

CHAPTER 7

FINANCIAL ASSURANCE REQUIREMENTS

Section 1. —In General.

(a) ~~Authority: The authority for the rules and regulations~~ This Chapter is promulgated ~~in this chapter pursuant to the Wyoming Environmental Quality Act (Act), W.S. 35-11-306 and specifically Wyoming Statute (W.S.) §§ 35-11-504 and -515.~~

(b) ~~Applicability:~~

~~_____ (i) — This eChapter governs all solid waste management facilities that are required to demonstrate financial assurance under W.S. § 35-11-504. -Exempt solid waste management facilities include those solid waste management facilities listed in W.S. § 35-11-504(c) and:~~

~~_____ (A) — Solid waste landfills regulated under Chapter 2 of these rules and regulations which are owned or operated by a municipality provided that the facility is a participating facility under W.S. 35-11-515(o)(iii);~~

~~_____ (B) — Owned and operated by the person disposing of solid waste generated at the facility who annually demonstrates to the director compliance with the financial assurance requirements of the Resource Conservation and Recovery Act, P.L. 94-580, as amended as of January 1, 1989;~~

~~_____ (C) — Which are also subject to bonding or financial assurance requirements under Article 2, 3, or 4 of the act if the director determines that the bond or financial assurance under Articles 2, 3, or 4 satisfies the requirements of this chapter;~~

~~_____ (D) — Which are subject to bonding or financial assurance requirements under W.S. 30-5-104(d)(i)(D) or 30 U.S.C. 226(g) as amended as of January 1, 1989;~~

~~_____ (E) — Owned or operated by an electric utility disposing of solid waste generated by an electric generation facility pursuant to a permit or license issued by the department, provided that the exemption may be revoked by the council upon petition of the director for a period of time established by the council to secure remedial action in the event of any discharge of pollution to the air, land or to waters of the state which is in violation of a permit, standard, rule or requirement established under the provisions of the act;~~

~~(i) — (F) Solid waste management facilities other than those regulated under Chapter 2 of these rules, which that are owned or operated by a municipality;~~

~~(ii) — (G) Type I and Type II sSanitary landfills regulated under Chapter 2 which that ceased receipt of wastes before October 9, 1991;~~

47 ~~(iii) — (H) Type I sanitary~~ Municipal solid waste landfills regulated under
48 Chapter 2 ~~of these rules which that~~ received waste after October 9, 1991, but ceased receipt of
49 waste before October 9, 1993, and installed an approved final cover system before October 9,
50 1994;

51
52 ~~(iv) — (I) Type II sanitary~~ Municipal solid waste landfills regulated under
53 Chapter 2 ~~of these rules which that~~ received waste after October 9, 1991, but ceased receipt of
54 wastes before October 9, 1997, and installed an approved final cover system before October 9,
55 1998; and

56
57 ~~(v) — (J) Mobile transfer, treatment and storage facilities regulated under~~
58 Chapter 6 of these rules ~~and regulations.~~

59
60 ~~(c) Leaking municipal solid waste landfills regulated under Chapter 17 of these rules~~
61 that conduct remediation in accordance with W.S. § 35-11-533 through -537 are exempt from
62 corrective action financial assurance requirements in Section 3 of this Chapter.

63
64 ~~(e) Objective: The objective of these rules and regulations is to provide financial~~
65 ~~assurance for the purposes specified in W.S. 35-11-504(a) and to establish the procedures for~~
66 ~~participating facilities as provided in W.S. 35-11-515.~~

67
68 ~~(d) Severability: If any section or provision of this chapter, or the application of that~~
69 ~~section or provision to any person, situation, or circumstance is adjudged invalid for any reason,~~
70 ~~the adjudication does not affect any other section or provision of these regulations or the~~
71 ~~application of the adjudicated section or provision to any other person, situation, or~~
72 ~~circumstance. The Environmental Quality Council declares that it would have adopted the valid~~
73 ~~portions and applications of this chapter without the invalid part, and to this end the provisions of~~
74 ~~this chapter are declared to be severable.~~

75
76 ~~**Section 2. Requirements to Demonstrate Financial Assurance.**~~

77
78 ~~(a) Financial assurance requirement for new nonmunicipally owned solid waste~~
79 ~~management facilities: Financial assurance and compliance with the department's rules and~~
80 ~~regulations will be required of all new nonmunicipally owned facilities, as specified by Section~~
81 ~~1(b) of this chapter, prior to issuance of a permit.~~

82
83 ~~(b) Financial assurance requirement for existing nonmunicipally owned solid waste~~
84 ~~management facilities: Compliance with these financial assurance rules and regulations will be~~
85 ~~required of all existing nonmunicipally owned solid waste management facilities as specified by~~
86 ~~Section 1(b) of this chapter no later than June 8, 1991.~~

87
88 ~~(c) Financial assurance requirement for conditionally exempt facilities: Financial~~
89 ~~assurance will be required of all existing, conditionally exempt solid waste management facilities~~
90 ~~specified in Section 1(b)(i)(E):~~

91
92 ~~(i) If the director determines the facility is in violation of the department's~~

93 rules and regulations resulting in the release of contamination to the air, land or water resources
94 of the state, the director shall issue an order to the operator of the regulated facility to show cause
95 why financial assurance is not required. Opportunity for a public hearing before the council shall
96 be provided. If a hearing is requested the director shall inform all interested parties of the time
97 and place of the hearing. Upon failure of the operator to show cause why financial assurance
98 should not be required, the council shall require financial assurance for a period of time needed
99 to secure remedial action. The financial assurance requirement may be removed when the
100 violations have been corrected to the director's satisfaction. No financial assurance requirement
101 shall be unreasonably prolonged.

102
103 _____ (ii) — The financial assurance requirement specified in paragraph (c) of this
104 section shall become effective upon thirty (30) days notice to the applicant.

105
106 (d) Municipally-owned or operated solid waste landfills regulated under Chapter 2 of
107 these rules shall demonstrate financial assurances for closure, post-closure, and corrective action
108 by following either the requirements of Sections 2 through 14 of this Chapter or the requirements
109 of Section 15 of this Chapter. Financial assurance requirements for municipally owned or
110 operated solid waste landfills regulated under Chapter 2 of these rules and regulations:
111 Compliance with these financial assurance rules and regulations will be required of all new and
112 existing municipally owned or operated Type I solid waste landfills regulated under Chapter 2 of
113 these rules and regulations effective April 9, 1997. Compliance for Type II solid waste landfills
114 regulated under Chapter 2 of these rules and regulations will be required effective October 9,
115 1997. Notwithstanding these effective dates, if the effective date for compliance with financial
116 assurance requirements for any category of existing sanitary landfills contained in 40 CFR part
117 258 is modified by the U.S. Environmental Protection Agency, then the effective dates for
118 compliance specified by this subsection shall be the modified USEPA date, for the applicable
119 category of landfills. Compliance shall be demonstrated as follows:

120
121 _____ (i) — For financial assurance for the costs of closure and post-closure care,
122 operators shall demonstrate compliance using either the requirements of Sections 3 through 8 of
123 these rules and regulations, or the requirements of Section 9;

124
125 _____ (ii) — For financial assurance for the costs of corrective action requirements, if
126 needed, operators shall demonstrate compliance using the requirements of Sections 3 through 8
127 of these rules and regulations.

128
129 (e) Definitions: The definitions in W.S. § 35-11-103(a) and (d) and Chapter 1 of
130 these rules apply to this Chapter.

131 **Section 3. — Coverage.**

132
133 _____ (a) — General purpose and scope: Permits for regulated facilities require closure,
134 post-closure and corrective action financial assurance plans as prescribed in this chapter for the
135 purpose of assuring that operators of these facilities are financially responsible for protection of
136 public health and the environment. This chapter contains general requirements governing
137 closure, post-closure care and corrective action for violations of a permit, standard, rule or
138 requirement. These requirements may be supplemented by site specific closure, post-closure

139 care and corrective action permit conditions. Together with the factors used to produce cost
140 estimates, these maintenance requirements form the basis of the financial assurance standards
141 included in this chapter.

142
143 ~~————— (b) ——— Closure and post-closure requirements:~~

144
145 ~~————— (i) ——— Notification:~~

146
147 ~~————— (A) ——— An operator intending to close a regulated facility shall notify the~~
148 ~~administrator of the intention to do so at least 180 days prior to the anticipated date for initiation~~
149 ~~of closure. Simultaneous notice shall be made by the operator to the governing body of each~~
150 ~~locality and adjacent property owners by certified or registered mail.~~

151
152 ~~————— (B) ——— If the facility has been open to the general public, the operator~~
153 ~~shall publish notice of closure in an area newspaper, as well as post one sign at each facility~~
154 ~~access point notifying all persons of the closing and prohibition against further receipt of waste~~
155 ~~materials. Further, suitable barriers shall be installed at former accesses to prevent new waste~~
156 ~~from being deposited.~~

157
158 ~~————— (ii) ——— Closure and post-closure standards:~~

159
160 ~~————— (A) ——— Closure and post-closure maintenance shall occur in accord with~~
161 ~~approved plans. A closure plan and a post-closure plan shall be submitted with the permit~~
162 ~~application. The operator shall submit a revised closure plan and post-closure plan to the~~
163 ~~administrator for review and approval as necessary to describe any plan changes.~~

164
165 ~~————— (B) ——— The operator shall close the facility in a manner that minimizes the~~
166 ~~need for post-closure maintenance and controls, minimizes or eliminates, to the extent necessary~~
167 ~~to protect human health and the environment, the post-closure escape of leachate, surface run-off~~
168 ~~or waste decomposition products to the groundwater, surface water or the atmosphere. The~~
169 ~~post-closure monitoring period shall continue for a minimum of thirty (30) years after the date of~~
170 ~~completing closure of the regulated facility, unless shortened by the director under Chapter 2,~~
171 ~~Section 7(b) of these rules and regulations. The minimum post-closure monitoring period shall~~
172 ~~be extended if the director determines it is needed to protect human health and the environment.~~

173
174 ~~————— (iii) ——— Inspection:~~

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

182
183 ~~————— (B) ——— Notification by the administrator that the closure is satisfactory~~
184 ~~does not relieve the operator of responsibility for corrective action in accordance with~~

185 regulations of the department to prevent or abate problems caused by the regulated facility which
186 are subsequently discovered.

187
188 ~~_____ (e) _____ Corrective action requirements.~~

189
190 ~~_____ (i) _____ Notification:~~

191
192 ~~_____ (A) _____ The administrator shall notify the operator of the need to take~~
193 ~~corrective action to remedy a violation of a permit condition, standard, rule or requirement~~
194 ~~relating to a regulated facility. The notification shall describe the nature of the violation.~~

195
196 ~~_____ (B) _____ If deemed necessary by the administrator, the operator will be~~
197 ~~required to close the facility and cease further receipt of waste materials.~~

198
199 ~~_____ (C) _____ If the facility is closed, the operator shall post one sign notifying~~
200 ~~all persons of the closing and prohibition against further receipt of waste materials. Further,~~
201 ~~suitable barriers shall be installed at former accesses to prevent new waste from being deposited.~~

202
203 ~~_____ (ii) _____ Remediation activities: In the event of a release, the operator shall:~~

204
205 ~~_____ (A) _____ Initiate immediate measures to:~~

206
207 ~~_____ (I) _____ Prevent further release to the environment.~~

208
209 ~~_____ (II) _____ Prevent further migration of the released substance into~~
210 ~~surrounding soils and waters of the state.~~

211
212 ~~_____ (III) _____ Identify, monitor and mitigate any safety hazards or health~~
213 ~~risks associated with the violation.~~

214
215 ~~_____ (B) _____ Prepare a plan to conduct an investigation of the release, the~~
216 ~~release site and any surrounding area which may be affected by the release. The plan shall~~
217 ~~include:~~

218
219 ~~_____ (I) _____ A comprehensive subsurface investigation to define the~~
220 ~~extent and degree of contamination.~~

221
222 ~~_____ (II) _____ A schedule for conducting the investigation.~~

223
224 ~~_____ (III) _____ A cost estimate for a third party to perform the tasks~~
225 ~~identified by the plan.~~

226
227 ~~_____ (C) _____ Submit the investigation plan to the administrator within thirty (30)~~
228 ~~days. The extent of contamination study should begin as soon as the plan has been approved and~~
229 ~~all necessary permits obtained.~~

230

231 ~~_____ (D) Conduct the extent of contamination study in accordance with the~~
232 ~~approved plan and submit a written report of the findings to the administrator.~~

233
234 ~~_____ (E) If required by the administrator, develop a comprehensive plan for~~
235 ~~mitigation and cleanup. The remediation plan shall be submitted to the administrator for~~
236 ~~approval. The remediation plan shall be implemented as soon as the administrator has approved~~
237 ~~the plan and all necessary permits have been obtained. The remediation plan shall contain an~~
238 ~~estimate of the costs for a third party to perform the tasks identified by the plan.~~

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

254
255 **Section 2. Closure and Post-Closure Cost Estimates.**

256
257 (a) Along with the closure plan and post-closure plan required for a regulated facility,
258 the operator must submit closure and post-closure estimates.

259
260 (i) An incinerator, resource recovery facility, compost facility, or storage
261 surface impoundment may omit the post-closure cost estimate if onsite disposal of wastes or
262 residues is not planned or required.

263
264 (b) The closure cost estimates shall:

265
266 (i) Cost estimate for facility closure:

267
268 ~~_____ (A) In submitting a closure plan as required by these regulations, the~~
269 ~~operator of a regulated facility shall include therein an itemized written estimate of the cost, in~~
270 ~~current dollars of completing all work described in the closure plan; of closing the facility.~~

271
272 ~~_____ (ii) Be based on the cost. The estimated closing cost shall be determined by the~~
273 ~~director on a case-by-case basis, considering information supplied by the operator. Such costs~~
274 ~~shall be based on the work required for a third-party contractor to complete the closure plan at~~
275 ~~the most expensive point in the life of the facility. If written bids are used to estimate costs, the~~
276 ~~director may obtain additional bids cost estimates from a third-party contractor to substantiate~~

277 the accuracy of the estimated costs; and

278

279 ~~(iii) — (B) — The estimated closing cost shall be based on the work~~
280 ~~required for a third party contractor to effect proper closure at the most expensive point in the~~
281 ~~life of the facility. Those Account for the following factors if applicable to be considered in~~
282 ~~estimating the closure cost shall include:~~

283

284 ~~(A) — (I) The size and topography of the site;~~

285

286 ~~(B) — (II) The daily or weekly volume of waste to be received at the~~
287 ~~site;~~

288

289 ~~(C) — (III) Availability of cover and fill material needed for site~~
290 ~~grading;~~

291

292 ~~(D) (IV) The type of waste to be received at the site;~~

293

294 ~~(E) — (V) Disposal method and sequential disposal plan;~~

295

296 ~~(F) — (VI) The location of the site and the character of the surrounding~~
297 ~~area;~~

298

299 ~~(G) — (VII) Requirements for surface drainage;~~

300

301 ~~(H) — (VIII) Operation and maintenance of the leachate collection and~~
302 ~~treatment system, and the off-site disposal of leachate;~~

303

304 ~~(I) — (IX) Environmental quality monitoring system;~~

305

306 ~~(J) — (X) Structures and other improvements to be dismantled and~~
307 ~~removed. Salvage values cannot be used to offset demolition costs;~~

308

309 ~~(K) — (XI) Site storage capacity for solid waste, incinerator residue~~
310 ~~and compost material;~~

311

312 ~~(L) — (XII) Off-site disposal requirements. Salvage values cannot be~~
313 ~~used to offset waste removal costs;~~

314

315 ~~(M) — (XIII) Vector control requirements;~~

316

317 ~~(N) Cleaning of all solid waste management units and equipment;~~

318

319 ~~(O) — (XIV) A minimum of fifteen percent ~~(15%)~~ variable contingency~~
320 ~~fee to cover other closure costs as determined appropriate by the ~~d~~Director; and~~

321

322 ~~(P) — (XV) Any ~~O~~ther relevant site-specific factors.~~

323
324 ~~_____ (C) Revised closure cost estimates will be submitted to the director as~~
325 ~~specified in this subsection. When the revised estimates are approved by the director, the~~
326 ~~operator shall submit revised financial assurance for the revised closure costs.~~

327
328 ~~_____ (I) If written bids are used to estimate closure costs, the~~
329 ~~operator shall provide revised closure cost estimates on an annual basis.~~

330
331 ~~_____ (II) If written bids are not used to estimate closure costs, the~~
332 ~~operator shall provide revised closure cost estimates every four years or with the permit renewal~~
333 ~~application, whichever comes first.~~

334
335 ~~(c) — (ii) The Cost estimate for facility post-closure cost estimate shall:~~

336
337 ~~_____ (A) In submitting a closure plan as required by these regulations, the~~
338 ~~operator of a regulated facility shall include therein a written estimate of the cost of post-closure~~
339 ~~care, monitoring and maintenance. Unless on-site disposal of wastes or residues from the~~
340 ~~treatment or storage of wastes is planned or required, an incinerator, resource recovery facility,~~
341 ~~compost facility or storage surface impoundment will not be required to include a post-closure~~
342 ~~cost estimate in its closure plan. The estimated post-closure cost shall be determined by the~~
343 ~~director on a case-by-case basis considering information supplied by the operator. Such costs~~
344 ~~shall be based on the work required for a third party contractor. If written bids are used to~~
345 ~~estimate costs, the director may obtain additional bids to substantiate the accuracy of the~~
346 ~~estimated costs.~~

347
348 ~~_____ (i) Include an itemized written estimate, in current dollars, of the cost of~~
349 ~~completing all work described in the post-closure plan;~~

350
351 ~~_____ (ii) Be based on the cost required for a third-party contractor to complete the~~
352 ~~work described in the post-closure plan. The Director may obtain additional cost estimates from~~
353 ~~a third-party contractor to substantiate the accuracy of the estimated cost; and~~

354
355 ~~(iii) — (B) Account for the following ~~Those factors~~ if applicable to be~~
356 ~~considered in estimating post-closure maintenance costs shall include:~~

357
358 ~~(A) — (I) The size and topography of the site;:-~~

359
360 ~~(B) — (II) The type and quantity of waste received;:-~~

361
362 ~~(C) — (III) Disposal method and sequential disposal plan;:-~~

363
364 ~~(D) — (IV) The potential for significant leachate production and the~~
365 ~~possibility of contaminating water supplies;:-~~

366
367 ~~(E) — (V) Environmental quality monitoring systems;:-~~

368

369 (F)——(VI) Soil conditions;:-

370
371 (G)——(VII) The location of the site and the character of the surrounding
372 area;

373
374 (H) Planned inspections of facility;:-

375
376 (I)——(VIII) A minimum of fifteen percent (15%) contingency fee to
377 cover other post-closure costs as determined appropriate by the ~~d~~Director; and:-

378
379 (J)——(IX) Any ~~O~~other relevant site-specific factors.

380
381 ~~(d)——(C) Estimated costs of post-closure activities shall be determined on a~~
382 ~~case-by-case basis. Revised Closure and post-closure cost estimates shall be updated, revised,~~
383 ~~and will be submitted to the dDirector as specified in Section 13 of this Chapter. on an annual~~
384 ~~basis as specified in this subsection. When the revised estimates are approved, the operator shall~~
385 ~~submit revised financial assurance for the revised post-closure costs.~~

386
387 ~~—————(I) If written bids are used to estimate post-closure costs, the~~
388 ~~operator shall provide revised post-closure cost estimates on an annual basis.~~

389
390 ~~—————(II) If written bids are not used to estimate post-closure costs,~~
391 ~~the operator shall provide revised post-closure cost estimates every four years or with the permit~~
392 ~~renewal application whichever comes first.~~

393
394
395 ~~Section 3.——(iii) Corrective Action Cost eEstimates. for corrective~~
396 ~~action:~~

397
398 ~~(a)——(A) IfFor solid waste management facilities a regulated facility violates~~
399 ~~a permit, standard, rule, or requirement established under the Act, resulting in a release of~~
400 ~~pollution or waste to the air, land, or water resources of the state, the Director shall: under W.S.~~
401 ~~35-11-504, the operator shall provide a supplemental financial assurance in an amount sufficient~~
402 ~~to meet the requirements of Section 3(c) of this chapter no later than thirty (30) days after the~~
403 ~~director approves the investigation or mitigation plan under Section 3(c)(ii)(C) or (E).~~

404
405 ~~—————(i) Notify the regulated facility of the violation; and~~

406
407 ~~—————(ii) Order the regulated facility to take corrective action to remedy or abate the~~
408 ~~violation and to provide financial assurance as specified in this Section.~~

409
410 ~~(b) Within thirty days of receiving an order to take corrective action, the operator~~
411 ~~shall provide notice of the selected correction action remedy and a corrective action cost estimate~~
412 ~~to the Director.~~

413
414 ~~—————(i) The corrective action cost estimate shall:~~

415
416 (A) Include an itemized written estimate of the cost, in current dollars,
417 of completing all work described for the selected corrective action remedy;
418

419 (B) Be based on the cost required for a third-party contractor to
420 complete the work described for the selected corrective action remedy. The Director may obtain
421 additional cost estimates from a third-party contractor to substantiate the accuracy of the
422 estimated costs; and
423

424 ~~(CB) Account for the following. The factors if applicable to be considered~~
425 ~~in estimating the cost of corrective actions and cleanup of a release shall include the following:~~
426

427 (I) Soils, geologic and hydrogeologic conditions at the site;:-

428

429 (II) The type and quantity of waste received;:-

430

431 (III) Disposal method and sequential disposal plan;:-

432

433 (IV) The potential for significant leachate production and the
434 possibility of contaminating groundwater;:-

435

436 (V) Environmental quality monitoring systems;:-

437

438 (VI) The location of the site and the character of the surrounding
439 area;:-

440

441 (VII) A minimum of fifteen percent ~~(15%)~~ contingency fee to
442 cover other corrective action and cleanup costs as determined appropriate by the ~~d~~Director;:-

443

444 (VIII) The ability of the facility to prevent and detect a release
445 and to facilitate cleanup activities. The criteria used to evaluate this ability shall include design,
446 construction, operation, monitoring and contingency plans submitted as part of the permit
447 application package;:-

448

449 (IX) The class, use, value and environmental vulnerability of
450 surface and groundwater resources ~~which~~ that may be impacted by a release;:- and

451

452 (X) Any ~~Other~~ relevant site-specific factors.

453

454 (D) Be updated, revised, and submitted to the Director in accordance
455 with Section 13 of this Chapter.

456

457 ~~(f) Financial assurance for facility closure, post-closure and corrective action:~~

458

459 ~~_____ (i) General:~~

460

461 ~~_____ (A) For each regulated facility for which a permit is applied, financial~~
462 ~~assurance shall be provided for closure and post-closure activities, and for corrective action if~~
463 ~~required under Section 3(e)(iii).~~

464 ~~_____ (B) Determination of the financial assurance requirements for~~
465 ~~corrective action and cleanup of commercial oil field waste disposal facilities will be made by~~
466 ~~the Water Quality Division when the construction permit application is evaluated.~~

467 ~~_____ (ii) Forms of financial assurance: Financial assurance may be provided in one~~
468 ~~or a combination of the following forms executed in the amount calculated as the estimated~~
469 ~~closure and post-closure costs in accordance with W.S. 35-11-504(a)(i). These forms may also~~
470 ~~be available for financial assurance for corrective actions at a regulated facility.~~

471 ~~_____ (A) Self bond;~~

472 ~~_____ (B) Surety bond;~~

473 ~~_____ (C) Federally insured certificates of deposit;~~

474 ~~_____ (D) Government-backed securities;~~

475 ~~_____ (E) Cash;~~

476 ~~_____ (F) Letters of credit.~~

477 ~~_____ (g) Transfer of permits: Permits may be transferred from one operator to another~~
478 ~~only if the new operator can demonstrate compliance with the financial assurance requirements~~
479 ~~of this chapter.~~

480 ~~_____ **Section 4. Establishment of Financial Assurance Requirements.**~~

481 ~~_____ (a) The Director, through the Administrator, shall establish the amount of financial~~
482 ~~assurance required for regulated facilities based on the cost estimates for closure, post-closure,~~
483 ~~and corrective action.~~

484 ~~_____ (b) If the Administrator determines that a cost estimate meets the requirements of this~~
485 ~~Chapter:~~

486 ~~_____ (i) The Administrator shall establish the amount of financial assurance~~
487 ~~required and notify the operator in writing of the amount; and~~

488 ~~_____ (ii) Within thirty days of receiving notice from the Administrator, the operator~~
489 ~~shall submit documentation of financial assurance, on forms furnished by the Director, in an~~
490 ~~amount at least equal to the established financial assurance amount.~~

491 ~~_____ (c) If the Administrator determines that a cost estimate does not meet the~~

507 requirements of this Chapter, the Administrator shall notify the operator of the deficiencies in the
508 cost estimate, and the operator shall revise and resubmit the cost estimate to the Administrator
509 within thirty days of the Administrator's determination unless an alternate schedule is approved
510 by the Administrator for good cause.

511
512 Section 54. Acceptable Forms of Financial Assurance.

513
514 An operator of a regulated facility shall provide financial assurance for closure, post-
515 closure, or corrective action in one or more of the following forms: surety bond, self-bond,
516 federally insured certificates of deposit, cash, government securities, or irrevocable letters of
517 credit.

518
519 Section 6. Surety Bonds.

520
521 Surety bonds shall comply with the following requirements:

522
523 (a) A corporate surety company shall not be considered good and sufficient for
524 purposes of W.S. § 35-11-504 ~~or~~ unless:

525
526 (i) The company is licensed to do business in the state;

527
528 (ii) The bond is made payable to the Department;

529
530 (iii) The estimated bond amount does not exceed the limit of risk as provided
531 for in W.S. § 26-5-110, nor raise the total of all bonds held by the applicant under that surety
532 above three times the limit of risk; and

533
534 (iv) The surety company agrees to the following:

535
536 (A) Not to cancel the bond, except as provided for in W.S. § 35-11-504
537 or where the Director gives prior written approval of a replacement bond or financial assurance;

538
539 (B) To be jointly and severally liable with the operator; and

540
541 (C) To provide immediate written notice to the Director and operator
542 once it becomes unable or may become unable due to any action filed against it to fulfill its
543 obligations under the bond.

544
545 (b) The provisions applicable to cancellation of the surety's license in W.S. §
546 35-11-504 shall also apply if for any other reason the surety becomes unable to fulfill its
547 obligations under the bond. Failure to comply with this provision shall result in suspension of the
548 permit. Upon such occurrence it is the operator's responsibility to provide a substitution of
549 financial assurance.

550
551 Section 7. Self-bonds.

552

553 _____ (a) — Self-bonding shall comply with the following requirements:

554

555 ~~(a) — (i) Initial application to self bond: An initial application to self-bond shall~~
556 ~~be made at the time the operator makes written application to the director to construct, operate or~~
557 ~~modify a regulated facility. The application shall be on forms furnished by the director and shall~~
558 ~~contain:~~

559

560 ~~(i) — (A) Identification of operator by:~~

561

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

566

567 ~~(B) — (H) For all other forms of business enterprises, name, address~~
568 ~~and telephone number and statement of how the enterprise is organized, law of the sState under~~
569 ~~which it is formed, place of business, and relationship and authority of the person signing the~~
570 ~~application.~~

571

572 ~~(ii) — (B) Amount of self-bond required proposed, to be determined in~~
573 ~~accordance with W.S. 35-11-504(a)(i) or W.S. 35-11-306(d). If the self bond amount is The~~
574 ~~proposed self-bond maximum amount shall not exceed seventy-five percent of the required bond~~
575 ~~amount. to be less than the full bond amount, the amount which is proposed to be under a self~~
576 ~~bond is the bond required.~~

577

578 ~~(iii) — (C) Type of operation and anticipated dates performance is to be~~
579 ~~commenced and completed.~~

580

581 ~~(iv) — (D) Brief chronological history of business operations that conducted~~
582 ~~within the last five (5) years which would illustrates a continuous operation for five (5) years~~
583 ~~immediately preceding the time of application. The Director~~

584

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

589

590 ~~_____ (II) — When calculating the period of continuous operation, the~~
591 ~~director may exclude past periods of interruption to the operation of the business entity that were~~
592 ~~beyond the applicant's control and that do not affect the applicant's likelihood of remaining in~~
593 ~~business during the proposed operation of the regulated facility.~~

594

595 ~~(v) — (E) Information in sufficient detail to show good-faith performance of~~
596 ~~past operation, and closure, post-closure, and corrective action obligations. The compliance~~
597 ~~information in the permit or annual reports may be referenced to satisfy part of this requirement.~~

598

599 _____ (F) A statement, in detail, to show a history of financial solvency. For
600 an initial bond, each operator must provide audited financial statements supporting the following
601 comparative documents, prepared and certified by an independent Certified Public Accountant
602 who, by reason of education, experience or special training, and disinterest, is competent to
603 analyze and interpret the operator's financial solvency. All statements shall be prepared
604 following generally accepted principles of accounting.

605 _____
606 _____ (I) A comparative balance sheet which shows assets, liabilities
607 and owner equity for five (5) years. The operator may provide common size documents for
608 confidentiality.

609 _____
610 _____ (II) A comparative income statement which shows all revenues
611 and expenses for five (5) years. The operator may provide common size documents for
612 confidentiality.

613 _____
614 _____ (III) A report for the most recently completed fiscal year
615 containing the accountant's audit opinion or review opinion of the balance sheet and income
616 statement with no adverse opinion.

617 _____
618 _____ (IV) Notwithstanding the language in (F) above, unaudited
619 financial statements may be submitted to support the comparative documents where current
620 fiscal year quarters have ended but a CPA opinion has not yet been obtained because the fiscal
621 year has not yet ended.

622 _____
623 (vi) (G) Financial information in sufficient detail to show that the operator
624 and ultimate parent guarantor meets one of the following criteria (the specific criterion relied
625 upon shall be identified):

626 _____
627 (A) (I) ~~The operator has~~ Have a rating for all bond issuance actions
628 and long term credit rating within the current year of "Aa3" ~~over the past five (5) years of "A"~~
629 higher as issued by either Moody's Investor Service, "AA-" or higher as issued by Standard and
630 Poor's Corporation or "AA-" or higher as issued by Fitch Ratings. The operator is eligible for a
631 maximum of seventy-five percent of the approved cost estimate. The self-bond must accompany
632 another acceptable financial assurance instrument for the remaining twenty-five percent of the
633 approved cost estimate (the rating service should be identified together with any further
634 breakdown of specific ratings);

635 _____
636 (B) (II) Have a rating for all bond issuance actions and long-term
637 credit rating within the current year of "A2" or higher as issued by Moody's Investor Service,
638 "A" or higher as issued by Standard and Poor's Corporation or "A" or higher as issued by Fitch
639 Ratings. The operator is eligible for a maximum of seventy percent of the approved cost
640 estimate. The self-bond must accompany another acceptable financial assurance instrument for
641 the remaining thirty percent of the approved cost estimate; or ~~The operator has a tangible net~~
642 ~~worth of at least \$10 million, and a ratio of total liabilities to net worth of 2.5 times or less, and a~~
643 ~~ratio of current assets to current liabilities of 1.2 times or greater. The two ratio requirements~~
644 ~~must be met for the past year, and documented for the four (4) years preceding the past year.~~

645 ~~Explanations should be included for any year where the ratios fall below the stated limits.~~

646

647 ~~(C)—(III) The operator's fixed assets in the United States total at least~~
648 ~~\$20 million, and the operator has a ratio of total liabilities to net worth of 2.5 times or less, and a~~
649 ~~ratio of current assets to current liabilities of 1.2 times or greater. The two ratio requirements~~
650 ~~must be met for the past year and documented for the four (4) years preceding the past year.~~
651 ~~Explanations should be included for any year where the ratios fall below the stated limits.~~Have a
652 rating for all bond issuance actions and long-term credit rating within the current year of
653 "Baa2/A-" or higher as issued by Moody's Investor Service, "BBB/A-" or higher as issued by
654 Standard and Poor's Corporation or "BBB/A-" or higher as issued by Fitch Ratings. The
655 operator is eligible for a maximum of fifty percent of the approved cost estimate. The self-bond
656 must accompany another acceptable financial assurance instrument for the remaining fifty
657 percent of the approved cost estimate.

658

659 ~~(D)—(IV) In the event of a split rating, the Director has the discretion~~
660 ~~to determine which rating will be accepted and applied to (A), (B), or (C) of this subsection. If~~
661 ~~the operator chooses (II) or (III), the two ratios shall be calculated with the proposed self bond~~
662 ~~amount added to the current or total liabilities for the current year. The operator may deduct the~~
663 ~~costs currently accrued for reclamation which appear on the balance sheet.~~

664

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

671

672 ~~(viii)—(I) A statement which identifying by name, address, and telephone~~
673 ~~number:~~

674

675 ~~(A)—(I) Identifies by name, address and telephone number, a A~~
676 ~~registered office which may be but need not be, the same as the operator's place of business;:~~

677

678 ~~(B)—(II) Identifies by name, address and telephone number, a A~~
679 ~~registered agent, which agent must be either an individual resident in this sState, whose business~~
680 ~~office is identical with such registered office, or a domestic corporation, or a foreign corporation~~
681 ~~authorized to transact business in the Sstate, having a business office identical with such~~
682 ~~registered office. The registered agent so appointed by the operator shall be an agent to such~~
683 ~~operator upon whom any process, notice or demand required or permitted by law to be served~~
684 ~~upon the operator may be served;:~~

685

686 ~~(ix) An acknowledgement that:~~

687

688 ~~(A)—(III) Acknowledges that ifIf the operator fails to appoint or~~
689 ~~maintain a registered agent in this state, or whenever any such registered agent cannot be~~
690 ~~reasonably found at the registered office, then the Wyoming Secretary of State~~Director shall be

691 an agent for such operator upon whom any process, notice or demand may be served for the
692 purpose of this Chapter. In the event of any such process, the ~~Wyoming Secretary of~~
693 ~~State~~ Director shall immediately cause one copy of such process, notice or demand to be
694 forwarded, by ~~registered or certified~~ mail, to the operator at his principle place of business. The
695 ~~Wyoming Secretary of State~~ Director shall keep a record of all processes, notices, or demands
696 served upon him or her under this paragraph, and shall record therein the time of such service
697 and his or her action with reference thereto.

698
699 (B) ~~—(IV)~~ ~~Acknowledges that s~~ Should the operator change the
700 registered office or registered agent, or both, a statement indicating such change shall be filed
701 immediately with the Solid and Hazardous Waste Division and the Director.

702
703 (C) ~~—(V)~~ ~~Acknowledges that n~~ Nothing herein contained shall limit or
704 affect the right to serve any process, notice or demand required or permitted by law to be served
705 upon an operator in any other manner now or hereafter permitted by law.

706
707 (x) ~~—(J)~~ The ~~d~~ Director may accept a written guarantee for an operator's
708 self-bond from an ultimate parent corporation guarantor ~~or from a federal agency~~, if the
709 guarantor ~~or federal agency~~ satisfies the financial criteria of this ~~e~~ Chapter as if it were the
710 operator. ~~The operator must only supply information addressing requirements not met by the~~
711 ~~parent corporation guarantor.~~ Such a written guarantee may be accepted by the Administrator
712 and shall be referred to as an "ultimate parent guarantee." The terms of the ultimate parent
713 ~~corporate guarantor~~ or federal agency guarantee shall provide for the following:

714
715 (A) ~~—(I)~~ If the operator fails to complete ~~the closure, post-closure,~~
716 or corrective action plan the ultimate parent guarantor shall do so or the ultimate parent
717 guarantor shall be liable under the indemnity agreement to provide funds to the ~~s~~ State sufficient
718 to complete the ~~reclamation plan~~ closure, post-closure, or corrective action plans, but not to
719 exceed the ~~bond amount~~ actual costs of closure, post-closure, or corrective action; and

720
721 (B) ~~—(H)~~ The ultimate parent ~~parent corporate or federal agency~~
722 guarantee shall remain in force unless the ultimate parent guarantor sends notice of cancellation
723 by ~~registered or certified~~ mail to the operator and to the ~~d~~ Director at least ninety ~~(90)~~
724 advance of the cancellation date, and the ~~d~~ Director accepts the cancellation. The cancellation
725 shall be accepted by the ~~d~~ Director if the operator obtains a suitable replacement bond before the
726 cancellation date, if the lands for which the ~~self bond~~ self-bond, or portion thereof, was accepted
727 have not been disturbed, or if the lands have been released under W.S. § 35-11-504.

728
729 (xi) ~~—(K)~~ For the ~~d~~ Director to accept a regulated facility operator's self-
730 bond, the total amount of the outstanding and proposed self-bond of the operator shall not
731 exceed 25 twenty-five percent (25%) of the operator's tangible net worth in the United States.
732 For the ~~d~~ Director to accept a corporate guarantee, the total amount of the ultimate parent
733 ~~corporation~~ guarantor's present and proposed self-bonds and guaranteed self-bonds shall not
734 exceed 25 twenty-five percent (25%) of the guarantor's tangible net worth in the United States.

735
736 ~~—(b)(ii)~~ Approval or denial of operator's self-bond application:

737
738 —(iA) The ~~d~~Director, within sixty-(60) days of the operator's submission
739 of all materials necessary to base a decision on the application shall:

740
741 —(A) Approve or reject such application and declare in writing
742 its reasons for such action to the operator or his registered agent. ~~The decision shall be based on~~
743 ~~the information submitted and shall be sufficient to meet the demonstrations required by W.S.~~
744 ~~35-11-504(a).~~

745
746 —(BH) If a rejection is based on inadequate information or failure
747 of the operator to supply all necessary material, the ~~d~~Director shall allow the operator thirty-(30)
748 days to remedy the deficiencies. Such corrections shall be made to the satisfaction of the
749 ~~d~~Director. The ~~d~~Director shall have an additional sixty-(60) days to approve or reject the
750 corrected application.

751
752 —(cxiii) If the Director accepts the operator's self-bond, an indemnity agreement
753 shall be submitted subject to the following requirements:

754
755 (i) The indemnity agreement shall be executed by all persons and parties who
756 are to be bound by it, including the ultimate parent entity guarantor, and shall bind each jointly
757 and severally.

758
759 (ii) Corporations applying for a self-bond or ultimate parent corporations
760 guaranteeing an operator's self-bond shall submit an indemnity agreement signed by two
761 corporate officers who are authorized to bind their corporations. A copy of such authorization
762 shall be provided to the Director along with an affidavit certifying that such an agreement is
763 valid under all applicable Federal and State laws. In addition, all corporate guarantors shall
764 provide a copy of the corporate authorization demonstrating that the corporation may guarantee
765 the self-bond and execute the indemnity agreement.

766
767 (iii) If the applicant is a partnership, joint venture or syndicate, the agreement
768 shall bind each partner or party who has a beneficial interest directly or indirectly, in the
769 operator.

770
771 (iv) The indemnity agreement shall provide that the persons or parties bound
772 shall pay all litigation costs incurred by the State in any successful effort to enforce the
773 agreement against the operator.

774 (B) ~~If the director accepts an uncollateralized self bond, an indemnity~~
775 ~~agreement shall be submitted subject to the following requirements:~~

776
777 —(I) ~~The indemnity agreement shall be executed by all persons~~
778 ~~and parties who are to be bound by it, including the parent corporation or federal agency~~
779 ~~guarantor, and shall bind each jointly and severally.~~

780
781 —(II) ~~Corporations applying for a self bond or parent corporation~~
782 ~~guaranteeing a subsidiary's self bond shall submit an indemnity agreement signed by two~~

783 ~~corporate officers who are authorized to bind the corporation. A copy of such authorization shall~~
784 ~~be provided to the director. A federal agency guaranteeing an operator's self bond shall submit~~
785 ~~an indemnity agreement signed by two officers of the agency who are authorized to bind the~~
786 ~~agency and a copy of their authorization. The agency shall also submit documents supporting~~
787 ~~the availability of a cause of action against the federal agency for performance under the~~
788 ~~indemnity agreement.~~

789 _____
790 (III) ~~If the applicant is a partnership or joint venture, the~~
791 ~~agreement shall bind each partner or party who has a beneficial interest directly or indirectly, to~~
792 ~~the operator.~~

793 _____
794 (IV) ~~The indemnity agreement shall provide that the persons or~~
795 ~~parties bound shall pay all litigation costs including reasonable attorney fees incurred by the state~~
796 ~~in any successful effort to enforce the agreement against the operator.~~

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

802 _____
803 (I) ~~For any collateral offered to support a self bond, the~~
804 ~~following information shall be provided.~~

805 _____
806 (1.) ~~The value of the property. The property shall be~~
807 ~~valued at the difference between 75 percent (75%) of the fair market value and any reasonable~~
808 ~~expense anticipated by the director in selling the property. The fair market value shall be~~
809 ~~determined by an appraiser or appraisers appointed by the director and mutually acceptable to~~
810 ~~both the director and the operator. The appraisal shall be expeditiously made, and copies thereof~~
811 ~~furnished to the director and the operator. The expense of the appraisal shall be borne by the~~
812 ~~operator.~~

813 _____
814 (2.) ~~A description of the property satisfactory for~~
815 ~~deposit to further assure that the operator shall faithfully perform all requirements of Act. The~~
816 ~~director shall have full discretion in accepting any such offer.~~

817 _____
818 a. ~~Real property shall not include any lands in~~
819 ~~the process of being used for the transfer, treatment, processing, storage or disposal of solid~~
820 ~~wastes, reclaimed or subject to this application. The operator may offer any lands the bonds for~~
821 ~~which have been released or lands within a permit area which will not be affected. In addition,~~
822 ~~any land used as a security shall not be used for disposal, treatment, processing or storage while~~
823 ~~it is a security.~~

824 _____
825 b. ~~Securities shall only include those which are~~
826 ~~United States government securities or those state government securities acceptable to the~~
827 ~~director. Securities shall meet the requirements specified in the definition of "Collateral" found~~
828 ~~in Chapter 1, Section 1(e).~~

829
830 _____ c. Personal property shall be in possession of
831 the operator, shall be unencumbered, and shall not include:
832
833 _____ 1. Property which is already being used
834 as collateral, or
835
836 _____ 2. Goods which the operator sells in the
837 ordinary course of his business, or
838
839 _____ 3. Fixtures, or
840
841 _____ 4. Certificates of deposit which are not
842 federally insured or where the depository is unacceptable to the director.
843
844 _____ (3.) Evidence of ownership submitted in one of the
845 following forms:
846
847 _____ a. If the property offered for deposit is real
848 property, the operator's interest must be evidenced by:
849
850 _____ 1. In the case of a federal or state lease,
851 a status report prepared by an attorney, satisfactory to the director as disinterested and competent
852 to so evaluate the asset, and an affidavit from the owner in fee establishing that the leasehold
853 could be transferred upon default.
854
855 _____ 2. In the case of a fee simple interest, a
856 title certificate or similar evidence of title and encumbrances prepared by an abstract office
857 authorized to transact business within the state and satisfactory to the director.
858
859 _____ b. If the property offered for deposit is a
860 security, the operator's interest must be evidenced by possession of the original or a notarized
861 copy of the certificate or a certified statement of account from a brokerage house.
862
863 _____ c. If the property offered for deposit is
864 personal property as defined in Chapter 1, Section 1(e)(i)(K), evidence of ownership shall be
865 submitted in the form satisfactory to the director to establish unquestionable title to the property
866 to the operator.
867
868 _____ (II) In addition to submitting the above information, if the
869 operator offers personal property as collateral to support a self bond, he must meet the financial
870 criteria contained in (1.) or (2.) following:
871
872 _____ (1.) The operator must have a tangible net worth of at
873 least \$10 million, a ratio of total liabilities to net worth of 3.0 times or less, and a ratio of current
874 assets to current liabilities of 1.0 times or greater. The two ratios shall be calculated with the

875 proposed self bond amount added to the current or total liabilities for the current year. The
876 operator may deduct the costs currently accrued for reclamation which appear on the balance
877 sheet.

878
879 ~~_____ (2.) The operator must have fixed assets in the United~~
880 ~~States that total at least \$20 million, a ratio of total liabilities to net worth of 3.0 times or less,~~
881 ~~and a ratio of current assets to current liabilities of 1.0 times or greater. The two ratios shall be~~
882 ~~calculated with the proposed self bond amount added to the current or total liabilities for the~~
883 ~~current year. The operator may deduct the costs currently accrued for closure/post closure which~~
884 ~~appear on the balance sheet.~~

885
886 ~~_____ (III) If the director accepts personal property as collateral to~~
887 ~~support a self bond, the director shall require:~~

888
889 ~~_____ (1.) Quarterly maintenance reports prepared by the~~
890 ~~operator, and~~

891
892 ~~_____ (2.) A perfected, first lien security interest in the~~
893 ~~property used, in favor of the Wyoming Department of Environmental Quality. This security~~
894 ~~interest shall be perfected by filing a financial statement or taking possession of the collateral in~~
895 ~~accordance with (IV)(1.) below.~~

896
897 ~~_____ (3.) In addition, the department may also require~~
898 ~~quarterly inspections of the personal property by a qualified representative of the department.~~

899
900 ~~_____ (IV) If the director accepts any property as collateral to support~~
901 ~~a self bond, the director shall, as applicable, require possession by the director of the personal~~
902 ~~property, or a mortgage or security agreement executed by the operator in favor of the~~
903 ~~Department of Environmental Quality. The requirement shall be that which is sufficient to vest~~
904 ~~such interest in the property in the director to secure the right and power to sell or otherwise~~
905 ~~dispose of the property by public or private proceedings so as to insure reclamation of the~~
906 ~~affected lands in accordance with the act. Personal property collateral to support a self bond~~
907 ~~shall be secured under the provisions of the Uniform Commercial Code as required by (2.)~~
908 ~~below.~~

909
910 ~~_____ (1.) Any mortgage shall be executed and duly recorded~~
911 ~~as required by law so as to be superior to all other liens, mortgages or encumbrances pertaining~~
912 ~~to the real property in question.~~

913
914 ~~_____ (2.) Any security interest created by a security~~
915 ~~agreement shall be perfected by filing a financing statement or taking possession of the collateral~~
916 ~~in accordance with W.S. 34-21-950 through W.S. 34-21-955 (1977). The director shall have all~~
917 ~~rights and duties set forth in W.S. 34-21-926 (1977) when the collateral is in its possession as a~~
918 ~~secured party, as defined in W.S. 34-21-905(a)(ix). Any money received from the collateral~~
919 ~~during this period of time shall be remitted to the operator. When the collateral is left in the~~
920 ~~possession of the operator, the security agreement shall require that, upon default, the operator~~

921 shall assemble the collateral and make it available to the director at a place to be designated by
922 the director which is reasonably convenient to both parties.

923
924 ~~_____ (V) The operator may, with written consent from the director,~~
925 ~~substitute for any of the property held hereunder other property upon submittal of all information~~
926 ~~required under this subsection and compliance with all requirements of this subsection so as to~~
927 ~~secure all obligations under all periods of time as they relate to disposal operations.~~

928
929 ~~_____ (VI) For collateral posted to support a self bond, all persons with~~
930 ~~an interest in the collateral shall be notified by the operator of the posting, and of all other~~
931 ~~actions affecting the collateral.~~

932
933 ~~_____ (diii) Self-Bond Renewal bonds:~~

934
935 ~~_____ (iA) Information for the~~Any operator seeking to renew a self-bond
936 under the self bonding program which shall accompany provide, along with the annual report
937 shall include:

938
939 ~~_____ (AI) Amount of bond required, which shall be determined in~~
940 ~~accordance with W.S. § 35-11-504 and Section 4 of this Chapter, and the.~~If the self bond
941 amount is proposed to be less than the full bond amount, the amount which is proposed to be
942 under covered by a self-bond renewal; and is the bond required.

943
944 ~~_____ (BH) Financial information in sufficient detail to show that the~~
945 ~~operator and ultimate parent guarantor still meets one of the criteria in Section 4(a)(i)(G)7(a)(vi),~~
946 ~~and the limitation in Section 4(a)(i)(K)7(a)(xi). The director requires financial statements for the~~
947 ~~most recently completed fiscal year together with an independent Certified Public Accountant's~~
948 ~~audit opinion or review opinion of the financial statements with no adverse opinion. Additional~~
949 ~~unaudited information may be required by the director.~~The operator and ultimate parent
950 guarantor shall submit the full report from the credit reporting agency or agencies supporting its
951 rating for the current year. Additional information may be requested by the Director when a split
952 rating occurs.

953
954 ~~_____ (HI) If the director has accepted a mortgage, any evidence of~~
955 ~~change in value, title and possession of the property shall be submitted.~~

956
957 ~~_____ (IV) If the director deems it necessary to revalue any asset, it~~
958 ~~may appoint the appraiser or appraisers mutually acceptable to the director and the operator.~~
959 ~~Any such reappraisal shall be expeditiously made, and copies thereof furnished to the director~~
960 ~~and the operator. The expense of the appraisal shall be borne by the operator. The findings of~~
961 ~~the appraisal shall be final and binding unless both parties agree to a reappraisal.~~

962
963 ~~_____ (V) For regulated facility operators using personal property as~~
964 ~~collateral to support a self bond, the operator's current financial information showing continuing~~
965 ~~compliance with Section 4(a)(ii)(C)(II) of this chapter.~~

966

967 ~~_____ (B) If the director has authorized a parent corporate guarantee, the~~
968 ~~parent corporation shall supply all information required under subsection (iii)(A)(II) of this~~
969 ~~section.~~

971 ~~_____ (iiC) A ny valid initial self_ bond shall may carry the right of successive~~
972 ~~renewalbe renewed so as long as the above listed information is submitted which demonstrates~~
973 ~~that all parties the guarantor remains qualified under W.S. 35-11-504.Section 7(a) of this Chapter~~
974 ~~and there is a minimum five-year life of operation remaining.~~

976 ~~_____ (eiv) Self-Bond Substitution of the operator's self bond:~~

977 ~~_____ (iA) The ~~d~~Director may require the operator to substitute a good and~~
978 ~~sufficient bond instrument ~~corporate surety licensed to do business in the state~~ if the ~~d~~Director~~
979 ~~determines in writing that the self_ bond of the operator fails to provide ~~this~~ the protection~~
980 ~~consistent with the objectives and purposes of W.S. 35-11-504~~the Act~~. The ~~d~~Director shall~~
981 ~~require ~~this~~ full or partial substitution if the financial information submitted ~~or requested~~ under~~
982 ~~Section ~~(4)(a)(ii)~~7(a)(xiv)(A)(II) indicates that the operator or ultimate parent guarantor no~~
983 ~~longer qualifies under the self_ bonding program. Substitution of an alternate bond shall be made~~
984 ~~within ~~thirty~~(30) days. The operator may also request substitution. This request is contingent~~
985 ~~upon the operator meeting all the requirements of the bond provisions in this Chapter, W.S.~~
986 ~~35-11-504. If these requirements are met, the ~~d~~Director shall accept substitution.~~

988 ~~_____ (iiB) If the operator fails within ~~sixty~~thirty~~(60)~~ days to make a~~
989 ~~substitution for the revoked self_ bond with a corporate surety, cash, governmental securities, or~~
990 ~~federally insured certificates of deposit, or irrevocable letters of credit in accordance with the~~
991 ~~bonding provisions of W.S. § 35-11-504 and this Chapter, the ~~d~~Director shall suspend or revoke~~
992 ~~the facility's permit until such substitution is made.~~

994 ~~_____ (C) All methods of substitution shall be made in accordance with the~~
995 ~~bonding provisions in W.S. 35-11-504. The director shall either:~~

997 ~~_____ (I) Require substitution of a good and sufficient corporate~~
998 ~~surety licensed to do business in the state that will stand as surety ~~so as to cover all periods of~~~~
999 ~~time as they relate to disposal operations, or~~

1000 ~~_____ (II) Retain from the operator sufficient assets within the~~
1001 ~~department ~~so as to cover that period of time of the disposal operation which is not covered by~~~~
1002 ~~the substituted surety. Those assets not retained shall be returned to the operator within ~~sixty~~~~
1003 ~~(60) days free from the department's encumbrances, liens, mortgages or security interests.~~

1004 ~~_____ (v) Requirements for forfeiture and release:~~

1005 ~~_____ (A) All requirements as to bond forfeiture proceedings and the release~~
1006 ~~of bonds shall be consistent with W.S. 35-11-504, ~~excepting the requirements as to notification~~~~
1007 ~~to the surety. When the director has required a mortgage, and the bond has been forfeited,~~
1008 ~~foreclosure procedures shall be in accordance with W.S. 34-4-101 through 34-4-113 (1977).~~

1013
1014 ~~_____ (B) For self bonds supported by collateral, upon bond release property~~
1015 ~~return shall be of that form sufficient for the director to release that portion of the interest or~~
1016 ~~mortgage commensurate with the amount of the bond released less any disposed of in accordance~~
1017 ~~with the mortgage or indemnity agreement.~~

1018
1019 ~~_____ (f)(vi) Reporting requirements:~~

1020
1021 ~~_____ (i) If a devaluation in the credit rating occurs, the operator shall notify the~~
1022 ~~Director within thirty days of the change and provide a copy of the rating report to the Director.~~

1023
1024 ~~_____ (ii) If the operator or ultimate parent guarantor receives any new notice from~~
1025 ~~the Securities and Exchange Commission or any party initiates proceedings against the operator~~
1026 ~~or ultimate parent guarantor alleging a failure to comply with any public disclosure or reporting~~
1027 ~~requirements under the securities laws of the United States, the operator shall notify the Director~~
1028 ~~within thirty days and shall include a summary of the allegations, including the date, the~~
1029 ~~requirement alleged to be violated, the party making the allegation, and the disposition or current~~
1030 ~~status thereof.~~

1031 ~~_____ (b) Surety bonds:~~

1032
1033 ~~_____ (i) A corporate surety shall not be considered good and sufficient for~~
1034 ~~purposes of W.S. 35-11-504 or unless:~~

1035
1036 ~~_____ (A) It is licensed to do business in the state;~~

1037
1038 ~~_____ (B) The estimated bond amount does not exceed the limit of risk as~~
1039 ~~provided for in W.S. 26-5-110, nor raise the total of all bonds held by the applicant under that~~
1040 ~~surety above three times the limit of risk;~~

1041
1042 ~~_____ (C) The surety agrees:~~

1043
1044 ~~_____ (I) Not to cancel bond, except as provided for in W.S.~~
1045 ~~35-11-504 or where the director gives prior written approval of a good and sufficient~~
1046 ~~replacement surety with transfer of the liability that has accrued against the operator on the~~
1047 ~~permit area;~~

1048
1049 ~~_____ (II) To be jointly and severally liable with the permittee;~~

1050
1051 ~~_____ (III) To provide immediate written notice to the director and~~
1052 ~~operator once it becomes unable or may become unable due to any action filed against it to fulfill~~
1053 ~~its obligations under the bond.~~

1054
1055 ~~_____ (ii) The provisions applicable to cancellation of the surety's license in W.S.~~
1056 ~~35-11-504 shall also apply if for any other reason the surety becomes unable to fulfill its~~
1057 ~~obligations under the bond. Upon such occurrence the operator shall provide the required notice.~~
1058 ~~Failure to comply with this provision shall result in suspension of the permit.~~

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Section 8.(e) Federally insured eCertificate of dDeposit.:

~~_____The dDirector shall not accept an individual certificate of deposit in an amount in excess of \$100,000 or the maximum insurable amount as determined by the FDIC or the Federal Savings and Loan Insurance Corporation.~~ Federal Deposit Insurance Corporation. The certificate must be ~~Such certificates of deposit shall be made payable solely to the Wyoming Ddepartment of Environmental Quality, both in writing and upon the records of the bank issuing these certificates.~~ The dDirector shall require the banks issuing these certificates to waive all rights of set off or liens against the certificates. The bond financial assurance amount may be calculated to include any amount which that would be deducted as a penalty for payment before maturity.

Section 9. Cash.

_____ The operator or its principal may submit a check payable to the Wyoming Department of Environmental Quality.

Section 10. Government Securities.

(a) Government securities shall be endorsed to the order of the Department, placed in the possession of the Department, and backed by the full faith and credit of the United States.

(b) Possession of government securities may be in the form of the cash value of an irrevocable trust for the full amount of the closure, post-closure, or corrective action obligation, payable to the Department. An irrevocable trust shall conform to the requirements below:

(i) The Wyoming Department of Environmental Quality Irrevocable Trust Form shall be signed by the operator or guarantor as principal and the financial institution as Trustee;

(ii) The Trustee must be a bank organized to do business in the United States that has and have the authority to act as a trustee and whose trust operations is-are regulated and examined by a Federal or State Agency;

(iii) The irrevocable trust must be funded for the full amount of the closure, post-closure, or corrective action obligation, except for the as this amount is reduced by other approved bond instruments or financial assurances;

(iv) Cancellation of an irrevocable trust shall follow the procedures detailed in W.S. § 35-11-504(f); and

(v) Forfeiture proceedings for an irrevocable trust shall follow the same procedures detailed in W.S. § 35-11-504(h).

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

1105
1106 ~~_____ (e) Cash: In lieu of a bond, the operator or its principal may deposit cash in a bank~~
1107 ~~account in the department's name.~~
1108

1109 **Section 11.(f) Irrevocable Letters of Credit:**

1110
1111 ~~_____ (i) Irrevocable L~~ letters of credit shall be subject to the following
1112 ~~conditions~~ comply with the following requirements:

1113
1114 ~~_____ (A) The letter shall be irrevocable during its term, which shall coincide~~
1115 ~~with the annual bonding period. The director may approve the use of letters of credit as security~~
1116 ~~in accordance with a schedule approved with the permit. Any bank issuing a letter of credit shall~~
1117 ~~notify the director in writing at least ninety (90) days prior to the maturity date of such letter or~~
1118 ~~the expiration of the letter of credit agreement. Letters of credit utilized as security in areas~~
1119 ~~requiring continuous bond coverage shall be collected by the director if not replaced by other~~
1120 ~~suitable evidence of financial responsibility at least thirty (30) days before the expiration date of~~
1121 ~~the letter of credit agreement;~~
1122

1123 ~~_____ (B) The letter must be payable to the department in part or in full upon~~
1124 ~~demand and receipt from the director of a notice of forfeiture issued in accordance with W.S. 35-~~
1125 ~~11-504;~~
1126

1127 ~~_____ (C) The letter shall not be in excess of 10 percent (10%) of the bank's~~
1128 ~~capital surplus account as shown on a balance sheet certified by a Certified Public Accountant;~~
1129

1130 ~~_____ (D) The director shall only accept bank letters of credit issued in~~
1131 ~~accordance with W.S. 13-3-402;~~
1132

1133 ~~_____ (E) The letter of credit shall provide that:~~
1134

1135 ~~_____ (I) The bank will give written notice within three (3) working~~
1136 ~~days to the permittee and the director of any notice received or action filed alleging the~~
1137 ~~insolvency or bankruptcy of the bank, or alleging any violations of regulatory requirements~~
1138 ~~which could result in suspension or revocation of the bank's charter or license to do business,~~
1139

1140 ~~_____ (II) In the event the bank becomes unable to fulfill its~~
1141 ~~obligations under the letter of credit for any reason, written notice shall be given immediately to~~
1142 ~~the permittee and the director, and~~
1143

1144 ~~_____ (III) Upon the incapacity of a bank by reason of bankruptcy,~~
1145 ~~insolvency, or suspension or revocation of its charter or license, the permittee shall be deemed to~~
1146 ~~be without performance bond coverage in violation of the act. The director shall issue a notice of~~
1147 ~~violation against any operator who is without bond coverage, specifying a reasonable period to~~
1148 ~~replace bond coverage, not to exceed sixty (60) days. During this period the director or his or~~
1149 ~~her designated representative shall conduct weekly inspections to ensure continuing compliance~~
1150 ~~with other permit requirements, the regulations and the act. If the notice is not abated in~~

1151 accordance with the schedule, a cessation order shall be issued.

1152

1153 ~~_____ (ii) Agent for service of process: The letter may only be issued by a bank~~
1154 ~~organized to do business in the U.S. which identified by name, address, and telephone number an~~
1155 ~~agent upon whom any process, notice or demand required or permitted by law to be served upon~~
1156 ~~the bank may be served. Letters of credit from U.S. branches of foreign banks are not~~
1157 ~~acceptable.~~

1158

1159 ~~_____ (A) If the bank fails to appoint or maintain an agent in this state, or~~
1160 ~~whenever any such agent cannot be reasonably found, then the Wyoming Secretary of State shall~~
1161 ~~be an agent for such bank upon whom any process, notice or demand may be served for the~~
1162 ~~purpose of this chapter. In the event of any such process, the Wyoming Secretary of State shall~~
1163 ~~immediately cause one copy of such process, notice or demand to be forwarded, by certified or~~
1164 ~~registered mail to the bank at its principle place of business. The Wyoming Secretary of State~~
1165 ~~shall keep a record of all processes, notices, or demands served upon him or her under this~~
1166 ~~paragraph, and shall record therein the time of such service and his or her action with reference~~
1167 ~~thereto;~~

1168

1169 ~~_____ (B) Nothing herein contained shall limit or affect the right to serve any~~
1170 ~~process, notice or demand required or permitted by law to be served upon the bank in any other~~
1171 ~~manner now or hereafter permitted by law.~~

1172

1173 _____ (a) The letter must be payable to the Department in part or in full upon demand and
1174 receipt from the Director of a notice of forfeiture issued in accordance with W.S. § 35-11-504(h);

1175

1176 _____ (b) The letter shall not be in excess of ten percent of the issuing or supporting bank's
1177 capital surplus account as shown on a balance sheet certified by a certified public accountant;

1178

1179 _____ (c) The Director shall not accept standby letters of credit;

1180

1181 _____ (d) The Director shall not accept letters of credit from a bank for any person, on all
1182 permits held by that person, in excess of the limitation imposed by W.S. § 13-3-402; and

1183

1184 _____ (e) The letter of credit shall provide that:

1185

1186 _____ (i) The bank will give prompt notice to the operator and the Director of any
1187 notice received or action filed alleging the insolvency or bankruptcy of the bank, or alleging any
1188 violations of regulatory requirements that could result in suspension or revocation of the bank's
1189 charter or license to do business;

1190

1191 _____ (ii) In the event the bank becomes unable to fulfill its obligations under the
1192 letter of credit for any reason, notice shall be given immediately to the operator and the Director;
1193 and

1194

1195 _____ (iii) Upon the incapacity of a bank by reason of bankruptcy, insolvency, or
1196 suspension or revocation of its charter or license, the permittee shall be deemed to be without

1197 financial assurance in violation of the Act. The Director shall issue a notice of violation against
1198 any operator who is without bond coverage, specifying a reasonable period to replace bond
1199 coverage, not to exceed ninety days. During this period the Director or their~~his~~ designated
1200 representative shall conduct weekly inspections to ensure continuing compliance with other
1201 permit requirements, these rules and the Act. If the notice is not abated in accordance with the
1202 schedule, a cessation order shall be issued.

1203
1204 (iv) The irrevocable letter of credit may be cancelled by the issuer only after
1205 ninety-days' notice to the Director, and upon receipt of the Director's written consent, which
1206 may be granted only when an alternative financial assurance substitution has been approved.

1207
1208 (f) The letter may only be issued by a bank organized to do business in the U.S. that
1209 identifies by name, address, and telephone number an agent upon whom any process, notice or
1210 demand required or permitted by law to be served upon the bank may be served.

1211
1212 (i) If the bank fails to appoint or maintain an agent in this State, or whenever
1213 any such agent cannot be reasonably found, then the Director shall be an agent for such bank
1214 upon whom any process, notice or demand may be served for the purpose of this Chapter. ~~In the~~
1215 event of any such process, the Director shall immediately cause one copy of such process, notice
1216 or demand may be served for the purpose of this Chapter. ~~In the event of any such process, the~~
1217 Director shall immediately cause one copy of such process, notice or demand to be forwarded by
1218 registered mail to the bank at its principal place of business. The Director shall keep a record of
1219 all processes, notices, or demands served upon them~~him~~ under this paragraph, and shall record
1220 therein the time of such service and their~~his~~ action with reference thereto.

1221
1222 (ii) Nothing herein contained shall limit or affect the right to serve any
1223 process, notice or demand required or permitted by law to be served upon the bank in any other
1224 manner now or hereafter permitted by law.

1225
1226 **Section 125. Bond or Other Forms of Financial Assurance Release of Financial**
1227 **Assurance.**

1228
1229 ~~— (a) — Any bond or other form of financial assurance may be canceled by the surety only~~
1230 ~~after ninety (90) days written notice to the director, and upon receipt of the director's written~~
1231 ~~consent, which may be granted only when the requirements of the bond have been fulfilled.~~

1232
1233 (a~~b~~) The Director shall release the closure or post-closure portion of the bond or
1234 financial assurance instrument when closure or post-closure activities have been successfully
1235 completed. The operator shall notify the Administrator upon completion of activities specified in
1236 the closure or post-closure plan. The Administrator shall inspect the facility and provide written
1237 inspection results to the operator. Release of the closure or post-closure portion of a bond or
1238 financial assurance does not relieve the operator of their~~its~~ responsibility for corrective action to
1239 prevent or abate violations caused by the regulated facility that are subsequently discovered, or
1240 relieve the operator of their~~its~~ responsibility to meet closure or post-closure standards. When the
1241 director determines that the violation has been remedied or the damage abated, the director shall
1242 release that portion of the bond or financial assurance instrument being held under W.S.

1243 35-11-504(a). When the director determines that closure activities have been successfully
 1244 completed at any regulated facility, the director shall release that portion of the bond or financial
 1245 assurance being held to guarantee performance of activities specified in W.S. 35-11-504(a). The
 1246 remaining portion of the bond or financial assurance shall be held for a period of not less than
 1247 thirty (30) years after the date of facility closure, or so long thereafter as necessary to assure
 1248 proper performance of any post-closure and corrective activities specified in W.S. 35-11-504(a)
 1249 unless the post-closure period is terminated at an earlier date under Chapter 2, Section 7(b).

1250
 1251 (c) ~~Release of the owner or operator from the closure financial assurance~~
 1252 ~~requirements of this chapter: Within sixty (60) days after receiving certification from the owner~~
 1253 ~~or operator that closure has been accomplished in accordance with the closure plan and the~~
 1254 ~~provisions of these regulations, the director shall verify that proper closure has occurred. Unless~~
 1255 ~~the director has reason to believe that closure has not been in accordance with the closure plan,~~
 1256 ~~the director shall notify the owner or operator in writing that the owner or operator is no longer~~
 1257 ~~required to maintain financial assurance for closure of the particular facility. Such notice shall~~
 1258 ~~release the owner or operator only from the requirements for financial assurance for closure of~~
 1259 ~~the facility; it does not release the owner or operator from legal responsibility for meeting the~~
 1260 ~~closure or post-closure standards. If no written notice or termination of financial assurance~~
 1261 ~~requirements or failure to properly perform closure is received by the owner or operator within~~
 1262 ~~sixty (60) days after certifying proper closure, the owner or operator may petition the director for~~
 1263 ~~an immediate decision in which case the director shall respond within ten (10) days after receipt~~
 1264 ~~of such petition.~~

1265
 1266 (bd) ~~Release of the owner or operator from the post-closure financial assurance~~
 1267 ~~requirements of this chapter: Within sixty (60) days of the director's determination under~~
 1268 ~~Chapter 2, Section 7(b), that the facility has been adequately stabilized, the director shall notify~~
 1269 ~~the owner or operator in writing that the owner or operator is no longer required to maintain~~
 1270 ~~financial assurance for the post-closure care of the regulated facility. Such notice shall release~~
 1271 ~~the owner or operator only from the requirements for financial assurance for post-closure care of~~
 1272 ~~the facility; it does not release the owner or operator from legal responsibility to take corrective~~
 1273 ~~action as necessary to protect public health or the environment from releases from the~~
 1274 ~~facility. The Director shall release the corrective action portion of the bond or financial assurance~~
 1275 ~~instrument when a violation has been remedied or the damage abated. The operator shall notify~~
 1276 ~~the Administrator upon completion of activities specified in the corrective action plan. The~~
 1277 ~~Administrator shall inspect the facility and provide written inspection results to the operator.~~
 1278 ~~Release of the corrective action portion of a bond or financial assurance does not relieve the~~
 1279 ~~operator of its their responsibility for further corrective action to prevent or abate violations~~
 1280 ~~caused by the regulated facility that are subsequently discovered, or relieve the operator of its~~
 1281 ~~their responsibility to meet closure or post-closure standards.~~

1282
 1283 **Section 136. Bond or Other Forms of Financial Assurance Recalculations of**
 1284 **Financial Assurance.**

1285
 1286 (a) Financial assurance amounts cost estimates for closure, post-closure, and
 1287 corrective action shall will be recalculated on a yearly basis annually, within thirty days after the
 1288 permit issuance anniversary date, and shall account for inflation.

1289
1290 (b) In addition to annual recalculations, the owner or operator shall revise the cost
1291 estimate whenever a change in the approved permit increases the cost of closure, post-closure, or
1292 corrective action.

1293
1294 **Section 147. Bond or Other Forms of Financial Assurance Forfeiture of Financial**
1295 **Assurance.**

1296
1297 (a) ~~—Bond or other financial assurance forfeiture proceedings shall occur only after the~~
1298 ~~director provides notice to the operator and any surety in accordance with W.S. § 35-11-504(h),~~
1299 ~~(j), and (k), that a violation exists and the council has approved the request of the director to~~
1300 ~~begin forfeiture proceedings.~~

1301
1302 ~~—(b) With the approval of the council the director may:~~

1303
1304 ~~—(i) Expend forfeited funds to remedy and abate the circumstances with~~
1305 ~~respect to which any financial assurance was provided; and~~

1306
1307 ~~—(ii) Expend funds from the trust and agency account under W.S. 35-11-504(a)~~
1308 ~~to remedy and abate any immediate danger to human health, safety and welfare.~~

1309
1310 ~~—(c) If the forfeited bond or other financial assurance instrument is inadequate to cover~~
1311 ~~the costs to carry out the activities specified in W.S. 35-11-504(a) or in any case where the~~
1312 ~~director has expended trust and agency account monies, the attorney general shall bring suit to~~
1313 ~~recover the cost of performing the activities where recovery is deemed possible.~~

1314
1315 **Section 8. ~~—Incapacity of Institution Issuing Financial Assurance. An owner or~~**
1316 **~~operator who fulfills the requirements of Section 3 of this chapter by obtaining a surety~~**
1317 **~~bond or a certificate of deposit or irrevocable letter of credit will be deemed to be without~~**
1318 **~~the required financial assurance in the event of bankruptcy, insolvency or a suspension or~~**
1319 **~~revocation of the license or charter of the issuing institution. The owner or operator must~~**
1320 **~~establish other financial assurance within sixty (60) days of such event.~~**

1321
1322 **Section 159. Closure and Post-Closure Account for Municipally-Owned Solid**
1323 **Waste Disposal Facilities.**

1324
1325 (a) ~~Applicability:—This section is applicable to municipally-owned or operated solid~~
1326 ~~waste landfills regulated under Chapter 2 of these rules and regulations electing to participate in~~
1327 ~~the state guarantee trust account [the account] provided under W.S. § 35-11-515. Such facilities~~
1328 ~~shall be known as participating facilities.~~

1329
1330 (b) ~~Initial requirements:—The requirements of this paragraph apply to participating~~
1331 ~~facilities upon their initial election to participate in the account. Each facility participating in the~~
1332 ~~account shall, upon their initial election to participate and every four years thereafter: The~~
1333 ~~requirements of this paragraph also apply to participating facilities upon the, fourth and~~
1334 ~~subsequent four-year anniversaries, following the initial election to participate in the account.~~

1335 Each facility shall:

1336

1337 (i) Either prepare a closure and post-closure plan complying with ~~Section~~
1338 ~~3(b)(ii) Chapter 2 of these rules, and containing prepare~~ a closure and post-closure cost estimate
1339 complying with Section ~~2 3(e)(i) and (ii)~~ of this ~~C~~chapter, or calculate the facility closure and
1340 post-closure costs using a standard cost estimate prepared by the ~~d~~Director; ~~and~~

1341

1342 (ii) Calculate the remaining usable disposal capacity of the facility, expressed
1343 as years, using information from the facility permit application; and

1344

1345 (iii) Calculate the annual amount to be paid to the account using the following
1346 procedure:

1347

1348 (A) Calculate three percent ~~(3%)~~ of the sum of closure and post-closure
1349 costs using the following formula:

1350

1351 Three percent ~~3%~~ of the sum of closure and post-closure costs = (0.03(Closure cost –
1352 the operator's accumulated net assets earmarked for payment of the operator's
1353 closure costs)) + (0.03(Post-closure cost – the operator's accumulated net assets
1354 earmarked for payment of the operator's post-closure costs))

1355

1356 (I) The facility owner or operator shall account for closure and
1357 post-closure liabilities and costs in accordance with ~~G~~generally ~~A~~accepted ~~A~~accounting
1358 ~~P~~principles as provided by W.S. § 16-4-121(c) and certify to the earmarking of the accumulated
1359 net assets, subject to audit.

1360

1361 (B) Calculate the balance due to the account by deducting the total of
1362 previous payments to the account from three percent ~~3%~~ of the sum of closure and post-closure
1363 costs using the following formula:-

1364

1365 Balance due = three percent ~~3%~~ of the sum of closure and post-closure costs – the
1366 total of previous payments to the account

1367

1368 (C) Calculate annual payments to the account by dividing the balance
1369 due by the years of remaining disposal capacity using the following formula:-

1370

1371 Annual payment = Balance due / years of remaining disposal capacity in disturbed
1372 areas

1373

1374 (c) Compliance with the financial assurance requirements of this section is required
1375 on July 1 of each year, unless an alternate date is approved by the Administrator.

1376

1377 ~~(iv) For existing Type I facilities, the owner shall pay the amount in paragraph~~
1378 ~~(b)(iii) of this section to the department no later than April 9, 1997 (no later than October 9, 1997~~
1379 ~~for existing Type II facilities). Existing nonparticipating Type I facilities making an initial~~
1380 ~~election to participate in the account after April 9, 1997 (after October 9, 1997 for existing Type~~
~~II facilities), shall pay the amount in paragraph (b)(iii) of this section prior to receiving approval~~

1381 from the director to terminate any alternate form of financial assurance approved under Section
1382 3(d) of this chapter;

1383
1384 ~~————— (v) ——— For new Type I facilities permitted after April 9, 1997 (after October 9,~~
1385 ~~1997 for new Type II facilities), the owner shall pay the amount in paragraph (b)(iii) of this~~
1386 ~~section prior to the issuance of a permit from the director.~~

1387
1388 ~~————— (e) ——— Subsequent requirements: Each facility shall pay the amount specified in~~
1389 ~~paragraph (b)(iii) of this section to the director no later than the anniversary dates following the~~
1390 ~~initial election to participate in the account.~~

1391
1392 ~~————— (d) ——— Estimating closure and post-closure costs:~~

1393
1394 ~~————— (i) ——— Closure and post-closure costs may be calculated using a site specific cost~~
1395 ~~estimate prepared by the operator or a standard cost estimate prepared by the director.~~

1396
1397 ~~(de) A refund of the closure guarantee costs shall follow procedures outlined in W.S. §~~
1398 ~~35-11-515(g) and (j). Refunds from the account for closure guarantees: Following certification~~
1399 ~~of closure by a registered professional engineer in accord with the requirements of Chapter 2,~~
1400 ~~Section 7, the owner may apply to the director for a refund of that portion of the annual fee paid~~
1401 ~~by the owner to the account for closure guarantee costs. If the director determines that closure~~
1402 ~~activities have been adequately completed, the department shall, within thirty 30 days, approve a~~
1403 ~~refund from the account equal to ninety percent (90%) of the total amount paid by the owner,~~
1404 ~~less any expenditures from the account under W.S. 35-11-515(k) which have not been recovered~~
1405 ~~under W.S. 35-11-515(m).~~

1406
1407 ~~(ef) A refund of the post-closure guarantee costs shall follow procedures outlined in~~
1408 ~~W.S. § 35-11-515(h) and (j). Refunds from the account for post-closure guarantees: Following~~
1409 ~~certification of the proper completion of the post-closure period by a registered professional~~
1410 ~~engineer in accord with the requirements of Chapter 2, Section 7, the owner may apply to the~~
1411 ~~director for a refund of that portion of the annual fee paid by the owner to the account for post-~~
1412 ~~closure guarantee costs. The director shall, within 30 days of the administrator's determination~~
1413 ~~that the facility has been adequately stabilized in accord with the requirements of Chapter 2,~~
1414 ~~Section 7(b), approve a refund from the account equal to ninety percent (90%) of the total~~
1415 ~~amount paid by the owner, less any expenditures from the account under W.S. 35-11-515(k)~~
1416 ~~which have not been recovered under W.S. 35-11-515(m).~~

1417
1418 ~~(fg) Election to withdraw as a participating facility: The facility owner may elect to~~
1419 ~~withdraw from participation in the account and shall notify the Director of said intent prior to the~~
1420 ~~financial assurance compliance date. Upon the election by a facility owner to withdraw from~~
1421 ~~participation in the account, Upon withdrawal from participation, or upon completing closure or~~
1422 ~~post-closure requirements, the owner may apply to the dDirector for a refund of the closure and~~
1423 ~~post-closure annual fees paid to the account. -The dDirector shall, within thirty (30) days,~~
1424 ~~approve a refund from the account equal to ninety percent (90%) of the total amount paid by the~~
1425 ~~owner, less any expenditures from the account made on behalf of the participating facility under~~
1426 ~~W.S. § 35-11-515(k) which that have not been recovered under W.S. § 35-11-515(m). Prior to~~

1427 the ~~Director~~ approving a refund for a withdrawing facility, the facility owner shall demonstrate
1428 compliance with the financial assurance requirements of this ~~Chapter~~, as specified in Section
1429 3(d).

1430
1431 (g) ~~Use of a combination of financial assurance mechanisms:~~ An owner may elect to
1432 participate in the account for purposes of demonstrating compliance only with the closure cost
1433 financial assurance requirement, only with the post-closure cost financial assurance requirement,
1434 or both. Any owner electing to participate in the account only for the purposes of satisfying the
1435 closure or post-closure cost financial assurance requirement shall use another financial assurance
1436 mechanism as specified in Section 3(d) of this chapter to complete his or her obligation to
1437 demonstrate adequate financial assurance for both closure and post-closure costs.

1438
1439 (h) ~~Expenditures from the account:~~ The ~~Director~~ may authorize expenditures from
1440 the account if the facility owner, after receiving a notice of violation and order directing the
1441 performance of closure or post-closure obligation under this ~~Chapter~~ or Chapter 2 of these rules
1442 and regulations, has failed to adequately perform such obligation. The ~~Director~~ shall provide in
1443 any such order that failure to perform the closure or post-closure obligation will result in the
1444 ~~Director's~~ authorizing an expenditure from the account. The amount to be expended shall be
1445 specified by the ~~Director~~ in the order. The availability of an opportunity to appeal the order
1446 under W.S. § 35-11-701(c) shall be considered the owner's opportunity to appeal the amount to
1447 be expended, under W.S. § 35-11-515(k).