

3745-400-13 Financial assurance for construction and demolition debris facility final closure.

- (A) The owner or operator of a construction and demolition debris facility shall establish and maintain financial assurance for final closure of the facility as required by paragraph (S) of rule 3745-400-11 of the Administrative Code. Financial assurance may be established and maintained through the use of one of the options specified in paragraphs (B) to (G) of this rule, unless it is demonstrated to the satisfaction of the health commissioner or director of the licensing authority that an alternate option will guarantee funding for final closure. The owner or operator may use the options in combination as specified in paragraph (H) of this rule. Financial assurance documentation shall include the information specified in this paragraph and shall be submitted as part of the license application.

[Comment: Because many local health departments had construction and demolition rules in place prior to the effective date of this rule, many existing facilities may have financial assurance mechanisms already established. These mechanisms may be acceptable alternatives to the mechanisms outlined in this rule.]

- (1) Financial assurance documentation shall include the amount, in dollars, for final closure of the construction and demolition debris facility and an original copy of the financial instrument(s), necessary to achieve compliance with the financial assurance provisions of this rule. The wording contained in the instrument shall be in accordance with the appropriate paragraph of rule 3745-400-14 of the Administrative Code, unless an option other than those specified in paragraphs (B) to (G) of this rule is proposed. The amount shall be calculated as the total acreage, to the nearest tenth of an acre, of the active licensed disposal area(s) as established in the facility's license application multiplied by thirteen thousand dollars per acre plus two thousand one hundred seventy-five dollars per ground water monitoring well.
- (2) The financial assurance instrument(s) submitted in accordance with paragraph (A)(1) of this rule shall be funded not later than thirty days after the licensing authority issues a construction and demolition debris facility license.
- (3) (a) Release of funds prior to closure. The owner or operator, or any other person authorized to perform final capping on behalf of the owner or operator, shall receive reimbursement from the financial assurance required under this rule where the licensing authority's written concurrence with the cap system certification required in paragraph (A)(3) of rule 3745-400-08 of the Administrative Code has been obtained. Reimbursement shall be calculated based upon the total acreage of the certified cap system, to the nearest tenth of an acre, multiplied by twelve thousand four hundred fifty dollars per acre plus two thousand one hundred seventy-five dollars for each properly plugged and abandoned ground water monitoring well.

[Comment: The remaining five hundred and fifty dollars per acre financial assurance is for maintenance of the certified cap during the active life of the facility but prior to facility final closure.]

- (b) Release of funds during closure. The owner or operator, or any other person authorized to perform closure on behalf of the owner or operator, shall not receive reimbursement for closure expenditures from the financial assurance required under this rule until the area is deemed closed in accordance with paragraph (A)(3) of rule 3745-400-08 of the Administrative Code.
 - (c) Release of funds after final closure certification. The owner or operator, or any other person authorized to perform final closure on behalf of the owner or operator, shall receive reimbursement of all remaining funds from the financial assurance required under this rule only after facility closure is deemed complete in accordance with paragraph (G) of rule 3745-400-12 of the Administrative Code.
 - (4) Financial assurance under this rule shall be reviewed and adjusted for each annual license application and any application for a facility modification. The financial assurance provided in a current unexpired license may be utilized to fulfill the financial assurance requirements of an annual license application or a modification if the dollar amount of the financial assurance is equal to or greater than the license application's calculated amount as specified in paragraph (A)(1) of this rule.
 - (B) Final closure trust fund.
 - (1) The owner or operator may satisfy the requirements of this rule by establishing a final closure trust fund which conforms to the requirements of this paragraph and by sending an originally signed duplicate of the trust agreement to the health commissioner or director of the licensing authority with the license application. The trustee shall 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 shall be identical to the wording specified in paragraph (A)(1) of rule 3745-400-14 of the Administrative Code and the trust agreement shall be accompanied by a formal certification of acknowledgment.
 - (3) All payments to the trust fund shall be made by the owner or operator within thirty days from the date of license issuance; this period is hereafter referred to as the "pay-in period". The payments to the final closure 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 health commissioner or director of the licensing authority.
 - (b) The total dollar amount of the trust fund shall be fully funded as required in paragraph (A)(1) of this rule within thirty days after the date of license issuance.
 - (4) The owner or operator may accelerate payments into the trust fund or he may deposit the full amount for final closure at the time the fund is established. However, he shall maintain the value of the fund at no less than the value the fund would have if payments were made as specified in paragraphs (B)(1) and (B)(3) of this rule.
 - (5) If the owner or operator establishes a final closure trust fund after having used one or more alternate mechanisms specified in this rule, the owner or operator's first payment shall be at least the amount that the fund would contain if the trust fund were established initially and payments made as specified in paragraph (B)(3) of this rule.
 - (6) When any area with financial assurance is certified closed in accordance with paragraph (B) of rule 3745-400-08 of the Administrative Code, the owner or operator, or any other person authorized to perform final closure, may request reimbursement for final closure expenditures by submitting a closure certification report to the health commissioner or director of the licensing authority. Not later than sixty days after receiving the request, the health commissioner or director of the licensing authority shall calculate in accordance with paragraph (A)(3) of this rule the amount to be reimbursed and shall instruct, in writing, the trustee to make such reimbursement.
 - (7) The health commissioner or director of the licensing authority will agree to termination of the trust when either of the following occur:
 - (a) The owner or operator substitutes alternate financial assurance for final closure as specified in this rule.
 - (b) The health commissioner or director of the licensing authority notifies the owner or operator, in accordance with paragraph (I) of this rule, that he is no longer required by this rule to maintain financial assurance for final closure of the facility.
- (C) Surety bond guaranteeing payment into a final closure trust fund.

- (1) The licensee may satisfy the requirements of this rule by obtaining a surety bond which conforms to the requirements of this paragraph and by delivering the bond to the health commissioner or director of the licensing authority with the license application. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on federal bonds in "Circular 570" of the U.S. department of the treasury.

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

- (2) The wording of the surety bond shall be identical to the wording specified in paragraph (B) of rule 3745-400-14 of the Administrative Code.
- (3) The owner or operator who uses a surety bond to satisfy the requirements of this rule shall also establish a standby trust fund not later than when the bond is obtained. Under the terms of the surety bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the health commissioner or director of the licensing authority. This standby trust fund shall meet the requirements specified in paragraph (B) of this rule, except as follows:
 - (a) An originally signed duplicate of the trust agreement and the surety bond shall be submitted with the license application.
 - (b) Until the standby trust fund is funded, pursuant to the requirements of this rule, payments into the trust fund as specified in paragraph (B) of this rule are not required.

[Comment: When the Ohio environmental protection agency is the licensing authority, the standby trust fund must be established to hold the funds from the bond for final closure. When a health district is the licensing authority, other financial mechanisms may be possible to hold the funds from the bond for final closure.]

- (4) The bond shall guarantee that the owner or operator will do one of the following:
 - (a) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of the facility final closure.
 - (b) Fund the standby trust fund in an amount equal to the penal sum not later than fifteen days after a mandatory final closure in compliance with paragraph (B) of rule 3745-400-12 of the Administrative Code.

- (c) Provide alternate financial assurance as specified in this rule, and obtain the health commissioner or director of the licensing authority written approval of the alternate financial assurance provided, not later than ninety days after both the owner or operator and the health commissioner or director of the licensing authority 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 final closure amount calculated in paragraph (A)(1) of this rule except as provided in paragraph (H) of this rule.
 - (7) Under the terms of the bond, the bond shall remain in force unless the surety sends written notice of cancellation by certified mail to the owner or operator and to the health commissioner or director of the licensing authority. Cancellation cannot occur, however, during the one-hundred-twenty-day period beginning on the first day that both the owner or operator and the health commissioner or director of the licensing authority have received the notice of cancellation, as evidenced by the return receipts.
 - (8) The owner or operator may cancel the bond if the health commissioner or director of the licensing authority has given prior written consent. The health commissioner or director of the licensing authority will provide such written consent when one of the following occurs:
 - (a) The owner or operator substitutes alternate financial assurance for final closure as specified in this rule.
 - (b) The health commissioner or director of the licensing authority notifies the licensee, in accordance with paragraph (I) of this rule, that he is no longer required to maintain financial assurance for final closure of the facility.
- (D) Surety bond guaranteeing performance of final closure.
- (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 bond to the health commissioner or director of the licensing authority with the license application. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on federal bonds in "Circular 570" of the U.S. department of the treasury.

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

- (2) The wording of the surety bond shall be identical to the wording specified in paragraph (C) of rule 3745-400-14 of the Administrative Code.
- (3) The owner or operator who uses a surety bond to satisfy the requirements of this rule shall also establish a standby trust fund. Under the terms of the surety bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the health commissioner or director of the licensing authority. This standby trust fund shall meet the requirements specified in paragraph (B) of this rule except as follows:
 - (a) An originally signed duplicate of the trust agreement and the surety bond shall be submitted with the license application.
 - (b) Until the standby trust fund is funded, pursuant to the requirements of this rule, payments into the trust fund as specified in paragraph (B) of this rule are not required.
- (4) The bond shall guarantee that the owner or operator will do one of the following:
 - (a) Perform final closure in accordance with Chapters 3745-400 and 3745-37 of the Administrative Code and any other requirements of the license.
 - (b) Provide alternate financial assurance as specified in this rule, and obtain the health commissioner or director of the licensing authority written approval of the alternate financial assurance provided, not later than ninety days after both the licensee and the health commissioner or director of the licensing authority receive notice of cancellation of the bond from the surety.
- (5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a determination, pursuant to rule 3745-400-12 of the Administrative Code, that the owner or operator has failed to perform final closure activities in accordance with the those chapters and license requirements, the surety shall perform final closure in accordance with rule 3745-400-12 of the Administrative Code, and license requirements 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 final closure amount calculated in paragraph (A)(1) of this rule.
 - (7) Under the terms of the bond, the bond shall remain in force unless the surety sends written notice of cancellation by certified mail to the owner or operator and to the health commissioner or director of the licensing authority. Cancellation cannot occur, however, during the one-hundred-twenty-day period beginning on the first day that both the owner or operator and the health commissioner or director of the licensing authority have received the notice of cancellation as evidenced by the return receipts.
 - (8) The owner or operator may cancel the bond if the health commissioner or director of the licensing authority has given prior written consent. The health commissioner or director of the licensing authority will provide such written consent when one of the following occurs:
 - (a) The owner or operator substitutes alternate financial assurance for final closure as specified in this rule.
 - (b) The health commissioner or director of the licensing authority notifies the owner or operator, in accordance with paragraph (I) of this rule, that he is no longer required by this rule to maintain financial assurance for final closure of the facility.
 - (9) The surety shall not be liable for deficiencies in the completion of final closure activities by the owner or operator after the owner or operator has been notified by the health commissioner or director of the licensing authority, in accordance with this rule, that he is no longer required to maintain financial assurance for final closure of the facility.
- (E) Final closure letter of credit.
- (1) The owner or operator may satisfy the requirements of this rule by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph and by having it delivered to the health commissioner or director of the licensing authority with the license application. 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 3745-400-14 of the Administrative Code.

- (3) A 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 health commissioner or director of the licensing authority shall be deposited promptly and directly by the issuing institution into the standby trust fund in accordance with instructions from the health commissioner or director of the licensing authority. The standby trust fund shall meet the requirements of the trust fund specified in paragraph (B) of this rule, except as follows:
 - (a) An originally signed duplicate of the trust agreement and the letter of credit shall be submitted with the license application to the health commissioner or director of the licensing authority.
 - (b) Until the standby trust fund is funded, pursuant to the requirements of this rule, payments into the trust fund as specified in paragraph (B) of this rule are not required.
- (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 construction and demolition debris facility and the owner or operator and the amount of funds assured for final closure 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 or operator and the health commissioner or director of the licensing authority by certified mail 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 health commissioner or director of the licensing authority 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 final closure cost estimate, except as provided in paragraph (H) of this rule.
- (7) Following a determination by the health commissioner or director of the licensing authority that the owner or operator has, when required to do so, failed to perform final closure activities in accordance with rule 3745-400-12 of the Administrative Code, and license requirements, the health commissioner or director of the licensing authority may draw on the letter of credit.

- (8) If the owner or operator does not establish alternate financial assurance as specified in this rule and obtain written approval of such alternate financial assurance from the health commissioner or director of the licensing authority not later than ninety days after both the owner or operator and the health commissioner or director of the licensing authority have received notice from the issuing institution that it will not extend the letter of credit beyond the current expiration date, the health commissioner or director of the licensing authority shall draw on the letter of credit. The health commissioner or director of the licensing authority 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 health commissioner or director of the licensing authority 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 health commissioner or director of the licensing authority.
- (9) The health commissioner or director of the licensing authority shall return the original letter of credit to the issuing institution for termination when one of the following occurs:
 - (a) The owner or operator substitutes alternate financial assurance for final closure care as specified in this rule.
 - (b) The health commissioner or director of the licensing authority notifies the owner or operator, in accordance with paragraph (I) of this rule, that he is no longer required to maintain financial assurance for final closure of the facility.
- (F) Final closure insurance.
 - (1) The owner or operator may satisfy the requirements of this rule by obtaining final closure insurance which conforms to the requirements of this paragraph and by submitting a certificate of such insurance to the health commissioner or director of the licensing authority with the license application. 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 3745-400-14 of the Administrative Code.
 - (3) The final closure insurance policy shall be issued for a face amount at least equal to the final closure amount calculated in paragraph (A)(1) of this rule, except as provided in paragraph (H) 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 final closure insurance policy shall guarantee that funds will be available to close the facility and conduct closure of the facility whenever final closure is mandated. The policy shall also guarantee that once closure of the facility occurs, 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 health commissioner or director of the licensing authority, to such party or parties as the health commissioner or director of the licensing authority specifies.
- (5) When any area with financial assurance is certified closed in accordance with paragraph (B) of rule 3745-400-08 of the Administrative Code, the owner or operator, or any other person authorized to perform final closure, may request reimbursement for final closure expenditures by submitting a closure certification report to the health commissioner or director of the licensing authority. Not later than sixty days after receiving the request, the health commissioner or director of the licensing authority shall calculate in accordance with paragraph (A)(3) of this rule the amount to be reimbursed and shall instruct, in writing, the insurer to make such reimbursement.
- (6) The owner or operator shall maintain the policy in full force and effect until the health commissioner or director of the licensing authority consents to termination of the policy by the owner or operator as specified in paragraph (F)(10) of this rule. Failure to pay the premium, without substitution of alternate financial assurance as specified in this rule, constitutes a violation of these rules, warranting such remedy as the health commissioner or director of the licensing authority deems necessary. Such violation shall be deemed to begin upon receipt by the health commissioner or director of the licensing authority 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 to the owner or operator and to the health commissioner or director of the licensing authority. Cancellation, termination, or failure to renew may not occur, however, during the one-hundred-twenty-day period beginning on the first day that both the owner or operator

and the health commissioner or director of the licensing authority have received the notice, 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 one or more of the following occurs:

- (a) Activities outlined in paragraph (B) of rule 3745-400-12 of the Administrative Code occur.
 - (b) Final closure is ordered by the health commissioner or director of the licensing authority 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) The health commissioner or director of the licensing authority will give written consent to the owner or operator that he may terminate the insurance policy when one of the following occurs:
- (a) The owner or operator substitutes alternate financial assurance for final closure as specified in this rule.
 - (b) The health commissioner or director of the licensing authority notifies the owner or operator, in accordance with paragraph (I) of this rule, that he is no longer required to maintain financial assurance for final closure of the facility.
- (G) Financial test and corporate guarantee for final closure.
- (1) The owner or operator may satisfy the requirements of this rule by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator shall meet the criteria set forth in paragraph (G)(1)(a) and either paragraph (G)(1)(b) or (G)(1)(c) of this rule:
- (a) Less than fifty per cent of the parent corporation's gross revenues are derived from construction and demolition debris disposal operations.
 - (b) 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 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 final closure amount calculated in paragraph (A)(1) of this rule.
 - (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 final closure amount calculated in paragraph (A)(1) of this rule.
- (c) The owner or operator shall have the following:
- (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."
 - (ii) Tangible net worth at least six times the sum of the final closure amount calculated in paragraph (A)(1) of this rule.
 - (iii) Tangible net worth of at least ten million dollars.
 - (iv) Assets located in the United States amounting to at least ninety per cent of total assets or at least six times the sum of the final closure amount calculated in paragraph (A)(1) of this rule.
- (2) The phrase "final closure amount" as used in paragraph (G)(1) of this rule refers to the amount required to be shown in the letter from the owner's or operator's chief financial officer pursuant to paragraph (F) of rule 3745-400-14 of the Administrative Code.
- (3) To demonstrate that requirements of this test are met, the owner or operator shall submit the following items with the license application to the health commissioner or director of the licensing authority:
- (a) A letter signed by the owner or operator's chief financial officer and worded as specified in paragraph (F) of rule 3745-400-14 of the Administrative Code.
 - (b) A copy of a report by an independent certified public accountant examining the owner's or operator's financial statements for the most recently completed fiscal

year.

- (c) A special report from the owner or operator's independent certified public accountant to the owner or operator stating the following:
 - (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 most recent fiscal year with the amounts in such financial statements.
 - (ii) In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.
- (4) After the initial submission of the items specified in paragraph (G)(3) of this rule, the owner or operator shall send updated information to the health commissioner or director of the licensing authority not later than ninety days after the close of each succeeding fiscal year. This information shall include all three items specified in paragraph (G)(3) of this rule.
- (5) If the owner or operator no longer meets the requirements of paragraph (G)(1) of this rule, notice shall be sent to the health commissioner or director of the licensing authority of the intent to establish alternate financial assurance as specified in this rule. The notice must be sent by certified mail 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. The owner or operator shall provide the alternate financial assurance not later than one hundred twenty days after the end of such fiscal year.
- (6) The health commissioner or director of the licensing authority may, based on a reasonable belief that the owner or operator no longer meets the requirements of paragraph (G)(1) of this rule, require reports of financial condition at any time from the owner or operator in addition to those specified in paragraph (G)(3) of this rule. If the health commissioner or director of the licensing authority finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of paragraph (G)(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 health commissioner or director of the licensing authority may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner or operator's financial statements submitted pursuant to paragraph (G)(3)(b) of this rule. An adverse opinion or disclaimer of opinion will be cause for disallowance. The health commissioner or director of the licensing authority 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 (G)(3) of this rule when one of the following occurs:
 - (a) The owner or operator substitutes alternate financial assurance for final closure as specified in this rule.
 - (b) The health commissioner or director of the licensing authority notifies the owner or operator, in accordance with paragraph (I) of this rule, that he is no longer required to maintain financial assurance for final closure of the facility.
- (9) The owner or operator may meet the requirements of this rule by obtaining a written guarantee, hereafter referred to as a "corporate guarantee". The guarantor shall be the parent corporation of the owner or operator. The guarantor shall meet the requirements for licensees in paragraphs (G)(1) to (G)(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 3745-400-14 of the Administrative Code. The corporate guarantee shall accompany the items sent to the health commissioner or director of the licensing authority as specified in paragraph (G)(3) of this rule. The terms of the corporate guarantee shall provide the following:
 - (a) If the owner or operator fails to perform final closure of a facility provided for by the corporate guarantee in accordance with the Chapters 3745-400 and 3745-37 of the Administrative Code and license requirements, the guarantor shall do so or shall establish a trust fund, in the name of the owner or operator, as specified in paragraph (B) of this rule.
 - (b) The corporate guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the health commissioner or director of the licensing authority. 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 health commissioner or director of the licensing authority have received notice of cancellation, as evidenced by the

return receipts.

- (c) 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 health commissioner or director of the licensing authority 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.
- (H) Use of multiple financial mechanisms. The owner or operator may satisfy the requirements of this rule by establishing more than one financial mechanism for each facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a final closure trust fund, letters of credit, and insurance. The mechanisms shall be as specified in paragraphs (A), (B), (D), and (E) 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 final closure cost estimate. If a 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 fund may be established for two or more mechanisms. The health commissioner or director of the licensing authority may invoke use of any or all of the mechanisms, in accordance with paragraphs (A), (B), (D), and (E) of this rule, to provide for final closure of the facility.
- (I) Release of the owner or operator from the requirements of this rule. Upon the receipt of the written concurrence of the health commissioner or director of the licensing authority that closure is completed for the facility as required in paragraph (G) in rule 3745-400-12 of the Administrative Code, the owner or operator is thereby notified that he is no longer required, by this rule, to maintain financial assurance for final closure of the particular facility.

Effective: August 31, 2002

R.C. 119.032 review dates: May 9, 2001 ; August 31, 2007

Certification: _____

June 24, 2002
(Date)

Promulgated Under: R.C. Chapter 119
Statutory Authority: R.C. Section 3714.02
Rule Amplifies: R.C. Section 3714.02
Prior Effective Dates: September 30, 1996