

3745-55-45

Financial assurance for post-closure care.

The owner or operator of a hazardous waste management unit subject to the requirements ~~in~~of rule 3745-55-44 of the Administrative Code must establish financial assurance for post-closure care in accordance with the approved post-closure plan for the facility sixty days prior to the initial receipt of hazardous waste or August 26, 1983, whichever is later. He must choose from ~~among~~ the following options:

(A) Post-closure trust fund.

- (1) An owner or operator may satisfy the requirements of this rule by establishing a post-closure trust fund which conforms to the requirements of paragraphs (A) to (A)(12)(b) of this rule and ~~by sending~~submitting an originally signed duplicate of the trust agreement to the director by certified mail. An owner or operator of a new facility must ~~send~~submit the originally signed duplicate of the trust agreement to the director by certified mail at least sixty days before the date on which hazardous waste is first received for disposal. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.
- (2) The wording of the trust agreement must be identical to the wording specified in paragraph (A)(1) of rule 3745-55-51 of the Administrative Code, and the trust agreement must be accompanied by a formal certification of acknowledgement [for example, see paragraph (A)(2) of rule 3745-55-51 of the Administrative Code]. "Schedule A" of the trust agreement must be updated within sixty days after a change in the amount of the current post-closure cost estimate covered by the agreement.
- (3) Payments to the trust fund must be made annually by the owner or operator over the term of the hazardous waste permit, or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereafter referred to as the "pay-in period." The payments to the post-closure trust fund must be made as follows:
 - (a) For a new facility, the first payment must be made before the initial receipt of hazardous waste for disposal. A receipt from the trustee for this payment must be submitted by the owner or operator to the director before this initial receipt of hazardous waste. The first payment must be at least equal to the current post-closure cost estimate, ~~(see rule 3745-55-44 of the Administrative Code)~~ except as provided in paragraph (G) of this rule, divided by the number of years in the pay-in period. Subsequent payments must be made no later than thirty days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by ~~performing the following calculation~~this formula:

$$\text{Next payment} = (\text{CE} - \text{CV}) / \text{Y}$$

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

- (b) If an owner or operator ~~established~~establishes a trust fund as specified in paragraph (A) of rule 3745-66-45 of the Administrative Code, and the value of ~~the that trust~~ fund is less than the current post-closure cost estimate when a permit is awarded for the facility, the amount of the current post-closure cost estimate still to be paid into the fund must be paid in over the pay-in period; as defined in paragraph (A)(3) of this rule. Payments must continue to be made no later than thirty days after each anniversary date of the first payment made pursuant to Chapters 3745-65 to 3745-69 and 3745-256 of the Administrative Code. The amount of each payment must be determined by ~~performing the following calculation~~this formula:

$$\text{Next payment} = (\text{CE} - \text{CV}) / \text{Y}$$

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

- (4) The owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the current post-closure cost estimate at the time the fund is established. However, he must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in ~~paragraphs (A)(1) and~~paragraph (A)(3) of this rule.
- (5) If the owner or operator establishes a post-closure trust fund after having used one or more alternate mechanisms specified in this rule or in rule 3745-66-45 of the Administrative Code, his first payment must be in at least the amount that the fund would ~~have contained~~contain if the trust fund were established initially and annual payments made ~~as specified in paragraph (A)(3) of this rule or according to specifications of this paragraph and paragraph (A) of rule 3745-66-45 of the Administrative Code~~, as applicable.
- (6) After the pay-in period is completed, whenever the current post-closure cost estimate changes during the operating life of the facility, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within sixty days ~~or after~~ the change in the cost estimate, must either deposit ~~a sufficient~~an amount into the fund so

that its value after ~~payment~~this deposit at least equals the amount of the current post-closure cost estimate, or obtain other financial assurance as specified in this rule to cover the difference.

- (7) During the operating life of the facility, if the value of the trust fund is greater than the total amount of the current post-closure cost estimate, the owner or operator may submit a written request to the director for release of the amount in excess of the current post-closure cost estimate.
- (8) If an owner or operator substitutes other financial assurance as specified in this rule for all or part of the trust fund, he may submit a written request to the director for release of the amount in ~~the trust fund which is greater than the amount required as a result of such substitution~~excess of the current post-closure cost estimate covered by the trust fund.
- (9) Within sixty days after receiving a request from the owner or operator for a release of funds as specified in paragraph (A)(7) or (A)(8) of this rule, the director will instruct the trustee to release to the owner or operator such funds as the director specifies in writing.
- (10) During the period of post-closure care, the director may approve a release of funds if the owner or operator demonstrates to the director that the value of the trust fund exceeds the remaining cost of post-closure care.
- (11) An owner or operator or any other person authorized to conduct post-closure care may request reimbursement for post-closure care expenditures by submitting itemized bills to the director. Within sixty days after receiving bills for post-closure activities, the director will instruct the trustee to make reimbursements in those amounts as the director specifies in writing, if the director determines that the post-closure care expenditures are in accordance with the approved post-closure plan or otherwise justified. If the director does not instruct the trustee to make such reimbursement, he will provide the owner or operator with a detailed written statement of reasons.
- (12) The director will agree to termination of the trust when:
 - (a) The owner or operator substitutes alternate financial assurance ~~for post-closure care~~ as specified in this rule; ~~or~~
 - (b) The director ~~notifies~~releases the owner or operator, ~~in accordance with this rule, that he is no longer required by this rule to maintain financial assurance for post-closure care of the facility~~from the requirements of

this rule in accordance with paragraph (I) of this rule.

(B) Surety bond guaranteeing payment into a post-closure trust fund.

- (1) An owner or operator may satisfy the requirements of this rule by obtaining a surety bond which conforms to the requirements of paragraphs (B) to (B)(9) of this rule and ~~by having submitted~~ the bond ~~delivered~~ to the director by certified mail. An owner or operator of a new facility must ~~have the surety submit the~~ bond ~~delivered~~ to the director by certified mail at least sixty days before the date on which hazardous waste is first received for disposal. The ~~surety~~ bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, 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 July first; interim changes in the circular are also published in the "Federal Register."]

- (2) The wording of the surety bond must be identical to the wording specified in paragraph (B) of rule 3745-55-51 of the Administrative Code.
- (3) The owner or operator who uses a surety bond to satisfy the requirements of this rule must 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 must meet the requirements specified in paragraph (A) of this rule, except that:
 - (a) An originally signed duplicate of the trust agreement must be ~~delivered~~ submitted to the director with the surety bond; and
 - (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 (A) of this rule;
 - (ii) Updating of "Schedule A" of the trust agreement [see paragraph (A) of rule 3745-55-51 of the Administrative Code] to show current post-closure cost estimates;

- (iii) Annual valuations as required by the trust agreement; and
 - (iv) Notices of nonpayment as required by the trust agreement.
- (4) The bond must guarantee that the owner or operator will:
- (a) Fund the standby trust fund in an amount equal to the penal sum of the bond by the beginning of final closure of the facility; or
 - (b) Fund the standby trust fund in an amount equal to the penal sum within fifteen days after an order to begin final closure is issued by the director or an Ohio court, or by a U. S. district court, or other court of competent jurisdiction, or within fifteen days after issuance of a notice of revocation of the permit by the director; or
 - (c) Provide alternate financial assurance as specified in this rule, and obtain the director's written approval of the assurance provided, within ninety days after receipt by both the owner or operator and the director of a 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.
- (6) The penal sum of the bond must be in an amount at least equal to the ~~amount of the~~ current post-closure cost estimate, ~~(see rule 3745-55-44 of the Administrative Code)~~ except as provided in paragraph (G) of this rule.
- (7) Whenever the current post-closure cost estimate increases to an amount greater than the penal sum, ~~of the bond~~ the owner or operator ~~must~~, within sixty days after the increase, must either cause the penal sum ~~of the bond~~ to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the director, or obtain other financial assurance, as specified in this rule, to cover the increase. Whenever the current post-closure cost estimate decreases, the penal sum may be reduced to the amount of the current post-closure cost estimate following written approval by the director. Notice of an increase or decrease in the penal sum must be sent to the director by certified mail within sixty days after the change.
- (8) Under the terms of the bond, the ~~bond must remain in force unless the surety~~

~~sends written~~ surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the director. Cancellation ~~cannot~~ may not occur, however, during the one hundred twenty days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the director ~~as shown on the signed return receipt, as evidenced by the return receipts.~~

- (9) The owner or operator may cancel the bond if the director has given prior written consent based on his receipt of evidence ~~to~~of alternate financial assurance as specified in this rule.

(C) Surety bond guaranteeing performance of post-closure care.

- (1) An owner or operator may satisfy the requirements of this rule by obtaining a surety bond which conforms to the requirements of paragraphs (C) to (C)(11) of this rule and ~~by having~~submitting the bond ~~delivered~~ to the director by certified mail. An owner or operator of a new facility must ~~have the surety~~submit the bond ~~delivered~~ to the director by certified mail at least sixty days before the date on which hazardous waste is first received for disposal. The ~~surety~~ bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in "Circular 570" of the U.S. department of treasury.

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

- (2) The wording of the surety bond must be identical to the wording specified in paragraph (C) of rule 3745-55-51 of the Administrative Code.
- (3) The owner or operator who uses a surety bond to satisfy the requirements of this rule must 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 must meet the requirements specified in paragraph (A) of this rule, except that:
- (a) An originally signed duplicate of the trust agreement must be ~~delivered~~submitted to the director with the surety bond; and
- (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 [~~see paragraph (A) of rule 3745-55-51 of the Administrative Code~~] in paragraph (A) of this rule;
 - (ii) Updating of "Schedule A" of the trust agreement [~~see paragraph (A) of rule 3745-55-51 of the Administrative Code~~] to show current post-closure cost estimates;
 - (iii) Annual valuations as required by the trust agreement; and
 - (iv) Notices of nonpayment as required by the trust agreement.
- (4) The bond must guarantee that the owner or operator will:
- (a) Perform post-closure care in accordance with the post-closure plan and other requirements of the permit for the facility; or
 - (b) Provide alternate financial assurance as specified in this rule, and obtain the director's written approval of the assurance provided, within ninety days ~~of~~after receipt by both the owner or operator and the director of a 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 pursuant to Chapter 3734. of the Revised Code or ~~to section~~Section 3008 of RCRA that the owner or operator has failed to perform post-closure care in accordance with the approved post-closure plan and other permit requirements, under the terms of the bond the surety will perform post-closure care in accordance with the post-closure plan and other permit requirements or will deposit the amount of the penal sum into the standby trust fund.
- (6) The penal sum of the bond must be in an amount at least equal to the current post-closure cost estimate (~~see rule 3745-55-44 of the Administrative Code~~).
- (7) Whenever the current post-closure cost estimate increases to an amount greater than the penal sum ~~of the bond~~ during the operating life of the facility, the owner or operator ~~must~~, within sixty days after the ~~increase in the estimate, cause either~~increase, must either cause the penal sum ~~of the bond~~ to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the director, or obtain other financial

assurance, as specified in this rule. Whenever the current post-closure cost estimate decreases during the operating life of the facility, the penal sum may be reduced to the amount of the current post-closure cost estimate following written approval by the director.

- (8) During the period of post-closure care, the director may approve a decrease in the penal sum ~~of the surety bond~~ if the owner or operator demonstrates to the director that the amount exceeds the remaining cost of post-closure care.
- (9) Under the terms of the bond, ~~the bond must remain in force unless~~ the surety ~~sends written~~ may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the director. Cancellation ~~cannot~~ may not occur, however, during the one hundred twenty days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the director, ~~as shown on the signed return receipt~~ evidenced by the return receipts.
- (10) The owner or operator may cancel the bond if the director has given prior written consent. The director will provide such written consent when:
- (a) An owner or operator substitutes alternate financial assurance as specified in this rule; or
 - (b) The director releases the owner or operator from the requirements of this rule in accordance with paragraph (I) of this rule.
- (11) The surety will not be liable for deficiencies in the performance of post-closure care by the owner or operator after the ~~owner or operator has been notified by the director in accordance with this rule, that he is no longer required by~~ director releases the owner or operator from the requirements of this rule in accordance with paragraph (I) of this rule ~~to maintain financial assurance for post-closure care of the facility.~~

(D) Post-closure letter of credit.

- (1) An owner or operator may satisfy the requirements of this rule by obtaining an irrevocable standby letter of credit which conforms to the requirements of paragraphs (D) to (D)(11)(b) of this rule and ~~by having it delivered~~ submitting the letter to the director by certified mail. An owner or operator of a new facility must ~~have submit~~ submit the letter of credit ~~delivered~~ to the director by certified mail at least sixty days before the date on which hazardous waste is first received for disposal. The letter of credit must be effective before this

initial receipt of hazardous waste. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency.

- (2) The wording of the letter of credit must be identical to the wording specified in paragraph (D) of rule 3745-55-51 of the Administrative Code.
- (3) An owner or operator who uses a letter of credit to satisfy the requirements of this rule must also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the director will be deposited ~~promptly and directly~~ by the issuing institution directly into the standby trust fund in accordance with instructions from the director. The standby trust fund must meet the requirements of the trust fund specified in paragraph (A) of this rule, except that:
 - (a) An originally signed duplicate of the trust agreement must be ~~delivered~~submitted to the director with the letter of credit; and
 - (b) Unless the standby trust fund is funded pursuant to the requirements of this rule, the following are not required ~~by this rule~~:
 - (i) Payments into the trust fund as specified in paragraph (A) of this rule;
 - (ii) Updating of "Schedule A" of the trust agreement [see paragraph (A) of rule 3745-55-51 of the Administrative Code] to show current post-closure cost estimates;
 - (iii) Annual valuations as required by the trust agreement; and
 - (iv) Notices of nonpayment as required by the trust agreement.
- (4) The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: the U.S. EPA identification number; name, and address, ~~and Ohio permit number~~ of the facility; and the amount of funds assured for post-closure care of the facility by the letter of credit.
- (5) The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year. ~~If the issuing institution decides not to extend the letter of credit beyond the then current~~

~~expiration date it must~~ unless, at least one hundred twenty days before ~~that the~~ current expiration date, ~~notify the issuing institution notifies~~ both the owner or operator and the director by certified mail of ~~that a~~ decision not to extend the expiration date. Under the terms of the letter of credit, the ~~one hundred twenty day period~~ one hundred twenty days will begin on the date when both the owner or operator and the director have received notice, as ~~shown on the signed return receipt~~ evidenced by the return receipts.

- (6) The letter of credit must be issued in an amount at least equal to the current post-closure cost estimate, except as provided in paragraph (G) of this rule.
- (7) Whenever the current post-closure cost estimate increases to an amount greater than the amount of the credit during the operating life of the facility, the owner or operator ~~must~~, within sixty days ~~of this~~ after the increase, must either cause the amount of the credit to be increased ~~to an amount~~ so that it at least ~~equal to~~ equals the current post-closure cost estimate and submit evidence of such increase to the director, or obtain other financial assurance as specified in this rule to cover the increase. Whenever the current post-closure cost estimate decreases during the operating life of the facility, the amount of the letter of credit may be reduced to the amount of the current post-closure cost estimate following written approval by the director.
- (8) During the period of post-closure care, the director may approve a decrease in the amount of the letter of credit if the owner or operator demonstrates to the director that the amount exceeds the remaining cost of post-closure care.
- (9) Following a determination pursuant to Chapter 3734. of the Revised Code or ~~to~~ Section Section 3008 of RCRA ~~by the director~~ that the owner or operator has failed, ~~when required to do so~~, to perform post-closure care in accordance with the approved post-closure plan or other permit requirements, the director may draw on the letter of credit.
- (10) If the owner or operator does not establish alternate financial assurance as specified in this rule and obtain written approval of such alternate assurance from the director within ninety days after receipt by both the owner or operator and the director of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the director will 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 last thirty days of any such extension the director will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this rule and obtain written approval of such assurance from the director.

- (11) The director will return the ~~original~~ letter of credit to the issuing institution for termination when:
- (a) The owner or operator substitutes alternate financial assurance ~~for post-closure care~~ as specified in this rule; or
 - (b) The director ~~notifies~~releases the owner or operator; from the requirements of this rule in accordance with paragraph (I) of this rule; ~~that he is no longer required by this rule to maintain financial assurance for post-closure care of the facility.~~

(E) Post-closure insurance.

- (1) An owner or operator may satisfy the requirements of this rule by obtaining post-closure insurance which conforms to the requirements of paragraphs (E) to (E)(11)(b) of this rule and submitting a certificate of such insurance to the director. An owner or operator of a new facility must submit the certificate of insurance to the director at least sixty days before the date on which hazardous waste is first received for disposal. The insurance must be effective before this initial receipt of hazardous waste. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.
- (2) The wording of the certificate of insurance must be identical to the wording specified in paragraph (E) of rule 3745-55-51 of the Administrative Code.
- (3) The post-closure insurance policy must be issued for a face amount at least equal to the current post-closure cost estimate, except as provided in paragraph (G) of this rule. The term "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 post-closure insurance policy must guarantee that funds will be available to provide post-closure care of the facility whenever the post-closure period begins. The policy must also guarantee that once post-closure care 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) An owner or operator or any other person authorized to conduct post-closure care may request reimbursement for post-closure care expenditures by

submitting itemized bills to the director. Within sixty days after receiving bills for post-closure care activities, the director will determine whether the post-closure care expenditures are in accordance with the approved post-closure plan or otherwise justified, and if so, he will instruct the insurer to make reimbursement in such amounts as the director specifies in writing. If the director does not instruct the insurer to make such reimbursements, he ~~must~~will provide the owner or operator with a detailed written statement of reasons.

- (6) The owner or operator must 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 (E)(11) of this rule. Failure to pay the premium, without substitution of alternate financial assurance as specified in this rule, will constitute a significant violation, warranting such remedy as the director deems necessary. Such violation will 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 must 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 must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, 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 to the owner or operator and the director. Cancellation, termination, or failure to renew may not occur, however, during the one hundred twenty days beginning with the date of receipt of the notice by both the director and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:
 - (a) The director deems the facility abandoned; or
 - (b) The permit is terminated or revoked or a new permit is denied; or
 - (c) Closure is ordered by the director or a U.S. district court, or other court of competent jurisdiction; or
 - (d) The owner or operator is named as debtor in a voluntary or involuntary

proceeding under Title 11 (bankruptcy), U.S. Code; or

- (e) The premium due is paid.
 - (9) Whenever the current post-closure cost estimate increases to an amount greater than the face amount of the policy during the operating life of the facility, the owner or operator, within sixty days after the increase, must either cause the face amount to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the director, or obtain other financial assurance as specified in this rule to cover the increase. Whenever the current post-closure cost estimate decreases during the operating life of the facility, the face amount may be reduced to the amount of the current post-closure cost estimate following written approval by the director.
 - (10) Commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to eighty-five per cent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. treasury for twenty-six-week treasury securities.
 - (11) The director will give written consent to the owner or operator that he may terminate the insurance policy when:
 - (a) An owner or operator substitutes alternate financial assurance as specified in this rule; or
 - (b) The director releases the owner or operator from the requirements of this rule in accordance with paragraph (I) of this rule.
- (F) Financial test and corporate guarantee for post-closure care.
- (1) An owner or operator may satisfy the requirements of this rule by demonstrating that he passes a financial test as specified in paragraphs (F) to (F)(11)(c) of this rule. To pass this test the owner or operator must meet the criteria of either paragraph (F)(1)(a) or (F)(1)(b) of this rule.
 - (a) The owner or operator must have:
 - (i) Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus

depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

- (ii) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost-estimates; and
- (iii) Tangible net worth of at least ten million dollars; and
- (iv) Assets in the United States amounting to at least ninety per cent of his total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost-estimates.

(b) The owner or operator must have:

- (i) A current rating for his 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"; and
- (ii) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and
- (iii) Tangible net worth of at least ten million dollars; and
- (iv) Assets located in the United States amounting to at least ninety per cent of his total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

(2) The phrase "current closure and post-closure cost estimates" as used in paragraph (F)(1) of this rule refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer. [See paragraph (F) of rule 3745-55-51 of the Administrative Code.] The phrase "current plugging and abandonment cost estimates" as used in paragraph (F)(1) of this rule refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer (see rule 3745-55-51 of the Administrative Code).

(3) To demonstrate that he meets this test, the owner or operator must submit the

following items to the director:

- (a) A letter signed by the owner's or operator's chief financial officer and worded as specified in paragraph (F) of rule 3745-55-51 of the Administrative Code; and
 - (b) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and
 - (c) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:
 - (i) He 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
 - (ii) In connection with that procedure, no matters came to ~~is~~his attention which caused him to believe that the specified data should be adjusted.
- (4) An owner or operator of a new facility must submit the items specified in paragraph (F)(3) of this rule to the director at least sixty days before the date on which hazardous waste is first received for disposal.
- (5) After the initial submittal of items specified in paragraph (F)(3) of this rule, the owner or operator must send updated information to the director within ninety days after the close of each succeeding fiscal year. This information must consist of all three items specified in paragraph (F)(3) of this rule.
- (6) If the owner or operator no longer meets the requirements of paragraph (F)(1) of this rule, he must send notice to the director of intent to establish alternate financial assurance as specified in this rule. The notice must be sent by certified mail within 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. The owner or operator must provide the alternate financial assurance within one hundred twenty days after the end of such fiscal year.
- (7) The director ~~may~~, based on a reasonable belief that the owner or operator may no longer meet the requirements of paragraph (F)(1) of this rule, may require reports of financial condition at any time from the owner or operator in

addition to those specified in paragraph (F)(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 (F)(1) of this rule, the owner or operator must provide alternate financial assurance as specified in this rule within thirty days after notification of such a finding.

- (8) The director may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in this report on examination of the owner's or operator's financial statements [see paragraph (F)(3)(b) of this rule]. An adverse opinion or a disclaimer of opinion will be cause for disallowance. The director will evaluate other qualifications on an individual basis. The owner or operator must provide alternate financial assurance as specified in this rule within thirty days after notification of the disallowance.
- (9) During the period of post-closure care, the director may approve a decrease in the current post-closure cost estimate for which this test demonstrates financial assurance if the owner or operator demonstrates to the director that the amount of the cost estimate exceeds the remaining cost of post-closure care.
- (10) The owner or operator is no longer required to submit the items specified in paragraph (F)(3) of this rule when:
 - (a) An owner or operator substitutes alternate financial assurance as specified in this rule; or
 - (b) The director releases the owner or operator from the requirements of this rule in accordance with paragraph (I) of this rule.
- (11) An owner or operator may meet the requirements of this rule by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraphs (F)(1) to (F)(9) of this rule and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in paragraph (H) of rule 3745-55-51 of the Administrative Code. A certified copy of the guarantee must accompany the items sent to the director as specified in paragraph (F)(3) of this rule. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value

received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee must provide that:

- (a) If the owner or operator fails to perform post-closure care of a facility covered by the corporate guarantee in accordance with the post-closure plan and other permit requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in paragraph (A) of this rule in the name of the owner or operator.
 - (b) 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 director. Cancellation may not occur, however, during the one hundred twenty days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the director, as evidenced by the return receipts.
 - (c) If the owner or operator fails to provide alternate financial assurance as specified in this rule and obtain the written approval of such alternate assurance from the director within ninety days after receipt by both the owner or operator and the director of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternate financial assurance in the name of the owner or operator.
- (G) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this rule by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a ~~post-closure~~ trust fund, letters of credit, and insurance. The mechanisms must be as specified in paragraphs (A), (B), (D), and (E) of this rule, except that it is the combination of mechanisms, rather than ~~each~~the single mechanism, which must provide financial assurance for an amount at least equal to the current post-closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust may be established for two or more mechanisms. The director may ~~invoke~~ use of any or all of the mechanisms, ~~in accordance with the requirements of paragraphs (A), (B), and (D) of this rule,~~ to provide for post-closure care of the facility.
- (H) Use of a financial mechanism for multiple facilities. An 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 ~~will~~must include a list showing, for each facility, the U.S. EPA identification number, name, address, ~~Ohio permit number~~ and the amount of funds

for post-closure care assured by the mechanism.

~~[Comment: If the facilities covered by the mechanism are in more than one U.S. EPA region, identical evidence of financial assurance must be submitted to and maintained with the U.S. EPA regional administrators of all such U.S. EPA regions or the directors of state programs in states authorized to administer such programs.]~~

The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for post-closure care of any of the facilities covered by the mechanism, the director may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

- (I) Release of the owner or operator from the requirements of this rule. Within sixty days after receiving ~~certification~~certifications from the owner or operator and ~~an independent registered~~a qualified professional engineer that the post-closure care period has been completed for a hazardous waste disposal unit in accordance with the approved plan, the director will notify the owner or operator that he is no longer required to maintain financial assurance for post-closure ~~care~~ of that unit, unless the director has reason to believe that post-closure care has not been in accordance with the approved post-closure plan. The director will provide the owner or operator ~~with~~ a detailed written statement of any such reason to believe that post-closure care has not been in accordance with the approved post-closure plan.

~~[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see rule 3745-50-11 of the Administrative Code titled "Incorporated by reference."]~~

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see rule 3745-50-11 of the Administrative Code titled "Incorporated by reference."]

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Certification

07/23/2010

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