

**3745-27-15 Financial assurance for solid waste facility or scrap tire transporter closure.****(A) Applicability.**

- (1) For sanitary landfill facilities, solid waste incinerators, scrap tire storage facilities, scrap tire recovery facilities, and scrap tire transporters, financial assurance information shall be submitted as part of a permit to install or registration certificate application for a new solid waste facility, for a modification that increases the closure cost estimate of an existing facility, or as part of a permit to install application submitted in response to division (A)(3) or (A)(4) of section 3734.05 of the Revised Code.
- (2) For sanitary landfill facilities subject to paragraph (A) of rule 3745-27-11 or 3745-30-09 of the Administrative Code, as applicable, the owner or operator shall submit to Ohio EPA a closure financial assurance instrument in accordance with this rule.

**(B) Implementation.**

- (1) The owner or operator of a solid waste facility shall execute and fund the closure financial assurance instrument submitted as a part of a permit to install or registration certification application prior to receipt of solid waste at a new solid waste facility, prior to acceptance of waste pursuant to a modification that increases closure cost estimates of an existing solid waste facility, or prior to issuance of a permit to install for which an application was submitted in response to division (A)(3) or (A)(4) of section 3734.05 of the Revised Code.
- (2) The owner or operator of a sanitary landfill facility subject to paragraph (A) of rule 3745-27-11 or 3745-30-09 of the Administrative Code, as applicable, shall execute and fund the closure financial assurance instrument not later than sixty days after approval of the closure/post-closure care plan.
- (3) Scrap tire transporters shall execute and fund the closure financial assurance instrument submitted as part of a registration certificate application prior to issuance of a registration certificate.

**(C) Closure financial assurance instrument.****(1) Solid waste facilities.**

- (a) The closure financial assurance instrument for a sanitary landfill facility or solid waste incinerator shall contain an itemized written estimate, in current dollars, of the cost of closure. The closure cost estimate shall be based on the closure costs at the point in the operating life of the facility when the extent and manner of its operation would make the closure the most expensive, and be based on a third party conducting the closure activities. Ohio EPA may review, approve, or require revisions to the closure cost estimate or to the closure financial assurance instrument.
- (b) The closure financial assurance instrument for a scrap tire storage or recovery facility shall contain an itemized written estimate, in current dollars, of the cost for a third party to complete closure of the facility. Ohio EPA may review, approve, or require revisions to the closure cost estimate or to the closure financial assurance instrument. The cost estimate shall be based on one of the following:
  - (i) The cost of closure performed in accordance with rule 3745-27-66 of the Administrative Code.
  - (ii) The fixed fee closure cost estimate calculated in accordance with paragraph (C)(3) of this rule.
- (c) The closure financial assurance instrument for a mobile scrap tire recovery facility or for portable equipment operated by a licensed class I or II scrap tire recovery facility at a site other than the

facility's licensed site shall contain a closure cost estimate of fifty thousand dollars.

- (2) For a scrap tire transporter, the financial assurance instrument shall contain a closure cost estimate of twenty thousand dollars.
  - (3) For the purposes of this rule, the fixed fee closure cost estimate for a solid waste facility that is a scrap tire storage or scrap tire recovery facility shall be calculated as shown in rule 3745-27-61 of the Administrative Code. The closure cost estimate shall be based on the closure costs at the point in the operating life of the facility when the extent and manner of its operation would make the closure the most expensive, and shall be based on a third party conducting the closure activities. Ohio EPA may review, approve, or require revisions to the closure cost estimate or to the closure financial assurance instrument.
- (D) Review of closure financial assurance instruments. The owner or operator of a solid waste facility shall submit the most recently adjusted closure cost estimate to the director by certified mail or any other form of mail accompanied by a receipt. The owner or operator of a solid waste facility or scrap tire transporter that has a closure cost estimate greater than twenty thousand dollars shall do the following:
- (1) Annually review and analyze the closure cost estimate and make any appropriate revisions to the estimates and to the financial assurance instrument whenever a change in the closure activities increases the cost of closure. Any revised closure cost estimate shall be adjusted for inflation as specified in paragraph (D)(2) of this rule.
  - (2) Annually adjust the closure cost estimate for inflation. The adjustment shall be made using the preceding February inflation factor derived from the annual implicit price deflator for gross domestic product as published by the U.S. department of commerce. The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year. The inflation adjustment shall be calculated as follows:
    - (a) For the first adjustment, by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.
    - (b) For subsequent adjustments, by multiplying the most recently adjusted closure cost estimate by the most recent inflation factor.
- (E) The owner or operator of a solid waste facility or scrap tire transporter shall select a closure financial assurance mechanism from the list of mechanisms specified in paragraphs (F) to (L) of this rule, except as otherwise specified by this rule, provided the owner or operator satisfies the criteria for use of that mechanism.
- (F) Closure trust fund.
- (1) The owner or operator may satisfy the requirements of this rule by establishing a closure trust fund that conforms to this paragraph and by sending an originally signed duplicate of the trust agreement to the director within the time period outlined in paragraph (B) of this rule and by submitting a copy into the operating record of the facility in accordance with rule 3745-27-09 of the Administrative Code, if applicable. The trustee shall be an entity that 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 3745-27-17 of the Administrative Code on forms prescribed by the director and be accompanied by a

formal certification of acknowledgment. "Schedule A" of the trust agreement shall be updated not later than sixty days after a change in the amount of the current closure cost estimate provided for in the agreement.

- (3) A closure trust fund shall be established to secure an amount at least equal to the current closure cost estimate or the scrap tire transporter cost estimate, except as provided in paragraph (M) of this rule. Except for payments made in accordance with paragraph (F)(4) of this rule, payments to the trust fund shall be made annually by the owner or operator during the pay-in period. The pay-in period shall be the anticipated life of the facility as calculated using the authorized maximum daily waste receipt and the approved volume of the solid waste facility as shown in the authorizing document. A receipt from the trustee for each payment shall be submitted by the owner or operator to the director and the first payment into the closure trust fund shall be at least equal to the current closure cost estimate divided by the number of years in the pay-in period, except as provided in paragraph (M) of this rule and shall be made in accordance with this rule. Subsequent payments to the closure trust fund shall be made as follows:

- (a) Not later than thirty days after each anniversary date of the first payment. The amount of each subsequent payment shall be determined by performing the following calculation:

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

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 the owner or operator establishes a trust fund, as specified in this rule, and the value of the trust fund is less than any revised current closure cost estimate made during the pay-in period, 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 defined in paragraph (F)(3) of this rule. Payments shall continue to be made not later than thirty days after each anniversary date of the first payment pursuant to paragraph (F)(3)(a) of this rule. The amount of each payment shall be determined by performing the following calculation:

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

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.

- (c) The owner or operator may make the first installment of the pay-in period by providing alternative financial insurance using one of the mechanisms specified in paragraph (G), (I), or (J) of this rule in an amount at least equal to the first installment. On the anniversary date of the first installment, the owner or operator shall pay into the trust an amount at least equal to the first and second installments required by this paragraph or select an alternative financial assurance mechanism.

- (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. The owner or operator shall maintain the value of the fund at no less than the value of the fund if annual payments were made as specified in paragraph (F)(3) of this rule.

- (5) If the owner or operator establishes a closure trust fund after having begun funding closure under any mechanism specified in this rule, the closure trust fund shall be established by depositing the total value of all prior mechanisms into the newly established trust fund. The subsequent annual payments shall be made as specified in paragraph (F)(3) of this rule.

- (6) After the pay-in period of a trust fund has ended and the current closure cost estimate changes, the owner or operator shall compare the revised estimate to 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 revised estimate, the owner or operator shall, not later than sixty days after the change in the cost estimate, either deposit a sufficient amount into the trust fund so that the value after payment at least equals the amount of the current closure cost estimate, or obtain alternative financial assurance as specified in this rule to compensate for the difference.
- (7) The director shall instruct the trustee to release to the owner or operator such funds as the director specifies in writing after receiving one of the following requests from the owner or operator:
  - (a) Release of the amount in excess of the current closure cost estimate, if the value of the trust fund is greater than the total amount of the current closure cost estimate.
  - (b) Release of the amount in the trust fund that exceeds the amount required as a result of such substitution, if the owner or operator substitutes any of the alternative financial assurance mechanisms specified in this rule for all or part of the trust fund.
- (8) Reimbursement for closure at solid waste facilities. After beginning closure the owner or operator, or any other person authorized by the owner, operator, or director to perform closure, may request reimbursement for closure expenditures by submitting itemized bills to the director. After receiving itemized bills for closure activities, the director shall determine whether the closure expenditures are in accordance with the closure/post-closure plan, permit or registration requirements, or applicable rules, or are otherwise justified, and if so, shall instruct the trustee to make reimbursement in such amounts as the director specifies in writing. If the director determines that the cost of closure will be 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 (O) of this rule, that the owner or operator is no longer required to maintain financial assurance for closure of the facility.
- (9) The owner or operator may request reimbursement from the scrap tire transporter trust fund as follows:
  - (a) When the requirements of paragraph (O) of this rule have been met.
  - (b) To remove and properly dispose of scrap tires that have been open dumped by the scrap tire transporter.
  - (c) To comply with rule 3745-27-79 of the Administrative Code.
  - (d) To cover the owner or operator's liability for sudden, accidental occurrences that result in damage or injury to persons or property or to the environment.
  - (e) For expenditures specified in this rule that may be reimbursed by submitting itemized bills to the director. After receiving itemized bills, the director shall determine whether the expenditures are authorized by this rule and are in accordance with the applicable requirements of Chapter 3745-27 of the Administrative Code, or are otherwise justified, and if so, shall instruct the trustee to make reimbursement in such amounts as the director specifies in writing. If the director has reason to believe that the value of the trust fund will be insufficient to cover the cost of the required activities, the director may withhold reimbursement of such amounts as the director deems prudent until the director determines, in accordance with paragraph (O) of this rule, that the owner or operator is no longer required to maintain scrap tire transporter financial assurance.

(10) The director may agree to termination of trust when one of the following occurs:

- (a) The owner or operator substitutes alternative financial assurance for closure as specified in this rule.
- (b) The director notifies the owner or operator, in accordance with paragraph (O) of this rule, that the owner or operator is no longer required by this rule to maintain financial assurance for closure of the facility or for a scrap tire transporter.

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

- (1) The owner or operator may satisfy the requirements of this rule by obtaining a surety bond that conforms to the requirements of this paragraph and by delivering the originally signed bond to the director by certified mail or any other form of mail accompanied by a receipt within the time period outlined in paragraphs (A) and (B) of this rule and by submitting a copy of the bond into the operating record in accordance with rule 3745-27-09 of the Administrative Code, if applicable. The surety company issuing the bond shall at a minimum be among those listed as acceptable sureties on federal bonds in the most recent listing of approved sureties as published by the U.S. department of the treasury.
- (2) The wording of the surety bond shall be identical to the wording specified in paragraph (B) of rule 3745-27-17 of the Administrative Code on forms prescribed by the director.
- (3) The owner or operator who uses a surety bond to satisfy the requirement of this rule shall also establish a standby trust fund not later than when the bond is obtained. Under the terms of the surety bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the director. This standby trust fund shall meet paragraph (F) of this rule, except as follows:
  - (a) An originally signed duplicate of the trust agreement shall be delivered to the director with the surety bond and a copy shall be placed in the operating record in accordance with rule 3745-27-09 of the Administrative Code, if applicable.
  - (b) Until the standby trust fund is funded, pursuant to the requirements of this rule, the following are not required:
    - (i) Payments into the trust fund as specified in paragraph (F) of this rule.
    - (ii) Revisions of "Schedule A" of the trust agreement to show current closure cost estimate or scrap tire transporter closure cost estimate.
    - (iii) Annual valuations as required by the trust agreement.
    - (iv) Notices of nonpayment as required by the trust agreement.
- (4) The bond shall guarantee that the surety will become liable on the bond obligation unless the owner or operator does one of the following, as applicable:
  - (a) Funds the standby trust fund in an amount equal to the penal sum of the bond before the beginning of closure of the facility.
  - (b) For a solid waste facility, funds the standby trust fund in an amount equal to the penal sum not later than fifteen days after a mandatory closure in accordance with the closure/post-closure care plan, permit or registration requirements, and applicable rules.

- (c) For a scrap tire transporter, funds the standby trust fund in an amount equal to the penal sum of the bond in accordance with the following, as applicable:
  - (i) Before the registration certificate issued to the scrap tire transporter has expired and a renewal registration has not been applied for in the manner prescribed in this chapter.
  - (ii) Not later than fifteen days after the denial of a renewal registration certificate applied for by the owner or operator.
  - (iii) Not later than fifteen days after the suspension or revocation of the registration certificate issued to the owner or operator.
- (d) Not later than ninety days after both the owner or operator and the director receive notice of cancellation of the bond from the surety, provides alternative financial assurance as specified in this rule and obtains the director's written approval of the alternative financial assurance provided.
- (5) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.
- (6) The penal sum of the bond shall be in an amount at least equal to the current closure cost estimate except as provided in paragraph (M) of this rule.
- (7) Whenever the current closure cost estimate increases to an amount greater than the penal sum of the bond, the owner or operator shall, not later than sixty days after the increase in the estimate, 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, and into the operating record in accordance with rule 3745-27-09 of the Administrative Code, if applicable, or obtain alternative financial assurance, as specified in this rule, to compensate for 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. Notice of an increase or a proposed decrease in the penal sum shall be sent to the director not later than sixty days after the change.
- (8) Under the terms of the bond, the bond shall remain in force unless the surety sends written notice of cancellation by certified mail or any other form of mail accompanied by a receipt to the owner or operator and to the director. Cancellation cannot occur, however, during the one hundred twenty day period beginning on the first day that both the owner or operator and the director have received the notice of cancellation, as evidenced by the return receipts.
- (9) The owner or operator may cancel the bond if the director has given prior written consent. The director shall provide such written consent to the surety bond company when one of the following occurs:
  - (a) The owner or operator substitutes alternative financial assurance for closure of a facility or for a scrap tire transporter as specified in this rule.
  - (b) The director notifies the owner or operator, in accordance with paragraph (O) of this rule that the owner or operator is no longer required to maintain financial assurance for closure of a facility or for a scrap tire transporter.
- (H) Surety bond guaranteeing performance of closure.
  - (1) The owner or operator may satisfy the requirements of this rule by obtaining a surety bond which conforms to the requirements of this paragraph and by delivering the originally signed bond to the

director within the time period outlined in paragraphs (A) and (B) of this rule and by submitting a copy of the surety bond into the operating record of the facility in accordance with rule 3745-27-09 of the Administrative Code, if applicable. The surety company issuing the bond shall at a minimum be among those listed as acceptable sureties on federal bonds in the most recent listing of approved sureties as published by the U.S. department of the treasury.

- (2) The wording of the surety bond shall be identical to the wording specified in paragraph (C) of rule 3745-27-17 of the Administrative Code on forms prescribed by the director.
- (3) The owner or operator who uses a surety bond to satisfy the requirements of this rule shall also establish a standby trust fund. Under the terms of the surety bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the director. This standby trust fund shall meet paragraph (F) of this rule except as follows:
  - (a) An originally signed duplicate of the trust agreement shall be delivered to the director with the surety bond, and a copy shall be placed in the operating record in accordance with rule 3745-27-09 of the Administrative Code, if applicable.
  - (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 (F) of this rule.
    - (ii) Revisions of "Schedule A" of the trust agreement to show current closure cost estimate or the scrap tire transporter cost estimate.
    - (iii) Annual valuations as required by the trust agreement.
    - (iv) Notices of nonpayment as required by the trust agreement.
- (4) The bond shall guarantee that the surety will become liable on the bond obligation unless the owner or operator does one of the following, as applicable:
  - (a) For a solid waste facility, performs closure in accordance with the closure/post-closure plan, permit or registration requirements, and applicable rules.
  - (b) For a scrap tire transporter, the following, as applicable:
    - (i) Removes and properly disposes of any scrap tires in the scrap tire transporter's possession or which have been open dumped by the scrap tire transporter.
    - (ii) Complies with the requirements of rule 3745-27-79 of the Administrative Code.
    - (iii) Provides coverage for the owner or operator's liability for sudden, accidental occurrences that result in damage or injury to persons or property or to the environment.
  - (c) Provides alternative financial assurance as specified in this rule and obtains the director's written approval of the alternative financial assurance provided not later than ninety days after both the owner or operator and the director receive notice of cancellation of the bond from the surety.
- (5)
  - (a) 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 a determination by the director that

the owner or operator of the solid waste facility has failed to perform closure activities in accordance with the closure/post-closure care plan, permit or registration requirements, and applicable rules, the surety shall perform closure in accordance with the closure/post-closure care plan, permit or registration requirements, and applicable rules, or will deposit the amount of the penal sum into the standby trust fund.

- (b) In the case of a scrap tire transporter, following a determination by the director that the owner or operator has failed to perform the activities specified in paragraph (H)(4)(b) of this rule, the surety shall perform the activities specified in paragraph (H)(4)(b) of this rule, 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 or the scrap tire transporter cost estimate.
  - (7) Whenever the current closure cost estimate increases to an amount greater than the penal sum of the bond, the owner or operator shall, not later than sixty days after the increase in the estimate, 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, and into the operating record in accordance with rule 3745-27-09 of the Administrative Code, if applicable, or obtain alternative financial assurance, as specified in this rule, to compensate for 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. Notice of an increase or a proposed decrease in the penal sum shall be sent to the director by certified mail or any other form of mail accompanied by a receipt not later than sixty days after the change.
  - (8) Under the terms of the bond, the bond shall remain in force unless the surety sends written notice of cancellation by certified mail or any other form of mail accompanied by a receipt to the owner or operator and to the director. Cancellation cannot occur, however, during the one hundred twenty day period beginning on the first day that both the owner or operator and the director have received the notice of cancellation as evidenced by the return receipts.
  - (9) The owner or operator may cancel the bond if the director has given prior written consent. The director shall provide such written consent to the surety bond company when one of the following occurs:
    - (a) The owner or operator substitutes alternative financial assurance for closure of a facility or for a scrap tire transporter as specified in this rule.
    - (b) The director notifies the owner or operator, in accordance with paragraph (O) of this rule, that the owner or operator is no longer required by this rule to maintain financial assurance for closure of a facility or for a scrap tire transporter.
  - (10) The surety shall not be liable for deficiencies in the completion of closure of a facility or scrap tire transporter by the owner or operator after the owner or operator has been notified by the director, in accordance with this rule, that the owner or operator is no longer required to maintain financial assurance for closure of a facility or for a scrap tire transporter.
- (I) Closure letter of credit.
- (1) The owner or operator may satisfy the requirements of this rule by obtaining an irrevocable standby letter of credit ("letter of credit") which conforms to the requirements of this paragraph and by having the originally signed letter of credit delivered to the director by certified mail or any other form of mail

accompanied by a receipt within the time period outlined in paragraphs (A) and (B) of this rule and by submitting a copy of the letter of credit into the operating record of the facility in accordance with rule 3745-27-09 of the Administrative Code, if applicable. 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 3745-27-17 of the Administrative Code on forms prescribed by the director.
- (3) An owner or operator who uses a letter of credit to satisfy the requirements of this rule shall also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the director shall be deposited promptly and directly by the issuing institution into the standby trust fund in accordance with instructions from the director. The standby trust fund shall meet the requirements of the trust fund specified in paragraph (F) of this rule, except as follows:
  - (a) An originally signed duplicate of the trust agreement shall be delivered to the director with the letter of credit, and a copy shall be placed in the operating record in accordance with rule 3745-27-09 of the Administrative Code, if applicable.
  - (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 (F) of this rule.
    - (ii) Updating of "Schedule A" of the trust agreement to show current closure cost estimate or the scrap tire transporter closure cost estimate.
    - (iii) Annual valuations as required by the trust agreement.
    - (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 following information: the names and addresses of the solid waste facility and the owner and the operator and the amount of funds assured for closure of the facility by the letter of credit or in the case of scrap tire transporters, the name and address of the owner and the operator.
- (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 prior to the current expiration date, the issuing institution notifies both the owner and operator and the director by certified mail or any other form of mail accompanied by a receipt of a decision not to extend the expiration date. Under the terms of the letter of credit, the one hundred twenty day period shall begin on the day 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, or the scrap tire transporter closure cost estimate except as provided in paragraph (M) 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 shall, not later than sixty days after the increase, either cause the amount of the credit to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the director and into the operating record in accordance with rule

3745-27-09 of the Administrative Code, if applicable, or obtain alternative financial assurance, as specified in this rule, to compensate for the increase. Whenever the current closure cost estimate decreases, the letter of credit may be reduced to the amount of the current closure cost estimate following written approval by the director. Notice of an increase or a proposed decrease in the amount of the letter of credit shall be sent to the director by certified mail or any other form of mail accompanied by a receipt not later than sixty days after the change.

- (8) Under the terms of the letter of credit, the director may draw on the letter of credit following a determination that the owner or operator has failed to do the following:
- (a) For a solid waste facility, perform closure in accordance with the closure/post-closure care plan, permit or registration requirements, and applicable rules.
  - (b) For a scrap tire transporter the following, as applicable:
    - (i) Remove and properly dispose of any scrap tires which have been open dumped by the scrap tire transporter.
    - (ii) Comply with rule 3745-27-79 of the Administrative Code.
    - (iii) To cover the owner or operator's liability for sudden, accidental occurrences that result in damage or injury to persons or property or to the environment.
  - (c) Provide alternative financial assurance as specified in this rule and obtain written approval of such alternative financial assurance from the director not later than ninety days after the owner and operator and the director have received notice from the issuing institution that it will not extend the letter of credit beyond the current expiration date. The director shall draw on the letter of credit and may delay the drawing if the issuing institution grants an extension of the term of the credit. During the thirty days of any such extension the director shall draw on the letter of credit if the owner or operator has failed to provide alternative financial assurance as specified in this rule and has failed to obtain written approval of such alternative financial assurance from the director.
- (9) The director shall return the original letter of credit to the issuing institution for termination when either of the following occur:
- (a) The owner or operator substitutes alternative financial assurance for closure of a facility or a scrap tire transporter as specified in this rule.
  - (b) The director notifies the owner or operator, in accordance with paragraph (O) of this rule, that the owner or operator is no longer required to maintain financial assurance for closure of a facility or a scrap tire transporter.
- (J) Closure insurance.
- (1) The owner or operator may satisfy the requirements of this rule by obtaining closure insurance which conforms to this paragraph and by submitting an originally signed certificate of such insurance to the director by certified mail or any other form of mail accompanied by a receipt within the time period outlined in paragraphs (A) and (B) of this rule, and if the facility is a sanitary landfill facility, by submitting a copy of the certificate of insurance into the operating record in accordance with rule 3745-27-09 of the Administrative Code. 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 3745-27-17 of the Administrative Code on forms prescribed by the director.
- (3) The closure insurance policy shall be issued for a face amount at least equal to the current closure cost estimate or the scrap tire transporter cost estimate, except as provided in paragraph (M) of this rule. 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 closure is mandated. The policy shall also guarantee that once 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) The scrap tire transporter insurance policy shall guarantee that funds will be available to perform the authorized closure activities whenever such activities are mandated. The policy shall also guarantee that once such activities begin, 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.
- (6) Reimbursement for closure. The owner or operator, or any other person authorized by the owner, operator, or director to perform closure, may request reimbursement for closure expenditures by submitting itemized bills to the director. After receiving itemized bills for closure activities, the director shall determine whether the closure expenditures are in accordance with the closure/post-closure care plan, permit or registration requirements, and applicable rules, or are otherwise justified, and if so, shall instruct the insurer to make reimbursement in such amounts as the director specifies in writing. If the director has reason to believe that the cost of closure will be 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 (O) of this rule that the owner or operator is no longer required to maintain financial assurance for closure of the facility or scrap tire transporter.
- (7) 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 (J)(11) of this rule. Failure to pay the premium, without substitution of alternative financial assurance as specified in this rule, constitutes a violation of these rules, warranting such remedy as the director deems necessary. Such violation shall 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.
- (8) 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.
- (9) The policy shall provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. At a minimum, the automatic renewal of the policy shall provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail or any other form of mail accompanied by a receipt to the owner or operator and to the

director. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect, if the following occurs on or before the date of expiration:

- (a) For a solid waste facility, any activities required by the closure/post-closure care plan, permit or registration requirements, and applicable rules have not been completed.
  - (b) For a scrap tire transporter, a determination that the owner or operator has failed to perform the closure activities specified in the registration requirements and applicable rules.
  - (c) Closure of the facility is ordered by the director or a court of competent jurisdiction, or characterization and remediation in accordance with rule 3745-27-79 of the Administrative Code is ordered by the director or a court of competent jurisdiction.
  - (d) The owner or operator is named as debtor in a voluntary or involuntary proceeding under title 11 (bankruptcy), U.S. Code.
  - (e) The premium due is paid.
- (10) Whenever the current closure cost estimate increases to an amount greater than the face amount of the policy, the owner or operator shall, not later than sixty days after the increase, 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, and into the operating record in accordance with rule 3745-27-09 of the Administrative Code, if applicable, or obtain alternative financial assurance as specified in this rule to compensate for the increase. Whenever the current closure cost estimate decreases, the face amount may be reduced to the amount of the current closure cost estimate following written approval by the director.
- (11) The director may give written consent to the owner or operator that owner or operator may terminate the insurance policy when either of the following occurs:
- (a) The owner or operator substitutes alternative financial assurance for closure of a facility or a scrap tire transporter as specified in this rule.
  - (b) The director notifies the owner or operator, in accordance with paragraph (O) of this rule that the owner or operator is no longer required to maintain financial assurance for closure of a facility or a scrap tire transporter.
- (K) Financial test and corporate guarantee for closure of a solid waste facility or a scrap tire transporter.
- (1) The owner or operator may satisfy this rule by demonstrating that the owner or operator passes a financial test as specified in this paragraph. To pass this test the owner or operator shall demonstrate that less than fifty per cent of the parent corporation's gross revenues are derived from solid waste disposal, solid waste transfer facility operations, or scrap tire transporter, or if there is no parent corporation, the owner or operator shall demonstrate that less than fifty per cent of its gross revenues are derived from solid waste facility, solid waste transfer facility, or scrap tire transporter operations and shall satisfy either of the following:
- (a) The owner or operator shall have the following:
    - (i) Satisfaction of at least two of the following 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 minus ten million dollars to total liabilities greater than 0.1; a ratio of current assets to current liabilities

greater than 1.5.

- (ii) Net working capital and tangible net worth each at least six times the sum of the current closure and current post-closure care cost estimates, scrap tire transporter closure cost estimates, any corrective measures cost estimates, and any other obligations assured by a financial test.
- (iii) Tangible net worth of at least ten million dollars.
- (iv) Assets in the United States amounting to at least ninety per cent of total assets or at least six times the sum of the current and current post-closure care cost estimates, scrap tire transporter closure cost estimates, any current corrective measures cost estimates, and any other assured by a financial test.

(b) The owner or operator shall have the following:

- (i) Issued a corporate bond for which the owner or operator, as the issuing entity, has not received a current rating of less than BBB as issued by "Standard and Poor's" or Baa as issued by "Moody's." Owners or operators using bonds that are secured by collateral or a guarantee shall meet the minimum rating without that security.
- (ii) Tangible net worth at least six times the sum of the current closure and current post-closure care cost estimates, scrap tire transporter closure cost estimates, any corrective measures cost estimates, and any other obligations assured by a financial test.
- (iii) Tangible net worth of at least ten million dollars.
- (iv) Assets 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 current post-closure care cost estimates, scrap tire transporter closure cost estimates, any current corrective measures cost estimates, and any other obligations assured by a financial test.

(2) Current closure and current post-closure care cost estimates, scrap tire transporter closure cost estimates, any current corrective measures cost estimates, and any other obligations assured by a financial test as used in paragraph (K)(1) of this rule refers to the cost estimates required to be shown in the letter from the owner's or operator's chief financial officer.

(3) To demonstrate that requirements of this test are met, the owner or operator shall submit the following items to the director, and into the operating record in accordance with rule 3745-27-09 of the Administrative Code, if applicable:

- (a) A letter signed by the owner's or operator's chief financial officer and worded as specified in paragraph (F) of rule 3745-27-17 of the Administrative Code on forms prescribed by the director.
- (b) A copy of a report by an independent certified public accountant examining the owner's or the operator's financial statements for the most recently completed fiscal year.
- (c) A special report from the owner's or the operator's independent certified public accountant, in the form of an agreed-upon procedures report, to the owner or operator stating the following:
  - (i) 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 most recent fiscal year with the amounts in such financial

statements.

- (ii) In connection with the agreed-upon procedures report, the independent certified public accountant states that the independent certified public accountant agrees the specified data is accurate.
- (4) After the initial submission of the items specified in paragraph (K)(3) of this rule, the owner or operator shall send updated information to the director, and submit updated information into the operating record in accordance with rule 3745-27-09 of the Administrative Code, if applicable, not later than ninety days after the close of each succeeding fiscal year. This information shall include all three items specified in paragraph (K)(3) of this rule.
- (5) If the owner or operator no longer meets paragraph (K)(1) of this rule, notice shall be sent to the director of the intent to establish alternative financial assurance as specified in this rule. The notice must be sent by certified mail or any other form of mail accompanied by a receipt not later than 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. A copy of the notice shall also be placed in the operating record, if applicable. The owner or operator shall provide alternative financial assurance not later than one hundred twenty days after the end of such fiscal year.
- (6) The director may, based on a reasonable belief that the owner or operator no longer meets paragraph (K)(1) of this rule, require reports of financial condition at any time from the owner or operator in addition to those specified in paragraph (K)(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 (K)(1) of this rule, the owner or operator shall provide alternative financial assurance as specified in this rule not later than thirty days after notification of such a finding.
- (7) 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 report on examination of the owner's or operator's financial statements. An adverse opinion or disclaimer of opinion will be cause for disallowance. The director shall evaluate other qualifications on an individual basis. The owner or operator shall provide alternative financial assurance as specified in this rule not later than thirty days after notification of the disallowance.
- (8) The owner or operator is no longer required to submit the items specified in paragraph (K)(3) of this rule when either of the following occur:
  - (a) The owner or operator substitutes alternative financial assurance for closure of a facility or a scrap tire transporter as specified in this rule.
  - (b) The director notifies the owner or operator, in accordance with paragraph (O) of this rule that the owner or operator is no longer required to maintain financial assurance for closure of a facility or scrap tire transporter.
- (9) The owner or operator may meet this rule by obtaining a written guarantee, hereafter referred to as a corporate guarantee. The guarantor shall be the parent corporation of the owner or operator. The guarantor shall meet the requirements for an owner or operator in paragraphs (K)(1) to (K)(7) of this rule and shall comply with the terms of the corporate guarantee. The wording of the corporate guarantee shall be identical to the wording specified in paragraph (G) of rule 3745-27-17 of the Administrative Code on forms prescribed by the director. The corporate guarantee shall accompany the items sent to the director as specified in paragraph (K)(3) of this rule. The terms of the corporate guarantee shall provide the following:

- (a) The owner or operator shall perform closure of a facility or scrap tire transporter provided for by the corporate guarantee in accordance with the closure/post-closure care plan, permit or registration requirements, and applicable rules.
- (b) The guarantor shall perform the activities in paragraph (K)(9)(a) of this rule or shall establish a trust fund in the name of the owner or operator as specified in paragraph (F) of this rule if the owner or operator fails to perform those activities.
- (c) The corporate guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail or any other form of mail accompanied by a receipt to the owner or operator and to the director. Cancellation may not occur, however, during the one hundred twenty day period beginning on the first day that both the owner or operator and the director have received notice of cancellation, as evidenced by the return receipts.
- (d) If the owner or operator fails to provide alternative financial assurance as specified in this rule, and fails to obtain the written approval of such alternative financial assurance from the director not later than ninety days after both the owner or operator and the director have received notice of cancellation of the corporate guarantee from the guarantor, the guarantor shall provide such alternative financial assurance in the name of the owner or operator.

(L) Local government financial test for closure.

- (1) For the purposes of this rule, "local government" means a subdivision of the state of Ohio including but not limited to a municipal corporation, a county, a township, a single or joint county solid waste management district, or a solid waste management authority.
- (2) A local government may satisfy the requirements of this rule by demonstrating that the local government passes a financial test as specified in this paragraph. This test consists of a financial component, a public notice component, and a record-keeping and reporting component. In order to satisfy the financial component of the test, a local government shall meet the following criteria:
  - (a) A local government's financial statements shall be prepared in accordance with generally accepted accounting principles for local governments available from the financial accounting standards board.
  - (b) A local government shall not have operated at a deficit equal to five per cent or more of total annual revenue in either of the past two fiscal years.
  - (c) A local government shall not currently be in default on any outstanding general obligation bonds.
  - (d) A local government shall not have any outstanding general obligation bonds rated lower than BBB as issued by "Standard and Poor's" or Baa as issued by "Moody's." Local governments using bonds that are secured by collateral or a guarantee shall meet the minimum rating without that security.
- (3) A local government shall satisfy either of the following:
  - (a) A local government shall demonstrate the following:
    - (i) A ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05.
    - (ii) A ratio of annual debt service to total expenditures less than or equal to 0.20.
    - (iii) A ratio of long term debt issued and outstanding to capital expenditures less than or equal to

2.00.

(iv) A ratio of the current cost estimates for closure, post-closure care, corrective measures, scrap tire transporter closure, and any other obligations assured by a financial test, to total revenue less than or equal to 0.43.

(b) The local government shall demonstrate the following:

(i) Outstanding general obligation bonds for which the local government, as the issuing entity, has not received a current rating of less than BBB as issued by "Standard and Poor's" or Baa as issued by "Moody's." Local governments using bonds that are secured by collateral or a guarantee shall meet the minimum rating without that security.

(ii) A ratio of the current cost estimates for closure, post-closure care, corrective measures, scrap tire transporter closure, and any other obligations assured by a financial test, to total revenue less than or equal to 0.43.

(4) In order to satisfy the public notice component of the test, a local government shall in each year that the test is used, identify the current cost estimates in either its budget or its comprehensive annual financial report. The facility covered, the categories of expenditures, including closure, post-closure care, corrective measures, scrap tire transporter closure, the corresponding cost estimate for each expenditure, and the anticipated year of the required activity must be recorded. If the financial assurance obligation is to be included in the budget, it should either be listed as an approved budgeted line item, if the obligation will arise during the budget period, or in an appropriate supplementary data section, if the obligation will not arise during the budget period. If the information is to be included in the comprehensive annual financial report, it is to be included in the financial section as a footnote to the annual financial statements.

(5) To demonstrate that the local government meets the requirements of this test, the following shall be submitted to the director, and into the operating record in accordance with rule 3745-27-09 of the Administrative Code, if applicable:

(a) A letter signed by the local government's chief financial officer and worded as specified in paragraph (H) of rule 3745-27-17 of the Administrative Code on forms prescribed by the director as follows:

(i) Lists all current cost estimates covered by a financial test.

(ii) Certifies that the local government meets the conditions of paragraph (L)(2) of this rule.

(iii) Provides evidence and certifies that the local governments meets the conditions of either paragraph (L)(3)(a) or (L)(3)(b) of this rule.

(b) A copy of the local government's independently audited year-end financial statements for the latest fiscal year, including the unqualified opinion of the auditor. The auditor must be an independent, certified public accountant or auditor of state.

(c) A special report from the independent certified public accountant or auditor of state, in the form of an agreed-upon procedures report, to the local government stating the following:

(i) The independent certified public accountant or auditor of state 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 most recent fiscal year with the amounts in such

financial statements.

(ii) In connection with the agreed-upon procedures report, that the independent certified public accountant agrees the specified data is accurate.

- (6) After the initial submission of the items specified in this rule, a local government shall send updated information to the director on forms prescribed by the director, and submit updated information into the operating record in accordance with rule 3745-27-09 of the Administrative Code, if applicable, not later than one hundred eighty days after the close of each succeeding fiscal year. This information shall include all items specified in this rule.
- (7) If a local government no longer meets the requirements of this rule, notice shall be sent to the director of the intent to establish alternative financial assurance as specified in this rule. The notice must be sent by certified mail or any other form of mail accompanied by a receipt not later than one hundred fifty days after the end of the fiscal year for which the year-end financial data show that the local government no longer meets the requirements. A copy of the notice shall also be placed in the operating record, if applicable. The local government shall provide alternative financial assurance not later than one hundred eighty days after the end of such fiscal year.
- (8) The director may, based on a reasonable belief that the local government no longer meets the requirements of this rule, require reports of financial condition at any time from the local government in addition to those specified in this rule. If the director finds, on the basis of such reports or other information, that the local government no longer meets the requirements of this rule, the local government shall provide alternative financial assurance as specified in this rule not later than thirty days after notification of such a finding.
- (9) The director may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant or auditor of state in the report on examination of the local government's financial statements. An adverse opinion or disclaimer of opinion will be cause for disallowance. The director shall evaluate other qualifications on an individual basis. The local government shall provide alternative financial assurance as specified in this rule not later than thirty days after notification of the disallowance.
- (10) A local government is no longer required to submit the items specified in this rule when one of the following occur:
- (a) The local government substitutes alternative financial assurance for closure as specified in this rule.
  - (b) The director notifies the local government, in accordance with paragraph (O) of this rule, that the local government is no longer required to maintain financial assurance for closure of a facility or a scrap tire transporter.
- (M) Use of multiple financial assurance mechanisms. The owner or operator may satisfy this rule by establishing more than one financial assurance mechanism for each facility or by establishing more than one financial assurance mechanism for scrap tire transporter financial assurance. These mechanisms are limited to a trust fund, surety bond guaranteeing payment into a closure trust fund, letter of credit, insurance, and the local government financial test. The mechanisms shall be as specified in paragraphs (F), (G), (I), (J), and (L) respectively of this rule, except that it is the combination of mechanisms, rather than each single mechanism, which shall provide financial assurance for an amount at least equal to the current closure cost estimate or scrap tire transporter closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, the owner or operator may use the trust fund as the standby trust fund for the

other mechanisms. A single standby trust fund may be established for two or more mechanisms. The director may invoke use of any or all of the mechanisms, in accordance with paragraphs (F), (G), (I), (J), and (L) of this rule, to provide for closure of the facility or provide for the required closure for a scrap tire transporter.

- (N) Use of a financial assurance mechanism for multiple facilities. The owner or operator may use a financial assurance mechanism specified in this rule to meet this rule for more than one facility. Evidence of financial assurance submitted to the director shall include a list showing, for each facility, the name, address, and the amount of funds for closure assured by the financial assurance mechanism. The amount of funds available through the financial assurance mechanism shall be no less than the sum of the funds that would be available if a separate financial assurance mechanism had been established and maintained for each facility.
- (O) Release of the owner or operator of a solid waste facility or scrap tire transporter from this rule. The director shall 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 particular facility or scrap tire transporter, unless the director has reason to believe that closure has not been completed in accordance with Chapter 3745-27 or 3745-30 of the Administrative Code, as applicable, or the closure/post-closure care plan after receiving certifications from the owner or operator and an independent professional skilled in the appropriate disciplines that closure has been completed in accordance with the final closure/post-closure care plan, permit or registration requirements, and applicable rules.

[Comment: The notice releases the owner or operator only from the requirements for financial assurance for closure of the facility; it does not release the owner or operator from legal responsibility for meeting the post-closure care standards or corrective measures, if applicable.]

3745-27-15

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Certification

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