operator passes one of the tests in item B. The owner or operator of a privately owned facility shall send a letter worded as specified in part 7035.2805, subpart 6, and signed by the owner's or operator's chief financial officer. The owner or operator of a publicly owned facility shall send a letter worded as specified in part 7035.2805, subpart 8, and signed by the owner's or operator's independent auditor and the head of the elected body responsible for the land disposal facility permit.

(2) A copy of an analysis of the owner's or operator's financial statements for the latest completed fiscal year. The owner or operator of a privately owned facility shall send an independent certified public accountant's report on examination of the financial statements. The owner or operator of a publicly owned facility shall send the financial statements prepared in accordance with Minnesota Statutes, section 371.17 or 471.69.

(3) Special reports from an independent certified public accountant stating that:

(a) the accountant has compared the data in the letter submitted under subitem (1) with the amounts in the financial statements;

(b) in connection with that procedure, no matters came to the accountant's attention that caused the accountant to believe that the specified data should be adjusted; and

(c) the total value of the bonds or warrant sent to the commissioner under item A equals or exceeds the sum of the current cost estimates.

(4) After the initial submission of the information specified in subitems (1), (2), and (3), the owner or operator shall send updated information to the commissioner within 90 days after the close of each succeeding fiscal year. If the owner or operator no longer meets the requirements of the financial test, the owner or operator shall send notice to the commissioner that it has either repaired the defect in the self-insurance demonstration or established alternate financial assurance. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements.

(5) The commissioner shall not allow the use of self-insurance if:

(a) the accountant's opinions required in subitem (3) include an adverse opinion or a disclaimer of opinion;

(b) the opinion includes qualifications that relate to the numbers that are used in the gross revenue test or the financial test; or

(c) in light of the qualifications, the owner or operator has failed to demonstrate that it meets the gross revenue or the financial test.

(6) An owner or operator may satisfy the financial assurance requirements of this part by obtaining a written guarantee, hereafter referred to as a corporate guarantee. If the owner or operator makes the self-insurance demonstration through the use of a corporate guarantee, the parent corporation must be the entity that issues the bonds that are sent to the commissioner.

The guarantor must be the parent corporation of the owner or operator. The guarantor must meet the requirements for facility owners or operators in this part and must comply with the terms of the corporate guarantee. The wording of the corporate guarantee must be identical to the wording in part 7035.2805, subpart 7. The corporate guarantee must accompany the items sent to the commissioner as specified in item C. The terms of the corporate guarantee must provide that:

(a) If the owner or operator of a facility covered by the corporate guarantee fails to perform closure, postclosure care, or corrective action in accordance with the appropriate plan and other permit requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in part 7035.2705 in the name of the owner or operator.

(b) The corporate guarantee remains in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the commissioner. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by the commissioner, as evidenced by return receipt.

(c) If the owner or operator fails to provide alternate financial assurance as specified in this part and fails to obtain the written approval of alternate financial assurance from the commissioner within 90 days after receipt by the commissioner of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor shall provide alternate financial assurance in the name of the owner or operator.

D. The bonds sent to the commissioner under item A must be readily saleable in secondary bond markets. The market value of the bonds must equal or exceed the sum of the current cost estimates. The commissioner shall give the owner or operator a receipt for the bonds. The commissioner shall have the bonds kept by the commissioner of management and budget until the bonds must either be sold or returned to the owner or operator. The owner or operator of a privately owned facility shall send bonds that are registered, unsubordinated debentures. The owner or operator of a publicly owned facility shall send bonds that are registered municipal bonds and that meet the requirements of Minnesota Statutes, chapters 400 and 475. The bonds must mature at the following times:

(1) Bonds used to self-insure closure costs must mature two years after the estimated closure date, as determined in the closure plan developed under part 7035.2625.

(2) Bonds used to self-insure postclosure care and contingency action costs must mature two years after the end of the postclosure care period, as determined in the postclosure plan developed under part 7035.2645, or thirty years after the date of issue, whichever is less.

(3) If either of the maturity dates required under subitem (1) or (2) exceeds 30 years, the owner or operator of a publicly owned facility may submit bonds with 30-year maturities and, thereafter, annually submit new 30-year bonds for the bonds held by the commissioner of management and budget. The substitutions must continue until the maturities required under subitems (1) and (2) equal the maturities of the bonds that the commissioner of management and budget holds.

E. Warrants sent to the commissioner under item A must be issued in compliance with chapters 383, 384, 385, and 427. The value of a warrant sent by an owner or operator must equal or exceed the sum of the current cost estimates. The commissioner shall give the owner or operator a receipt for the warrant. The commissioner shall have the warrant kept by the commissioner of management and budget until the warrant must either be submitted for payment or returned to the owner or operator.

F. The owner or operator who uses self-insurance to satisfy the requirements of part 7035.2695 shall also establish a standby trust fund. This standby trust fund must meet the requirements in part 7035.2705 or 7035.2715, except that an originally signed duplicate of the trust agreement must be submitted to the commissioner with the bonds or warrant. The trust must meet the requirements specified in subitems (1) and (2) if the standby trust is funded under this part:

(1) updating of Schedule A of the trust agreement to show the sum of the current cost estimates; and

(2) annual valuations as required by the trust agreement.

G. If the sum of the current cost estimates changes, the owner or operator shall compare the new estimate with the most recent annual valuation of the bonds or the value of the warrant. If the total market value of the bonds or the value of the warrant is less than the amount of the new estimates, the owner or operator, within 60 days after the change in the cost estimates, shall send the commissioner either enough bonds or another warrant to make up the deficiency or establish other financial assurance mechanisms as specified in parts 7035.2705 to 7035.2750. If the owner or operator sends more bonds, the bonds must be accompanied by an independent certified public accountant's report that the new issues have a market value that equals or exceeds the amount of the deficiency.

H. The owner or operator may request to exchange new issues of bonds or warrants for bonds or warrants held by the commissioner of management and budget on the commissioner's behalf. The new issues must have a market value equal to the bonds for which they are exchanged. New warrants must be equal in value to the warrants for which they are exchanged. The owner's or operator's request for a bond exchange must be accompanied by an independent certified public accountant's report that the new issues have a market value equal to the bonds for which they are exchanged. The commissioner shall make the exchange after receiving the request, the warrants or bonds and the accountant's report that must accompany the bonds. The commissioner and the owner or operator shall provide each other with receipts appropriate to document the exchange.

I. During the operating life of the facility, if the total market value of the bonds exceeds the sum of the current cost estimates by an amount greater than the market value of any single bond, the owner or operator may submit a written request together with supporting documents to the commissioner for return of bonds whose total value is not greater than the excess amount. If the value of warrants submitted exceeds the sum of the current cost estimates, the owner or operator may substitute a warrant with a value equal to the sum of the current cost estimates, provided that supporting documents justify the substitution.

J. If the owner or operator substitutes other financial assurance mechanisms as specified in parts 7035.2705 to 7035.2750 in place of self-insurance, the owner or operator may submit a written request to the commissioner for return of the bonds or warrants along with evidence that the substitute mechanisms have taken effect.

K. Within 60 days of receiving a request from the owner or operator for return of bonds or warrants as specified in item I or J and if supporting documents justify the request, the commissioner shall return the warrants or appropriate number of bonds. The owner or operator shall give the commissioner an appropriate receipt for all warrants or bonds returned.

(1) If the owner or operator asks for an adjustment under item I, the commissioner shall:

(a) return all warrants in exchange for warrants of the correct value; or

(b) return bonds whose total market value does not exceed the difference between the sum of the previous cost estimates and the sum of the revised cost estimates.

(2) If the owner or operator asks for a return of securities under item J when a partial substitution of other financial assurance mechanisms for self-insurance has been made, the commissioner shall:

(a) return all warrants in exchange for warrants of the correct value; or

(b) return bonds whose total market value does not exceed the difference between the sum of the current cost estimates and the amount of financial assurance offered by the substitute mechanisms.

(3) If the owner or operator asks for a return of securities under item J when a full substitution of other financial assurance mechanisms has been made, the commissioner shall return all warrants or bonds.

L. If the owner or operator or guarantor, after proper orders from the commissioner, fails or refuses to perform actions specified in the closure plan, the postclosure care plan, or the contingency action plan, the commissioner shall seek authorization from the agency to sell bonds or submit warrants for payment. The commissioner shall also seek authorization if the owner or operator fails to meet the criteria of the financial test and fails to provide alternate financial assurance within 90 days, as provided in item C. The commissioner shall have the proceeds from bond sales or warrant payments deposited in the standby trust fund established under item F.

M. The commissioner shall return the bonds or warrants to the owner or operator and receive appropriate receipts if the agency releases the owner or operator from the requirements of this part in accordance with part 7035.2775.

Statutory Authority: *MS s 115.03; 116.07*

History: *13 SR 1150; L 2003 c 112 art 2 s 50; L 2009 c 101 art 2 s 109*

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