

CHAPTER 6

FINANCIAL ASSURANCE REQUIREMENTS

Section 1. Purpose.

(a) This Chapter provides for financial assurance arrangements in support of decontamination, decommissioning, reclamation, restoration, disposal, and any other activity required by the Department, for costs associated with the licensed facilities and sites.

Section 2. Scope.

(a) This Chapter sets forth the requirements of Wyoming Statute (W.S.) §§ 35-11-417 through 418 (2016) and 35-11-2003(e) (2016) for the establishment of financial assurance arrangements for licensees listed in these rules. Such financial assurance arrangements may consist of surety bonds, federally insured certificates of deposit payable to the Department, cash deposits, certificates of deposits, deposits of government securities, irrevocable letters of credit issued by a bank organized to do business in the United States, or any combination of approved mechanisms.

(b) Licensees shall comply with the requirements of 10 Code of Federal Regulations (C.F.R.) Part 40, Appendix A, Criterion 9 and 10, as incorporated by reference in Chapter 4 of these rules.

Section 3. Terms Unique to Financial Assurance.

(a) "Annual Review" is conducted during the review of the annual report which is due on the anniversary date of the establishment of the permit to mine or source material license in circumstances where no permit exists.

(b) "Cost Estimate" means a document containing the total costs that would be incurred if an independent contractor were hired to perform the decommissioning of the facility and disposal of licensed material, and all associated costs to the Department in conducting decommissioning oversight. Costs must reflect current approved estimated costs.

(c) "Facility" means the location within one building, vehicle, or under one roof and under the same administrative control: (1) at which the possession, use, processing or storage of licensed material is or was authorized; or (2) may also mean multiple such locations at a site or part of a site.

Section 4. Financial Assurance.

(a) The Department requires specific source and byproduct material licensees to furnish a decommissioning financial assurance arrangement in a dollar amount approved by the Department, as necessary to protect public health and safety, to ensure corrective action during

operation, to ensure decontamination and decommissioning of a facility or site, and for disposal of licensed material in the event of abandonment, insolvency, or other inability of the licensee to meet the requirements of the license, the Act, or these rules.

(b) The costs associated with reclamation and long term care and maintenance, in accordance with this chapter shall be sufficient to ensure compliance with those standards established by the Department pertaining to bonds, sureties, and other financial arrangements to ensure adequate reclamation and long term management of such byproduct material and its disposal.

(c) Licensees shall provide the Department with cost-estimates that are reasonably accurate and these estimates shall include costs for the following:

(i) Disposal of licensed material;

(ii) Decontamination and decommissioning of buildings, facilities, and the site to a standard which achieves levels that allow release for unrestricted use of these areas upon decommissioning;

(iii) Reclamation of byproduct material disposal areas in accordance with the technical criteria detailed in 10 C.F.R. Part 40, Appendix A;

(iv) Aquifer restoration which is based on the physical characteristics of the mining aquifer; the cost of equipment, labor, and administration; and any other data required under 10 C.F.R. Part 40, Appendix A Criterion 5(b)(5) and Chapter 11 of the Non-Coal Rules and Regulations;

(A) Other operational activities that have impacted groundwater as detailed in 10 C.F.R. Part 40, Appendix A, Criterion 5(b).

(v) Costs that would be incurred if an independent contractor was hired to dispose of radioactive materials and perform decontamination, decommissioning, and reclamation work including:

(A) The cost of removal and/or disposal of licensed material which is generated, stored, processed, or otherwise present at the facility or site; and

(B) The probable extent of contamination through the possession or use of licensed material, at or adjacent to the facility or site and the probable cost of removal of such contamination;

(vi) An adequate contingency factor.

(vii) For sites requiring long-term care and maintenance, a minimum charge of two-hundred and fifty thousand dollars (\$250,000.00), in 1978 dollars, shall be included in the financial assurance established by the licensee to cover the costs of long-term care and

maintenance.

(d) Prior to approval of an application for a new license, an applicant shall establish financial assurance arrangements to ensure the decontamination and decommissioning of the facility.

(e) Prior to termination of a license, a licensee shall establish a fund adequate and sufficient to cover the payment of the cost for long-term care and monitoring pursuant to Criteria 9 and 10 of 10 C.F.R. Part 40, Appendix A.

(f) Applicants shall provide an executed original copy of each financial assurance instrument required by this Chapter for approval by the Department as appropriate.

(i) An applicant for a new license shall submit a certification that financial assurance for decommissioning has been provided in the amount required by this Chapter. An executed original copy of each financial assurance instrument required by this Chapter and approved by the Department shall be submitted to the Department sixty (60) days prior to the approval of the Permit to Mine and Source Material License.

Section 5. Acceptable Financial Assurance Methods.

(a) Refer to W.S. §§ 35-11-417 through 418 (2016) for acceptable financial instruments and assurances.

(b) Self-insurance, or any arrangement that essentially constitutes self-insurance (for example, a contract with a state or federal agency), including bonding pursuant W.S. § 35-11-417(d) (2016) will not satisfy the financial assurance requirements of these rules.

(c) The term of the financial assurance warranty shall automatically renew until termination of the license by the Department, unless it can be demonstrated that another arrangement would provide an acceptable level of assurance. The requirements for cancelation or substitution of the financial assurance warranty are outlined in W.S. §§ 35-11-420 and 35-11-421 (2016).

(d) The value of the financial assurance warranty shall not be dependent upon the success, profitability, or continued operation of the licensed operation.

Section 6. Periodic Review of Financial Assurances.

(a) As part of the annual report, a licensee shall provide to the Department written proof of the value of existing financial warranties and any licensee-proposed changes to the financial assurance warranties, including updated decommissioning plans, changes in cost estimates, or the changes to the type of warranty. The report shall describe any changes in operations, estimated costs, or any other circumstances that may affect the amount of required financial assurance warranties, including any increased cost attributable to inflation.

(b) Each financial assurance shall be subject to annual review, at a minimum, and approval by the Department to assure its continued adequacy of each warranty.

(c) With the approval of the Department, changes to the amount of a decommissioning financial assurance instrument may occur to account for increases or decreases in cost estimates resulting from inflation or deflation, changes in engineering plans, activities performed, or changes in any other condition affecting disposal, decontamination, and decommissioning costs.

(i) With the approval of the Department, reduction in the amount of decommissioning financial assurance instrument may occur as decommissioning activities are completed, in accordance with an approved decommissioning plan or to reflect current site conditions and license authorization.

(d) Appropriate and adequate decommissioning financial assurances shall be maintained in effect and in good standing by the licensee until termination of the license or as otherwise authorized by the Department, regardless of whether decommissioning is phased through the life of licensed operations or occurs at the end.

Section 7. Long-Term Care and Maintenance Financial Assurances.

(a) In addition to the decommissioning warranty required by this Chapter, the Department may require licensees to provide a long-term care warranty of the licensed facility if the facility will remain a disposal site for 11e.(2) byproduct material subsequent to the termination of the license, or the license will be terminated using the criteria in 10 C.F.R. §§ 20.1402, 20.1404, and 10 C.F.R., Part 40, Appendix A.

(i) The amount of funds to be provided by such long-term care warranties shall be based on approved cost estimates as determined by the Department, U.S. Department of Energy (DOE), and NRC, and shall be sufficient to cover the annual costs of site surveillance, including reasonable administrative costs incurred, subsequent to the termination of the license.

(ii) For each licensee going to long-term care, the long-term care warranty must have a minimum value equivalent to two hundred and fifty thousand dollars (\$250,000.00) in 1978 dollars.

(A) The value of the long-term care warranty shall be adjusted annually to recognize inflation.

(I) The inflation rate to be used for this adjustment is that indicated by the change in the Consumer Price Index for All Urban Consumers published by the U.S. Department of Labor, Bureau of Labor Statistics.

(II) The Licensee may use other reasonable resources to analyze the inflation rate provided the amount of long-term care warranty is acceptable to the Department.

(iii) Cost estimates for facilities and sites requiring long-term care subsequent to license termination are to be based on the final disposition of wastes such that ongoing active maintenance is not necessary to preserve isolation.

(A) It is expected that, as a minimum, annual site inspections shall be conducted to confirm the integrity of the stabilized waste systems and to determine the need, if any, for maintenance and/or monitoring.

(B) Cost estimates shall be adjusted if more frequent site inspections are required based on an evaluation of a particular site.

(iv) For sites decommissioned in accordance with 10 C.F.R. §§ 20.1403, 20.1404, and 10 C.F.R. Part 40, Appendix A. Cost estimates for long-term care subsequent to license termination must be sufficient to enable the Department or the DOE to:

(A) Perform periodic site inspections at least every five (5) years;

(B) Assure the continuation of institutional controls; and

(C) Assume responsibilities and carry out any necessary control and maintenance of the site. Cost estimates shall be adjusted to account for more frequent site inspections as required by the Department.

(v) Upon the determination by the Department that disposal, decommissioning, and decontamination requirements have been satisfied, the Department shall transfer the custody of the site and any funds for long-term care to the appropriate regulatory agency assuming long-term care and custody. Such funds include, but are not limited to, sums collected for long-term care and maintenance (i.e. continued site observation, monitoring, and necessary maintenance). Such funds do not include monies held as surety where no default has occurred and the required reclamation or other bonded activity has been performed.

(A) If the value of the long-term care warranty funds exceeds the amount required by the regulatory agency overseeing the long-term care of the site, then all such excess amounts shall be returned to the licensee.

Section 8. Financial Assurance Recordkeeping.

(a) Licensees shall keep records of financial assurances throughout the life of the license, including, but not limited to, records of the cost estimate performed for the decommissioning, the amount certified for decommissioning, and records of the funding method used for assuring funds.