

3745-55-43

Financial assurance for facility closure.

An owner or operator of each facility must establish financial assurance for closure of the facility. He must 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 (A) to (A)(11)(b) of this rule and ~~by sending~~ submitting an originally signed duplicate of the trust agreement to the director by certified mail. An owner or operator of a new facility must 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 must 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 must be identical to the wording specified in paragraph (A)(1) of rule 3745-55-51 of the Administrative Code and the trust agreement must 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 must be updated within sixty days after a change ~~in~~ the amount of the current closure cost estimate covered by the agreement.
- (3) Payments to the trust fund must 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 ~~to~~ into the closure trust fund must be made as follows:
 - (a) For a new facility, the first payment must be made before the initial receipt of hazardous waste for treatment, storage, or disposal. A receipt from the trustee for this payment must be submitted by the owner or operator to the director before this initial receipt of hazardous waste. The first payment must 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 must be made no later than thirty days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by ~~performing the following calculation~~ 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 ~~the~~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 must be paid in over the pay-in period as defined in paragraph (A)(3) of this rule. Payments must continue to be made no later than thirty days after each anniversary date of the first payment made pursuant to the requirements of Chapters 3745-65 to 3745-69 and 3745-256 of the Administrative Code. The amount of each payment must be determined by ~~performing the following calculation~~this formula:

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

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

- (4) The owner or operator may accelerate payments unto the trust fund or he may deposit the full moutn of the current closure cost estimate at the time the fund is established. However, he must maintain the value of the fund at no less than the value the fund would have if annual payments were made as specified in paragraph (A)(3) of this rule.
- (5) If the owner or operator establishes a closure trust fund after having used one or more alternate mechanisms specified in this rule or in rule 3745-66-43 of the Administrative Code, his first payment must be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made ~~as specified in~~according to specifications of 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 must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator ~~must~~, within sixty days ~~of~~after the change in the cost estimate, must either deposit a ~~sufficient~~an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance as specified in this rule to cover the difference.

- (7) If the value of the trust fund is greater than the total amount of the current closure cost estimate, the owner or operator may submit a written request to the director for release of the amount in excess of the current closure cost estimate.
- (8) If an owner or operator substitutes other financial assurance as specified in this rule for all or part of the trust fund, he 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 ~~any other~~ another person authorized to ~~perform~~ 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 its remaining operating life. 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 otherwise justified, and if so, he 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 life of the facility will be significantly greater than the value of the trust fund, he may withhold reimbursement of such amounts as he deems prudent until he 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, he will provide the owner or operator with a detailed written statement of reasons.
- (11) The director will agree to termination of the trust when:
 - (a) The owner or operator substitutes alternate financial assurance ~~for closure~~ 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.

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

- (1) An owner or operator may satisfy the requirements of this rule by obtaining a surety bond which conforms to the requirements of paragraphs (B) to (B)(9) of this rule and ~~by having submitted~~ the bond ~~delivered~~ to the director by certified mail. An owner or operator of a new facility must ~~have submitted~~ the surety bond ~~delivered~~ 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 ~~surety~~ bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, 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 changes in the circular are also published in the "Federal Register."]

- (2) The wording of the surety bond must be identical to the wording specified in paragraph (B) of rule 3745-55-51 of the Administrative Code.
- (3) The owner or operator who uses a surety bond to satisfy the requirements of this rule must also establish a standby trust fund by the time 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 must meet the requirements specified in paragraph (A) of this rule, except that:
- (a) An originally signed duplicate of the trust agreement must be ~~delivered~~submitted to the director with the surety bond; and
- (b) Until the standby trust fund is funded pursuant to the requirements of this rule, the following are not required:
- (i) Payments into the trust fund as specified in paragraph (A) of this rule;
- (ii) Updating of "Schedule A" of the trust agreement [see paragraph (A) of rule 3745-55-51 of the Administrative Code] to show current closure cost estimates;
- (iii) Annual valuations as required by the trust agreement; and

(iv) Notices of nonpayment as required by the trust agreement.

- (4) The bond must 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 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 must 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 ~~of the bond~~, the owner or operator ~~must~~, within sixty days after the increase, must 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 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 his 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 paragraphs (C) to (C)(10) of this rule and ~~by having submitted~~ the bond ~~delivered~~ to the director by certified mail. An owner or operator of a new facility must ~~have the surety submit the bond delivered~~ 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 ~~surety~~ bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, 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 changes in the circular are also published in the "Federal Register."]

- (2) The wording of the surety bond must 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 must 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~~ into the standby trust fund in accordance with instructions from the director. This standby trust must meet the requirements specified in paragraph (A) of ~~thusthis~~ this rule, except that:
 - (a) An originally signed duplicate of the trust agreement must be ~~delivered~~ submitted to the director with the surety bond; and
 - (b) Unless the standby trust fund is funded pursuant to the requirements of this rule, the following are not required:
 - (i) Payments into the trust fund as specified in paragraph (A) of this rule;

- (ii) Updating of "Schedule A" of the trust agreement [see paragraph (A) of rule 3745-55-51 of the Administrative Code] to show current closure cost estimates;
 - (iii) Annual valuations as required by the trust agreement; and
 - (iv) Notices of nonpayment as required by the trust agreement.
- (4) The bond must guarantee that the owner or operator will:
 - (a) Perform final closure in accordance with the closure plan and other requirements ~~in~~of the permit for the facility whenever required to do so; or
 - (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 a determination pursuant to Chapter 3734. of the Revised Code or ~~section~~Section 308 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 must 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 ~~of the bond~~, the owner or operator ~~must~~, within sixty days after the increase, must 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 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 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:
 - (a) An owner or operator provides 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.
 - (10) ~~The surety will not be liable for deficiencies in the performance of closure by the owner or operator after the owner or operator has been notified by the director in accordance with this rule that he is no longer required by this rule to maintain financial assurance for closure of the facility~~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 (D) to (D)(10)(b) of this rule and by ~~having it delivered~~submitting the letter to the director by certified mail. An owner or operator of a new facility must ~~have~~submit the letter of credit ~~delivered~~ to the director by certified mail at least sixty days before ~~the initial receipt of~~date on which hazardous waste is first received for treatment, storage, or disposal. The letter of credit must be effective before this initial receipt of hazardous waste. The issuing institution must 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 must be identical to the wording specified in paragraph (D) of rule 3745-55-51 of the Administrative Code.
 - (3) An owner or operator who uses a letter of credit to satisfy the requirements of this rule must 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

~~promptly and directly~~ by the issuing institution directly into the standby trust fund in accordance with instruction from the director. ~~The~~This standby trust fund must meet the requirements of the trust fund specified in paragraph (A) of this rule, except that:

- (a) An originally signed duplicate of the trust agreement must be ~~delivered~~submitted to the director with the letter of credit; and
- (b) Unless the standby trust fund is funded pursuant to the requirements of this rule, the following are not required:
 - (i) Payments into the trust 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 must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: the U.S. EPA identification number, name, and address ~~and Ohio permit number~~ of the facility, and the amount of funds assured for closure of the facility by the letter of credit.
- (5) The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must 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 ~~notified~~notifies both the owner or operator and the director by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the one hundred twenty days will begin on the date when both the owner or operator and the director have received the notice, as evidenced by the return receipts.
- (6) The letter of credit must be issued ~~for at least the amount of~~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 ~~must~~, within sixty days ~~of~~after the increase, must either cause the amount of the credit to be increased ~~to an amount at least equal to so that it at least equals~~ the current closure cost estimate and submit evidence of such increase to the director, or 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 written approval by the director.
- (8) Following a determination pursuant to Chapter 3734. of the Revised Code or ~~section~~Section 3008 of the RCRA that the owner or operator has failed,~~when required to do so,~~ 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 it 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 ~~original~~ letter of credit to the issuing institution for termination when:
- (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 (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 must 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 must be effective before this initial receipt of hazardous waste. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.

- (2) The wording of the certificate of insurance must be identical to the wording specified in paragraph (E) of rule 3745-55-51 of the Administrative Code.
- (3) The closure insurance policy must 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 must guarantee that funds will be available to close the facility whenever final closure occurs. The policy must 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 ~~perform~~conduct closure may request reimbursement for closure expenditures by submitting itemized bills to the director. The owner or operator may request reimbursement for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within sixty days after receiving bills for closure activities, the director will determine whether the partial or final closure expenditures are in accordance with the approved closure plan or otherwise justified, and if so, he will instruct the insurer to make reimbursement in such amounts as the director specifies in writing. If the director has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the face amount of the policy, he may withhold reimbursement of such amounts as he deems prudent until he 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, he will provide the owner or operator with a detailed written statement of reasons.

- (6) The owner or operator must 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 must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.
- (8) The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, 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, must 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 obtain other financial assurance as specified in this rule to cover the increase. Whenever the current closure cost estimate decreases, the face amount may be reduced to the amount of the current closure cost estimate following written approval by the director.

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

- (a) An owner or operator substitutes alternate financial assurance as specified in this rule; or
- (b) The director releases the owner or operator from the requirements of this rule in accordance with paragraph (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 he passes a financial test as specified in ~~paragraph~~ paragraphs (F) to (F)(10)(c) of this rule. To pass this test the owner or operator must meet the criteria of either paragraph (F)(1)(a) or (F)(1)(b) of this rule.

(a) The owner or operator must have:

- (i) Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and
- (ii) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and
- (iii) Tangible net worth of at least ten million dollars; and
- (iv) Assets located in the United States amounting to at least ninety per cent of ~~his~~ total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

(b) The owner or operator must have:

- (i) A current rating for his 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 ~~his~~ total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.
- (2) The phrase "current closure and post-closure cost estimates" as used in ~~paragraph (F)(1)~~ paragraphs (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 ~~paragraph (F)(1)~~ paragraphs (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 operators chief financial officer [paragraph (F) of rule 3745-55-51 of the Administrative Code].
- (3) To demonstrate that he meets this test, the owner or operator must 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) He has compared the data which the letter from the chief financial

officer specifies as having been derived from the independently audited year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

- (ii) In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.
- (4) An owner or operator of a new facility must 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 must send updated information to the director within ninety days after the close of each succeeding fiscal year. This information must 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, he must send notice to the director of intent to establish alternate financial assurance as specified in this rule. The notice must be sent by certified mail within ninety days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide the alternate financial assurance within one hundred twenty days after the end of such fiscal year.
- (7) The director ~~may~~, based on a reasonable belief that the owner or operator may no longer meet the requirements of paragraph (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 must provide alternate financial assurance as specified in this rule within thirty days after notification of such a finding.
- (8) The director may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his 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 must 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:
- (a) An owner or operator substitutes alternate financial assurance as specified in this rule; or
 - (b) The director releases the owner or operator from the requirements of this rule in accordance with paragraph (I) of this rule.
- (10) An owner or operator may meet the requirements of this rule by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraphs (F)(1) to (F)(8) of this rule and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in paragraph (H) of rule 3745-55-51 of the Administrative Code. A certified copy of the guarantee must accompany the items sent to the director as specified in paragraph (F)(3) of this rule. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" with and the value received in consideration of the guarantee. The terms of the guarantee must 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 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 must 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 must 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, he 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 ~~invoke~~ use of 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 ~~that~~this rule to meet the requirements of this rule for more than one facility. Evidence of financial assurance submitted to the director ~~will~~must include a list showing, for each facility, the U.S. EPA identification number, name, address, ~~Ohio permit number~~, and the amount of funds for closure assured by the mechanism. ~~[Comment: If the facilities covered by the mechanism are in more than one U.S. EPA region, identical evidence of financial assurance~~ shall~~must~~ 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 must 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 ~~an independent registered~~ a qualified professional engineer that final closure has been ~~accomplished~~ completed in accordance with the approved closure plan, the director will notify the owner or operator in writing that he 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; it does not release him from legal responsibility for meeting the closure standards.]

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

[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."]

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