

1 **DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

2 **Solid and Hazardous Waste Commission/Hazardous Materials and**
3 **Waste Management Division**

4 **6 CCR 1007-2**

5 **PART 1 - REGULATIONS PERTAINING TO SOLID WASTE SITES AND FACILITIES**

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7
8 **Amendment of the Solid Waste Financial Assurance Regulations**

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10
11 **1) Section 1 of the Table of Contents of the Solid Waste Regulations is being**
12 **amended by deleting and reserving Section 1.8 to read as follows:**

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15 **PART 1 - REGULATIONS PERTAINING TO SOLID WASTE SITES AND FACILITIES**

16
17
18 **TABLE OF CONTENTS**

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20
21 **PART A**

22
23 **GENERAL REQUIREMENTS AND INFORMATION CONCERNING**
24 **ALL SOLID WASTE DISPOSAL SITES AND FACILITIES**
25 **IN THE STATE OF COLORADO**

26
27
28 **SECTION 1 ADMINISTRATIVE INFORMATION**

- 29 1.1 General information
30 1.2 Definitions
31 1.3 Scope and effective date
32 1.4 Exemptions
33 1.5 Waiver processes and procedures
34 1.6 Application for certificate of designation
35 1.7 Solid waste authorization and fees
36 1.8 ~~Financial assurance~~ Reserved
37 1.9 Inspections and enforcement

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42 2) Section 4 of the Table of Contents of the Solid Waste Regulations is being
43 amended by revising Section 4 to read as follows:

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46 PART 1 - REGULATIONS PERTAINING TO SOLID WASTE SITES AND FACILITIES
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50 TABLE OF CONTENTS
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54 **PART B**
55 **REQUIREMENTS AND INFORMATION CONCERNING**
56 **ALL SOLID WASTE DISPOSAL SITES AND FACILITIES**
57 **IN THE STATE OF COLORADO**
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61 **SECTION 4 FINANCIAL ASSURANCE REQUIREMENTS CONSTRUCTION DEBRIS AND**
62 **INERT MATERIAL LANDFILL SITES AND FACILITIES [RESERVED]**
63

- 64 4.1 General Provisions
- 65 4.1.1 Purpose
- 66 4.1.2 Scope and Availability
- 67 4.1.3 Exemptions
- 68 4.1.4 Duration of Financial Assurance Coverage
- 69 4.1.5 Definition of terms as used in this Section
- 70 4.2 Closure Cost Estimates
- 71 4.3 Post-Closure Cost Estimates
- 72 4.4 Corrective Action Cost Estimates
- 73 4.5 Revising Closure, Post-Closure and Corrective Action Cost Estimates
- 74 4.5.1 Annual Inflation Revision
- 75 4.5.2 Adjustments and Reimbursements of Financial Assurance
- 76 Mechanisms
- 77 4.5.3 Five-Year Revised Cost Estimate
- 78 4.6 Financial Assurance Requirements
- 79 4.6.1 General Requirements
- 80 4.6.2 Trust Funds
- 81 4.6.3 Letters of Credit
- 82 4.6.4 Surety Bonds Guaranteeing Performance or Payment
- 83 4.6.5 Insurance
- 84 4.6.6 Corporate Financial Test
- 85 4.6.7 Local Government Financial Test
- 86 4.6.8 Corporate Guarantee
- 87 4.6.9 Local Government Guarantee
- 88 4.6.10 Certificates of Deposit

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- ~~4.6.11 Use of Multiple Financial Mechanisms~~
- ~~4.6.12 Use of a Financial Mechanism for Multiple Sites~~
- ~~4.6.13 Release of the Owner or Operator from the Requirements of this Section~~

3) Section 1.8 (Financial Assurance Criteria), which includes §1.8.1 through §1.8.19, is deleted in its entirety and the section is reserved to read as follows:

SECTION 1.8 RESERVED FINANCIAL ASSURANCE CRITERIA

4) Section 2.4 (Recordkeeping) is amended to read as follows:

2.4 RECORDKEEPING

- 2.4.1 All operating records shall be part of the engineering design and operation report and shall be maintained at the facility, unless otherwise approved by the Department.
- 2.4.2 The owner or operator of a solid waste disposal site and facility shall record and retain in an operating record the following information as it becomes available:
 - (A) Location restriction demonstration required under ~~Sub~~section 3.1;
 - (B) Inspection records, and training procedures;
 - (C) Gas monitoring results from monitoring and any remediation plans required by Section 2.3;
 - (D) Design documentation for controlling leachate or gas condensate;
 - (E) Demonstrations, certifications, findings, data or documents required by ~~Sub~~section 2.2;
 - (F) Closure and post closure care plans and any monitoring, testing, or analytical data as required by ~~Sub~~section 2.5 ~~A~~and 2.6;
 - (G~~H~~) Cost estimates and financial assurance documentation required by ~~Sub~~section ~~4~~1-8; and
 - (H~~I~~) Information demonstrating compliance with waivers as required by Section 1.5.

135 **5) The existing placeholder for Section 4 (Construction Debris and inert Material**
136 **Landfill Sites and Facilities [Reserved]) is deleted and a new Section 4 (Financial**
137 **Assurance Regulations) is added to read as follows:**
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139

140 **SECTION 4**

141 ~~**CONSTRUCTION DEBRIS AND INERT MATERIAL LANDFILL SITES AND FACILITIES [RESERVED]**~~
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146 **SECTION 4.0 FINANCIAL ASSURANCE REQUIREMENTS**
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149 **4.1 General Provisions**

- 150 4.1.1 Purpose
- 151 4.1.2 Scope and Availability
- 152 4.1.3 Exemptions
- 153 4.1.4 Duration of Financial Assurance Coverage
- 154 4.1.5 Definition of terms as used in this Section

155 **4.2 Closure Cost Estimates**

156 **4.3 Post-Closure Cost Estimates**

157 **4.4 Corrective Action Cost Estimates**

158 **4.5 Revising Closure, Post-Closure and Corrective Action Cost Estimates**

- 159 4.5.1 Annual Inflation Revision
- 160 4.5.2 Adjustments and Reimbursements of Financial Assurance Mechanisms
- 161 4.5.3 Five-Year Revised Cost Estimate

162 **4.6 Financial Assurance Requirements**

- 163 4.6.1 General Requirements
- 164 4.6.2 Trust Funds
- 165 4.6.3 Letters of Credit
- 166 4.6.4 Surety Bonds Guaranteeing Performance or Payment
- 167 4.6.5 Insurance
- 168 4.6.6 Corporate Financial Test
- 169 4.6.7 Local Government Financial Test
- 170 4.6.8 Corporate Guarantee
- 171 4.6.9 Local Government Guarantee
- 172 4.6.10 Certificates of Deposit
- 173 4.6.11 Use of Multiple Financial Mechanisms
- 174 4.6.12 Use of a Financial Mechanism for Multiple Sites
- 175 4.6.13 Release of the Owner or Operator from the Requirements of this Section

176
177 **SECTION 4.0 FINANCIAL ASSURANCE REQUIREMENTS**
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179 **4.1 General Provisions**
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182 **4.1.1 Purpose:** Colorado law prohibits the operation of solid waste disposal sites and facilities
183 without adequate financial assurance. The purpose of financial assurance is to ensure, at any
184 point in the operating life of a solid waste disposal site and facility, the availability of adequate
185 funds such that the State of Colorado may use those funds to pay the costs of closing the facility,
186 the costs of needed post-closure care of the site and facility, and the costs associated with
187 corrective action of any releases from the site and facility, in the case of bankruptcy or financial
188 insolvency of the owner or operator.

189
190 **4.1.2 Scope and Applicability:** This Section 4 applies to any person owning or operating a
191 solid waste disposal site and facility. This includes all locations and facilities at which the deposit
192 and final treatment of solid wastes occur, and includes the following facility types:

- 193
194 (A) Landfills (Sections 2 and 3 of these regulations)
195 (B) Asbestos Waste Disposal Areas (Section 5 of these regulations)
196 (C) Incinerator Ash Disposal Sites (Section 6 of these regulations)
197 (D) Solid Waste Surface Impoundments (Section 9 of these regulations)
198 (E) Waste Tire Monofills, Waste Tire Processors, and Waste Tire Collection Facilities
199 (Section 10 of these regulations)
200 (F) Solid Waste Incineration Facilities (Section 11 of these regulations)
201 (G) Water Treatment Plant Sludge Disposal Facilities (Section 12 of these regulations)
202 (H) Medical Waste Facilities (Section 13 of these regulations)
203 (I) Composting Facilities (Section 14 of these regulations), and
204 (J) Commercial Exploration and Production Waste Impoundments (Section 17 of these
205 regulations)
206 (K) Waste Grease Transporters and Waste Grease Facilities (Section 18 of these
207 regulations)

208
209 **4.1.3 Exemptions:** This Section 4 does not apply to the following facility types:

- 210
211 (A) Transfer Stations (Section 7 of these regulations)
212 (B) Recycling Facilities (Section 8 of these regulations)

213
214 **4.1.4 Duration of Financial Assurance Coverage:** Financial assurance coverage must be
215 provided before the solid waste disposal site and facility commences operation or any waste is
216 accepted and must continue until a release is granted by the department.

217
218 **4.1.5 Definition of terms as used in this Section:**

- 219
220 (A) Captive Insurance Company - a closely-held company owned by one or more
221 organizations or parents, whose original purpose was, and may continue to be, to insure
222 some or all of the risks of shareholders or affiliated organizations.
223
224 (B) Corrective Action – cleanup or remediation of contamination required by or performed
225 under these Regulations and/or Subpart E of the federal regulations promulgated
226 pursuant to the provisions of subtitle D of the federal “Resources Conservation and
227 Recovery Act of 1976,” as amended.
228
229 (C) Parent Company or Parent - a company that controls other businesses by owning an
230 influential amount of voting stock or control.

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(D) Subsidiary - a company that is partly or completely owned by the parent company, which holds a controlling interest in the subsidiary company.

(E) Consultation – the department will inform the local governing authority of their opportunity to ~~comment~~consult on certain financial assurance activities per the requirements of this Section 4 and reasonable deadlines by which ~~comments a response~~ must be received. The department will consider the advice and input received from, and will consult with, the local governing authority as reasonable and appropriate under the circumstances.

Consultation between the department and the local governing authority may consist of telephone conversations, written communications, or meetings, dependent upon the particular circumstances. In the case where a solid waste disposal site and facility is owned or operated by the local governing authority, the department ~~may~~shall consult the local governing authority on matters concerning financial assurance but shall retain ~~final decision-making and~~ approval authority.

(F) Notification - the department or solid wastes disposal site and facility will provide written notice to the local governing authority of certain financial assurance activities per the requirements of this Section 4. If, after notification, a local governing authority requests Consultation, the department shall engage in Consultation with the local governing authority.

4.2 Closure Cost Estimates

4.2.1 Prior to operating, the owner or operator of a solid waste disposal site and facility must have a detailed written estimate, in current dollars, approved by the department after Consultation, of the cost of closing the facility.

(A) The estimate must equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan and is limited to the used area (current and previous) of the solid waste disposal site and facility.

(B) The closure cost estimate must be based on the costs of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. The owner or operator may use costs for on-site disposal if the owner or operator can demonstrate that on-site disposal can be accomplished in conformance with other applicable sections of these regulations and disposal capacity will exist at all times over the life of the facility.

(C) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of solid wastes, facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

(D) The owner or operator may not incorporate a zero cost for solid wastes that might have an economic value.

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280 **4.3 Post-Closure Cost Estimates**

281
282 4.3.1: Prior to operating, the owner or operator of a landfill, surface impoundment, land treatment
283 unit, or any other unit where wastes will remain in the unit after closure must have a detailed
284 written estimate, in current dollars, approved by the department after Consultation, of the cost of
285 post-closure care of the site and facility.

286
287 (A) The post-closure cost estimate must be based on the costs to the owner or operator
288 of hiring a third party to conduct post-closure care at such a site and facility. A third party
289 is a party who is neither a parent nor a subsidiary of the owner or operator.

290
291 (B) The post-closure cost estimate must be calculated by multiplying the annual post-
292 closure costs by the number of years that post-closure care will be required. All solid
293 waste disposal sites and facilities needing to implement post-closure care must initially
294 provide enough financial assurance to provide for thirty (30) years of post-closure care,
295 maintenance, and monitoring unless a shorter period has been approved by the
296 department.

297
298 **4.4 Corrective Action Cost Estimates**

299
300 4.4.1: Once a corrective action plan has been approved, and when required by the department,
301 the owner or operator of any facility with a release of solid waste(s) into the environment that
302 requires corrective action must have a detailed written estimate, in current dollars, approved by
303 the department after Consultation, of the cost of corrective action.

304
305 (A) The corrective action cost estimate must be based on the costs to the owner or
306 operator of hiring a third party to conduct corrective action activities. A third party is a
307 party who is neither a parent nor a subsidiary of the owner or operator.

308
309 (B) The corrective action cost estimate must be calculated by determining the initial
310 remediation costs and adding a multiple of the annual corrective action costs for the
311 number of years corrective action activities will be required.

312
313 **4.5 Revising Closure, Post-Closure, and Corrective Action Cost Estimates**

314
315 **4.5.1 Annual Inflation Revision:** During the active life of the solid waste disposal site and
316 facility, the owner or operator must annually revise the closure, post-closure, and any corrective
317 action cost estimate for inflation and must submit this estimate for department approval. This
318 estimate must occur at least sixty (60) days prior to the anniversary date of the establishment of
319 the financial instrument(s) used to comply with this Section 4. For owners and operators using
320 the financial test or guarantee, the revised cost estimate must be updated for inflation within thirty
321 (30) days after the close of the entity's fiscal year and submitted for department approval. The
322 annual adjustment may be made by recalculating the maximum costs of closure, post-closure,
323 and/or corrective action in current dollars, or by using an inflation factor derived from the most
324 recent Implicit Price Deflator for Gross National Product as published by the U.S. Department of
325 Commerce in its Survey of Current Business. The inflation factor is the result of dividing the
326 latest published annual Deflator by the Deflator for the previous year.

327

328 (A) The first adjustment is made by multiplying the original cost estimate by the inflation
329 factor. The result is the revised cost estimate.

330
331 (B) Subsequent adjustments are made by multiplying the latest revised cost estimate by
332 the latest inflation factor.

333 4.5.2: Adjustments and Reimbursements of Financial Assurance Mechanisms

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335
336 (A) Whenever the current closure, post-closure, and corrective action cost estimates
337 increase to an amount greater than the current amount of the financial assurance
338 mechanism, the owner or operator, within sixty (60) days after the increase, must either
339 increase the value of the mechanism and submit evidence of such increase to the
340 department and local governing authority or obtain other financial assurance to cover the
341 increase.

342
343 (B) Whenever the closure, post-closure, and corrective action cost estimates decrease,
344 the financial assurance mechanism may be reduced to the amount of the current closure,
345 post-closure, or corrective action cost estimate following the submittal of sufficient
346 justification to the department and local governing authority and written approval by the
347 department, with notification to the local governing authority. Justification for a decrease
348 can include partial closure of a facility or any other occurrence that legitimately decreases
349 the ultimate costs of closure, post-closure, or corrective action. Such justification shall be
350 made a permanent part of the operating record of the site and facility.

351
352 (C) After beginning partial or final closure, an owner or operator or another person
353 authorized to conduct partial or final closure may request releases for the amount of
354 financial assurance covering the partial or final closure expenditures by submitting
355 itemized receipts to the department. If the department concurs with the accuracy of the
356 justification, the department shall notify the local governing authority, and the amount in
357 excess of the current closure or post closure cost estimates shall be released. Additional
358 procedures for partial expenditure releases may appear for each mechanism within
359 Subsection 4.6.1(D).

360
361 (D) If an alternate mechanism is approved by the department, or if the facility is released
362 from the financial assurance requirement, the original mechanism will be returned to the
363 facility.

364
365 **4.5.3 Five-Year Revised Cost Estimate:** After department approval of the initial cost estimate,
366 and during the active life of the facility, the owner or operator must replace original cost estimates
367 with new cost estimates every five (5) years unless otherwise required by the department. This
368 five-year revised cost estimate is intended to capture changes in, or additions to, facility
369 operations and must be a complete re-evaluation of the closure, post-closure, and corrective
370 action costs.

371
372 4.5.4: The owner or operator must submit the closure, post-closure, and any corrective action
373 cost estimates, and all annual, five-year revised cost estimates, or other revisions, to the
374 department and the local governing authority for review and approval.

375 4.6 Financial Assurance Requirements

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4.6.1: General Requirements

(A) All owners and operators must establish financial assurance for closure and post-closure of, and if necessary corrective action at, the solid waste disposal site and facility in the amounts determined by the cost estimates required in Sections 4.2 through 4.5 of these regulations.

(B) The department shall ~~Consult~~ with the local governing authority as required by these regulations in the following circumstances:

- (1) Prior to accepting a solid waste disposal site and facility's initial financial assurance via an application for a Certificate of Designation or other application or department requirement.
- (2) Prior to accepting initial financial assurance for corrective action.
- (3) Prior to terminating a site and facility's financial assurance pursuant to Section 4.6.13.
- (4) As necessary in Section 4.6.12.

(C) No local governing authority shall require an applicant for a certificate of designation to obtain any financial assurance mechanism or amount in addition to that required by the provisions of these regulations.

(D) The following are allowable financial assurance mechanisms and instruments that an owner or operator may use, alone or in combination, subject to approval by the department:

- (1) Trust fund
- (2) Letter of credit
- (3) Surety bond
- (4) Insurance
- (5) Corporate financial test
- (6) Local government financial test
- (7) Corporate guarantee
- (8) Local government guarantee
- (9) Certificate of Deposit

(E) All owners and operators shall annually provide, concurrently to the department and the local governing authority, proof of sufficiency of the financial assurance required by these regulations.

(F) An owner or operator may use a financial assurance mechanism specified in this section to meet the requirements of more than one facility. However, per Section 4.6.12, all solid waste disposal sites and facilities under a multiple facility financial instrument must be located in Colorado, and the owner and operator must be the same for all facilities unless special approval of the department is first obtained.

426
427 (G) No certificate of designation shall be effective unless and until the required financial
428 assurance mechanism has been fully implemented as required by this section. Failure to
429 properly maintain financial assurance as required by this section may result in the
430 suspension or revocation of the certificate of designation. No ~~person shall operate a~~ solid
431 waste disposal site and facility ~~shall operate~~ without being in compliance with the
432 financial assurance requirements contained in this Section 4.
433
434 (H) A financial assurance instrument may not be transferred to a new owner or operator
435 unless, as part of the process, the assignment or transfer of the financial instrument(s) or
436 alternate financial assurance has been reviewed and approved by the department and
437 the local governing authority.
438
439 (I) The department will give written consent to the owner or operator to terminate the
440 financial assurance mechanism identified Subsection 4.6.1(D) when:
441
442 (1) The owner or operator provides alternate financial assurance as specified in
443 this Section; or
444
445 (2) The department, after ~~Consultation~~consultation with the local governing
446 authority, releases the owner or operator from maintaining financial assurance for
447 closure, post-closure care, or corrective action pursuant to Section 4.6.13.
448
449 (J) In the event that the owner and operator are separate parties, both will be a part of
450 any discussions prior to the release of the financial instrument.
451
452 (K) The department shall assess a fee per Section 1.7.2 to offset the costs of the
453 department's review of the financial assurance information.
454
455 (L) If at any time the department shall determine that an owner or operator has
456 insufficient financial assurance or otherwise is not in full compliance with these
457 regulations, it shall notify the owner or operator and may take whatever enforcement
458 actions it deems necessary, including altering pay-in periods and schedules.
459
460 (M) No release or reimbursement of funds will be made if a known release has occurred
461 at a site/facility and the owner or operator does not then have sufficient financial
462 assurance to implement the corrective action plan for such release. Further, if within
463 ninety (90) days of a known release, an owner or operator has not established sufficient
464 financial assurance for that release, the department will take whatever enforcement
465 actions it deems necessary. This may include a recommendation to the local governing
466 authority that they suspend or revoke the certificate of designation for the site and facility
467 with the known release. This may also include the department applying the available
468 closure and post-closure funds to implement the corrective action and assess the owner
469 or operator for any deficiency in the closure or post-closure funds which results.
470
471 (N) The department is authorized to expend such monies for the third party closure, post-
472 closure, or corrective action as available to the department from the financial assurance
473 mechanisms provided by the owner or operator of the solid waste disposal site and
474 facility.

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(O) The department is authorized to contract with one or more private contractors to conduct the third-party closure, post-closure care, or corrective action at a solid waste disposal site and facility, as may be necessary.

(1) Any such contract shall be between the department and the private contractor and the owner or operator shall not be a party to such contract.

(2) The department may disallow a contractor because of conflicts of interest or other reasons.

(3) The department may contract with the local governing authority that issued the certificate of designation to conduct such third party closure, post-closure care, or corrective action.

4.6.2 Trust Funds

(A) Subject to department approval, an owner or operator may establish a trust fund which conforms to the requirements of this Section. 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. An owner or operator of a new or existing facility must submit an originally signed duplicate of the trust agreement to the ~~department~~department. A trust fund must contain, at the end of the operating life of the facility, or within the timeframes defined in this section, sufficient funds to cover closure, post-closure and corrective action costs.

(B) The trustee, to be validated by the comptroller or banking commission, shall be the trust department of a federal or state chartered bank with capital and surplus of not less than \$10,000,000, selected by the operator and acceptable to the department. Said bank must be located and legally chartered to operate in one of the fifty (50) states. The trustee shall direct the investment of funds in the trust, using the standard of care of a fiduciary. The investment objectives of the trust are primarily preservation of capital and access to liquidity, and secondarily investment return on capital investment. Investments in the trust may include fixed income mutual funds with average durations of less than five years; United States Treasury bills, notes and bonds with maturities less than ten years; United State agency bonds; money market mutual funds invested solely in United States Treasury or Agency bonds; pre-refunded municipal bonds backed by United State Treasuries or Agencies; bank certificates of deposit and money market accounts up to Federal Deposit Insurance Corporation (FDIC) insurance limits; commercial paper bonds rated "A2P2" or better, corporate bonds rated "AA" or better by Standard and Poor's Financial Services, or any combination of these investments. If individual bonds are used, a minimum of 10 bonds shall be used with roughly equal spacing of maturities and with the intent to hold such bonds to maturity. No funds shall be released, disbursed, or transferred by the trustee from this trust without the express written authorization of the department.

(C) The wording of the trust agreement must be identical to the wording specified in Appendix A, and no changes will be allowed without department approval. The trust agreement must be accompanied by a formal certification of acknowledgment. Schedule

524 A of the trust agreement must be updated within sixty (60) days after a change in the
525 amount of the current cost estimate covered by the agreement or any change in facility
526 name or ownership.

527
528 (D) **Trust Funds for Closure and Post-Closure for Landfills:** The following facility
529 types will be considered "landfills" for the purposes of this Subsection 4.6.2(D): Landfills
530 (covered by Sections 2 and 3 of these regulations); Asbestos Waste Disposal Areas
531 (covered by Section 5 of these regulations); Incinerator Ash Disposal Sites (covered by
532 Section 6 of these regulations); Waste Tire Monofills (covered by Section 10 of these
533 regulations); and Water Treatment Plant Sludge Disposal Facilities (covered by Section
534 12 of these regulations).

535
536 (1) For landfills, payments into the trust fund for closure and post-closure by the
537 owner or operator must, at a minimum, be made annually over the operating life
538 of the facility or twenty (20) years, whichever period is shorter, as estimated in
539 the closure and post closure plan. This period is hereafter referred to as the "pay
540 in period". The payments into the trust fund must be made as follows:

541 (a) For a new landfill, the first payment must be made before the initial
542 receipt of waste. A receipt from the trustee for this payment must be
543 submitted by the owner or operator to the department and local
544 governing authority before this initial receipt of waste.

545
546 (b) A receipt for the initial payment must be submitted to the department
547 by the trustee for both new and existing landfills. The first payment ~~for~~
548 must be at least equal to the current closure, and post closure cost
549 estimate, divided by the number of years in the pay in period.

550
551 The amount of each subsequent payment must be determined by this
552 formula:

553
554
$$\text{NEXT PAYMENT} = \frac{\text{CE} - \text{CV}}{\text{Y}}$$

555
556

557
558 Where CE is the current closure and post-closure cost estimate, CV is
559 the current value of the trust fund, and Y is the number of years
560 remaining in the pay-in period. After the first year, and annually
561 thereafter, the CE shall be multiplied ~~times~~by the preceding year's annual
562 rate of inflation before subtracting CV.

563
564 (c) In lieu of using the formula expressed in Subsection 4.6.2(D)(1)(b),
565 the equivalent annual payments into the trust fund may be determined by
566 calculating the net present value of CE.

567
568 (2) The owner or operator may accelerate payments into the trust fund or may
569 deposit the full amount of the current cost estimates at the time the fund is
570 established, or at any time thereafter. However, the value of the fund must be
571 maintained at no less than the value that the fund would have if annual payments
572 were made as specified in Subsection 4.6.2(D)(1).

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(3) If the owner or operator establishes a trust fund after having used one or more alternate mechanisms specified in Subsection 4.6.1(D), the first payment must be at least the amount that the fund would contain if the trust fund were established initially and all annual payments had been made.

(4) Whenever the current closure and post-closure cost estimates increase or decrease, and are approved by the department, the owner or operator must recalculate the payments into the trust fund based on the new cost estimate (new CE). If the current valuation of the fund is less than the amount which is required using the new CE, the owner or operator must, within sixty (60) days of the approval of the new estimate, either (a) deposit an amount into the fund such that the fund equals the amount in the new CE for the current point in the pay-in period, or (b) obtain other financial assurance as specified in this section to cover the difference.

(E) Trust Funds for Closure and Post-Closure for Other Types of Solid Waste Disposal Sites and Facilities: The following facility types will be considered other types of solid waste disposal sites and facilities for the purposes of this Subsection 4.6.2(E): Solid Waste Surface Impoundments (covered by Section 9 of these regulations); Solid Waste Incineration Facilities (covered by Section 11 of these regulations); Medical Waste Facilities (covered by Section 13 of these regulations); Composting Facilities (covered by Section 14 of these regulations); and Commercial Exploration and Production Waste Impoundments (covered by Section 17 of these regulations)

(1) For all facilities listed in Subsection 4.6.2(E) above that were in operation prior to the effective date of this Section 4 (Xxxxx yy, 2018), a trust fund may be funded as described in Subsection 4.6.2(D).

(2) For all new facilities listed in Subsection 4.6.2(E) above that were not in operation on the effective date of this Section 4 (Xxxxx yy, 2018), a trust fund must be fully funded, with no pay-in period, and approved by the department before any waste is accepted in the facility.

(F) Trust Funds for Corrective Action: Whenever a trust fund will be used to assure performance of corrective action, the owner or operator will calculate a corrective action cost estimate as required by Section 4.4, submit it to the department for approval, and place 100% of the corrective action cost estimate amount into the closure and post-closure trust fund, or a separate trust fund, within sixty (60) days after department approval.

(G) Reimbursements

(1) Adjustments to the amount of a trust fund must comply with Section 4.5.2.

(2) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund, the owner or operator may submit a written request to the department, and copy the local governing authority, for

621 release of the amount in excess of the current cost estimate covered by the trust
622 fund.

623
624 (3) Within sixty (60) days after approving a request from the owner or operator
625 for release of funds as specified in this section, the department will instruct the
626 trustee to release to the owner or operator such funds as the department
627 specifies in writing.

628
629 (4) After beginning partial or final closure, an owner or operator or another
630 person authorized to conduct partial or final closure may request reimbursements
631 for partial or final closure expenditures by submitting itemized receipts to the
632 department. The owner or operator may request reimbursements for partial
633 closure only if sufficient funds are remaining in the trust fund to cover the
634 maximum costs of closing the facility over its remaining operating life. Within
635 sixty (60) days after receiving receipts for partial or final closure activities, the
636 department will instruct the trustee to make reimbursements in those amounts as
637 the department determines that the partial or final closure expenditures are in
638 accordance with the approved closure plan, or otherwise justified. If the
639 department has reason to believe that the maximum cost of closure over the
640 remaining life of the facility will be significantly greater than the value of the trust
641 fund, it may withhold reimbursements of such amounts as is deemed prudent
642 until it determines after Consultation, that the owner or operator is no longer
643 required to maintain financial assurance for final closure of the facility. If the
644 department does not instruct the trustee to make such reimbursements, it will
645 provide the owner or operator with a detailed written statement of reasons.

646
647 (5) An owner or operator or any other person authorized to conduct post-closure
648 care may request reimbursements for post-closure care expenditures by
649 submitting itemized bills to the department. Within sixty (60) days after receiving
650 bills for post-closure care activities, the department will instruct the trustee to
651 make reimbursements in those amounts as the department specifies in writing, if
652 the department determines that the post-closure care expenditures are in
653 accordance with the approved post-closure plan or otherwise justified. If the
654 department does not instruct the trustee to make such reimbursements, it will
655 provide the owner or operator with a detailed written statement of reasons.

656
657 (6) If there is one trust fund for both closure and post-closure care, then there
658 will not be any reimbursement for closure costs if there are not sufficient funds to
659 cover both the remaining closure and post-closure care costs.

661 4.6.3 Letters of Credit

662
663 (A) Subject to department approval, an owner or operator may obtain an irrevocable
664 standby letter of credit from an institution that has the authority to issue such letters and
665 whose operations are regulated and examined by a federal or state agency. An owner
666 or operator of a new facility must submit the letter of credit to the department. The letter
667 of credit must be effective before this initial receipt of waste.
668
669

670 (B) A letter of credit must be in full conformance with Article 5 of the uniform commercial
671 code, C.R.S. 4-5-101 et seq., as amended.

672
673 (C) The wording of the letter of credit must be identical to the wording specified in
674 Appendix A.

675
676 (D) The letter of credit must be irrevocable and issued for a period of at least one (1)
677 year. The letter of credit must provide that the expiration date will be automatically
678 extended for a period of at least one (1) year unless, at least one hundred twenty (120)
679 days before the current expiration date, the issuing institution notifies the owner or
680 operator and the department by certified mail, or other trackable delivery service, of a
681 decision not to extend the expiration date. Under the terms of the letter of credit, the one
682 hundred twenty (120) days will begin on the date when the owner or operator and the
683 department have received the notice, as evidenced by the return receipts.

684
685 (E) The letter of credit must be issued in an amount at least equal to the current closure,
686 post-closure and corrective action cost estimates, less any amount covered by alternative
687 assurance mechanisms.

688
689 (F) Adjustments to the amount of a letter of credit must comply with Section 4.5.2.

690
691 (G) Following a determination that the owner or operator has failed to perform final
692 closure or post-closure or corrective action in accordance with the closure or post-closure
693 or corrective action plan and other permit requirements when required to do so, the
694 department may draw on the letter of credit.

695
696 (H) If the owner or operator does not establish alternate financial assurance as specified
697 and obtain written approval of such alternate assurance from the department, the
698 department will draw on the letter of credit. The department may delay the drawing if the
699 issuing institution grants an extension of the term of the credit. During the last thirty (30)
700 days of any such extension the department will draw on the letter of credit if the owner or
701 operator has failed to provide alternate financial assurance as specified in this section
702 and obtain written approval of such assurance from the department. The department will
703 notify the local governing authority if it draws on the letter of credit.

704 705 **4.6.4 Surety Bonds Guaranteeing Performance or Payment**

706
707 (A) Subject to department approval, an owner or operator may secure a guarantee from
708 a surety company, in the form of a bond, that all closure, post-closure care and corrective
709 action requirements will be fulfilled. An owner or operator of a new facility must submit
710 the bond to the department at least ninety (90) business days before waste is first
711 received. The bond must be effective before this initial receipt of waste. The surety
712 company issuing the bond and any co-sureties must, at a minimum, be among those
713 listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of
714 the Treasury, and should be conducting business in Colorado and issue the bond subject
715 to the laws and jurisdiction of the state of Colorado. If the surety is using reinsurance, a
716 treasury reinsurance form must be submitted with the bond or within forty-five (45) days
717 thereafter.

718

- 719 (B) The wording of the surety bond must be identical to the wording in Appendix A.
720
721 (C) The bond must guarantee that the owner or operator will provide alternate financial
722 assurance as specified in this Section 4, and obtain the approval of the department within
723 (90) days after receipt by the owner or operator and the department of a notice of
724 cancellation of the bond from the surety.
725
726 (D) Under the terms of the bond, the surety will become liable on the bond obligation
727 when the owner or operator fails to perform as guaranteed by the bond.
728
729 (E) The penal sum of the bond must be in an amount at least equal to the current
730 closure, post-closure, and corrective action cost estimate, less amounts covered by
731 alternative mechanisms.
732
733 (F) Under the terms of the bond, the surety may cancel the bond by sending notice of
734 cancellation by certified mail, or other trackable delivery service, to the owner or operator
735 and to the department. Cancellation may not occur until one hundred twenty (120) days
736 after the notice of cancellation has been received by both the owner or operator and the
737 department, as evidenced by return receipts. The department will notify the local
738 governing authority of any such cancellation.
739

740 4.6.5 Insurance

- 741 (A) Subject to department approval, an owner or operator may satisfy the requirements
742 of this Section by obtaining insurance which conforms to the requirements of this
743 paragraph and submitting a certificate of such insurance to the department. An owner or
744 operator of a new facility must submit a copy of the insurance policy and all
745 endorsements to the department at least ninety (90) days before the date on which waste
746 is first received. If an owner or operator changes a current insurance policy, the owner or
747 operator must submit a copy of the proposed insurance policy and all endorsements to
748 the department at least ninety (90) days before changing or replacing the insurance
749 policy.
750
751 (B) The insurer must be licensed to transact the business of insurance or be eligible to
752 provide insurance as an excess or surplus lines insurer, in one or more states, and
753 comply with the Title 10 Insurance Code, C.R.S., as amended. The insurance company
754 must be conducting business in Colorado and assure the policy is subject to the laws and
755 jurisdiction of the State of Colorado.
756
757 (C) The wording of the certificate of insurance must be identical to the wording specified
758 in Appendix A.
759
760 (D) The owner or operator shall submit annually to the department on the anniversary of
761 the insurance policy the following information regarding the insurer's qualifications:
762
763 (1) The most recent A.M. Best rating of A- (A minus) or better for the insurer; and
764
765

766 (2) Documentation demonstrating that the insurer is domiciled within an NAIC
767 accredited jurisdiction and is licensed and deemed in good standing in
768 Colorado with the domiciliary regulator.
769
770 (E) The owner or operator of a facility using a Captive Insurance Company, as
771 that term is defined in Section 4.1.5, must do the following:
772
773 (1) Annually submit to the department on the anniversary of the insurance policy,
774 items specified in Subsections 4.6.5(D)(1) and (2);
775
776 (2) Utilize a Captive Insurance Company that is domiciled in an NAIC accredited
777 jurisdiction and is deemed in good standing with the domiciliary regulator;
778
779 (3) Annually submit to the department a Certificate of Good Standing for the
780 Captive Insurance Company, or its equivalent issued by the domiciliary regulator;
781 and
782
783 (4) If the parent company decides to cancel the captive insurance policy, or if the
784 Captive Insurance Company no longer meets the requirements of this
785 Subsection 4.6.5 (E), the owner or operator or Captive Insurance Company must
786 provide a one hundred eighty (180) day notice to the department of their intent to
787 cancel the policy and/or their inability to comply with this Section, and must put in
788 place another financial assurance mechanism allowed in Subsection 4.6.1(D)
789 before the end of the 180-day period.
790
791 (F) The department may disallow use of the insurer or the Captive Insurance Company
792 by the owner or operator if the applicable requirements of Subsections 4.6.5(D)(1) and
793 (2) and (E) are not met.
794
795 (G) The insurance policy must be issued for a face amount at least equal to the current
796 closure, post closure and corrective action cost estimate. The term "face amount" means
797 the total amount the insurer is obligated to pay under the policy. Actual payments by the
798 insurer will not change the face amount, although the insurer's future liability will be
799 lowered by the amount of the payments.
800
801 (H) The Insurance Policy:
802
803 (1) Must guarantee that, where the department determines the owner or
804 operator has failed to perform, funds will be available to the department to close,
805 provide post-closure care of the site and facility, and to provide any necessary
806 corrective action at the site and facility whenever closure, post-closure and
807 corrective action occurs. The policy must also guarantee that once closure, post-
808 closure and corrective action begin, the insurer will be responsible for paying out
809 funds, if department determines the owner or operator has failed to perform, up
810 to an amount equal to the face amount of the policy, upon the direction of the
811 department, to such party or parties as the department specifies.
812

813 (2) Each policy must contain a provision allowing assignment of the policy to a
814 successor owner or operator. Such assignment may be conditional upon consent
815 of the insurer, provided that such consent is not unreasonable withheld.
816

817 (I) The owner or operator must maintain the policy in full force and effect until the
818 department consents to termination of the policy by the owner or operator as specified in
819 this section. Failure to pay the premium, without substitution of alternate financial
820 assurance as specified in this section, will constitute a violation of these regulations,
821 warranting such remedy as the department deems necessary. Such violation will be
822 deemed to begin upon receipt by the department of a notice of future cancellation,
823 termination, or failure to renew due to nonpayment of the premium, rather than upon the
824 date of expiration. The department will notify the local governing authority in the event of
825 any policy termination.
826

827 (J) The policy must provide that the insurer may not cancel, terminate, or fail to renew
828 the policy except for failure to pay the premium. The automatic renewal of the policy
829 must, at a minimum, provide the insured with the option of renewal at the face amount of
830 the expiring policy. If there is a failure to pay the premium, the insurer may elect to
831 cancel the policy by sending notice of cancellation by certified mail, or other trackable
832 delivery service, to the owner or operator and the department, one hundred twenty (120)
833 days in advance of cancellation. The department will notify the local governing authority
834 of any such notice of cancellation. However, cancellation, termination, or failure to renew
835 may not occur and the policy, which shall contain a provision with the following terms and
836 conditions, will remain in full force and effect in the event that on or before the date of
837 expiration:
838

839 (1) The department, after ~~Consultation~~consultation with the local governing
840 authority, deems the facility abandoned; or

841 (2) The certificate of designation is terminated or revoked or a new certificate of
842 designation is denied; or

843 (3) Closure is ordered by the department or the local governing authority or a
844 ~~State or other~~ court of competent jurisdiction; or

845 (4) The owner or operator is named as debtor in a voluntary or involuntary
846 proceeding under Title 11 (bankruptcy), U.S. Code; or

847 (5) The premium due is paid by any person.
848

849 (K) If the insurer cancels the policy, the owner or operator must obtain replacement
850 financial assurance as required by this Section 4.
851

852 (L) All premiums shall be paid annually and proof of payment shall be supplied to the
853 department and local governing authority.
854

855 (M) Adjustments to the amount of an insurance policy must comply with Section 4.5.2.
856
857
858
859
860

861 (N) Commencing on the date that liability to make premium payments for the insurance
862 policy occurs, the owner or operator will thereafter annually increase the face amount of
863 the policy as required by Section 4.5.

864 (O) Any policy issued pursuant to this section, including by a Captive Insurance
865 Company, will specifically identify each facility covered and the amount of coverage for
866 each facility.
867

868 ~~(P) For insurance policies providing coverage for post-closure care, commencing on the~~
869 ~~date that liability to make payments pursuant to the policy accrues, the insurer will~~
870 ~~thereafter annually increase the face amount of the policy. Such increase must be~~
871 ~~equivalent to the face amount of the policy, less any payments made, multiplied by an~~
872 ~~amount equivalent to eighty five (85) percent of the most recent investment rate or of the~~
873 ~~equivalent coupon-issue yield announced by the U.S. Treasury for 26-week Treasury~~
874 ~~securities~~
875

876 4.6.6 Corporate Financial Test

877 (A) Subject to department approval, an owner or operator may demonstrate financial
878 assurance if characteristics of the owner's or operator's corporation meet the following:
879

880 (1) The owner or operator must satisfy one of the following three conditions:
881

882 (a) A current rating for its senior unsubordinated debt of AAA, AA, or A
883 as issued by Standard and Poor's or Aaa, Aa, or A as issued by Moody's;
884 or
885

886 (b) A ratio of less than 1.5 comparing total liabilities to net worth; or
887

888 (c) A ratio of greater than 0.10 comparing the sum of net income plus
889 depreciation, depletion and amortization, minus \$10 million, to total
890 liabilities.
891

892 (2) The tangible net worth of the owner or operator must be greater than:
893

894 (a) The sum of the current closure, post closure care, corrective action
895 cost estimates and any other environmental obligations, including
896 guarantees, covered by a financial test plus \$10 million except as
897 provided in Subsection 4.6.6(A)(2)(b).
898

899 (b) \$10 million in net worth plus the amount of any guarantees that have
900 not been recognized as liabilities on the financial statements provided all
901 of the current closure, post-closure care, and corrective action costs and
902 any other environmental obligations covered by a financial test are
903 recognized as liabilities on the owner's or operator's audited financial
904 statements, and subject to the approval of the department.
905

906 (3) The owner or operator must have assets located in the United States
907 amounting to at least the sum of current closure, post-closure care, corrective
908
909

910 action cost estimates and any other environmental obligations covered by a
911 financial test.

912
913 (B) Record keeping and reporting requirements.

914
915 (1) The owner or operator must place the following items into the facility's
916 operating record:

917 (a) A letter signed by the owner's or operator's chief financial officer that:

918 (i) Lists all the current cost estimates covered by a financial test,
919 including, but not limited to, cost estimates required for solid
920 waste disposal sites and facilities under Section 4 of these
921 regulations and cost factors for all other environmental
922 obligations, if applicable; and

923 (ii) Provides evidence demonstrating that the owner/operator
924 meets the conditions of either Subsection 4.6.6(A)(1)(a), or (b),
925 or (c) and Subsections 4.6.6(A)(2) and 4.6.6(A)(3).

926 (b) A copy of the independent certified public accountant's unqualified
927 opinion of the owner's or operator's financial statements for the latest full
928 fiscal year. To be eligible to use the financial test, the owner's or
929 operator's financial statements must receive an unqualified opinion from
930 the independent certified public accountant. An adverse opinion,
931 disclaimer of opinion, or other qualified opinion will be cause for
932 disallowance, with the potential exception for qualified opinions provided
933 in the next sentence. The department may evaluate qualified opinions on
934 a case-by-case basis and allow use of the financial test in cases where
935 the department deems that the matters which form the basis for the
936 qualification are insufficient to warrant disallowance of the financial test.
937 If the department does not allow use of the test, the owner or operator
938 must provide alternate financial assurance that satisfies the requirements
939 of this Section.

940 (c) If the chief financial officer's letter providing evidence of financial
941 assurance includes financial data showing that the owner or operator
942 satisfies Subsection 4.6.6(A)(1)(b) or (c) that are different from data in
943 the audited financial statements referred to in Subsections 4.6.6(B)(1)
944 and (2) or any other audited financial statement or data filed with the
945 Securities and Exchange Commission, then a special report from the
946 owner's or operator's independent certified public accountant is required.
947 The special report shall be based upon an agreed upon procedures of
948 engagement in accordance with professional auditing standards and
949 shall describe the procedures performed in comparing the data in the
950 chief financial officer's letter derived from the independently audited,
951 year-end financial statements for the latest fiscal year with the amounts
952 in such financial statements, the findings of that comparison, and the
953 reasons for any differences.

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(d) If the chief financial officer's letter provides a demonstration that the ~~solid waste disposal site and facility owner or operator~~ has provided financial assurance for environmental obligations ~~regarding the solid waste disposal site and facility~~ as provided in Subsection 4.6.6(A)(2)(b), then the letter shall include a report from the independent certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements, how these obligations have been measured and reported, and that the tangible net worth of the firm is at least \$10 million plus the amount of any guarantees provided.

(2) An owner or operator must place the items specified in Subsection 4.6.6(B)(1) in the operating record and send a copy to the department indicating that these items have been placed in the operating record before the initial receipt of waste or before the effective date of the requirements of this Section, whichever is later in the case of closure, and post-closure care, or no later than one hundred twenty (120) days after the corrective action remedy has been selected in accordance with the requirements of these regulations.

(3) After the initial placement of items specified in Subsection 4.6.6(B)(1) in the operating record, the owner or operator must annually update the information and place updated information in the operating record and send a copy to the department within ninety (90) days following the close of the owner or operator's fiscal year. The department may provide up to an additional forty-five (45) days for an owner or operator who can demonstrate that ninety (90) days is insufficient time to acquire audited financial statements. The updated information must consist of all items specified in Subsection 4.6.6(B)(1).

(4) The owner or operator is no longer required to submit the items specified in this Subsection 4.6.6(B) or comply with the requirements of this Section 4.6.6 when:

(a) The owner or operator substitutes alternate financial assurance as specified in this section that is not subject to these record keeping and reporting requirements; or

(b) The owner or operator is released from the requirements of this Section in accordance with these regulations.

(5) If the owner or operator no longer meets the requirements of Subsection 4.6.6(A), the owner or operator shall, within one hundred twenty (120) days following the close of the owner or operator's fiscal year, obtain alternative financial assurance ~~satisfy that satisfies~~ the requirements of this Section, place the required submissions for assurance in the operating record, and notify the department that the owner or operator no longer meets the criteria of the financial test and that alternate financial assurance has been obtained.

1007 (6) The department may, based on a reasonable belief that the owner or operator
1008 no longer ~~meet~~meets the requirements of Subsection 4.6.6(A), require at any
1009 time the owner or operator to provide reports of its financial condition in addition
1010 to or including current financial test documentation as specified in Subsection
1011 4.6.6(B). If the department finds that the owner or operator no longer meets the
1012 requirements of Subsection 4.6.6(A), the owner or operator must provide
1013 alternate financial assurance that meets the requirements of this Section.
1014

1015 (7) When calculating the current cost estimates for closure, post-closure care,
1016 corrective action, or the sum of the combination of such costs to be covered, and
1017 any other environmental obligations assured by a financial test referred to in this
1018 Section 4.6.6, the owner or operator must include cost estimates required for
1019 municipal solid waste disposal sites and facilities under this part, as well as cost
1020 estimates required for other environmental obligations, if applicable.
1021

1022 4.6.7 Local Government Financial Test

1023 (A) Subject to department approval, an owner or operator may demonstrate financial
1024 assurance at least equal to the cost estimates for closure, post-closure care and
1025 corrective action if the owner or operator is a local government and meets the following:
1026

1027 (1) The owner or operator must satisfy one of the following two conditions:
1028

1029 (a) If the owner or operator has outstanding, rated, ~~general~~gener-al
1030 obligation bonds, that are not secured by insurance, a letter of credit, or
1031 other collateral or guarantee, it must have a current rating of Aaa, Aa, or
1032 A, as issued by Moody's, or AAA, AA, or A, as issued by Standard and
1033 Poor's on all outstanding general obligation bonds; or,
1034

1035 (b) The owner or operator must satisfy each of the following financial
1036 ratios based on the owner or operator's most recent audited annual
1037 financial statement:
1038

1039 (i) A ratio of cash plus marketable securities to total
1040 expenditures greater than or equal to 0.05; and
1041

1042 (ii) A ratio of annual debt service to total expenditures less than
1043 or equal to 0.20; and
1044

1045 (2) The owner or operator must prepare its financial statements and have them
1046 audited in conformity with generally accepted accounting principles for
1047 governments and have its financial statements audited by an independent
1048 certified public accountant.
1049

1050 (3) A local government is not eligible to assure its obligations under this Section
1051 4.6.7 if it:
1052

1053 (a) Is currently in default on any outstanding general obligation bonds, or
1054
1055

- 1056 (b) Has an outstanding general obligation bond rated lower than Baa as
1057 issued by Moody's or BBB as issued by Standard and Poor's, or
1058
1059 (c) Operated at a deficit equal to five percent or more of total annual
1060 revenue in each of the past two fiscal years, unless the owner or
1061 operator demonstrates, through the submission of an auditor's statement
1062 to the department, that this deficit was caused by expenditures from
1063 specific funds previously set aside and budgeted in prior fiscal years and
1064 not by general expenditures for the applicable fiscal year exceeding total
1065 annual revenue by an amount equal to or greater than five percent, or
1066
1067 (d) Receives an adverse opinion, disclaimer of opinion, or other qualified
1068 opinion from the independent certified public accountant (or appropriate
1069 State agency) auditing its financial statement as required under
1070 Subsection 4.6.7(A)(2). However, the department may evaluate qualified
1071 opinions on a case-by-case basis and allow use of the financial test in
1072 cases where the department deems the qualification insufficient to
1073 warrant disallowance of the test.
1074

1075 **(B) Public Notice Component**

1076 The local government owner or operator must place a reference to the closure, post-
1077 closure care, or corrective action costs assured through the financial test into its next
1078 comprehensive annual financial report (CAFR) or audited financial statement after the
1079 effective date of this Section or prior to the initial receipt of waste at the facility, whichever
1080 is later. Disclosure must include the nature and source of closure and post-closure care
1081 requirements, the reported liability at the balance sheet date, the estimated total closure
1082 and post-closure care costs remaining to be recognized, the percentage of landfill
1083 capacity used to date, and the estimated landfill life in years. A reference to corrective
1084 action costs must be placed in the CAFR not later than one hundred twenty (120) days
1085 after the corrective action remedy has been selected in accordance with the requirements
1086 of these regulations. For the first year after the financial test is issued to assure costs at a
1087 particular facility, the reference may instead be placed in the operation record until
1088 issuance of the next available CAFR if timing does not permit the reference to be
1089 incorporated into the most recently issued CAFR or budget. For closure and post-closure
1090 costs, conformance with Government Accounting Standards Board Statement 18 assures
1091 compliance with this public notice. The reference must include the amount of each cost-
1092 estimate and the year(s) in which the local government expects these costs to be
1093 incurred. References in the budget must occur as budgeted line items if the activities are
1094 to occur in the period covered by the budget, but may appear in a supplemental data
1095 section if the activities will not occur until after the period covered by the budget.
1096
1097

1098 **(C) Recordkeeping and Reporting Requirements**

1099 (1) The local government owner or operator must place the following items in the
1100 facility's operating record and deliver a copy to the department:
1101

1102 (a) A letter signed by the local government's chief financial officer that:
1103
1104

1105 (i) Lists all the current cost estimates covered by a financial test,
1106 as described in Subsection 4.6.7(B);
1107
1108 (ii) Provides evidence and certifies that the local government
1109 meets the conditions of Subsections 4.6.7(A)(1)(a),
1110 4.6.7(A)(1)(b), and 4.6.7(A)(1)(c); and
1111
1112 (iii) Certifies that the local government meets the conditions of
1113 Subsection 4.6.7(D).
1114
1115 (b) The local government's independently audited year-end financial
1116 statements for the latest fiscal year, including the unqualified opinion of
1117 the auditor who must be an independent, certified public accountant or
1118 an appropriate State agency that conducts equivalent comprehensive
1119 audits; and
1120
1121 (c) A report to the local government from the local government's
1122 independent ~~C~~ertified ~~P~~ublic ~~A~~ccountant ~~(CPA)~~ based on performing
1123 agreed upon procedures relative to the financial ratios required by
1124 Subsection 4.6.7(A)(1), if applicable, and the requirements of
1125 Subsections 4.6.7(A)(2) and 4.6.7(A)(3). The Certified Public
1126 Accountant~~CPA~~ report should state the procedures performed and the
1127 Certified Public Accountant~~CPA~~ findings.
1128
1129 (d) A copy of the comprehensive annual financial report used to comply
1130 with this section and or certification that the requirements of General
1131 Accounting Standards Board Statement 18 have been met.
1132
1133 (2) The items required in Subsection 4.6.7(C)(1) must be placed in the facility
1134 operating record as follows:
1135
1136 (a) In the case of closure and post-closure care, prior to the initial receipt
1137 of waste at the facility, or
1138
1139 (b) In the case of corrective action, not later than one hundred twenty
1140 (120) days after the corrective action remedy is selected in accordance
1141 with the requirements of Section 2.2 and Appendix B6.
1142
1143 (3) After the initial placement of the items in the facility's operating record, the
1144 local government owner or operator must update the information and place the
1145 updated information in the operating record within six (6) months following the
1146 close of the owner or operator's fiscal year, or as otherwise agreed to by the
1147 department.
1148
1149 (4) The local government owner or operator is no longer required to meet the
1150 requirements of Subsection 4.6.7(C) when:
1151
1152 (a) The owner or operator substitutes alternate financial assurance as
1153 specified in Subsection 4.6.7(C)(5); or

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(b) The owner or operator is released from the requirements of this Section in accordance with Section 4.6.13.

(5) A local government must satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test it must, within two hundred ten (210) days following the close of the owner or operator's fiscal year, obtain alternative financial assurance that meets the requirements of Section 4, place the required submissions for that assurance in the operating record, and notify the department that the owner or operator no longer meets the criteria of the financial test and that alternate assurance has been obtained.

(6) The department, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of the local government financial test, the local government must provide alternate financial assurance in accordance with Subsection 4.6.7(C)(5).

(D) **Calculation of Costs to be Assured:** The portion of the closure, post-closure, and corrective action costs for which an owner or operator can assure under this paragraph is determined as follows:

(1) If the local government owner or operator does not assure other environmental obligations through a financial test, it may assure closure, post-closure, and corrective action costs that equal up to 43 percent of the local government's total annual revenue.

(2) If the local government assures other environmental obligations through a financial test it must add those costs to the closure, post-closure, and corrective action costs it seeks to assure under this Subsection 4.6.7(D). The total of all environmental obligations must not exceed 43 percent of the local government's total annual revenue.

(3) The owner or operator must obtain an alternate financial assurance instrument for those costs that exceed the limits set in Subsections 4.6.7(D)(1) and (2).

4.6.8 Corporate Guarantee.

(A) Subject to department approval, an owner or operator may meet the requirements of this Section by obtaining a written corporate 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 Section 4.6.6 and must comply with the

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terms of the guarantee. A certified copy of the guarantee must be placed in the facility's operating record along with copies of the letter from the guarantor's chief financial officer and accountants' opinions. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter from the guarantor's chief financial officer must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee.

(B) The guarantee must be effective and all required submissions placed in the operating record and a copy submitted to the department before the initial receipt of waste or before the effective date of the requirements of these regulations whichever is later, in the case of closure and post-closure care, or in the case of corrective action no later than one hundred twenty (120) days after the corrective action remedy has been selected in accordance with the requirements of these regulations.

(C) The terms of the guarantee must provide that:

(1) If the owner or operator fails to perform closure, post-closure care, and/or corrective action of a facility covered by the guarantee, the guarantor will:

(a) Perform, or pay a third party to perform, closure, post-closure care, and/or corrective action as required (performance guarantee); or

(b) Establish a fully funded trust fund as specified in Section 4.6.2 in the name of the owner or operator (payment guarantee).

(2) The guarantee will remain in force for as long as the owner or operator is required to comply with the applicable financial assurance requirements or unless the guarantor sends prior notice of cancellation by certified mail, or other trackable delivery service, to the owner or operator and to the department. Cancellation may not occur, however, during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the department, as evidenced by the return receipts.

(3) If notice of cancellation is given, the owner or operator must, within ninety (90) days following receipt of the cancellation notice by the owner or operator and the department, obtain alternate financial assurance, place evidence of that alternate financial assurance in the facility operating record, and notify the department and the local governing authority. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within one hundred twenty (120) days of the cancellation notice, obtain alternative assurance, place evidence of the alternate assurance in the facility operating record, and notify the department and the local governing authority.

(D) If a corporate guarantor no longer meets the requirements of Subsection 4.6.6(A), the owner or operator must, within ninety (90) days, obtain alternative assurance, place evidence of the alternate assurance in the facility operating record, and notify the

1252 department and the local governing authority. If the owner or operator fails to provide
1253 alternate financial assurance within the 90-day period, the guarantor must provide that
1254 alternate assurance within the next thirty (30) days.

1255
1256 (E) The owner or operator is no longer required to meet the requirements of this Section
1257 4.6.8 when:

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1259 (1) The owner or operator substitutes alternate financial assurance as specified
1260 in this section; subject to department approval or

1261
1262 (2) The owner or operator is released by the department after Consultation from
1263 the requirements of this Section in accordance with these regulations.

1264 **4.6.9 Local Government Guarantee**

1265
1266 (A) Subject to department approval, an owner or operator may meet the requirements of
1267 this Section by obtaining a written guarantee provided by a local government. The
1268 guarantor must meet the requirements of the local government financial test in Section
1269 4.6.7, and must comply with the terms of a written guarantee.

1270
1271 (B) **Terms of the Written Guarantee.** The guarantee must be effective before the initial
1272 receipt of waste or before the effective date of this Section, whichever is later, in the case
1273 of closure, post-closure care, or no later than one hundred twenty (120) days after the
1274 corrective action remedy has been selected in accordance with the requirements of these
1275 regulations. The guarantee must provide that:

1276
1277 (1) If the owner or operator fails to perform closure, post-closure care, and/or
1278 corrective action of a facility covered by the guarantee, the guarantor will:

1279
1280 (a) Perform, or pay a third party to perform, closure, post-closure care,
1281 and/or corrective action as required; or

1282
1283 (b) Establish a fully funded trust fund as specified in Section 4.6.2 in the
1284 name of the owner or operator.

1285
1286 (2) The guarantee will remain in force unless the guarantor sends notice of
1287 cancellation by certified mail, or other trackable delivery service, to the owner or
1288 operator and to the department. Cancellation may not occur, however, during the
1289 one hundred twenty (120) days beginning on the date of receipt of the notice of
1290 cancellation by both the owner or operator and the department, as evidenced by
1291 the return receipts.

1292
1293 (3) If a guarantee is canceled, the owner or operator must, within ninety (90)
1294 days following receipt of the cancellation notice by the owner or operator and the
1295 department, obtain alternate financial assurance, place evidence of that alternate
1296 financial assurance in the facility operating record, and notify the department. If
1297 the owner or operator fails to provide alternate financial assurance within the 90-
1298 day period, the guarantor must provide that alternate assurance within one
1299 hundred twenty (120) days following the guarantor's notice of cancellation, place
1300

1301 evidence of the alternative assurance in the facility operating record, and notify
1302 the department.

1303
1304 **(C) Recordkeeping and Reporting**
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1306 (1) The owner or operator must place a certified copy of the guarantee along
1307 with the items required under Section 4.6.7 into the site and facility's operating
1308 record before the initial receipt of waste or before the effective date of this
1309 section, whichever is later, in the case of closure, post-closure care, or no later
1310 than one hundred twenty (120) days after the corrective action remedy has been
1311 selected in accordance with the requirements of these regulations.
1312

1313 (2) If a local government guarantor no longer meets the requirements of Section
1314 4.6.9, the owner or operator must, within ninety (90) days following the close of
1315 the guarantor's fiscal year, obtain alternative assurance, place evidence of the
1316 alternate assurance in the facility operating record, and notify the department. If
1317 the owner or operator fails to provide alternate financial assurance within the 90-
1318 day period, the guarantor must provide that alternate assurance within next thirty
1319 (30) days.
1320

1321 (3) A local government guarantor must satisfy the requirements for the local
1322 government guarantee at the close of each fiscal year. A demonstration that the
1323 local government meets all requirements of the local government guarantee
1324 under this section of the regulations must be placed in the operating records and
1325 with the department within one hundred eighty (180) days following the close of
1326 the guarantor's fiscal year.
1327

1328 **4.6.10 Certificates of Deposit**
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1330 (A) Subject to department approval, an owner or operator may establish a certificate of
1331 deposit. An owner or operator of a new or existing facility must submit the original
1332 certificate of deposit to the department with a copy to the local governing authority. The
1333 certificate of deposit must be effective before the initial receipt of waste. The issuing
1334 institution must have the authority to issue certificate of deposits and must be regulated,
1335 insured, and examined by a federal or state agency.
1336

1337 (B) The issuing institution, to be validated by the comptroller or banking commission,
1338 shall be a federal or state chartered bank with capital and surplus of not less than
1339 \$10,000,000, selected by the operator and acceptable to the department. Said bank
1340 must be located and legally chartered to operate in one of the fifty (50) states. The
1341 institution shall direct the investment of funds in the certificate of deposit, using the
1342 standard of care of a fiduciary. No funds shall be released, disbursed, or transferred by
1343 the institution from this certificate of deposit without the express written authorization of
1344 the department.
1345

1346 (C) The wording of the certificate of deposit must be identical to the wording specified in
1347 Appendix A, unless otherwise approved by the department.
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(D) Certificates of Deposit for Closure and Post-Closure Care for Landfills: The following facility types will be considered "landfills" for the purposes of this Subsection 4.6.10(D): Landfills (covered by Sections 2 and 3 of these regulations); Asbestos Waste Disposal Areas (covered by Section 5 of these regulations); Incinerator Ash Disposal Sites (covered by Section 6 of these regulations); Waste Tire Monofills (covered by Section 10 of these regulations); and Water Treatment Plant Sludge Disposal Facilities (covered by Section 12 of these regulations).

(1) For landfills, payments into the certificate of deposit for closure, post-closure and corrective action by the owner or operator must, at a minimum, be made annually over the operating life of the facility or twenty (20) years, whichever period is shorter, as estimated in the closure and post closure plan. This period is hereafter referred to as the "pay-in period". The payments into the certificate of deposit must be made as follows:

(a) For a new landfill, the first payment must be made before the initial receipt of waste. A receipt from the issuing institution for this payment must be submitted by the owner or operator to the department before this initial receipt of waste.

(b) A receipt for the initial payment must be submitted to the department by the issuing institution for both new and existing landfills. The first payment must be at least equal to the current closure and post-closure cost estimate, divided by the number of years in the pay-in period.

The amount of each subsequent payment must be determined by this formula:

$$\text{NEXT PAYMENT} = \frac{\text{CE} - \text{CV}}{\text{Y}}$$

Where CE is the current closure and post-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. After the first year, and annually thereafter, the CE shall be multiplied timesby the preceding year's annual rate of inflation before subtracting CV.

(c) In lieu of using the formula expressed in Subsection 4.6.10(D)(1), the equivalent annual payments into the certificate of deposit may be determined by calculating the net present value of CE.

(2) The owner or operator may accelerate payments into the certificate of deposit or may deposit the full amount of the current cost estimates at the time the fund is established, or at any time thereafter. However, the value of the certificate of deposit must be maintained at no less than the value that the certificate of deposit would have if annual payments were made as specified in Subsection 4.6.10(D)(1).

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(3) If the owner or operator establishes a closure and post-closure certificate of deposit after having used one or more alternate mechanisms specified in Subsection 4.6.1(D), the first payment must be at least the amount that the certificate of deposit would contain if the certificate of deposit were established initially and all annual payments had been made.

(4) Whenever the current closure and post-closure cost estimates increase or decrease, and are approved by the department, the owner or operator must recalculate the payments into the certificate of deposit based on the new cost estimate (new CE). If the current valuation of the certificate of deposit is less than the amount which is required using the new CE, the owner or operator must, within sixty (60) days of the approval of the new estimate, either (a) deposit an amount into the certificate of deposit such that the fund equals the amount in the new CE for the current point in the pay-in period, or (b) obtain other financial assurance as specified in this section to cover the difference.

(E) Certificates of Deposit for Closure and Post-Closure Care for Other Types of Solid Waste Disposal Sites and Facilities: The following facility types will be considered other types of solid waste disposal sites and facilities for the purposes of this Subsection 4.6.10(E): Solid Waste Surface Impoundments (covered by Section 9 of these regulations); Solid Waste Incineration Facilities (covered by Section 11 of these regulations); Medical Waste Facilities (covered by Section 13 of these regulations); Composting Facilities (covered by Section 14 of these regulations); and Commercial Exploration and Production Waste Impoundments (covered by Section 17 of these regulations)

(1) For all facilities listed in this section that were in operation prior to the effective date of this Section 4 (Xxxx yy, 2018), a certificate of deposit may be funded as described in Subsection 4.6.10(D).

(2) For all new facilities listed in Subsection 4.6.10(E) above that were not in operation on the effective date of this Section 4 (Xxxx yy, 2018), a certificate of deposit must be fully funded, with no pay-in period, and approved by the department with Consultation before any waste is accepted in the facility.

(F) Certificate of Deposit for Corrective Action: Whenever a certificate of deposit will be used to assure performance of corrective action, the owner or operator will calculate a corrective action cost estimate as required by Section 4.4, submit it to the department for approval, and place 100% of the corrective action cost estimate amount into the closure and post-closure certificate of deposit, or a separate certificate of deposit, within sixty (60) days after department approval.

(G) The certificate of deposit must be accompanied by an original signed copy of a Collateral Assignment of Certificate of Deposit form. The wording of the collateral assignment of certificate of deposit must be identical to the wording specified in Appendix A, unless otherwise approved by the department.

(H) The certificate of deposit must provide that the expiration date will be automatically extended unless, at least sixty (60) days before the current expiration date, the issuing

1446 institution notifies the owner or operator and the department and the local governing
1447 authority, by certified mail or other trackable delivery service, of a decision not to extend
1448 the expiration date. Under the terms of the certificate of deposit, the sixty (60) days will
1449 begin on the date when the owner or operator and the department has received the
1450 notice, as evidenced by the return receipts. The issuing institution shall give ~~thirty~~
1451 ~~(30)~~sixty (60) day notification of maturity of the certificate of deposit to the department
1452 and the owner or operator. If ~~both~~ the owner or operator, and the
1453 local governing authority have received notice from the issuing institution that it has
1454 decided not to extend the certificate of deposit beyond the current expiration date, the
1455 owner or operator must establish adequate alternative financial assurance as required by
1456 these regulations. If the owner or operator does not establish alternate financial
1457 assurance and obtain written approval of such alternate assurance from the department
1458 within forty-five (45) days of such notice by the issuing institution, the department will
1459 withdraw the money in the certificate of deposit. The department will notify the local
1460 governing authority if the department draws on the certificate of deposit. The money will
1461 be kept by the department until needed for closure, post-closure, and/or corrective action
1462 or until the owner or operator has established a department-approved alternate financial
1463 assurance mechanism.

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1465 (I) The issue amount of the certificate of deposit must be in an amount at least equal to
1466 the current closure, post-closure and corrective action cost estimates, less amounts
1467 covered by alternative mechanisms.

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1469 (J) Following a determination that the owner or operator has failed to perform final
1470 closure or post closure or corrective action in accordance with the closure or post closure
1471 or corrective action plan and other permit requirements when required to do so, the
1472 department may draw on the certificate of deposit.

1473
1474 (K) The department will return the certificate of deposit to the issuing institution for
1475 termination when the requirements of Section 4.5.2 have been satisfied.

1476 **4.6.11 Use of Multiple Financial Mechanisms:**

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1478 An owner or operator may satisfy the requirements of this Section by establishing more than one
1479 financial mechanism per solid waste disposal site and facility. The mechanisms must be as
1480 specified in Subsection 4.6.1(D) of this Section, except that it is the combination of mechanisms,
1481 rather than the single mechanism, which must provide full financial assurance for an amount at
1482 least equal to the current closure, post-closure and corrective action cost estimates. The amount
1483 of financial assurance for each financial mechanism shall be stated on each agreement per these
1484 Regulations. When use of a financial mechanism for closure and post-closure care or corrective
1485 action of the site and facility becomes necessary, the department may choose the order in which
1486 to use the mechanisms or may choose to use all concurrently. The department will notify the local
1487 governing authority how the ~~department mechanisms~~ will be ~~utilized~~draw upon the mechanism(s).

1488 **4.6.12 Use of a Financial Mechanism for Multiple Facilities:**

1489
1490 An owner or operator may use a financial assurance mechanism specified in Subsection 4.6.1(D)
1491 to meet the requirements of more than one solid waste disposal site and facility; provided,
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1494 however, that all solid waste disposal sites and facilities are located in Colorado and the owner
1495 and operator are the same, unless special approval of the department ~~is first obtained.~~

1496
1497 ~~All solid waste disposal sites and facilities under a single financial instrument must be located in~~
1498 ~~Colorado. The owner and operator must be the same for all sites and facilities unless special~~
1499 ~~approval of the department,~~ after ~~Consultation~~consultation with the local governing authority, is
1500 first obtained. Evidence of financial assurance submitted to the department and the local
1501 governing authority must include a list showing, for each facility, name, address, and the amount
1502 of funds for closure assured by the mechanism. The amount of funds available through the
1503 mechanism must be no less than the sum of funds that would be available if a separate
1504 mechanisms have been established and maintained for each site and facility. In directing funds
1505 available through the mechanism for closure, post-closure or corrective action of any of the sites
1506 and facilities covered by the mechanism, the department, with notice to the local governing
1507 authority, may direct only the amount of funds designated for that site and facility, unless the
1508 owner or operator agrees to the use of additional funds available under the mechanism.

1509
1510 **4.6.13 Release of the Owner or Operator from the Requirements of this Section.** After
1511 receiving certifications from the owner or operator and a Colorado registered professional
1512 engineer that final closure, post-closure and corrective action has been completed in accordance
1513 with the approved plans, the department shall verify that the closure, post-closure and corrective
1514 action has met the requirements as established and shall ~~Consult~~consult with the local governing
1515 authority. Once verified, the department will notify the owner and operator that they are no longer
1516 subject to the requirements of this Section.

1517
1518 If there is reason to believe that the closure, post-closure and corrective action activities have not
1519 been made in accordance with the approved plan(s), the department shall provide the owner or
1520 operator with a detailed written statement of any deficiencies.

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1522 **4.6.14** Failure to properly maintain financial assurance as required by this Section 4 and the
1523 certificate of designation may result in the suspension or revocation of a certificate of designation.

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1526 **6) Section 9.2.2 is revised to read as follows:**

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1529 **9.2.2 FINANCIAL ASSURANCE:**

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1531 The owner or operator of a Type A waste impoundment shall establish and maintain financial assurance
1532 in accordance with Section ~~4-84~~ of these Solid Waste Regulations.

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1535 **7) Section 9.2.5 is revised to read as follows:**

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1537 **9.2.5 CLOSURE:** The owner or operator of each Type A waste impoundment shall develop a closure
1538 plan and submit it for Department approval. The closure plan must present sufficient detail to support the
1539 closure cost estimates required in Sections ~~4-84~~ and 9.2.2 above and to enable the Department to
1540 evaluate the adequacy of financial assurance. For some Type A impoundments, the scope of the

1541 closure plan will be limited to sludge and impacted soil removal, disposal and verification sampling to
1542 ensure residual contamination is below acceptable levels in soil and ground water.

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8) Section 9.3.3 is amended by revising paragraph (J) to read as follows:

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9.3.3 FACILITY OPERATION REQUIREMENTS

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The owners or operator shall operate a Type B Waste Impoundment in accordance with the approved
EDOP.

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(J) **Financial Assurance:** The owner or operator shall maintain financial assurance of an
adequate amount to cover closure and post-closure care costs in accordance with Section ~~4.84~~ of
these Solid Waste Regulations.

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9) Section 9.3.4 is amended by revising paragraph (F)(1)(i) to read as follows:

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9.3.4 ENGINEERING DESIGN AND OPERATIONS PLAN

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(F) **Closure Plan:** The EDOP shall include a closure plan that describes the steps necessary to
close each impoundment at any point during its active life and at the end of the facility's active
life. The facility may either: 1) close the waste in place as a solid waste landfill in accordance
with these Solid Waste Regulations, or 2) remove all solid waste and residual contamination to
meet unrestricted use concentrations. Option 2, also known as "clean closure," eliminates the
need for post-closure care. Both Option 1 and Option 2 require the owner or operator of a waste
impoundment to develop a closure plan.

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- (1) The closure plan shall include the following information consistent with Section
9.3.6:

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- (i) Cost estimates for closure and post-closure and proof of financial assurance
equal to or greater than those cost estimates consistent with Section ~~4.84~~ of the
solid Waste Regulations.

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10) Section 10.5.5 is amended to read as follows:

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10.5.5 WASTE TIRE MONOFILL FINANCIAL ASSURANCE

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Any person who owns or operates a Waste Tire Monofill must maintain financial assurance for any required reclamation and for closure and post-closure care of the Facility pursuant to section ~~4.84~~ of these Regulations.

11) Section 10.6.6 is amended to read as follows:

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10.6.6 WASTE TIRE PROCESSOR FINANCIAL ASSURANCE

All Waste Tire Processors must maintain financial assurance for any required reclamation and for closure and post-closure care of the Facility pursuant to section ~~4.84~~ of these Regulations.

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12) Section 10.8.6 is amended to read as follows:

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10.8.6 WASTE TIRE COLLECTION FACILITY FINANCIAL ASSURANCE

All owners or operators of Waste Tire Collection Facilities must maintain financial assurance for any required reclamation and for closure and post-closure care of the Facility pursuant to section ~~4.84~~ of these Regulations.

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13) Section 13.7.3 is amended to read as follows:

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13.7 ENGINEERING DESIGN AND OPERATION PLAN REQUIREMENTS FOR COMMERCIAL STORAGE AND TREATMENT FACILITIES

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13.7.3 Fees and financial assurance - All medical waste facilities subject to regulation under this Section 13.7 shall be subject to applicable solid waste fees as required under Section 1.7 and financial assurance as required under Section ~~4.84~~ of these regulations.

14) Section 14.2.2(B) is amended to read as follows:

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14.2.2 Class I Composting Facility Pre-Operations Requirements

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(B) **Financial Assurance:** Prior to commencing composting or feedstock storage, the owner/operator Class I composting facility must establish financial assurance in accordance with Section ~~4.84~~ of these Regulations.

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15) Section 14.2.4(B) is amended to read as follows:

14.2.4 Class I Composting Facility Operational Requirements

(B) **Financial Assurance:** The owner/operator of a Class I composting facility must maintain financial assurance in accordance with Section ~~4.84~~ of these Regulations.

16) Section 14.3.2(B) is amended to read as follows:

14.3.2 Class II Composting Facility Pre-Operations Requirements

(B) **Financial Assurance:** Prior to commencing composting or feedstock storage, the owner/operator Class II composting facility must establish financial assurance in accordance with Section ~~4.84~~ of these Regulations.

17) Section 14.3.5(B) is amended to read as follows:

14.3.5 Class II Composting Facility Design and Operations Plan: Operations

(B) **Financial Assurance:** The EDOP for a Class II composting facility must include current financial assurance estimates in accordance with Section ~~4.84~~ of these Solid Waste Regulations. A Class II composting facility must maintain adequate financial assurance in accordance with its EDOP and with Section 1.8 of these Solid Waste Regulations.

18) Section 14.4.2(B) is amended to read as follows:

14.4.2 Class III Composting Facility Pre-Operations Requirements

1684
1685 *****
1686
1687 (B) **Financial Assurance:** Prior to commencing composting or feedstock storage, the owner/operator
1688 Class III composting facility must establish financial assurance in accordance with Section ~~1-84~~ of these
1689 Regulations.
1690

1691 *****

1692
1693
1694 **19) Section 14.4.5(B) is amended to read as follows:**

1695
1696 **14.4.5 Class III Composting Facility Design and Operations Plan: Operations**

1697
1698 *****

1699
1700 (B) **Financial Assurance:** The EDOP for a Class III composting facility must include current financial
1701 assurance estimates in accordance with Section ~~1-84~~ of these Solid Waste Regulations. A Class III
1702 composting facility must maintain adequate financial assurance in accordance with its EDOP and with
1703 Section 1.8 of these Solid Waste Regulations.
1704

1705 *****

1706
1707
1708 **20) Section 17.3.3(N) is amended to read as follows:**

1709
1710 **17.3.3 Operating Requirements**

1711 *****

1712
1713
1714 17.3.3(N) **Financial Assurance:** Financial assurance of an adequate amount to cover closure and post-
1715 closure care costs shall be established in accordance with Section ~~1-84~~ of these Solid Waste
1716 Regulations.
1717

1718
1719 **21) Section 18.3.5 is amended to read as follows:**

1720
1721
1722 18.3.5 FINANCIAL ASSURANCE

1723
1724 A person transporting a load of more than 55 gallons of waste grease at one time must acquire
1725 and maintain financial assurance in the amount of \$10,000 for the cleanup and proper disposal of
1726 waste grease in accordance with Section ~~1-84~~ of these Regulations.
1727

1728
1729 **22) Section 18.4.7 is amended to read as follows:**

1730

1731 **18.4.7 FINANCIAL ASSURANCE**

1732

1733

1734

All Waste Grease Facilities must acquire and maintain financial assurance for any required reclamation and for closure of the Facility in accordance with Section ~~1-84~~ of these Regulations.

1735 **23) Appendix A (Financial Assurance Instrument Language) is amended to read**
1736 **as follows:**

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1737
1738 **Appendix A**
1739 **FINANCIAL ASSURANCE INSTRUMENT LANGUAGE**

1740
1741 **WORDING OF THE INSTRUMENTS**

1742
1743 **I. (A) Trust Agreement**

1744
1745 A trust agreement for a trust fund, in this section, must be worded as follows, except that instruction in
1746 brackets are to be replaced with the relevant information and the brackets deleted:

1747
1748 **Trust Agreement**

1749
1750 Trust Agreement, the "Agreement", entered into as of [date] by and between [name of the owner or
1751 operator], a [name of state][insert "corporation", "partnership", "association", or "proprietorship"], the
1752 "Grantor", and [name of corporate trustee], [insert "incorporated in the State of Colorado" or "a
1753 national bank"], the "Trustee."

1754
1755 Whereas, the Colorado Department of Public Health and Environment, Hazardous Materials and
1756 Waste Management Division ("~~the department~~"), a regulatory agency of the State of Colorado, has
1757 established certain regulations applicable to the Grantor, requiring that an owner or operator of a
1758 solid waste ~~disposal site and~~ facility shall provide assurance that funds will be available when
1759 needed for closure ~~and/or~~ post-closure ~~and corrective action~~ care of the facility,

1760
1761 Whereas, the Grantor has elected to establish a trust ~~fund~~ to provide all or a part of such financial
1762 assurance for the facilities identified herein,

1763
1764 Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the
1765 trustee under this Agreement, and the Trustee is willing to act as trustee,

1766
1767 Now, therefore, the Grantor and the Trustee agree as follows:

1768
1769 **Section 1. Definitions as used in this Agreement:**

1770
1771 (A) The term "Grantor" means the owner or operator who enters into this Agreement and any
1772 successors or ~~assigns~~~~assignors~~ of the Grantor.

1773
1774 (B) The term "Trustee" means the Trustee who enters into this Agreement and any successor
1775 Trustee.

1776
1777 **Section 2. Identification of ~~Facilities~~facilities and ~~Cost Estimates~~cost estimates** This Agreement
1778 pertains to the facilities and cost estimates identified on attached Schedule A [on Schedule A, for

1779 each facility list the ~~EPA identification number~~, name, address, and the current closure and/or
1780 post-closure cost estimates, and/or corrective action, or portions thereof, for which financial
1781 assurance is demonstrated by this Agreement].

1782
1783 Section 3. Establishment of Fund. The ~~Grantor~~ and the ~~Trustee~~ hereby establish a
1784 trust fund, the "Fund", for the benefit of the ~~Colorado Department of Public Health and Environment,~~
1785 ~~Hazardous Materials and Waste Management Division~~. The ~~Grantor~~ and the
1786 ~~Trustee~~ intend that no third party have access to the ~~Fund~~ except as herein provided.
1787 The ~~Fund~~ is established initially as consisting of the property which is acceptable to the
1788 ~~Trustee~~, described in Schedule B attached hereto. Such property and any other property
1789 subsequently transferred to the ~~Trustee~~ is referred to as the ~~Fund~~, together with all
1790 earnings and profits thereon, less any payments or distributions made by the ~~Trustee~~
1791 pursuant to this Agreement.

1792
1793 The ~~Fund~~ shall be held by the ~~Trustee~~, IN TRUST, as hereinafter provided. The
1794 ~~Trustee~~ shall not be responsible nor shall it undertake any responsibility for the amount or
1795 adequacy of, nor any duty to collect from the ~~Grantor~~, any payments necessary to discharge
1796 any liabilities of the ~~Grantor~~ established by the ~~Department~~.

1797
1798 Section 4. Payment for ~~Closure~~, ~~post-closure~~ and ~~Post-Closure Care~~ corrective action care
1799 The ~~Trustee~~ shall make payments from the ~~Fund~~ as the ~~Department~~ shall
1800 direct, in writing, to provide for the payment of the costs of closure, and/or corrective action, and/or
1801 post-closure care of the facilities covered by this Agreement. The ~~Trustee~~ shall reimburse
1802 the ~~Grantor~~ or other persons as specified by the ~~Department~~ from the ~~Fund~~
1803 for closure ~~and~~, post-closure ~~and corrective action~~ expenditures in such amount as the
1804 ~~Department~~ shall direct in writing. In addition, the ~~Trustee~~ shall refund to the
1805 ~~Grantor~~ such amounts as the ~~Department~~ specifies in writing. Upon refund, such
1806 funds shall no longer constitute part of the ~~Fund~~ as defined herein.

1807
1808 Section 5. Payment ~~Comprising~~ comprising the Fund Payments made to the ~~Trustee~~ for the
1809 ~~Fund~~ shall consist of cash or securities acceptable to the ~~Trustee~~.

1810
1811 Section 6. Trustee ~~Management~~ management The ~~Trustee~~ shall invest and reinvest the
1812 principal and income of the ~~Fund~~ and keep the ~~Fund~~ invested as a single fund, without
1813 distinction between principal and income, in accordance with general investment policies and
1814 guidelines which the ~~Grantor~~ may communicate in writing to the ~~Trustee~~ from time to
1815 time, subject, however, to the provisions of this ~~Section~~ section. In investing reinvesting,
1816 exchanging, selling, and managing the ~~Fund~~, the ~~Trustee~~ shall discharge his duties with
1817 respect to the ~~trust fund-Fund~~ solely in the interest of the beneficiary and with the care, skill,
1818 prudence, and diligence under the circumstances then prevailing which persons of prudence, acting
1819 in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like
1820 character and with like aims; -except that:

1821
1822 (A) Securities or other obligations of the ~~Grantor~~, or any other owner or operator of the

1823 facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as
1824 amended, 15 U.S.C. 80A-2.(A), shall not be acquired or held, unless they are securities or other
1825 obligations of the Federal or a State government;

1826
1827 (B) The Trustee is authorized to invest the Fund in time or demand deposits of the
1828 Trustee, to the extent insured by an agency of the Federal or State
1829 government; and

1830
1831 (C) The Trustee is authorized to hold cash awaiting investment or distribution uninvested
1832 for a reasonable time and without liability for the payment of interest thereon.

1833
1834 (D) The investment objectives of the Trust are primarily preservation of capital and access to
1835 liquidity, and secondarily investment return on capital investment. Investments in the Trust may
1836 include fixed income mutual funds with average durations of less than five years; United States
1837 Treasury bills, notes and bonds with maturities less than ten years; United State agency bonds;
1838 money market mutual funds invested solely in United States Treasury or Agency bonds; pre-
1839 refunded municipal bonds backed by United State Treasuries or Agencies; bank certificates of
1840 deposit and money market accounts up to Federal Deposit Insurance Corporation (FDIC)
1841 insurance limits; commercial paper bonds rated "A2P2" or better, corporate bonds rated "AA" or
1842 better by Standard and Poor's Financial Services, or any combination of these investments. If
1843 individual bonds are used, a minimum of 10 bonds shall be used with roughly equal spacing of
1844 maturities and with the intent to hold such bonds to maturity.

1845
1846 Section 7. Commingling and Investment The Trustee is expressly authorized in
1847 its discretion:

1848
1849 (A) To transfer from time to time any or all of the assets of the Fund to any common,
1850 commingled, or collective trust fund created by the Trustee in which the Fund is
1851 eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of
1852 other trusts participating therein; ~~and~~

1853
1854 ~~(B) To purchase shares in any investment company registered under the investment company~~
1855 ~~act of 1940, 15 U.S.C. 80A-1 et seq., including one which may be created, managed,~~
1856 ~~underwritten, or to which investment advice is rendered or the shares of which are sold by the~~
1857 ~~trustee. The trustee may vote such shares in its discretion.~~

1858
1859 Section 8. Express Powers of Trustee Without in any way limiting the powers and
1860 discretions conferred upon ~~the~~ Trustee by the other provision of this Agreement or by
1861 law, the Trustee is expressly authorized and empowered:

1862
1863 (A) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by
1864 public or private sale. No person dealing with the Trustee shall be bound to see to the
1865 application of the purchase money or to inquire into the validity or expediency of any such sale
1866 or other disposition;

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(B) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(C) To register any securities held in the Fundfund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trusteetrustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trusteetrustee shall at all times show that all such securities are part of the Fundfund;

(D) To deposit any cash in the Fundfund in interest-bearing accounts maintained or savings certificates issued by the Trusteetrustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trusteetrustee, to the extent insured by an agency of the Federal or State government; and

(E) To compromise or otherwise adjust all claims in favor of or against the Fundfund.

Section 9. Taxes and Expensesexpenses. All taxes of any kind that may be assessed or levied against or in respect of the Fundfund and all brokerage commissions incurred by the Fundfund shall be paid from the Fundfund. All other expenses incurred by the Trusteetrustee in connection with the administration of this Trusttrust, including fees for legal services rendered to the Trusteetrustee, the compensation of the trustee to the extent not paid directly by the Grantorgrantor, and all other proper charges and disbursements of the Trusteetrustee shall be paid from the Fundfund.

Section 10. Annual Valuationvaluation. The Trusteetrustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fundfund, furnish to the Grantorgrantor and to the Colorado Department of Public Health and Environmentdepartment a statement confirming the value of the Trusttrust. Any securities in the Fundfund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fundfund. The failure of the Grantorgrantor to object in writing to the Trusteetrustee within 90 days after the statement has been furnished to the Grantorgrantor and the Departmentdepartment shall constitute a conclusively binding assent by the Grantorgrantor, barring the Grantorgrantor from asserting any claim or liability against the Trusteetrustee with respect to matters disclosed in the statement.

Section 11. Advice of Counselcounsel. The Trusteetrustee may from time to time consult with counsel, who may be counsel to the Grantorgrantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trusteetrustee shall be

1911 fully protected, to the extent permitted by law, in acting upon the ~~advice~~advice of counsel.

1912
1913 Section 12. Trustee Compensation The ~~Trustee~~trustee shall be entitled to
1914 reasonable compensation for its services as agreed upon in writing from time to time with the
1915 ~~Grantor~~grantor.

1916
1917 Section 13. Successor Trustee The ~~Trustee~~trustee may resign or the ~~Grantor~~grantor may replace
1918 the ~~Trustee~~trustee, but such resignation or replacement shall not be effective until the
1919 ~~Grantor~~grantor has appointed a successor trustee and this successor accepts the appointment.
1920 The successor trustee shall have the same powers and duties as those conferred upon the
1921 ~~Trustee~~trustee hereunder. Upon the successor trustee's acceptance of the appointment, the
1922 ~~Trustee~~trustee shall assign, transfer and pay over to the successor trustee the funds and properties
1923 then constituting the ~~Fund~~fund. If for any reason the ~~Grantor~~grantor cannot or does not act in the
1924 event of the resignation of the ~~Trustee~~trustee, the ~~Trustee~~trustee may apply to a court of competent
1925 jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee
1926 shall specify the date on which it assumes the administration of the ~~Trust~~trust in a writing sent to the
1927 ~~Grantor~~grantor, the ~~Department~~department, and the present ~~Trustee~~trustee by certified mail, or
1928 other trackable delivery service, 10 days before such change becomes effective. Any expenses
1929 incurred by the ~~Trustee~~trustee as a result of any of the acts contemplated by this Section 13 shall
1930 be paid as provided in Section 9.

1931
1932 Section 14. Instructions to the Trustee All orders, requests, and instructions by the ~~Grantor~~grantor
1933 to the ~~Trustee~~trustee shall be in writing, signed by such persons as are designated in the attached
1934 Exhibit A or such other designees as the ~~Grantor~~grantor may designate by amendment to Exhibit A.
1935 The ~~Trustee~~trustee shall be fully protected in acting without inquiry in accordance with the Grantor's
1936 orders, requests, and instructions. All orders, requests, and instructions by the
1937 ~~Department~~department to the ~~Trustee~~trustee shall be in writing, signed by the director or his
1938 designees, and the ~~Trustee~~trustee shall act and shall be fully protected in acting in accordance with
1939 such orders, requests, and instructions. The ~~Trustee~~trustee shall have the right to assume, in the
1940 absence of written notice to the contrary, that no event constituting a change or a termination of the
1941 authority of any person to act on behalf of the ~~Grantor~~grantor or ~~Department~~department hereunder
1942 has occurred. The ~~Trustee~~trustee shall have no duty to act in the absence of such orders,
1943 requests, and instructions from the ~~Grantor~~grantor and/or the ~~Department~~department, except as
1944 provided for herein.

1945
1946 Section 15. Notice of Nonpayment The ~~Trustee~~trustee shall notify the ~~Grantor~~grantor
1947 and the ~~Department~~department, by certified mail, or other trackable delivery service, within 10 days
1948 following the expiration of the 30-days period after the anniversary of the establishment of the
1949 ~~Trust~~trust, if no payment is received from the ~~Grantor~~grantor during that period. After the pay-in
1950 period is completed, the ~~Trustee~~trustee shall not be required to send a notice of nonpayment.

1951
1952 Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in
1953 writing executed by the ~~Grantor~~grantor, the ~~Trustee~~trustee, and the ~~Department~~department, or by
1954 the ~~Trustee~~trustee and the ~~Department~~department if the ~~Grantor~~grantor ceases to exist.

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Section 17. Irrevocability and Termination Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee and the Department, or by the Trustee and the Department, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Department issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law This Agreement shall be administered, construed, and enforced according to the laws of the State of Colorado.

Section 20. Interpretation As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written: The parties below certify that the wording of this Agreement is identical to the wording specified in these regulations were constituted on the date first above written.

{Signature of grantor}
{Title}
{Seal}

Attest: _____ {Signature of attester}
{Title}

{Signature of trustee}
{Name of trustee}
{Title}
{Seal}

-Attest: {Signature of attester}
{Title}

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~~(B)~~–The following is an example of the certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in ~~of~~ these regulations.

State of _____ [County of _____]
County of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of notary public]

II. Standby Trust Agreement

~~(A)~~–A trust agreement for a standby trust fund, in this section, must be worded as follows, except that instruction in brackets are to be replaced with the relevant information and the brackets deleted:

Standby Trust Agreement

Standby Trust Agreement, the "Agreement", entered into as of [date] by and between [name of the owner or operator], a [name of state] [insert "corporation", "partnership", "association", or "proprietorship"], the "Grantor", and [name of corporate Trustee], [insert "incorporated in the State of Colorado" or "a national bank"], the "Trustee."

~~Whereas, the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division, a regulatory agency of the State of Colorado, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a solid waste facility shall provide assurance that funds will be available when needed for closure and/or post-closure care of the facility,~~

~~Whereas, the Grantor has elected to establish a standby trust to provide all or a part of such financial assurance for the facilities identified herein,~~

~~Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this Agreement, and the Trustee is willing to act as trustee,~~

~~Now, therefore, the Grantor and the Trustee agree as follows:~~

Section 1. Definitions as used in this Agreement:

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~~(A) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.~~

~~(B) The term "Trustee" means the trustee who enters into this Agreement and any successor Trustee.~~

~~Section 2. Identification of Facilities and Cost Estimates This Agreement pertains to the facilities and cost estimates identified on attached Schedule A [on Schedule A, for each facility list the EPA identification number, name, address, and the current closure and/or post-closure cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement].~~

~~Section 3. Establishment of Fund The grantor and the trustee hereby establish a trust fund, the "Fund", for the benefit of the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division. The grantor and the trustee intend that no third party have access to the fund except as herein provided. The fund is established initially as consisting of the property which is acceptable to the trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the trustee is referred to as the fund, together with all earnings and profits thereon, less any payments or distributions made by the trustee pursuant to this Agreement.~~

~~The fund shall be held by the trustee, IN TRUST, as hereinafter provided. The trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the grantor, any payments necessary to discharge any liabilities of the grantor established by the Department.~~

~~Section 4. Payment for Closure and Post-Closure Care~~

~~The trustee shall make payments from the fund as the Department shall direct, in writing, to provide for the payment of the costs of closure and/or post-closure care of the facilities covered by this Agreement. The trustee shall reimburse the grantor or other persons as specified by the Department from the fund for closure and post-closure expenditures in such amount as the Department shall direct in writing. In addition, the trustee shall refund to the grantor such amounts as the Department specifies in writing. Upon refund, such funds shall no longer constitute part of the fund as defined herein.~~

~~Section 5. Payment Comprising the Fund payments made to the trustee for the fund shall consist of cash or securities acceptable to the trustee.~~

~~Section 6. Trustee Management The trustee shall invest and reinvest the principal and income of the fund and keep the fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the grantor may communicate in writing to the trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the fund, the trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of~~

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~~prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:~~

~~(A) Securities or other obligations of the grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80A-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;~~

~~(B) The trustee is authorized to invest the fund in time or demand deposits of the trustee, to the extent insured by an agency of the Federal or State government; and~~

~~(C) The trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.~~

~~Section 7. Commingling and Investment~~ The trustee is expressly authorized in its discretion:

~~(A) To transfer from time to time any or all of the assets of the fund to any common, commingled, or collective trust fund created by the trustee in which the fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and~~

~~(B) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80A-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the trustee. The trustee may vote such shares in its discretion.~~

~~Section 8. Express Powers of Trustee~~ Without in any way limiting the powers and discretions conferred upon the trustee by the other provision of this Agreement or by law, the trustee is expressly authorized and empowered:

~~(A) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;~~

~~(B) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;~~

~~(C) To register any securities held in the fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the~~

21.31 nominee of such depository with other securities deposited therein by another person, or to
21.32 deposit or arrange for the deposit of any securities issued by the United States Government, or
21.33 any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records
21.34 of the trustee shall at all times show that all such securities are part of the fund;

21.35
21.36 (D) To deposit any cash in the fund in interest-bearing accounts maintained or savings
21.37 certificates issued by the trustee, in its separate corporate capacity, or in any other banking
21.38 institution affiliated with the trustee, to the extent insured by an agency of the Federal or State
21.39 government; and

21.40
21.41 (E) To compromise or otherwise adjust all claims in favor of or against the fund.
21.42

21.43 Section 9. Taxes and Expenses All taxes of any kind that may be assessed or levied against or in
21.44 respect of the fund and all brokerage commissions incurred by the fund shall be paid from the fund.
21.45 All other expenses incurred by the trustee in connection with the administration of this trust,
21.46 including fees for legal services rendered to the trustee, the compensation of the trustee to the
21.47 extent not paid directly by the grantor, and all other proper charges and disbursements of the
21.48 trustee shall be paid from the fund.

21.49
21.50 Section 10. Advice of Counsel The trustee may from time to time consult with counsel, who may be
21.51 counsel to the grantor, with respect to any question arising as to the construction of this Agreement
21.52 or any action to be taken hereunder. The trustee shall be fully protected, to the extent permitted by
21.53 law, in acting upon the advice of counsel.

21.54
21.55 Section 11. Trustee Compensation The trustee shall be entitled to reasonable compensation for its
21.56 services as agreed upon in writing from time to time with the grantor.

21.57
21.58 Section 12. Successor Trustee The trustee may resign or the grantor may replace the trustee, but
21.59 such resignation or replacement shall not be effective until the grantor has appointed a successor
21.60 trustee and this successor accepts the appointment. The successor trustee shall have the same
21.61 powers and duties as
21.62 those conferred upon the trustee hereunder. Upon the successor trustee's acceptance of the
21.63 appointment, the trustee shall assign, transfer and pay over to the successor trustee the funds and
21.64 properties then constituting the fund. If for any reason the grantor cannot or does not act in the
21.65 event of the resignation of the trustee, the trustee may apply to a court of competent jurisdiction for
21.66 the appointment of a successor trustee or for instructions. The successor trustee shall specify the
21.67 date on which it assumes the administration of the trust in a writing sent to the grantor, the
21.68 Department, and the present trustee by certified mail 10 days before such change becomes
21.69 effective. Any expenses incurred by the trustee as a result of any of the acts contemplated by this
21.70 Section shall be paid as provided in Section 9.

21.71
21.72 Section 13. Instructions to the Trustee All orders, requests, and instructions by the grantor to the
21.73 trustee shall be in writing, signed by such persons as are designated in the attached exhibit A or
21.74 such other designees as the grantor may designate by amendment to Exhibit A. The trustee shall

2175 be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and
2176 instructions. All orders, requests, and instructions by the Department to the trustee shall be in
2177 writing, signed by the director or his designees, and the trustee shall act and shall be fully protected
2178 in acting in accordance with such orders, requests, and instructions. The trustee shall have the
2179 right to assume, in the absence of written notice to the contrary, that no event constituting a change
2180 or a termination of the authority of any person to act on behalf of the grantor or department
2181 hereunder has occurred. The trustee shall have no duty to act in the absence of such orders,
2182 requests, and instructions from the grantor and/or the Department, except as provided for herein.

2183
2184 Section 14. Amendment of Agreement This Agreement may be amended by an instrument in
2185 writing executed by the grantor, the trustee, and the Department, or by the trustee and the
2186 Department if the grantor ceases to exist.

2187
2188 Section 15. Irrevocability and Termination Subject to the right of the parties to amend this
2189 Agreement as provided in Section 14, this trust shall be irrevocable and shall continue until
2190 terminated at the written agreement of the grantor, the trustee and the Department, or by the
2191 trustee and the Department, if the grantor ceases to exist. Upon termination of the trust, all
2192 remaining trust property, less final trust administration expenses, shall be delivered to the grantor.

2193
2194 Section 16. Immunity and Indemnification The trustee shall not incur personal liability of any nature
2195 in connection with any act or omission, made in good faith, in the administration of this trust, or in
2196 carrying out any directions by the grantor or the Department issued in accordance with this
2197 Agreement. The trustee shall be indemnified and saved harmless by the grantor or from the trust
2198 fund, or both, from and against any personal liability to which the trustee may be subjected by
2199 reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its
2200 defense in the event the grantor fails to provide such defense.

2201
2202 Section 17. Choice of Law This Agreement shall be administered, construed, and enforced
2203 according to the laws of the State of Colorado.

2204
2205 Section 18. Interpretation As used in this Agreement, words in the singular include the plural and
2206 words in the plural include the singular. The descriptive headings for each section of this
2207 Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

2208
2209 In witness whereof the parties have caused this Agreement to be executed by their respective
2210 officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date
2211 first above written. The parties below certify that the wording of this Agreement is identical to the
2212 wording specified in these regulations were constituted on the date first above written.

2213
2214 [Signature of grantor]

2215 [Title]

2216 [Seal]

2217
2218 Attest: _____ [Signature of attester]

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_____ [Title]

[Signature of trustee]

[Name of trustee]

[Title]

[Seal]

Attest: _____ [Signature of attester]

[Title]

(B) The following is an example of the certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in of these regulations.

State of _____

County of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of notary public]

Exhibit A

The following have been designated to give instruction to the Trustee:

[Name and title of designated person] _____

[Signature] _____

[Name and title of designated person] _____

[Signature] _____

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Schedule A

Facility name: _____

Facility address: _____

Facility phone number: _____

Facility email address: _____

Current closure cost estimate: _____

Current post-closure cost estimate: _____

Current corrective action cost estimate (if applicable): _____

Schedule B

Financial Institution Information

Name and address of financial institution where Trust is located:

Name: _____

Address: _____

Contact/Representative name: _____

Contact phone number: _____

Contact email: _____

Account Information

Trust account number: _____

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Initial funding amount: _____

III. Irrevocable Standby Letter of Credit.

A letter of credit, specified in these regulations, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Irrevocable Standby Letter of Credit

Director
Colorado Department of Public Health and Environment
Hazardous Materials and Waste Management Division
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

Dear Sir or Madam:

We hereby establish our irrevocable standby letter of credit no. _____ in your favor, at the request and for the account of [owner's or operator's name and address] up to the aggregate amount of [in words] U.S. Dollars \$_____, available upon presentation of:

- (1) Your sight draft bearing reference to this letter of credit no. _____, and
- (2) Your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the Colorado Solid Wastes Disposal Sites and Facilities Act as amended."

This letter of credit is effective as of [date] and shall expire on [date at least 1 year later], but such expiration date shall be automatically extended for a period of [at least 1 year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you and [owner's or operator's name] by certified mail, or other trackable delivery service, that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft, for 120 days after the date of receipt by both you and [owner's or operator's name], as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this letter of credit, we shall duly honor such draft upon presentation to us, and we shall deposit the specified amount of the draft directly into the standby trust fund of [owner's or operator's name], ~~in accordance with your instructions, unless an alternate mechanism has been~~ established by the State of Colorado to directly receive monies.

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We certify that the wording of this letter of credit is identical to the wording specified as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]
[date]

Signature: _____

Printed: _____

Title: _____

Date: _____

This letter of credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

IVIII. Surety Bond

A surety bond guaranteeing payment ~~into a trust fund~~, as specified in these regulations, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Financial Guarantee Surety Bond

Date bond executed: _____

Effective date: _____

Principal: [legal name and business address of owner or operator] _____

Type of organization: [insert "individual", "joint venture", "partnership", or "corporation"] _____

State of incorporation: _____

Surety(ies): [name(s) and business address(es)] _____

~~EPA Identification Number, name~~ Name, address, and closure and/or post-closure, corrective action amount(s) for each facility guaranteed by this bond: [Indicate closure and/or post-closure and/or

2395 *corrective action amount separately]* _____
2396 _____
2397 _____
2398 _____

2399
2400 Total penal sum of bond: \$ _____
2401 Surety's bond number: _____
2402

2403 Know all persons by these presents, that we, the principal and surety(ies) hereto are firmly
2404 bound to the Colorado Department of Public Health and Environment, Hazardous Materials and
2405 Waste Management Division (the "department") in the above penal sum for the payment of which
2406 we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and
2407 severally; provided that, where the surety(ies) are corporations acting as co-sureties, we, the
2408 sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint
2409 action or action against any or all of us, and for all other purposes each surety binds itself, jointly
2410 and severally with the principal, for the payment of such sum only as is set forth opposite the name
2411 of such surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the
2412 penal sum.
2413

2414 Whereas said principal is required, under the Colorado ~~regulations pertaining to~~ Solid Wastes
2415 Disposal Sites and Facilities Act, to have a ~~permit or interim status certificate of designation~~ in order
2416 to own or operate each solid waste management facility identified above, and
2417

2418 Whereas said principal is required to provide financial assurance for closure, or closure and
2419 post-closure care, as a condition of the ~~permit or interim status certificate of designation~~, and
2420

2421 Whereas said principal ~~shall establish a standby trust fund as is required when a surety bond is~~
2422 ~~used to provide such financial assurance, unless an alternate mechanism has been established by~~
2423 ~~the State of Colorado to directly receive monies for any corrective action required at solid waste~~
2424 ~~disposal sites and facilities.~~
2425

2426 Now, therefore, the conditions of the obligation are such that if the principal shall faithfully,
2427 before the beginning of final closure of each facility identified above, ~~fund~~ provide funding directly to
2428 ~~the standby trust fund~~department in the amount(s) identified above for the facility,
2429

2430 Or, if the principal shall fund ~~the standby trust fund~~ in such amount(s) within 15 days after an
2431 order to begin closure is issued by the ~~Department~~department or a U.S. District court or other court
2432 of competent jurisdiction,
2433

2434 Or, if the principal shall provide alternate financial assurance, as specified in these regulations
2435 and obtain the ~~Department's~~department's written approval of such assurance, within 90 days after
2436 the date notice of cancellation is received by both the principal and the ~~Department~~department from
2437 the surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and
2438 effect.

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The surety(ies) shall become liable on this bond obligation only when the principal has failed to fulfill the conditions described above. Upon notification by the Departmentdepartment that the principal has failed to perform as guaranteed by this bond, the surety(ies) shall place funds in the amount guaranteed for the facility(ies) ~~into the standby trust fund~~ as directed by the Departmentdepartment.

The liability of the surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the surety(ies) hereunder exceed the amount of said penal sum.

The surety(ies) may cancel the bond by sending notice of cancellation by certified mail, or other trackable delivery service, to the principal and to the Departmentdepartment, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the principal and the Departmentdepartment, as evidenced by the return receipts.

The principal may terminate this bond by sending written notice to the surety(ies), provided, however, that no such notice shall become effective until the surety(ies) receive(s) written authorization for termination of the bond by the Departmentdepartment.

[The following paragraph is an optional rider that may be included but is not required:]

The principal and surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure, ~~and/or~~ post-closure and/or corrective action amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the Departmentdepartment.

In witness whereof, the principal and surety(ies) have executed this financial-guarantee surety bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the principal and surety(ies) and that the wording of this surety bond is identical to the wording specified in the applicable regulations were constituted on the date this bond was executed.

Principal _____
[Signature(s)] _____
[Name(s) and Titles] _____

[Title(s)] _____

[Corporate seal]

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Corporate Surety(ies) _____

[Name and address] _____

State of incorporation: _____

Liability limit: \$ _____

[Signature(s)] _____

[Name(s) and title(s)] _____

[Corporate seal]

[For every co-surety, provide signature(s), Corporate seal, and other information in the same manner as for surety above.]

Bond premium: \$

IV. Performance Bond

A surety bond guaranteeing performance of closure and/or post-closure care, or corrective action as specified, must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Performance Bond

Date bond executed: _____

Effective date: _____

Principal:[legal name and business address of owner or operator] _____

Type of organization: [insert "individual", "joint venture", "Partnership", or "corporation"] _____

State of incorporation: _____

Surety(ies):[Name(s) and business address(es)] _____

EPA Identification Number, name~~Name~~, address, and closure and/or post-closure corrective action amount(s) for each facility guaranteed- by this bond (indicate closure and post-closure amounts

2527 separately]: _____
2528 _____
2529 _____

2530
2531 Total penal sum of bond: \$ _____

2532
2533 Surety's bond number: _____

2534
2535 Know all persons by these presents, that we, the principal and surety(ies) hereto are firmly
2536 bound to the Colorado Department of Public Health and Environment (the "department")
2537 (~~hereinafter referred to as the Department~~), in the above penal sum for the payment of which we
2538 bind ourselves, our heirs, executors, administrators successors, and assigns jointly and severally;
2539 provide that, where the surety(ies) are corporations acting as co-sureties, we, the sureties, bind
2540 ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or
2541 actions against any or all of us, and for all other purposes each surety binds itself, jointly and
2542 severally with the principal, for the payment of such sum only as is set forth opposite the name of
2543 such surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the
2544 penal sum.

2545
2546 Whereas said principal is required, under the Colorado Solid Wastes Disposal Sites and
2547 Facilities Act as amended, to have a ~~permit in order~~certificate of designation in order to own or
2548 operate each solid waste ~~management disposal site and~~ facility identified above; and

2549
2550 Whereas said principal is required to provide financial assurance for closure, or closure and
2551 post-closure care, as a condition of the ~~certificate of designation permit, and Whereas said principal~~
2552 ~~shall establish a standby trust fund as is required when a surety bond is used to provide such~~
2553 ~~financial assurance, unless an alternate mechanism has been established by the State of Colorado~~
2554 ~~to directly receive monies; and~~

2555
2556 Whereas said principal is required to provide financial assurance for any corrective action
2557 required at Solid Waste Disposal Sites and Facilities.

2558
2559 Now, therefore, the conditions of this obligation are such that if the principal shall faithfully
2560 perform closure, whenever required to do so, of each facility for which this bond guarantees
2561 closure, in accordance with the closure plan and other requirements of the ~~permit~~certificate of
2562 ~~designation~~ as such plan and ~~permit~~certificate of designation may be amended, pursuant to all
2563 applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may
2564 be amended.

2565
2566 And, if the principal shall faithfully perform post-closure care of each facility for which this bond
2567 guarantees post-closure care, in accordance with the post-closure plan and other requirements of
2568 the ~~permit~~certificate of designation, as such plan and ~~permit~~certificate of designation may be
2569 amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes,
2570 rules, and regulations may be amended.

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Or, if the principal shall provide alternate financial assurance as specified in these regulations, and obtain the ~~Department's~~department's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the principal and the ~~Department~~department from the surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The surety(ies) shall ~~be come~~become liable on this bond obligation only when the principal has failed to fulfill the conditions described above.

Upon notification by the ~~Department~~department that the principal has been found in violation of the closure requirements of these regulations, for a facility for which this bond guarantees performances of closure, the surety(ies) shall either perform closure in accordance with the closure plan and other ~~permit certificate of designation~~ requirements or ~~place~~deposit the closure amount guaranteed for the facility ~~into the standby trust fund~~ as directed by the ~~Department~~department.

Upon notification by the ~~Department~~department that the principal has failed to provide alternate financial assurance as specified in these regulations, and obtain written approval of such assurance from the ~~Department~~department during the 90 days following receipt by both the principal and the ~~Department~~department of a notice of cancellation of the bond, the surety(ies) shall ~~place~~ deposit funds in the amount guaranteed for the facility(ies) ~~into the standby trust fund~~ as directed by the ~~Department~~department.

The surety(ies) hereby waive(s) notification of amendments to closure plans, permits, applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the surety(ies) hereunder exceed the amount of said penal sum.

The surety(ies) may cancel the bond by sending notice of cancellation by certified mail, ~~or other trackable delivery service~~, to the owner or operator and to the ~~Department~~department provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the principal and the ~~Department~~department, as evidenced by the return receipts.

The principal may terminate this bond by sending written notice to the surety(ies), provided, however, that no such notice shall become effective until the surety(ies) receive(s) written authorization for termination of the bond by the ~~Department~~department.

[The following paragraph is an optional rider that may be included but is not required.]

2615 Principal and surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it
2616 guarantees a new closure and/or post-closure and corrective action amount, provided that the
2617 penal sum does not increase by more than 20 percent in any one year, and no decrease in the
2618 penal sum takes place without the written permission of the ~~Department~~department.
2619

2620 In witness whereof, the principal and surety(ies) have executed this performance bond and have
2621 affixed their seals on the date set forth above.
2622

2623 The persons whose signatures appear below hereby certify that they are authorized to execute
2624 this surety bond on behalf of the principal and surety(ies) and that the wording of this surety bond is
2625 identical to the wording specified in the applicable regulations.
2626

2627 Principal _____

2628 [Signature(s)] _____

2629 [Name(s) and Title(s)] _____

2630 ~~{Title(s)}~~

2631 [Corporate seal]

2632

2633

2634

2635

2636

2637 Corporate Surety(ies)

2638 [Name and address]

2639 State of incorporation:

2640 Liability limit: \$

2641 [Signature(s)]

2642 [Name(s) and title(s)]

2643

2644 [Corporate seal]

2645

2646

2647 [For every co-surety, provide signature(s), ~~corporate~~Corporate seal, and other information in the

2648 same manner as for surety above.]

2649

2650 Bond premium: \$

2651

2652

2653 **VI. Insurance**

2654

2655 (1) The standard insurance industry certificate of insurance form (ACORD form), as prescribed by

2656 the Colorado Insurance Commission, shall be used to evidence closure and/or post-closure care

2657 and/or corrective action coverage. The following information is to be included in the certificate of

2658 insurance:

- 2659
2660 (A) Name, address, email and telephone number of agency; and the underwriter
2661
2662 (B) Name and EPA I.D. Number if applicable of facility being covered (if list is too long additional
2663 pages may be attached).
2664
2665 (C) Indication of type of coverage (closure, post-closure and/or corrective action).
2666
2667 (D) Amount of coverage (closure, post-closure and/or corrective action).
2668
2669 (E) A statement of certification, in the comment section, worded as follows, except that
2670 instructions in brackets are to be replaced with the relevant information and the brackets
2671 deleted:
2672
2673 "This certificate certifies that the policy to which this certificate applies, provides [insert and/or
2674 closure and/or post-closure care or corrective action coverage] in connection with the insured's
2675 obligation to demonstrate financial responsibility under Section 1-8-94.6.5 of the regulations
2676 pertaining to Solid Waste Disposal Sites and Facilities 6 CCR 1007-2, as amended.
2677
2678 (F) Authorized company representatives' signature
2679
2680 (2) Cancellation of this policy, whether by the insurer or the insured, will be effective only upon
2681 written notice and only after the expiration of sixty (60) days after a written notice of cancellation
2682 is received by the Department~~department~~.
2683
2684

2685 **VII. Certificate of Deposit**

2686
2687 ~~(1) The following information is to be included on the Certificate of Deposit:~~

2688
2689 ~~(A) Name, address, and telephone number of issuing bank.~~

2690
2691 ~~(B) Name and EPA I.D. Number if applicable of facility being covered (if list is too long additional~~
2692 ~~pages may be attached).~~

2693
2694 COLLATERAL ASSIGNMENT OF CERTIFICATE OF DEPOSIT

2695
2696 Instructions: The Colorado Department of Public Health and Environment requires an original
2697 signed copy with Italic text replaced.

2698 Bank and Assignor may also require original signed copies.

2699
2700 (Note: No individual certificate of deposit or the total of all deposits of the assignor at any
2701 individual savings institution should exceed \$250,000 or the maximum insurable amount by
2702 F.D.I.C).

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PART I
(To: be completed by Assignor)

~~(C) Payable To: The undersigned assignor (the "Assignor"), as responsible operator or owner for (Name and Address of Facility) ("the Facility"), does hereby assign, transfer to, and pledge to the Director, of the Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and Environment ("the department"), Hazardous Materials and Waste Management Division, right, title, and interest in and to the Certificate of Deposit issued by or carried with _____, and its successors or assigns, with an office located at (Address and Telephone Number of Bank or Savings Institution) and identified as Certificate of Deposit # _____ ("CD") including its principal amount and any interest that will accrue or already has accrued on the CD ("Assignment"). This Assignment is binding on Assignor, its/his/her/their heirs, devisees, personal representatives, successors, and assigns.~~

~~(D) Indication of type of coverage (closure, post-closure and/or corrective action):~~

~~(E) Amount of coverage (closure, post-closure and/or corrective action):~~

~~(F) Authorized Bank's signature~~

~~(G) Automatic renewal of the Certificate of Deposit with interest added to the principal unless otherwise instructed in writing by the Department.~~

~~(2) (A) Cancellation of this Certificate of Deposit, whether by the insurer or the insured, will be effective only upon written notice and only after expiration of sixty (60) days after a written notice of cancellation is received by the Department.~~

~~(B) A thirty (30) day written notice of maturity of the Certificate of Deposit will be sent to the Department and facility.~~

PURPOSE

~~This Assignment is made as, and shall constitute, collateral security for closure, post-closure, and corrective action costs associated with the Facility in accordance with section 30-20-104.5, C.R.S. and 6 CCR 1007-2, § 4.0. Pursuant to 6 CCR 1007-2, § 4.5, the aforesaid costs shall be updated every five (5) years, adjusted annually to account for inflation or deflation by using the implicit price deflator for the gross domestic product or its successor as published by the U.S. Department of Commerce ("Cost Estimate"), or as requirements change at the Facility.~~

~~The principal amount of the CD shall be equal or greater to the current Cost Estimate. If the Cost Estimate increases to an amount greater than the principal amount of the CD, the owner or operator, during the seven (7) day grace period after the maturity date of the CD ("Grace Period"),~~

2747 shall contribute additional funding to the CD so that the principal amount of the CD is at least
2748 equal to the Cost Estimate. In the alternative, the Facility may implement another financial
2749 assurance mechanism as set forth in 6 CCR 1007-2, § 4.6.1(D) to satisfy the disparity between the
2750 principal amount of the CD and the Cost Estimate. The owner and operator shall provide
2751 confirmation that the principal amount of the CD or the alternative financial mechanism covers the
2752 Cost Estimate to the department within ten (10) days of the aforesaid contribution or establishment
2753 of other financial assurance mechanism.

2754
2755 During every Grace Period, the owner or operator of the Facility shall increase the principal
2756 amount of the CD to account for the inflationary adjustment as determined pursuant to 6 CCR
2757 1007-2, § 4.5 and shall provide written notice of such increase to the department within ten (10)
2758 days thereafter.

2759
2760 If the Cost Estimate decreases during the operating life of the Facility or during post-closure, the
2761 principal amount of the CD may be reduced to the amount of the Cost Estimate following the
2762 department's consultation with the local governing authority and written approval by the
2763 department.

2764
2765 Upon request by the department, the Assignor shall provide within ten (10) days to the department
2766 a complete copy of the most recent account statement of the CD, which, at a minimum, shows its
2767 principal amount and accrued interest. The Assignor also irrevocably consents and authorizes
2768 _____ to release any information regarding the CD and a recent
2769 account statement to the department if the department should contact this bank directly.

2770
2771 **DURATION OF ASSIGNMENT**

2772
2773 This Assignment shall be for a period from the date hereof until the department declares this
2774 Assignment to be terminated by written notice to _____ and
2775 Assignor. Consequently, the CD shall be automatically renewed for successive new terms
2776 identical to the CD's original term unless and until _____ receives
2777 written notice of termination of the Assignment. Assignor hereby agrees to not cancel or otherwise
2778 act on the CD without the department's written approval and that Assignor is liable for any fees or
2779 penalties associated with any payment of the CD to the department.

2780
2781 **CDPHE'S RIGHT TO DRAW UPON CERTIFICATE OF DEPOSIT**

2782
2783 Following a determination by the department that the owner or operator has failed to perform final
2784 closure or post-closure or corrective action in accordance with the closure or post-closure or
2785 corrective action plan and other certificate of designation requirements, if applicable, the
2786 department may draw on the CD without further notice to or the consent of Assignor.

2787
2788 The undersigned hereby constitutes and appoints the department as Power of Attorney of the
2789 undersigned to demand, collect, and receive all amounts that may become due under the terms of
2790 this Assignment, and to endorse the CD for payment or negotiation and to endorse any

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commercial paper given in payment of the CD.

PRESENTATION OF CERTIFICATE OF DEPOSIT

The undersigned represents and warrants that a receipt for the CD is contemporaneously being delivered to the department with the execution of this Assignment; that the CD is to remain assigned to the department until authorized for release pursuant to 6 CCR 1007-2, § 4.4.6.13; that the CD is genuine and is in all respects what it purports to be; that the undersigned is the owner thereof free and clear of all liens and encumbrances of any nature whatsoever; and that the undersigned has full power, right, and authority to execute and deliver this Assignment.

NOTICES

All notices required under this Assignment shall be sent to:

Financial Assurance Program Manager
Colorado Department of Public Health and Environment
Mail Code: HMWMD-SWP-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

The undersigned further represents and warrants that any assignments of this CD made while the CD is pledged to the department shall be subordinate to this Assignment.

ASSIGNOR: (Name of the Owner or Operator of the Facility)

Name (Print) Title

Signature Date

PART II

(To be completed by bank or savings institution)

SIGNATURE GUARANTEE AND UNDERTAKING BY THE FINANCIAL INSTITUTION

The signature of the Assignor appearing on PART I of this document was made in the presence of the undersigned officer of _____ and such signature is herewith guaranteed by _____.

This institution is an association/bank doing business in this state whose accounts are insured by the Federal Deposit Insurance Corporation. The above Assignment carries with it the right in and to the insurance of this account provided by the Federal Deposit Insurance Corporation.

2835 _____ hereby certifies that the CD identified on page one (1) has a
2836 principal amount of \$ _____; that the signature of the Assignor above is comparable to
2837 signatures on file with _____; and that
2838 _____ has no knowledge of any other lien, encumbrance, right,
2839 hold, claim to, or obligation on the assigned CD.

2840
2841 The CD is issued for a period of _____ year(s), beginning on _____ and shall be
2842 automatically renewable for a like term and at Bank's standard interest rate in effect as of the
2843 applicable renewal date for a CD of such term and principal amount, with interest automatically
2844 rolling into the principal on each maturity date. In accordance with 6 CCR 1007-2, § 4.6.10(H),
2845 _____ shall provide a thirty (30) day written notice of maturity of
2846 the CD to the Assignor and will make a good faith effort to provide same notice to the department.
2847 _____ may elect at any time not to renew the CD as of a particular
2848 maturity date, subject to the requirement that, at least sixty (60) days before the applicable
2849 maturity date,

2850
2851 _____ shall notify the Assignor and the department by certified
2852 mail or other trackable delivery service, of such decision. Such notice shall be effective upon
2853 receipt. Upon maturity of the CD following _____'s notice of non-
2854 renewal, _____ shall disburse all funds as directed by the
2855 department.

2856
2857 _____ understands and agrees that the procedures governing the
2858 forfeiture of this CD are specified in 6 CCR 1007-2, § 4.6.10(J), and that, upon
2859 _____'s receipt of written notice from the department that the
2860 Facility has not complied with its requisite final closure or post-closure or corrective action plan,
2861 _____ will forward to the department within ten (10) days the
2862 principal amount of the CD plus any accrued interest, less any early withdrawal penalty, without
2863 further notice to the Assignor.

2864
2865 On this date, the maximum penalty for early withdrawal of this Certificate of Deposit is:
2866 \$ _____. Any penalty shall be deducted from interest accrued,
2867 and if to the extent that such amount is insufficient, shall be deducted from the principal of the CD.

2868
2869 _____ herein states that so long as this agreement remains in
2870 effect, it has no other interests in this CD other than its sole responsibility to act as the agent for
2871 the purpose of holding the CD for the department's exclusive use until otherwise approved by the
2872 department in writing, and agrees not to act on the CD except as otherwise provided in this
2873 agreement or pursuant to written approval by the department.
2874 _____ agrees that any claim or lien, which may result from this Assignment, or which it may acquire in the
2875 future against the Assignor, will be subordinate and junior to the department's interest in the CD.

2876
2877 _____ agrees that except as otherwise provided in this agreement,
2878 no modification will be made to the terms and conditions of the CD which would affect the interest

2879 of the department under this assignment, without first notifying and obtaining written approval from
2880 the department. Written notice of any proposed modification or change in the terms or conditions
2881 of this CD shall be provided to the Financial Assurance Program Manager at the address listed in
2882 PART I above.

2883 _____ understands that this Certificate of Deposit is being pledged
2884 to the department by the Assignor as financial assurance under 6 CCR 1007-2, § 4.0.
2885 _____ has retained a copy of this Assignment and has properly
2886 documented this Assignment in the appropriate records of this institution.

2887
2888
2889
2890 _____
2891 Name of Financial Institution

2892
2893
2894 _____
2895 Name _____ Title _____

2896
2897
2898 Signature _____ Date _____

2899
2900 Accepted By:
2901 Colorado Department of Public Health and Environment

2902
2903
2904 _____
2905 Signature _____ Date _____

2906 Division Director
2907 Hazardous Materials and Waste Management Division

1 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

2 Solid and Hazardous Waste Commission

3 Hazardous Materials and Waste Management Division

4 6 CCR 1007-2

5
6
7 STATEMENT OF BASIS AND PURPOSE
8 AND SPECIFIC STATUTORY AUTHORITY FOR
9

10 Part 1 – Regulations Pertaining to Solid Waste Sites and Facilities (6 CCR 1007-2)
11 Amendment of Financial Assurance Regulations – Deletion of Section 1.8 of the regulations;
12 Addition of Section 4 to the regulations
13
14

15 **Basis and Purpose**

16
17 I. Statutory Authority

18
19 These amendments to 6 CCR 1007-2, Part 1 are made pursuant to the authority granted to the
20 Solid and Hazardous Waste Commission in § 30-20-104.5, C.R.S and § 30-20-109, C.R.S.
21

22 Statement of Basis & Purpose

23
24 The purpose of the current Part 1.8 and the future Part 4 of the solid waste regulations is to
25 provide assurance that funds will be available to the Department when needed for adequate
26 closure and post-closure of, and corrective action at, solid waste disposal sites and facilities
27 should the owner and operator become financially insolvent. These regulations require the
28 owners and/or operators to estimate the costs of closure, post-closure and corrective action and
29 assure financial responsibility for those costs through any of nine mechanisms: trust fund, letter
30 of credit, surety bond, insurance, corporate financial test, local government financial test,
31 corporate guarantee, local government guarantee, and certificate of deposit.
32

33 These changes to the financial assurance regulations are a result of, and response to, concerns of
34 the Department after many years of program implementation. Vulnerabilities in the existing
35 regulations that have been exposed by research done by EPA’s Environmental Financial
36 Advisory Board (EFAB), and effects of the 2008 economic recession. The proposed regulatory
37 changes were developed with the help of a series of ~~four~~five stakeholder meetings at which
38 comments were received from interested parties, discussed, and incorporated as appropriate.
39 Work on the regulatory language may continue up to the rulemaking hearing date. ~~It remains the~~
40 ~~Department’s goal to resolve all stakeholder concerns by the hearing date.~~
41
42

Discussion of the Regulatory Proposal

This rulemaking proposes to make the solid waste financial assurance requirements a stand-alone section of the regulations by moving the requirements from Section 1.8 to Section 4, which is currently empty. This simplifies Section 1 of the regulations, gives appropriate emphasis to the financial assurance requirements, and makes the solid waste regulations consistent with the hazardous waste regulations where financial assurance requirements are in a separate section.

4. The significant changes proposed in this rulemaking fall into the five groups listed below, all of which are discussed in the following sections:

1. Clarification of the role of the local governing authority,
2. Elimination of pay-in periods for new non-landfill facilities,
3. Adding requirements for financial assurance coverage of corrective action liabilities,
4. Eliminating requirements for stand-by trusts, and
5. Strengthening the requirements for insurance and captive insurance companies.

1. Clarification of the role of the local governing authority

The role of the local governing authority is prominent and vital in the current Regulations Pertaining to Solid Waste Sites and Facilities~~solid waste statutes and regulations~~. This is true in the existing Section 1.8, where the local governing authority is involved with the Department in many review and consultation processes and decision points. While our experience has been that the local governments governing authorities have less expertise in financial assurance than Department staff and almost always default to agreement with Department positions, local government governing authority stakeholders opposed having their role significantly diminished. On the other hand, the regulated community was concerned that, if the role of the local governing authority remained unchanged from the previous regulations, regulated entities could find themselves in a situation where the Department had approved their financial assurance mechanism or updated cost estimates, but the local governing authority never indicated a decision. This would leave the regulated entity at risk in terms of the adequacy of their financial assurance. To solve this problem, ~~the Department and the stakeholders have developed draft proposed~~ regulations ~~that~~ define two levels of local government governing authority involvement. The higher level of local government governing authority involvement is “consultation.” Consistent with the Colorado Solid Wastes Disposal Sites and Facilities Act, the draft regulations include a consultation role for the local governing authority in a) all approvals of new financial assurance, including initial financial assurance for new solid waste disposal sites and facilities and any subsequent financial assurance for corrective action, b) all instances where financial assurance is being terminated for any solid waste disposal sites and facilities facility (except those instances where one financial assurance mechanism is being terminated in favor of a new or different mechanism), and c) in approving situations where a single financial assurance mechanism is being used to cover multiple solid waste disposal sites and facilities which may be owned by different owners or operators. An invitation for local government governing authority consultation will come from the ~~Division~~ Department and

88 will require an affirmative response from the local government governing authority by a date
89 set by the ~~Division~~Department. The lower level of local government governing authority
90 involvement is “notification.” Notifications may come from the ~~Division~~Department or the
91 owner or operator and will not require an affirmative response from the local
92 government governing authority. In the event a local governing authority has a concern about
93 any matter in a notification, they may request consultation with the Department. The
94 Department is always available for any local governing authority questions or concerns
95 regarding any aspect of financial assurance and is willing to consult with local governing
96 authority upon request.

97 98 2. Elimination of pay-in periods for new non-landfill facilities

99
100 It is clear from the federal financial assurance regulations for solid waste that allowance of a
101 pay-in period for trust funds was intended ~~only~~for use by landfills. The problem is that the
102 current ~~Colorado~~ state financial assurance regulations do not limit pay-in period to landfills,
103 but allow the use of pay-in periods for all solid waste disposal sites and facilities. This has
104 created current situations where a solid waste disposal site and facility reaches a point where
105 it can present its maximum closure risk, but is still many years from full-funding of ~~their~~ its
106 trust fund.

107
108 ~~The Department believes that p~~Pay-in periods for financial assurance trust funds are
109 appropriate for solid waste disposal sites and facilities that accumulate closure and post-
110 closure liabilities slowly. Most disposal facilities (landfills and monofills) would fit in this
111 category because as new cells are constructed and filled, which can take many years, closure
112 and post-closure liabilities expand slowly. Conversely, risk does not accumulate slowly at
113 other types of solid waste disposal sites and facilities such as impoundments, waste treatment
114 facilities, and compost facilities. These facilities typically reach capacity quickly, long
115 before any pay-in period has accumulated the needed financial assurance protection. If these
116 facilities were to become financially insolvent, the Department ~~would be at risk of having to~~
117 ~~cover the vast majority of~~ would not have access to sufficient capital to cover closure, post-
118 closure and corrective action costs.

119
120 This regulatory proposal allows all current solid waste disposal sites and facilities that have
121 pay-in periods to continue to operate under those pay-in schedules, unless the facility does
122 not comply with the pay-in schedule. This proposal will also continue to allow new landfills
123 and monofills to use pay-in periods. However, the proposal eliminates pay-in periods for
124 other solid waste disposal sites and facilities such as new impoundments, waste treatment
125 facilities, and compost facilities.

126 127 3. Adding requirements for corrective action coverage with financial assurance

128
129 When ~~a~~solid waste disposal sites and facilitiesfacility has have a confirmed release of
130 contaminants to the environment that requires monitoring or remediation, corrective action is
131 required. Depending on the severity of the release, corrective action could be limited to
132 monitoring the contamination to ensure that it naturally attenuates over time, or the corrective

133 action may involve complicated and costly remediation projects. The Department must be
134 able to pay these costs if the owner and/or operator become financially insolvent. Therefore,
135 the Department must be able to call upon adequate financial assurance ~~to be able~~ to complete
136 the corrective action liabilities.

137
138 4. Eliminating requirements for stand-by trusts

139
140 In the years since these regulations were promulgated, Colorado has developed alternatives
141 to, and no longer needs, stand-by trust accounts for receipt of financial assurance funds. This
142 ~~should be good news to regulated facilities as will eliminate~~ the account set-up and
143 administration fees paid for these accounts, which are expensive.

144
145 5. Strengthening the requirements for insurance and captive insurance companies

146
147 **A. Requirements for Insurers.**

148
149 These proposed regulations strengthen the requirements for ~~insurers insurance~~
150 ~~companies to include qualifications for the insurer~~. The insurer must, at a minimum,
151 be licensed to transact the business of insurance in the State of Colorado, attain a
152 rating of A- or better from A.M. Best, be eligible to provide insurance as an excess or
153 surplus lines insurer of more than \$100 million in one or more States, and submit a
154 copy of the proposed insurance policy to the Department for review before it is in full
155 force and effect.

156
157 The Department has chosen to utilize an A.M. Best rating to assure that the insurer
158 has the financial strength to secure their liabilities. A.M. Best is a third-party rating
159 agency that evaluates all insurers and is one of the top rated third-party ~~agency~~
160 ~~agencies~~ to provide their type of analysis and research. A rating of A- means that the
161 insurer has a very good financial prognosis and is not at risk of becoming financially
162 insolvent. An insurer will also have to demonstrate that they have at least \$100
163 million or greater in capital and surplus beyond the liability of their outstanding
164 policies. This will assure that the liability covered by the policy will be guaranteed
165 even if other outstanding policies are paid in full. The Department is also requiring
166 an owner and/or operator to submit the insurance policy to the Department before it is
167 approved for financial assurance. This will ensure that the policy coverage adequately
168 meets the required needs of the closure, post-closure and/or corrective action at the
169 solid waste disposal site and facility before the policy is bound.

170
171 **B. Requirements for Captive Insurance Companies.**

172
173 These regulations also strengthen the requirements for captive insurance
174 ~~companies providers~~. Captive insurance is insurance issued by a wholly-owned
175 subsidiary of the company being insured. The financial health of the captive
176 insurance company is closely tied with the parent company, so if the company
177 encounters financial difficulties there is no guarantee that the captive insurance

178 company would retain the necessary resources to fund any closure, ~~and~~ post-closure,
179 and corrective action liabilities they may have.

180
181 The Department has had concerns about captive insurance for some time. These
182 concerns include the following:

- 183 1. A lack of independence, and thus the transfer of risk, between the captive
184 insurance subsidiary and the insured parent company.
- 185 2. A lack of consistent requirements for captives insurance companies with regard to
186 minimum capitalization thresholds, reserves, and encumbrances on reserves.
- 187 3. A general lack of Department expertise in monitoring and reviewing the financial
188 statestatus of captive insurance providerscompanies and their parent companies.
- 189 4. The financial viability of companies (and their captive insurance
190 providerscompanies) can change very rapidly.

191
192 To address these concerns, and to address comments received from stakeholders, the
193 Department sought additional outside expertise on captive insurance from the
194 Colorado Division of Insurance (part of the Department of Regulatory Agencies); the
195 Vermont Department of Financial Regulation, and the U.S. Environmental Protection
196 Agency. ~~We very much appreciate the input we received. That input is very much~~
197 appreciated.

198
199 ~~We believe our concerns have been adequately addressed by~~ For captive insurance,
200 ~~adding~~ the same requirements ~~that were~~ have been that were added for all insurers, as
201 explained above. In addition, requirements have been added that the captive ~~insurer~~
202 insurance company be domiciled in a jurisdiction accredited by the National
203 Association of Insurance Commissioners (NAIC) and be in good standing with the
204 domiciliary regulator. Further, the captive insurer must give the Department at least
205 180 days of notice before cancelling a captive insurance policy.

206
207 In working with stakeholders, ~~The~~ the Department had originally proposed that all
208 captive insurance companies be domiciled in Vermont because Vermont regulates
209 more captive insurance entitiescompanies than any other state and has developed
210 regulations that keep pace with, and effectively control, the industry. For many years,
211 Vermont has been widely viewed as the “gold standard” in captive insurance
212 regulation. However, after feedback from stakeholders, as well as from the Division
213 of Insurance, ~~the Department decided to these regulations~~ allow captive insurance
214 companies to be domiciled in an NAIC accredited jurisdiction and be in good
215 standing with the domiciliary regulator in the State of Colorado. ~~The Department is~~
216 comfortable with this approach because of This accounts for the more rigorous
217 national standards that have developed over the past few years, including in
218 Colorado, ~~s insurance regulations.~~

219
220 These regulations ~~Department has~~ also required ~~d~~ that if the captive insurance company
221 fails to provide a Certificate of Good Standing, or its equivalent, issued by the
222 domiciliary regulator, the owner and operator shall submit notification to the

223 Department, at which point a different approved mechanism would need to be
224 secured. The 180-day notice allows the Department to work with the company to put
225 another approvable financial assurance mechanism in place before the captive
226 insurance policy lapses.

227
228 H. In addition to these significant changes, the following issues were discussed with
229 stakeholders:

230
231 1. Section 4.2.1(D): Stakeholders asked why owners and operators would not be allowed to
232 incorporate a zero cost into their financial assurance cost estimates for solid wastes that
233 might have an economic value. That is to say, if the Department has to call on the
234 financial assurance to enable cleanup and closure of a solid waste disposal site and
235 facility, and there are solid wastes on-site that might have re-sale or re-use value to
236 another entity, should the cost estimate for financial assurance be able to take that value
237 into consideration at least to the extent that disposition of that material would have a
238 zero-cost impact to the closure of the facility? ~~The Department believes that this should~~
239 ~~not be allowed~~ This proposal was not incorporated in these regulations for several
240 reasons:

- 241 a. Market values of these waste materials are usually dynamic, unpredictable, and
242 hard for the Department to verify;
- 243 b. The market value of these waste materials are often over-estimated by the owner
244 and/or operator;
- 245 c. Many times even processed materials viewed by the owner/operator as a product
246 do not have market value and are instead a closure liability; and
- 247 d. Neither the Department nor the third party performing closure will have the time
248 or expertise to ~~disposition~~ dispose of materials from a site that might have
249 positive or non-negative value.

250
251 2. Section 4.6.2(B): Stakeholders asked why investments with trust fund monies need to
252 have “no” risk of losing principle value versus having a “low” risk. ~~The Department~~
253 ~~believes that T~~ trust fund money can be invested in a manner that achieves rates of return
254 that cover inflation, but have essentially no risk of losing the underlying principle of the
255 fund. This can be done by investing in high grade corporate bonds, treasury bonds, and
256 even Certificates of Deposit. Such investments can be structured to remain fully insured
257 by the FDIC. Any loss of the underlying principle represents inadequate financial
258 assurance and places the owner/operator in a non-compliant status.

259 The remainder of the changes in the proposed rulemaking are clarifications and readability
260 improvements.