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Title 22@ Social Security

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

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

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Article 8@ Financial Requirements

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Section 66265.143@ Financial Assurance for Closure

66265.143 Financial Assurance for Closure

An owner or operator of each facility shall establish and demonstrate to the Department financial assurance for closure of the facility. The owner or operator shall choose from the options as specified in subsections (a) through (e) and (h) of this section.

(a)

Closure trust fund. (1) An owner or operator may satisfy the requirements of this section by establishing a closure 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), shall contain original signatures and shall be accompanied by a formal certification of acknowledgement (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 closure cost estimate covered by the trust 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 closure trust fund shall be made as follows. (A) The first payment shall be at least equal to the current closure 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 must be determined by this formula: $\text{Next payment} = (\text{CE} - \text{CV}) / Y$ 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 deposit the full amount of the current closure 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 closure 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 closure cost estimate changes, 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 closure cost estimate, or obtain other financial assurance as specified in this article 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

Department 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 section for all or part of the trust fund, a written request may be submitted to the Department for release of the amount in excess of the current closure 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 subsections (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 closure occurs, the value of the trust fund shall equal the amount of the current closure 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 closure cost estimate, or obtain other financial assurance, as specified in this section, to cover the difference. (11) After beginning partial or final closure, an owner or operator or another person authorized to conduct partial or final closure may request reimbursements for partial or final closure expenditures by submitting itemized bills to the Department. The owner or operator may request reimbursements for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. No later than 60 days after receiving bills for partial or final closure activities, the Department shall instruct the trustee to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the Department 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, the Department may withhold reimbursements of such amounts as deemed prudent until a determination is made, in accordance with subsection (i) of this section, that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Department does not instruct the trustee to make such reimbursements, a detailed written statement of reasons will be provided to the owner or operator. (12) 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 closure 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), shall contain original signatures and shall be accompanied by a formal certification of acknowledgement (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 closure cost estimate covered by the trust 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 closure trust fund shall be made as follows. (A) The first payment shall be at least equal to the current closure 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 must be determined by this formula: $\text{Next payment} = (\text{CE} - \text{CV}) / Y$ 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.

(A)

The first payment shall be at least equal to the current closure 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 must be determined by this formula:

$\text{Next payment} = (\text{CE} - \text{CV}) / Y$ 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 deposit the full amount of the current closure 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 closure 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 closure cost estimate changes, 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 closure cost estimate, or obtain other financial assurance as specified in this article 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 Department 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 section for all or part of the trust fund, a written request may be submitted to the Department for release of the amount in excess of the current closure 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 subsections (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 closure occurs, the value of the trust fund shall equal the amount of the

current closure 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 closure cost estimate, or obtain other financial assurance, as specified in this section, to cover the difference.

(11)

After beginning partial or final closure, an owner or operator or another person authorized to conduct partial or final closure may request reimbursements for partial or final closure expenditures by submitting itemized bills to the Department. The owner or operator may request reimbursements for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. No later than 60 days after receiving bills for partial or final closure activities, the Department shall instruct the trustee to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the Department 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, the Department may withhold reimbursements of such amounts as deemed prudent until a determination is made, in accordance with subsection (i) of this section, that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Department does not instruct the trustee to make such reimbursements, a detailed written statement of reasons will be provided to the owner or operator.

(12)

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 closure 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 shall 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 closure 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. For facilities that require a RCRA permit, the determination will be made pursuant to Health and Safety Code Section 25187. (6) The penal sum of the bond shall be in an amount at least equal to the current closure cost estimate, except as provided in subsection (f) of this section. (7) Whenever the current closure 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 closure 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 closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure 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.

(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 shall 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 closure 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 closure 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 closure 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. For facilities

that require a RCRA permit, the determination will be made pursuant to Health and Safety Code Section 25187.

(6)

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

(7)

Whenever the current closure 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 closure 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 closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure 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)

Closure letter of credit.(1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit which conforms to

the requirements of this subsection and submitting the letter to the Department. 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 shall 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 closure 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 closure of the facility by the letter of credit. (5) The letter of credit shall be irrevocable and issued for a period of at least one (1) year. The letter of credit shall provide that

the expiration date will be automatically extended for a period of at least 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 receipts. (6) The letter of credit shall be issued in an amount at least equal to the current closure cost estimate, except as provided in subsection (f) of this section. (7) Whenever the current closure cost estimate increases to an amount greater than the amount of the letter of credit, 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 closure 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 closure cost estimate decreases, the amount of the letter of credit may be reduced to the amount of the current closure cost estimate following written approval by the Department. (8) Following a determination by the Department that the owner or operator has failed to perform final closure in accordance with the approved closure plan when required to do so, the Department may draw on the letter of credit. For facilities that require a RCRA permit, that determination shall be made pursuant to Section 25187 of the Health and Safety Code. (9) 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. (10) 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 an irrevocable standby letter of credit which conforms to the requirements of this subsection and submitting the letter to the Department. 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 shall 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 closure 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 closure 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 closure 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 closure of the facility by the letter of credit.

(5)

The letter of credit shall be irrevocable and issued for a period of at least one (1) year. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least 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 receipts.

(6)

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

(7)

Whenever the current closure cost estimate increases to an amount greater than the amount of the letter of credit, 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 closure 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 closure cost estimate decreases, the amount of the letter of credit may be reduced to the amount of the current closure cost estimate

following written approval by the Department.

(8)

Following a determination by the Department that the owner or operator has failed to perform final closure in accordance with the approved closure plan when required to do so, the Department may draw on the letter of credit. For facilities that require a RCRA permit, that determination shall be made pursuant to Section 25187 of the Health and Safety Code.

(9)

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.

(10)

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)

Closure insurance.(1) An owner or operator may satisfy the requirements of this section by obtaining closure insurance that conforms to the requirements of this section 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 closure insurance conforming to the requirements of this subsection 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 closure insurance policy shall be issued for a face amount at least equal to the current closure 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 closure insurance policy shall guarantee that funds shall be available to close the facility whenever final closure occurs. The policy shall also guarantee that once final closure begins, the insurer shall be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon direction from the Department, to such party or parties as the Department specifies. (5) After beginning partial or final closure, an owner or operator or any other person authorized to conduct closure may request reimbursements for closure expenditures by submitting itemized bills to the Department. The owner or operator may request reimbursements for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for closure activities, the Department shall instruct the insurer to make reimbursements in such amounts as the Department specifies in writing if the Department determines that the partial or final closure expenditures are in accordance with the approved closure plan or otherwise justified. If the Department 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, a reimbursement of such amounts may be withheld as deemed prudent until a determination, in accordance with subsection (i) of this section, that the owner or operator is no longer required to maintain financial assurance for final closure of the particular facility is made. If the Department does not instruct the insurer to make such reimbursements, the owner or operator shall be provided a detailed written statement of reasons. (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)(10) of this section. Failure to pay the premium, without substitution of alternate financial assurance as specified in this section, shall constitute a significant violation of these regulations, warranting such remedy as the Department deems necessary. Such violation will 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 closure cost estimate

increases to an amount greater than the face amount of the policy, 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 closure 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 closure cost estimate decreases, the face amount may be reduced to the amount of the current closure cost estimate following written approval by the Department.

(10) The Department shall 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 in accordance with subsection (i) of this section.

(1)

An owner or operator may satisfy the requirements of this section by obtaining closure insurance that conforms to the requirements of this section 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 closure insurance conforming to the requirements of this subsection 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 closure insurance policy shall be issued for a face amount at least equal to the current closure 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 closure insurance policy shall guarantee that funds shall be available to close the facility whenever final closure occurs. The policy shall also guarantee that once final

closure begins, the insurer shall be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon direction from the Department, to such party or parties as the Department specifies.

(5)

After beginning partial or final closure, an owner or operator or any other person authorized to conduct closure may request reimbursements for closure expenditures by submitting itemized bills to the Department. The owner or operator may request reimbursements for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for closure activities, the Department shall instruct the insurer to make reimbursements in such amounts as the Department specifies in writing if the Department determines that the partial or final closure expenditures are in accordance with the approved closure plan or otherwise justified. If the Department 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, a reimbursement of such amounts may be withheld as deemed prudent until a determination, in accordance with subsection (i) of this section, that the owner or operator is no longer required to maintain financial assurance for final closure of the particular facility is made. If the Department does not instruct the insurer to make such reimbursements, the owner or operator shall be provided a detailed written statement of reasons.

(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)(10) of this section. Failure to pay the premium, without substitution of alternate financial assurance as specified in this section, shall constitute a significant violation of these regulations, warranting such remedy as the Department deems

necessary. Such violation will 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 closure cost estimate increases to an amount greater than the face amount of the policy, 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 closure 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 closure cost estimate decreases, the face amount may be reduced to the amount of the current closure cost estimate following written approval by the Department.

(10)

The Department shall 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 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.

(e)

Financial test and guarantee for closure.(1) An owner or operator may satisfy the requirements of this section by demonstrating that the owner or operator passes the financial test specified in this subsection. To pass this test the owner or operator shall meet the criteria of either 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 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 post-closure 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 post-closure 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 post-closure 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 post-closure 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 has been met, the owner or operator shall submit all of the following items to the Department: (A) a letter signed by the owner's or operator's chief financial officer. The letter shall be on the owner's or operator's official letterhead stationery, shall contain an original signature and shall be worded as specified in section 66264.151, subsection (f); (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 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 shall 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 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 shall 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) 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 of this section in accordance with subsection (i) of this section. (9) An owner or operator may meet the requirements of this section by obtaining a written guarantee. The guarantor shall be the direct or higher-tier parent corporation of the owner or operator as defined in section 66260.10, 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 and comply with the requirements for owners or operators in subsections (e)(1) through (e)(8) 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). The guarantee shall be on the official letterhead stationery of the parent corporation, shall contain an original signature and the signature shall be formally witnessed or notarized. A certified copy of the guarantee shall accompany the items sent to the Department as specified in subsection (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 final closure of a facility covered by the guarantee in accordance with the closure plan and other interim status requirements whenever required to do so, the guarantor shall do so or shall 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 receipts; (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. (10) 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 of section 1633.2, subdivision (i).

(1)

An owner or operator may satisfy the requirements of this section by demonstrating that the owner or operator passes the financial test specified in this subsection. To pass this test the owner or operator shall meet the criteria of either 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 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 post-closure 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 post-closure 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 post-closure 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 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 post-closure 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 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 post-closure 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 post-closure 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 post-closure 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 post-closure 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 post-closure 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 post-closure 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 has been met, the owner or operator shall submit all of the following items to the Department: (A) a letter signed by the owner's or operator's

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

(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 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 shall 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 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 shall 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)

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 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.

(9)

An owner or operator may meet the requirements of this section by obtaining a written guarantee. The guarantor shall be the direct or higher-tier parent corporation of the

owner or operator as defined in section 66260.10, 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 and comply with the requirements for owners or operators in subsections (e)(1) through (e)(8) 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). The guarantee shall be on the official letterhead stationery of the parent corporation, shall contain an original signature and the signature shall be formally witnessed or notarized. A certified copy of the guarantee shall accompany the items sent to the Department as specified in subsection (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 final closure of a facility covered by the guarantee in accordance with the closure plan and other interim status requirements whenever required to do so, the guarantor shall do so or shall 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 receipts; (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 final closure of a facility covered by the guarantee in accordance with the closure plan and other interim status requirements whenever required to do so, the guarantor shall do so or shall 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 receipts;

(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.

(10)

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 of 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 closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, the trust fund may be used 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 closure of the facility.

(g)

Use of a financial mechanism for multiple facilities. An owner or operator may use one or more of the financial assurance mechanisms specified in section 66265.143, subsections (a) through (e) and (h) to meet the requirements of section 66265.143 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 closure 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 closure 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 Closure Costs.(1) An owner or operator of a facility or facilities where solely non-RCRA hazardous waste is managed may establish financial assurance for closure by means of a financial mechanism other than those 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. The Department shall evaluate the equivalency of a mechanism principally in terms of:(A) Certainty of the availability of funds for the required closure activities; and (B) The amount of funds that will be made available. The Department shall also consider other factors deemed to be appropriate, and shall 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 section 66265.143. The submission shall include the following information:(A) Name, address and telephone number of issuing institution; and (B) Hazardous waste facility identification number, name, address and closure cost estimate for each facility intended to be covered by the proposed mechanism; and (C) The amount of funds for closure 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 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 closure cost estimate.

(1)

An owner or operator of a facility or facilities where solely non-RCRA hazardous waste is managed may establish financial assurance for closure by means of a financial mechanism other than those 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. The Department shall evaluate the equivalency of a mechanism principally in terms of: (A) Certainty of the availability of funds for the required closure activities; and (B) The amount of funds that will be made available. The Department shall also consider other factors deemed to be appropriate, and shall 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 closure activities; and

(B)

The amount of funds that will be made available. The Department shall also consider other

factors deemed to be appropriate, and shall 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 section 66265.143. The submission shall include the following information: (A) Name, address and telephone number of issuing institution; and (B) Hazardous waste facility identification number, name, address and closure cost estimate for each facility intended to be covered by the proposed mechanism; and (C) The amount of funds for closure 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 telephone number of issuing institution; and

(B)

Hazardous waste facility identification number, name, address and closure cost estimate for each facility intended to be covered by the proposed mechanism; and

(C)

The amount of funds for closure 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 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 closure cost estimate.

(i)

Release of the owner or operator from the requirements of this section.(1) Within 60 days after receiving certifications from the owner or operator and an independent professional engineer, registered in California that final closure has been completed in accordance with the approved closure plan, the Department shall notify the owner or operator in writing that he or she is no longer required by this section to maintain financial assurance for final closure of the facility, unless the Department has reason to believe that final closure has not been in accordance with the approved closure plan. The Department shall 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. (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 he or she 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 closure of that particular facility.

(1)

Within 60 days after receiving certifications from the owner or operator and an independent professional engineer, registered in California that final closure has been completed in accordance with the approved closure plan, the Department shall notify the owner or operator in writing that he or she is no longer required by this section to maintain financial assurance for final closure of the facility, unless the Department has reason to believe that final closure has not been in accordance with the approved closure plan. The Department shall 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.

(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 he or she 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 closure of that particular facility.