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CHAPTER 14

FINANCIAL ASSURANCE REQUIREMENTS

Section 1. In General.

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

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

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

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

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

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

~~(ii)(i)~~ “Closure” means the act process of securing and stabilizing a regulated facility pursuant to the requirements of these regulations this Chapter and a closure plan approved by the Department.

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

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

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

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

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

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

60
61 ~~(vi)(ii) “Corrective action” means all actions necessary to remedy, abate, and~~
62 ~~eliminate the public health threat, or environmental threat, and damages from a release to the~~
63 ~~environment of pollutants from an operating or closed regulated facility or from any violation of~~
64 ~~a permit, standard, rule, or other requirement established under the Wyoming Environmental~~
65 ~~Quality Act and to restore the environmental conditions as required.~~

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

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

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

82
83 ~~(x) “Fixed assets” means plants and equipment.~~

84
85 ~~(xi) “Liabilities” means obligations to transfer assets or provide services to~~
86 ~~other entities in the future as a result of past transactions.~~

87
88 ~~(xii)~~(iii) “Monitoring” means all procedures and techniques used to
89 systematically collect, analyze and inspect data on operational parameters of the facility or on the
90 quality of the air, ground-water, surface water, and soil.

91
92 ~~(xiii)~~—“Net worth” means ~~total assets minus total liabilities and is equivalent to~~
93 ~~owners’ equity.~~

94
95 ~~(xiv)~~(iv) “Operator” means a person who owns or operates a regulated
96 facility or a person who holds a permit to construct, install, modify, or operate a regulated
97 facility. ~~that person responsible for the proper design, operation, and maintenance, closure, and~~
98 ~~post-closure care of a regulated facility. The “operator” means the permit holder. For commercial~~
99 ~~oil field waste disposal facilities and commercial wastewater sludge treatment, storage and~~
100 ~~disposal facilities permitted by the Water Quality Division, the permit holder must also be the~~
101 ~~owner of the facility in accordance with Wyoming Water Quality Rules and Regulations,~~
102 ~~Chapter 3, Section 12(b).~~

103
104 ~~(xv)~~—“Parent corporation” means ~~a United States corporation that owns or~~
105 ~~controls the applicant.~~

106
107 ~~(xvi)~~(v) “Regulated facility” ~~includes~~ means a commercial sludge ~~facilities~~
108 facility or a ~~and~~ commercial oil field waste disposal ~~facilities~~ facility as specified in Section 1(b)
109 of this chapter.

110
111 ~~(xvii)~~(vi) “Release” includes, but is not limited to, any spilling, leaking,
112 pumping, pouring, emptying, emitting, discharging, dumping, addition, escaping, leaching, or
113 unauthorized disposal of any ~~oil or hazardous substance~~ pollutant that enters, or threatens to
114 enter, ~~Waters~~ the air, land or waters of the State.

115
116 ~~(xviii)~~—“Self bond” means ~~an indemnity agreement in a sum certain executed by~~
117 ~~the permittee and/or the parent company or federal agency guarantor and made payable to the~~
118 ~~State, with or without separate surety.~~

119
120 ~~(xix)~~—“Tangible net worth” means ~~net worth minus intangibles such as goodwill,~~
121 ~~patents or royalties.~~

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

123
124 (a) ~~Financial assurance will be required for a~~All ~~new and existing commercial oil~~
125 ~~field waste disposal~~ regulated facilities ~~as specified by Section 1(b) of this chapter~~ shall provide
126 financial assurance for closure, post-closure, and corrective action in compliance with this
127 Chapter ~~no later than ninety (90) days after promulgation of this chapter.~~

128

129 (b) ~~Financial assurance requirement for all new and existing commercial sludge~~
130 ~~facilities: Financial assurance will be required of all new commercial facilities as specified by~~
131 ~~Section 1(b) of this chapter prior to the issuance of a construction permit. Compliance with these~~
132 ~~financial assurance rules and regulations will be required of all existing facilities no later than~~
133 ~~ninety (90) days after promulgation of this chapter. No new permit shall be issued for any~~
134 regulated facility unless the applicant provides financial assurance that ensures there are
135 adequate sources of funds to provide for closure, post-closure, and corrective action.
136

137 (i) The Department may deny a permit application if the documentation or
138 proposed forms of financial assurance do not ensure that adequate funds will be available to
139 provide for closure, post-closure, and corrective action.
140

141 (ii) A permit may be transferred to a new permittee only if the new permittee
142 demonstrates compliance with the financial assurance requirements of this Chapter. Construction
143 permit ownership will be transferred in accordance with Water Quality Rules and Regulations,
144 Chapter 3, Section 12.
145

146 (c) Any operator of a regulated facility that violates a permit, standard, rule, or
147 requirement established under the Wyoming Environmental Quality Act that results in a release
148 of pollution or waste to the air, land, or water resources of the state shall provide financial
149 assurance for the costs of completing corrective action to remedy or abate the violation or
150 damages caused by the violation.
151

152 (d) An operator shall submit documentation of the financial assurance to the
153 Department as part of any permit application for a regulated facility and shall update
154 documentation of financial assurance as required by Sections 3(d)(iv), 3(e)(iv), 4(d)(iv), 5(c)(ii),
155 and 5(d)(ii) of this Chapter. The Department shall determine whether the documentation and
156 proposed forms of financial assurance are adequate and shall notify the applicant in writing of its
157 determination.
158

159 **Section 3. ~~Coverage~~ Closure and Post-Closure Requirements.**
160

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

170 (b) ~~Closure and Post-Closure Requirements:~~
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~~(i) Notification:~~

(a) At least one hundred eighty (180) days prior to the anticipated date for initiation of closure of a regulated facility, the operator shall:

~~(A)(i) An operator intending to close a regulated facility shall n~~Notify the Department in writing of the operator's 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.~~ close a regulated facility;

(ii) Notify the governing body of each locality and adjacent property owners by certified or registered mail of the operator's intention to close a regulated facility;

~~(B)(iii) The operator shall p~~Post at least one (1) sign at the regulated facility notifying all persons of the anticipated 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.; and~~

(iv) Install barriers at all access points 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) An operator or permit applicant shall submit a closure plan and a post-closure plan with each permit application for a regulated facility. Additionally, a permittee shall submit a revised closure plan and revised post-closure plan to the Department whenever changes to facility operations, conditions, or anticipated closure necessitate changes to the plans.

(c) The closure plan shall:

~~(B)(i) The operator shall close the facility in a manner that minimizes the need for post-closure maintenance and controls;~~ Describe the work necessary to minimizes or eliminates, to the extent necessary to protect human health and the environment, the post-closure escape of leachate, surface runoff, or waste ~~decom-position~~ 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~~

215 ~~facility. The minimum post-closure monitoring period shall be extended if the Department~~
216 ~~determines it is needed to protect human health and the environment.~~

217
218 (ii) Minimize the need for post-closure maintenance and controls; and

219
220 (iii) Include a cost estimate.

221
222 ~~(iii) Inspection:~~

223
224 ~~(A) The Department shall inspect all closed regulated facilities to~~
225 ~~determine if the closure is complete and adequate in accordance with the approved plan after~~
226 ~~being notified by the operator that closure has been completed. The Department shall provide~~
227 ~~written inspection results to the operator of a closed facility after the inspection. If the closure is~~
228 ~~not satisfactory, the Department shall specify necessary construction or such other steps as may~~
229 ~~be appropriate to bring unsatisfactory sites into compliance with closure requirements.~~

230
231 ~~(B) Notification by the Department that the closure is satisfactory does~~
232 ~~not relieve the operator of responsibility for corrective action in accordance with regulations of~~
233 ~~the Department to prevent or abate problems caused by the regulated facility that are~~
234 ~~subsequently discovered.~~

235
236 ~~(e) Corrective Action Requirements:~~

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238 ~~(i) Notification:~~

239
240 ~~(A) The Department shall notify the operator of the need to take~~
241 ~~corrective action to remedy a violation of a permit condition, standard, rule or requirement~~
242 ~~relating to a regulated facility. The notification shall describe the nature of the violation.~~

243
244 ~~(B) If deemed necessary by the Department, the operator will be~~
245 ~~required to close the facility and cease further receipt of waste materials.~~

246
247 ~~(C) If the facility is closed, the operator shall post one (1) sign~~
248 ~~notifying all persons of the closing and prohibition against further receipt of waste materials.~~
249 ~~Further, suitable barriers shall be installed at former accesses to prevent new waste from being~~
250 ~~deposited.~~

251
252 ~~(ii) Remediation Activities: In the event of a release, the operator shall:~~

253
254 ~~(A) Initiate immediate measures to:~~

255
256 ~~(I) Prevent further release to the environment.~~

257

258 (II) — Prevent further migration of the released substance into
259 surrounding soils and Waters of the State.

260
261 (III) — Identify, monitor and mitigate any safety hazards or health
262 risks associated with the violation.

263
264 (B) — Prepare a plan to conduct an investigation of the release, the
265 release site and any surrounding area that may be affected by the release. The plan shall include:

266
267 (I) — A comprehensive subsurface investigation to define the
268 extent and degree of contamination.

269
270 (II) — A schedule for conducting the investigation.

271
272 (III) — A cost estimate for a third party to perform the tasks
273 identified by the plan.

274
275 (C) — Submit the investigation plan to the Department within thirty (30)
276 days. The extent of contamination study should begin as soon as the plan has been approved and
277 all necessary permits obtained.

278
279 (D) — Conduct the extent of contamination study in accordance with the
280 approved plan and submit a written report of the findings to the Department.

281
282 (E) — If required by the Department, develop a comprehensive plan for
283 mitigation and clean-up. The remediation plan shall be submitted to the Department for approval.
284 The remediation plan shall be implemented as soon as the Department has approved the plan and
285 all necessary permits have been obtained. The remediation plan shall contain an estimate of the
286 costs for a third party to perform the tasks identified by the plan.

287
288 (d) — Financial Assurance: In order to assure that the costs associated with protecting
289 the public health and safety from the consequences of an abandonment, or a failure to properly
290 execute closure, post-closure care or required corrective action and clean-up of a regulated
291 facility are recovered from the operator of such a facility, the operator shall provide financial
292 assurance in one, or a combination of the forms described in this chapter including a self bond, a
293 surety bond, a federally insured certificate of deposit, government backed securities, or cash.
294 Such financial assurance shall be in the amount calculated as the cost estimate using the
295 procedures set forth in Sections 3(e)(i), 3(e)(ii) and 3(e)(iii) of this chapter. Evidence of the
296 selected forms of financial assurance shall be filed with the Department as part of the permit
297 application procedures and prior to the issuance of an operating permit. The Department may
298 reject the proposed forms of assurance of financial responsibility if the evidence submitted does
299 not adequately assure that funds will be available as required by these rules. The operator shall

300 ~~be notified in writing within sixty (60) days of receipt of the evidence of financial assurance of~~
301 ~~the decision to accept or reject the proposed forms of financial assurance.~~

302
303 ~~(e) — Cost Estimates:~~

304
305 ~~(i) — Cost Estimate for Facility Closure:~~

306
307 (d) The closure plan cost estimate shall:

308
309 ~~(formerly located at Section 3(e)(i)(A))~~(i) ~~In submitting a closure plan as~~
310 ~~required by these regulations, the operator of a regulated facility shall i~~include therein an
311 ~~itemized written estimate of the cost of closing the facility~~completing all work described in the
312 ~~closure plan.;~~The estimated closing cost shall be determined by the Department on a case-by-
313 ~~case basis, considering information supplied by the operator.~~

314
315 ~~(formerly located at Section 3(e)(i)(B))~~(ii) ~~The estimated closing cost shall b~~e
316 ~~based on the work cost~~required for a third-party contractor to effect proper closurecomplete the
317 ~~work described in the closure~~at the most expensive point in the life of the facility.;~~Those factors~~
318 ~~to be considered in estimating the closure cost shall include:~~

319
320 (iii) Account for the following factors:

321
322 ~~(formerly located at Section 3(e)(i)(B)(I))~~(A) The size and
323 topography of the site.;

324
325 ~~(formerly located at Section 3(e)(i)(B)(II))~~(B) The ~~daily or weekly~~
326 ~~volume of total~~ waste material storage capacity ~~to be received~~ at the site.;

327
328 ~~(formerly located at Section 3(e)(i)(B)(III))~~(C) Availability of cover
329 and fill material needed for site grading.;

330
331 ~~(formerly located at Section 3(e)(i)(B)(IV))~~(D) The type of waste to
332 be received at the site.;

333
334 ~~(formerly located at Section 3(e)(i)(B)(V))~~(E) Disposal method and
335 sequential disposal plan.;

336
337 ~~(formerly located at Section 3(e)(i)(B)(VI))~~(F) The location of the
338 site and the character of the surrounding area.;

339
340 ~~(formerly located at Section 3(e)(i)(B)(VII))~~(G) Requirements for
341 surface drainage.;

342

- 343 ~~(formerly located at Section 3(e)(i)(B)(VIII))(H)~~ Operation and
344 maintenance of the leachate collection and treatment system, and, the off-site disposal of
345 leachate-;
- 346
- 347 ~~(formerly located at Section 3(e)(i)(B)(IX))(I)~~ Environmental ~~quality~~
348 monitoring system-;
- 349
- 350 ~~(formerly located at Section 3(e)(i)(B))(X)(J)~~ Structures and other
351 improvements to be dismantled and removed. Salvage values cannot be used to offset demolition
352 costs-;
- 353
- 354 ~~(formerly located at Section 3(e)(i)(B)(XI))(K)~~ Site storage capacity
355 for solid waste, incinerator residue, and compost material-;
- 356
- 357 ~~(formerly located at Section 3(e)(i)(B)(XII))(L)~~ Off-site disposal
358 requirements-;
- 359
- 360 ~~(formerly located at Section 3(e)(i)(B)(XIII))(M)~~ Vector control
361 requirements-;
- 362
- 363 ~~(formerly located at Section 3(e)(i)(B)(XIV))(N)~~ A minimum of fifteen
364 percent (15%) variable contingency fee to cover other closure costs as determined appropriate by
365 the Department-; and
- 366
- 367 ~~(formerly located at Section 3(e)(i)(B)(XV))(O)~~ Any Other relevant
368 site-specific factors.

369

370 ~~(formerly located at Section 3(e)(i)(C))(iv) — Revised closure cost estimates will~~
371 ~~be submitted to the Department on an annual basis. Be updated, revised, and submitted to the~~
372 ~~Department by April 1 of each year. When the revised estimates are approved by the~~
373 ~~Department, the operator shall submit revised financial assurance for the revised closure costs.~~

374

375 (e) The post-closure plan shall:

376

377 (i) Describe the monitoring, maintenance, and controls necessary to confirm
378 that:

379

380 (A) Post-closure escape of leachate, surface runoff, or waste
381 decomposition products to the groundwater, surface water, or the atmosphere has been
382 minimized or eliminated to the extent necessary to protect human health and the environment;
383 and

384

385 (B) The facility has been stabilized and closed in accordance with the
386 most recent approved closure plan.

387
388 (ii) Establish the monitoring period necessary to ensure that the regulated
389 facility has been stabilized and closed in accordance with the most recent approved closure plan.
390 The monitoring period shall continue for a minimum of five (5) years after the date of
391 completing closure of the regulated facility, but the Department may require a longer monitoring
392 period or extend the post-closure monitoring period if the Department determines a longer
393 monitoring period is necessary to protect human health and the environment; and

394
395 (iii) Include a cost estimate. However, an incinerator, resource recovery
396 facility, compost facility, or storage surface impoundment may omit the post-closure plan cost
397 estimate from its post-closure plan if onsite disposal of wastes or residues is not planned or
398 required.

399
400 ~~(ii)(f) Cost Estimate for Facility Post-Closure: The post-closure plan cost estimate shall:~~

401
402 ~~(A)(i) In submitting a closure plan as required by these regulations, the operator~~
403 ~~of a regulated facility shall include therein a written estimate of the cost of completing all work~~
404 ~~described in the post-closure plan; post-closure care, monitoring, and maintenance. Unless onsite~~
405 ~~disposal of wastes or residues from the treatment or storage of wastes is planned or required, an~~
406 ~~incinerator, resource recovery facility, compost facility or storage surface impoundment will not~~
407 ~~be required to include a post-closure cost estimate in its closure plan. The estimated post-closure~~
408 ~~cost shall be determined by the Department on a case-by-case basis considering information~~
409 ~~supplied by the operator. Such costs shall be based on the work required for a third party~~
410 ~~contractor.~~

411
412 (ii) Be based on the cost required for a third-party contractor to complete the
413 work described in the post-closure plan;

414
415 ~~(B)(iii) Account for the following Those factors to be considered in estimating~~
416 ~~post-closure maintenance costs shall include:~~

417
418 ~~(A)~~ (A) The size and topography of the site.;

419
420 ~~(B)~~ (B) The type and quantity of waste that can be received.;

421
422 ~~(C)~~ (C) Disposal method and sequential disposal plan.;

423
424 ~~(D)~~ (D) The potential for significant leachate production and the
425 possibility of contaminating water supplies.;

426
427 ~~(E)~~ (E) Environmental quality monitoring systems.;

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~~(VI)(F)~~ Soil conditions;

~~(VII)(G)~~ The location of the site and the character of the surrounding area;

~~(VIII)(H)~~ A minimum of fifteen percent (15%) contingency fee to cover other post-closure costs as determined appropriate by the Department; and

~~(IX)(I)~~ Other site-specific factors.

~~(C)(iv)~~ Estimated costs of post-closure activities shall be determined on a case-by-case basis. Revised post-closure cost estimates will be Be updated, revised, and submitted to the Department on an annual basis by April 1 of each year. ~~When the revised estimates are approved, the operator shall submit revised financial assurance for the revised post-closure costs.~~

~~(iii) — Cost Estimate for Corrective Action:~~

~~(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.~~

471 ~~(VII)—A minimum of fifteen percent (15%) contingency fee to~~
472 ~~cover other corrective action and clean-up costs as determined appropriate by the Department.~~

473
474 ~~(VIII)—The ability of the facility to prevent and detect a release~~
475 ~~and to facilitate clean-up activities. The criteria used to evaluate this ability shall include design,~~
476 ~~construction, operation, monitoring, and contingency plans submitted as part of the application~~
477 ~~package.~~

478
479 ~~(IX)—The class, use, value and environmental vulnerability of~~
480 ~~surface and groundwater resources that may be impacted by a release.~~

481
482 ~~(X)—Other site-specific factors.~~

483
484 ~~(f)—Financial Assurance for Facility Closure, Post-Closure, and Corrective Action:~~

485
486 ~~(i)—General:~~

487
488 ~~(A)—For each regulated facility for which a permit is applied, financial~~
489 ~~assurance shall be provided for closure and post-closure activities, and for corrective action if~~
490 ~~required under Section 3(e)(iii) of this chapter.~~

491
492 ~~(B)—Determination of the financial assurance requirements for~~
493 ~~corrective action and clean-up of commercial oil field waste disposal and commercial sludge~~
494 ~~facilities will be made by the Water Quality Division when the construction permit application is~~
495 ~~evaluated.~~

496
497 ~~(C)—All existing commercial oilfield waste disposal facilities shall~~
498 ~~provide financial assurance for closure and post-closure activities, and for corrective action~~
499 ~~within ninety (90) days after promulgation of this chapter.~~

500
501 ~~(ii)—Forms of Financial Assurance: Financial assurance may be provided in~~
502 ~~one (1) or a combination of the following forms executed in the amount calculated as the~~
503 ~~estimated closure and post-closure costs in accordance with W.S. 35-11-307(a) or W.S. 35-11-~~
504 ~~306(d) of the Act. These forms may also be available for financial assurance for corrective~~
505 ~~actions at a regulated facility.~~

506
507 ~~(A)—Self bond;~~

508
509 ~~(B)—Surety bond;~~

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511 ~~(C)—Federally insured certificates of deposit;~~

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513 ~~(D)—Government backed securities;~~

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~~(E) — Cash.~~

~~(g) — Transfer of Permits: Permits may be transferred from one operator to another only if the new operator can demonstrate compliance with the financial assurance requirements of this chapter. Construction permit ownership will be transferred in accordance with Wyoming Water Quality Rules and Regulations, Chapter 3, Section 12.~~

~~(h) — Financial assurance amounts will be recalculated on a yearly basis.~~

~~(formerly located at Section 3(e)(iii))~~ (h) Inspection:

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

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

~~(formerly located at Section 4(e)(i))~~ (i) Within sixty (60) days after receiving certification from the owner or operator that closure has been accomplished in accordance with the closure plan and the provisions of this Chapter, the Director shall verify that proper closure has occurred. Unless the Director has reason to believe that closure has not been in accordance with the closure plan, the Director shall notify the owner or operator in writing that the Director is no longer required to maintain financial assurance for closure of the particular facility. Such notice shall release the owner or operator only from the requirements for financial assurance for closure of the facility; it does not release the Director from legal responsibility for meeting the closure or post-closure standards. If no written notice or termination of financial assurance requirements or failure to properly perform closure is received by the owner or operator within sixty (60) days after certifying proper closure, the owner or operator may petition the Director for an immediate decision, in which case the Director shall respond within ten (10) days after receipt of such petition.

Section 4. Corrective Action Requirements.

~~(formerly located at Section 3(e))~~ (a) The Department shall notify the operator of the need to take corrective action to remedy a violation of a permit condition, standard, rule or requirement relating to a regulated facility. The notification shall describe the nature of the violation.

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

(ii) If the facility is closed, 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.

(b) Remediation Activities: In the event of a release, the operator shall demonstrate to the Department compliance with Water Quality Rules and Regulations Chapter 4, Section 4 and :

(i) Initiate immediate measures to:

(A) Prevent further release to the environment.

(B) Prevent further migration of the released substance into surrounding soils and Waters of the State.

(C) Identify, monitor and mitigate any safety hazards or health risks associated with the violation.

(ii) If the release is not exempt from Water Quality Rules and Regulations Chapter 4, Section 4(a)(ii), then the operator shall prepare a plan to conduct an investigation of the release, the release site, and any surrounding area that may be affected by the release. The plan shall include:

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

(B) A schedule for conducting the investigation.

(C) A cost estimate for a third-party to perform the tasks identified by the plan.

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

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

(v) If required by the Department, develop a comprehensive plan for mitigation and clean-up. The remediation plan shall be submitted to the Department for approval.

600 The remediation plan shall be implemented as soon as the Department has approved the plan and
601 all necessary permits have been obtained. The remediation plan shall contain an estimate of the
602 costs for a third-party to perform the tasks identified by the plan.

603
604 ~~(formerly located at Section 3(e)(iii))(c)~~ Cost Estimate for Corrective Action:

605
606 (i) The operator of a commercial oil field disposal system regulated under
607 W.S. § 35-11-306 or a commercial sludge facility regulated under W.S. § 35-11-307 in
608 submitting an application for a construction permit as required by Chapter 3, Wyoming Water
609 Quality Rules and Regulations shall include a written estimate of the cost of corrective actions to
610 remediate a release from the facility. The estimated cost of corrective action and clean-up of a
611 release shall be determined by the Department on a case-by-case basis considering information
612 submitted by the operator. Such costs shall be based on the work required for a third-party
613 contractor.

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

616 (A) Soils, geologic and hydrogeologic conditions at the site.

617
618 (B) The type and quantity of waste received.

619
620 (C) Disposal method and sequential disposal plan.

621
622 (D) The potential for significant leachate production and the possibility
623 of contaminating groundwater.

624
625 (E) Environmental monitoring systems.

626
627 (F) The location of the site and the character of the surrounding area.

628
629 (G) A minimum of fifteen percent (15%) contingency fee to cover
630 other corrective action and clean-up costs as determined appropriate by the Department.

631
632 (H) The ability of the facility to prevent and detect a release and to
633 facilitate clean-up activities. The criteria used to evaluate this ability shall include design,
634 construction, operation, monitoring, and contingency plans submitted as part of the application
635 package.

636
637 (I) The class, use, value and environmental vulnerability of surface
638 and groundwater resources that may be impacted by a release.

639
640 (J) Other site-specific factors.

643 **Section 5. Establishment of Financial Assurance Requirements.**

644
645 ~~(formerly located at Section 3(e))~~(a) The Department shall establish the amount of
646 financial assurance required for regulated facilities based on the plans and cost estimates for
647 closure, post-closure, and corrective action. Upon receipt of a cost estimate, the Department shall
648 determine whether the cost estimate meets the requirements of this Chapter and notify the
649 operator in writing of its determination.

650
651 (b) If the Department determines that a cost estimate meets the requirements of this
652 Chapter:

653
654 (i) The Department shall establish the amount of financial assurance required
655 and notify the operator in writing of the amount established; and

656
657 (ii) The operator shall submit documentation of financial assurance in an
658 amount at least equal to the Department's established financial assurance amount within thirty
659 (30) days of the Department's establishment of the financial assurance amount.

660
661 (c) If the Department determines that a cost estimate does not meet the requirements
662 of this Chapter:

663
664 (i) The Department shall notify the operator of the deficiencies in the cost
665 estimate, and the operator shall revise and resubmit the cost estimate to the Department within
666 thirty (30) days of the Department's determination; or

667
668 (ii) The Department shall establish the amount of financial assurance required
669 and notify the operator in writing of the amount established, and the operator shall submit
670 documentation of financial assurance in an amount at least equal to the Department's established
671 financial assurance amount within thirty (30) days of the Department's establishment of the
672 financial assurance amount.

673 **Section 4 6. Forms of Financial Assurance.**

674
675 ~~(formerly Section 3(f)(ii))~~(a) ~~Forms of Financial Assurance: Financial assurance~~ An
676 operator of a regulated facility shall ~~may be provided~~ provide financial assurance in an amount at
677 least equal to the established financial assurance amount for closure, post-closure, and corrective
678 action in one (1) or a combination of the following forms ~~executed in the amount calculated as~~
679 ~~the estimated closure and post-closure costs in accordance with W.S. 35-11-307(a) or W.S. 35-~~
680 ~~11-306(d) of the Act. These forms may also be available for financial assurance for corrective~~
681 ~~actions at a regulated facility.:~~

682
683 (A) ~~Self-bond;~~

684
685 (B)(i) Surety bond;

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- ~~(E)(ii)~~ Federally insured certificates of deposit;
- ~~(D)(iii)~~ Government-backed securities;
- ~~(E)(iv)~~ Cash.

~~(a) Self-Bonding:~~

~~(i) Initial Application to self bond: Initial application to self bond shall be made at the time the operator makes written application to the Department to construct, operate or modify a regulated facility. The application shall be on forms furnished by the Department and shall contain:~~

~~_____ (A) Identification of operator by:~~

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

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

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

~~_____ (C) Type of operation and anticipated dates performance is to be commenced and completed.~~

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

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

728 ~~_____ (H) — When calculating the period of continuous operation, the~~
729 ~~Department may exclude past periods of interruption to the operation of the business entity that~~
730 ~~were beyond the applicant’s control and that do not affect the applicant’s likelihood of remaining~~
731 ~~in business during the proposed operation of the regulated facility.~~

732
733 ~~_____ (E) — Information in sufficient detail to show good faith performance of~~
734 ~~past operation and closure/post-closure obligations.~~

735
736 ~~(F) — A statement, in detail, to show a history of financial solvency. For~~
737 ~~an initial bond, each operator must provide audited financial statements supporting the following~~
738 ~~comparative documents, prepared and certified by an independent Certified Public Accountant~~
739 ~~who, by reason of education, experience or special training, and disinterest, is competent to~~
740 ~~analyze and interpret the operator’s financial solvency. All statements shall be prepared~~
741 ~~following generally accepted principles of accounting.;~~

742
743 ~~(I) — A comparative balance sheet that shows assets, liabilities,~~
744 ~~and owner equity for five (5) years. The operator may provide common-size documents for~~
745 ~~confidentiality.;~~

746
747 ~~(II) — A comparative income statement that shows all revenues~~
748 ~~and expenses for five (5) years. The operator may provide common-size documents for~~
749 ~~confidentiality.;~~

750
751 ~~(III) — A report for the most recently completed fiscal year~~
752 ~~containing the accountant’s audit opinion or review opinion of the balance sheet and income~~
753 ~~statement with no adverse opinion.;~~

754
755 ~~(IV) — Notwithstanding the language in (F) above, unaudited~~
756 ~~financial statements may be submitted to support the comparative documents where current~~
757 ~~fiscal year quarters have ended but a CPA opinion has not yet been obtained because the fiscal~~
758 ~~year has not yet ended.~~

759
760 ~~(G) — Financial information in sufficient detail to show that the operator~~
761 ~~meets one (1) of the following criteria (the specific criterion relied upon shall be identified).~~

762
763 ~~_____ (I) — The operator has a rating for all bond issuance actions over~~
764 ~~the past five (5) years of “A” or higher as issued by either Moody’s Investor Service or Standard~~
765 ~~and Poor’s Corporation, (the rating service should be identified together with any further~~
766 ~~breakdown of specific ratings).~~

767
768 ~~_____ (II) — The operator has a tangible net worth of at least \$10~~
769 ~~million, and a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current~~
770 ~~assets to current liabilities of 1.2 times or greater. The two ratio requirements must be met for the~~

771 ~~past year, and documented for the four (4) years preceding the past year. Explanations should be~~
772 ~~included for any year where the ratios fall below the stated limits.~~

773
774 ~~_____ (III) — The operator’s fixed assets in the United States total at least~~
775 ~~\$20 million, and the operator has a ratio of total liabilities to net worth of 2.5 times or less, and a~~
776 ~~ratio of current assets to current liabilities of 1.2 times or greater. The two ratio requirements~~
777 ~~must be met for the past year and documented for the four (4) years preceding the past year.~~
778 ~~Explanations should be included for any year where the ratios fall below the stated limits.~~

779
780 ~~(IV) — If the operator chooses (II) or (III), the two ratios shall be~~
781 ~~calculated with the proposed self bond amount added to the current or total liabilities for the~~
782 ~~current year. The operator may deduct the costs currently accrued for reclamation that appear on~~
783 ~~the balance sheet.~~

784 ~~(H) — A statement listing any notices issued by the Securities and~~
785 ~~Exchange Commission or proceedings initiated by any party alleging a failure to comply with~~
786 ~~any disclosure or reporting requirements under the securities laws of the United States. Such~~
787 ~~statement shall include a summary of each such allegation, including the date, the requirement~~
788 ~~alleged to be violated, the party making the allegation, and the disposition or current status~~
789 ~~thereof.~~

790
791 ~~(I) — A statement that:~~

792
793 ~~_____ (I) — Identifies by name, address and telephone number, a~~
794 ~~registered office, which may be but need not be, the same as the operator’s place of business.~~

795
796 ~~_____ (II) — Identifies by name, address and telephone number, an agent~~
797 ~~registered with the Wyoming Secretary of State’s Office to transact business in the State. The~~
798 ~~agent’s business office shall be identical to the registered office. or The agent may be an~~
799 ~~individual resident in this state, a domestic corporation, or a foreign corporation. The registered~~
800 ~~agent so appointed by the operator shall be an agent to such operator upon whom any process,~~
801 ~~notice or demand required or permitted by law to be served upon the operator may be served.;~~

802
803 ~~_____ (III) — Acknowledges that if the operator fails to appoint or~~
804 ~~maintain a registered agent in this state, or whenever any such registered agent cannot be~~
805 ~~reasonably found at the registered office, then the Wyoming Secretary of State shall be an agent~~
806 ~~for such operator upon whom any process, notice or demand may be served. In the event of any~~
807 ~~such process, the Wyoming Secretary of State shall immediately cause one (1) copy of such~~
808 ~~process, notice or demand to be forwarded, by registered or certified mail, to the operator at his~~
809 ~~principle place of business. The Wyoming Secretary of State shall keep a record of all processes,~~
810 ~~notices, or demands served upon him under this paragraph, and shall record therein the time of~~
811 ~~such service and his action with reference thereto.~~

812

813 ~~_____ (IV) Acknowledges that should the operator change the~~
814 ~~registered office or registered agent, or both, a statement indicating such change shall be filed~~
815 ~~immediately with the Solid Waste Management Program or the Water Quality Division.;~~
816

817 ~~_____ (V) Acknowledges that nothing herein contained shall limit or~~
818 ~~affect the right to serve any process, notice or demand required or permitted by law to be served~~
819 ~~upon an operator in any other manner now or hereafter permitted by law.;~~
820

821 ~~_____ (J) The Department may accept a written guarantee for an operator's~~
822 ~~self bond from a parent corporation guarantor or from a federal agency, if the guarantor or~~
823 ~~federal agency satisfies the financial criteria of this chapter as if it were the operator. The~~
824 ~~operator must only supply information addressing requirements not met by the parent~~
825 ~~corporation guarantor. The terms of the parent corporate or federal agency guarantee shall~~
826 ~~provide for the following:~~

827 ~~_____ (I) If the operator fails to complete the closure/post closure~~
828 ~~plan the guarantor shall do so or the guarantor shall be liable under the indemnity agreement to~~
829 ~~provide funds to the State sufficient to complete the reclamation plan, but not to exceed the bond~~
830 ~~amount.~~
831

832 ~~_____ (II) The parent corporate or federal agency guarantee shall~~
833 ~~remain in force unless the guarantor sends notice of cancellation by registered or certified mail to~~
834 ~~the operator and to the Department at least ninety (90) days in advance of the cancellation date,~~
835 ~~and the Department accepts the cancellation. The cancellation shall be accepted by the~~
836 ~~Department if the operator obtains a suitable replacement bond before the cancellation date, if~~
837 ~~the lands for which the self bond, or portion thereof, was accepted have not been disturbed, or if~~
838 ~~the lands have been released under W.S. 35-11-306.~~
839

840 ~~_____ (K) For the Department to accept a regulated facility operator's self~~
841 ~~bond, the total amount of the outstanding and proposed self bond of the operator shall not exceed~~
842 ~~twenty five percent (25%) of the operator's tangible net worth in the United States. For the~~
843 ~~Department to accept a corporate guarantee, the total amount of the parent corporation~~
844 ~~guarantor's present and proposed self bonds and guaranteed self bonds shall not exceed twenty~~
845 ~~five percent (25%) of the guarantor's tangible net worth in the United States.;~~
846

847 ~~_____ (ii) Approval or denial of operator's, self bond application:~~
848

849 ~~_____ (A) The Department, within sixty (60) days of the operator's~~
850 ~~submission of all materials necessary to base a decision on the application shall:~~
851

852 ~~_____ (I) Approve or reject such application and declare in writing~~
853 ~~its reasons for such action to the operator or his registered agent. The decision shall be based on~~
854 ~~the information submitted and shall be sufficient to meet the demonstrations required by W.S.~~
855 ~~35-11-306(d).~~

856
857 ~~_____ (II) If a rejection is based on inadequate information or failure~~
858 ~~of the operator to supply all necessary material, the Department shall allow the operator thirty~~
859 ~~(30) days to remedy the deficiencies. Such corrections shall be made to the satisfaction of the~~
860 ~~Department. The Department shall have an additional sixty (60) days to approve or reject the~~
861 ~~corrected application.~~

862
863 ~~_____ (B) If the Department accepts an uncollateralized self bond, an~~
864 ~~indemnity agreement shall be submitted subject to the following requirements:~~

865
866 ~~_____ (I) The indemnity agreement shall be executed by all persons~~
867 ~~and parties who are to be bound by it, including the parent corporation or federal agency~~
868 ~~guarantor, and shall bind each jointly and severally.~~

869
870 ~~_____ (II) Corporations applying for a self bond or parent corporation~~
871 ~~guaranteeing a subsidiary's self bond shall, submit an indemnity agreement signed by two (2)~~
872 ~~corporate officers who are authorized to bind the corporation. A copy of such authorization shall~~
873 ~~be provided to the Department. A federal agency guaranteeing an operator's self bond shall~~
874 ~~submit an indemnity agreement signed by two (2) officers of the agency who are authorized to~~
875 ~~bind the agency and a copy of their authorization. The agency shall also submit documents~~
876 ~~supporting the availability of a cause of action against the federal agency for performance under~~
877 ~~the indemnity agreement.~~

878
879 ~~_____ (III) If the applicant is a partnership or joint venture, the~~
880 ~~agreement shall bind each partner or party who has a beneficial interest directly or indirectly, to~~
881 ~~the operator.~~

882
883 ~~_____ (IV) The indemnity agreement shall provide that the persons or~~
884 ~~parties bound shall pay all litigation costs including reasonable attorney fees incurred by the~~
885 ~~State in any successful, effort, to enforce the agreement against the operator.~~

886
887 ~~_____ (C) If the application is rejected based on the information required in~~
888 ~~Section 4(a)(i), or based on the limitation set in Section 4(a)(i)(K) then the operator may offer~~
889 ~~collateral and an indemnity agreement to support the self bond application. The indemnity~~
890 ~~agreement shall be subject to the requirements of (B) above.~~

891
892 ~~_____ (I) For any collateral offered to support a self bond, the~~
893 ~~following information shall be provided.~~

894
895 ~~(1.) The value of the property. The property shall be~~
896 ~~valued at the difference between seventy five percent (75%) of the fair market value and any~~
897 ~~reasonable expense anticipated by the Department in selling the property. The fair market value~~
898 ~~shall be determined by an appraiser or appraisers appointed by the Department and mutually~~

899 acceptable to both the Department and the operator. The appraisal shall be expeditiously made,
900 and copies thereof furnished to the Department and the operator. The expense of the appraisal
901 shall be borne by the operator.

902
903 (2.)—A description of the property satisfactory for
904 deposit to further assure that the operator shall faithfully perform all requirements of the Act.
905 The Department shall have full discretion in accepting any such offer.

906
907 a.—Real property shall not include any lands in
908 the process of being used for the transfer, treatment, processing, storage or disposal of solid
909 wastes, reclaimed or subject to this application. The operator may offer any lands the bonds for
910 which have been released or lands within a permit area that will not be affected. In addition, any
911 land used as a security shall not be used for disposal, treatment, processing or storage while it is
912 a security.

913
914 b.—Securities shall only include those that are
915 United States government securities or those state government securities acceptable to the
916 Department. Securities shall meet the requirements specified in the definition of “Securities”
917 found in Section 1(e)(iii)(B).

918
919 c.—Personal property shall be in possession of
920 the operator, shall be unencumbered, and shall not include:

- 921
922 1.—Property that is already being used as
923 collateral, or
924
925 2.—Goods that the operator sells in the
926 ordinary course of his business, or
927
928 3.—Fixtures, or
929
930 4.—Certificates of deposit that are not
931 federally insured or where the depository is unacceptable to the Department.

932
933 (3.)—Evidence of ownership submitted in one of the
934 following forms:

935
936 a.—If the property offered for deposit is real
937 property, the operator’s interest must be evidenced by:

- 938
939 1.—In the case of a federal or state lease,
940 a status report prepared by an attorney, satisfactory to the Department as disinterested and

941 ~~competent to so evaluate the asset, and an affidavit from the owner in fee establishing that the~~
942 ~~leasehold could be transferred upon default.~~

943
944 ~~2. In the case of a fee simple interest, a~~
945 ~~title certificate or similar evidence of title and encumbrances prepared by an abstract office~~
946 ~~authorized to transact business within the State and satisfactory to the Department.~~

947
948 ~~b. If the property offered for deposit is a~~
949 ~~security, the operator's interest must be evidenced by possession of the original or a notarized~~
950 ~~copy of the certificate or a certified statement of account from a brokerage house.~~

951
952 ~~c. If the property offered for deposit is~~
953 ~~personal property as defined in Section 1(e)(iii) (C), evidence of ownership shall be submitted in~~
954 ~~the form satisfactory to the Department to establish unquestionable title to the property to the~~
955 ~~operator.~~

956
957 ~~(II) In addition to submitting the above information, if the~~
958 ~~operator offers personal property as collateral to support a self bond, the operator must meet the~~
959 ~~financial criteria contained in (1.) or (2.) of the following:~~

960
961 ~~(1.) The operator must have a tangible net worth of at~~
962 ~~least \$10 million, a ratio of total liabilities to new worth of 3.0 times or less, and a ratio of~~
963 ~~current assets to current liabilities of 1.0 times or greater. The two ratios shall be calculated with~~
964 ~~the proposed self bond amount added to the current or total liabilities for the current year. The~~
965 ~~operator may deduct the costs currently accrued for reclamation that appear on the balance sheet.~~

966
967 ~~(2.) The operator must have fixed assets in the United~~
968 ~~States that total at least \$20 million, a ratio of total liabilities to net worth of 3.0 times or less,~~
969 ~~and a ratio of current assets to current liabilities of 1.0 times or greater. The two ratios shall be~~
970 ~~calculated with the proposed self bond amount added to the current or total liabilities for the~~
971 ~~current year. The operator may deduct the costs currently accrued for closure/post closure that~~
972 ~~appear on the balance sheet.~~

973
974 ~~(III) If the Department accepts personal property as collateral to~~
975 ~~support a self bond, the Department shall require:~~

976
977 ~~(1.) Quarterly maintenance reports prepared by the~~
978 ~~operator, and~~

979
980 ~~(2.) A perfected, first lien security interest in the~~
981 ~~property used, in favor of the Wyoming Department of Environmental Quality. This security~~
982 ~~interest shall be perfected by filing a financial statement or taking possession of the collateral in~~
983 ~~accordance with (IV)(1.) below.~~

984
985 (3.)—In addition, the Department may also require
986 quarterly inspections of the personal property by a qualified representative of the Department.
987

988 (IV)—If the Department accepts any property as collateral to
989 support a self-bond, the Department shall, as applicable, require possession by the Department of
990 the personal property, or a mortgage or security agreement executed by the operator in favor of
991 the Department of Environmental Quality. The requirement shall be that which is sufficient to
992 vest such interest in the property in the Department to secure the right and power to sell or
993 otherwise dispose of the property by public or private proceedings so as to insure reclamation of
994 the affected lands in accordance with the Act. Personal property collateral to support a self-bond
995 shall be secured under the provisions of the Uniform Commercial Code as required by (2.)
996 below.
997

998 (1.)—Any mortgage shall be executed and duly recorded
999 as required by law so as to be superior to all other liens, mortgages or encumbrances pertaining
1000 to the real property in question.
1001

1002 (2.)—Any security interest created by a security
1003 agreement shall be perfected by filing a financing statement or taking possession of the collateral
1004 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,
1005 and W.S. 34.1-9-515 through 34.1-9-516.
1006

1007 (V)—The operator may, with written consent from the
1008 Department, substitute for any of the property held hereunder other property upon submittal of
1009 all information required under this subsection and compliance with all requirements of this
1010 subsection so as to secure all obligations under all periods of time as they relate to disposal
1011 operations.
1012

1013 (VI)—For collateral posted to support a self-bond, all persons
1014 with an interest in the collateral shall be notified by the operator of the posting, and of all other
1015 actions affecting the collateral.
1016

1017 (iii)—Renewal bonds:

1018
1019 (A)—Information for the renewal bond under the self-bonding program,
1020 which shall accompany the annual report, shall include:

1021
1022 (I)—Amount of bond required, which shall be determined in
1023 accordance with W.S. 35-11-307 or W.S. 35-11-306. If the self-bond amount is proposed to be
1024 less than the full bond amount, the amount that is proposed to be under a self-bond is the bond
1025 required.
1026

1027 ~~_____ (II) — Financial information in sufficient detail to show that the~~
1028 ~~operator and guarantor still meets one (1) of the criteria in Section 4(a)(i)(G), and the limitations~~
1029 ~~in Section 4(a)(i)(K). The Department requires financial statements for the most recently~~
1030 ~~completed fiscal year together with an independent certified public accountant’s audit opinion or~~
1031 ~~review opinion of the financial statements with no adverse opinion. Additional unaudited~~
1032 ~~information may be required by the Department.~~

1033
1034 ~~_____ (III) — If the Department has accepted a mortgage, any evidence of~~
1035 ~~change in value, title and possession of the property shall be submitted.~~

1036
1037 ~~_____ (IV) — If the Department deems it necessary to revalue any asset,~~
1038 ~~it may appoint the appraiser or appraisers mutually acceptable to the department and the~~
1039 ~~operator. Any such reappraisal shall be expeditiously made, and copies thereof furnished to the~~
1040 ~~Department and the operator. The expense of the appraisal shall be borne by the operator. The~~
1041 ~~findings of the appraisal shall be final and binding unless both parties agree to a reappraisal.~~

1042
1043 ~~_____ (V) — For regulated facility operators using personal property as~~
1044 ~~collateral to support a self bond, the operator’s current financial information showing continuing~~
1045 ~~compliance with Section 4(a)(ii)(C)(II) of this chapter.~~

1046
1047 ~~_____ (B) — If the Department has authorized a parent corporate guarantee, the~~
1048 ~~parent corporation shall supply all information required under subsection (iii)(A)(II) of this~~
1049 ~~section.~~

1050
1051 ~~(C) — Any valid initial self bond shall carry the right of successive~~
1052 ~~renewal as long as the above listed information is submitted, which demonstrates that the~~
1053 ~~guarantor remains qualified under W.S. 35-11-307 or W.S. 35-11-306.~~

1054
1055 ~~(iv) — Substitution of the operator’s self bond:~~

1056
1057 ~~_____ (A) — The Department may require the operator to substitute a good and~~
1058 ~~sufficient corporate surety licensed to do business in the State if the Department determines in~~
1059 ~~writing that the self bond of the operator fails to provide this protection consistent with the~~
1060 ~~objectives and purposes of W.S. 35-11-307 or W.S. 35-11-306. The Department shall require this~~
1061 ~~substitution if the financial information submitted or requested under Section (4)(a)(ii)(A)(II)~~
1062 ~~indicates that the operator no longer qualifies under the self bonding program. Substitution of an~~
1063 ~~alternate bond shall be made within thirty (30) days. The operator may also request substitution.~~
1064 ~~This request is contingent upon the operator meeting all the requirements of the bond provisions,~~
1065 ~~W.S. 35-11-307 or W.S. 35-11-306 of the Act. If these requirements are met, the Department~~
1066 ~~shall accept substitution.~~

1067
1068 ~~_____ (B) — If the operator fails within sixty (60) days to make a substitution~~
1069 ~~for the revoked self bond with a corporate surety, cash, governmental securities, or federally~~

1070 ~~insured certificates of deposit, or irrevocable letters of credit, the Department shall suspend or~~
1071 ~~revoke the permit until such substitution is made.~~

1072
1073 ~~_____ (C) _____ All methods of substitution shall be made in accordance with the~~
1074 ~~bonding provisions W.S. 35-11-504 or W.S. 35-11-306 of the act. The Department shall either:~~

1075
1076 ~~_____ (I) _____ Require substitution of a good and sufficient corporate~~
1077 ~~surety licensed to do business in the State that will stand as surety so as to cover all periods of~~
1078 ~~time as they relate to disposal operations, or~~

1079
1080 ~~_____ (II) _____ Retain from the operator sufficient assets within the~~
1081 ~~Department so as to cover the period of time of the disposal operation that is not covered by the~~
1082 ~~substituted surety. Those assets not retained shall be returned to the operator within sixty (60)~~
1083 ~~days free from the Department's encumbrances, liens, mortgages or security interests.~~

1084
1085 ~~_____ (v) _____ Requirements for forfeiture and release:~~

1086
1087 ~~_____ (A) _____ All requirements as to bond forfeiture proceedings and the release~~
1088 ~~of bonds shall be consistent with W.S. 35-11-307 or W.S. 35-11-306 of the Act, excepting the~~
1089 ~~requirements as to notification to the surety. When the Department has required a mortgage, and~~
1090 ~~the bond has been forfeited, foreclosure procedures shall be in accordance with W.S. 34-4-101~~
1091 ~~through 34-4-113.~~

1092
1093 ~~_____ (B) _____ For self-bonds supported by collateral, upon bond release property~~
1094 ~~return shall be of that form sufficient for the Department to release that portion of the interest or~~
1095 ~~mortgage commensurate with the amount of the bond released less any disposed of in accordance~~
1096 ~~with the mort-gage or indemnity agreement.~~

1097
1098 (b) Surety Bonds:

1099
1100 (i) A corporate surety shall not be considered good and sufficient for
1101 purposes of W.S. [§ 35-11-307](#) or W.S. [§ 35-11-306](#) unless:

1102
1103 (A) It is licensed to do business in the State;

1104
1105 (B) The estimated bond amount does not exceed the limit of risk as
1106 provided for in W.S. [§ 26-5-110](#), nor raise the total of all bonds held by the applicant under that
1107 surety above three (3) times the limit of risk; and

1108
1109 (C) The surety agrees:

1110
1111 (I) Not to cancel bond, except as provided for in W.S. [§ 35-11-](#)

1112 307 or W.S. § 35-11-306 or where the Department gives prior written approval of a good and
1113 sufficient replacement surety with transfer of the liability that has accrued against the operator on
1114 the permit area;

- 1115
- 1116 (II) To be jointly and severally liable with the permittee.
- 1117
- 1118 (III) To provide immediate written notice to the Department and
1119 operator once it becomes unable or may become unable due to any action filed against it to fulfill
1120 its obligations under the bond.

1121

1122 (ii) The provisions applicable to cancellation of the surety's license in W.S. §
1123 35-11- 307 or W.S. § 35-11-306 shall also apply if for any other reason the surety becomes
1124 unable to fulfill its obligations under the bond. Upon such occurrence, the operator shall provide
1125 the required notice. Failure to comply with this provision shall result in suspension of the permit.

1126

1127 ~~(e) — Federally Insured Certificate of Deposit: The Department shall not accept an~~
1128 ~~individual certificate of deposit in an amount in excess of \$100,000 or the maximum insurable~~
1129 ~~amount as determined by the FDIC or the Federal Savings and Loan Insurance Corporation.;~~
1130 ~~Such certificates of deposit shall be made payable to the Department both in writing and upon~~
1131 ~~the records of the bank issuing these certificates. The Department shall require the banks issuing~~
1132 ~~these certificates to waive all rights of setoff or liens against the certificates. The bond amount~~
1133 ~~may be calculated to include any amount that would be deducted as a penalty for payment before~~
1134 ~~maturity.~~

1135

1136 ~~(i) Release of the Owner or Operator from the Requirements of this Chapter:~~
1137 ~~Within sixty (60) days after receiving certification from the owner or operator that closure has~~
1138 ~~been accomplished in accordance with the closure plan and the provisions of these regulations,~~
1139 ~~the Director shall verify that proper closure has occurred. Unless the Director has reason to~~
1140 ~~believe that closure has not been in accordance with the closure plan, he shall notify the owner or~~
1141 ~~operator in writing that he is no longer required to maintain financial assurance for closure of the~~
1142 ~~particular facility. Such notice shall release the owner or operator only from the requirements for~~
1143 ~~financial assurance for closure of the facility; it does not release him from legal responsibility for~~
1144 ~~meeting the closure or post-closure standards. If no written notice or termination of financial~~
1145 ~~assurance requirements or failure to properly perform closure is received by the owner or~~
1146 ~~operator within sixty (60) days after certifying proper closure, the owner or operator may petition~~
1147 ~~the Director for an immediate decision, in which case the Director shall respond within ten (10)~~
1148 ~~days after receipt of such petition.~~

1149

1150 ~~(A) — Incapacity of Institution Issuing Financial Assurance: An owner or~~
1151 ~~operator who fulfills the requirements of Section 3(c)(i) of this chapter by obtaining a surety~~
1152 ~~bond or a certificate of deposit will be deemed to be without the required financial assurance in~~
1153 ~~the event of bankruptcy, insolvency or a suspension or revocation of the license or charter of the~~

1154 ~~issuing institution. The owner or operator must establish other financial assurance within sixty~~
1155 ~~(60) days of such event.~~

1156
1157 (c) In lieu of a bond, the facility operator shall deposit federally insured certificates of
1158 deposit payable to the Wyoming Department of Environmental Quality, cash, or government
1159 securities, or all three (3).

1160
1161 (i) Securities that are unencumbered shall only include those that are United
1162 States Government securities or State Government securities that are acceptable to the Director.
1163 Government securities must be endorsed to the order of the Department and placed in possession
1164 of the Department. Possession shall be in the form of the cash value of the irrevocable trust for
1165 the full amount of the reclamation obligation and payable to the Department and federally
1166 insured.

1167
1168 (ii) An operator shall satisfy the requirements of this subsection by
1169 establishing an irrevocable trust that conforms to the requirements below and submitting an
1170 originally signed duplicate of the trust agreement to the Administrator for consideration.

1171
1172 (A) The irrevocable trust must be submitted to the Director on the
1173 Wyoming Department of Environmental Quality Irrevocable Trust Form and be signed by the
1174 operator or guarantor as principal and the financial institution as Trustee, and made payable to
1175 the Department;

1176
1177 (B) The Trustee must be a bank organized to do business in the United
1178 States that has the authority to act as a trustee and whose trust operations is regulated and
1179 examined by a Federal Agency;

1180
1181 (C) The irrevocable trust must be cash funded for the full amount of
1182 the financial assurance obligation to be provided in the irrevocable trust before it may be
1183 approved to satisfy the requirements of financial assurance in lieu of a bond. For purposes of
1184 this subsection, “the full amount of the financial assurance obligation to be provided” means the
1185 amount of coverage for Closure, Post-Closure and Corrective Action required to be provided for
1186 the permit/facility, less the amount of financial assurance obligation that is being provided by
1187 other financial assurance mechanisms being used to demonstrate financial assurance by the
1188 operator or guarantor;

1189
1190 (D) Cancellation of an irrevocable trust shall follow the same
1191 procedures detailed in W.S. §35-11-306(j) for performance bonds; and

1192
1193 (E) Forfeiture proceeding for an irrevocable trust shall follow the same
1194 procedures detailed in W.S. §35-11-306(m) for performance bonds.

1196 ~~——(d)—— Government Backed Securities: In lieu of a bond, the operator or its principal~~
1197 ~~may deposit government securities registered solely in the Department's name and backed by the~~
1198 ~~full faith and credit of the United States.~~

1199
1200 ~~(e)—— Cash: In lieu of a bond, the operator or its principal may deposit cash in a bank~~
1201 ~~account in the Department's name.~~