3745-27-16 Financial assurance for solid waste facility post-closure care.

(A) Applicability.

(1) Financial assurance information shall be submitted as part of a permit to install for a new sanitary landfill facility, for a modification that increases the post-closure care cost estimate of an existing facility, or as part of a permit to install application submitted in response to division (A)(3) or (A)(4) of section 3734.05 of the Revised Code.

(2) For sanitary landfill facilities subject to paragraph (A) of rule 3745-27-11, 3745-29-11, or 3745-30-09 of the Administrative Code, as applicable, the owner or operator shall submit to Ohio EPA a post-closure care financial assurance instrument in accordance with this rule.

[Comment: The requirements of this rule do not apply to solid waste incinerators subject to the requirements of rules 3745-27-50 to 3745-27-53 of the Administrative Code; solid waste transfer facilities subject to the requirements of rules 3745-27-21 to 3745-27-24 of the Administrative Code; or scrap tire collection, storage, recovery, mobile recovery facilities or scrap tire transporters subject to rules 3745-27-54 to 3745-27-67 of the Administrative Code, because there are no post-closure care requirements for these types of facilities or operations.]

(B) Implementation.

(1) The owner or operator of a sanitary landfill facility shall execute and fund the post-closure care financial assurance instrument submitted as a part of a permit to install prior to receipt of solid waste at a new sanitary landfill facility, a modification that increases post-closure care cost estimates of an existing sanitary landfill facility, or prior to issuance of a permit to install for which an application was submitted in response to division (A)(3) or (A)(4) of section 3734.05 of the Revised Code.

(2) The owner or operator of sanitary landfill facilities subject to paragraph (A) of rule 3745-27-11, 3745-29-11, or 3745-30-09 of the Administrative Code, as applicable, shall execute and fund the post-closure care financial assurance instrument not later than sixty days after approval of the final closure/post-closure care plan.

(C) Post-closure care financial assurance instrument. The post-closure care financial assurance instrument shall contain an itemized written estimate, in current dollars, of the cost of post-closure care for the sanitary landfill facility in accordance with rule 3745-27-14, 3745-29-14, or 3745-30-10 of the Administrative Code, as applicable, or for a scrap tire monofill facility in accordance with rule 3745-27-74 of the Administrative Code. The estimate shall be based on a third party conducting the post-closure care activities. Ohio EPA may review, approve, or require revisions to the post-closure care cost estimate or to the post-closure care financial assurance instrument.

(D) Review of post-closure care financial assurance instruments. 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 post-closure care cost estimate prepared in accordance with the following:

(1) The owner or operator of a sanitary landfill facility shall annually review and analyze the post-closure care cost estimate and shall make any appropriate revisions to these estimates and to the financial assurance instrument whenever a change in the post-closure care activities increases the cost of post-closure care. Any revised post-closure care cost estimate must be adjusted for inflation as specified

in paragraph (D)(2) of this rule.

(2) The owner or operator of a sanitary landfill facility shall annually adjust the post-closure care cost estimate for inflation. The adjustment shall be made as specified in this paragraph, using 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. 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 post-closure care cost estimate by the inflation factor. The result is the adjusted post-closure care cost estimate.

(b) Subsequent adjustments are made by multiplying the most recently adjusted post-closure care cost estimate by the most recent inflation factor.

(E) The owner or operator of a sanitary landfill facility shall select a post-closure care financial assurance mechanism from the list of mechanisms specified in paragraph (F), (G), (H), (I), (J), (K), or (L) of this rule, except as otherwise specified by this rule, provided the owner or operator satisfies the criteria for use of that mechanism.

(F) Post-closure care trust fund.

(1) The owner or operator may satisfy the requirements of this rule by establishing a post-closure care trust fund which conforms to this paragraph and by sending an originally signed duplicate of the trust agreement to the director within the time period outlined in paragraph (B) of this rule. 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 post-closure care cost estimate provided for in the agreement.

(3) A post-closure care trust fund shall be established to secure an amount at least equal to the current post-closure care cost estimate, except as provided in paragraph (M) of this rule. Payments to the trust fund shall be made annually, except as permitted by paragraph (F)(4) of this rule, by the owner or operator over the term of the applicable authorizing document, including permit to install, or plan approval, and shall be based on the authorized maximum daily waste receipt and the approved volume of the sanitary landfill facility; this period is hereafter referred to as the pay-in period. The first payment into the post-closure care trust fund shall be made in accordance with paragraph (B) of this rule. Subsequent payments to the post-closure care 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 post-closure care cost estimate divided by the number of years in the pay-in period, except as provided in paragraph (M) of this rule. Subsequent payments shall be made not later than thirty days after each anniversary date of the first payment. The amount of each subsequent payment shall be determined by performing the following calculation:

Next payment = (CE - CV) / Y

Where CE is the current post-closure care 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 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 post-closure care cost estimate made during the pay-in period, the amount of the current post-closure care cost estimate still to be paid into the trust fund shall be paid in over the pay-in period, as defined in paragraph (F)(3) of this rule. Payments shall continue to be made not later than thirty days after each anniversary date of the first payment pursuant to paragraph (F)(3)(a) of this rule. The amount of each payment shall be determined by performing the following calculation:

Next payment = (CE - CV) / Y

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

(c) The owner or operator may make the first installment required under paragraph (F)(3)(a) or (F)(3)(b) of this rule by providing alternate financial insurance using one of the mechanisms specified in paragraph (G), (I), or (J) of this rule in an amount at least equal to the first installment. On the anniversary date of the first installment, the owner or operator shall pay into the trust an amount at least equal to the first and second installments required under paragraph (F)(3)(a) or (F)(3)(b) of this rule or select an alternate financial assurance mechanism.

(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 post-closure care 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 annual payments were made as specified in paragraph (F)(3) of this rule.

(5) If the owner or operator establishes a post-closure care trust fund after having begun funding post-closure care under any mechanisms specified in this rule, the post-closure care trust fund shall be established by depositing the total value of all prior mechanisms into the newly established trust fund. The subsequent annual payments shall be made as specified in paragraph (F)(3) of this rule.

(6) After the pay-in period of a trust fund has ended and the current post-closure care 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 post-closure care 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 written request to the director for the release of the amount in excess of the current post-closure care cost estimate, if the value of the trust fund is greater than the total amount of the current post-closure care cost estimate.

(b) The owner or operator may submit 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 mechanisms specified in this rule for all or part of the trust fund.

(8) Reimbursement for post-closure care at sanitary landfill facilities.

After beginning post-closure care, the owner or operator, or any other person authorized by the owner, operator, or director to perform post-closure care, may request reimbursement for post-closure care expenditures by submitting itemized bills to the director. After receiving itemized bills for post-closure care activities, the director shall determine whether the post-closure care expenditures are in accordance with the final closure/post-closure care plan, permit requirements, and applicable rules, 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 post-closure care will be greater than the value of the trust fund, the director may withhold reimbursement of such amounts as he deems prudent until he determines, in accordance with paragraph (O) of this rule, that the owner or operator is no longer required to maintain financial assurance for post-closure care of the facility.

(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 post-closure care as specified in paragraph (F)(6) of this rule.

(b) The director notifies the owner or operator, in accordance with paragraph (O) of this rule, that the owner or operator is no longer required by this rule to maintain financial assurance for post-closure care of the facility.

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

(1) The owner or operator may satisfy the requirements of this rule by obtaining a surety bond which conforms to 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 paragraphs (A) and (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, if applicable.

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 treasury.

(2) The wording of the surety bond shall be identical to 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 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 (F) of this rule, except 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, if applicable.

(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 (F) of this rule.

(ii) Revisions of Schedule A of the trust agreement to show current post-closure care 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 shall become liable on the bond obligation unless the owner or operator does one of the following, as applicable:

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

(b) Funds the standby trust fund in an amount equal to the penal sum of the bond not later than fifteen days after a mandatory final closure requirement in accordance with the final closure/post-closure care plan, permit requirements, and applicable rules.

(c) Provides alternate financial assurance as specified in this rule, and obtain 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 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 post-closure care cost estimate except as provided in paragraph (M) of this rule.

(7) Whenever the current post-closure care 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 post-closure care 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, if applicable, or obtain alternate financial assurance, as specified in this rule, to compensate for the increase. Whenever the current post-closure care cost estimate decreases, the penal sum may be reduced to the amount of the current post-closure care 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 post-closure care as specified in this rule.

(b) The director notifies the owner or operator, in accordance with paragraph (O) of this rule that the owner or operator is no longer required to maintain financial assurance for post-closure care of the facility.

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

(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 paragraphs (A) and (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, if applicable.

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.

(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 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 paragraph (F) 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, if applicable.

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

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

(ii) Revisions of Schedule A of the trust agreement to show current post-closure care 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 shall become liable on the bond obligation unless the owner or operator does one of the following, as applicable:

(a) Performs post-closure care in accordance with the final closure/post-closure plan, and applicable rules, and other requirements of the permit or registration.

(b) Provides alternate financial assurance as specified in this rule, and 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 receives 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 solid waste facility has failed to perform post-closure care activities in accordance with the final closure/post-closure plan, applicable rules, and permit requirements, the surety shall perform post-closure care in accordance with the final closure/post-plan and permit requirements,

or applicable rules, 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 post-closure care cost estimate.

(7) Whenever the current post-closure care 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 post-closure care 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, if applicable, or obtain alternate financial assurance, as specified in this rule, to compensate for the increase. Whenever the current post-closure care cost estimate decreases, the penal sum may be reduced to the amount of the current post-closure care 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 post-closure care as specified in this rule.

(b) The director notifies the owner or operator, in accordance with paragraph (O) of this rule that the owner or operator is no longer required by this rule to maintain financial assurance for post-closure care of the facility.

(10) The surety shall not be liable for deficiencies in the completion of post-closure care 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 post-closure care of the facility.

(I) Post-closure care letter of credit.

(1) The owner or operator may satisfy this rule by obtaining an irrevocable standby letter of credit ("letter of credit") which conforms to 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 paragraphs (A) and (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, if applicable. 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 (F) of this rule, except 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, if applicable.

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

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

(ii) Updating of Schedule A of the trust agreement to show current post-closure care 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 solid waste facility and the owner and the operator and the amount of funds assured for post-closure care of the facility 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 post-closure care cost estimate, except as provided in paragraph (M) of this rule.

(7) Whenever the current post-closure care 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 post-closure care 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, if applicable, or obtain alternate financial assurance, as specified in this rule, to compensate for the increase. Whenever the current post-closure care cost estimate decreases, the letter of credit may be reduced to the amount of the current post-closure care 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 either of the following:

(a) Perform post-closure care activities in accordance with the final closure/post-closure care plan, permit requirements, and applicable rules.

(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 or 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 occur:

(a) The owner or operator substitutes alternate financial assurance for post-closure care as specified in this rule.

(b) The director notifies the owner or operator, in accordance with paragraph (O) of this rule that the owner or operator is no longer required to maintain financial assurance for post-closure care of the facility.

(J) Post-closure care insurance.

(1) The owner or operator may satisfy this rule by obtaining post-closure care insurance which conforms to the requirements of this paragraph and by submitting a originally 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 paragraphs (A) and (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, if applicable. 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 prescribed by the director.

(3) The post-closure care insurance policy shall be issued for a face amount at least equal to the current post-closure care cost estimate except as provided in paragraph (M) 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 post-closure care insurance policy shall guarantee that funds will be available to perform post-closure care whenever mandated. The policy shall 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) Reimbursement for post-closure care.

After beginning post-closure care, the owner or operator, or any other person authorized by the owner, operator, or director to perform post-closure care, may request reimbursement for post-closure care expenditures by submitting itemized bills to the director. After receiving itemized bills for post-closure care activities, the director shall determine whether the post-closure care expenditures are in accordance with rule 3745-27-14, 3745-29-14, or 3745-30-10 of the Administrative Code, as applicable, and the

final closure/post-closure plan, applicable rules, the permit, or are otherwise justified, 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 post-closure care will be greater than the face amount of the policy, the director may withhold reimbursement of such amounts as he deems prudent until he determines, in accordance with paragraph (O) of this rule, that the owner or operator is no longer required to maintain financial assurance for post-closure care 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 (J)(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) Post-closure care activities required in the final closure/post-closure care plan, permit requirements, and applicable rules have occurred.

(b) Post-closure care of the facility is ordered by the director or a court of competent jurisdiction.

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

(d) The premium due is paid.

(9) Whenever the current post-closure care 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 post-closure care 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, if applicable, or obtain alternate financial assurance as specified in this rule to compensate for the increase. Whenever the current post-closure care cost estimate decreases, the face amount may be reduced to the amount of the current post-closure care 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 post-closure care as specified in

this rule.

(b) The director notifies the owner or operator, in accordance with paragraph (O) of this rule that owner or operator is no longer required to maintain financial assurance for post-closure care of the facility.

(K) Financial test and corporate guarantee for post-closure care.

(1) The owner or operator may satisfy 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 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 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.

(b) The owner or operator shall have one of 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." Owners or 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 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 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 (K)(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, if applicable:

(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 the following:

(i) 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, the independent certified public accountant states that the independent certified public accountant agrees the specified data is accurate.

(4) After the initial submission of the items specified in paragraph (K)(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, if applicable, not later than ninety days after the close of each succeeding fiscal year. This information shall include all three items specified in paragraph (K)(3) of this rule.

(5) If the owner or operator no longer meets paragraph (K)(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, if applicable. 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 paragraph (K)(1) of this rule, require reports of financial condition at any time from the owner or operator in addition to those specified in paragraph (K)(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 paragraph (K)(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 the 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) The owner or operator is no longer required to submit the items specified in paragraph (K)(3) of this rule when either of the following occur:

(a) The owner or operator substitutes alternate financial assurance for post-closure care as specified in this rule.

(b) The director notifies the owner or operator, in accordance with paragraph (O) of this rule that the owner or operator is no longer required to maintain financial assurance for post-closure care of the facility.

(9) The owner or operator may meet this rule by obtaining a written guarantee, hereafter referred to as a corporate guarantee. The guarantor shall be the parent corporation of the owner or operator. The guarantor shall meet the requirements for an owner or operator in paragraphs (K)(1) to (K)(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 (K)(3) of this rule. The terms of the corporate guarantee shall provide the following:

(a) The owner or operator shall perform post-closure care of a facility provided for by the corporate guarantee in accordance with the final closure/post-closure care plan, permit requirements, and applicable rules.

(b) The guarantor shall perform the activities in paragraph (K)(9)(a) of this rule or shall establish a trust fund in the name of the owner or operator as specified in paragraph (F) of this rule if the owner or operator fails to perform 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.

(L) Local government financial test for post-closure care.

(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 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 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 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 shall not currently be in default on any outstanding general obligation bonds.

(d) A local government 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 meet the minimum rating without that security.

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

(a) The local government 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 shall in each year 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, if applicable:

(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 does the following:

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

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

(iii) Provides evidence and certifies that the local government meets the conditions of either paragraph (L)(2)(a) or (L)(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 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, the independent certified public accountant states that the independent certified public accountant 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, if applicable, 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 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 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, if applicable. 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 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 post-closure care as specified in this rule.

(b) The director notifies the local government, in accordance with paragraph (O) of this rule, that the local government is no longer required to maintain financial assurance for post-closure care of the facility.

(M) Use of multiple financial assurance mechanisms.

The owner or operator may satisfy 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 post-closure care trust fund, letter of credit, insurance, and the local government financial test. The mechanisms shall be as specified in paragraphs (F), (G), (I), (J), and (L) 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 post-closure care 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 (F), (G), (I), (J), and (L) of this rule, to provide for post-closure care of the facility.

(N) Use of a financial assurance mechanism for multiple facilities.

The owner or operator may use a financial assurance mechanism specified in this rule to meet 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 post-closure care 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.

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

The director shall notify the owner or operator in writing that the owner or operator is no longer required, by this rule, to maintain financial assurance for post-closure care of a particular facility, unless the director has reason to believe that post-closure care has not been completed in accordance with rule 3745-27-14, 3745-29-14, or 3745-30-10 of the Administrative Code or the final closure/post-closure plan after receiving certifications from the owner or operator and an independent professionals skilled in the appropriate disciplines that post-closure care has been completed in accordance with the final closure/post-closure care plan, permit requirements, and applicable rules.

[Comment: The notice releases the owner or operator only from the requirements for financial assurance for post-closure care of the facility; it does not release the owner or operator from legal responsibility for meeting the final closure standards or corrective measures, if applicable.]

[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 "Circular 570" is available at http://www.gpo.gov/fdsys/.]

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