3745-27-18 **Corrective measures financial assurance for a sanitary landfill facility.**

(A) Applicability.

Except as provided in paragraph ~~(B)(6)~~(C) of this rule, an owner or operator of a sanitary landfill facility "required to undertake corrective measures" pursuant to rule 3745-27-10 of the Administrative Code shall comply with ~~the requirements of~~ this rule. For the purposes of this rule, "required to undertake corrective measures" means one of the following:

(1) The director selects a corrective measure in accordance with paragraph (F)(10) of rule 3745-27-10 of the Administrative Code.

(2) The director requires the owner or operator to undertake interim measures to protect human health or the environment in accordance with paragraph (F)(6) of rule 3745-27-10 of the Administrative Code.

(3) The director requires corrective measures as a condition of a permit.

(B) Implementation.

(1) If the sanitary landfill facility is "required to undertake corrective measures" pursuant to a selection or designation of a plan in accordance with paragraph (A)(1) or ~~(2)~~(A)(2) of this rule, the owner or operator shall do the following:

(a) ~~Within~~Not later than ninety days after being required to undertake corrective actions in accordance with paragraph (A) of this rule, execute a corrective measures financial assurance instrument, deliver the originally signed corrective measures financial assurance instrument to the director by certified mail or any other form of mail accompanied by a receipt, and place a copy of the corrective measures financial assurance instrument into the operating record in accordance with rule 3745-27-09 of the Administrative Code.

(b) ~~Within~~Not later than one hundred and twenty days after being required to undertake corrective actions in accordance with paragraph (A) of this rule, fund the corrective measures financial assurance instrument.

(2) If the owner or operator of a sanitary landfill facility is "required to undertake corrective measures" pursuant to rule 3745-27-10 of the Administrative Code as a condition of permit issuance, the owner or operator shall do the following:

(a) Upon permit issuance, comply with this rule.

(b) ~~No~~Not later than the date of permit issuance, execute the corrective measures financial assurance instrument, and prior to receipt of solid wastes in the ~~unit(s)~~units authorized by the permit, fund the corrective measures financial assurance instrument.

(C) ~~The requirements of this~~ This rule ~~do~~does not apply to the following:

(1) Residual solid waste landfill facilities subject to the requirements of Chapter 3745-30 of the Administrative Code.

(2) Industrial solid waste landfill facilities subject to the requirements of Chapter 3745-29 of the Administrative Code.

(3) Sanitary landfill facilities that ceased acceptance of solid waste prior to June 1, 1994 as evidenced by the notification required to be submitted by paragraph (E) of rule 3745-27-11 of the Administrative Code.

(D) Corrective measures financial assurance instrument.

The corrective measures financial assurance instrument shall contain an itemized written estimate, in current dollars, of the total cost of corrective measures activities as described in the corrective measures plan for the entire corrective measures period for all ~~unit(s)~~units of the sanitary landfill facility subject to the corrective measures pursuant to rule 3745-27-10 of the Administrative Code. The owner or operator shall prepare a separate estimate for each noncontiguous unit of a sanitary landfill facility undergoing corrective measures pursuant to rule 3745-27-10 of the Administrative Code. The estimate shall be based on a third party conducting the corrective measures activities.

(E) Review of corrective measures financial assurance instrument. The owner or operator of a sanitary landfill facility shall submit to the director~~,~~ by certified mail or any other form of mail accompanied by a receipt, the most recently adjusted corrective measures cost estimate prepared in accordance with this paragraph. The owner or operator of a sanitary landfill facility shall do the following:

(1) Annually review and analyze the corrective measures cost estimate and shall make any appropriate revisions to these estimates and to the financial assurance instrument whenever a change in the corrective measures activities increases the cost of corrective measures. Any revised corrective measures cost estimate must be adjusted for inflation as specified in paragraph (E)(2) of

this rule.

(2) Annually adjust the corrective measures cost estimate for inflation. The adjustment shall be made as specified in this paragraph, using ~~an~~the preceding February inflation factor derived from the annual implicit price deflator for gross domestic product as published by the U.S. department of commerce ~~in its February issue of "Survey of Current Business."~~ The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year.

(a) The first adjustment is made by multiplying the corrective measures cost estimate by the inflation factor. The result is the adjusted corrective measures cost estimate.

(b) Subsequent adjustments are made by multiplying the most recently adjusted corrective measures cost estimate by the most recent inflation factor.

(F) The owner or operator, who is required to undertake corrective measures shall select a corrective measures financial assurance mechanism from the list of mechanisms specified in paragraphs (G)~~, (H), (I), (J), (K), (L), and~~ to (M) of this rule, provided the owner or operator satisfies the criteria for use of that mechanism.

(G) Corrective measures trust fund.

(1) The owner or operator may satisfy ~~the requirements of~~ this rule by establishing a corrective measures trust fund which conforms to ~~the requirements of~~ this paragraph, and by sending an originally signed duplicate of the trust agreement to the director by certified mail or any other form of mail accompanied by a receipt within the time period outlined in paragraph (B) of this rule, and submitting a copy of the trust agreement into the operating record of the facility in accordance with rule 3745-27-09 of the Administrative Code. The trustee shall be an entity that has the authority to act as a trustee and which trust operations are regulated and examined by a federal or state agency.

(2) The wording of the trust agreement shall be identical to the wording specified in paragraph (A)(1) of rule 3745-27-17 of the Administrative Code on forms prescribed by the director and the trust agreement shall be accompanied by a formal certification of acknowledgment. Schedule A of the trust agreement shall be updated not later than sixty days after a change in the amount of the current corrective measures cost estimate provided for in the agreement.

(3) A corrective measures trust fund shall be established to secure an amount at least equal to the current corrective measures cost estimate, except as provided in paragraph (N) of this rule. Payments to the trust fund shall be made quarterly, except as permitted by paragraph (G)(4) of this rule, by the owner or operator over the term of the projected corrective measures period as outlined in the applicable authorizing document, including permit to install or plan approval, this period is hereafter referred to as the pay-in period. The first payment into the corrective measures trust fund shall be made in accordance with paragraph (B) of this rule. Subsequent payments to the corrective measures trust fund shall be made as follows:

(a) A receipt from the trustee for each payment shall be submitted by the owner or operator to the director. The first payment shall be at least equal to the current corrective measures cost estimate divided by the number of quarters in the pay-in period, except as provided in paragraph (N) of this rule. Subsequent payments shall be made not later than thirty days after each quarter following the first payment. The amount of each subsequent payment shall be determined by performing the following calculation:

<u>Next payment = (CE - CV) / Q</u>

Where CE is the current corrective measures cost estimate, CV is the current value of the trust fund, and Q is the number of quarters remaining in the pay-in period.

(b) If the owner or operator establishes a trust fund, as specified in this rule, and the value of the trust fund is less than any revised current corrective measures cost estimate made during the pay-in period, the amount of the current corrective measures cost estimate still to be paid into the trust fund shall be paid in over the pay-in period, as defined in paragraph (G)(3) of this rule. Payments shall continue to be made not later than thirty days after each quarter following the first payment pursuant to paragraph (G)(3)(a) of this rule. The amount of each payment shall be determined by performing the following calculation:

<u>Next payment = (CE - CV) / Q</u>

Where CE is the current corrective measures cost estimate, CV is the current value of the trust fund, and Q is the number of quarters remaining in the pay-in period.

(4) The owner or operator may accelerate payments into the trust fund or the owner or operator may deposit the full amount of the current corrective measures

cost estimate at the time the fund is established. However, the owner or operator shall maintain the value of the fund at no less than the value the fund would have if quarterly payments were made as specified in paragraphs (G)(3) of this rule.

(5) If the owner or operator establishes a corrective measures trust fund after having begun funding corrective measures under any ~~mechanism(s)~~mechanisms specified in this rule, the corrective measures trust fund shall be established by depositing the total value of all prior mechanisms into the newly established trust fund. The subsequent quarterly payments shall be made as specified in paragraph (G)(3) of this rule.

(6) After the pay-in period of a trust fund has ended and the current corrective measures cost estimate changes, the owner or operator shall compare the revised estimate to the trustee's most recent annual valuation of the trust fund. If the value of the trust fund is less than the amount of the revised estimate, the owner or operator shall, not later than sixty days after the change in the cost estimate, either deposit a sufficient amount into the trust fund so that its value after payment at least equals the amount of the current corrective measures cost estimate, or obtain alternate financial assurance as specified in this rule to compensate for the difference.

(7) The director shall instruct the trustee to release to the owner or operator such funds as the director specifies in writing, after receiving one of the following requests from the owner or operator for a release of funds:

(a) ~~The owner or operator may submit a~~A written request to the director for the release of the amount in excess of the current corrective measures cost estimate, if the value of the trust fund is greater than the total amount of the current corrective measures cost estimate.

(b) ~~The owner or operator may submit a~~ A written request to the director for release of the amount in the trust fund that exceeds the amount required as a result of such substitution, if the owner or operator substitutes any of the alternate financial assurance ~~mechanism(s)~~mechanisms specified in this rule for all or part of the trust fund.

(8) Reimbursement for corrective measures.

After beginning corrective measures, the owner or operator, or any other person authorized by the owner, operator, or director to perform corrective measures, may request reimbursement for corrective measures expenditures by submitting itemized bills to the director. After receiving itemized bills for

corrective measures activities, the director shall determine whether the corrective measures expenditures are in accordance with the applicable authorizing document, including permit to install or plan approval, or are otherwise justified, and if so, will instruct the trustee to make reimbursement in such amounts as the director specifies in writing. If the director determines that the cost of corrective measures care will be greater than the value of the trust fund, ~~he~~the director may withhold reimbursement of such amounts as ~~he~~the director deems prudent until ~~he~~the director determines, in accordance with paragraph (P) of this rule, that the owner or operator is no longer required to maintain financial assurance for corrective measures.

(9) The director will agree to termination of a trust when one of the following occurs:

(a) The owner or operator substitutes alternate financial assurance for corrective measures as specified in paragraph (G)(6) of this rule.

(b) The director notifies the owner or operator, in accordance with paragraph (P) of this rule, that the owner or operator is no longer required by this rule to maintain financial assurance for corrective measures.

(H) Surety bond guaranteeing payment into a corrective measures trust fund.

(1) The owner or operator may satisfy ~~the requirements of~~ this rule by obtaining a surety bond that conforms to ~~the requirements of~~ this paragraph and by delivering the originally signed bond to the director by certified mail or any other form of mail accompanied by a receipt within the time period outlined in paragraph (B) of this rule by submitting a copy of the bond into the operating record in accordance with rule 3745-27-09 of the Administrative Code. The surety company issuing the bond shall~~,~~ at a minimum~~,~~ be among those listed as acceptable sureties on federal bonds in "Circular 570" of the U.S. department of the treasury.

~~[Comment: "Circular 570" is published in the "Federal Register" annually on the first day of July; interim changes in the circular are also published in the "Federal Register."]~~

(2) The wording of the surety bond shall be identical to the wording specified in paragraph (B) of rule 3745-27-17 of the Administrative Code on forms prescribed by the director.

(3) The owner or operator who uses a surety bond to satisfy ~~the requirements of~~ this

rule shall also establish a standby trust fund not later than when the bond is obtained. Under the terms of the surety bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the director. This standby trust fund shall meet ~~the requirements specified in~~ paragraph (G) of this rule, except ~~that~~as follows:

(a) An originally signed duplicate of the trust agreement shall be delivered to the director with the surety bond and placed in the operating record in accordance with rule 3745-27-09 of the Administrative Code.

(b) Until the standby trust fund is funded, pursuant to ~~the requirements of~~ this rule, the following are not required:

(i) Payments into the trust fund as specified in paragraph (G) of this rule.

(ii) Revisions of Schedule A of the trust agreement to show current corrective measures cost estimate.

(iii) Annual valuations as required by the trust agreement;

(iv) Notices of nonpayment as required by the trust agreement.

(4) The bond shall guarantee that the surety will become liable on the bond obligation unless the owner or operator does one of the following, as applicable:

(a) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of the corrective measures period.

(b) Fund the standby trust fund in an amount equal to the penal sum of the bond not later than fifteen days after corrective measures are required pursuant to rule 3745-27-10 of the Administrative Code.

(c) Provide alternate financial assurance as specified in this rule, and obtain the director's written approval of the alternative financial assurance provided, not later than ninety days after both the owner or operator and the director receive notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety shall become liable on the bond

obligation when the owner or operator fails to perform as guaranteed by the bond.

(6) The penal sum of the bond shall be in an amount at least equal to the current corrective measures cost estimate except as provided in paragraph (N) of this rule.

(7) Whenever the current corrective measures cost estimate increases to an amount greater than the penal sum of the bond, the owner or operator shall, not later than sixty days after the increase in the estimate, either cause the penal sum of the bond to be increased to an amount at least equal to the current corrective measures cost estimate and submit evidence of such increase to the director, and into the operating record in accordance with rule 3745-27-09 of the Administrative Code, or obtain alternate financial assurance~~,~~ as specified in this rule~~,~~ to compensate for the increase. Whenever the current corrective measures cost estimate decreases, the penal sum may be reduced to the amount of the current corrective measures cost estimate following written approval by the director. Notice of an increase or a proposed decrease in the penal sum shall be sent to the director not later than sixty days after the change.

(8) Under the terms of the bond, the bond shall remain in force unless the surety sends written notice of cancellation by certified mail or any other form of mail accompanied by a receipt to the owner or operator and to the director. Cancellation cannot occur, however, during the one hundred twenty day period beginning on the first day that both the owner or operator and the director have received the notice of cancellation, as evidenced by the return receipts.

(9) The owner or operator may cancel the bond if the director has given prior written consent. The director will provide such written consent to the surety bond company when one of the following occurs:

(a) The owner or operator substitutes alternate financial assurance for corrective measures as specified in this rule.

(b) The director notifies the owner or operator~~,~~ in accordance with paragraph (P) of this rule that the owner or operator is no longer required to maintain financial assurance for corrective measures.

(I) Surety bond guaranteeing performance of corrective measures.

(1) The owner or operator may satisfy ~~the requirements of~~ this rule by obtaining a surety bond which conforms to ~~the requirements of~~ this paragraph and by delivering the originally signed bond to the director within the time period outlined in paragraph (B) of this rule by submitting a copy of the surety bond into the operating record of the facility in accordance with rule 3745-27-09 of the Administrative Code. The surety company issuing the bond shall~~,~~ at a minimum~~,~~ be among those listed as acceptable sureties on federal bonds in "Circular 570" of the U.S. department of the treasury.

~~[Comment: "Circular 570" is published in the "Federal Register" annually on the first day of July; interim changes in the circular are also published in the "Federal Register."]~~

(2) The wording of the surety bond shall be identical to the wording specified in paragraph (C) of rule 3745-27-17 of the Administrative Code on forms prescribed by the director.

(3) The owner or operator who uses a surety bond to satisfy ~~the requirements of~~ this rule shall also establish a standby trust fund. Under the terms of the surety bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the director. This standby trust fund shall meet the requirements specified in paragraph (G) of this rule except that:

(a) An originally signed duplicate of the trust agreement shall be delivered to the director with the surety bond and placed in the operating record in accordance with rule 3745-27-09 of the Administrative Code.

(b) Unless the standby trust fund is funded pursuant to ~~the requirements of~~ this rule, the following are not required:

(i) Payments into the trust fund as specified in paragraph (G) of this rule.

(ii) Revisions of Schedule A of the trust agreement to show current corrective measures cost estimate.

(iii) Annual valuations as required by the trust agreement.

(iv) Notices of nonpayment as required by the trust agreement.

(4) The bond shall guarantee that the surety will become liable on the bond obligation unless the owner or operator does one of the following, as applicable:

(a) Performs corrective measures in accordance with the applicable authorizing document, including the permit to install or plan approval.

(b) Provides alternate financial assurance as specified in this rule, and ~~obtain~~obtains the director's written approval of the alternate financial assurance provided, not later than ninety days after both the owner or operator and the director receive notice of cancellation of the bond from the surety.

(5) 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. Following a determination by the director that the owner or operator of the sanitary landfill facility has failed to perform corrective measures activities in accordance with the applicable authorizing document, including the permit to install or plan approval, the surety shall perform corrective measures in accordance with the applicable authorizing document, including the permit to install or plan approval, or will deposit the amount of the penal sum into the standby trust fund.

(6) The penal sum of the bond shall be in an amount at least equal to the current corrective measures cost estimate.

(7) Whenever the current corrective measures cost estimate increases to an amount greater than the penal sum of the bond, the owner or operator shall, not later than sixty days after the increase in the estimate, either cause the penal sum of the bond to be increased to an amount at least equal to the current corrective measures cost estimate and submit evidence of such increase to the director, and into the operating record in accordance with rule 3745-27-09 of the Administrative Code, or obtain alternate financial assurance, as specified in this rule, to compensate for the increase. Whenever the current corrective measures cost estimate decreases, the penal sum may be reduced to the amount of the current corrective measures cost estimate following written approval by the director. Notice of an increase or a proposed decrease in the penal sum shall be sent to the director by certified mail or any other form of mail accompanied by a receipt not later than sixty days after the change.

(8) Under the terms of the bond, the bond shall remain in force unless the surety sends written notice of cancellation by certified mail or any other form of

mail accompanied by a receipt to the owner or operator and to the director. Cancellation cannot occur, however, during the one hundred twenty day period beginning on the first day that both the owner or operator and the director have received the notice of cancellation, as evidenced by the return receipts.

(9) The owner or operator may cancel the bond if the director has given prior written consent. The director will provide such written consent to the surety bond company when one of the following occurs:

(a) The owner or operator substitutes alternate financial assurance for corrective measures as specified in this rule.

(b) The director notifies the owner or operator, in accordance with paragraph (P) of this rule that the owner or operator is no longer required by this rule to maintain financial assurance for corrective measures.

(10) The surety shall not be liable for deficiencies in the completion of corrective measures activities by the owner or operator after the owner or operator has been notified by the director, in accordance with this rule, that the owner or operator is no longer required to maintain financial assurance for corrective measures.

(J) Corrective measures letter of credit.

(1) The owner or operator may satisfy ~~the requirements of~~ this rule by obtaining an irrevocable standby letter of credit ("letter of credit") which conforms to ~~the requirements of~~ this paragraph and by having the originally signed letter of credit delivered to the director by certified mail or any other form of mail accompanied by a receipt within the time period outlined in paragraph (B) of this rule and by submitting a copy of the letter of credit into the operating record of the facility in accordance with rule 3745-27-09 of the Administrative Code. The issuing institution shall 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.

(2) The wording of the letter of credit shall be identical to the wording specified in paragraph (D) of rule 3745-27-17 of the Administrative Code on forms prescribed by the director.

(3) An owner or operator who uses a letter of credit to satisfy ~~the requirements of~~ this rule shall also establish a standby trust fund. Under the terms of the letter

of credit, all amounts paid pursuant to a draft by the director shall be deposited promptly and directly by the issuing institution into the standby trust fund in accordance with instructions from the director. The standby trust fund shall meet the requirements of the trust fund specified in paragraph (G) of this rule, except ~~that~~as follows:

(a) An originally signed duplicate of the trust agreement shall be delivered to the director with the letter of credit, and a copy of the letter placed in the operating record in accordance with rule 3745-27-09 of the Administrative Code.

(b) Unless the standby trust fund is funded pursuant to ~~the requirements of~~ this rule, the following are not required:

(i) Payments into the trust fund as specified in paragraph (G) of this rule.

(ii) Updating of Schedule A of the trust agreement to show current corrective measures cost estimate.

(iii) Annual valuations as required by the trust agreement.

(iv) Notices of nonpayment as required by the trust agreement.

(4) The letter of credit shall 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 names and addresses of the sanitary landfill facility and the owner and the operator and the amount of funds assured for corrective measures by the letter of credit.

(5) The letter of credit shall be irrevocable and issued for a period of at least one year. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one year unless, at least one hundred twenty days prior to the current expiration date, the issuing institution notifies both the owner and operator and the director by certified mail or any other form of mail accompanied by a receipt of a decision not to extend the expiration date. Under the terms of the letter of credit, the one hundred twenty day period shall begin on the day when both the owner or operator and the director have received the notice, as evidenced by the return receipts.

(6) The letter of credit shall be issued in an amount at least equal to the current

corrective measures cost estimate, except as provided in paragraph (N) of this rule.

(7) Whenever the current corrective measures cost estimate increases to an amount greater than the amount of the credit, the owner or operator shall, not later than sixty days after this increase, either cause the amount of the credit to be increased to an amount at least equal to the current corrective measures cost estimate and submit evidence of such increase to the director, and into the operating record in accordance with rule 3745-27-09 of the Administrative Code, or obtain alternate financial assurance, as specified in this rule, to compensate for the increase. Whenever the current corrective measures cost estimate decreases, the letter of credit may be reduced to the amount of the current corrective measures cost estimate following written approval by the director. Notice of an increase or a proposed decrease in the amount of the letter of credit shall be sent to the director by certified mail or any other form of mail accompanied by a receipt not later than sixty days after the change.

(8) Under the terms of the letter of credit, the director may draw on the letter of credit following a determination that the owner or operator has failed to do the following:

(a) Perform corrective measures activities in accordance with the applicable authorizing document, including the permit to install or plan approval.

(b) Provide alternate financial assurance as specified in this rule and obtain written approval of such alternate financial assurance from the director not later than ninety days after the owner and operator and the director have received notice from the issuing institution that it will not extend the letter of credit beyond the current expiration date, the director shall draw on the letter of credit. The director may delay the drawing if the issuing institution grants an extension of the term of the credit. During the final thirty days of any such extension the director shall draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this rule and has failed to obtain written approval of such alternate financial assurance from the director.

(9) The director shall return the original letter of credit to the issuing institution for termination when either of the following occurs:

(a) The owner or operator substitutes alternate financial assurance for corrective measures as specified in this rule.

(b) The director notifies the owner or operator, in accordance with paragraph

(P) of this rule that the owner or operator is no longer required to maintain financial assurance for corrective measures.

(K) Corrective measures insurance.

(1) The owner or operator may satisfy ~~the requirements of~~ this rule by obtaining corrective measures insurance which conforms to ~~the requirements of~~ this paragraph and by submitting a originally signed certificate of such insurance to the director by certified mail or any other form of mail accompanied by a receipt within the time period outlined in paragraph (B) of this rule, and by submitting a copy of the certificate of insurance into the operating record of the facility in accordance with rule 3745-27-09 of the Administrative Code. At a minimum, the insurer shall 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.

(2) The wording of the certificate of insurance shall be identical to the wording specified in paragraph (E) of rule 3745-27-17 of the Administrative Code on forms described by the director.

(3) The corrective measures insurance policy shall be issued for a face amount at least equal to the current corrective measures cost estimate except as provided in paragraph (N) of this rule. Face amount means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(4) The corrective measures insurance policy shall guarantee that funds will be available to perform corrective measures whenever mandated. The policy shall also guarantee that once corrective measures begins, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the director, to such party or parties as the director specifies.

(5) Reimbursement for corrective measures.

After beginning corrective measures, the owner or operator, or any other person authorized by the owner, operator, or director to perform corrective measures, may request reimbursement for corrective measures expenditures by submitting itemized bills to the director. After receiving itemized bills for corrective measures activities, the director shall determine whether the corrective measures expenditures are in accordance with the applicable authorizing document, including the permit to install or plan approval, and if

so, shall instruct the insurer to make reimbursement in such amounts as the director specifies in writing. If the director has reason to believe that the cost of corrective measures will be greater than the face amount of the policy, ~~he~~the director may withhold reimbursement of such amounts as ~~he deems~~ the director deems prudent until ~~he determines~~the director determines, in accordance with paragraph (P) of this rule, that the owner or operator is no longer required to maintain financial assurance for corrective measures of the facility.

(6) The owner or operator shall maintain the policy in full force and effect until the director consents to termination of the policy by the owner or operator as specified in paragraph (K)(8) of this rule. Failure to pay the premium, without substitution of alternate financial assurance as specified in this rule, will constitute a violation of these rules, warranting such remedy as the director deems necessary. Such violation shall be deemed to begin upon receipt by the director of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

(7) Each policy shall contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

(8) The policy shall 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 shall~~,~~ at a minimum~~,~~ 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 or any other form of mail accompanied by a receipt to the owner or operator and to the director. Cancellation, termination, or failure to renew may not occur, and the policy will remain in full force and effect unless on or before the date of expiration:

(a) Corrective measures activities required in the applicable authorizing document, including permit to install or plan approval have occurred.

(b) The owner or operator is named as debtor in a voluntary or involuntary proceeding under title 11 (bankruptcy), U.S. Code.

(c) The premium due is paid.

(9) Whenever the current corrective measures cost estimate increases to an amount greater than the face amount of the policy, the owner or operator shall, not later than sixty days after the increase, either cause the face amount to be

increased to an amount at least equal to the current corrective measures cost estimate and submit evidence of such increase to the director, and into the operating record in accordance with rule 3745-27-09 of the Administrative Code, or obtain alternate financial assurance as specified in this rule to compensate for the increase. Whenever the current corrective measures cost estimate decreases, the face amount may be reduced to the amount of the current corrective measures cost estimate following written approval by the director.

(10) The director will give written consent to the owner or operator that owner or operator may terminate the insurance policy when either of the following occurs:

(a) The owner or operator substitutes alternate financial assurance for corrective measures as specified in this rule~~;~~.

(b) The director notifies the owner or operator, in accordance with paragraph (P) of this rule that owner or operator is no longer required to maintain financial assurance for corrective measures.

(L) Financial test and corporate guarantee for corrective measures.

(1) The owner or operator may satisfy ~~the requirements of~~ this rule by demonstrating that the owner or operator passes a financial test as specified in this paragraph. To pass this test the owner or operator shall demonstrate that less than fifty per cent of the parent corporation's gross revenues are derived from solid waste disposal, solid waste transfer facility operations, or scrap tire transporter operations, or if there is no parent corporation, the owner or operator shall demonstrate that less than fifty per cent of its gross revenues are derived from solid waste facility, solid waste transfer facility, or scrap tire transporter operations and either:

(a) The owner or operator shall have the following:

(i) Satisfaction of at least two of the following 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 minus $10 million to total liabilities greater than 0.1; a ratio of current assets to current liabilities greater than 1.5~~;~~.

(ii) Net working capital and tangible net worth each at least six times the sum of the current final closure and current post-closure care

cost estimates, scrap tire transporter final closure cost estimates, any corrective measures cost estimates, and any other obligations assured by a financial test~~;~~.

(iii) Tangible net worth of at least ten million dollars~~;~~.

(iv) Assets in the United States amounting to at least ninety per cent of total assets or at least six times the sum of the current final and current post-closure care cost estimates, scrap tire transporter final closure cost estimates, any current corrective measures cost estimates, and any other obligations assured by a financial test.

(b) The owner or operator shall have the following:

(i) Issued a corporate bond for which the owner or operator, as the issuing entity, has not received a current rating of less than BBB as issued by "Standard and Poor's" or Baa as issued by "Moody's". Owner and operators using bonds that are secured by collateral or a guarantee must meet the minimum rating without that security.

(ii) Tangible net worth at least six times the sum of the current final and current post-closure care cost estimates, scrap tire transporter final closure cost estimates, any corrective measures cost estimates, and any other obligations assured by a financial test~~;~~.

(iii) Tangible net worth of at least ten million dollars~~;~~.

(iv) Assets located in the United States amounting to at least ninety per cent of total assets or at least six times the sum of the current final closure and current post-closure care cost estimates, scrap tire transporter final closure cost estimates, any current corrective measures cost estimates, and any other obligations assured by a financial test.

(2) Current final closure and current post-closure care cost estimates, scrap tire transporter final closure cost estimates, current corrective measures cost estimates, and any other obligations assured by a financial test as used in paragraph (L)(1) of this rule refers to the cost estimates required to be shown in the letter from the owner's or operator's chief financial officer.

(3) To demonstrate that requirements of this test are met, the owner or operator

shall submit the following items to the director, and into the operating record in accordance with rule 3745-27-09 of the Administrative Code:

(a) A letter signed by the owner's or operator's chief financial officer and worded as specified in paragraph (F) of rule 3745-27-17 of the Administrative Code on forms prescribed by the director;

(b) A copy of a report by an independent certified public accountant examining the owner's or the operator's financial statements for the most recently completed fiscal year;

(c) A special report from the owner's or the operator's independent certified public accountant, in the form of an agreed-upon procedures report, to the owner or operator stating ~~that~~the following:

(i) ~~He~~The independent certified public accountant 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 most recent fiscal year with the amounts in such financial statements~~;~~.

(ii) In connection with the agreed-upon procedures report, ~~he~~the independent certified public accountant states that ~~he~~the independent certified public accountant agrees the specified data is accurate.

(4) After the initial submission of the items specified in paragraph (L)(3) of this rule, the owner or operator shall send updated information to the director, and submit updated information into the operating record in accordance with rule 3745-27-09 of the Administrative Code, not later than ninety days after the close of each succeeding fiscal year. This information shall include all three items specified in paragraph (L)(3) of this rule.

(5) If the owner or operator no longer meets ~~the requirements of~~ paragraph (L)(1) of this rule, notice shall be sent to the director of the intent to establish alternate financial assurance as specified in this rule. The notice must be sent by certified mail or any other form of mail accompanied by a receipt not later than ninety 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. A copy of the notice shall also be placed in the operating record. The owner or operator shall provide alternate financial assurance not later than one hundred twenty days after the end of such fiscal year.

(6) The director may, based on a reasonable belief that the owner or operator no longer meets ~~the requirements of~~ paragraph (L)(1) of this rule, require reports of financial condition at any time from the owner or operator in addition to those specified in paragraph (L)(3) of this rule. If the director finds, on the basis of such reports or other information, that the owner or operator no longer meets ~~the requirements of~~ paragraph (L)(1) of this rule, the owner or operator shall provide alternate financial assurance as specified in this rule not later than thirty days after notification of such a finding.

(7) The director may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in ~~his/her~~the independent certified public accountant's report on examination of the owner's or operator's financial statements. An adverse opinion or disclaimer of opinion will be cause for disallowance. The director shall evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in this rule not later than thirty days after notification of the disallowance.

(8) During the period of corrective measures, the director may approve in writing a decrease in the current corrective measures cost estimate, if the owner or operator demonstrates, to the satisfaction of the director, that the amount of the corrective measures cost estimate exceeds the cost of the remaining corrective measures activities. Whenever the current corrective measures cost estimate decreases, the amount listed on the chief financial officer's letter may be reduced to the amount of the current corrective measures cost estimate following written approval by the director.

(9) The owner or operator is no longer required to submit the items specified in paragraph (L)(3) of this rule when either of the following occur:

(a) The owner or operator substitutes alternate financial assurance for corrective measures as specified in this rule.

(b) The director notifies the owner or operator, in accordance with paragraph (P) of this rule that the owner or operator is no longer required to maintain financial assurance for corrective measures.

(10) The owner or operator may meet ~~the requirements of~~ this rule by obtaining a written guarantee, hereafter referred to as a corporate guarantee. The guarantor shall be a parent corporation of the owner or operator. The guarantor shall meet the requirements for an owner or operator in paragraphs (L)(1) to (L)(7) of this rule and shall comply with the terms of the corporate

guarantee. The wording of the corporate guarantee shall be identical to the wording specified in paragraph (G) of rule 3745-27-17 of the Administrative Code on forms prescribed by the director. The corporate guarantee shall accompany the items sent to the director as specified in paragraph (L)(3) of this rule. The terms of the corporate guarantee shall provide ~~that~~the following:

(a) The owner or operator shall perform corrective measures of a facility provided for by the corporate guarantee in accordance with the applicable authorizing document, including permit to install or plan approval.

(b) The guarantor shall perform the activities in paragraph (L)(10)(a) of this rule or shall establish a trust fund in the name of the owner or operator as specified in paragraph (G) of this rule if the owner or operator fails to performs those activities.

(c) The corporate guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail or any other form of mail accompanied by a receipt to the owner or operator and to the director. Cancellation may not occur, however, during the one hundred twenty day period beginning on the first day that both the owner or operator and the director have received notice of cancellation, as evidenced by the return receipts.

(d) If the owner or operator fails to provide alternate financial assurance as specified in this rule, and fails to obtain the written approval of such alternate financial assurance from the director not later than ninety days after both the owner or operator and the director have received notice of cancellation of the corporate guarantee from the guarantor, the guarantor shall provide such alternate financial assurance in the name of the owner or operator.

(M) Local government financial test for corrective measures.

(1) For the purposes of this rule, local government means a subdivision of the state of Ohio including~~,~~ but not limited to~~,~~ a municipal corporation, a county, a township, a single or joint county solid waste management district, or a solid waste management authority.

(2) A local government may satisfy ~~the requirements of~~ this rule by demonstrating that the local government passes a financial test as specified in this paragraph. This test consists of a financial component, a public notice component, and a

record-keeping and reporting component. In order to satisfy the financial component of the test, a local government ~~must~~shall meet the following criteria:

(a) A local government's financial statements shall be prepared in accordance with "Generally Accepted Accounting Principles" for local governments.

(b) A local government ~~must~~shall not have operated at a deficit equal to five per cent or more of total annual revenue in either of the past two fiscal years.

(c) A local government ~~must~~shall not currently be in default on any outstanding general obligation bonds.

(d) A local government ~~must~~shall not have any outstanding general obligation bonds rated lower than BBB as issued by "Standard and Poor's" or Baa as issued by "Moody's." Local governments using bonds that are secured by collateral or a guarantee ~~must~~shall meet the minimum rating without that security.

(3) In addition to satisfy the financial component of the test, a local government ~~must~~shall meet either of the following criteria:

(a) The local government ~~must~~shall have the following:

(i) A ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05~~;~~.

(ii) A ratio of annual debt service to total expenditures less than or equal to 0.20~~;~~.

(iii) A ratio of long term debt issued and outstanding to capital expenditures less than or equal to 2.00~~;~~.

(iv) A ratio of the current cost estimates for final closure, post-closure care, corrective measures, scrap tire transporter final closure, and any other obligations assured by a financial test, to total revenue less than or equal to 0.43.

(b) The local government shall have the following:

(i) Outstanding general obligation bonds for which the local government, as the issuing entity, has not received a current rating of less than BBB as issued by "Standard and Poor's" or Baa as issued by "Moody's". Local governments using bonds that are secured by collateral or a guarantee must meet the minimum rating without that security.

(ii) A ratio of the current cost estimates for final closure, post-closure care, corrective measures, scrap tire transporter final closure, and any other obligations assured by a financial test, to total revenue less than or equal to 0.43.

(4) In order to satisfy the public notice component of the test, a local government ~~must~~shall in each year that the test is used, identify the current cost estimates in either its budget or its comprehensive annual financial report. The facility covered, the categories of expenditures, including final closure, post-closure care, corrective measures, scrap tire transporter final closure, the corresponding cost estimate for each expenditure, and the anticipated year of the required activity must be recorded. If the financial assurance obligation is to be included in the budget, it should either be listed as an approved budgeted line item, if the obligation will arise during the budget period, or in an appropriate supplementary data section, if the obligation will not arise during the budget period. If the information is to be included in the comprehensive annual financial report, it is to be included in the financial section as a footnote to the annual financial statements.

(5) To demonstrate that a local government meets the requirements of this test, the following three items must be submitted to the director, and into the operating record in accordance with rule 3745-27-09 of the Administrative Code:

(a) A letter signed by the local government's chief financial officer and worded as specified in paragraph (H) of rule 3745-27-17 of the Administrative Code on forms prescribed by the director ~~that~~as follows:

(i) Lists all the current cost estimates covered by a financial test.

(ii) Certifies that the local government meets the conditions of paragraph (M)(1) of this rule.

(iii) Provides evidence and certifies that the local government meets the conditions of either paragraph (M)(2)(a) or (M)(2)(b) of this rule.

(b) A copy of the local government's independently audited year-end financial statements for the latest fiscal year, including the unqualified opinion of the auditor. The auditor must be an independent, certified public accountant or auditor of state~~;~~.

(c) A special report from the independent certified public accountant or auditor of state, in the form of an agreed-upon procedures report, to the local government stating ~~that~~the following:

(i) The independent certified public accountant or auditor of state 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 most recent fiscal year with the amounts in such financial statements~~;~~.

(ii) In connection with the agreed-upon procedures report, ~~he~~the independent certified public account or auditor of the state states that ~~he~~the independent certified public account or auditor of the state agrees the specified data is accurate.

(6) After the initial submission of the items specified in this rule, a local government shall send updated information to the director on forms prescribed by the director, and submit updated information into the operating record in accordance with rule 3745-27-09 of the Administrative Code, not later than one hundred eighty days after the close of each succeeding fiscal year. This information shall include all items specified in this rule.

(7) If a local government no longer meets ~~the requirements of~~ this rule, notice shall be sent to the director of the intent to establish alternate financial assurance as specified in this rule. The notice ~~must~~shall be sent by certified mail or any other form of mail accompanied by a receipt not later than one hundred fifty days after the end of the fiscal year for which the year-end financial data show that the local government no longer meets the requirements. A copy of the notice shall also be placed in the operating record. The local government shall provide alternate financial assurance not later than one hundred eighty days after the end of such fiscal year.

(8) The director may, based on a reasonable belief that the local government no longer meets ~~the requirements of~~ this rule, require reports of financial condition at any time from the local government in addition to those specified in this rule. If the director finds, on the basis of such reports or other information, that the local government no longer meets the requirements of

this rule, the local government shall provide alternate financial assurance as specified in this rule not later than thirty days after notification of such a finding.

(9) The director may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant or auditor of state in ~~his/her~~the report on examination of the local government's financial statements. An adverse opinion or disclaimer of opinion will be cause for disallowance. The director shall evaluate other qualifications on an individual basis. The local government shall provide alternate financial assurance as specified in this rule not later than thirty days after notification of the disallowance.

(10) The local government is no longer required to submit the items specified in this rule when one of the following occur:

(a) The local government substitutes alternate financial assurance for corrective measures as specified in this rule.

(b) The director notifies the local government, in accordance with paragraph (P) of this rule, that the local government is no longer required to maintain financial assurance for corrective measures of the facility.

(N) Use of multiple financial assurance mechanisms.

The owner or operator may satisfy ~~the requirements of~~ this rule by establishing more than one financial assurance mechanism for each facility. These mechanisms are limited to a trust fund, surety bond guaranteeing payment into a corrective measures trust fund, letter of credit, insurance, and the local government financial test. The mechanisms shall be as specified in paragraphs (G), (H), (J), (K), and (M) respectively of this rule, except that it is the combination of mechanisms, rather than each single mechanism, which shall provide financial assurance for an amount at least equal to the current corrective measures cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, the owner or operator 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 director may invoke use of any or all of the mechanisms, in accordance with paragraphs (G), (H), (J), (K), and (M) of this rule, to provide for corrective measures.

(O) Use of a financial mechanism for multiple facilities.

The owner or operator may use a financial assurance mechanism specified in this

rule to meet ~~the requirements of~~ this rule for more than one facility. Evidence of financial assurance submitted to the director shall include a list showing, for each facility, the name, address, and the amount of funds for corrective measures assured by the financial assurance mechanism. The amount of funds available through the financial assurance mechanism shall be no less than the sum of the funds that would be available if a separate financial assurance mechanism had been established and maintained for each facility.

(P) Release of the owner or operator of a solid waste facility from the requirements of this rule. The

~~The~~ director shall notify the owner or operator in writing that he is no longer required, by this rule, to maintain financial assurance for corrective measures at a particular facility, unless the director has reason to believe that corrective measures have not been completed in accordance with the requirements of the applicable authorizing document, including permit to install or plan approval.

[Comment: "Circular 570" is published in the "Federal Register" annually on the first day of July; interim changes in the circular are also published in the "Federal Register." A copy of the Circular 570 is available at http://www.gpo.gov/fdsys/.]

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