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CHAPTER 7

FINANCIAL ASSURANCE REQUIREMENTS

Section 1. In General.

(a) Chapter is promulgated pursuant to the Wyoming Environmental Quality Act (Act), specifically Wyoming Statute (W.S.) §§ 35-11-504 and -515.

(b) This Chapter 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:

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

(ii) Sanitary landfills regulated under Chapter 2 that ceased receipt of wastes before October 9, 1991;

(iii) Municipal solid waste landfills regulated under Chapter 2 of these rules that received waste after October 9, 1991, but ceased receipt of waste before October 9, 1993, and installed an approved final cover system before October 9, 1994;

(iv) Municipal solid waste landfills regulated under Chapter 2 of these rules that received waste after October 9, 1991, but ceased receipt of wastes before October 9, 1997, and installed an approved final cover system before October 9, 1998; and

(v) Mobile transfer, treatment and storage facilities regulated under Chapter 6 of these rules.

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

(d) Municipally-owned or operated solid waste landfills regulated under Chapter 2 of these rules shall demonstrate financial assurances for closure, post-closure, and corrective action by following either the requirements of Sections 2 through 14 of this Chapter or the requirements of Section 15 of this Chapter.

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

Section 2. Closure and Post-Closure Cost Estimates.

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

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

(b) The closure cost estimate shall:

(i) Include an itemized written estimate of the cost, in current dollars of completing all work described in the closure plan;

(ii) Be based on the cost required for a third-party contractor to complete the closure plan at the most expensive point in the life of the facility. The Director may obtain additional cost estimates from a third-party contractor to substantiate the accuracy of the estimated costs; and

(iii) Account for the following factors if applicable:

(A) The size and topography of the site;

(B) The daily or weekly volume of waste to be received at the site;

(C) Availability of cover and fill material needed for site grading;

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

(E) Disposal method and sequential disposal plan;

(F) The location of the site and the character of the surrounding area;

(G) Requirements for surface drainage;

(H) Operation and maintenance of the leachate collection and treatment system, and the off-site disposal of leachate;

(I) Environmental quality monitoring system;

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

(K) Site storage capacity for solid waste, incinerator residue and compost material;

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

(M) Vector control requirements;

- 93
- 94 (N) Cleaning of all solid waste management units and equipment;
- 95
- 96 (O) A minimum of fifteen percent variable contingency fee to cover
- 97 other closure costs as determined appropriate by the Director. and
- 98
- 99 (P) Any other relevant site-specific factors.
- 100
- 101 (c) The post-closure cost estimate shall:
- 102
- 103 (i) Include an itemized written estimate, in current dollars, of the cost of
- 104 completing all work described in the post-closure plan;
- 105
- 106 (ii) Be based on the cost required for a third-party contractor to complete the
- 107 work described in the post-closure plan. The Director may obtain additional cost estimates from
- 108 a third-party contractor to substantiate the accuracy of the estimated cost; and
- 109
- 110 (iii) Account for the following factors if applicable:
- 111
- 112 (A) The size and topography of the site;
- 113
- 114 (B) The type and quantity of waste received;
- 115
- 116 (C) Disposal method and sequential disposal plan;
- 117
- 118 (D) The potential for significant leachate production and the possibility
- 119 of contaminating water supplies;
- 120
- 121 (E) Environmental quality monitoring systems;
- 122
- 123 (F) Soil conditions;
- 124
- 125 (G) The location of the site and the character of the surrounding area;
- 126
- 127 (H) Planned inspections of facility;
- 128
- 129 (I) A minimum of fifteen percent contingency fee to cover other
- 130 post-closure costs as determined appropriate by the Director; and
- 131
- 132 (J) Any other relevant site-specific factors.
- 133
- 134 (d) Closure and post-closure cost estimates shall be updated, revised, and submitted
- 135 to the Director as specified in Section 13 of this Chapter.
- 136

137 **Section 3. Corrective Action Cost Estimates.**

138

139 (a) If a regulated facility violates a permit, standard, rule, or requirement established
140 under the Act, resulting in a release of pollution or waste to the air, land, or water resources of
141 the state, the Director shall:

- 142
- 143 (i) Notify the regulated facility of the violation; and
 - 144
 - 145 (ii) Order the regulated facility to take corrective action to remedy or abate the
146 violation and provide financial assurance as specified in this Section.
 - 147

148 (b) Within thirty days of receiving an order to take corrective action, the operator
149 shall provide notice of the selected correction action remedy and a corrective action cost estimate
150 to the Director.

- 151
- 152 (i) The corrective action cost estimate shall:
 - 153
 - 154 (A) Include an itemized written estimate of the cost, in current dollars,
155 of completing all work described for the selected corrective action remedy;
 - 156
 - 157 (B) Be based on the cost required for a third-party contractor to
158 complete the work described for the selected corrective action remedy. The Director may obtain
159 additional cost estimates from a third-party contractor to substantiate the accuracy of the
160 estimated costs; and
 - 161
 - 162 (C) Account for the following factors if applicable:
 - 163 (I) Soils, geologic and hydrogeologic conditions at the site;
 - 164
 - 165 (II) The type and quantity of waste received;
 - 166
 - 167 (III) Disposal method and sequential disposal plan;
 - 168
 - 169 (IV) The potential for significant leachate production and the
170 possibility of contaminating groundwater;
 - 171
 - 172 (V) Environmental quality monitoring systems;
 - 173
 - 174 (VI) The location of the site and the character of the surrounding
175 area;
 - 176
 - 177 (VII) A minimum of fifteen percent contingency fee to cover
178 other corrective action and cleanup costs as determined appropriate by the Director;
 - 179
 - 180 (VIII) The ability of the facility to prevent and detect a release
181 and to facilitate cleanup activities. The criteria used to evaluate this ability shall include design,
182 construction, operation, monitoring and contingency plans submitted as part of the permit
183 application;
 - 184

185
186 (IX) The class, use, value and environmental vulnerability of
187 surface and groundwater resources that may be impacted by a release; and

188
189 (X) Any other relevant site-specific factors.

190
191 (D) Be updated, revised, and submitted to the Director in accordance
192 with Section 13 of this Chapter.

193
194 **Section 4. Establishment of Financial Assurance Requirements.**

195
196 (a) The Director, through the Administrator, shall establish the amount of financial
197 assurance required for regulated facilities based on the cost estimates for closure, post-closure,
198 and corrective action.

199
200 (b) If the Administrator determines that a cost estimate meets the requirements of this
201 Chapter:

202
203 (i) The Administrator shall establish the amount of financial assurance
204 required and notify the operator in writing of the amount; and

205
206 (ii) Within thirty days of receiving notice from the Administrator, the operator
207 shall submit documentation of financial assurance, on forms furnished by the Director, in an
208 amount at least equal to the established financial assurance amount.

209
210 (c) If the Administrator determines that a cost estimate does not meet the
211 requirements of this Chapter, the Administrator shall notify the operator of the deficiencies in the
212 cost estimate, and the operator shall revise and resubmit the cost estimate to the Administrator
213 within thirty days of the Administrator's determination unless an alternate schedule is approved
214 by the Administrator for good cause.

215
216 **Section 5. Acceptable Forms of Financial Assurance.**

217
218 An operator of a regulated facility shall provide financial assurance for closure, post-
219 closure, or corrective action in one or more of the following forms: surety bond, self-bond,
220 federally insured certificates of deposit, cash, government securities, or irrevocable letters of
221 credit.

222
223 **Section 6. Surety Bonds.**

224
225 Surety bonds shall comply with the following requirements:

226
227 (a) A corporate surety company shall not be considered good and sufficient for
228 purposes of W.S. § 35-11-504 unless:

229
230 (i) The company is licensed to do business in the state;

- 231
- 232 (ii) The bond is made payable to the Department;
- 233
- 234 (iii) The estimated bond amount does not exceed the limit of risk as provided
- 235 for in W.S. § 26-5-110, nor raise the total of all bonds held by the applicant under that surety
- 236 above three times the limit of risk; and
- 237
- 238 (iv) The surety company agrees to the following:
- 239
- 240 (A) Not to cancel the bond, except as provided for in W.S. § 35-11-504
- 241 or where the Director gives prior written approval of a replacement bond or financial assurance;
- 242
- 243 (B) To be jointly and severally liable with the operator; and
- 244
- 245 (C) To provide immediate written notice to the Director and operator
- 246 once it becomes unable or may become unable due to any action filed against it to fulfill its
- 247 obligations under the bond.
- 248
- 249 (b) The provisions applicable to cancellation of the surety's license in W.S. §
- 250 35-11-504 shall also apply if for any other reason the surety becomes unable to fulfill its
- 251 obligations under the bond. Failure to comply with this provision shall result in suspension of the
- 252 permit. Upon such occurrence it is the operator's responsibility to provide a substitution of
- 253 financial assurance.

254

255 **Section 7. Self-bonds.**

256 Self-bonding shall comply with the following requirements:

- 257
- 258
- 259 (a) An initial application to self-bond shall contain:
- 260
- 261 (i) Identification of operator:
- 262
- 263 (A) For corporations, name, address, telephone number, state of
- 264 incorporation, principal place of business and name, title and authority of person signing
- 265 application, a corporate resolution authorizing the application, and statement of authority to do
- 266 business in the State of Wyoming, or
- 267
- 268 (B) For all other forms of business enterprises, name, address and
- 269 telephone number and statement of how the enterprise is organized, law of the State under which
- 270 it is formed, place of business, and relationship and authority of the person signing the
- 271 application.
- 272
- 273 (ii) Amount of self-bond proposed. The proposed self-bond maximum amount
- 274 shall not exceed seventy-five percent of the required bond amount.
- 275
- 276 (iii) Type of operation and anticipated dates performance is to be commenced

277 and completed.

278

279 (iv) Brief chronological history of business operations that illustrates a
280 continuous operation for five years immediately preceding the time of application. The Director
281 may allow a joint venture or syndicate with less than five years of continuous operation to
282 qualify under this requirement, if each member of the joint venture or syndicate has been in
283 continuous operation for at least five years immediately preceding the time of application.

284

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

288

289 (vi) Financial information in sufficient detail to show that the operator and
290 ultimate parent guarantor meets one of the following criteria:

291

292 (A) Have a rating for all bond issuance actions and long term credit
293 rating within the current year of "Aa3" or higher as issued by either Moody's Investor Service,
294 "AA-" or higher as issued by Standard and Poor's Corporation or "AA-" or higher as issued by
295 Fitch Ratings. The operator is eligible for a maximum of seventy-five percent of the approved
296 cost estimate. The self-bond must accompany another acceptable financial assurance instrument
297 for the remaining twenty-five percent of the approved cost estimate;

298

299 (B) Have a rating for all bond issuance actions and long-term credit
300 rating within the current year of "A2" or higher as issued by Moody's Investor Service, "A" or
301 higher as issued by Standard and Poor's Corporation or "A" or higher as issued by Fitch Ratings.
302 The operator is eligible for a maximum of seventy percent of the approved cost estimate. The
303 self-bond must accompany another acceptable financial assurance instrument for the remaining
304 thirty percent of the approved cost estimate; or

305

306 (C) Have a rating for all bond issuance actions and long-term credit
307 rating within the current year of "Baa2/A-" or higher as issued by Moody's Investor Service,
308 "BBB/A-" or higher as issued by Standard and Poor's Corporation or "BBB/A-" or higher as
309 issued by Fitch Ratings. The operator is eligible for a maximum of fifty percent of the approved
310 cost estimate. The self-bond must accompany another acceptable financial assurance instrument
311 for the remaining fifty percent of the approved cost estimate.

312

313 (D) In the event of a split rating, the Director has the discretion to
314 determine which rating will be accepted and applied to (A), (B), or (C) of this subsection.

315

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

322

323 (viii) A statement identifying by name, address, and telephone number:

324

325 (A) A registered office which may be but need not be, the same as the
326 operator's place of business;

327

328 (B) A registered agent, which agent must be either an individual
329 resident in this State, whose business office is identical with such registered office, or a domestic
330 corporation authorized to transact business in the State, having a business office identical with
331 such registered office. The registered agent so appointed by the operator shall be an agent to
332 such operator upon whom any process, notice or demand required or permitted by law to be
333 served upon the operator may be served;

334

335 (ix) An acknowledgement that:

336

337 (A) If the operator fails to appoint or maintain a registered agent in this
338 state, or whenever any such registered agent cannot be reasonably found at the registered office,
339 then the Director shall be an agent for such operator upon whom any process, notice or demand
340 may be served for the purpose of this Chapter. In the event of any such process, the Director
341 shall immediately cause one copy of such process, notice or demand to be forwarded, by
342 certified mail, to the operator at his principle place of business. The Director shall keep a record
343 of all processes, notices, or demands served upon him or her under this paragraph, and shall
344 record therein the time of such service and his or her action with reference thereto.

345

346 (B) Should the operator change the registered office or registered
347 agent, or both, a statement indicating such change shall be filed immediately with the Solid and
348 Hazardous Waste Division and the Director.

349

350 (C) Nothing herein contained shall limit or affect the right to serve any
351 process, notice or demand required or permitted by law to be served upon an operator in any
352 other manner now or hereafter permitted by law.

353

354 (x) The Director may accept a written guarantee for an operator's self-bond
355 from an ultimate parent guarantor, if the guarantor satisfies the financial criteria of this Chapter
356 as if it were the operator. Such a written guarantee may be accepted by the Administrator and
357 shall be referred to as an "ultimate parent guarantee." The terms of the ultimate parent guarantee
358 shall provide for the following:

359

360 (A) If the operator fails to complete closure, post-closure, or corrective
361 action the ultimate parent guarantor shall do so or the ultimate parent guarantor shall be liable
362 under the indemnity agreement to provide funds to the State sufficient to complete the closure,
363 post-closure, or corrective action plans, but not to exceed the actual costs of closure, post-
364 closure, or corrective action; and

365

366 (B) The ultimate parent guarantee shall remain in force unless the
367 ultimate parent guarantor sends notice of cancellation by certified mail to the operator and to the
368 Director at least ninety days in advance of the cancellation date, and the Director accepts the

369 cancellation. The cancellation shall be accepted by the Director if the operator obtains a suitable
370 replacement bond before the cancellation date, if the lands for which the self-bond, or portion
371 thereof, was accepted have not been disturbed, or if the lands have been released under W.S. §
372 35-11-504.

373
374 (xi) For the Director to accept a regulated facility operator's self-bond, the total
375 amount of the outstanding and proposed self-bond of the operator shall not exceed twenty-five
376 percent of the operator's tangible net worth in the United States. For the Director to accept a
377 corporate guarantee, the total amount of the ultimate parent guarantor's present and proposed
378 self-bonds and guaranteed self-bonds shall not exceed twenty-five percent of the guarantor's
379 tangible net worth in the United States.

380
381 (b) Approval or denial of operator's self-bond application:

382
383 (i) The Director, within sixty days of the operator's submission of all
384 materials necessary to base a decision on the application shall:

385
386 (A) Approve or reject such application and declare in writing its
387 reasons for such action to the operator or his registered agent.

388
389 (B) If a rejection is based on inadequate information or failure of the
390 operator to supply all necessary material, the Director shall allow the operator thirty days to
391 remedy the deficiencies. Such corrections shall be made to the satisfaction of the Director. The
392 Director shall have an additional sixty days to approve or reject the corrected application.

393
394 (c) If the Director accepts the operator's self-bond, an indemnity agreement shall be
395 submitted subject to the following requirements:

396
397 (i) The indemnity agreement shall be executed by all persons and parties who
398 are to be bound by it, including the ultimate parent entity guarantor, and shall bind each jointly
399 and severally.

400
401 (ii) Corporations applying for a self-bond or ultimate parent corporations
402 guaranteeing an operator's self-bond shall submit an indemnity agreement signed by two
403 corporate officers who are authorized to bind their corporations. A copy of such authorization
404 shall be provided to the Director along with an affidavit certifying that such an agreement is
405 valid under all applicable Federal and State laws. In addition, all corporate guarantors shall
406 provide a copy of the corporate authorization demonstrating that the corporation may guarantee
407 the self-bond and execute the indemnity agreement.

408
409 (iii) If the applicant is a partnership, joint venture or syndicate, the agreement
410 shall bind each partner or party who has a beneficial interest directly or indirectly, in the
411 operator.

412
413 (iv) The indemnity agreement shall provide that the persons or parties bound
414 shall pay all litigation costs incurred by the State in any successful effort to enforce the

415 agreement against the operator.

416

417 (d) Self-Bond Renewal:

418

419 (i) Any operator seeking to renew a self-bond shall provide, along with the
420 annual report:

421

422 (A) Amount of bond required, which shall be determined in accordance
423 with W.S. § 35-11-504 and Section 4 of this Chapter, and the amount proposed to be covered by
424 a self-bond renewal; and

425

426 (B) Financial information in sufficient detail to show that the operator
427 and ultimate parent guarantor still meets one of the criteria in Section 7(a)(vi), and the limitation
428 in Section 7(a)(xi). The operator and ultimate parent guarantor shall submit the full report from
429 the credit reporting agency or agencies supporting its rating for the current year. Additional
430 information may be requested by the Director when a split rating occurs.

431

432 (ii) A self-bond may be renewed so long as the above listed information
433 demonstrates that all parties remain qualified under Section 7(a) of this Chapter and there is a
434 minimum five-year life of operation remaining.

435

436 (e) Self-Bond Substitution:

437

438 (i) The Director may require the operator to substitute a good and sufficient
439 bond instrument if the Director determines in writing that the self-bond of the operator fails to
440 provide the protection consistent with the objectives and purposes of the Act. The Director shall
441 require full or partial substitution if the financial information submitted under Section
442 7(a)(xiv)(A)(II) indicates that the operator or ultimate parent guarantor no longer qualifies under
443 the self-bonding program. Substitution of an alternate bond shall be made within thirty days.
444 The operator may also request substitution. This request is contingent upon the operator meeting
445 all the requirements of the bond provisions in this Chapter. If these requirements are met, the
446 Director shall accept substitution.

447

448 (ii) If the operator fails within thirty days to make a substitution for the
449 revoked self-bond with a corporate surety, cash, governmental securities, or federally insured
450 certificates of deposit, or irrevocable letters of credit in accordance with the bonding provisions
451 of W.S. § 35-11-504 and this Chapter, the Director shall suspend or revoke the facility's permit
452 until such substitution is made.

453

454 (f) Reporting requirements:

455

456 (i) If a devaluation in the credit rating occurs, the operator shall notify the
457 Director within thirty days of the change and provide a copy of the rating report to the Director.

458

459 (ii) If the operator or ultimate parent guarantor receives any new notice from
460 the Securities and Exchange Commission or any party initiates proceedings against the operator

461 or ultimate parent guarantor alleging a failure to comply with any public disclosure or reporting
462 requirements under the securities laws of the United States, the operator shall notify the Director
463 within thirty days and shall include a summary of the allegations, including the date, the
464 requirement alleged to be violated, the party making the allegation, and the disposition or current
465 status thereof.

466
467 **Section 8. Federally Insured Certificate of Deposit.**

468
469 The Director shall not accept certificate of deposit in an amount in excess of the
470 maximum insurable amount as determined by the Federal Deposit Insurance Corporation. The
471 certificate must be payable solely to the Wyoming Department of Environmental Quality. The
472 Director shall require the banks issuing these certificates to waive all rights of set off or liens
473 against the certificates. The financial assurance amount may be calculated to include any
474 amount that would be deducted as a penalty for payment before maturity.

475
476 **Section 9. Cash.**

477
478 The operator or its principal may submit a check payable to the Wyoming Department of
479 Environmental Quality.

480
481 **Section 10. Government Securities.**

482
483 (a) Government securities shall be endorsed to the order of the Department, placed in
484 the possession of the Department, and backed by the full faith and credit of the United States.

485
486 (b) Possession of government securities may be in the form of the cash value of an
487 irrevocable trust for the full amount of the closure, post-closure, or corrective action obligation,
488 payable to the Department. An irrevocable trust shall conform to the requirements below:

489
490 (i) The Wyoming Department of Environmental Quality Irrevocable Trust
491 Form shall be signed by the operator or guarantor as principal and the financial institution as
492 Trustee;

493
494 (ii) The Trustee must be a bank organized to do business in the United States
495 and have the authority to act as a trustee whose trust operations are regulated and examined by a
496 Federal or State Agency;

497
498 (iii) The irrevocable trust must be funded for the full amount of the closure,
499 post-closure, or corrective action obligation, except for the amount reduced by other approved
500 bond instruments or financial assurances;

501
502 (iv) Cancellation of an irrevocable trust shall follow the procedures detailed in
503 W.S. § 35-11-504(f); and

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

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Section 11. Irrevocable Letters of Credit.

Irrevocable letters of credit shall comply with the following requirements:

- (a) The letter must be payable to the Department in part or in full upon demand and receipt from the Director of a notice of forfeiture issued in accordance with W.S. § 35-11-504(h);
- (b) The letter shall not be in excess of ten percent of the issuing or supporting bank’s capital surplus account as shown on a balance sheet certified by a certified public accountant;
- (c) The Director shall not accept standby letters of credit;
- (d) The Director shall not accept letters of credit from a bank for any person, on all permits held by that person, in excess of the limitation imposed by W.S. § 13-3-402; and
- (e) The letter of credit shall provide that:
 - (i) The bank will give prompt notice to the operator and the Director of any notice received or action filed alleging the insolvency or bankruptcy of the bank, or alleging any violations of regulatory requirements that could result in suspension or revocation of the bank’s charter or license to do business;
 - (ii) In the event the bank becomes unable to fulfill its obligations under the letter of credit for any reason, notice shall be given immediately to the operator and the Director; and
 - (iii) Upon the incapacity of a bank by reason of bankruptcy, insolvency, or suspension or revocation of its charter or license, the permittee shall be deemed to be without financial assurance in violation of the Act. The Director shall issue a notice of violation against any operator who is without bond coverage, specifying a reasonable period to replace bond coverage, not to exceed ninety days. During this period the Director or their designated representative shall conduct weekly inspections to ensure continuing compliance with other permit requirements, these rules and the Act. If the notice is not abated in accordance with the schedule, a cessation order shall be issued.
 - (iv) The irrevocable letter of credit may be cancelled by the issuer only after ninety-days’ notice to the Director, and upon receipt of the Director’s written consent, which may be granted only when an alternative financial assurance substitution has been approved.
- (f) The letter may only be issued by a bank organized to do business in the U.S. that identifies by name, address, and telephone number an agent upon whom any process, notice or demand required or permitted by law to be served upon the bank may be served.
 - (i) If the bank fails to appoint or maintain an agent in this State, or whenever any such agent cannot be reasonably found, then the Director shall be an agent for such bank

553 upon whom any process, notice or demand may be served for the purpose of this Chapter. In the
554 event of any such process, the Director shall immediately cause one copy of such process, notice
555 or demand to be forwarded by registered mail to the bank at its principal place of business. The
556 Director shall keep a record of all processes, notices, or demands served upon them under this
557 paragraph, and shall record therein the time of such service and their action with reference
558 thereto.

559
560 (ii) Nothing herein contained shall limit or affect the right to serve any
561 process, notice or demand required or permitted by law to be served upon the bank in any other
562 manner now or hereafter permitted by law.

563
564 **Section 12. Release of Financial Assurance.**

565
566 (a) The Director shall release the closure or post-closure portion of the bond or
567 financial assurance instrument when closure or post-closure activities have been successfully
568 completed. The operator shall notify the Administrator upon completion of activities specified in
569 the closure or post-closure plan. The Administrator shall inspect the facility and provide written
570 inspection results to the operator. Release of the closure or post-closure portion of a bond or
571 financial assurance does not relieve the operator of their responsibility for corrective action to
572 prevent or abate violations caused by the regulated facility that are subsequently discovered, or
573 relieve the operator of their responsibility to meet closure or post-closure standards.

574
575 (b) The Director shall release the corrective action portion of the bond or financial
576 assurance instrument when a violation has been remedied or the damage abated. The operator
577 shall notify the Administrator upon completion of activities specified in the corrective action
578 plan. The Administrator shall inspect the facility and provide written inspection results to the
579 operator. Release of the corrective action portion of a bond or financial assurance does not
580 relieve the operator of their responsibility for further corrective action to prevent or abate
581 violations caused by the regulated facility that are subsequently discovered, or relieve the
582 operator of their responsibility to meet closure or post-closure standards.

583
584 **Section 13. Recalculation of Financial Assurance.**

585
586 (a) Financial assurance cost estimates for closure, post-closure, and corrective action
587 shall be recalculated annually, within thirty days after the permit issuance anniversary date, and
588 account for inflation.

589
590 (b) In addition to annual recalculations, the owner or operator shall revise the cost
591 estimate whenever a change in the approved permit increases the cost of closure, post-closure, or
592 corrective action.

593
594 **Section 14. Forfeiture of Financial Assurance.**

595
596 Bond or other financial assurance forfeiture proceedings shall occur in accordance with
597 W.S. § 35-11-504(h), (j), and (k).

598

599 **Section 15. Closure and Post-Closure Account for Municipally-Owned Solid**
600 **Waste Disposal Facilities.**

601
602 (a) This section is applicable to municipally-owned or operated solid waste landfills
603 regulated under Chapter 2 of these rules electing to participate in the state guarantee trust
604 account provided under W.S. § 35-11-515. Such facilities shall be known as participating
605 facilities.

606
607 (b) Each facility participating in the account shall, upon their initial election to
608 participate and every four years thereafter:

609
610 (i) Either prepare a closure and post-closure plan complying with Chapter 2
611 of these rules, and prepare a closure and post-closure cost estimate complying with Section 2 of
612 this Chapter, or calculate the facility closure and post-closure costs using a standard cost estimate
613 prepared by the Director;

614
615 (ii) Calculate the remaining usable disposal capacity of the facility, expressed
616 as years, using information from the facility permit application; and

617
618 (iii) Calculate the annual amount to be paid to the account using the following
619 procedure:

620
621 (A) Calculate three percent of the sum of closure and post-closure costs
622 using the following formula:

623
624 Three percent of the sum of closure and post-closure costs = $(0.03(\text{Closure cost} -$
625 the operator's accumulated net assets earmarked for payment of the operator's
626 closure costs)) + $(0.03(\text{Post-closure cost} - \text{the operator's accumulated net assets}$
627 earmarked for payment of the operator's post-closure costs))

628
629 (I) The facility owner or operator shall account for closure and
630 post-closure liabilities and costs in accordance with generally accepted accounting principles as
631 provided by W.S. § 16-4-121(c) and certify to the earmarking of the accumulated net assets,
632 subject to audit.

633
634 (B) Calculate the balance due to the account by deducting the total of
635 previous payments to the account from three percent of the sum of closure and post-closure costs
636 using the following formula:

637
638 Balance due = three percent of the sum of closure and post-closure costs – the total
639 of previous payments to the account

640
641 (C) Calculate annual payments to the account by dividing the balance
642 due by the years of remaining disposal capacity using the following formula:

643
644 Annual payment = Balance due / years of remaining disposal capacity in disturbed

645 areas

646

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

649

650 (d) A refund of the closure guarantee costs shall follow procedures outlined in W.S. §
651 35-11-515(g) and (j).

652

653 (e) A refund of the post-closure guarantee costs shall follow procedures outlined in
654 W.S. § 35-11-515(h) and (j).

655

656 (f) The facility owner may elect to withdraw from participation in the account and
657 shall notify the Director of said intent prior to the financial assurance compliance date. Upon
658 withdrawal from participation, or upon completing closure or post-closure requirements, the
659 owner may apply to the Director for a refund of the annual fees paid to the account. The Director
660 shall, approve a refund from the account equal to ninety percent of the total amount paid by the
661 owner, less any expenditures from the account made on behalf of the participating facility under
662 W.S. § 35-11-515(k) that have not been recovered under W.S. § 35-11-515(m). Prior to the
663 Director approving a refund for a withdrawing facility, the facility owner shall demonstrate
664 compliance with the financial assurance requirements of this Chapter.

665

666 (g) An owner may elect to participate in the account for purposes of demonstrating
667 compliance only with the closure cost financial assurance requirement, only with the post-
668 closure cost financial assurance requirement, or both. Any owner electing to participate in the
669 account only for the purposes of satisfying the closure or post-closure cost financial assurance
670 requirement shall use another financial assurance mechanism to complete his or her obligation to
671 demonstrate adequate financial assurance for both closure and post-closure costs.

672

673 (h) The Director may authorize expenditures from the account if the facility owner,
674 after receiving a notice of violation and order directing the performance of closure or post-
675 closure obligation under this Chapter or Chapter 2 of these rules, has failed to adequately
676 perform such obligation. The Director shall provide in any such order that failure to perform the
677 closure or post-closure obligation will result in the Director's authorizing an expenditure from
678 the account. The amount to be expended shall be specified by the Director in the order. The
679 availability of an opportunity to appeal the order under W.S. § 35-11-701(c) shall be considered
680 the owner's opportunity to appeal the amount to be expended, under W.S. § 35-11-515(k).