

CHAPTER 14
FINANCIAL ASSURANCE REQUIREMENTS

Section 1. In General.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(xv) “Parent corporation” means a United States corporation that owns or controls the applicant.

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

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

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

(xix) “Tangible net worth” means net worth minus intangibles such as goodwill, patents or royalties.

Section 2. Requirements to Demonstrate Financial Assurance.

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

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

Section 3. Coverage.

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

(b) **Closure and Post-Closure Requirements:**

(i) **Notification:**

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

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

(ii) **Closure and Post-Closure Standards:**

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

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

(iii) **Inspection:**

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

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

(c) Corrective Action Requirements.

(i) Notification:

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

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

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

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

(A) Initiate immediate measures to:

(I) Prevent further release to the environment.

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

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

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

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

(II) A schedule for conducting the investigation.

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

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

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

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

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

(e) Cost Estimates:

(i) Cost Estimate for Facility Closure:

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

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

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

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

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

(ii) Cost Estimate for Facility Post-Closure:

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

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

- (I) The size and topography of the site.
- (II) The type and quantity of waste received.
- (III) Disposal method and sequential disposal plan.
- (IV) The potential for significant leachate production and the possibility of contaminating water supplies.
- (V) Environmental quality monitoring systems.
- (VI) Soil conditions.
- (VII) The location of the site and the character of the surrounding area.
- (VIII) A minimum of fifteen percent (15%) contingency fee to cover other post-closure costs as determined appropriate by the Department.
- (IX) Other site-specific factors.

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

(iii) Cost Estimate for Corrective Action:

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

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

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

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

(i) General:

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

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

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

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

- (A) Self-bond;
- (B) Surety bond;
- (C) Federally insured certificates of deposit;
- (D) Government-backed securities;
- (E) Cash.

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

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

Section 4. Forms of Financial Assurance.

(a) Self-Bonding:

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

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

(A) Identification of operator by:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(I) A statement that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Property that is already being used as collateral, or
2. Goods that the operator sells in the ordinary course of his business, or
3. Fixtures, or
4. Certificates of deposit that are not federally insured or where the depository is unacceptable to the Department.

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

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

1. In the case of a federal or state lease, a status report prepared by an attorney, satisfactory to the Department as disinterested and competent to so evaluate the asset, and an affidavit from the owner in fee establishing that the leasehold could be transferred upon default.
2. In the case of a fee simple interest, a title certificate or similar evidence of title and encumbrances prepared by an abstract office authorized to transact business within the State and satisfactory to the Department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) Renewal bonds:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(v) Requirements for forfeiture and release:

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

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

(b) Surety Bonds:

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

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

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

(C) The surety agrees:

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

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

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

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

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

(c) **Federally Insured Certificate of Deposit:** The Department 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. Such certificates of deposit shall be made payable to the Department both in writing and upon the records of the bank issuing these certificates. The Department shall require the banks issuing these certificates to waive all rights of setoff or liens against the certificates. The bond amount may be calculated to include any amount that would be deducted as a penalty for payment before maturity.

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

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

(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.

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