

1 CHAPTER 14
2 FINANCIAL ASSURANCE REQUIREMENTS

3
4 **Section 1. In General.**

5
6 (a) Authority: This rule is promulgated pursuant to the Wyoming Environmental
7 Quality Act, Wyoming Statutes (W.S.) 35-11-101 through 35-11-2004, specifically W.S. 35-11-
8 306 and W.S. 35-11-307.

9
10 (b) Applicability. This chapter governs all commercial oil field waste disposal
11 facilities that are required to demonstrate financial assurance under W.S. 35-11-306, and all new
12 and existing commercial waste treatment, storage and disposal facilities used for the
13 management of more than ten (10) tons of dried wastewater treatment sludges or the equivalent
14 per operating day, that are required to demonstrate financial assurance under W.S. 35-11-307.
15 This chapter does not apply to publicly owned facilities or facilities that receive non-domestic
16 sludges.

17
18 (c) Objective: The objective of these rules and regulations is to provide financial
19 assurance for the purposes specified in W.S. 35-11-306(d), and W.S. 35-11-307(c).

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21 (d) Severability: If any section or provision of this chapter, or the application of that
22 section or provision to any person, situation, or circumstance is adjudged invalid for any reason,
23 the adjudication does not affect any other section or provision of these regulations or the
24 application of the adjudicated section or provision to any other person, situation, or
25 circumstance. The Environmental Quality Council declares that it would have adopted the valid
26 portions and application of this chapter without the invalid part, and to this end the provisions of
27 this chapter are declared to be severable.

28
29 (e) Definitions: The following definitions supplement those contained in W. S. 35-
30 11-103 of the Wyoming Environmental Quality Act:

31
32 (i) “Closed facility” means a regulated facility at which operations have been
33 properly terminated in accord with an approved facility closure plan on file with the Water
34 Quality Division and complying with all applicable regulations and requirements concerning its
35 stabilization.

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37 (ii) “Closure” means the act of securing and stabilizing a regulated facility
38 pursuant to the requirements of these regulations.

39
40 (iii) “Collateral” means the actual or constructive deposit, as appropriate, with
41 the Department of one (1) or more of the following kinds of property to support a self-bond:
42

43 (A) A perfected, first-lien security interest in real property located
44 within the State of Wyoming, in favor of the Wyoming Department of Environmental Quality
45 that meets the requirements of this chapter.

46
47 (B) Securities backed by the full faith and credit of the United States
48 government or state government securities acceptable to the Department. These securities must
49 be endorsed to the order of, and placed in the possession of the Department.

50
51 (C) Personal property located within the state, owned by the operator,
52 that in market value exceeds \$1 million per property unit.

53
54 (iv) “Comparative balance sheet” means item amounts from a number of the
55 operator’s successive yearly balance sheets arranged side by side in a single statement.

56
57 (v) “Comparative income statement” means an operator’s income statement
58 amounts for a number of successive yearly periods arranged side by side in a single statement.

59
60 (vi) “Corrective action” means all actions necessary to eliminate the public
61 health threat or environmental threat from a release to the environment of pollutants from an
62 operating or closed regulated facility and to restore the environmental conditions as required.

63
64 (vii) “Cost-effective” means the selection of alternative responses taking into
65 account total short-term and long-term costs of those responses including the costs of operation
66 and maintenance for the entire activity, the presence of naturally occurring hazardous or toxic
67 substances and current or potential uses of the natural resources impacted, as determined by the
68 Department.

69
70 (viii) “Current assets” means cash and assets that are reasonably expected to be
71 realized in cash or sold or consumed within one (1) year or within the normal identified
72 operating cycle of the business.

73
74 (ix) “Current liabilities” means debts or other obligations that must be paid or
75 liquidated within one (1) year or within the normal identified operating cycle of the business.
76 This shall also include dividends payable on preferred stock within one (1) quarter if declared, or
77 one (1) year if a pattern of declaring dividends each quarter is apparent from the business’ past
78 practices.

79
80 (x) “Fixed assets” means plants and equipment.

81
82 (xi) “Liabilities” means obligations to transfer assets or provide services to
83 other entities in the future as a result of past transactions.

84

85 (xii) "Monitoring" means all procedures and techniques used to systematically
86 collect, analyze and inspect data on operational parameters of the facility or on the quality of the
87 air, ground water, surface water, and soil.
88

89 (xiii) "Net worth" means total assets minus total liabilities and is equivalent to
90 owners' equity.
91

92 (xiv) "Operator" means that person responsible for the proper design, operation,
93 and maintenance, closure, and post-closure care of a regulated facility. The "operator" means the
94 permit holder. For commercial oil field waste disposal facilities and commercial wastewater
95 sludge treatment, storage and disposal facilities permitted by the Water Quality Division, the
96 permit holder must also be the owner of the facility in accordance with Wyoming Water Quality
97 Rules and Regulations, Chapter 3, Section 10(b).
98

99 (xv) "Parent corporation" means a United States corporation that owns or
100 controls the applicant.
101

102 (xvi) "Regulated facility" includes commercial sludge facilities and commercial
103 oil field waste disposal facilities as specified in Section 1(b) of this chapter.
104

105 (xvii) "Release" includes, but is not limited to, any spilling, leaking, pumping,
106 pouring, emptying, emitting, discharging, dumping, addition, escaping, leaching, or unauthorized
107 disposal of any oil or hazardous substance that enters, or threatens to enter, Waters of the State.
108

109 (xviii) "Self-bond" means an indemnity agreement in a sum certain executed by
110 the permittee and/or the parent company or federal agency guarantor and made payable to the
111 State, with or without separate surety.
112

113 (xix) "Tangible net worth" means net worth minus intangibles such as goodwill,
114 patents or royalties.
115

116 **Section 2. Requirements to Demonstrate Financial Assurance.**

117

118 (a) Financial assurance will be required for all new and existing commercial oil field
119 waste disposal facilities as specified by Section 1(b) of this chapter no later than ninety (90) days
120 after promulgation of this chapter.
121

122 (b) Financial assurance requirement for all new and existing commercial sludge
123 facilities: Financial assurance will be required of all new commercial facilities as specified by
124 Section 1(b) of this chapter prior to the issuance of a construction permit. Compliance with these
125 financial assurance rules and regulations will be required of all existing facilities no later than
126 ninety (90) days after promulgation of this chapter.
127

Section 3. Coverage.

(a) General Purpose and Scope: Permits for regulated facilities require closure, post-closure, and corrective action financial assurance plans as prescribed in this chapter for the purpose of assuring that operators of these facilities are financially responsible for protection of public health and the environment. This chapter contains general requirements governing closure, post-closure, care and corrective action for violations of a permit, standard, rule or requirement. These requirements may be supplemented by site-specific closure, post-closure care, and corrective action permit conditions. Together with the factors used to produce cost estimates, these maintenance requirements form the basis of the financial assurance standards included in this chapter.

(b) Closure and Post-Closure Requirements:

(i) Notification:

(A) An operator intending to close a regulated facility shall notify the Department of the intention to do so at least 180 days prior to the anticipated date for initiation of closure. Simultaneous notice shall be made by the operator to the governing body of each locality and adjacent property owners by certified or registered mail.

(B) The operator shall post one (1) sign notifying all persons of the closing and prohibition against further receipt of waste materials. Further, suitable barriers shall be installed at former accesses to prevent new waste from being deposited.

(ii) Closure and Post-Closure Standards:

(A) Closure and post-closure maintenance shall occur in accord with approved plans. A closure plan and a post-closure plan shall be submitted with the permit application. The operator shall submit a revised closure plan and post-closure plan to the Department for review and approval as necessary to describe any plan changes.

(B) The operator shall close the facility in a manner that minimizes the need for post-closure maintenance and controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, the post-closure escape of leachate, surface runoff or waste decomposition products to the ground water, surface water or the atmosphere. The post-closure monitoring period shall continue for a minimum of five (5) years after the date of completing closure of the regulated facility. The minimum post-closure monitoring period shall be extended if the Department determines it is needed to protect human health and the environment.

(iii) Inspection:

171 (A) The Department shall inspect all closed regulated facilities to
172 determine if the closure is complete and adequate in accordance with the approved plan after
173 being notified by the operator that closure has been completed. The Department shall provide
174 written inspection results to the operator of a closed facility after the inspection. If the closure is
175 not satisfactory, the Department shall specify necessary construction or such other steps as may
176 be appropriate to bring unsatisfactory sites into compliance with closure requirements.

177
178 (B) Notification by the Department that the closure is satisfactory does
179 not relieve the operator of responsibility for corrective action in accordance with regulations of
180 the Department to prevent or abate problems caused by the regulated facility that are
181 subsequently discovered.

182
183 (c) Corrective Action Requirements.

184
185 (i) Notification:

186
187 (A) The Department shall notify the operator of the need to take
188 corrective action to remedy a violation of a permit condition, standard, rule or requirement
189 relating to a regulated facility. The notification shall describe the nature of the violation.

190
191 (B) If deemed necessary by the Department, the operator will be
192 required to close the facility and cease further receipt of waste materials.

193
194 (C) If the facility is closed, the operator shall post one (1) sign
195 notifying all persons of the closing and prohibition against further receipt of waste materials.
196 Further, suitable barriers shall be installed at former accesses to prevent new waste from being
197 deposited.

198
199 (ii) Remediation Activities: In the event of a release, the operator shall:

200
201 (A) Initiate immediate measures to:

202
203 (I) Prevent further release to the environment.

204
205 (II) Prevent further migration of the released substance into
206 surrounding soils and Waters of the State.

207
208 (III) Identify, monitor and mitigate any safety hazards or health
209 risks associated with the violation.

210
211 (B) Prepare a plan to conduct an investigation of the release, the
212 release site and any surrounding area that may be affected by the release. The plan shall include:

213

214 (I) A comprehensive subsurface investigation to define the
215 extent and degree of contamination.

216
217 (II) A schedule for conducting the investigation.

218
219 (III) A cost estimate for a third party to perform the tasks
220 identified by the plan.

221
222 (C) Submit the investigation plan to the Department within thirty (30)
223 days. The extent of contamination study should begin as soon as the plan has been approved and
224 all necessary permits obtained.

225
226 (D) Conduct the extent of contamination study in accordance with the
227 approved plan and submit a written report of the findings to the Department.

228
229 (E) If required by the Department, develop a comprehensive plan for
230 mitigation and clean-up. The remediation plan shall be submitted to the Department for approval.
231 The remediation plan shall be implemented as soon as the Department has approved the plan and
232 all necessary permits have been obtained. The remediation plan shall contain an estimate of the
233 costs for a third party to perform the tasks identified by the plan.

234
235 (d) Financial Assurance: In order to assure that the costs associated with protecting
236 the public health and safety from the consequences of an abandonment, or a failure to properly
237 execute closure, post-closure care or required corrective action and clean-up of a regulated
238 facility are recovered from the operator of such a facility, the operator shall provide financial
239 assurance in one, or a combination of the forms described in this chapter including a self-bond, a
240 surety bond, a federally insured certificate of deposit, government-backed securities, or cash.
241 Such financial assurance shall be in the amount calculated as the cost estimate using the
242 procedures set forth in Sections 3(e)(i), 3(e)(ii) and 3(e)(iii) of this chapter. Evidence of the
243 selected forms of financial assurance shall be filed with the Department as part of the permit
244 application procedures and prior to the issuance of an operating permit. The Department may
245 reject the proposed forms of assurance of financial responsibility if the evidence submitted does
246 not adequately assure that funds will be available as required by these rules. The operator shall
247 be notified in writing within sixty (60) days of receipt of the evidence of financial assurance of
248 the decision to accept or reject the proposed forms of financial assurance.

249
250 (e) Cost Estimates:

251
252 (i) Cost Estimate for Facility Closure:

253
254 (A) In submitting a closure plan as required by these regulations, the
255 operator of a regulated facility shall include therein an itemized written estimate of the cost of

256 closing the facility. The estimated closing cost shall be determined by the Department on a case-
257 by-case basis, considering information supplied by the operator.

258
259 (B) The estimated closing cost shall be based on the work required for
260 a third party contractor to effect proper closure at the most expensive point in the life of the
261 facility. Those factors to be considered in estimating the closure cost shall include:

- 262 (I) The size and topography of the site.
- 263 (II) The daily or weekly volume of waste to be received at the
264 site.
- 265 (III) Availability of cover and fill material needed for site
266 grading.
- 267 (IV) The type of waste to be received at the site.
- 268 (V) Disposal method and sequential disposal plan.
- 269 (VI) The location of the site and the character of the surrounding
270 area.
- 271 (VII) Requirements for surface drainage.
- 272 (VIII) Operation and maintenance of the leachate collection and
273 treatment system, and, the off-site disposal of leachate.
- 274 (IX) Environmental quality monitoring system.
- 275 (X) Structures and other improvements to be dismantled and
276 removed. Salvage values cannot be used to offset demolition costs.
- 277 (XI) Site storage capacity for solid waste, incinerator residue,
278 and compost material.
- 279 (XII) Off-site disposal requirements.
- 280 (XIII) Vector control requirements.
- 281 (XIV) A minimum of fifteen percent (15%) variable contingency
282 fee to cover other closure costs as determined appropriate by the Department.
- 283 (XV) Other site-specific factors.

299 (C) Revised closure cost estimates will be submitted to the Department
300 on an annual basis. When the revised estimates are approved by the Department, the operator
301 shall submit revised financial assurance for the revised closure costs.

302

303 (ii) Cost Estimate for Facility Post-Closure:

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305 (A) In submitting a closure plan as required by these regulations, the
306 operator of a regulated facility shall include therein a written estimate of the cost of post-closure
307 care, monitoring, and maintenance. Unless onsite disposal of wastes or residues from the
308 treatment or storage of wastes is planned or required, an incinerator, resource recovery facility,
309 compost facility or storage surface impoundment will not be required to include a post-closure
310 cost estimate in its closure plan. The estimated post-closure cost shall be determined by the
311 Department on a case-by-case basis considering information supplied by the operator. Such costs
312 shall be based on the work required for a third party contractor.

313

314 (B) Those factors to be considered in estimating post-closure
315 maintenance costs shall include:

316

317 (I) The size and topography of the site.

318

319 (II) The type and quantity of waste received.

320

321 (III) Disposal method and sequential disposal plan.

322

323 (IV) The potential for significant leachate production and the
324 possibility of contaminating water supplies.

325

326 (V) Environmental quality monitoring systems.

327

328 (VI) Soil conditions.

329

330 (VII) The location of the site and the character of the surrounding
331 area.

332

333 (VIII) A minimum of fifteen percent (15%) contingency fee to
334 cover other post-closure costs as determined appropriate by the Department.

335

336 (IX) Other site-specific factors.

337

338 (C) Estimated costs of post-closure activities shall be determined on a
339 case-by- case basis. Revised post-closure cost estimates will be submitted to the Department on
340 an annual basis. When the revised estimates are approved, the operator shall submit revised
341 financial assurance for the revised post-closure costs.

342 (iii) Cost Estimate for Corrective Action:

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(A) The operator of a commercial oil field disposal system regulated under W.S. 35-11-306 or a commercial sludge facility regulated under W.S. 35-11-307 in submitting an application for a construction permit as required by Chapter 3, Wyoming Water Quality Rules and Regulations shall include a written estimate of the cost of corrective actions to remediate a release from the facility. The estimated cost of corrective action and clean-up of a release shall be determined by the Department on a case-by-case basis considering information submitted by the operator. Such costs shall be based on the work required for a third party contractor.

(B) The factors to be considered in estimating the cost of corrective actions and clean-up of a release shall include the following:

- (I) Soils, geologic and hydrogeologic conditions at the site.
- (II) The type and quantity of waste received.
- (III) Disposal method and sequential disposal plan.
- (IV) The potential for significant leachate production and the possibility of contaminating groundwater.
- (V) Environmental quality monitoring systems.
- (VI) The location of the site and the character of the surrounding area.
- (VII) A minimum of fifteen percent (15%) contingency fee to cover other corrective action and clean-up costs as determined appropriate by the Department.
- (VIII) The ability of the facility to prevent and detect a release and to facilitate clean-up activities. The criteria used to evaluate this ability shall include design, construction, operation, monitoring, and contingency plans submitted as part of the application package.
- (IX) The class, use, value and environmental vulnerability of surface and groundwater resources that may be impacted by a release.
- (X) Other site-specific factors.

(f) Financial Assurance for Facility Closure, Post-Closure, and Corrective Action:

(i) General:

385 (A) For each regulated facility for which a permit is applied, financial
 386 assurance shall be provided for closure and post-closure activities, and for corrective action if
 387 required under Section 3(e)(iii) of this chapter.

388
 389 (B) Determination of the financial assurance requirements for
 390 corrective action and clean-up of commercial oil field waste disposal and commercial sludge
 391 facilities will be made by the Water Quality Division when the construction permit application is
 392 evaluated.

393
 394 (C) All existing commercial oilfield waste disposal facilities shall
 395 provide financial assurance for closure and post-closure activities, and for corrective action
 396 within ninety (90) days after promulgation of this chapter.

397
 398 (ii) Forms of Financial Assurance: Financial assurance may be provided in
 399 one (1) or a combination of the following forms executed in the amount calculated as the
 400 estimated closure and post-closure costs in accordance with W.S. 35-11-307(a) or W.S. 35-11-
 401 306(d) of the Act. These forms may also be available for financial assurance for corrective
 402 actions at a regulated facility.

- 403
 404 (A) Self-bond;
 405
 406 (B) Surety bond;
 407
 408 (C) Federally insured certificates of deposit;
 409
 410 (D) Government-backed securities;
 411
 412 (E) Cash.

413
 414 (g) Transfer of Permits: Permits may be transferred from one operator to another only
 415 if the new operator can demonstrate compliance with the financial assurance requirements of this
 416 chapter. Construction permit ownership will be transferred in accordance with Wyoming Water
 417 Quality Rules and Regulations, Chapter 3, Section 10.

418
 419 (h) Financial assurance amounts will be recalculated on a yearly basis.

420
 421 **Section 4. Forms of Financial Assurance.**

422
 423 (a) Self-Bonding:

424
 425 (i) Initial Application to self-bond: Initial application to self-bond shall be
 426 made at the time the operator makes written application to the Department to construct, operate

427 or modify a regulated facility. The application shall be on forms furnished by the Department
428 and shall contain:

429
430 (A) Identification of operator by:

431
432 (I) For corporations, name, address, telephone number, state of
433 incorporation, principal place of business and name, title and authority of person signing
434 application, a corporate resolution authorizing the application, and statement of authority to do
435 business in the State of Wyoming; or

436
437 (II) For all other forms of business enterprises, name, address
438 and telephone number, and statement of how the enterprise is organized, law of the state under
439 which it is formed, place of business, and relationship and authority of the person signing the
440 application.

441
442 (B) Amount of bond required, to be determined in accordance with
443 W.S. 35- 11-307 or W.S. 35-11-306(d). If the self-bond amount is proposed to be less than the
444 full bond amount, the amount proposed under a self-bond is the bond required.

445
446 (C) Type of operation and anticipated dates performance is to be
447 commenced and completed.

448
449 (D) Brief chronological history of business operations conducted
450 within the last five (5) years that would illustrate a continuous operation for five (5) years
451 immediately preceding the time of application.

452
453 (I) The Department may allow a joint venture or partnership
454 with less than five (5) years of continuous, operation to qualify under this requirement, if each
455 member of the joint venture or partnership has been in continuous operation for at least five (5)
456 years immediately preceding the time of application.

457
458 (II) When calculating the period of continuous operation, the
459 Department may exclude past periods of interruption to the operation of the business entity that
460 were beyond the applicant's control and that do not affect the applicant's likelihood of remaining
461 in business during the proposed operation of the regulated facility.

462
463 (E) Information in sufficient detail to show good faith performance of
464 past operation and closure/post-closure obligations.

465
466 (F) A statement, in detail, to show a history of financial solvency. For
467 an initial bond, each operator must provide audited financial statements supporting the following
468 comparative documents, prepared and certified by an independent Certified Public Accountant
469 who, by reason of education, experience or special training, and disinterest, is competent to

470 analyze and interpret the operator's financial solvency. All statements shall be prepared
471 following generally accepted principles of accounting.

472

473 (I) A comparative balance sheet that shows assets, liabilities,
474 and owner equity for five (5) years. The operator may provide common-size documents for
475 confidentiality.

476

477 (II) A comparative income statement that shows all revenues
478 and expenses for five (5) years. The operator may provide common-size documents for
479 confidentiality.

480

481 (III) A report for the most recently completed fiscal year
482 containing the accountant's audit opinion or review opinion of the balance sheet and income
483 statement with no adverse opinion.

484

485 (IV) Notwithstanding the language in (F) above, unaudited
486 financial statements may be submitted to support the comparative documents where current
487 fiscal year quarters have ended but a CPA opinion has not yet been obtained because the fiscal
488 year has not yet ended.

489

490 (G) Financial information in sufficient detail to show that the operator
491 meets one (1) of the following criteria (the specific criterion relied upon shall be identified).

492

493 (I) The operator has a rating for all bond issuance actions over
494 the past five (5) years of "A" or higher as issued by either Moody's Investor Service or Standard
495 and Poor's Corporation (the rating service should be identified together with any further
496 breakdown of specific ratings).

497

498 (II) The operator has a tangible net worth of at least \$10 mil-
499 lion, and a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current assets to
500 current liabilities of 1.2 times or greater. The two ratio requirements must be met for the past
501 year, and documented for the four (4) years preceding the past year. Explanations should be
502 included for any year where the ratios fall below the stated limits.

503

504 (III) The operator's fixed assets in the United States total at least
505 \$20 million, and the operator has a ratio of total liabilities to net worth of 2.5 times or less, and a
506 ratio of current assets to current liabilities of 1.2 times or greater. The two ratio requirements
507 must be met for the past year and documented for the four (4) years preceding the past year.
508 Explanations should be included for any year where the ratios fall below the stated limits.

509

510 (IV) If the operator chooses (II) or (III), the two ratios shall be
511 calculated with the proposed self-bond amount added to the current or total liabilities for the

512 current year. The operator may deduct the costs currently accrued for reclamation that appear on
513 the balance sheet.

514
515 (H) A statement listing any notices issued by the Securities and
516 Exchange Commission or proceedings initiated by any party alleging a failure to comply with
517 any disclosure or reporting requirements under the securities laws of the United States. Such
518 statement shall include a summary of each such allegation, including the date, the requirement
519 alleged to be violated, the party making the allegation, and the disposition or current status
520 thereof.

521
522 (I) A statement that:

523
524 (I) Identifies by name, address and telephone number, a
525 registered office, which may be but need not be, the same as the operator's place of business.

526
527 (II) Identifies by name, address and telephone number, an agent
528 registered with the Wyoming Secretary of State's Office to transact business in the State. The
529 agent's business office shall be identical to the registered office. The agent may be an individual
530 resident in this state, a domestic corporation, or a foreign corporation. The registered agent so
531 appointed by the operator shall be an agent to such operator upon whom any process, notice or
532 demand required or permitted by law to be served upon the operator may be served.

533
534 (III) Acknowledges that if the operator fails to appoint or
535 maintain a registered agent in this state, or whenever any such registered agent cannot be
536 reasonably found at the registered office, then the Wyoming Secretary of State shall be an agent
537 for such operator upon whom any process, notice or demand may be served. In the event of any
538 such process, the Wyoming Secretary of State shall immediately cause one (1) copy of such
539 process, notice or demand to be forwarded, by registered or certified mail, to the operator at his
540 principle place of business. The Wyoming Secretary of State shall keep a record of all processes,
541 notices, or demands served upon him under this paragraph, and shall record therein the time of
542 such service and his action with reference thereto.

543
544 (IV) Acknowledges that should the operator change the
545 registered office or registered agent, or both, a statement indicating such change shall be filed
546 immediately with the Solid Waste Management Program or the Water Quality Division.

547
548 (V) Acknowledges that nothing herein contained shall limit or
549 affect the right to serve any process, notice or demand required or permitted by law to be served
550 upon an operator in any other manner now or hereafter permitted by law.

551
552 (J) The Department may accept a written guarantee for an operator's
553 self-bond from a parent corporation guarantor or from a federal agency, if the guarantor or
554 federal agency satisfies the financial criteria of this chapter as if it were the operator. The

555 operator must only supply information addressing requirements not met by the parent
 556 corporation guarantor. The terms of the parent corporate or federal agency guarantee shall
 557 provide for the following:

558 (I) If the operator fails to complete the closure/post-closure
 559 plan the guarantor shall do so or the guarantor shall be liable under the indemnity agreement to
 560 provide funds to the State sufficient to complete the reclamation plan, but not to exceed the bond
 561 amount.

562
 563 (II) The parent corporate or federal agency guarantee shall
 564 remain in force unless the guarantor sends notice of cancellation by registered or certified mail to
 565 the operator and to the Department at least ninety (90) days in advance of the cancellation date,
 566 and the Department accepts the cancellation. The cancellation shall be accepted by the
 567 Department if the operator obtains a suitable replacement bond before the cancellation date, if
 568 the lands for which the self-bond, or portion thereof, was accepted have not been disturbed, or if
 569 the lands have been released under W.S. 35-11-306.

570
 571 (K) For the Department to accept a regulated facility operator's self-
 572 bond, the total amount of the outstanding and proposed self-bond of the operator shall not exceed
 573 twenty-five percent (25%) of the operator's tangible net worth in the United States. For the
 574 Department to accept a corporate guarantee, the total amount of the parent corporation
 575 guarantor's present and proposed self-bonds and guaranteed self-bonds shall not exceed twenty-
 576 five percent (25%) of the guarantor's tangible net worth in the United States.

577
 578 (ii) Approval or denial of operator's, self-bond application:

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 580 (A) The Department, within sixty (60) days of the operator's
 581 submission of all materials necessary to base a decision on the application shall:

582
 583 (I) Approve or reject such application and declare in writing
 584 its reasons for such action to the operator or his registered agent. The decision shall be based on
 585 the information submitted and shall be sufficient to meet the demonstrations required by W.S.
 586 35-11-306(d).

587
 588 (II) If a rejection is based on inadequate information or failure
 589 of the operator to supply all necessary material, the Department shall allow the operator thirty
 590 (30) days to remedy the deficiencies. Such corrections shall be made to the satisfaction of the
 591 Department. The Department shall have an additional sixty (60) days to approve or reject the
 592 corrected application.

593
 594 (B) If the Department accepts an uncollateralized self-bond, an
 595 indemnity agreement shall be submitted subject to the following requirements:

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597 (I) The indemnity agreement shall be executed by all persons
598 and parties who are to be bound by it, including the parent corporation or federal agency
599 guarantor, and shall bind each jointly and severally.
600

601 (II) Corporations applying for a self-bond or parent corporation
602 guaranteeing a subsidiary's self-bond shall, submit an indemnity agreement signed by two (2)
603 corporate officers who are authorized to bind the corporation. A copy of such authorization shall
604 be provided to the Department. A federal agency guaranteeing an operator's self-bond shall
605 submit an indemnity agreement signed by two (2) officers of the agency who are authorized to
606 bind the agency and a copy of their authorization. The agency shall also submit documents
607 supporting the availability of a cause of action against the federal agency for performance under
608 the indemnity agreement.
609

610 (III) If the applicant is a partnership or joint venture, the
611 agreement shall bind each partner or party who has a beneficial interest directly or indirectly, to
612 the operator.
613

614 (IV) The indemnity agreement shall provide that the persons or
615 parties bound shall pay all litigation costs including reasonable attorney fees incurred by the
616 State in any successful, effort, to enforce the agreement against the operator.
617

618 (C) If the application is rejected based on the information required in
619 Section 4(a)(i), or based on the limitation set in Section 4(a)(i)(K) then the operator may offer
620 collateral and an indemnity agreement to support the self-bond application. The indemnity
621 agreement shall be subject to the requirements of (B) above.
622

623 (I) For any collateral offered to support a self-bond, the
624 following information shall be provided.
625

626 (1.) The value of the property. The property shall be
627 valued at the difference between seventy-five percent (75%) of the fair market value and any
628 reasonable expense anticipated by the Department in selling the property. The fair market value
629 shall be determined by an appraiser or appraisers appointed by the Department and mutually
630 acceptable to both the Department and the operator. The appraisal shall be expeditiously made,
631 and copies thereof furnished to the Department and the operator. The expense of the appraisal
632 shall be borne by the operator.
633

634 (2.) A description of the property satisfactory for
635 deposit to further assure that the operator shall faithfully perform all requirements of the Act.
636 The Department shall have full discretion in accepting any such offer.
637

638 a. Real property shall not include any lands in
639 the process of being used for the transfer, treatment, processing, storage or disposal of solid

640 wastes, reclaimed or subject to this application. The operator may offer any lands the bonds for
641 which have been released or lands within a permit area that will not be affected. In addition, any
642 land used as a security shall not be used for disposal, treatment, processing or storage while it is
643 a security.

644 b. Securities shall only include those that are
645 United States government securities or those state government securities acceptable to the
646 Department. Securities shall meet the requirements specified in the definition of “Securities”
647 found in Section 1(e)(iii)(B).

648
649 c. Personal property shall be in possession of
650 the operator, shall be unencumbered, and shall not include:

651
652 i. Property that is already being used as
653 collateral, or

654
655 ii. Goods that the operator sells in the
656 ordinary course of his business, or

657
658 iii. Fixtures, or

659
660 iv. Certificates of deposit that are not
661 federally insured or where the depository is unacceptable to the Department.

662
663 (3.) Evidence of ownership submitted in one of the
664 following forms:

665
666 a. If the property offered for deposit is real
667 property, the operator’s interest must be evidenced by:

668
669 i. In the case of a federal or state lease,
670 a status report prepared by an attorney, satisfactory to the Department as disinterested and
671 competent to so evaluate the asset, and an affidavit from the owner in fee establishing that the
672 leasehold could be transferred upon default.

673
674 ii. In the case of a fee simple interest, a
675 title certificate or similar evidence of title and encumbrances prepared by an abstract office
676 authorized to transact business within the State and satisfactory to the Department.

677
678 b. If the property offered for deposit is a
679 security, the operator’s interest must be evidenced by possession of the original or a notarized
680 copy of the certificate or a certified statement of account from a brokerage house.

681

682 c. If the property offered for deposit is
683 personal property as defined in Section 1(e)(iii) (C), evidence of ownership shall be submitted in
684 the form satisfactory to the Department to establish unquestionable title to the property to the
685 operator.

686
687 (II) In addition to submitting the above information, if the
688 operator offers personal property as collateral to support a self-bond, the operator must meet the
689 financial criteria contained in (1.) or (2.) of the following:

690
691 (1.) The operator must have a tangible net worth of at
692 least \$10 million, a ratio of total liabilities to new worth of, 3.0 times or less, and a ratio of
693 current assets to current liabilities of 1.0 times or greater. The two ratios shall be calculated with
694 the proposed self-bond amount added to the current or total liabilities for the current year. The
695 operator may deduct the costs currently accrued for reclamation that appear on the balance sheet.

696
697 (2.) The operator must have fixed assets in the United
698 States that total at least \$20 million, a ratio of total liabilities to net worth of 3.0 times or less,
699 and a ratio of current assets to current liabilities of 1.0 times or greater. The two ratios shall be
700 calculated with the proposed self-bond amount added to the current or total liabilities for the
701 current year. The operator may deduct the costs currently accrued for closure/post-closure that
702 appear on the balance sheet.

703
704 (III) If the Department accepts personal property as collateral to
705 support a self-bond, the Department shall require:

706
707 (1.) Quarterly maintenance reports prepared by the
708 operator, and

709
710 (2.) A perfected, first-lien security interest in the
711 property used, in favor of the Wyoming Department of Environmental Quality. This security
712 interest shall be perfected by filing a financial statement or taking possession of the collateral in
713 accordance with (IV)(1.) below.

714
715 (3.) In addition, the Department may also require
716 quarterly inspections of the personal property by a qualified representative of the Department.

717
718 (IV) If the Department accepts any property as collateral to
719 support a self-bond, the Department shall, as applicable, require possession by the Department of
720 the personal property, or a mortgage or security agreement executed by the operator in favor of
721 the Department of Environmental Quality. The requirement shall be that which is sufficient to
722 vest such interest in the property in the Department to secure the right and power to sell or
723 otherwise dispose of the property by public or private proceedings so as to insure reclamation of
724 the affected lands in accordance with the Act. Personal property collateral to support a self-bond

725 shall be secured under the provisions of the Uniform Commercial Code as required by (2.)
726 below.

727 (1.) Any mortgage shall be executed and duly recorded
728 as required by law so as to be superior to all other liens, mortgages or encumbrances pertaining
729 to the real property in question.

730
731 (2.) Any security interest created by a security
732 agreement shall be perfected by filing a financing statement or taking possession of the collateral
733 in accordance with W.S. 34.1-9-310 through 34.1-9-314, W.S. 34.1-9-501 through 34.1-9-504,
734 and W.S. 34.1-9-515 through 34.1-9-516.

735
736 (V) The operator may, with written consent from the
737 Department, substitute for any of the property held hereunder other property upon submittal of
738 all information required under this subsection and compliance with all requirements of this
739 subsection so as to secure all obligations under all periods of time as they relate to disposal
740 operations.

741
742 (VI) For collateral posted to support a self-bond, all persons
743 with an interest in the collateral shall be notified by the operator of the posting, and of all other
744 actions affecting the collateral.

745
746 (iii) Renewal bonds:

747
748 (A) Information for the renewal bond under the self-bonding program,
749 which shall accompany the annual report, shall include:

750
751 (I) Amount of bond required, which shall be determined in
752 accordance with W.S. 35-11-307 or W.S. 35-11-306. If the self-bond amount is proposed to be
753 less than the full bond amount, the amount that is proposed to be under a self-bond is the bond
754 required.

755
756 (II) Financial information in sufficient detail to show that the
757 guarantor still meets one (1) of the criteria in Section 4(a)(i)(G), and the limitation in Section
758 4(a)(i)(K). The Department requires financial statements for the most recently completed fiscal
759 year together with an independent certified public accountant's audit opinion or review opinion
760 of the financial statements with no adverse opinion. Additional unaudited information may be
761 required by the Department.

762
763 (III) If the Department has accepted a mortgage, any evidence of
764 change in value, title and possession of the property shall be submitted.

765
766 (IV) If the Department deems it necessary to revalue any asset,
767 it may appoint the appraiser or appraisers mutually acceptable to the department and the

768 operator. Any such reappraisal shall be expeditiously made, and copies thereof furnished to the
 769 Department and the operator. The expense of the appraisal shall be borne by the operator. The
 770 findings of the appraisal shall be final and binding unless both parties agree to a reappraisal.

771
 772 (V) For regulated facility operators using personal property as
 773 collateral to support a self-bond, the operator's current financial information showing continuing
 774 compliance with Section 4(a)(ii)(C)(II) of this chapter.

775
 776 (B) If the Department has authorized a parent corporate guarantee, the
 777 parent corporation shall supply all information required under subsection (iii)(A)(II) of this
 778 section.

779
 780 (C) Any valid initial self-bond shall carry the right of successive
 781 renewal as long as the above listed information is submitted, which demonstrates that the
 782 guarantor remains qualified under W.S. 35-11-307 or W.S. 35-11-306.

783
 784 (iv) Substitution of the operator's self-bond:

785
 786 (A) The Department may require the operator to substitute a good and
 787 sufficient corporate surety licensed to do business in the State if the Department determines in
 788 writing that the self-bond of the operator fails to provide this protection consistent with the
 789 objectives and purposes of W.S. 35-11-307 or W.S. 35-11-306. The Department shall require this
 790 substitution if the financial information submitted or requested under Section (4)(a)(ii)(A)(II)
 791 indicates that the operator no longer qualifies under the self-bonding program. Substitution of an
 792 alternate bond shall be made within thirty (30) days. The operator may also request substitution.
 793 This request is contingent upon the operator meeting all the requirements of the bond provisions,
 794 W.S. 35-11-307 or W.S. 35-11-306 of the Act. If these requirements are met, the Department
 795 shall accept substitution.

796
 797 (B) If the operator fails within sixty (60) days to make a substitution
 798 for the revoked self-bond with a corporate surety, cash, governmental securities, or federally
 799 insured certificates of deposit, or irrevocable letters of credit, the Department shall suspend or
 800 revoke the permit until such substitution is made.

801
 802 (C) All methods of substitution shall be made in accordance with the
 803 bonding provisions W.S. 35-11-504 or W.S. 35-11-306 of the act. The Department shall either:

804
 805 (I) Require substitution of a good and sufficient corporate
 806 surety licensed to do business in the State that will stand as surety so as to cover all periods of
 807 time as they relate to disposal operations, or

808
 809 (II) Retain from the operator sufficient assets within the
 810 Department so as to cover the period of time of the disposal operation that is not covered by the

811 substituted surety. Those assets not retained shall be returned to the operator within sixty (60)
812 days free from the Department's encumbrances, liens, mortgages or security interests.

813

814 (v) Requirements for forfeiture and release:

815

816 (A) All requirements as to bond forfeiture proceedings and the release
817 of bonds shall be consistent with W.S. 35-11-307 or W.S. 35-11-306 of the Act, excepting the
818 requirements as to notification to the surety. When the Department has required a mortgage, and
819 the bond has been forfeited, foreclosure procedures shall be in accordance with W.S. 34-4-101
820 through 34-4-113.

821

822 (B) For self-bonds supported by collateral, upon bond release property
823 return shall be of that form sufficient for the Department to release that portion of the interest or
824 mortgage commensurate with the amount of the bond released less any disposed of in accordance
825 with the mort- gage or indemnity agreement.

826

827 (b) Surety Bonds:

828

829 (i) A corporate surety shall not be considered good and sufficient for
830 purposes of W.S. 35-11-307 or W.S. 35-11-306 unless:

831

832 (A) It is licensed to do business in the State;

833

834 (B) The estimated bond amount does not exceed the limit of risk as
835 provided for in W.S. 26-5-110, nor raise the total of all bonds held by the applicant under that
836 surety above three (3) times the limit of risk;

837

838 (C) The surety agrees:

839

840 (I) Not to cancel bond, except as provided for in W.S. 35-11-
841 307 or W.S. 35-11-306 or where the Department gives prior written approval of a good and
842 sufficient replacement surety with transfer of the liability that has accrued against the operator on
843 the permit area.

844

845 (II) To be jointly and severally liable with the permittee.

846

847 (III) To provide immediate written notice to the Department and
848 operator once it becomes unable or may become unable due to any action filed against it to fulfill
849 its obligations under the bond.

850

851 (ii) The provisions applicable to cancellation of the surety's license in W.S.
852 35-11- 307 or W.S. 35-11-306 shall also apply if for any other reason the surety becomes unable

853 to fulfill its obligations under the bond. Upon such occurrence the operator shall provide the
854 required notice. Failure to comply with this provision shall result in suspension of the permit.
855

856 (c) Federally Insured Certificate of Deposit: The Department shall not accept an
857 individual certificate of deposit in an amount in excess of \$100,000 or the maximum insurable
858 amount as determined by the FDIC or the Federal Savings and Loan Insurance Corporation.
859 Such certificates of deposit shall be made payable to the Department both in writing and upon
860 the records of the bank issuing these certificates. The Department shall require the banks issuing
861 these certificates to waive all rights of setoff or liens against the certificates. The bond amount
862 may be calculated to include any amount that would be deducted as a penalty for payment before
863 maturity.
864

865 (i) Release of the Owner or Operator from the Requirements of this Chapter:
866 Within sixty (60) days after receiving certification from the owner or operator that closure has
867 been accomplished in accordance with the closure plan and the provisions of these regulations,
868 the Director shall verify that proper closure has occurred. Unless the Director has reason to
869 believe that closure has not been in accordance with the closure plan, he shall notify the owner or
870 operator in writing that he is no longer required to maintain financial assurance for closure of the
871 particular facility. Such notice shall release the owner or operator only from the requirements for
872 financial assurance for closure of the facility; it does not release him from legal responsibility for
873 meeting the closure or post-closure standards. If no written notice or termination of financial
874 assurance requirements or failure to properly perform closure is received by the owner or
875 operator within sixty (60) days after certifying proper closure, the owner or operator may petition
876 the Director for an immediate decision, in which case the Director shall respond within ten (10)
877 days after receipt of such petition.
878

879 (A) Incapacity of Institution Issuing Financial Assurance: An owner or
880 operator who fulfills the requirements of Section 3(c)(i) of this chapter by obtaining a surety
881 bond or a certificate of deposit will be deemed to be without the required financial assurance in
882 the event of bankruptcy, insolvency or a suspension or revocation of the license or charter of the
883 issuing institution. The owner or operator must establish other financial assurance within sixty
884 (60) days of such event.
885

886 (d) Government-Backed Securities: In lieu of a bond, the operator or its principal
887 may deposit government securities registered solely in the Department's name and backed by the
888 full faith and credit of the United States.
889

890 (e) Cash: In lieu of a bond, the operator or its principal may deposit cash in a bank
891 account in the Department's name.