

|->

Title 22@ Social Security

|->

Division 4.5@ Environmental Health Standards for the Management of Hazardous Waste

|->

Chapter 15@ Interim Status Standards for Owners and Operators of Hazardous Waste Transfer, Treatment, Storage, and Disposal Facilities

|->

Article 8@ Financial Requirements

|->

Section 66265.145@ Financial Assurance for Postclosure Care

66265.145 Financial Assurance for Postclosure Care

An owner or operator of a facility with a hazardous waste disposal unit shall establish and demonstrate to the Department financial assurance for postclosure care of the disposal unit(s). The owner or operator shall choose from the options as specified in subsections (a) through (e) and (h) of this section.

(a)

Postclosure trust fund.(1) An owner or operator may satisfy the requirements of this section by establishing a postclosure trust fund which conforms to the requirements of this subsection and submitting an originally signed duplicate of the trust agreement to the Department. 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 section 66264.151, subsection (a)(1). The trust agreement shall contain original signatures and shall be accompanied by a formal certification of acknowledgment (for example, see section 66264.151, subsection (a)(2)). Schedule A of the trust agreement shall be updated within 60 days after a change in the amount of the current postclosure cost estimate covered by the agreement. (3) Payments into the trust fund shall be made annually by the owner or operator over the ten (10) years beginning with the establishment of the trust fund or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is

hereafter referred to as the "pay-in period." The payments into the postclosure trust fund shall be made as follows: (A) The first payment shall be at least equal to the current postclosure cost estimate, except as provided in subsection (f) of this section, divided by the number of years in the pay-in period. (B) Subsequent payments shall be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment shall be determined by this formula: $\text{Next payment} = (\text{CE} - \text{CV}) / Y$ where CE is the current postclosure 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 deposit the full amount of the current postclosure cost estimate at the time the fund is established. However, the value of the fund shall be maintained at no less than the value that the fund would have if annual payments were made as specified in subsection (a)(3) of this section. (5) If the owner or operator establishes a postclosure trust fund after having used one or more alternate mechanisms specified in this section, the first payment shall be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made as specified in subsection (a)(3) of this section. (6) After the pay-in period is completed, whenever the current postclosure cost estimate changes during the operating life of the facility, the owner or operator 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 60 days after the change in the cost estimate, shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current postclosure cost estimate, or obtain other financial assurance as specified in this section to cover the difference. (7) During the operating life of the facility, if the value of the trust fund

is greater than the total amount of the current postclosure cost estimate, the owner or operator may submit a written request to the Department for release of the amount in excess of the current postclosure cost estimate. (8) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund, the owner or operator may submit a written request to the Department for release of the amount in excess of the current postclosure cost estimate covered by the trust fund. (9) Within 60 days after receiving a request from the owner or operator for release of funds as specified in subsection (a)(7) or (8) of this section, the Department will instruct the trustee to release to the owner or operator such funds as the Department specifies in writing. (10) Before final postclosure occurs, the value of the trust fund shall equal the amount of the current postclosure cost estimate. If the value of the fund is less than the amount of the current estimate, the owner or operator shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current postclosure cost estimate, or obtain other financial assurance, as specified in this section, to cover the difference. (11) During the period of postclosure care, the Department shall approve a release of funds if the owner or operator demonstrates to the satisfaction of the Department that the value of the trust fund exceeds the remaining cost of postclosure care. (12) An owner or operator or any other person authorized to conduct postclosure care may request reimbursements for postclosure expenditures by submitting itemized bills to the Department. Within 60 days after receiving bills for postclosure care activities, the Department will instruct the trustee to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the postclosure expenditures are in accordance with the approved postclosure plan or otherwise justified. If the Department does not instruct the trustee to make such

reimbursements, the owner or operator shall be provided a detailed written statement of reasons. (13) The Department will agree to termination of the trust when: (A) an owner or operator substitutes alternate financial assurance as specified in this section; or (B) the Department releases the owner or operator from the requirements in accordance with subsection (i) of this section.

(1)

An owner or operator may satisfy the requirements of this section by establishing a postclosure trust fund which conforms to the requirements of this subsection and submitting an originally signed duplicate of the trust agreement to the Department. 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 section 66264.151, subsection (a)(1). The trust agreement shall contain original signatures and shall be accompanied by a formal certification of acknowledgment (for example, see section 66264.151, subsection (a)(2)). Schedule A of the trust agreement shall be updated within 60 days after a change in the amount of the current postclosure cost estimate covered by the agreement.

(3)

Payments into the trust fund shall be made annually by the owner or operator over the ten (10) years beginning with the establishment of the trust fund or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereafter referred to as the "pay-in period." The payments into the postclosure trust fund shall be made as follows: (A) The first payment shall be at least equal to the current postclosure cost estimate, except as provided in subsection (f) of this section, divided by the number of years in the pay-in period. (B) Subsequent

payments shall be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment shall be determined by this formula: $\text{Next payment} = (\text{CE} - \text{CV}) / Y$ where CE is the current postclosure cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(A)

The first payment shall be at least equal to the current postclosure cost estimate, except as provided in subsection (f) of this section, divided by the number of years in the pay-in period.

(B)

Subsequent payments shall be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment shall be determined by this formula:

$\text{Next payment} = (\text{CE} - \text{CV}) / Y$ where CE is the current postclosure 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 deposit the full amount of the current postclosure cost estimate at the time the fund is established. However, the value of the fund shall be maintained at no less than the value that the fund would have if annual payments were made as specified in subsection (a)(3) of this section.

(5)

If the owner or operator establishes a postclosure trust fund after having used one or more alternate mechanisms specified in this section, the first payment shall be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made as specified in subsection (a)(3) of this section.

(6)

After the pay-in period is completed, whenever the current postclosure cost estimate

changes during the operating life of the facility, the owner or operator 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 60 days after the change in the cost estimate, shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current postclosure cost estimate, or obtain other financial assurance as specified in this section to cover the difference.

(7)

During the operating life of the facility, if the value of the trust fund is greater than the total amount of the current postclosure cost estimate, the owner or operator may submit a written request to the Department for release of the amount in excess of the current postclosure cost estimate.

(8)

If an owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund, the owner or operator may submit a written request to the Department for release of the amount in excess of the current postclosure cost estimate covered by the trust fund.

(9)

Within 60 days after receiving a request from the owner or operator for release of funds as specified in subsection (a)(7) or (8) of this section, the Department will instruct the trustee to release to the owner or operator such funds as the Department specifies in writing.

(10)

Before final postclosure occurs, the value of the trust fund shall equal the amount of the current postclosure cost estimate. If the value of the fund is less than the amount of the current estimate, the owner or operator shall either deposit an amount into the

fund so that its value after this deposit at least equals the amount of the current postclosure cost estimate, or obtain other financial assurance, as specified in this section, to cover the difference.

(11)

During the period of postclosure care, the Department shall approve a release of funds if the owner or operator demonstrates to the satisfaction of the Department that the value of the trust fund exceeds the remaining cost of postclosure care.

(12)

An owner or operator or any other person authorized to conduct postclosure care may request reimbursements for postclosure expenditures by submitting itemized bills to the Department. Within 60 days after receiving bills for postclosure care activities, the Department will instruct the trustee to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the postclosure expenditures are in accordance with the approved postclosure plan or otherwise justified. If the Department does not instruct the trustee to make such reimbursements, the owner or operator shall be provided a detailed written statement of reasons.

(13)

The Department will agree to termination of the trust when: (A) an owner or operator substitutes alternate financial assurance as specified in this section; or (B) the Department releases the owner or operator from the requirements in accordance with subsection (i) of this section.

(A)

an owner or operator substitutes alternate financial assurance as specified in this section; or

(B)

the Department releases the owner or operator from the requirements in accordance with subsection (i) of this section.

(b)

Surety bond guaranteeing payment into a postclosure trust fund. (1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this subsection and submitting the bond to the Department. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury. (2) The wording of the surety bond shall be identical to the wording specified in section 66264.151, subsection (b). The surety bond shall contain original signatures and shall be accompanied by the documents specified in this subsection. (3) The owner or operator who uses a surety bond to satisfy the requirements of this section shall also establish a standby trust fund. Under the terms of the bond, all payments made thereunder shall be deposited by the surety directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund must meet the requirements specified in subsection (a) of this section, except that: (A) an originally signed duplicate of the standby trust agreement shall be submitted to the Department with the surety bond; and (B) until the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations: 1. payments into the trust fund as specified in subsection (a) of this section; 2. updating of Schedule A of the trust agreement (see section 66264.151, subsection (a)) to show current postclosure cost estimates; 3. annual valuations as required by the trust agreement; and 4. notices of nonpayment as required by the trust agreement. (4) The bond shall guarantee that the owner or operator shall: (A) fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility; or (B) fund the standby trust fund in an amount equal to the penal sum within 15 days after an

administrative order to begin final closure issued by the Department becomes final, or within 15 days after an order to begin final closure is issued by a U.S. district court or other court of competent jurisdiction; or (C) provide alternate financial assurance as specified in this section, and obtain the Department's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the bond from the surety. (5) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. (6) The penal sum of the bond shall be in an amount at least equal to the current postclosure cost estimate, except as provided in subsection (f) of this section. (7) Whenever the current postclosure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, shall either cause the penal sum to be increased to an amount at least equal to the current postclosure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current postclosure cost estimate decreases, the penal sum may be reduced to the amount of the current postclosure cost estimate following written approval by the Department. (8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation shall not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipt. (9) The owner or operator may cancel the bond if the Department has given prior written consent based on receipt of evidence of alternate financial assurance as specified in this section.

An owner or operator may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this subsection and submitting the bond to the Department. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

(2)

The wording of the surety bond shall be identical to the wording specified in section 66264.151, subsection (b). The surety bond shall contain original signatures and shall be accompanied by the documents specified in this subsection.

(3)

The owner or operator who uses a surety bond to satisfy the requirements of this section shall also establish a standby trust fund. Under the terms of the bond, all payments made thereunder shall be deposited by the surety directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund must meet the requirements specified in subsection (a) of this section, except that:

(A) an originally signed duplicate of the standby trust agreement shall be submitted to the Department with the surety bond; and (B) until the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations: 1. payments into the trust fund as specified in subsection (a) of this section; 2. updating of Schedule A of the trust agreement (see section 66264.151, subsection (a)) to show current postclosure cost estimates; 3. annual valuations as required by the trust agreement; and 4. notices of nonpayment as required by the trust agreement.

(A)

an originally signed duplicate of the standby trust agreement shall be submitted to the Department with the surety bond; and

(B)

until the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations: 1. payments into the trust fund as specified in subsection (a) of this section; 2. updating of Schedule A of the trust agreement (see section 66264.151, subsection (a)) to show current postclosure cost estimates; 3. annual valuations as required by the trust agreement; and 4. notices of nonpayment as required by the trust agreement.

1.

payments into the trust fund as specified in subsection (a) of this section;

2.

updating of Schedule A of the trust agreement (see section 66264.151, subsection (a)) to show current postclosure cost estimates;

3.

annual valuations as required by the trust agreement; and

4.

notices of nonpayment as required by the trust agreement.

(4)

The bond shall guarantee that the owner or operator shall: (A) fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility; or (B) fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin final closure issued by the Department becomes final, or within 15 days after an order to begin final closure is issued by a U.S. district court or other court of competent jurisdiction; or (C) provide alternate financial assurance as specified in this section, and obtain the Department's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the bond from the

surety.

(A)

fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility; or

(B)

fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin final closure issued by the Department becomes final, or within 15 days after an order to begin final closure is issued by a U.S. district court or other court of competent jurisdiction; or

(C)

provide alternate financial assurance as specified in this section, and obtain the Department's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the bond from the surety.

(5)

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

(6)

The penal sum of the bond shall be in an amount at least equal to the current postclosure cost estimate, except as provided in subsection (f) of this section.

(7)

Whenever the current postclosure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, shall either cause the penal sum to be increased to an amount at least equal to the current postclosure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section to cover the increase.

Whenever the current postclosure cost estimate decreases, the penal sum may be reduced to the amount of the current postclosure cost estimate following written approval by the Department.

(8)

Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Department.

Cancellation shall not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipt.

(9)

The owner or operator may cancel the bond if the Department has given prior written consent based on receipt of evidence of alternate financial assurance as specified in this section.

(c)

Postclosure letter of credit. (1) An owner or operator may satisfy the requirements of this section by obtaining and submitting to the Department, an irrevocable standby letter of credit which conforms to the requirements of this subsection. 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 section 66264.151, subsection (d). The letter of credit shall contain original signatures and shall be accompanied by the documents specified in this subsection. (3) An owner or operator who uses a letter of credit to satisfy the requirements of this section shall also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Department shall be deposited by the issuing institution directly into

the standby trust fund in accordance with instructions from the Department. This standby trust fund must meet the requirements of the trust fund specified in subsection (a) of this section, except that: (A) an originally signed duplicate of the standby trust agreement shall be submitted to the Department with the letter of credit; and (B) unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations: 1. payments into the trust fund as specified in subsection (a) of this section; 2. updating of Schedule A of the trust agreement (see section 66264.151, subsection (a)) to show current postclosure cost estimates; 3. annual valuations as required by the trust agreement; and 4. notices of nonpayment as required by the trust agreement. (4) The letter of credit shall be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution and date, and providing the following information: the Hazardous Waste Facility Identification Number, name and address of the facility and the amount of funds assured for postclosure care of the facility by the letter of credit. (5) The letter of credit shall be irrevocable and issued for a period of at least one (1) year. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one (1) year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Department by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days shall begin on the date when both the owner or operator and the Department have received the notice, as evidenced by the return receipt. (6) The letter of credit shall be issued in an amount at least equal to the current postclosure cost estimate, except as provided in subsection (f) of this section. (7) Whenever the current postclosure cost estimate increases to an amount greater than the amount of the letter of credit

during the operating life of the facility, the owner or operator, within 60 days after the increase, shall either cause the amount of the letter of credit to be increased so that it at least equals the current postclosure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current postclosure cost estimate decreases during the operating life of the facility, the amount of the letter of credit may be reduced to the amount of the current postclosure cost estimate following written approval from the Department. (8) During the period of postclosure care, the Department may approve a decrease in the amount of the letter of credit if the owner or operator demonstrates to the Department that the amount exceeds the remaining cost of postclosure care. (9) Following a determination by the Department that the owner or operator has failed to perform postclosure care in accordance with the approved postclosure plan and other permit requirements, the Department may draw on the letter of credit. (10) If the owner or operator does not establish alternate financial assurance as specified in this section and obtain written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Department shall draw on the letter of credit. The Department shall delay drawing on the letter of credit in accordance with the provisions of this paragraph, if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the Department shall draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this section and obtain written approval of such assurance from the Department. (11) The Department shall return the letter of

credit to the issuing institution for termination when: (A) an owner or operator substitutes alternate financial assurance as specified in this section; or (B) The Department releases the owner or operator from the requirements in accordance with subsection (i) of this section.

(1)

An owner or operator may satisfy the requirements of this section by obtaining and submitting to the Department, an irrevocable standby letter of credit which conforms to the requirements of this subsection. 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 section 66264.151, subsection (d). The letter of credit shall contain original signatures and shall be accompanied by the documents specified in this subsection.

(3)

An owner or operator who uses a letter of credit to satisfy the requirements of this section shall also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Department shall be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund must meet the requirements of the trust fund specified in subsection (a) of this section, except that: (A) an originally signed duplicate of the standby trust agreement shall be submitted to the Department with the letter of credit; and (B) unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations: 1. payments into the trust fund as specified in subsection (a) of this section; 2. updating of Schedule A of the trust agreement (see section 66264.151, subsection (a)) to show

current postclosure cost estimates; 3. annual valuations as required by the trust agreement; and 4. notices of nonpayment as required by the trust agreement.

(A)

an originally signed duplicate of the standby trust agreement shall be submitted to the Department with the letter of credit; and

(B)

unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations: 1. payments into the trust fund as specified in subsection (a) of this section; 2. updating of Schedule A of the trust agreement (see section 66264.151, subsection (a)) to show current postclosure cost estimates; 3. annual valuations as required by the trust agreement; and 4. notices of nonpayment as required by the trust agreement.

1.

payments into the trust fund as specified in subsection (a) of this section;

2.

updating of Schedule A of the trust agreement (see section 66264.151, subsection (a)) to show current postclosure cost estimates;

3.

annual valuations as required by the trust agreement; and

4.

notices of nonpayment as required by the trust agreement.

(4)

The letter of credit shall be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution and date, and providing the following information: the Hazardous Waste Facility Identification Number, name and address of the facility and the amount of funds assured for postclosure care of the

facility by the letter of credit.

(5)

The letter of credit shall be irrevocable and issued for a period of at least one (1) year. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one (1) year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Department by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days shall begin on the date when both the owner or operator and the Department have received the notice, as evidenced by the return receipt.

(6)

The letter of credit shall be issued in an amount at least equal to the current postclosure cost estimate, except as provided in subsection (f) of this section.

(7)

Whenever the current postclosure cost estimate increases to an amount greater than the amount of the letter of credit during the operating life of the facility, the owner or operator, within 60 days after the increase, shall either cause the amount of the letter of credit to be increased so that it at least equals the current postclosure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current postclosure cost estimate decreases during the operating life of the facility, the amount of the letter of credit may be reduced to the amount of the current postclosure cost estimate following written approval from the Department.

(8)

During the period of postclosure care, the Department may approve a decrease in the amount of the letter of credit if the owner or operator demonstrates to the Department

that the amount exceeds the remaining cost of postclosure care.

(9)

Following a determination by the Department that the owner or operator has failed to perform postclosure care in accordance with the approved postclosure plan and other permit requirements, the Department may draw on the letter of credit.

(10)

If the owner or operator does not establish alternate financial assurance as specified in this section and obtain written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Department shall draw on the letter of credit. The Department shall delay drawing on the letter of credit in accordance with the provisions of this paragraph, if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the Department shall draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this section and obtain written approval of such assurance from the Department.

(11)

The Department shall return the letter of credit to the issuing institution for termination when: (A) an owner or operator substitutes alternate financial assurance as specified in this section; or (B) The Department releases the owner or operator from the requirements in accordance with subsection (i) of this section.

(A)

an owner or operator substitutes alternate financial assurance as specified in this section; or

(B)

The Department releases the owner or operator from the requirements in accordance with

subsection (i) of this section.

(d)

Postclosure insurance.(1) An owner or operator may satisfy the requirements of this section by obtaining postclosure insurance that conforms to the requirements of this subsection and submitting a certificate of such insurance to the Department. The owner or operator shall submit to the Department a letter from an insurer stating that the insurer is considering issuance of postclosure insurance conforming to the requirements of this section to the owner or operator. The owner or operator shall submit the certificate of insurance to the Department or establish other financial assurance as specified in this section. At a minimum, the insurer shall be: (A) an admitted carrier, licensed to transact the business of insurance in California; or (B) a nonadmitted carrier eligible to provide insurance as an excess or surplus lines insurer in California. Any excess or surplus insurance relied upon by the owner or operator to meet the requirements of this subsection shall be underwritten by a surplus lines insurer that is on the California Department of Insurance's List of Approved Surplus Line Insurers as being eligible to cover risks in California, or the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the National Association of Insurance Commissioners and is licensed as an insurer in its domiciliary jurisdiction. (2) The wording of the certificate of insurance shall be identical to the wording specified in section 66264.151, subsection (e). The certificate of insurance shall contain original signatures. (3) The postclosure insurance policy shall be issued for a face amount at least equal to the current postclosure cost estimate, except as provided in subsection (f) of this section. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer shall not change the face amount, although the insurer's future liability

shall be lowered by the amount of the payments. (4) The postclosure insurance policy shall guarantee that funds shall be available to provide postclosure care of the facility whenever the postclosure period begins. The policy shall also guarantee that once postclosure care 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 Department, to such party or parties as the Department specifies. (5) An owner or operator or any other person authorized to perform postclosure care may request reimbursement for postclosure care expenditures by submitting itemized bills to the Department. Within 60 days after receiving bills for postclosure care activities, the Department will instruct the insurer to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the postclosure expenditures are in accordance with the approved postclosure plan or otherwise justified. If the Department does not instruct the insurer to make such reimbursements, a detailed written statement of reasons will be provided to the owner or operator. (6) The owner or operator shall maintain the policy in full force and effect until the Department consents to termination of the policy by the owner or operator as specified in subsection (d)(11) of this section. Failure to pay the premium, without substitution of alternate financial assurance as specified in the section, shall constitute a significant violation of these regulations, warranting such remedy as the Department deems necessary. Such violation shall be deemed to begin upon receipt by the Department 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 the Department. Cancellation, termination or failure to renew shall not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Department and the owner or operator, as evidenced by the return receipts. Cancellation, termination or failure to renew shall not occur and the policy shall remain in full force and effect in the event that on or before the date of expiration: (A) the Department deems the facility abandoned; or (B) interim status is terminated or revoked; or (C) closure is ordered by the Department or any other State or Federal agency 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 postclosure cost estimate increases to an amount greater than the face amount of the policy during the operating life of the facility, the owner or operator, within 60 days after the increase, shall either cause the face amount to be increased to an amount at least equal to the current postclosure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current postclosure cost estimate decreases during the operating life of the facility, the face amount may be reduced to the amount of the current postclosure cost estimate following written approval by the Department. (10) Commencing on the date that liability to make payments pursuant to the policy accrues, the insurer

shall thereafter annually increase the face amount of the policy. Such increase shall be equivalent to the face amounts of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week Treasury securities. (11) The Department will give written consent to the owner or operator that the insurance policy may be terminated when: (A) an owner or operator substitutes alternate financial assurance as specified in this section; or (B) the Department releases the owner or operator from the requirements of this section in accordance with subsection (i) of this section.

(1)

An owner or operator may satisfy the requirements of this section by obtaining postclosure insurance that conforms to the requirements of this subsection and submitting a certificate of such insurance to the Department. The owner or operator shall submit to the Department a letter from an insurer stating that the insurer is considering issuance of postclosure insurance conforming to the requirements of this section to the owner or operator. The owner or operator shall submit the certificate of insurance to the Department or establish other financial assurance as specified in this section. At a minimum, the insurer shall be: (A) an admitted carrier, licensed to transact the business of insurance in California; or (B) a nonadmitted carrier eligible to provide insurance as an excess or surplus lines insurer in California. Any excess or surplus insurance relied upon by the owner or operator to meet the requirements of this subsection shall be underwritten by a surplus lines insurer that is on the California Department of Insurance's List of Approved Surplus Line Insurers as being eligible to cover risks in California, or the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the National Association of Insurance Commissioners and is licensed as an insurer in its domiciliary jurisdiction.

(A)

an admitted carrier, licensed to transact the business of insurance in California; or

(B)

a nonadmitted carrier eligible to provide insurance as an excess or surplus lines insurer in California. Any excess or surplus insurance relied upon by the owner or operator to meet the requirements of this subsection shall be underwritten by a surplus lines insurer that is on the California Department of Insurance's List of Approved Surplus Line Insurers as being eligible to cover risks in California, or the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the National Association of Insurance Commissioners and is licensed as an insurer in its domiciliary jurisdiction.

(2)

The wording of the certificate of insurance shall be identical to the wording specified in section 66264.151, subsection (e). The certificate of insurance shall contain original signatures.

(3)

The postclosure insurance policy shall be issued for a face amount at least equal to the current postclosure cost estimate, except as provided in subsection (f) of this section. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer shall not change the face amount, although the insurer's future liability shall be lowered by the amount of the payments.

(4)

The postclosure insurance policy shall guarantee that funds shall be available to provide postclosure care of the facility whenever the postclosure period begins. The policy shall also guarantee that once postclosure care 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 Department, to such party or parties as the

Department specifies.

(5)

An owner or operator or any other person authorized to perform postclosure care may request reimbursement for postclosure care expenditures by submitting itemized bills to the Department. Within 60 days after receiving bills for postclosure care activities, the Department will instruct the insurer to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the postclosure expenditures are in accordance with the approved postclosure plan or otherwise justified. If the Department does not instruct the insurer to make such reimbursements, a detailed written statement of reasons will be provided to the owner or operator.

(6)

The owner or operator shall maintain the policy in full force and effect until the Department consents to termination of the policy by the owner or operator as specified in subsection (d)(11) of this section. Failure to pay the premium, without substitution of alternate financial assurance as specified in the section, shall constitute a significant violation of these regulations, warranting such remedy as the Department deems necessary. Such violation shall be deemed to begin upon receipt by the Department 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 the Department. Cancellation, termination or failure to renew shall not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Department and the owner or operator, as evidenced by the return receipts. Cancellation, termination or failure to renew shall not occur and the policy shall remain in full force and effect in the event that on or before the date of expiration: (A) the Department deems the facility abandoned; or (B) interim status is terminated or revoked; or (C) closure is ordered by the Department or any other State or Federal agency 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.

(A)

the Department deems the facility abandoned; or

(B)

interim status is terminated or revoked; or

(C)

closure is ordered by the Department or any other State or Federal agency 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 postclosure cost estimate increases to an amount greater than the face amount of the policy during the operating life of the facility, the owner or operator, within 60 days after the increase, shall either cause the face amount to be increased to an amount at least equal to the current postclosure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current postclosure cost estimate decreases during the operating life of the facility, the face amount may be reduced to the amount of the current postclosure cost estimate following written approval by the Department.

(10)

Commencing on the date that liability to make payments pursuant to the policy accrues, the insurer shall thereafter annually increase the face amount of the policy. Such increase shall be equivalent to the face amounts of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week Treasury securities.

(11)

The Department will give written consent to the owner or operator that the insurance policy may be terminated when: (A) an owner or operator substitutes alternate financial assurance as specified in this section; or (B) the Department releases the owner or operator from the requirements of this section in accordance with subsection (i) of this section.

(A)

an owner or operator substitutes alternate financial assurance as specified in this section; or

(B)

the Department releases the owner or operator from the requirements of this section in

accordance with subsection (i) of this section.

(e)

Financial test and guarantee for postclosure care.(1) An owner or operator may satisfy the requirements of this section by demonstrating that he or she passes a financial test as specified in this section. To pass this test the owner or operator shall meet the criteria either of subsection (e)(1)(A) or (B) of this section.(A) the owner or operator shall have all of the following:1. 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; 2. a current corporate credit rating of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; 3. net working capital and tangible net worth each at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates; 4. tangible net worth of at least \$20 million; and 5. assets in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and postclosure cost estimates for all of the owner's or operator's hazardous waste facilities regulated by the Department and the current plugging and abandonment cost estimates. (B) the owner or operator shall have all of the following:1. a current rating for his or her 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; 2. tangible net worth at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates; 3. tangible net worth of at least \$20 million; and 4. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and postclosure cost

estimates for all of the owner's or operator's hazardous waste facilities regulated by the Department and the current plugging and abandonment cost estimates.

(2) The phrase "current closure and postclosure cost estimates" as used in subsection (e)(1) of this section refers to the cost estimates required to be shown in paragraphs 1 through 6 of the letter from the owner's or operator's chief financial officer as specified in section 66264.151, subsection (f). The phrase "current plugging and abandonment cost estimates" as used in subsection (e)(1) of this section refers to the cost estimates required to be shown in paragraphs 1 through 6 of the letter from the owner's or operator's chief financial officer. (3) To demonstrate that this test can be met, the owner or operator shall submit the following items to the Department: (A) a letter signed by the owner's or operator's chief financial officer and worded as specified in section 66264.151, subsection (f). The letter shall be on the owner's or operator's official letterhead stationery, and shall contain an original signature, (B) a copy of the owner's or operator's financial statements and 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 that includes the following: 1. a statement that the independent certified public accountant has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and 2. identification and description of the specific accounting standards and guidance relied upon to prepare the report. (4) After the initial submission of items specified in subsection (e)(3) of this section, the owner or operator shall send updated information to the Department within 90 days after

the close of each succeeding fiscal year. This information shall consist of all three items specified in subsection (e)(3) of this section. (5) If the owner or operator no longer meets the requirements of subsection (e)(1) of this section, the owner or operator must send notice to the Department of intent to establish alternate financial assurance as specified in this section. The notice shall be sent by certified mail within 90 days after any occurrence that prevents the owner or operator from meeting the requirements. The owner or operator shall provide the alternate financial assurance within 120 days after any such occurrence. (6) The Department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subsection (e)(1) of this section, require reports of financial condition at any time from the owner or operator in addition to those specified in subsection (e)(3) of this section. If the Department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subsection (e)(1) of this section, the owner or operator shall provide alternate financial assurance as specified in this section within 30 days after notification of such a finding. (7) The Department may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his or her report on examination of the owner's or operator's financial statements (see subsection (e)(3)(B) of this section). An adverse opinion or a disclaimer of opinion shall be cause for disallowance. The Department will evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in this section within 30 days after notification of the disallowance. (8) During the period of postclosure care, the Department may approve a decrease in the current postclosure cost estimate for which this test demonstrates financial assurance if the owner or operator demonstrates to the Department that the amount of the

cost estimate exceeds the remaining cost of postclosure care. (9) The owner or operator is no longer required to submit the items specified in subsection (e)(3) of this section when: (A) an owner or operator substitutes alternate financial assurance as specified in this section; or (B) the Department releases the owner or operator from the requirements in accordance with subsection (i) of this section.

(10) An owner or operator may meet the requirements for this section by obtaining a written guarantee. The guarantor shall be the direct or higher-tier parent corporation as defined in section 66260.10 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 shall meet the requirements for owners or operators in subsections (e)(1) through (9) of this section and shall comply with the terms of the guarantee. The wording of the guarantee shall be identical to the wording specified in section 66264.151, subsection (h). A certified copy of the guarantee shall accompany the items sent to the Department as specified in subsections (e)(3) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee shall provide that: (A) if the owner or operator fails to perform postclosure care of a facility covered by the guarantee in accordance with the postclosure plan and other interim status requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in subsection (a) of this section in the name of the owner or operator; (B)

the guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation shall not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department as evidenced by the return receipt; (C) if the owner or operator fails to provide alternate financial assurance as specified in this section and obtain the written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the guarantee from the guarantor, the guarantor shall provide such alternate financial assurance in the name of the owner or operator. (11) An owner or operator may not rely on any assets to meet the requirements of this section if those same assets serve as the basis of satisfying any financial assurance or financial guarantee requirement imposed by any other "governmental agency," as defined in California Civil Code section 1633.2, subdivision (i).

(1)

An owner or operator may satisfy the requirements of this section by demonstrating that he or she passes a financial test as specified in this section. To pass this test the owner or operator shall meet the criteria either of subsection (e)(1)(A) or (B) of this section. (A) the owner or operator shall have all of the following: 1. 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; 2. a current corporate credit rating of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; 3. net working capital and tangible net worth each at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates; 4. tangible net worth of at least \$20

million; and 5. assets in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and postclosure cost estimates for all of the owner's or operator's hazardous waste facilities regulated by the Department and the current plugging and abandonment cost estimates. (B) the owner or operator shall have all of the following: 1. a current rating for his or her 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; 2. tangible net worth at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates; 3. tangible net worth of at least \$20 million; and 4. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and postclosure cost estimates for all of the owner's or operator's hazardous waste facilities regulated by the Department and the current plugging and abandonment cost estimates.

(A)

the owner or operator shall have all of the following: 1. 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; 2. a current corporate credit rating of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; 3. net working capital and tangible net worth each at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates; 4. tangible net worth of at least \$20 million; and 5. assets in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and postclosure cost estimates for all of the owner's or operator's hazardous waste facilities regulated by the Department and the current plugging and abandonment cost estimates.

1.

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;

2.

a current corporate credit rating of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;

3.

net working capital and tangible net worth each at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates;

4.

tangible net worth of at least \$20 million; and

5.

assets in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and postclosure cost estimates for all of the owner's or operator's hazardous waste facilities regulated by the Department and the current plugging and abandonment cost estimates.

(B)

the owner or operator shall have all of the following: 1. a current rating for his or her 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; 2. tangible net worth at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates; 3. tangible net worth of at least \$20 million; and 4. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and postclosure cost estimates for all of the owner's or operator's hazardous waste facilities regulated by the Department and the current plugging and abandonment cost

estimates.

1.

a current rating for his or her 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;

2.

tangible net worth at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates;

3.

tangible net worth of at least \$20 million; and

4.

assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and postclosure cost estimates for all of the owner's or operator's hazardous waste facilities regulated by the Department and the current plugging and abandonment cost estimates.

(2)

The phrase "current closure and postclosure cost estimates" as used in subsection (e)(1) of this section refers to the cost estimates required to be shown in paragraphs 1 through 6 of the letter from the owner's or operator's chief financial officer as specified in section 66264.151, subsection (f). The phrase "current plugging and abandonment cost estimates" as used in subsection (e)(1) of this section refers to the cost estimates required to be shown in paragraphs 1 through 6 of the letter from the owner's or operator's chief financial officer.

(3)

To demonstrate that this test can be met, the owner or operator shall submit the following items to the Department: (A) a letter signed by the owner's or operator's chief financial officer and worded as specified in section 66264.151, subsection (f). The

letter shall be on the owner's or operator's official letterhead stationery, and shall contain an original signature, (B) a copy of the owner's or operator's financial statements and 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 that includes the following: 1. a statement that the independent certified public accountant has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and 2. identification and description of the specific accounting standards and guidance relied upon to prepare the report.

(A)

a letter signed by the owner's or operator's chief financial officer and worded as specified in section 66264.151, subsection (f). The letter shall be on the owner's or operator's official letterhead stationery, and shall contain an original signature,

(B)

a copy of the owner's or operator's financial statements and 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 that includes the following: 1. a statement that the independent certified public accountant has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and 2. identification and description of the specific accounting standards and guidance relied upon

to prepare the report.

1.

a statement that the independent certified public accountant has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

2.

identification and description of the specific accounting standards and guidance relied upon to prepare the report.

(4)

After the initial submission of items specified in subsection (e)(3) of this section, the owner or operator shall send updated information to the Department within 90 days after the close of each succeeding fiscal year. This information shall consist of all three items specified in subsection (e)(3) of this section.

(5)

If the owner or operator no longer meets the requirements of subsection (e)(1) of this section, the owner or operator must send notice to the Department of intent to establish alternate financial assurance as specified in this section. The notice shall be sent by certified mail within 90 days after any occurrence that prevents the owner or operator from meeting the requirements. The owner or operator shall provide the alternate financial assurance within 120 days after any such occurrence.

(6)

The Department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subsection (e)(1) of this section, require reports of financial condition at any time from the owner or operator in addition to those specified in subsection (e)(3) of this section. If the Department finds, on the basis of such

reports or other information, that the owner or operator no longer meets the requirements of subsection (e)(1) of this section, the owner or operator shall provide alternate financial assurance as specified in this section within 30 days after notification of such a finding.

(7)

The Department may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his or her report on examination of the owner's or operator's financial statements (see subsection (e)(3)(B) of this section). An adverse opinion or a disclaimer of opinion shall be cause for disallowance. The Department will evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in this section within 30 days after notification of the disallowance.

(8)

During the period of postclosure care, the Department may approve a decrease in the current postclosure cost estimate for which this test demonstrates financial assurance if the owner or operator demonstrates to the Department that the amount of the cost estimate exceeds the remaining cost of postclosure care.

(9)

The owner or operator is no longer required to submit the items specified in subsection (e)(3) of this section when: (A) an owner or operator substitutes alternate financial assurance as specified in this section; or (B) the Department releases the owner or operator from the requirements in accordance with subsection (i) of this section.

(A)

an owner or operator substitutes alternate financial assurance as specified in this section; or

(B)

the Department releases the owner or operator from the requirements in accordance with

subsection (i) of this section.

(10)

An owner or operator may meet the requirements for this section by obtaining a written guarantee. The guarantor shall be the direct or higher-tier parent corporation as defined in section 66260.10 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 shall meet the requirements for owners or operators in subsections (e)(1) through (9) of this section and shall comply with the terms of the guarantee. The wording of the guarantee shall be identical to the wording specified in section 66264.151, subsection (h). A certified copy of the guarantee shall accompany the items sent to the Department as specified in subsections (e)(3) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee shall provide that: (A) if the owner or operator fails to perform postclosure care of a facility covered by the guarantee in accordance with the postclosure plan and other interim status requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in subsection (a) of this section in the name of the owner or operator; (B) the guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation shall not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department

as evidenced by the return receipt; (C) if the owner or operator fails to provide alternate financial assurance as specified in this section and obtain the written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the guarantee from the guarantor, the guarantor shall provide such alternate financial assurance in the name of the owner or operator.

(A)

if the owner or operator fails to perform postclosure care of a facility covered by the guarantee in accordance with the postclosure plan and other interim status requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in subsection (a) of this section in the name of the owner or operator;

(B)

the guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation shall not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department as evidenced by the return receipt;

(C)

if the owner or operator fails to provide alternate financial assurance as specified in this section and obtain the written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the guarantee from the guarantor, the guarantor shall provide such alternate financial assurance in the name of the owner or operator.

(11)

An owner or operator may not rely on any assets to meet the requirements of this section if those same assets serve as the basis of satisfying any financial assurance or financial guarantee requirement imposed by any other "governmental agency," as

defined in California Civil Code section 1633.2, subdivision (i).

(f)

Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this section by establishing more than one financial mechanism per facility. The mechanisms shall be as specified in subsections (a) through (d) and (h) of this section, except that it is the combination of mechanisms, rather than the single mechanism, which shall provide financial assurance for an amount at least equal to the current postclosure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he or she 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. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this subsection, the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify the other as "excess" coverage. The Department may use any or all of the mechanisms to provide for postclosure care of the facility.

(g)

Use of a financial mechanism for multiple facilities for postclosure care. An owner or operator may use one or more of the financial assurance mechanisms specified in subsections (a) through (e) and (h) of this section and section 66265.146 to meet the requirements of this section for more than one facility. Evidence of financial assurance submitted to the Department shall include a list showing, for each facility, the Hazardous Waste Facility Identification Number, name, address and the amount of funds for postclosure care assured by the mechanism. The amount of funds available through the mechanism 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 postclosure care of any of the facilities covered by the mechanism, the Department may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

(h)

Alternative Financial Mechanism for Postclosure Care. (1) The owner or operator may establish financial assurance for postclosure care for facilities which manage solely non-RCRA hazardous waste by means of a financial mechanism other than as specified in subsections (a) through (e) of this section, provided that prior to its use the mechanism has been submitted to and approved by the Department. The mechanism shall be at least equivalent to the financial mechanisms specified in subsections (a) through (e) of this section and section 66265.146. The

Department shall evaluate the equivalency of a mechanism principally in terms of:

(A) certainty of the availability of funds for the required postclosure care activities; and (B) the amount of funds that will be made available; (C) the Department may also consider other factors deemed to be appropriate, and may require the owner or operator to submit additional information as is deemed necessary to make the determination. (2) The owner or operator shall submit to the Department the proposed mechanism together with a letter requesting that the proposed mechanism be considered acceptable for meeting the requirements of this section. The submission shall include the following information: (A) name, address and phone number of the issuing institution; and (B) hazardous waste facility identification number, name, address and postclosure cost estimate for each facility; and (C) the amount of funds for postclosure care to be assured for each facility by the proposed mechanism; and (D) the terms of the proposed

mechanism (period covered, renewal/extension, cancellation). (3) The Department shall notify the owner or operator in writing of the determination made regarding the proposed mechanism's acceptability in lieu of the financial assurance mechanisms specified in subsections (a) through (e) of this section. (4) If a proposed mechanism is found acceptable, the owner or operator shall submit a fully executed document to the Department. The document shall contain original signatures and shall be accompanied by a formal certification of acknowledgment. (5) If a proposed mechanism is found acceptable except for the amount of funds, the owner or operator shall either increase the amount of the mechanism or obtain other financial assurance as specified in subsections (a) through (e) of this section. The amount of funds available through the combination of mechanisms shall at least equal the current postclosure cost estimate.

(1)

The owner or operator may establish financial assurance for postclosure care for facilities which manage solely non-RCRA hazardous waste by means of a financial mechanism other than as specified in subsections (a) through (e) of this section, provided that prior to its use the mechanism has been submitted to and approved by the Department. The mechanism shall be at least equivalent to the financial mechanisms specified in subsections (a) through (e) of this section and section 66265.146. The Department shall evaluate the equivalency of a mechanism principally in terms of: (A) certainty of the availability of funds for the required postclosure care activities; and (B) the amount of funds that will be made available; (C) the Department may also consider other factors deemed to be appropriate, and may require the owner or operator to submit additional information as is deemed necessary to make the determination.

(A)

certainty of the availability of funds for the required postclosure care activities; and

(B)

the amount of funds that will be made available;

(C)

the Department may also consider other factors deemed to be appropriate, and may require the owner or operator to submit additional information as is deemed necessary to make the determination.

(2)

The owner or operator shall submit to the Department the proposed mechanism together with a letter requesting that the proposed mechanism be considered acceptable for meeting the requirements of this section. The submission shall include the following information: (A) name, address and phone number of the issuing institution; and (B) hazardous waste facility identification number, name, address and postclosure cost estimate for each facility; and (C) the amount of funds for postclosure care to be assured for each facility by the proposed mechanism; and (D) the terms of the proposed mechanism (period covered, renewal/extension, cancellation).

(A)

name, address and phone number of the issuing institution; and

(B)

hazardous waste facility identification number, name, address and postclosure cost estimate for each facility; and

(C)

the amount of funds for postclosure care to be assured for each facility by the proposed mechanism; and

(D)

the terms of the proposed mechanism (period covered, renewal/extension, cancellation).

(3)

The Department shall notify the owner or operator in writing of the determination made regarding the proposed mechanism's acceptability in lieu of the financial assurance mechanisms specified in subsections (a) through (e) of this section.

(4)

If a proposed mechanism is found acceptable, the owner or operator shall submit a fully executed document to the Department. The document shall contain original signatures and shall be accompanied by a formal certification of acknowledgment.

(5)

If a proposed mechanism is found acceptable except for the amount of funds, the owner or operator shall either increase the amount of the mechanism or obtain other financial assurance as specified in subsections (a) through (e) of this section. The amount of funds available through the combination of mechanisms shall at least equal the current postclosure cost estimate.

(i)

Release of the owner or operator from Financial Assurance requirements for postclosure care. (1) Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that all postclosure care requirements have been completed in accordance with the approved postclosure plan, the Department, at the request of the owner or operator, will notify the owner or operator in writing that he or she is no longer required by this section to maintain financial assurance for postclosure care of that unit, unless the Department has reason to believe that postclosure care has not been in accordance with the approved postclosure plan. The Department shall provide the owner or operator a detailed written statement of any such reason to

believe that postclosure care has not been in accordance with the approved postclosure plan. (2) When transfer of ownership or operational control of a facility occurs, and the new owner or operator has demonstrated to the satisfaction of the Department that the owner or operator is complying with the financial requirements of this section, the Department shall notify the previous owner or operator in writing that they are no longer required to maintain financial assurance for postclosure care of that particular facility.

(1)

Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that all postclosure care requirements have been completed in accordance with the approved postclosure plan, the Department, at the request of the owner or operator, will notify the owner or operator in writing that he or she is no longer required by this section to maintain financial assurance for postclosure care of that unit, unless the Department has reason to believe that postclosure care has not been in accordance with the approved postclosure plan. The Department shall provide the owner or operator a detailed written statement of any such reason to believe that postclosure care has not been in accordance with the approved postclosure plan.

(2)

When transfer of ownership or operational control of a facility occurs, and the new owner or operator has demonstrated to the satisfaction of the Department that the owner or operator is complying with the financial requirements of this section, the Department shall notify the previous owner or operator in writing that they are no longer required to maintain financial assurance for postclosure care of that particular facility.