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3745-520-910

Financial assurance for post-closure care of a C&DD facility.

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, test methods, federal rules, and federal statutory provisions referenced in this rule, see rule 3745-500-03 of the Administrative Code titled "Incorporation by reference."]

- (A) A cost estimate for performing the post-closure care activities required by rule 3745-520-750 of the Administrative Code shall be calculated in current dollars and be based on a third party being paid prevailing wages to conduct those activities. The cost estimate shall be accurate, complete, and appropriate for the post-closure care activities and length of time of the post-closure care period.
- (B) The post-closure care financial assurance instrument shall contain an itemized written cost estimate calculated in accordance with paragraph (A) of this rule and shall be funded in an amount not less than the calculated post-closure care cost estimate. However, the licensing authority may determine the amount of financial assurance for post-closure care of a C&DD facility if the cost estimate provided by the owner or operator is inaccurate, incomplete, or inappropriate. If the licensing authority makes such a determination, the owner or operator shall fund the amount determined by the licensing authority.
- (C) After executing and funding a post-closure care financial assurance instrument, financial assurance for post-closure care shall be maintained and may be released only in accordance with paragraph (N) of this rule. If an order extending the post-closure care period is issued pursuant to rule 3745-520-755 of the Administrative Code, the owner or operator may be required to maintain financial assurance for post-closure care beyond a five-year period after closure.
- (D) Review of post-closure care financial assurance instrument.
  - (1) The owner or operator shall adjust the amount of the financial assurance instrument according to the cost estimates calculated pursuant to paragraphs (A) and (B) of this rule. Whenever the post-closure care cost estimate increases to an amount greater than the amount of the financial assurance maintained, the owner or operator shall cause the amount of the financial assurance instrument to be increased to an amount at least equal to the post-closure care cost estimate and submit evidence of such increase to the licensing authority or obtain alternative financial assurance, as specified in this rule, to compensate for the increase. The amount of the financial assurance instrument shall be increased not later than sixty days after the increased cost estimate is calculated or by December thirty-first, whichever occurs first, and at least prior to license issuance.

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(2) The owner or operator may use an existing financial assurance instrument to satisfy all or part of the financial assurance requirements of this rule as long as the requirements of paragraph (E) of this rule are met.

(E) The owner or operator shall select a post-closure care financial assurance mechanism from the list of mechanisms specified in paragraphs (F), (G), (H), (I), or (J) of 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 that conforms to this rule and by submitting an originally signed duplicate of the trust agreement to the licensing authority. 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 3745-520-930 of the Administrative Code and the trust agreement shall be accompanied by a formal certification of acknowledgment.

(3) The owner or operator shall fully fund the trust fund prior to the date of license issuance. The owner or operator shall submit to the licensing authority a receipt from the trustee for the deposit made into the trust fund.

(4) If the owner or operator establishes a post-closure care trust fund to replace one or more alternative mechanisms specified in this rule, the owner or operator shall fully fund the trust fund in an amount at least equal to the post-closure care cost estimate determined in accordance with paragraphs (A) and (B) of this rule.

(5) After beginning post-closure care, the owner or operator, or any other person authorized to perform post-closure care, may request reimbursement for post-closure care expenditures by submitting itemized bills to the licensing authority for post-closure care activities performed. Upon request for reimbursement, the licensing authority shall determine the amount to be reimbursed and shall instruct, in writing, the trustee to make such reimbursement in accordance with paragraph (M) of this rule.

(6) The licensing authority may agree to termination of the trust fund when either of the following occurs:

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

(b) The licensing authority notifies the owner or operator in accordance with paragraph (N) of this rule that the owner or operator is no longer required

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by this rule to maintain financial assurance for post-closure care of the C&DD 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 that conforms to this rule and by submitting the originally signed surety bond to the licensing authority. At a minimum, the surety bond company issuing the surety bond shall 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 3745-520-930 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 the date the surety bond is obtained. Under the terms of the surety bond, all payments made thereunder shall be deposited by the surety bond company directly into the standby trust fund in accordance with instructions from the licensing authority. 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 submitted with the surety bond.

(b) Until the standby trust fund is funded, pursuant to the requirements of this rule, a deposit into the standby trust fund as specified in paragraph (F) of this rule is not required.

(4) The surety 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 surety bond before the beginning of post-closure care.

(b) Fund the standby trust fund in an amount equal to the penal sum of the surety bond not later than fifteen days after closure is required in compliance with paragraph (B) of rule 3745-520-710 of the Administrative Code.

(c) Provide alternative financial assurance as specified in this rule and obtain written approval of the alternative financial assurance from the licensing authority not later than ninety days after both the owner or operator and the

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licensing authority receive notice of cancellation of the surety bond from the surety bond company.

(5) Under the terms of the surety bond, the surety bond company shall become liable on the surety bond obligation when the owner or operator fails to perform as guaranteed by the surety bond.

(6) Except as provided in paragraph (K) of this rule, the penal sum of the surety bond shall be in an amount at least equal to the post-closure care cost estimate determined in accordance with paragraphs (A) and (B) of this rule.

(7) Under the terms of the surety bond, the surety bond shall remain in full force and effect unless the surety bond company sends written notice of cancellation by certified mail or other form of mail accompanied by a receipt to the owner or operator, the approved board of health, and the director. Cancellation shall not occur during the period of one hundred twenty days beginning on the first day that both the owner or operator and the licensing authority have received the notice of cancellation, as evidenced by the return receipts.

(8) The owner or operator may cancel the surety bond if the licensing authority has given prior written approval. The licensing authority may provide such written approval when one of the following occurs:

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

(b) The licensing authority notifies the owner or operator in accordance with paragraph (N) of this rule that the owner or operator is no longer required to maintain financial assurance for post-closure care of the C&DD 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 that conforms to this rule and by submitting the originally signed surety bond to the licensing authority. The surety bond company issuing the surety 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 3745-520-930 of the Administrative Code.

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- (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 the date the surety bond is obtained. Under the terms of the surety bond, all payments made thereunder shall be deposited by the surety bond company directly into the standby trust fund in accordance with instructions from the licensing authority. 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 submitted with the surety bond.
  - (b) Until the standby trust fund is funded, pursuant to the requirements of this rule, a deposit into the standby trust fund as specified in paragraph (F) of this rule is not required.
- (4) The surety bond shall guarantee that the owner or operator shall do one of the following:
- (a) Perform post-closure care in accordance with rule 3745-520-750 of the Administrative Code and other requirements of any authorizing documents.
  - (b) Provide alternative financial assurance as specified in this rule, and obtain written approval of the alternative financial assurance from the licensing authority not later than ninety days after both the owner or operator and the licensing authority receive notice of cancellation of the surety bond from the surety bond company.
- (5) Under the terms of the surety bond, the surety bond company shall become liable on the surety bond obligation when the owner or operator fails to perform as guaranteed by the surety bond. Following a determination by the approved board of health or the director that the owner or operator has failed to perform post-closure care activities in accordance with rule 3745-520-750 of the Administrative Code and requirements of any authorizing documents, the surety bond company shall perform post-closure care activities in accordance with rule 3745-520-750 of the Administrative Code and requirements of any authorizing documents or shall deposit the amount of the penal sum of the surety bond into the trust fund.
- (6) The penal sum of the surety bond shall be in an amount at least equal to the post-closure care cost estimate determined in accordance with paragraphs (A) and (B) of this rule.
- (7) Under the terms of the surety bond, the surety bond shall remain in full force and effect unless the surety bond company sends written notice of cancellation by certified mail or other form of mail accompanied by a receipt to the owner or operator, the approved board of health, and the director. Cancellation shall not

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occur during the period of one hundred twenty days beginning on the first day that both the owner or operator and the licensing authority have received the notice of cancellation, as evidenced by the return receipts.

(8) The owner or operator may cancel the surety bond if the licensing authority has given prior written approval. The licensing authority may provide such written approval when one of the following occurs:

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

(b) The licensing authority notifies the owner or operator in accordance with paragraph (N) of this rule that the owner or operator is no longer required to maintain financial assurance for post-closure care of the C&DD facility.

(9) The surety bond company 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 licensing authority in accordance with this rule that the owner or operator is no longer required to maintain financial assurance for post-closure care of the C&DD facility.

(I) Post-closure care letter of credit.

(1) The owner or operator may satisfy the requirements of this rule by obtaining an irrevocable standby letter of credit that conforms to the requirements of this rule and by having the originally signed letter of credit delivered to the licensing authority. The issuing institution shall be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency.

(2) The wording of the letter of credit shall be identical to the wording specified in paragraph (D) of rule 3745-520-930 of the Administrative Code.

(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 not later than the date the letter of credit is obtained. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the licensing authority shall be deposited directly by the issuing institution into the standby trust fund in accordance with instructions from the licensing authority. 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 submitted with the letter of credit.

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- (b) Until the standby trust fund is funded, pursuant to the requirements of this rule, a deposit into the standby trust fund as specified in paragraph (F) of this rule is 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 C&DD facility and the owner or operator and the amount of funds assured for post-closure care of the C&DD 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 shall 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 the owner or operator, the approved board of health, 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 period of one hundred twenty days shall begin on the day when the owner or operator, licensing authority, and director have received the notice, as evidenced by the return receipts.
- (6) Except as provided in paragraph (K) of this rule, the letter of credit shall be in an amount at least equal to the post-closure care cost estimate determined in accordance with paragraphs (A) and (B) of this rule.
- (7) Following a determination by the approved board of health or the director that the owner or operator has failed to perform post-closure care activities in accordance with rule 3745-520-750 of the Administrative Code and requirements of any authorizing documents, the approved board of health or director may draw on the letter of credit.
- (8) If the owner or operator does not establish alternative financial assurance as specified in this rule and obtain written approval of such alternative financial assurance from the licensing authority not later than ninety days after the owner or operator, licensing authority, and director have received notice from the issuing institution that it shall not extend the letter of credit beyond the current expiration date, the approved board of health or director shall draw on the letter of credit. The approved board of health or 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 approved board of health or the director shall draw on the letter of credit if the owner or operator has failed to provide alternative financial assurance as specified in this rule and has failed to obtain written approval of such alternative financial assurance from the licensing authority.

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(9) 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 alternative financial assurance for post-closure care as specified in this rule.

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

(J) Post-closure care insurance.

(1) The owner or operator may satisfy the requirements of this rule by obtaining post-closure care insurance that conforms to this rule and by submitting an originally signed certificate of such insurance to the licensing authority.

(2) The owner or operator using insurance as a financial assurance mechanism shall submit documentation stating whether the insurer is a subsidiary or has a corporate, legal, or financial affiliation with the owner or operator. If the post-closure care insurance is issued by a subsidiary or affiliate, the owner or operator shall include a detailed written description of the relationship between the insurer and the owner and the operator.

(3) An insurer issuing an insurance policy in satisfaction of this rule 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. The owner or operator shall submit to the licensing authority the following information regarding the insurer's qualifications:

(a) The most recent A.M. Best rating of the insurer.

(b) Documentation demonstrating that the insurer is domiciled in the United States.

(c) The most recent report on examination from the insurance department from the insurer's state of domicile.

(d) Documentation demonstrating that the insurer has capital and surplus of at least one hundred million dollars.

(e) Documentation demonstrating that the insurer received an unqualified opinion of the insurer's annual financial statements from an independent certified public accountant.

(4) The licensing authority may disallow use of the insurer by the owner or operator on the basis of one or more of the following:

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- (a) The A.M. Best rating is less than A-.
- (b) The report on examination does not demonstrate that the status of the insurer is satisfactory.
- (c) The opinion expressed by the independent certified public accountant in the report on examination of the insurer's financial statements.
- (5) The wording of the certificate of insurance shall be identical to the wording specified in paragraph (E) of rule 3745-520-930 of the Administrative Code.
- (6) Except as provided in paragraph (K) of this rule, the post-closure care insurance policy shall be issued for a face amount at least equal to the amount of the post-closure care cost estimate determined in accordance with paragraphs (A) and (B) of this rule. Face amount shall be the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer shall not change the face amount, but the insurer's future liability will be lowered by the amount of the payments.
- (7) The post-closure care insurance policy shall guarantee that funds shall be available to conduct post-closure care of the C&DD facility whenever post-closure care begins. The policy shall also guarantee that once post-closure care of the C&DD facility begins, the insurer shall be responsible for paying out funds, up to an amount equal to the face amount of the policy. Upon the direction of the licensing authority, payment shall be made to such party or parties as the licensing authority specifies.
- (8) After beginning post-closure care, the owner or operator, or any other person authorized to perform post-closure care activities, may request reimbursement for post-closure care expenditures. The licensing authority shall calculate in accordance with paragraph (M) of this rule the amount to be reimbursed and shall instruct, in writing, the insurer to make such reimbursement.
- (9) The owner or operator shall maintain the policy in full force and effect until the licensing authority consents to termination of the policy by the owner or operator as specified in paragraph (J)(13) of this rule. Failure to pay the premium, without substitution of alternative financial assurance as specified in this rule, constitutes a violation of these rules, warranting such remedy as the licensing authority deems necessary. Such violation shall be deemed to begin upon receipt by 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.

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- (10) 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.
- (11) 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 licensing authority at least one hundred twenty days prior to the date of cancellation. Cancellation, termination, or failure to renew may not occur during the period of one hundred twenty days beginning on the first day that both the owner or operator and the licensing authority have received the notice, as evidenced by the return receipts.
- (12) If the licensing authority disallows use of the insurer, the owner or operator shall provide alternative financial assurance as specified in this rule not later than thirty days after notification of the disallowance of the insurer.
- (13) The licensing authority may give written approval that the owner or operator may terminate the insurance policy when one of the following occurs:
- (a) The owner or operator substitutes alternative financial assurance for post-closure care as specified in this rule.
  - (b) The licensing authority notifies the owner or operator in accordance with paragraph (N) of this rule, that the owner or operator is no longer required to maintain financial assurance for post-closure care of the C&DD facility.
- (K) Use of multiple financial assurance mechanisms. The owner or operator may satisfy the requirements of this rule by establishing more than one financial assurance mechanism for the C&DD facility. The mechanisms are limited to trust funds, surety bonds guaranteeing payment into a post-closure care trust fund, letters of credit, and insurance. The mechanisms shall conform to paragraphs (F), (G), (I), and (J) of this rule, except that it is the combination of mechanisms, rather than each single mechanism, that shall provide financial assurance for an amount at least equal to the post-closure care cost estimate calculated in accordance with paragraphs (A) and (B) of this rule. 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 licensing authority may invoke use of any or all of the mechanisms in accordance with paragraphs (F), (G), (I), and (J) of this rule to provide for post-closure care of the C&DD facility.

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(L) 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 the requirements of this rule for more than one C&DD facility. Evidence of financial assurance submitted to the licensing authority shall include a list showing, for each C&DD 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 C&DD facility.

(M) Release of funds. Reimbursement shall be made as follows:

(1) Release of funds during post-closure care. The owner or operator or any other person authorized to perform post-closure care activities shall receive reimbursement from the financial assurance mechanism or a reduction in the amount of financial assurance maintained in accordance with this rule after the licensing authority's written concurrence that the post-closure care activities listed in the request for reimbursement or reduction have been performed in accordance with rule 3745-520-750 of the Administrative Code.

(2) Release of funds after post-closure care period has ended. The owner or operator or any other person authorized to perform post-closure care activities shall receive reimbursement of funds or termination of the financial assurance required under this rule only after post-closure care has been completed in accordance with rule 3745-520-750 of the Administrative Code.

(N) Release of the owner or operator from the requirements of this rule.

(1) After the completion of the post-closure care period in accordance with rule 3745-520-750 of the Administrative Code, the owner or operator may request written approval to terminate financial assurance for post-closure care of the particular C&DD facility in accordance with this rule.

(2) The board of health or the director may notify the owner or operator that financial assurance may be terminated if the board of health or director has issued written concurrence that the owner or operator is no longer required by this rule to maintain financial assurance for post-closure care of the C&DD facility and the owner or operator has requested release from financial assurance obligations.