

7045.0504 FINANCIAL ASSURANCE FOR FACILITY CLOSURE.

Subpart 1. **In general.** An owner or operator of a facility shall establish financial assurance for closure of the facility by choosing from the options specified in subparts 2 to 7.

Subp. 2. **Closure trust fund.** The following apply to closure trust funds:

A. An owner or operator may satisfy the requirements of this part by establishing a closure trust fund that conforms to the requirements of items A to L, and by submitting to the commissioner an originally signed duplicate of the trust agreement. An owner or operator of a new facility shall submit the originally signed duplicate of the trust agreement to the commissioner at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

B. The wording of the trust agreement must be identical to the wording specified in part 7045.0524, subpart 1, item A, and must be accompanied by a formal certification of acknowledgment as shown in part 7045.0524, subpart 1, item B. Schedule A of the trust agreement must be updated within 60 days after a change in the amount of the current closure cost estimate covered by the agreement.

C. Payments into the trust fund must be made annually by the owner or operator over the term of the initial permit or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereafter referred to as the "pay-in period." The payments into the closure trust fund must be made as described in subitems (1) and (2).

(1) For a new facility, the first payment must be made before the initial receipt of hazardous waste for treatment, storage, or disposal. A receipt from the trustee for this payment must be submitted by the owner or operator to the commissioner before this initial receipt of hazardous waste. The first payment must be at least equal to the current closure cost estimate, except as provided in subpart 8, divided by the number of years in the pay-in period. Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by this formula:

$$\text{next payment} = \frac{\text{CE}-\text{CV}}{\text{Y}}$$

where CE is the current closure cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(2) If an owner or operator establishes a trust fund as specified in part 7045.0612, subpart 2, and the value of that trust fund is less than the current closure cost estimate when a permit is awarded for the facility, the amount of the current closure cost estimate still to be paid into the trust fund must be paid in over the pay-in period as defined in item C. Payments must continue to be made no later than 30 days after each anniversary date of the first payment made pursuant to part 7045.0612, subpart 2. The amount of each payment must be determined by this formula:

$$\text{next payment} = \frac{\text{CE}-\text{CV}}{\text{Y}}$$

where CE is the current closure cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

D. The owner or operator may accelerate payments into the trust fund or may deposit the full amount of the current closure cost estimate at the time the fund is established. However, he or she shall maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in item C.

E. If the owner or operator establishes a closure trust fund after having used one or more alternate mechanisms specified in this part or in part 7045.0612, the first payment must be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to specifications of this subpart and part 7045.0612, subpart 2, as applicable.

F. After the pay-in period is completed, whenever the current closure cost estimate changes, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate and submit a receipt from the trustee for this payment to the commissioner, or obtain other financial assurance as specified in this part to cover the difference.

G. If the value of the trust fund is greater than the total amount of the current closure cost estimate, the owner or operator may submit a written request to the commissioner for release of the amount in excess of the current closure cost estimate covered by the trust fund.

H. If an owner or operator substitutes other financial assurance as specified in this part for all or part of the trust fund, he or she may submit a written request to the

commissioner for release of the amount in excess of the current closure cost estimate covered by the trust fund.

I. Within 60 days after receiving a request from the owner or operator for release of funds as specified in item G or H the commissioner shall instruct the trustee to release to the owner or operator such funds as the commissioner specifies in writing.

J. The trustee shall notify the owner or operator and the commissioner by certified mail within ten days following the expiration of the 30-day period after the anniversary of the establishment of the trust if no payment is received from the owner or operator during the period. Within 60 days after receipt by both the owner or operator and the commissioner of a notice of nonpayment of any payment required by this part, the owner or operator shall:

- (1) make the required payment;
- (2) provide alternative financial assurance as specified in this part and obtain the commissioner's written approval of the assurance provided; or
- (3) stop accepting waste and begin closure of the facility.

K. After beginning partial or final closure, an owner, operator, or other person authorized to perform closure may request reimbursement for partial or final closure expenditures by submitting itemized bills to the commissioner. The owner or operator may request reimbursement for partial closure expenditures only if sufficient funds remain in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for partial or final closure activities, the commissioner shall determine whether the partial or final closure expenditures are in accordance with the closure plan or otherwise justified, and if so, the commissioner shall instruct the trustee to make reimbursement in amounts as the commissioner specifies in writing. If the commissioner has reason to believe that the maximum cost of closure over the remaining operating life of the facility will be significantly greater than the value of the trust fund, the commissioner may withhold reimbursement of the amounts as deemed prudent until it is determined, in accordance with subpart 10, that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the commissioner withholds reimbursement, the commissioner shall provide the owner or operator with a detailed written statement of reasons.

L. The commissioner shall agree to termination of the trust if:

- (1) an owner or operator substitutes alternate financial assurance as specified in this part; or
- (2) the commissioner releases the owner or operator from the requirements of this part in accordance with subpart 10.

Subp. 3. **Surety bond guaranteeing payment into a closure trust fund.** The following apply to surety bonds that guarantee payment into a closure trust fund:

A. An owner or operator may satisfy the requirements of this part by obtaining a surety bond that conforms to the requirements of items A to I, and by submitting the bond to the commissioner. An owner or operator of a new facility shall submit the bond to the commissioner at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in Circular 570, issued by the United States Department of the Treasury, as published annually in the Federal Register on July 1.

B. The wording of the surety bond must be identical to the wording specified in part 7045.0524, subpart 2.

C. The owner or operator who uses a surety bond to satisfy the requirements of this part shall also establish a standby trust fund. Under the terms of the bond, all payments made under the bond will be deposited by the surety directly into the standby trust fund in accordance with instructions from the commissioner. This standby trust fund must meet the requirements specified in subpart 2, except that an originally signed duplicate of the trust agreement must be submitted to the commissioner with the surety bond; and until the standby trust fund is funded under this subpart, the requirements specified in subitems (1) to (4) are not required:

- (1) payments into the trust fund as specified in subpart 2;
- (2) updating of Schedule A of the trust agreement to show current closure cost estimates;
- (3) annual valuations as required by the trust agreement;
- (4) notices of nonpayment as required by the trust agreement.

D. The bond must guarantee that the owner or operator will:

(1) fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility;

(2) fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin final closure is issued by the commissioner, the agency, or court of competent jurisdiction; or

(3) provide alternate financial assurance as specified in this part and obtain the commissioner's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the commissioner of a notice of cancellation of the bond from the surety.

E. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

F. The penal sum of the bond must be in an amount at least equal to the current closure cost estimate, except as provided in subpart 8.

G. Whenever the current closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, shall either cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the commissioner, or obtain other financial assurance as specified in this part to cover the increase. Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the commissioner.

H. Under the terms of the bond, the surety may cancel the bond by sending 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 both the owner or operator and the commissioner, as evidenced by the return receipts.

I. The owner or operator may cancel the bond if the commissioner has given prior written consent based on the commissioner's receipt of evidence of alternate financial assurance as specified in this part.

Subp. 4. **Surety bond guaranteeing performance of closure.** The following apply to surety bonds that guarantee performance of closure:

A. An owner or operator may satisfy the requirements of this part by obtaining a surety bond that conforms to the requirements of items A to J, and by submitting the bond to the commissioner. An owner or operator of a new facility shall submit the bond to the commissioner at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in Circular 570, issued by the United States Department of the Treasury, as published annually in the Federal Register on July 1.

B. The wording of the surety bond must be identical to the wording specified in part 7045.0524, subpart 3.

C. The owner or operator who uses a surety bond to satisfy the requirements of this part shall also establish a standby trust fund. Under the terms of the bond, all payments made under the bond will be deposited by the surety directly into the standby trust fund in accordance with instructions from the commissioner. This standby trust must meet the requirements specified in subpart 2, except that an originally signed duplicate of the trust agreement must be submitted to the commissioner with the surety bond; and unless the

standby trust fund is funded under this subpart the requirements specified in subitems (1) to (4) are not required:

- (1) payments into the trust fund as specified in subpart 2;
- (2) updating of Schedule A of the trust agreement to show current closure cost estimates;
- (3) annual valuations as required by the trust agreement;
- (4) notices of nonpayment as required by the trust agreement.

D. The bond must guarantee that the owner or operator will:

- (1) perform final closure in accordance with the closure plan and other requirements of the permit for the facility whenever required to do so; or
- (2) provide alternate financial assurance as specified in this part and obtain the commissioner's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the commissioner of a notice of cancellation of the bond from the surety.

E. Under the terms of the bond, the surety becomes liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a determination by the commissioner that the owner or operator has failed to perform final closure in accordance with the closure plan and other permit requirements when required to do so, under the terms of the bond the surety shall perform final closure in accordance with the closure plan and other permit requirements or will deposit the amount of the penal sum into the standby trust fund.

F. The penal sum of the bond must be in an amount at least equal to the current closure cost estimate.

G. Whenever the current closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, shall either cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the commissioner, or obtain other financial assurance as specified in this part. Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the commissioner.

H. Under the terms of the bond, the surety may cancel the bond by sending 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 both the owner or operator and the commissioner, as evidenced by the return receipts.

I. The owner or operator may cancel the bond if the commissioner has given prior written consent. The commissioner shall provide such written consent if:

(1) an owner or operator substitutes alternate financial assurance as specified in this part; or

(2) the commissioner releases the owner or operator from the requirements of this part in accordance with subpart 10.

J. The surety will not be liable for deficiencies in the performance of closure by the owner or operator after the commissioner releases the owner or operator from the requirements of this part in accordance with subpart 10.

Subp. 5. **Closure letter of credit.** The following apply to closure letters of credit:

A. An owner or operator may satisfy the requirements of this part by obtaining an irrevocable standby letter of credit which conforms to the requirements of items A to J, and by submitting the letter to the commissioner. An owner or operator of a new facility shall submit the letter of credit to the commissioner at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The letter of credit must be effective before this initial receipt of hazardous waste. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

B. The wording of the letter of credit must be identical to the wording specified in part 7045.0524, subpart 4.

C. An owner or operator who uses a letter of credit to satisfy the requirements of this part shall also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the commissioner will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the commissioner. This standby trust fund must meet the requirements of the trust fund specified in subpart 2 except that an originally signed duplicate of the trust agreement must be submitted to the commissioner with the letter of credit; and unless the standby trust fund is funded under this subpart, the requirements specified in subitems (1) to (4) are not required:

(1) payments into the trust fund as specified in subpart 2;

(2) updating of Schedule A of the trust agreement to show current closure cost estimates;

(3) annual valuations as required by the trust agreement;

(4) notices of nonpayment as required by the trust agreement.

D. The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: the identification number, name, and address of the facility, and the amount of funds assured for closure of the facility by the letter of credit.

E. The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the commissioner by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the commissioner have received the notice, as evidenced by the return receipts.

F. The letter of credit must be issued in an amount at least equal to the current closure cost estimate, except as provided in subpart 8.

G. Whenever the current closure cost estimate increases to an amount greater than the amount of the credit, the owner or operator, within 60 days after the increase, shall either cause the amount of the credit to be increased so that it at least equals the current closure cost estimate and shall submit evidence of the increase to the commissioner or obtain other financial assurance as specified in this part to cover the increase. Whenever the current closure cost estimate decreases, the amount of the credit may be reduced to the amount of the current closure cost estimate following written approval by the commissioner.

H. Following a determination by the commissioner that the owner or operator has failed to perform final closure in accordance with the closure plan and other permit requirements when required to do so, the commissioner may draw on the letter of credit.

I. If the owner or operator does not establish alternate financial assurance as specified in this part and obtain written approval of alternate assurance from the commissioner within 90 days after receipt by both the owner or operator and the commissioner of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the commissioner shall draw on the letter of credit. The commissioner may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any extension the commissioner shall draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this part and obtain written approval of the assurance from the commissioner.

J. The commissioner shall return the letter of credit to the issuing institution for termination if:

(1) an owner or operator substitutes alternate financial assurance as specified in this part; or

(2) the commissioner releases the owner or operator from the requirements of this part in accordance with subpart 10.

Subp. 6. **Closure insurance.** The following apply to closure insurance:

A. An owner or operator may satisfy the requirements of this part by obtaining closure insurance which conforms to the requirements of items A to J, and submitting a certificate of insurance to the commissioner. An owner or operator of a new facility shall submit the certificate of insurance to the commissioner at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The insurance must be effective before this initial receipt of hazardous waste. 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.

B. The wording of the certificate of insurance must be identical to the wording specified in part 7045.0524, subpart 5.

C. The closure insurance policy must be issued for a face amount at least equal to the current closure cost estimate, except as provided in subpart 8. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer must not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

D. The closure insurance policy must guarantee that funds will be available to close the facility whenever final closure occurs. The policy must also guarantee that once final closure begins, the insurer is responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the commissioner, to a party or parties as the commissioner specifies.

E. After beginning partial or final closure, an owner, operator, or other person authorized to perform closure may request reimbursement for closure expenditures by submitting itemized bills to the commissioner. The owner or operator may request reimbursements for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its operating life. Within 60 days after receiving bills for closure activities, the commissioner shall determine whether the closure expenditures are in accordance with the closure plan or otherwise justified, and if so, the commissioner shall instruct the insurer to make reimbursement in amounts as the commissioner specifies in writing. If the commissioner has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the face amount of the policy, the commissioner may withhold reimbursement of amounts as deemed prudent until it is determined, in accordance with subpart 10, that the owner or operator is no longer required to maintain financial assurance for closure of the facility. If the commissioner withholds reimbursement, the commissioner shall provide the owner or operator with a detailed written statement of reasons.

F. The owner or operator shall maintain the policy in full force and effect until the commissioner consents to termination of the policy by the owner or operator as specified in item J.

G. A policy must contain a provision allowing assignment of the policy to a successor owner or operator. The assignment may be conditional upon consent of the insurer, provided the consent is not unreasonably refused.

H. The 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 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 elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the commissioner. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the commissioner and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration one or more of the following occurs:

- (1) the agency deems the facility abandoned;
- (2) the permit is terminated or revoked or a new permit is denied;
- (3) closure is ordered by the commissioner, the agency or a court of competent jurisdiction;
- (4) the owner or operator is named as debtor in a voluntary or involuntary proceeding under United States Code, title 11, Bankruptcy, as amended;
- (5) the premium due is paid.

I. Whenever the current closure cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within 60 days after the increase, shall either cause the face amount to be increased to an amount at least equal to the current closure cost estimate and submit evidence of the increase to the commissioner, or obtain other financial assurance as specified in this part to cover the increase. Whenever the current closure cost estimate decreases, the face amount may be reduced to the amount of the current closure cost estimate following written approval by the commissioner.

J. The commissioner shall give written consent to the owner or operator to terminate the insurance policy if:

- (1) an owner or operator substitutes alternate financial assurance as specified in this part; or

(2) the commissioner releases the owner or operator from the requirements of this part in accordance with subpart 10.

Subp. 7. **Financial test and corporate guarantee for closure.** The financial test and corporate guarantee for closure is as follows:

A. An owner or operator may satisfy the requirements of this part by demonstrating that he or she passes a financial test as specified in items A to L. To pass this test the owner or operator shall meet the criteria of either item B or C.

B. The owner or operator shall have:

(1) 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;

(2) net working capital and tangible net worth each at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable;

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

(4) 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 sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable.

C. The owner or operator shall have:

(1) a current rating for the 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;

(2) tangible net worth at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable;

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

(4) 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 closure and postclosure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable.

D. The phrase "current closure and postclosure cost estimates" as used in items A to C refers to the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer as specified in part 7045.0524, subpart

6. The phrase "current plugging and abandonment cost estimate" as used in items A to C means the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer as specified in Code of Federal Regulations, title 40, section 144.70(f), as amended.

E. To demonstrate that he or she meets this test, the owner or operator shall submit the following items to the commissioner:

(1) a letter signed by the owner's or operator's chief financial officer and worded as specified in part 7045.0524, subpart 6;

(2) a copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(3) a special report from the owner's or operator's independent certified public accountant to the owner or operator stating that he or she has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and in connection with that procedure, no matters came to his or her attention which caused him or her to believe that the specified data should be adjusted.

F. An owner or operator of a new facility shall submit the items specified in item E to the commissioner at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal.

G. After the initial submission of items specified in item E the owner or operator shall send updated information to the commissioner within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in item E.

H. If the owner or operator no longer meets the requirements of item A he or she shall send notice to the commissioner of intent to establish alternate financial assurance as specified in this part. 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. The owner or operator shall provide the alternate financial assurance within 120 days after the end of the fiscal year.

I. The commissioner may, based on a reasonable belief that the owner or operator may no longer meet the requirements of item A, require reports of financial condition at any time from the owner or operator in addition to those specified in item E. If the commissioner finds, on the basis of the reports or other information, that the owner or operator no longer meets the requirements of item A, the owner or operator shall provide alternate financial assurance as specified in this part within 30 days after notification of the finding.

J. The commissioner may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the report on examination of the owner's or operator's financial statements required by item E, subitem (2). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The commissioner shall evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in this part within 30 days after notification of the disallowance.

K. The owner or operator is no longer required to submit the items specified in item E if:

(1) an owner or operator substitutes alternate financial assurance as specified in this part; or

(2) the commissioner releases the owner or operator from the requirements of this part in accordance with subpart 10.

L. An owner or operator may meet the requirements of this part by obtaining a written guarantee, hereafter referred to as "corporate guarantee." The guarantor must be the parent corporation of the owner or operator. The guarantor must meet the requirements for owners or operators in items A to J, and must comply with the terms of the corporate guarantee. The wording of the corporate guarantee must be identical to the wording specified in part 7045.0524, subpart 8. The certified copy of the corporate guarantee must accompany the items sent to the commissioner as specified in item E. The terms of the corporate guarantee must provide that:

(1) If the owner or operator fails to perform final closure of a facility covered by the corporate guarantee in accordance with the closure plan and other permit requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in subpart 2 in the name of the owner or operator.

(2) 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 both the owner or operator and the commissioner, as evidenced by the return receipts.

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

Subp. 8. Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this part by establishing more than one financial mechanism per facility.

These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, and insurance. The mechanisms must be as specified in subparts 2, 3, 5, and 6 respectively, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he or she may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The commissioner may use any or all of the mechanisms to provide for closure of the facility.

Subp. 9. Use of financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in this part to meet the requirements of this part for more than one facility. Evidence of financial assurance submitted to the commissioner must include a list showing, for each facility, the identification number, name, address, and the amount of funds for closure assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for closure of any of the facilities covered by the mechanism, the commissioner may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

Subp. 10. Release of owner or operator from requirements of this part. Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been accomplished in accordance with the closure plan, the commissioner shall notify the owner or operator in writing that he or she is no longer required by this part to maintain financial assurance for closure of the particular facility, unless the commissioner has reason to believe that closure has not been in accordance with the closure plan. The commissioner shall provide the owner or operator a detailed written statement of any reason to believe that closure has not been in accordance with the approved closure plan.

Statutory Authority: *MS s 116.07*

History: *9 SR 115; 11 SR 2415; L 1987 c 186 s 15; 20 SR 715; 33 SR 2042*

Published Electronically: *October 10, 2013*