

**7045.0620 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 such facilities, must 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 must 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 as specified in items A to E:

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 must 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.

(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 5 and 6.

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 7.

D. An owner or operator may meet the requirements of this part by obtaining a trust fund for liability coverage as specified in subpart 8.

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 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 must specify at

least one such assurance as "primary" coverage and must 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. 2. **Coverage for nonsudden accidental occurrences.** An owner or operator of a surface impoundment, landfill, or land treatment facility which 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 as specified in items A to E:

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.

(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 5 and 6.

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 7.

D. An owner or operator may meet the requirements of this part by obtaining a trust fund for liability coverage as specified in subpart 8.

E. An owner or operator may demonstrate the required liability coverage through 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 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 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 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 owner or operator may obtain an adjustment from the commissioner. The request for an adjustment must be submitted in writing to the commissioner. If granted, the adjustment takes the form of an adjusted level of required liability coverage, such 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 technical and engineering information deemed necessary by the commissioner, to determine a level of financial responsibility other than that required by subpart 1 or 2.

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 adjustments of level or type of coverage.

The commissioner shall process an adjustment of the level of required coverage as if it were a permit modification in accordance with the agency's permitting procedures in chapter 7001. Notwithstanding any other provision, the commissioner may hold a public information meeting at his or her discretion or whenever the commissioner finds, on the basis of requests for a public information meeting, a significant degree of public interest in a tentative decision to adjust the level or type of required coverage.

Subp. 4. **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 7045.0596, are received by the commissioner. Within 60 days after receiving such 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. 5. **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 shall meet the criteria of 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 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 \$10,000,000;

(3) tangible net worth 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 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 both assurance for closure or postclosure care, as specified by parts 7045.0504, subpart 7; 7045.0508, 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 the 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. The owner or operator of a facility which is not required to have liability insurance under Code of Federal Regulations, title 40, section 265.147 (1983) may obtain a one-time extension of the time allowed for submission of the documents specified in item E if the fiscal year of the owner or operator ends during the 90 days prior to July 16, 1984, and if the year-end financial statements for that fiscal year will be audited by an independent certified public accountant. The extension will end no later than 90 days after the end of the owner's or operator's fiscal year. To obtain the extension, the owner's or operator's chief financial officer shall send, by July 16, 1984, a letter to the commissioner. This letter from the chief financial officer must:

(1) request the extension;

(2) certify that he or she has grounds to believe that the owner or operator meets the criteria of the financial test;

(3) specify for each facility to be covered by the test the identification number, name, address, the amount of liability coverage and, when applicable, current closure and postclosure cost estimates to be covered by the test;

(4) specify the date ending the owner's or operator's last complete fiscal year before July 16, 1984;

(5) specify the date, no later than 90 days after the end of the fiscal year, when he or she will submit the documents specified in item E; and

(6) certify that the year-end financial statements of the owner or operator for the fiscal year will be audited by an independent certified public accountant.

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 must 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. 6. **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 5. The wording of the corporate guarantee must be identical to the wording specified in part 7045.0524, subpart 8a. The 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 guarantee. A certified copy of the corporate guarantee must accompany the items sent to the commissioner as specified in subpart 5, 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 such 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 7045.0518.

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 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 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 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 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. 7. 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. 8. 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 subpart, "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 by 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; 17 SR 1279; 20 SR 715; 33 SR 2042*

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