

7045.0518 LIABILITY REQUIREMENTS.

Subpart 1. **Coverage for sudden accidental occurrences.** An owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of facilities, shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for sudden accidental occurrences in the amount of at least \$1,000,000 per occurrence with an annual aggregate of at least \$2,000,000, exclusive of legal defense costs. This liability coverage may be demonstrated in one of the following ways:

A. An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in subitems (1) and (2):

(1) Each insurance policy must be amended by attachment of the hazardous waste facility liability endorsement or evidenced by a certificate of liability insurance. The wording of the endorsement must be identical to the wording specified in part 7045.0524, subpart 9. The wording of the certificate of insurance must be identical to the wording specified in part 7045.0524, subpart 10. The owner or operator shall submit a signed duplicate original of the endorsement or the certificate of insurance to the commissioner. If requested by the commissioner, the owner or operator must provide a signed duplicate original of the insurance policy. An owner or operator of a new facility shall submit the signed duplicate original of the hazardous waste facility liability endorsement or the certificate of liability 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.

(2) Each insurance policy must be issued by an insurer, which is 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. An owner or operator may meet the requirements of this part by passing a financial test or using the corporate guarantee for liability coverage as specified in subparts 6 and 7.

C. An owner or operator may meet the requirements of this part by obtaining a letter of credit for liability coverage as specified in subpart 8.

D. An owner or operator may meet the requirements of this part by obtaining a trust fund for liability coverage as specified in subpart 9.

E. An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, corporate guarantee, letter of credit, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a corporate guarantee unless the financial

statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amounts required by this part. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this item, the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

F. An owner or operator shall notify the commissioner in writing within 30 days whenever:

(1) a claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in items A to E;

(2) a certification of valid claim for bodily injury or property damages caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under items A to E; or

(3) a final court order establishing a judgment for bodily injury or property damage caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under items A to E.

Subp. 2. **Coverage for nonsudden accidental occurrences.** An owner or operator of a surface impoundment, landfill, land treatment facility, or disposal miscellaneous unit that is used to manage hazardous waste, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least \$3,000,000 per occurrence with an annual aggregate of at least \$6,000,000, exclusive of legal defense costs. An owner or operator who must meet the requirements of this part may combine the required per-occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences must maintain liability coverage in the amount of at least \$4,000,000 per occurrence and \$8,000,000

annual aggregate. This liability coverage may be demonstrated in one of the following ways:

A. An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in subitems (1) and (2):

(1) Each insurance policy must be amended by attachment of the hazardous waste facility liability endorsement or evidenced by a certificate of liability insurance. The wording of the endorsement must be identical to the wording specified in part 7045.0524, subpart 9. The wording of the certificate of insurance must be identical to the wording specified in part 7045.0524, subpart 10. The owner or operator shall submit a signed duplicate original of the endorsement or the certificate of insurance to the commissioner. If requested by the commissioner, the owner or operator shall provide a signed duplicate original of the insurance policy. An owner or operator of a new facility shall submit the signed duplicate original of the hazardous waste facility liability endorsement or the certificate of liability 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.

(2) Each insurance policy must be issued by an insurer which is 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. An owner or operator may meet the requirements of this part by passing a financial test or using the corporate guarantee for liability coverage as specified in subparts 6 and 7.

C. An owner or operator may meet the requirements of this part by obtaining a letter of credit for liability coverage as specified in subpart 8.

D. An owner or operator may meet the requirements of this part by obtaining a trust fund for liability coverage as specified in subpart 9.

E. An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, corporate guarantee, letter of credit, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a corporate guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amount required by this part. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this item, the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

F. An owner or operator must notify the commissioner in writing within 30 days whenever:

(1) a claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in items A to E;

(2) a certification of valid claim for bodily injury or property damage caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under items A to E; or

(3) a final court order establishing a judgment for bodily injury or property damage caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under items A to E.

Subp. 3. **Adjustment of liability requirements.** If an owner or operator can demonstrate to the satisfaction of the commissioner that the levels of financial responsibility required by subparts 1 and 2 are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the owner or operator may obtain an adjustment from the commissioner. The request for an adjustment must be submitted to the commissioner as part of the permit application in accordance with the agency's permitting procedures in chapter 7001 for a facility that does not have a permit, or pursuant to the procedures for permit modification in chapter 7001 for a facility that has a permit. If granted, the adjustment will take the form of an adjusted level of required liability coverage, the level to be based on the commissioner's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. The commissioner may require an owner or operator who requests an adjustment to provide the technical and engineering information as is deemed necessary by the commissioner to determine a level of financial responsibility other than that required by subpart 1 or 2.

Subp. 4. **Adjustment of financial liability to protect health and environment.** If the commissioner determines that the levels of financial responsibility required by subpart 1 or 2 are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the commissioner may adjust the level of financial responsibility required under subpart 1 or 2 as may be necessary to protect human health and the environment. This adjusted level will be based on the commissioner's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the commissioner determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operations of a facility that is not a surface impoundment,

landfill, or land treatment facility, the commissioner may require that an owner or operator of the facility comply with subpart 2. An owner or operator shall furnish to the commissioner within a reasonable time, any information which the commissioner requests to determine whether cause exists for such adjustments of level or type of coverage. An adjustment of the level or type of coverage for a facility that has a permit will be treated as a permit modification under the agency's permitting procedures in chapter 7001.

Subp. 5. **Period of coverage.** An owner or operator shall continuously provide liability coverage for a facility as required by this part until certifications of closure of the facility, as specified in part 7045.0488, are received by the commissioner. Within 60 days after receiving the certifications from the owner or operator and an independent registered professional engineer, the commissioner shall notify the owner or operator in writing that he or she is no longer required by this part to maintain liability coverage for that facility, unless the commissioner has reason to believe that closure has not been in accordance with the approved closure plan.

Subp. 6. **Financial test for liability coverage.** The financial test for liability coverage 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 I. To pass this test the owner or operator must meet the criteria of either item B or C.

B. The owner or operator shall have:

(1) net working capital and tangible net worth each at least six times the amount of liability coverage to be demonstrated by this test;

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

(3) assets in the United States amounting to either at least 90 percent of his or her total assets, or at least six times the amount of liability coverage to be demonstrated by this test.

C. The owner or operator shall have:

(1) a current rating for his or her 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 of at least \$10,000,000;

(3) tangible net worth of at least six times the amount of liability coverage to be demonstrated by this test; and

(4) assets in the United States amounting to either: at least 90 percent of his or her total assets; or at least six times the amount of liability coverage to be demonstrated by this test.

D. The phrase "amount of liability coverage" as used in items A to C refers to the annual aggregate amounts for which coverage is required under subparts 1 and 2.

E. To demonstrate that he or she meets this test, the owner or operator shall submit the following three 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 7. If an owner or operator is using the financial test to demonstrate assurance for corrective action, closure or postclosure care, as specified by parts 7045.0504, subpart 7; 7045.0508, subpart 7; 7045.0514, subpart 7; 7045.0612, subpart 6; and 7045.0616, subpart 6, and liability coverage, he or she shall submit the letter specified in part 7045.0524, subpart 7 to cover both forms of financial responsibility; a separate letter as specified in part 7045.0524, subpart 6 is not required.

(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.

(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, the owner or operator shall obtain insurance, a letter of credit, a trust fund, or a corporate guarantee for the entire amount of required liability coverage as specified in this part. Evidence of liability coverage must be submitted to the commissioner 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 test requirements.

I. The commissioner may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his or her 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 evidence of insurance for the entire amount of required liability coverage as specified in this part within 30 days after notification of disallowance.

Subp. 7. **Corporate guarantee for liability coverage.** The corporate guarantee for liability coverage is as follows:

A. Subject to item B, an owner or operator may meet the requirements of this part by obtaining a written 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 subpart 6. The wording of the corporate guarantee must be identical to the wording specified in part 7045.0524, subpart 8a. The corporate guarantee must be signed by two corporate officers of the parent corporation. A corporate resolution authorizing the parent corporation to provide the corporate guarantee for the subsidiary must be attached to the corporate guarantee. A certified copy of the corporate guarantee must accompany the items sent to the commissioner as specified in subpart 6, item E. The terms of the corporate guarantee must provide that:

(1) if the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden or nonsudden accidental occurrences, or both, as the case may be, arising from the operation of facilities covered by this corporate guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from the injury or damage, the guarantor will do so up to the limits of coverage; and

(2) the corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the commissioner. This guarantee may not be terminated unless and until the commissioner approves alternate liability coverage complying with this part and/or part 7045.0620.

B. A corporate guarantee may be used to satisfy the requirements of this part only if:

(1) in the case of corporations incorporated in the United States, the attorney general or insurance commissioner of the state in which the guarantor is incorporated and of each state in which a facility covered by the corporate guarantee is located has submitted a written statement to the commissioner and the United States Environmental Protection Agency that a corporate guarantee executed as described in this part and part 7045.0524, subpart 8a, is a legally valid and enforceable obligation in that state; and

(2) in the case of corporations incorporated outside the United States, the non-United States corporation has identified a registered agent for service of process in each state in which a facility covered by the corporate guarantee is located and in the state in which it has its principal place of business, and the attorney general or insurance

commissioner of each state in which a facility covered by the corporate guarantee is located and the state in which the guarantor corporation has its principal place of business, has submitted a written statement to the commissioner and to the United States Environmental Protection Agency that a corporate guarantee executed as described in this part and part 7045.0524, subpart 8a, is a legally valid and enforceable obligation in that state.

Subp. 8. Letter of credit for liability coverage.

A. An owner or operator may satisfy the requirements of this part by obtaining an irrevocable standby letter of credit that conforms to the requirements of this subpart and submitting a copy of the letter of credit to the commissioner.

B. The financial institution issuing the letter of credit must be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency.

C. The wording of the letter of credit must be identical to the wording in part 7045.0524, subpart 11.

D. An owner or operator who uses a letter of credit to satisfy the requirements of this part may also establish a standby trust fund. Under the terms of a letter of credit, all amounts paid pursuant to a draft by the trustee of the standby trust will be deposited by the issuing institution into the standby trust in accordance with instructions from the trustee. The trustee of the standby trust fund must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

E. The wording of the standby trust fund must be identical to the wording in part 7045.0524, subpart 13.

Subp. 9. Trust fund for liability coverage.

A. An owner or operator may satisfy the requirements of this part by establishing a trust fund that conforms to the requirements of this subpart and submitting an originally signed duplicate of the trust agreement to the commissioner.

B. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

C. The trust fund for liability coverage must be funded for the full amount of the liability coverage to be provided by the trust fund before it may be relied upon to satisfy the requirements of this part. If at any time after the trust fund is created the amount of funds in the trust fund is reduced below the full amount of the liability coverage to be provided, the owner or operator, by the anniversary date of the establishment of the fund, must either add sufficient funds to the trust fund to cause its value to equal the full amount of liability coverage to be provided or obtain other financial assurance as specified in this part to cover the difference. For purposes of this item, "the full amount of the liability coverage to be

provided" means the amount of coverage for sudden or nonsudden occurrences required to be provided by the owner or operator under this part, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

D. The wording of the trust fund must be identical to the wording in part 7045.0524, subpart 12.

Statutory Authority: *MS s 14.07; 116.07*

History: *9 SR 115; 11 SR 2415; L 1987 c 186 s 15; 13 SR 577; 13 SR 2761; 20 SR 715; 33 SR 2042*

Published Electronically: *October 10, 2013*