

3745-66-43

Financial assurance for facility closure.

An owner or operator of each facility ~~must~~shall establish financial assurance for closure of the facility. ~~He must~~The owner or operator shall choose from among the options specified in paragraphs (A) to (E) of this rule.

(A) Closure trust fund.

- (1) An owner or operator may satisfy the requirements of this rule by establishing a closure trust fund which conforms to the requirements of paragraphs (A) to (A)(11)(b) of this rule and submitting an originally signed duplicate of the trust agreement to the director by certified mail. The trustee ~~must~~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 ~~of Ohio~~ agency.
- (2) The wording of the trust agreement ~~must~~shall be identical to the wording specified in paragraph (A)(1) of rule 3745-55-51 of the Administrative Code and the trust agreement ~~must~~shall be accompanied by a formal certification of acknowledgement [for an example, see paragraph (A)(2) of rule 3745-55-51 of the Administrative Code.] "Schedule A" of the trust agreement ~~must~~shall be updated within sixty days after a change in the amount of the current closure cost estimate covered by the agreement.
- (3) Payments to the trust fund ~~must~~shall be made annually by the owner or operator over the twenty years beginning on August 26, 1983 or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; ~~this~~. This period is hereafter referred to as the "pay-in period." The payments to the closure trust fund ~~must~~shall be made as follows:
 - (a) The first payment ~~must~~shall be made by August 26, 1983, except as provided in paragraph (A)(5) of this rule. The first payment ~~must~~shall be at least equal to the current closure cost estimate except as provided in paragraph (F) of this rule, divided by the number of years in the pay-in period.
 - (b) Subsequent payments ~~must~~shall be made no later than thirty days after each anniversary date of the first payment. The amount of each subsequent payment ~~must~~shall be determined by this formula:

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

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

- (4) The owner or operator may accelerate payments into the trust fund or ~~he~~the owner or operator may deposit the full amount of the current closure cost estimate at the time the fund is established. However, ~~he must~~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 (A)(3) of this rule.
- (5) If the owner or operator establishes a closure trust fund after having initially used one or more alternate mechanisms specified in this rule, ~~his~~the owner's or operator's first payment ~~must~~shall be at least the amount that the fund would have contained if the trust fund were established initially and annual payments made as specified in paragraph (A)(3) of this rule.
- (6) After the pay-in period is completed, whenever the current closure cost estimate changes, the owner or operator ~~must~~shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within sixty days after the change in the cost estimate, ~~must~~shall either deposit an amount into the fund so that ~~its~~the value of the trust fund after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance as specified in this rule to cover the difference.
- (7) If the value of the trust fund is greater than the total amount of the current closure cost estimate, the owner or operator may submit a written request to the director for release of the amount in excess of the current closure cost estimate.
- (8) If an owner or operator substitutes other financial assurance as specified in this rule for all or part of the trust fund, ~~he~~the owner or operator may submit a written request to the director for release of the amount in excess of the current closure cost estimate covered by the trust fund.
- (9) Within sixty days after receiving a request from the owner or operator for release of funds as specified in paragraph (A)(7) or (A)(8) of this rule, the director will instruct the trustee to release to the owner or operator such funds as the director specifies in writing.
- (10) After beginning partial or final closure, an owner or operator or another person authorized to conduct partial or final closure may request reimbursement for partial or final closure expenditures by submitting itemized bills to the director. The owner or operator may request reimbursement for partial

closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over ~~its~~the remaining operating life of the facility. No later than sixty days after receiving bills for partial or final closure activities, the director will instruct the trustee to make reimbursements in those amounts as the director specifies in writing, if the director determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the director has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, ~~he~~the director may withhold reimbursement of such amounts as ~~he~~the director deems prudent until ~~he~~the director determines, in accordance with paragraph (H) of this rule, that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the director does not instruct the trustee to make such reimbursements, ~~he~~the director will provide to the owner or operator a detailed written statement of reasons.

(11) The director will agree to termination of the trust when either:

- (a) The owner or operator substitutes alternate financial assurance as specified in this rule; ~~or,~~
- (b) The director releases the owner or operator from the requirements of this rule in accordance with paragraph (H) of this rule.

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

- (1) An owner or operator may satisfy the requirements of this rule by obtaining a surety bond which conforms to the requirements of paragraphs (B) to (B)(9) of this rule and submitting the bond to the director by certified mail. The surety company issuing the bond ~~must~~, at a minimum, 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 July first; ~~interim~~. Interim changes in the circular are also published in the "Federal Register."]

- (2) The wording of the surety bond ~~must~~shall be identical to the wording specified in paragraph (B) of rule 3745-55-51 of the Administrative Code.
- (3) The owner or operator who uses a surety bond to satisfy the requirements of this rule ~~must~~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 ~~must~~shall meet the requirements specified in paragraph (A) of this rule, except that:

- (a) An originally signed duplicate of the trust agreement ~~must~~shall be submitted to the director with the surety bond;~~and.~~
 - (b) Until the standby trust fund is funded pursuant to ~~the requirements of this rule,~~ the following are not required by rules 3745-66-40 to 3745-66-48 of the Administrative Code:
 - (i) Payments into the trust fund as specified in paragraph (A) of this rule;~~;~~
 - (ii) Updating of "Schedule A" of the trust agreement [see paragraph (A) of rule 3745-55-51 of the Administrative Code] to show current closure cost estimates;~~;~~
 - (iii) Annual valuations as required by the trust agreement;~~and.~~
 - (iv) Notices of nonpayment as required by the trust agreement.
- (4) The bond ~~must~~shall guarantee that the owner or operator will:
- (a) Fund the standby trust fund in an amount equal to the penal sum of the bond at least sixty days prior to the expected date of the beginning of final closure of the facility; or
 - (b) Fund the standby trust fund in an amount equal to the penal sum within fifteen days after an order to begin final closure in accordance with rules 3745-66-10 to 3745-66-21 of the Administrative Code is issued by the director, or by an Ohio court, or by another court of competent jurisdiction, or by a U.S. district court, or within fifteen days after issuance of a notice of revocation of the permit by the director; or
 - (c) Provide alternate financial assurance as specified in this rule and obtain the director's written approval of the assurance provided within ninety days after receipt by both the owner or operator and the director of a notice of cancellation of the bond from the surety.

- (5) Under the terms of the bond, the surety ~~must~~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 ~~must~~shall be in an amount at least equal to the amount of the current closure cost estimate, except as provided in paragraph (F) of this rule.
- (7) Whenever the current closure cost estimate increases to an amount greater than the penal sum of the bond, the owner or operator, within sixty days after the increase, ~~must~~shall either cause the penal sum of the bond to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the director, or shall obtain other financial assurance as specified in this rule to cover the increase. Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the director.
- (8) Under the terms of the bond, the bond ~~must~~shall remain in force unless the surety sends written notice of cancellation by certified mail to the owner or operator and to the director. Cancellation may not occur, however, during the one hundred twenty days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the director, as evidenced by the return receipts.
- (9) The owner or operator may cancel the bond if the director has given prior written consent based on the director's receipt of evidence of alternate financial assurance as specified in this rule.

(C) Closure letter of credit.

- (1) An owner or operator may satisfy the requirements of this rule by obtaining an irrevocable standby letter of credit which conforms to the requirements of paragraphs (C) to (C)(10)(b) of this rule and submitting ~~it~~ the letter of credit to the director by certified mail. The issuing institution ~~must~~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 ~~of Ohio~~ agency.
- (2) The wording of the letter of credit ~~must~~shall be identical to the wording specified in paragraph (D) of rule 3745-55-51 of the Administrative Code.
- (3) An owner or operator who uses a letter of credit to satisfy the requirements of this rule ~~must~~shall also establish a standby trust fund by the time the letter of

credit is obtained. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the director ~~must~~shall be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the director. The standby trust fund ~~must~~shall meet the requirements of the trust fund specified in paragraph (A) of this rule, except that:

- (a) An originally signed duplicate of the trust agreement ~~must~~shall be submitted to the director with the letter of credit; and
- (b) Unless the standby trust fund is funded pursuant to ~~the requirements of~~ this rule, the following are not required:
 - (i) Payments into the trust as specified in paragraph (A) of this rule;~~;~~
 - (ii) Updating of "Schedule A" of the trust agreement [see paragraph (A) of rule 3745-55-51 of the Administrative Code] to show current closure cost estimates;~~;~~
 - (iii) Annual valuations as required by the trust agreement;~~and,~~
 - (iv) Notices of a nonpayment as required by the trust agreement.
- (4) The letter of credit ~~must~~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 U.S. EPA identification number, name, and address of the facility;~~;~~ and the amount of funds assured for closure of the facility by the letter of credit.
- (5) The letter of credit ~~must~~shall be irrevocable and issued for a period of at least one year. The letter of credit ~~must~~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 before the current expiration date, the issuing institution notifies both the owner or operator and the director by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the one hundred twenty days will begin on the date when both the owner or operator and the director have received the notice, as evidenced by the return receipts.
- (6) The letter of credit ~~must~~shall be issued in an amount at least equal to the current closure cost estimate, except as provided in paragraph (F) of this rule.
- (7) Whenever the current closure cost estimate increases to an amount greater than

the amount of the credit, the owner or operator, within sixty days after the increase, ~~must~~shall either cause the amount of the credit to be increased so that ~~it~~the amount of the credit at least equals the current closure cost estimate and submit evidence of such increase to the director, or shall obtain other financial assurance as specified in this rule to cover the increase. Whenever the current closure cost estimate decreases, the amount of the credit may be reduced to the amount of the current closure cost estimate following written approval by the director.

- (8) Following a determination pursuant to Chapter 3734. of the Revised Code or Section 3008 of RCRA that the owner or operator has failed to perform final closure in accordance with the approved closure plan and other requirements of Chapters 3745-65 to 3745-69 and 3745-256 of the Administrative Code when required to do so, the director may draw on the letter of credit.
- (9) If the owner or operator does not establish alternate financial assurance as specified in this rule and obtain written approval of such alternate assurance from the director within ninety days after receipt by both the owner or operator and the director of a notice from the issuing institution that ~~it~~the issuing institution has decided not to extend the letter of credit beyond the current expiration date, the director will draw on the letter of credit. The director may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last thirty days of any such extension, the director will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this rule and obtain written approval of such assurance from the director.
- (10) The director will return the letter of credit to the issuing institution for termination when either:
- (a) An owner or operator substitutes alternate financial assurance as specified in this rule; ~~or,~~
 - (b) The director releases the owner or operator from the requirements of this rule in accordance with paragraph (H) of this rule.

(D) Closure insurance.

- (1) An owner or operator may satisfy the requirements of this rule by obtaining closure insurance which conforms to the requirements of paragraphs (D) to (D)(10)(b) of this rule and submitting a certificate of such insurance to the director. By August 26, 1983, the owner or operator ~~must~~shall submit to the director a letter from an insurer stating that the insurer is considering issuance

of closure insurance conforming to the requirements of paragraphs (D) to (D)(10)(b) of this rule to the owner or operator. Within ninety days after August 26, 1983, the owner or operator ~~must~~shall submit the certificate of insurance to the director or establish other financial assurance as specified in this rule. At a minimum, the insurer ~~must~~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 ~~must~~shall be identical to the wording specified in paragraph (E) of rule 3745-55-51 of the Administrative Code.
- (3) The closure insurance policy ~~must~~shall be issued for a face amount at least equal to the current closure cost estimate, except as provided in paragraph (F) of this rule. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.
- (4) The closure insurance policy ~~must~~shall guarantee that funds will be available to close the facility whenever final closure occurs. The policy ~~must~~shall also guarantee that once final closure 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) After beginning partial or final closure, an owner or operator or any other person authorized to conduct closure may request reimbursement for closure expenditures by submitting itemized bills to the director. The owner or operator may request reimbursement for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over ~~its~~the remaining operating life of the facility. Within sixty days after receiving bills for closure activities, the director will determine whether the partial or final closure expenditures are in accordance with the approved closure plan or otherwise justified, and if so, ~~he~~the director will instruct the insurer to make reimbursement in such amounts as the director specifies in writing. If the director has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the face amount of the policy, ~~he~~the director may withhold reimbursement of such amounts as ~~he~~the director deems prudent until ~~he~~the director determines, in accordance with paragraph (H) of this rule, that the owner or operator is no longer required to maintain financial assurance for final closure of the particular facility. If the director does not instruct the insurer to make such reimbursement, ~~he~~the director will provide to the owner or operator a detailed written statement of reasons.

- (6) The owner or operator ~~must~~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 (D)(10) of this rule. Failure to pay the premium, without substitution of alternate financial assurance as specified in this rule, will constitute a significant violation, warranting such remedy as the director deems necessary. Such violation will be deemed to begin upon receipt by the director of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.
- (7) Each policy ~~must~~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 ~~must~~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 ~~must~~, at a minimum, shall provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the director. Cancellation, termination, or failure to renew may not occur, however, during the one hundred twenty days beginning with the date of receipt of the notice by both the director and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration, any of the following occurs:
- (a) The director deems the facility abandoned;~~or~~.
 - (b) A permit is revoked or terminated;~~or~~.
 - (c) Closure is ordered by the director or a U.S. district court or other court of competent jurisdiction;~~or~~.
 - (d) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (bankruptcy), U.S. Code;~~or~~.
 - (e) The premium due is paid.
- (9) Whenever the current closure cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within sixty days after the increase, ~~must~~shall either cause the face amount to be increased to an

amount at least equal to the current closure cost estimate and submit evidence of such increase to the director, or shall obtain other financial assurance as specified in this rule to cover the increase. Whenever the current closure cost estimate decreases, the face amount may be reduced to the amount of the current closure cost estimate following written approval by the director.

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

(a) An owner or operator substitutes alternate financial assurance as specified in this rule; ~~or,~~

(b) The director releases the owner or operator from the requirements of this rule in accordance with paragraph (H) of this rule.

(E) Financial test and corporate guarantee for closure.

(1) An owner or operator may satisfy the requirements of this rule by demonstrating that ~~he~~the owner or operator passes a financial test as specified in paragraphs (E) to (E)(10)(c) of this rule. To pass this test, the owner or operator ~~must~~shall meet the criteria of either paragraph (E)(1)(a) or (E)(1)(b) of this rule.

(a) The owner or operator ~~must~~shall have:

(i) Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; ~~and,~~

(ii) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; ~~and,~~

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

(iv) Assets located in the United States amounting to at least ninety per cent of ~~his~~the owner's or operator's total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

- (b) The owner or operator ~~must~~shall have:
- (i) A current rating for ~~his~~the owner's or operator's most recent bond issuance of "AAA, AA, A, or BBB" as issued by "Standard and Poor's" or "Aaa, Aa, A, or Baa" as issued by "Moody's"; ~~and~~
 - (ii) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; ~~and~~.
 - (iii) Tangible net worth at least ten million dollars; ~~and~~.
 - (iv) Assets located in the United States amounting to at least ninety per cent of ~~his~~the owner's or operator's total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.
- (2) The phrase "current closure and post-closure cost estimates" as used in paragraph (E)(1) of this rule refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer as specified in paragraph (F) of rule 3745-55-51 of the Administrative Code. The phrase "current plugging and abandonment cost estimates" as used in paragraph (E)(1) of this rule refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer as specified in paragraph (F) of rule 3745-55-51 of the Administrative Code.
- (3) To demonstrate that ~~he~~the owner or operator meets this test, the owner or operator ~~must~~shall submit the following items to the director:
- (a) A letter signed by the owner's or operator's chief financial officer and worded as specified in paragraph (F) of rule 3745-55-51 of the Administrative Code; ~~and~~.
 - (b) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; ~~and~~.
 - (c) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that both:

- (i) ~~He~~The 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 latest fiscal year with the amounts in such financial statements;~~and.~~
- (ii) In connection with that procedure, no matters came to ~~his~~the accountant's attention which caused ~~him~~the accountant to believe that the specified data should be adjusted.
- (4) The owner or operator may obtain an extension of the time allowed for submittal of the documents specified in paragraph (E)(3) of this rule if the fiscal year of the owner or operator ends during the ninety days prior to August 26, 1983 and if the year-end financial statements for that fiscal year will be audited by an independent certified public accountant. The extension will end no later than ninety days after the end of the owner's or operator's fiscal year. To obtain the extension, the owner's or operator's chief financial officer ~~must~~shall send, by August 26, 1983, a letter to the director. This letter from the chief financial officer ~~must~~shall:
- (a) Request the extension;~~;~~
 - (b) Certify that ~~he~~the chief financial officer has grounds to believe that the owner or operator meets the criteria of the financial test;~~;~~
 - (c) Specify for each facility to be covered by the test the U.S. EPA identification number, name, address, and current closure and post-closure cost estimates to be covered by the test;~~;~~
 - (d) Specify the date ending the owner's or operator's last complete fiscal year before August 26, 1983;~~;~~
 - (e) Specify the date, no later than ninety days after the end of such fiscal year, when ~~he~~the owner or operator will submit the documents specified in paragraph (E)(3) of this rule;~~and.~~
 - (f) Certify that the year-end financial statements of the owner or operator for such fiscal year will be audited by an independent certified public accountant.
- (5) After the initial submittal of items specified in paragraph (E)(3) of this rule, the owner or operator ~~must~~shall send updated information to the director within

ninety days after the close of each succeeding fiscal year. This information ~~must~~shall consist of all three items specified in paragraph (E)(3) of this rule.

- (6) If the owner or operator no longer meets the requirements of paragraph (E)(1) of this rule, ~~he must~~the owner or operator shall send notice to the director of intent to establish alternate financial assurance as specified in this rule. The notice ~~must~~shall be sent by certified mail within ninety days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator ~~must~~shall provide the alternate financial assurance within one hundred twenty days after the end of such fiscal year.
- (7) The director ~~may~~, based on a reasonable belief that the owner or operator may no longer meet the requirements of paragraph (E)(1) of this rule, may require reports of financial condition at any time from the owner or operator in addition to those specified in paragraph (E)(3) of this rule. If the director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of paragraph (E)(1) of this rule, the owner or operator ~~must~~shall provide alternate financial assurance as specified in this rule within thirty days after notification of such a finding.
- (8) The director may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in ~~his~~the accountant's report on examination of the owner's or operator's financial statements [see paragraph (E)(3)(b) of this rule]. An adverse opinion or a disclaimer of opinion will be cause for disallowance. The director will evaluate other qualifications on an individual basis. The owner or operator ~~must~~shall provide alternate financial assurance as specified in this rule within thirty days after notification of the disallowance.
- (9) The owner or operator is no longer required to submit the items specified in paragraph (E)(3) of this rule when either:
 - (a) An owner or operator substitutes alternate financial assurance as specified in this rule; ~~or~~
 - (b) The director releases the owner or operator from the requirements of this rule in accordance with paragraph (H) of this rule.
- (10) An owner or operator may meet the requirements of this rule by obtaining a written guarantee. The guarantor ~~must~~shall be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial

business relationship" with the owner or operator. The guarantor ~~must~~shall meet the requirements for owners or operators in paragraphs (E)(1) to (E)(8) of this rule and ~~must~~shall comply with the terms of the guarantee. The wording of the guarantee ~~must~~shall be identical to the wording specified in paragraph (H) of rule 3745-55-51 of the Administrative Code. A certified copy of the guarantee ~~must~~shall accompany the items sent to the director as specified in paragraph (E)(3) of this rule. One of these items ~~must~~shall be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter ~~must~~shall describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter ~~must~~shall describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee ~~must~~shall provide that:

- (a) If the owner or operator fails to perform final closure of a facility covered by the corporate guarantee in accordance with the closure plan and other requirements of Chapters 3745-65 to 3745-69 and 3745-256 of the Administrative Code whenever required to do so, the guarantor will do so or establish a trust fund as specified in paragraph (A) of this rule in the name of the owner or operator.
 - (b) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and the director. Cancellation may not occur, however, during the one hundred twenty days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the director, as evidenced by the return receipts.
 - (c) If the owner or operator fails to provide alternate financial assurance as specified in this rule and obtain the written approval of such alternate assurance from the director within ninety days after receipt by both the owner or operator and the director of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the owner or operator.
- (F) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this rule by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds, letters of credit, and insurance. The mechanisms ~~must~~shall be as specified in paragraphs (A) to (D) of this rule, except that it is the combination of mechanisms, rather than the single mechanism, which ~~must~~shall provide financial assurance for an amount at least equal to the current closure 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 use any or all of the mechanisms to provide for closure of the facility.

(G) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in this rule to meet the requirements of this rule for more than one facility. Evidence of financial assurance submitted to the director ~~must~~shall include a list showing, for each facility, the U.S. EPA identification number, name, address, and the amount of funds for closure assured by the mechanism. The amount of funds available through the mechanism ~~must~~shall be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for closure of any of the facilities covered by the mechanism, the director may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

(H) Release of the owner or operator from the requirements of this rule. Within sixty days after receiving certifications from the owner or operator and a qualified professional engineer that final closure has been completed in accordance with the approved closure plan (see rule 3745-66-15 of the Administrative Code), the director will notify the owner or operator in writing that ~~he~~the owner or operator is no longer required by this rule to maintain financial assurance for final closure of the facility, unless the director has reason to believe that final closure has not been in accordance with the approved closure plan. The director will provide the owner or operator a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan.

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

Effective: 03/24/2017

Five Year Review (FYR) Dates: 11/29/2016 and 11/29/2021

CERTIFIED ELECTRONICALLY

Certification

02/15/2017

Date

Promulgated Under: 119.03
Statutory Authority: 3734.12
Rule Amplifies: 3734.12
Prior Effective Dates: 08/26/1983 (Emer.), 11/29/1983, 05/29/1985 (Emer.),
08/29/1985, 12/28/1987, 02/23/1989, 09/02/1997,
12/07/2000, 12/07/2004, 09/05/2010