

3745-55-43

Financial assurance for facility closure.

An owner or operator of each facility shall establish financial assurance for closure of the facility. The owner or operator shall choose from among the following options:

(A) Closure trust fund.

- (1) An owner or operator may satisfy the requirements of this rule by establishing a closure trust fund which conforms to the requirements of ~~paragraphs~~paragraph (A) ~~to (A)(1)(b)~~ of this rule and submitting an originally signed duplicate of the trust agreement to the director ~~by certified mail~~. An owner or operator of a new facility shall send the originally signed duplicate of the trust agreement to the director ~~by certified mail~~ at least sixty days before the date on which hazardous waste is first received for treatment, storage, or disposal. The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.
- (2) The wording of the trust agreement shall be identical to the wording specified in paragraph (A)(1) of rule 3745-55-51 of the Administrative Code and the trust agreement shall be accompanied by a formal certification of acknowledgement. [For example, see paragraph (A)(2) of rule 3745-55-51 of the Administrative Code.] "Schedule A" of the trust agreement shall be updated within sixty days after a change in the amount of the current closure cost estimate covered by the agreement.
- (3) Payments to the trust fund shall be made annually by the owner or operator over the term of the initial hazardous waste permit 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) For a new facility, the first payment shall be made before the initial receipt of hazardous waste for treatment, storage, or disposal. A receipt from the trustee for this payment shall be submitted by the owner or operator to the director before this initial receipt of hazardous waste. The first payment shall be at least equal to the current closure cost estimate (see rule 3745-55-42 of the Administrative Code) except as provided in paragraph (G) of this rule, divided by the number of years in the pay-in period. Subsequent payments shall be made no later than thirty 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 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.

- (b) If an owner or operator establishes a trust fund as specified in paragraph (A) of this rule, and the value of that trust fund is less than the current closure cost estimate when a permit is issued to the facility, the amount of the current closure cost estimate still to be paid into the trust fund shall be paid in over the pay-in period as described in paragraph (A)(3) of this rule. Payments shall continue to be made no later than thirty days after each anniversary date of the first payment made pursuant to Chapters 3745-65 to 3745-69 and 3745-256 of the Administrative Code. The amount of each 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 unto the trust fund or the owner or operator may deposit the full amount of the current closure cost estimate at the time the trust fund is established. However, the owner or operator shall maintain the value of the trust fund at no less than the value the trust fund would have if annual payments were made as specified in paragraph (A)(3) of this rule.
- (5) If the owner or operator establishes a closure trust fund after having used one or more alternate mechanisms specified in this rule or in rule 3745-66-43 of the Administrative Code, the owner's or operator's first payment shall be in at least the amount that the trust fund would contain if the trust fund were established initially and annual payments made according to paragraph (A)(3) of this rule and paragraph (A) of rule 3745-66-43 of the Administrative Code, as applicable.
- (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 trust fund is less than the amount of the new estimate, the owner or operator, within sixty days after the change in the cost estimate, ~~either shall either~~ deposit an amount into the trust fund so that the value of the trust fund after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance as specified in this rule to cover the difference.

- (7) If the value of the trust fund is greater than the total amount of the current closure cost estimate, the owner or operator may submit a written request to the director for release of the amount in excess of the current closure cost estimate.
 - (8) If an owner or operator substitutes other financial assurance as specified in this rule for all or part of the trust fund, the owner or operator may submit a written request to the director for release of the amount in excess of the current closure cost estimate covered by the trust fund.
 - (9) Within sixty days after receiving a request from the owner or operator for release of funds as specified in paragraph (A)(7) or (A)(8) of this rule, the director will instruct the trustee to release to the owner or operator such funds as the director specifies in writing.
 - (10) After beginning partial or final closure, an owner or operator or another person authorized to conduct partial or final closure may request reimbursement for partial or final closure expenditures by submitting itemized bills to the director. The owner or operator may request reimbursements for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over the remaining operating life of the facility. Within sixty days after receiving bills for partial or final closure activities, the director will determine whether the partial or final closure expenditures are in accordance with the approved closure plan or are otherwise justified, and if so, the director will instruct the trustee to make reimbursement in such amounts as the director specifies in writing. If the director has reason to believe that the maximum cost of closure over the remaining operating life of the facility will be significantly greater than the value of the trust fund, the director may withhold reimbursement of such amounts as the director deems prudent until the director determines, in accordance with paragraph (I) of this rule, that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the director does not instruct the trustee to make such reimbursements, the director will provide the owner or operator with a detailed written statement of reasons.
 - (11) The director will agree to termination of the trust when either:
 - (a) The owner or operator substitutes alternate financial assurance as specified in this rule.
 - (b) The director releases the owner or operator from the requirements of this rule in accordance with paragraph (I) of this rule.
- (B) Surety bond guaranteeing payment into a closure trust fund.

- (1) An owner or operator may satisfy the requirements of this rule by obtaining a surety bond which conforms to the requirements of ~~paragraphs~~ paragraph (B) to (B)(9) of this rule and submitting the bond to the director ~~by certified mail~~. An owner or operator of a new facility shall submit the surety bond to the director ~~by certified mail~~ at least sixty days before the date on which hazardous waste is first received for treatment, storage, or disposal. The bond shall be effective before this initial receipt of hazardous waste. ~~The~~ At a minimum, the surety company issuing the bond shall, ~~at a minimum,~~ be among those listed as acceptable sureties on federal bonds in "Circular 570" of the U.S. department of the treasury.

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

- (2) The wording of the surety bond shall be identical to the wording specified in paragraph (B) of rule 3745-55-51 of the Administrative Code.
- (3) The owner or operator who uses a surety bond to satisfy the requirements of this rule also shall ~~also~~ establish a standby trust fund by the time the bond is obtained. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the director. This standby trust fund shall meet the requirements specified in paragraph (A) of this rule, except that:
- (a) An originally signed duplicate of the trust agreement shall be submitted to the director with the surety bond; and
 - (b) Until the standby trust fund is funded pursuant to this rule, the following are not required:
 - (i) Payments into the trust fund as specified in paragraph (A) of this rule;
 - (ii) Updating of "Schedule A" of the trust agreement [see paragraph (A) of rule 3745-55-51 of the Administrative Code] to show current closure cost estimates;
 - (iii) Annual valuations as required by the trust agreement; and
 - (iv) Notices of nonpayment as required by the trust agreement.
- (4) The bond shall guarantee that the owner or operator will:

- (a) Fund the standby trust fund in an amount equal to the penal sum of the bond 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 fifteen days after an order to begin final closure in accordance with rules 3745-55-10 to 3745-55-20 of the Administrative Code is issued by the director, or by an Ohio court, or other court of competent jurisdiction, or by a U.S. district court, or within fifteen days after issuance of a notice or revocation of the permit by the director; or
 - (c) Provide alternate financial assurance as specified in this rule, and obtain the director's written approval of the assurance provided, within ninety days after receipt by both the owner or operator and the director of a notice of cancellation of the bond from the surety.
- (5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. ~~Following~~After a determination by the director that the owner or operator has failed to perform final closure in accordance with the approved closure plan and other permit requirements when required to do so, under the terms of the bond the surety will perform final closure as guaranteed by the bond, or will deposit the amount of the penal sum into the standby trust fund.
- (6) The penal sum of the bond shall be in an amount at least equal to the current closure cost estimate (see rule 3745-55-42 of the Administrative Code) except as provided in paragraph (G) of this rule.
- (7) Whenever the current closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within sixty days after the increase, either 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 director, or shall obtain other financial assurance as specified in this rule to cover the increase. Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the director.
- (8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the director. Cancellation may not occur, however, during the one hundred twenty days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the director, as evidenced by the return receipts.

- (9) The owner or operator may cancel the bond if the director has given prior written consent based on the director's receipt of evidence of alternate financial assurance as specified in this rule.

(C) Surety bond guaranteeing performance of closure.

- (1) An owner or operator may satisfy the requirements of this rule by obtaining a surety bond which conforms to the requirements of ~~paragraph~~ paragraph (C) to (C)(10) of this rule and submitting the bond to the director ~~by certified mail~~. An owner or operator of a new facility shall submit the bond to the director ~~by certified mail~~ at least sixty days before the date on which hazardous waste is first received for treatment, storage, or disposal. The bond shall be effective before this initial receipt of hazardous waste. ~~The~~ At a minimum, the surety company issuing the bond shall, ~~at a minimum,~~ be among those listed as acceptable sureties on federal bonds in "Circular 570" of the U.S. department of the treasury.

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

- (2) The wording of the surety bond shall be identical to the wording specified in paragraph (C) of rule 3745-55-51 of the Administrative Code.
- (3) The owner or operator who uses a surety bond to satisfy the requirements of this rule also shall ~~also~~ establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the director. This standby trust shall meet the requirements specified in paragraph (A) of this rule, except that:
- (a) An originally signed duplicate of the trust agreement shall be submitted to the director with the surety bond; and
- (b) Unless the standby trust fund is funded pursuant to this rule, the following are not required:
- (i) Payments into the trust fund as specified in paragraph (A) of this rule;
- (ii) Updating of "Schedule A" of the trust agreement [see paragraph (A) of rule 3745-55-51 of the Administrative Code] to show current closure cost estimates;
- (iii) Annual valuations as required by the trust agreement; and

- (iv) Notices of nonpayment as required by the trust agreement.
- (4) The bond shall guarantee that the owner or operator will either:
- (a) Perform final closure in accordance with the closure plan and other requirements of the permit for the facility whenever required to do so.
 - (b) Provide alternate financial assurance as specified in this rule, and obtain the director's written approval of the assurance provided, within ninety days after receipt by both the owner or operator and the director of a notice of cancellation of the bond from the surety.
- (5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. ~~Following~~After a determination pursuant to Chapter 3734. of the Revised Code or Section 3008 of RCRA that the owner or operator has failed to perform final closure in accordance with the approved closure plan and other permit requirements when required to do so, under the terms of the bond the surety will perform final closure as guaranteed by the bond or will deposit the amount of the penal sum into the standby trust fund.
- (6) The penal sum of the bond shall be in an amount at least equal to the amount of the current closure cost estimate (see rule 3745-55-42 of the Administrative Code).
- (7) Whenever the current closure cost estimate increases to an amount greater than the amount of the penal sum, the owner or operator, within sixty days after the increase, either ~~shall either~~ cause the penal sum of the bond to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the director, or shall obtain other financial assurance as specified in this rule. Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the director.
- (8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the director. Cancellation may not occur, however, during the one hundred twenty days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the director, as evidenced by return receipts.
- (9) The owner or operator may cancel the bond if the director has given prior written consent. The director will provide such written consent when either:
- (a) An owner or operator provides alternate financial assurance as specified in this rule.

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

(10) The surety will not be liable for deficiencies in the performance of closure by the owner or operator after the director releases the owner or operator from the requirements of this rule in accordance with paragraph (I) of this rule.

(D) Closure letter of credit.

(1) An owner or operator may satisfy the requirements of this rule by obtaining an irrevocable standby letter of credit which conforms to the requirements of ~~paragraphs~~ paragraph (D) to ~~(D)(10)(b)~~ of this rule and by submitting the letter to the director ~~by certified mail~~. An owner or operator of a new facility shall submit the letter of credit to the director ~~by certified mail~~ at least sixty days before the date on which hazardous waste is first received for treatment, storage, or disposal. The letter of credit shall be effective before this initial receipt of hazardous waste. The issuing institution shall be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency.

(2) The wording of the letter of credit shall be identical to the wording specified in paragraph (D) of rule 3745-55-51 of the Administrative Code.

(3) An owner or operator who uses a letter of credit to satisfy the requirements of this rule also shall ~~also~~ establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the director will be deposited by the issuing institution directly into the standby trust fund in accordance with instruction from the director. This standby trust fund shall meet the requirements of the trust fund specified in paragraph (A) of this rule, except that:

(a) An originally signed duplicate of the trust agreement shall be submitted to the director with the letter of credit; and

(b) Unless the standby trust fund is funded pursuant to this rule, the following are not required:

(i) Payments into the trust fund as specified in paragraph (A) of this rule;

(ii) Updating of "Schedule A" of the trust agreement [see paragraph (A) of rule 3745-55-51 of the Administrative Code] to show current closure estimates;

(iii) Annual valuations as required by the trust agreement; and

- (iv) 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 U.S. EPA identification number, name, and address of the facility, and the amount of funds assured for closure of the facility by the letter of credit.
- (5) The letter of credit shall be irrevocable and issued for a period of at least one year. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one year unless, at least one hundred twenty days before the current expiration date, the issuing institution notifies both the owner or operator and the director by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the one hundred twenty days ~~will~~ begin on the date when both the owner or operator and the director have received the notice, as evidenced by the return receipts.
- (6) The letter of credit shall be issued in an amount at least equal to the current closure cost estimate, except as provided in paragraph (G) of this rule.
- (7) Whenever the current closure cost estimate increases to an amount greater than the amount of the credit, the owner or operator, within sixty days after the increase, either shall ~~either~~ cause the amount of the credit to be increased so that the amount of the credit at least equals the current closure cost estimate and submit evidence of such increase to the director, or shall obtain other financial assurance as specified in this rule to cover the increase. Whenever the current closure cost estimate decreases, the amount of the letter of credit may be reduced to the amount of the current closure cost estimate ~~following~~after written approval by the director.
- (8) ~~Following~~After a determination pursuant to Chapter 3734. of the Revised Code or Section 3008 of the RCRA that the owner or operator has failed to perform final closure in accordance with the closure plan and other permit requirements when required to do so, the director may draw on the letter of credit.
- (9) If the owner or operator does not establish alternate financial assurance as specified in this rule and obtain written approval of such alternate assurance from the director within ninety days after the receipt by both the owner or operator and the director of a notice from the issuing institution that the issuing institution ~~has~~ decided not to extend the letter of credit beyond the current expiration date, the director will draw on the letter of credit. The director may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last thirty days of any such extension, the director will draw on the letter of credit if the owner or operator has failed to provide alternate

financial assurance as specified in this rule and obtain written approval of such assurance from the director.

(10) The director will return the letter of credit to the issuing institution for termination when either:

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

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

(E) Closure insurance.

(1) An owner or operator may satisfy the requirements of this rule by obtaining closure insurance which conforms to the requirements of ~~paragraphs~~ paragraph (E) ~~to (E)(10)(b)~~ of this rule and submitting a certificate of such insurance to the director. An owner or operator of a new facility shall submit the certificate of insurance to the director at least sixty days before the date on which hazardous waste is first received for treatment, storage, or disposal. The insurance shall be effective before this initial receipt of hazardous waste. At a minimum, the insurer shall be licensed to transact the business of insurance; or eligible to provide insurance as an excess or surplus lines insurer; in one or more states.

(2) The wording of the certificate of insurance shall be identical to the wording specified in paragraph (E) of rule 3745-55-51 of the Administrative Code.

(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 paragraph (G) of this rule. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(4) The closure insurance policy shall guarantee that funds will be available to close the facility whenever final closure occurs. The policy also shall ~~also~~ guarantee that once final closure begins, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the director, to such party or parties as the director specifies.

(5) After beginning partial or final closure, an owner or operator or any other person authorized to conduct closure may request reimbursement for closure expenditures by submitting itemized bills to the director. The owner or operator may request reimbursement for partial closure only if the remaining value of

the policy is sufficient to cover the maximum costs of closing the facility over the remaining operating life of the facility. Within sixty days after receiving bills for closure activities, the director will determine whether the partial or final closure expenditures are in accordance with the approved closure plan or otherwise justified, and if so, the director will instruct the insurer to make reimbursement in such amounts as the director specifies in writing. If the director has reason to believe that the maximum cost of closure over the remaining operating life of the facility will be significantly greater than the face amount of the policy, the director may withhold reimbursement of such amounts as the director deems prudent until the director determines, in accordance with paragraph (I) of this rule, that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the director does not instruct the insurer to make such reimbursements, the director will provide the owner or operator with a detailed written statement of reasons.

- (6) The owner or operator shall maintain the policy in full force and effect until the director consents to termination of the policy by the owner or operator as specified in paragraph (E)(10) of this rule. Failure to pay the premium, without substitution of alternate financial assurance as specified in this rule, will constitute a significant violation, warranting such remedy as the director deems necessary. Such violation will be deemed to begin upon receipt by the director of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.
- (7) Each policy 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~~ At a minimum, 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 director. Cancellation, termination, or failure to renew may not occur, however, during the one hundred twenty days beginning with the date of receipt of the notice by both the director and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:
 - (a) The director deems the facility abandoned; or

- (b) The permit is terminated or revoked or a new permit is denied; or
 - (c) Closure is ordered by the director or a U.S. district court or other court of competent jurisdiction; or
 - (d) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (bankruptcy), U.S. Code; or
 - (e) The premium due is paid.
- (9) Whenever the current closure cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within sixty days after the increase, either shall either cause the face amount to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the director, or shall obtain other financial assurance as specified in this rule to cover the increase. Whenever the current closure cost estimate decreases, the face amount may be reduced to the amount of the current closure cost estimate ~~following~~after written approval by the director.
- (10) The director will give written consent to the owner or operator that the owner or operator may terminate the insurance policy when either:
- (a) An owner or operator substitutes alternate financial assurance as specified in this rule.
 - (b) The director releases the owner or operator from the requirements of this rule in accordance with paragraph (I) of this rule.
- (F) Financial test and corporate guarantee for closure.
- (1) An owner or operator may satisfy the requirements of this rule by demonstrating that the owner or operator passes a financial test as specified in ~~paragraphs paragraph (F) to (F)(10)(c)~~paragraph (F) of this rule. To pass this test, the owner or operator shall meet the criteria of either paragraph (F)(1)(a) or (F)(1)(b) of this rule.
- (a) The owner or operator shall have:
 - (i) Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

- (ii) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and
 - (iii) Tangible net worth of at least ten million dollars; and
 - (iv) Assets located in the United States amounting to at least ninety per cent of total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.
- (b) The owner or operator shall have:
- (i) A current ~~rating~~rating for the owner's or operator's most recent bond issuance of "AAA, AA, A, or BBB" as issued by "Standard and Poor's" or "Aaa, Aa, A, or Baa" as issued by "Moody's"; and
 - (ii) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and
 - (iii) Tangible net worth of at least ten million dollars; and
 - (iv) Assets located in the United States amounting to at least ninety per cent of the owner's or operator's total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.
- (2) The phrase "current closure and post-closure cost estimates" as used in ~~paragraphs~~paragraph (F)(1) ~~to (F)(1)(b)(iv)~~ of this rule refers to the cost estimates required to be shown in paragraphs one through four of the letter from the owner's or operator's chief financial officer [paragraph (F) of rule 3745-55-51 of the Administrative Code]. The phrase "current plugging and abandonment cost estimates" as used in ~~paragraphs~~paragraph (F)(1) ~~to (F)(1)(b)(iv)~~ of this rule refers to the cost estimates required to be shown in paragraphs one through four of the letter from the owner's or operator's chief financial officer [see paragraph (F) of rule 3745-55-51 of the Administrative Code].
- (3) To demonstrate that the owner or operator meets this test, the owner or operator shall submit the following items to the director:
- (a) A letter signed by the owner's or operator's chief financial officer and worded as specified in paragraph (F) of rule 3745-55-51 of the Administrative Code; and

- (b) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and
- (c) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:
 - (i) The accountant has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited year-end financial statements for the latest fiscal year with the amounts in such financial statements; and
 - (ii) In connection with that procedure, no matters came to the accountant's attention which caused the accountant to believe that the specified data should be adjusted.
- (4) An owner or operator of a new facility shall submit the items specified in paragraph (F)(3) of this rule to the director at least sixty days before the date on which hazardous waste is first received for treatment, storage, or disposal.
- (5) After the initial submittal of items specified in paragraph (F)(3) of this rule, the owner or operator shall send updated information to the director within ninety days after the close of each succeeding fiscal year. This information shall consist of all three items specified in paragraph (F)(3) of this rule.
- (6) If the owner or operator no longer meets the requirements of paragraph (F)(1) of this rule, the owner or operator shall send notice to the director of intent to establish alternate financial assurance as specified in this rule. The notice shall be sent by certified mail within ninety days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator shall provide the alternate financial assurance within one hundred twenty days after the end of such fiscal year.
- (7) The director, based on a reasonable belief that the owner or operator may no longer meet the requirements of paragraph (F)(1) of this rule, may require reports of financial condition at any time from the owner or operator in addition to those specified in paragraph (F)(3) of this rule. If the director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of paragraph (F)(1) of this rule, the owner or operator shall provide alternate financial assurance as specified in this rule within thirty days after notification of such a finding.

- (8) The director may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the accountant's report on examination of the owner's or operator's financial statements [see paragraph (F)(3)(b) of this rule]. An adverse opinion or a disclaimer of opinion will be cause for disallowance. The director will evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in this rule within thirty days after notification of the disallowance.
- (9) The owner or operator is no longer required to submit the items specified in paragraph (F)(3) of this rule when either:
 - (a) An owner or operator substitutes alternate financial assurance as specified in this rule.
 - (b) The director releases the owner or operator from the requirements of this rule in accordance with paragraph (I) of this rule.
- (10) An owner or operator may meet the requirements of this rule by obtaining a written guarantee. The guarantor shall be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor shall meet the requirements for owners or operators in paragraphs (F)(1) to (F)(8) of this rule and shall comply with the terms of the guarantee. The wording of the guarantee shall be identical to the wording specified in paragraph (H) of rule 3745-55-51 of the Administrative Code. A certified copy of the guarantee shall accompany the items sent to the director as specified in paragraph (F)(3) of this rule. One of these items shall be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter shall describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter shall describe this "substantial business relationship" with 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 corporate guarantee in accordance with the closure plan and other permit requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in paragraph (A) of this rule in the name of the owner or operator.

- (b) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the director. Cancellation may not occur, however, during the one hundred twenty days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the director, as evidenced by the return receipts.
 - (c) If the owner or operator fails to provide alternate financial assurance as specified in this rule and obtain the written approval of such alternate assurance from the director within ninety days after receipt by both the owner or operator and the director of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the owner or operator.
- (G) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this rule by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, and insurance. The mechanisms shall be as specified in paragraphs (A), (B), (D), and (E) of this rule, 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 letter of credit, the owner or operator may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust may be established for two or more mechanisms. The director may use any or all of the mechanisms to provide for closure of the facility.
- (H) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in this rule to meet the requirements of this rule for more than one facility. Evidence of financial assurance submitted to the director shall include a list showing, for each facility, the U.S. EPA identification number, name, address, and the amount of funds for closure assured by the mechanism. If the facilities covered by the mechanism are in more than one U.S. EPA region, identical evidence of financial assurance shall be submitted to and maintained with the U.S. EPA regional administrators of all such regions or the directors of state programs in states authorized to administer such programs. 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 director 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.

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

[Comment 1: The notice releases the owner or operator only from requirements for financial assurance for closure of the facility;~~the~~. The notice does not release the owner or operator from legal responsibility for meeting the closure standards.]

[Comment 2: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see rule 3745-50-11 of the Administrative Code titled "Incorporated by reference."]

Effective: 9/29/2021
Five Year Review (FYR) Dates: 6/7/2021 and Exempt

CERTIFIED ELECTRONICALLY

Certification

09/14/2021

Date

Promulgated Under: 119.03
Statutory Authority: 3734.12
Rule Amplifies: 3734.12
Prior Effective Dates: 08/26/1983 (Emer.), 11/29/1983, 05/29/1985 (Emer.),
08/29/1985, 12/28/1987, 02/23/1989, 09/02/1997,
12/07/2000, 12/07/2004, 09/05/2010, 10/31/2015