ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264 and 265

[FRL 1459-7]

Financial Requirements for Owners and Operators of Hazardous Waste Management Facilities

AGENCY: Environmental Protection Agency.

ACTION: Revision of Proposed Rule.

SUMMARY: This proposal is a revision of regulations proposed on December 18, 1978 (43 FR 58995, 59006-7). Under the revised proposal, as in the original, an owner or operator of each hazardous waste management facility would have to provide assurance that funds will be available when needed for properly closing the facility and, in the case of a disposal facility, for maintaining and monitoring it after closure. The revised proposal, however, allows a number of options in providing such assurances, while the original proposal had only one option, trust funds. The revised provisions for financial assurance are proposed for inclusion both in the general standards to be used in permitting (Part 264) and in standards for facilities in interim status (Part 265).

The revised proposal also includes a new requirement for liability insurance for facilities in interim status. The liability requirements in the original proposal were only for inclusion in the general standards. These general standards have not been revised, but the comment period for them is reopened.

EPA is reproposing this rule because of the many new and revised provisions which have not been subjected to public review. The changes have resulted from reanalyses by the Agency in response to public comment on the original proposal.

DATES: Comments are due on or before July 18, 1980. A public hearing will be held July 1, 1980 from 9 a.m. to 5 p.m.

ADDRESSES: Comments should be addressed to Deborah Villari, Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 755-9173. Comments should identify the regulatory docket as follows: "Section 3004, Financial Requirements."

The official record for this rulemaking is available at: Room 2711, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, and is available for viewing from 9 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

A public hearing will be held at the HEW North Building Auditorium, 330 Independence Avenue SW., Washington, D.C., on July 1, 1980, from 9 a.m. to 5 p.m., with registration from 8:30 to 9 a.m. Anyone wishing to make a statement at the hearing should notify, in writing: Ms. Geraldine Wyer, Public Participation Officer, Office of Solid Waste (WH-562), U.S. E.P.A., 401 M Street SW., Washington, D.C. 20460.

Oral and written comments may be submitted at the public hearing. Persons who wish to make oral presentations must restrict their presentations to 10 minutes and are encouraged to have written copies of their complete comments for inclusion in the official record.

FOR FURTHER INFORMATION CONTACT: George A. Garland, Chief, Economic and Policy Analysis Branch, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 755-9190.

For information about the liability requirements, contact Hugh Holman, Economic Analysis Division, Office of Planning and Evaluation (PM-220), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460 (202) 755-2677.

SUPPLEMENTARY INFORMATION:

Authority

This regulation is proposed under the authority of Section 1006, 2002(a), and 3004, of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 USC §§ 6905, 6912(a), and 6924.

Background

Section 3004(6) of the Resource Conservation and Recovery Act of 1976 specifically requires EPA to establish financial responsibility standards applicable to owners and operators of hazardous waste management facilities as such standards may be necessary or desirable to protect human health and the environment. EPA proposed, on December 18, 1978 (43 FR 58995, 59006-7), financial requirements intended to provide: (1) assurance that funds will be available when needed to close hazardous waste management facilities properly and to monitor and maintain hazardous waste disposal facilities after closure; and (2) liability coverage for injuries to people and property which result from the operation of hazardous waste management facilities.

The need for requirements for financial assurance of closure and post-closure care is indicated by the numerous instances of environmental damage resulting from abandonment of facilities and other failure to provide for closure and post-closure care in a timely manner. (Several such cases are described in the Background Document for the financial requirements.) The likelihood of failure to provide adequately for closure and post-closure care is increased by the fact that the costs occur when the economic value of the facility is diminished or nonexistent. For some disposal facilities, post-closure care must extend for decades beyond the operating life of the facility. EPA believes that significant numbers of owners and operators may lack the ability to provide effectively for closure and post-closure costs unless they make provision for them during the active operating life of the facility.

The Agency believes liability requirements are necessary because of the potential for damage to people and property from hazardous waste management operations, as indicated by actual damage cases and the essential nature of hazardous wastes. If the facility owner or operator has insufficient financial resources to pay for damages, private parties or government may be forced to bear the costs.

The basic purposes of the financial requirements have not changed since the original proposal, but the provisions for achieving these purposes have been expanded and altered as a result of reanalyses following public comment on the original proposal. As explained in greater detail below, the revised proposal would allow owners and operators to choose from a number of mechanisms in providing financial assurance for closure and post-closure care, including trust funds, surety bonds, letters of credit, guaranties, a financial test, and a revenue test for municipalities. The provisions for the one option that was available in the original proposal, the trust fund, have been restructured to be less burdensome to owners and operators. Standard forms for the financial instruments have been added to the proposal.

The revised requirements for financial assurance for closure and post-closure care are proposed for inclusion in both the general standards to be used in the permitting of hazardous waste management facilities (40 CFR Part 264) and the interim status standards (Part 265). The headings and citations are numbered for inclusion in Part 265 since the regulations on closure, post-closure care, cost-estimating, and applicability to which the proposed regulations must refer have been promulgated only for Part 265 (and appear in today's Federal Register). For inclusion in Part 264, these citations would be changed and other

minor modifications would be made, e.g., the requirement that the assurance mechanisms be established by the effective date of the regulations would be dropped since the general standards must be applicable to new facilities seeking a permit after the effective date.

The revised proposal also adds a liability insurance requirement for facilities in interim status. The insurance would cover damage claims resulting from sudden accidents. The general status liability requirements in the original proposal, covering both sudden and nonsudden events, are not part of the reproposal, but the public comment period for them is reopened, to run concurrently with the comment period for the reproposal.

Other portions of the original proposal not included in the reproposal are: (1) the requirements for estimating the costs of closure and post-closure care, which, with an "Applicability" section, are promulgated in today's Federal Register; (2) the transfer of ownership provisions, which are dropped from these requirements since this topic is more appropriately covered by the Consolidated Permit Regulations, 40 CFR Part 122, Subparts A and B, which are promulgated today; and (3) the access and default provisions, which are dropped since Sections 3007 and 3008 of RCRA contain access and enforcement provisions that apply to all regulations under Subtitle C of RCRA, and the Agency has decided that special provisions for financial responsibility requirements would be inappropriate.

Applicability

The applicability of the financial requirements for hazardous waste facility owners and operators is set forth in 40 CFR 265.140, which is promulgated today. The proposed regulation, as revised, includes amendments to § 265.140 to cover applicability of the proposed financial requirements. Essentially, the financial requirements for closure and the liability requirements would apply to owners and operators of all hazardous waste facilities, and the requirements for post-closure care would apply only to owners and operators of disposal facilities. States and the Federal government are exempt from the financial requirements.

Financial Assurance for Closure

Under Subpart G of the Part 265 regulations promulgated today, an owner or operator of each hazardous waste facility must prepare a closure plan for the facility. The owner or operator must also prepare a cost estimate for closure of his facility at the point in the facility's operating life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan; he must adjust the estimate for inflation annually and prepare a new estimate whenever a change in the closure plan affects the cost of closure (see § 265.142).

The originally proposed interim status standard for financial assurance for closure required that the owner or operator make a cash deposit for the entire amount of the closure cost estimate into a closure trust fund on the effective date of the regulations; the general standard required an owner or operator to make a cash deposit equal to the cost estimate for closure, multiplied by the appropriate "present value factor," into a closure trust fund as a condition of receiving a permit. The present value factor accounted for growth of the fund over operating life at a 2 percent per annum real interest rate (interest minus inflation). A number of commenters said that owners and operators of many facilities could not afford to comply with these requirements. They suggested that many facilities would have to close, exacerbating the expected shortfall in hazardous waste management capacity. The Agency believes that depositing the full amount of the closure cost in the trust at the beginning may cause insolvency in a few cases representing a relatively small percentage of capacity. However, not being willing to risk aggravating a possible capacity shortfall, EPA proposes to allow the closure trust fund to build up over the expected life of the site or 20 years, whichever period is shorter. The revised proposed requirements for the trust fund include provisions for adjusting the annual payments in response to inflation, changes in the closure cost estimate, and changes in the value of securities in the fund.

As noted above, the originally proposed general standard for the trust fund allowed adjustment of the lump-sum amount to be deposited on the basis that the fund would earn a real interest rate of 2 percent. Some commenters felt that this rate was too low, while others felt it was too high. EPA agrees that a 2 percent real interest rate is too high. Provisions of the revised proposal are based on a zero real interest rate to adequately account for the effects of long-term inflation and trustee fees. Based on long-term data, the Agency believes that over an extended period, the purchasing power of the deposited funds is likely to be static, i.e., the nominal interest realized will be cancelled out by inflation and by trustee fees.

The original proposal did not allow reimbursement of the owner or operator for closure expenses from the trust fund until closure was completed to the satisfaction of the Regional Administrator. Commenters stated that this provision imposed hardship on owners and operators since they would have to pay out twice for closure before being reimbursed. The Agency agrees that it would be preferable to reimburse owners and operators as closure is accomplished. Under the revised proposal the owner or operator would be reimbursed for closure bills submitted before closure was completed if the Regional Administrator found them to be in accordance with the closure plan and if the amount remaining in the trust fund after such payment would be at least 20 percent of the amount in the fund when closure began. The 20 percent remaining would provide reasonable financial assurance for closure activities that may be found to be necessary after the owner or operator and an independent registered professional engineer have certified that closure was completed in accordance with the closure plan. The Regional Administrator must release all funds within 30 days of receiving such certifications unless he has reason to believe closure was not done according to the closure plan.

EPA received numerous comments, especially from industry, suggesting that other financial assurance mechanisms in addition to the trust should be allowed. Commenters stated that allowing only trust funds is unnecessary and financially burdensome. The Agency now proposes to allow a number of mechanisms including surety bonds, letters of credit, guaranties, and tests of financial strength, as well as trust funds.

EPA's major concern with respect to surety bonds has been that they could be quickly cancelled and thus did not assure coverage of closure. As the Agency has gone through the process of revising its proposed regulations, however, it has learned that cancellation provisions that assure coverage of closure may be obtainable by the regulated community. The surety bond provisions in the reproposal include two cancellation clauses. First, the owner or operator and EPA must receive 90 days' notice of cancellation from the surety company; during this time, if the owner or operator is unable to establish other financial assurance, the Agency may order closure. A second clause requires that the bond must remain in effect until completion of closure once closure begins or is ordered to begin by the Regional Administrator.

EPA believes that these provisions would make the surety bond an acceptable alternative mechanism.

A bank letter of credit assures that a bank will make available a specific sum of money over a specific time period on behalf of its customer to the party (beneficiary) in whose favor the letter is written. The beneficiary can draw on the credit by presenting documents specified in the letter. Under the proposed regulation, a letter of credit, payable to the Regional Administrator, would be obtained by a facility owner or operator in the amount of the closure cost estimate. The letter of credit would contain an automatic one-year extension clause; if the bank decides not to renew the credit, it must give 60 days' notice to the Regional Administrator and the owner or operator. If the owner or operator fails to establish other financial assurance during this period, or if the owner or operator fails to carry out closure in accordance with the closure plan, the Regional Administrator could draw on the credit; the funds would go into an escrow account from which closure bills would be paid.

The revised proposal includes a financial test consisting of criteria for net worth, net working capital, and level of indebtedness. By meeting these criteria, firms could satisfy the requirement for financial assurance for closure. The purpose of the test is not to predict whether a firm will go bankrupt but rather to indicate whether it will have adequate funds to establish a trust fund or other allowable instrument to provide financial assurance for closure if its financial position deteriorates beyond the acceptable levels.

Under the proposed regulation an entity meeting the financial test may guarantee another entity's compliance with the closure regulations, and this guarantee would qualify as financial assurance for closure.

For reasons explained in the preamble to 40 CFR Parts 264 and 265, facilities owned or operated by States or the Federal government are exempt from financial requirements under § 265.140(c). Since local governments can, and sometimes do, become insolvent, however, the Agency has included a simple revenue test for municipalities in the reproposed regulation.

For added flexibility, the revised proposal explicitly allows an owner or operator to combine instruments (e.g., coverage of half the closure cost estimate by a trust fund, half by a letter of credit), cover more than one facility with a single mechanism, or cover both closure and post-closure care with a single mechanism.

Under the originally proposed interim status standards, the Regional Administrator could allow partial compliance with the financial assurance requirements if full compliance would render the owner or operator insolvent. This provision is not included in the revised proposal since it could work against the main function of the requirements as minimum standards for financial responsibility on the part of owners and operators. It would also impose a severe administrative burden on the Agency, since the financial status of owners and operators applying for such relief would have to be evaluated. Furthermore, EPA believes that by changing the trust fund to make it a less costly mechanism, and by providing for other financial mechanisms which, for many owners and operators, may be considerably cheaper to use than the trust fund, any need for such a provision is substantially reduced.

Financial Assurance for Post-Closure Care

Subpart G of the Part 265 regulations promulgated today requires that an owner or operator of each hazardous waste disposal facility prepare a plan for 30 years of post-closure care. The owner or operator must prepare, and keep current, a cost estimate for 30 years of post-closure care of the facility (see § 265.144).

The original proposed regulation for financial assurance for post-closure care required establishment of a trust fund built up over the life of the facility. Assurance of post-closure care for 20 years was required since the basic period of post-closure care under the proposed post-closure regulations was 20 years. Again, a 2 percent real interest rate was assumed in directing the calculation of the amount to be paid in. The issues and comments received on the post-closure trust fund requirements were very similar to those received on the closure trust requirements. The Agency's response in the revised proposal is very much the same, and thus the post-closure trust provisions are quite similar to those of the closure trust provisions as revised. The owner or operator would be reimbursed for post-closure costs if they are in accordance with the post-closure plan. At the end of 30 years of post-closure care (or earlier if the Regional Administrator reduces the post-closure care period required of the facility), any funds remaining in the trust would be returned to the owner or operator.

In the revised proposal surety bonds and letters of credit have been added as acceptable financial instruments for assuring post-closure care. These may be written so that they assure lump-sum post-closure funds at closure, or they may assure that the funds will be available at any point during the post-closure period should the owner or operator default. A financial test, guaranty, and a revenue test for municipalities are also being allowed as means of assuring post-closure care.

Mechanisms for Financial Assurance Suggested But Not Included

All the basic methods for providing financial assurance that have been added since the original proposal were among those suggested by commenters on the original proposal. There were a number of other mechanisms suggested that are not in the reproposal, however.

The escrow account has been considered by the Agency, but was not included in the reproposal because it would require the Regional Administrator to become a signatory to the agreement and might present other administrative burdens without offering significant advantage over the other instruments allowed. The escrow account is used in the reproposed regulations as a means of holding funds following a default, since this use of escrows does not involve the Regional Administrator as a signatory.

A national fund based on assessments on owners and operators and used to cover defaults was suggested by several commenters. Use of such a method would clearly require special legislation. EPA is considering proposal of legislation for a national fund that may include coverage of defaults in providing post-closure care, as well as coverage of post-closure liability.

Other mechanisms suggested included pledges of securities, liens against land and real improvements, interest-bearing accounts in financial institutions, and sinking funds. These were not included because the Agency concluded that they suffered from one or more of the following shortcomings: their status is uncertain in the event of financial failure; they would impose unreasonable administrative burdens on the Agency; they could be cancelled quickly, providing no long-term guarantee of financial assurance; or they depend on long-term solvency of the owner or operator.

Liability Requirements

The reproposal includes an interim status requirement for liability insurance during operating life. Under this requirement an owner or operator of each hazardous waste treatment, storage, or disposal facility must show evidence of a minimum of $1 million of liability insurance per occurrence per

firm with a $2 million annual aggregate, for sudden and accidental occurrences (exclusive of legal defense costs).

EPA today also reopens the comment period on the general standards for liability coverage proposed December 18, 1978 (43 FR 59007). The proposed general standards differ from the interim status requirement proposed today, for reasons discussed below. the final general standards and interim status standards will be revised in promulgation to make them consistent as far as insurance for sudden accidents is concerned.

The general standards proposed in December 1978 required each owner or operator to maintain liability insurance for both sudden and accidental occurrences and for nonsudden and accidental occurrences. The interim status regulations proposed at that time did not include any insurance requirement. Though cognizant of the need for financial responsiblity for third-party claims during interim status, EPA was concerned that liability insurance would not be made available to facilities managing hazardous waste until they could show compliance with permit requirements. Analysis performed since the December 1978 proposal suggests that many firms following good business management practices already possess liability insurance covering sudden accidents. Other firms that follow good management practices should easily be able to increase their coverage to the requisite amount or to obtain coverage in the event that they do not currently carry such insurance.

Sudden accidents that cause damage to third parties are clearly a possibility during the operation of a hazardous waste management facility. An analysis of the 90 incidents of damage occurring on hazardous waste management sites in the EPA damage report files showed that damage occurred from sudden events in 15 of the incidents. Facilities involved in sudden accidents were both "on-site" (adjacent to manufacturing facilities) and off-site, and were owned by small, independent operators as well as by large corporations.

The analysis of liability coverage has confirmed that coverage for nonsudden occurrences may not be available at this time to all firms prior to compliance with permit requirements. Most insurance companies do not currently provide coverage of nonsudden occurrences; most that do provide coverage restrict it to their clients who are large and well-managed. Consequently, for the interim status period, the Agency has decided to propose that insurance coverage be required, but only for damages from sudden and accidental incidents.

The analysis suggests that the required insurance can be obtained at a reasonable cost. The cost of liability insurance varies considerably with the inherent risk of the activity insured, the management practices of the firm, and the past accident record of the firm. The cost of annual coverage for sudden accidents is likely to range from $10–20,000 for a small "average risk" waste disposal firm (with annual revenues of $1 million or less) and would increase, though at a decreasing rate, for larger sized firms. This cost of coverage is estimated to be 1–3 percent of annual revenues for small firms. If a small firm is deemed to pose greater risks, however, it could end up paying 5–10 percent of its revenues for insurance. A large high-risk waste disposal firm is likely to pay less than 1 percent of its revenues for insurance coverage. Additionally, the cost of coverage for a firm that only stores waste should be less than the cost of coverage for waste disposal firms. The Agency believes that the firms that do not currently have this coverage or do not have it in the requisite amount should be able to secure it at reasonable cost.

In addition to not requiring coverage for nonsudden events, the liability insurance requirement for the interim status period proposed here differs from the previously proposed general standards in several respects:

The amount of insurance coverage required for sudden incidents is $1 million per incident instead of the $5 million per incident specified in the proposed general standard. Many commenters on the proposed general standard argued that $5 million was too high, and that there have been no representative settlements in this amount. In response to these comments, EPA has reconsidered the required level of coverage. An extensive analysis of the Agency's damage report files identified only one incident where damage caused by a sudden occurrence was estimated. The damages in this incident were $216,500 (1979 dollars). Insurance industry representatives informed EPA that small firms might typically maintain coverage for sudden events in an amount ranging from $300,000 to $1 million. Finally, EPA contacted four States (Washington, Oregon, Oklahoma, and Kansas) known to require insurance for hazardous waste management facilities, and found that the amount of insurance required by these States ranges from $300,000 to $1.2 million. On the basis of these findings, EPA is proposing to require $1 million of liability insurance per incident.

Many commenters on the proposed general regulations argued that EPA should not specify *any* one amount of required insurance coverage, that the amount should be decided on a case-by-case basis after a review of the degree of risk posed by the operations of a hazardous waste management facility. EPA agrees that the degree of risk is of signal importance in setting an appropriate level of insurance coverage. EPA believes that $1 million is a reasonable minimum level of coverage for sudden and accidental occurrences for all firms managing hazardous wastes, and that many firms will choose to obtain coverage in greater amounts based on the risks inherent in their operations. EPA also believes that the premiums paid by facility owners and operators for a given level of coverage will reflect the degree of risk posed by the operations of the facility.

Under today's proposal, liability insurance is to be maintained on a per firm basis rather than a per site basis, accompanied by an annual aggregate liability limit. Many commenters on the proposed general standards requested clarification on this point. Liability insurance is required on a per firm basis rather than a per site basis because insurance companies generally provide coverage to all facilities owned or operated by a firm under a single policy. The insurance industry provides coverage in this manner because through the use of an annual aggregate they are able to take into account the risk of multiple accidents occurring at a firm which owns one or more facilities. Having reviewed prior damage incident histories, the Agency believes that an annual aggregate twice that of the liability limit per occurrence will provide adequate coverage for sudden accidents.

The amount of liability insurance carried must exclude legal defense costs. Legal defense costs are excluded from the liability limits because the costs of legal defense could be considerable and, if included in the limits, could consume the major portion of insurance coverage and leave little coverage for actual damages. The exclusion of legal defense costs is also consistent with standard comprehensive general liability policies.

An added requirement is that the deductible in the insurance policy must not exceed 5 percent of the per incident limit of liability of the policy. A maximum limit has been placed on the deductible in order to prevent firms from carrying a policy with a deductible so high as to render any insurance

coverage ineffective, due to the underlying inability of the firm to meet its obligations under the deductible.

Finally, self-insurance is not permitted as an alternative to liability insurance during interim status. Self-insurance, as proposed in the December 1978 general standards, was defined as the absence of insurance and the sufficiency of equity to cover potential claims. The Agency believes that most if not all firms currently carry or can obtain comprehensive general liability policies and hence sees no need to allow self-insurance for the interim status period.

Use of State-Authorized Mechanisms

In the original proposal the Agency did not address the problem of differences between State and Federal financial requirements which potentially might cause problems to owners or operators. No such problem would develop in States that receive authorization to operate a hazardous waste regulatory program in lieu of the Federal program, since only the State's requirements would apply. Some States, however, may not seek or obtain Federal authorization, and, for others, authorization may be delayed. In such States the owners and operators would be subject to Federal hazardous waste regulations and also to any State hazardous waste regulations that are in effect. To avoid causing unnecessary burdens on owners and operators, the Agency has included provisions in the revised proposal that would allow owners or operators to use State-authorized mechanisms to meet the Federal financial requirements if such mechanisms provide assurances that are substantially equivalent to that of mechanisms specified in the Federal requirements.

Also, to the extent that a State assumes legal or financial responsibility for closure, post-closure care, or liability coverage for a facility, the owner and operator would be exempt from the respective Federal financial requirements.

Comments Requested on Financial Assurance for Closure and Post-Closure Care

In response to many comments on the original proposed regulation on financial assurance for closure and post-closure care, the Agency is proposing a greatly expanded regulation. The main objective has been to allow means in addition to trust funds which would be effective in assuring availability of needed funds. EPA has limited experience regarding financial mechanisms, however. The Agency wishes to receive, and expects to benefit greatly from, public review of this entire revised proposal. Furthermore, the Agency requests comments on the following specific matters:

- The revised proposal allows the closure trust fund to be built up in annual payments over the life of the facility, or 20 years, whichever period is shorter. Does the benefit of lowering the cost of compliance with the financial requirement outweigh any reduction in financial assurance caused by the lengthy pay-in period?
- What kinds of owners or operators of hazardous waste facilities are likely to be able to obtain letters of credit and surety bonds? Can the requirements for these instruments be altered in a way that will increase their availability without reducing their effectiveness?
- What has been the experience of other governmental entities with collecting on surety bonds and letters of credit in the event of a default? Has experience led any governmental body to prefer one type of financial instrument over another in terms of reliability and ease of administration? What kinds of arrangements do banks and other financial institutions usually make to hold funds pending the outcome of legal determinations of default?
- Are the proposed financial test, revenue test, and guaranty effective means of financial assurance? Are the criteria accurate measures of financial health? Are there relatively simple alternatives or substitutes for the criteria which promise greater accuracy or reliability? Is there empirical evidence available which would justify making the proposed financial tests more or less stringent? Should private bond-rating services be considered as an alternative to the revenue test for municipalities or added as an element of the test?
- The Agency has considered escrow accounts as mechanisms for financial assurance and has tentatively decided that they are likely to present undue administrative burdens to the Agency without offering significant advantages over the other instruments allowed in the regulations. Comments are nonetheless invited on the idea of adding escrow accounts to the list of allowed instruments.
- The revised proposal allows for use of a single financial mechanism to provide financial assurance for closure and/or post-closure care of multiple facilities. How useful is this provision to the regulated community? Will it pose administrative problems to the Regional Offices in cases where facilities in more than one Region are covered by a single financial instrument?
- Suggestions and information on other possible mechanisms, or on different versions of the instruments already allowed, will be welcomed. The utility of such suggestions will be maximized by providing concrete examples of the form and operation of the instruments as well as an argument as to how they will succeed in meeting the problems of providing financial assurance for closure and/or post-closure care at a hazardous waste facility.
- EPA has been considering proposing legislation for a national fund that would provide financial assurance for post-closure care. Under such an approach, owners or operators of hazardous waste disposal facilities would pay into a national fund which would then be used to pay for post-closure care at bankrupt facilities. Comments are invited on whether this approach might be less costly than the proposed requirements for financial assurance for post-closure care.
- Forms for the trust instruments, surety bonds, letters of credit, and guarantees allowed in this revised proposal are included in these regulations in Appendices II–VIII. The Agency would prefer to require the use of such forms in order to simplify review of the instruments and administration of the regulations. Are there errors of commission or omission in the language of the specific forms which may impede or prevent them from accomplishing the goals intended? Would changes in the language or requirements of the specific forms increase their availability to the regulated community without reducing their reliability? How can the costs of the instruments be minimized further?

Comments Requested on Liability Requirements

EPA also invites comments on several issues pertaining to the interim status liability requirement proposed today, and reopens the comment period on the general standard for liability coverage proposed December 18, 1978 (43 FR 59007).

EPA invites comment on the following specific issues, as well as on any other issues raised by the proposed liability requirements:

- Should the Agency require insurance coverage for nonsudden and accidental occurrences during the interim status period?
- Will the insurance industry provide such coverage?
- Will such coverage be available on a continuing basis, or may the insurance industry withdraw such coverage in the event of large damage suits?

- Is it desirable to allow the use of financial responsibility mechanisms such as indemnity funds as alternatives to liability insurance for either sudden or nonsudden occurrences? How would such alternatives work?
- Is the amount of coverage specified in the regulations appropriate?
- Can we tailor the amount of required insurance to reflect better the degrees of risk posed by the operations of particular sites? How can this be done?
- What will the likely annual cost of insurance be for nonsudden incidents?
- Will all firms be able to afford insurance for nonsudden incidents?
- Can a useful self-insurance alternative be specified which will ensure financial responsibility? What criteria should be used in qualifying self-insurers? What should be the allowable level(s) of self-insurance?
- EPA has obtained information on the above issues relating to liability requirements since the original proposal and has included the information as an appendix to the Background Document for the financial requirements. The Agency requests comments on this information as well as on the rest of the Background Document.

Background Document

Copies of the Background Document prepared in support of this revised proposed rule are available for review in all EPA Regional Office libraries and in the EPA headquarters library (Public Information Reference Unit) Room 2404, Waterside Mall, 401 M Street, SW, Washington, D.C.

Economic, Environmental, and Regulatory Impacts

In accordance with Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107, EPA policy as stipulated in 39 FR 37419, October 21, 1974, and Executive Order 12044, respectively, analyses of the economic, environmental, and regulatory impacts are being performed for the entirety of Subtitle C, Hazardous Waste Management. Copies of the draft documents covering the proposed requirements for financial assurance of closure and post-closure care are available for review in the EPA libraries noted above. The impacts of the liability requirement in this reproposal are not covered in the present drafts but will be covered in subsequent drafts.

Dated: May 2, 1980.

Douglas M. Costle,

Administrator.

It is proposed to amend 40 CFR Part 265 by revising § 265.140(a) and (b), and adding §§ 265.141, 265.143, 265.145, 265.146, 265.147, and Appendices I–VIII. It is also proposed that the same provisions, with changes in section numbers and other minor modifications, will be included in Part 264.

Subpart H—Financial Requirements

§ 265.140 Applicability.

(a) The requirements of §§ 265.142, 265.143, 265.146, 265.147, and 265.149 apply to owners and operators of all hazardous waste facilities, except as provided otherwise in this section or in § 265.1.

(b) The requirements of §§ 265.144 and 265.145 apply only to owners and operators of disposal facilities.

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§ 265.141 Definitions.

When used in Part 265, the following terms have the meanings given below:

(a) "Assets" means debit balances carried forward upon a closing of books of account representing property values or rights acquired that are recognized and measured in conformity with generally accepted accounting principles.

(b) "Current assets" means cash and other assets that are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of a business or within one year, if the operating cycle is shorter than one year.

(c) "Current liabilities" means liabilities expected to be satisfied by either the use of assets classified as current in the same balance sheet or the creation of other current liabilities; or those expected to be satisfied within a relatively short period of time, usually one year.

(d) "Liabilities" means obligations carried forward upon a closing of books of account that are recognized and measured in conformity with generally accepted accounting principles.

(e) "Marketable securities" means securities that are traded on recognized established securities markets where there are independent bona fide offers to buy and sell and where payment will be received in settlement of a sale within a relatively short time conforming to trade custom.

(f) "Net working capital" means the excess of current assets over current liabilities.

(g) "Net worth" means the excess of total assets over total liabilities and is equivalent to owner's equity.

(h) "Standby letter of credit" means an irrevocable engagement by an issuing bank, at the request of an owner or operator, that it will honor demands for payment made by the U.S. Environmental Protection Agency for the period of the letter of credit and under terms specified for letters of credit in these regulations.

(i) "Surety bond" means a contract by which a surety company engages to be answerable for the default or debts by an owner or operator on responsibilities relating to closure or post-closure care, and agrees to satisfy these responsibilities if the owner or operator does not, in accordance with the terms specified for surety bonds in these regulations.

(j) "Total-liabilities-to-net-worth ratio" means the value of total liabilities, which includes the sum of short-term and long-term obligations, divided by the value of net worth.

(k) "Trust fund" means a fund established by an owner or operator and held by a financial institution as the trustee with a fiduciary responsibility to carry out the terms of the trust as specified in these regulations for the benefit of the U.S. Environmental Protection Agency.

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§ 265.143 Financial assurance for facility closure.

By the effective date of these regulations, an owner or operator of each facility must establish financial assurance for closure of the facility. He must choose from among the following options:

(a) *Closure trust fund.*

(1) The owner or operator may establish a closure trust fund. The trustee must be a bank or other financial institution. The beneficiary of the trust fund must be the U.S. Environmental Protection Agency.

(2) The trust agreement must be executed on EPA Form 8700–15 (see Appendix II). The owner or operator must send the properly executed trust agreement to the Regional Administrator by certified mail within 10 days after the effective date of the agreement.

(3) Replacement of a trust fund with another form or forms of financial assurance allowed in this section must be preceded by the written consent of the Regional Administrator. The owner or operator must report any change of trustee to the Regional Administrator within 10 days after such a change becomes effective.

(4) Payments to the trust fund must be in cash or marketable securities. The value of each security must be determined in accordance with the Internal Revenue Service method for valuing securities for estate tax purposes (26 CFR 20.2031–2). In all valuations of the trust fund for purposes

of these regulations, securities must be valued by this IRS method.

(5) Payments to the closure trust fund must be made annually over the operating life of the facility as estimated in the closure plan (§ 265.112(a)) or 20 years, whichever period is shorter; this period is hereafter referred to as the "pay-in" period. The first payment must be equal to the adjusted closure cost estimate (see § 265.142) divided by the pay-in period in years. The first payment must be made by the effective date of these regulations. Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The trust agreement must require the trustee to notify the Regional Administrator by certified mail within 5 days after the end of the 30-day period if he does not receive payment within such period. Upon receiving such notification, the Regional Administrator may order the facility to begin closure unless the owner or operator has established other financial assurance as allowed in this section.

(6) The owner or operator must adjust the amount of each annual payment after the first one by multiplying the amount of the previous year's payment by the inflation factor calculated in accordance with § 265.142(c).

(7) If a new closure cost estimate is prepared in accordance with § 265.142(b), the next annual payment must be calculated as follows:

Step 1—Divide the adjusted closure cost estimate by the number of years in the pay-in period as of the effective date of these regulations.

Step 2—Multiply the result by the number of payments made to the fund.

Step 3—From the result of step 2 subtract the current value of the fund. The result is the amount which needs to be distributed over the remaining pay-in period.

Step 4—Divide the result of step 3 by the remaining years in the pay-in period.

Step 5—Add the result of step 4 to the result of step 1 to obtain the new payment.

(For an example of this calculation, see Appendix I.)

(8) The owner or operator must determine the value of the trust fund each year within 30 days prior to the date each annual payment is due to be made. If the total value of the fund has decreased since the previous year's valuation, the next payment must be calculated using the steps in paragraph (a)(7) of this section. The owner or operator may also use the calculation in paragraph (a)(7) to determine his next payment if the value of the fund has increased. If the value of the fund exceeds the *total* amount of the adjusted closure cost estimate, the owner or operator may submit a written request to the Regional Administrator for release of the amount in excess of the adjusted closure cost estimate. This request must be accompanied by a written statement from the trustee confirming the value of the fund.

(9) An owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the closure cost estimate at the time the fund is established, but the trust fund must be valued annually and its value must be maintained at no less than the value that the fund would have had if annual payments had been made as specified in paragraphs (a)(5)–(8) of this section.

(10) If an owner or operator establishes a closure trust fund after the effective date of these regulations, having initially used one of the other mechanisms specified in this section, his first payment must be in the amount that the trust fund would have contained if it had been established on the effective date of these regulations in accordance with the requirements of this section.

(11) If the operating life of a facility extends beyond the maximum 20-year pay-in period, the owner or operator must determine the value of the trust fund every year after the 20th year until closure begins. Whenever the closure cost estimate changes during this period in accordance with § 265.142 (b) or (c), the owner or operator must compare the new estimate with the latest annual value of the fund. If the value of the fund is less than the amount of the adjusted closure cost estimate, the owner or operator must deposit cash or marketable securities into the fund so that its value equals the amount of the estimate. Such payment must be made within 60 days of the change in the closure cost estimate. If the value of the fund is greater than the total amount of the adjusted closure cost estimate, the owner or operator may submit a written request to the Regional Administrator for release of funds in excess of the estimate. This request must be accompanied by a written statement from the trustee confirming the value of the fund.

(12) Within 30 days after receiving a request from the owner or operator for release of excess funds as specified in paragraphs (a) (8) and (11), the Regional Administrator must direct the trustee in writing to release such excess funds to the owner or operator unless the Regional Administrator finds that the closure cost estimate was not prepared and adjusted in accordance with § 265.142.

(13) An owner or operator may request reimbursement for closure expenditures by submitting itemized bills to the Regional Administrator. Within 30 days after receiving bills for closure activities, the Regional Administrator must direct the trustee in writing to pay those bills which the Regional Administrator determines to be in accordance with the closure plan or are otherwise justified. Such payments must be made so long as the value of the fund after payment is at least 20 percent of the value that the fund had before any closure bills were paid.

(14) If an owner or operator substitutes another form or forms of financial assurance specified in this section for all or part of the trust fund, he may apply to the Regional Administrator for release of funds from the trust fund. Within 30 days after receiving such request, the Regional Administrator must direct the trustee in writing to release the excess funds to the owner or operator.

(15) The terms of the trust must require the trustee to make disbursements as specified in this paragraph. The trustee will disburse monies from the trust fund to parties designated by the Regional Administrator upon written notification from the Regional Administrator that:

(i) The value of the trust fund exceeds the amount of the adjusted closure cost estimate; or

(ii) The itemized bills are in accordance with the approved closure plan or are otherwise justified, and they must be paid if the value of the trust fund after such payment is at least 20 percent of the value that the fund had before any closure bills were paid; or

(iii) The owner or operator has established other financial assurance for closure as allowed in this section for part or all of the trust fund; or

(iv) There has been a legal determination, a copy of which is attached to this notification, of a violation of the closure requirements of these regulations rendered in a proceeding brought pursuant to Section 3008 of RCRA.

(16) The trust agreement must require the trustee to release all funds remaining in the trust fund to the owner or operator upon receipt from him of the original or an authenticated copy of the Regional Administrator's letter, specified in paragraph (h) of this section, notifying the owner or operator that he is no longer required to comply with the requirements of this section for financially assuring closure of the facility.

(b) *Surety bond guaranteeing performance of closure.* (1) An owner or

operator may meet the requirements of this section by obtaining a surety bond guaranteeing performance of closure. A surety company issuing a bond in accordance with these regulations must, at a minimum, be authorized to do business in the United States and be certified by the U.S. Treasury Department, in Circular 570, to write bonds in the penal sum of the bond to be issued. The obligee of the bond must be the U.S. Environmental Protection Agency.

(2) The bond must be executed on EPA Form 8700–16 (see Appendix III). The terms of the bond must provide that the surety will send the properly executed bond to the Regional Administrator by certified mail within 10 days after the effective date of the bond.

(3) The surety bond must guarantee that the owner or operator will perform facility closure in accordance with the closure plan. The surety bond must be written in an amount equal to or greater than the adjusted closure cost estimate (see § 265.142). The surety bond must be written so that whenever closure activities begin or are ordered to begin by the Regional Administrator during the term of the bond, the bond coverage includes completion of closure in accordance with the closure plan.

(4) If the closure cost estimate increases beyond the amount of the penal sum of the bond, the owner or operator must, within 30 days of such increase in the estimate, cause the penal sum of the bond to be increased or obtain other financial assurance, as specified in this section, to cover the increase. If the closure cost estimate decreases, the penal sum of the bond may be reduced to the amount of the adjusted closure cost estimate. At the request of the owner or operator, the Regional Administrator must send written notice to the surety of any reduction in the required penal sum within 30 days after receiving the request.

(5) The terms of the surety bond must provide that the surety company may cancel the bond by sending notice to the owner or operator and to the Regional Administrator by certified mail. Cancellation must not be effective for at least 90 days after the Regional Administrator receives the notice. The owner or operator, within 5 days of receiving a notice of cancellation from the surety, must notify the Regional Administrator by certified mail that he has received such a notice. The owner or operator may cancel the bond by providing 30 days' notice to the surety company if the Regional Administrator has given prior written consent based on his having received evidence of other financial assurance as specified in this section.

(6) Thirty days after receiving a notice of cancellation from the surety the Regional Administrator may order the owner or operator to begin closure unless the Regional Administrator has received evidence of other financial assurance as specified in this section.

(7) A surety becomes liable on a bond obligation only when a proceeding brought pursuant to the provisions of Section 3008 of RCRA has determined that the owner or operator has violated the closure requirements of these regulations. The terms of the bond must require that, following such a determination, the surety must:

(i) Complete closure of the facility in accordance with the closure plan; or

(ii) Pay the amount of the penal sum into an escrow account as directed by the Regional Administrator.

(8) The Regional Administrator must direct the depositary of an escrow account established under paragraph (b)(7)(ii) of this section to disburse funds to designated parties for the purpose of completing closure.

(c) *Standby letter of credit assuring funds for closure.* (1) An owner or operator may meet the requirements of this section by obtaining an irrevocable standby letter of credit. The letter must be written in favor of the Regional Administrator of the U.S. Environmental Protection Agency and must be for a period of at least one year. The letter of credit may be issued by any bank which is a member of the Federal Reserve System.

(2) The letter of credit must be executed on EPA Form 8700–17 (see Appendix IV). The terms of the letter must provide that the issuing bank will send the properly executed letter of credit to the Regional Administrator by certified mail within 10 days after the effective date of the letter.

(3) The credit must be issued for at least the amount of the adjusted closure cost estimate (see § 265.142).

(4) If the closure cost estimate increases beyond the amount of the credit, the owner or operator must, within 30 days of such increase in the estimate, cause the amount of the credit to be increased or obtain other financial assurance, as specified in this section, to cover the increase. If the closure cost estimate decreases, the credit may be reduced to the amount of the adjusted closure cost estimate. At the request of the owner or operator, the Regional Administrator must send written notice to the issuing bank of any reduction in the required credit within 30 days after receiving the request.

(5) The letter of credit must contain a clause providing for automatic annual extensions of the credit, subject to 60 days' written notice by the issuing bank to both the owner or operator and the Regional Administrator, by certified mail, of the bank's intention not to renew the credit. The owner or operator, within 5 days of receiving notice of nonrenewal from the bank, must notify the Regional Administrator by certified mail that he has received such a notice. The owner or operator may cancel the letter of credit by providing 30 days' notice to the issuing bank if the Regional Administrator has given prior written consent based on his having received evidence of other financial assurance as specified in this section.

(6) Thirty days after receiving a notice of nonrenewal from the bank the Regional Administrator may draw upon the credit up to the full amount of the credit unless he has received evidence that the owner or operator has established other financial assurance as specified in this section. If the Regional Administrator draws upon the letter of credit following a notice of nonrenewal, the issuing bank must, under the terms of the letter, deposit the amount of the draft immediately and directly into an interest-bearing escrow account. Disbursements from the escrow account must be made in the same manner as specified for trust funds in paragraphs (a)(12)–(16) of this section.

(7) If the closure cost estimate increases beyond the amount of the funds in the escrow account, the owner or operator must, within 30 days of such increase, add to the account or establish other financial assurance as specified in this section to cover the increase. If the owner or operator fails to do so, the Regional Administrator may order him to begin closure.

(8) The Regional Administrator may otherwise draw upon the letter of credit only upon a legal determination of a violation of the closure requirements of these regulations rendered in a proceeding brought pursuant to the provisions of Section 3008 of RCRA. The terms of the letter must provide that, if the Regional Administrator draws upon the letter of credit following such a determination, the issuing bank will immediately and directly deposit the amount of the draft into an interest-bearing escrow account. The letter must require the escrow depositary to disburse monies from the escrow account to persons designated by the Regional Administrator to complete closure of the facility.

(d) *Use of more than one type of financial instrument.* An owner or operator may meet the requirements of

this section by establishing more than one type of financial instrument. These instruments are limited to a trust fund, surety bond, or letter of credit as specified in paragraphs (a), (b), and (c), respectively, of this section (e.g., a letter of credit may assure half the closure cost and a trust fund the remaining half).

(e) *Financial test and guaranty for closure.* (1) An owner or operator may meet the requirements of this section by having all of the following financial characteristics:

(i) At least $10 million in net worth in the United States.

(ii) A total-liabilities-to-net-worth ratio of not more than three.

(iii) Net working capital in the United States of at least twice the adjusted closure cost estimate (see § 265.142).

(2) These characteristics must be demonstrated in a financial statement which has been audited by an independent certified public accountant and which contains unconsolidated balance sheets dated no more than 140 days prior to the current date. The owner or operator who intends to use a financial test to meet both closure and post-closure requirements for a single facility or to meet closure and/or post-closure requirements for more than one facility must indicate in the statement which requirements for which facilities are to be met through the financial test and must demonstrate that his net working capital in the United States is at least twice the sum of all the adjusted estimates of closure and post-closure costs to be covered by the financial test. The owner or operator must have the financial statement available at the facility and must provide data from the statement if requested as part of annual reports to the Regional Administrator under § 265.75.

(3) If at any time during the operating life of the facility the owner or operator fails to meet the requirements of paragraph (e)(1) of this section, he must notify the Regional Administrator by certified mail within 5 days of learning of failure to meet the requirements. Evidence of other financial assurance as specified in this section must be sent to the Regional Administrator by certified mail within 30 days from the time that the owner or operator learns of failure to meet the requirements; otherwise the Regional Administrator may order him to begin closure.

(4) An owner or operator may meet the requirements of this section by obtaining another entity's written guaranty providing financial assurance, in an amount equal to the adjusted closure cost estimate, for the owner's or operator's compliance with the closure requirements of these regulations. The guarantor must meet the requirements for owners or operators in paragraphs (e) (1) and (2) of this section.

(5) The guaranty must be executed on EPA Form 8700–18 (see Appendix V). The owner or operator must send the properly executed guaranty to the Regional Administrator by certified mail within 10 days after the effective date of the guaranty.

(6) Under the terms of the guaranty, the guarantor must notify the Regional Administrator and the owner or operator by certified mail if he at any time fails to meet the requirements of paragraph (e)(1) of this section. The guarantor must send such notice within 5 days after learning of failure to meet the requirements.

(7) The owner or operator must, within 30 days of receiving such notification, establish other financial assurance as specified in this section and provide evidence of such assurance to the Regional Administrator. If he fails to do so, the Regional Administrator may order him to begin closure.

(8) The guarantor may cancel the guaranty with 90 days' notice to the Regional Administrator and the owner or operator by certified mail, except that the guaranty must remain in effect if closure begins or is ordered to begin by the Regional Administrator before the end of the 90 days. Evidence of other financial assurance as specified in this section must be provided to the Regional Administrator within 30 days after a notice of cancellation is received by the Regional Administrator; otherwise, he may order the owner or operator to begin closure.

(9) The guaranty may be cancelled at any time following the mutual written consent of the owner or operator, the Regional Administrator, and the guarantor.

(10) Under the terms of the guaranty, in the event of a legal determination of a violation of the closure requirements rendered in a proceeding brought pursuant to Section 3008 of RCRA, the guarantor must pay parties designated by the Regional Administrator to complete closure in accordance with the closure plan.

(f) *Revenue test for municipalities.* (1) If the owner or operator is a municipality (as defined by RCRA), it may meet the requirements of this section by having annual revenues from property, sales, and/or income taxes equal to 10 times the adjusted closure cost estimate (see § 265.142). To be acceptable, these tax revenues must be legally available to cover closure responsibilities, i.e., they must not be dedicated to other purposes or otherwise precluded from use in meeting closure responsibilities.

(2) The owner or operator must send a letter signed by the chief financial officer of the municipality to the Regional Administrator stating that the municipality meets the requirements of paragraph (f)(1) of this section. The letter must be sent by certified mail within 10 days after the owner or operator begins use of the revenue test to meet the requirements of this section.

(3) If at any time during the operating life of the facility the annual tax revenues fail to meet the minimum multiple specified in paragraph (f)(1), the owner or operator must notify the Regional Administrator by certified mail within 5 days of learning of failure to meet the requirement. The owner or operator must send evidence of other financial assurance as specified in this section to the Regional Administrator by certified mail within 30 days from the time that the owner or operator learns of failure to meet the minimum multiple; otherwise the Regional Administrator may order the owner or operator to begin closure.

(g) *Use of a single financial mechanism for multiple facilities.* An owner or operator may use a single financial mechanism, as specified in paragraphs (a) through (f) of this section, to meet the requirements of this section for more than one facility of which he is the owner or operator. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established for each facility.

(h) *Release of the owner or operator from the requirements of this section.* Within 60 days of receiving certifications from the owner or operator and an independent registered professional engineer that closure has been accomplished in accordance with the closure plan (see § 265.115), the Regional Administrator must, unless he has reason to believe that closure has not been in accordance with the closure plan, send a letter to the owner or operator notifying him that he no longer has to comply with the requirements of this section for the facility in question.

[Comment: It should be noted that this letter from the Regional Administrator to the owner or operator releases him only from requirements for financial assurance for closure of the facility; it does not release him from legal responsibility for meeting the closure standards.]

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§ 265.145 Financial assurance for post-closure monitoring and maintenance.

By the effective date of these regulations, an owner or operator of each disposal facility must establish financial assurance for 30 years of post-closure care of the facility. He must choose from among the following options:

(a) *Post-closure trust fund.* (1) The owner or operator may establish a post-closure trust fund. The trustee must be a bank or other financial institution. The beneficiary of the trust fund must be the U.S. Environmental Protection Agency.

(2) The trust agreement must be executed on EPA Form 8700-19 (see Appendix VI). The owner or operator must send the properly executed trust agreement to the Regional Administrator by certified mail within 10 days after the effective date of the agreement.

(3) Replacement of a trust fund with another form or forms of financial assurance allowed in this section must be preceded by written consent of the Regional Administrator. The owner or operator must report any change of trustee to the Regional Administrator within 10 days after such a change becomes effective.

(4) Payments to the trust fund must be in cash or marketable securities. The value of each security must be determined in accordance with the Internal Revenue Service method for valuing securities for estate tax purposes (26 CFR 20.2031-2). In all valuations of the trust fund for purposes of these regulations, securities must be valued by this IRS method.

(5) Payments to the post-closure trust fund must be made annually over the operating life of the facility as estimated in the closure plan (§ 265.112(a)) or 20 years, whichever period is shorter; this period is hereafter referred to as the "pay-in" period. The first payment must be equal to the adjusted post-closure cost estimate (see § 265.144) divided by the pay-in period in years. The first payment must be made by the effective date of these regulations. Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The trust agreement must require the trustee to notify the Regional Administrator by certified mail within 5 days after the 30-day period if he does not receive payment within such period. Upon receiving such notification, the Regional Administrator may order the facility to begin closure unless the owner or operator has established other financial assurance as allowed in this section.

(6) The owner or operator must adjust the amount of each annual payment after the first one by multiplying the amount of the previous year's payment by the inflation factor calculated in accordance with § 265.142(c).

(7) If a new post-closure cost estimate is prepared in accordance with § 265.144(b), the next annual payment must be calculated as follows:

Step 1—Divide the adjusted post-closure cost estimate by the number of years in the pay-in period as of the effective date of these regulations.

Step 2—Multiply the result by the number of payments made to the fund.

Step 3—From the result of step 2 subtract the current value of the fund. The result is the amount which needs to be distributed over the remaining pay-in period.

Step 4—Divide the result of step 3 by the remaining years in the pay-in period.

Step 5—Add the result of step 4 to the result of step 1 to obtain the new payment.

(Appendix I provides an example of a calculation of a new closure trust fund payment using these same steps.)

(8) The owner or operator must determine the value of the trust fund each year during the operating life of the facility within 30 days prior to the date each annual payment is due to be made. If the total value of the fund has decreased since the previous year's valuation, the next payment must be calculated using the steps in paragraph (a)(7) of this section. The owner or operator may also use the calculation in paragraph (a)(7) to determine his next payment if the value of the fund has increased. If the value of the fund exceeds the *total* amount of the adjusted post-closure cost estimate, the owner or operator may submit a written request to the Regional Administrator for release of the amount in excess of the adjusted post-closure cost estimate. This request must be accompanied by a written statement from the trustee confirming the value of the fund.

(9) An owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the post-closure cost estimate at the time the fund is established, but the trust fund must be valued annually and its value must be maintained at no less than the value that the fund would have had if payments and valuations had been made as specified in paragraphs (a)(5)-(8) of this section.

(10) If an owner or operator establishes a post-closure trust fund after the effective date of these regulations, having initially used one of the other mechanisms specified in this section, his first payment must be in the amount that the trust fund would have contained if it had been established on the effective date of these regulations in accordance with the requirements of this section.

(11) If the operating life of a facility extends beyond the maximum 20-year pay-in period, the owner or operator must determine the value of the trust fund every year after the 20th year until closure begins. Whenever the post-closure cost estimate changes during this period in accordance with § 265.144 (b) or (c), the owner or operator must compare the new estimate with the latest annual value of the fund. If the value of the fund is less than the amount of the adjusted post-closure cost estimate, the owner or operator must deposit cash or marketable securities into the fund so that its value equals the amount of the estimate. Such payment must be made within 60 days of the change in the post-closure cost estimate. If the value of the fund is greater than the total amount of the adjusted post-closure estimate, the owner or operator may submit a written request to the Regional Administrator for release of funds in excess of the estimate. This request must be accompanied by a written statement from the trustee confirming the value of the fund.

(12) Within 30 days after receiving a request from the owner or operator for release of excess funds as specified in paragraphs (a)(8) and (11), the Regional Administrator must direct the trustee in writing to release such excess funds to the owner or operator unless the Regional Administrator finds that the post-closure cost estimate was not prepared and adjusted in accordance with § 265.144.

(13) An owner or operator may request reimbursement for post-closure expenditures by submitting itemized bills to the Regional Administrator. Within 30 days after receiving the bills for post-closure activities, the Regional Administrator must direct the trustee in writing to pay those bills which the Regional Administrator determines to be in accordance with the post-closure plan or are otherwise justified.

(14) If an owner or operator substitutes another form of financial assurance specified in this section for all or part of the trust fund, he may apply to the Regional Administrator for release of funds from the trust fund. Within 30 days after receiving such a request, the Regional Administrator must direct the trustee in writing to release the excess funds to the owner or operator.

(15) Reversion of excess funds after closure.

(i) If, under the provisions of § 265.117(d), the Regional Administrator follows termination or reduction of some or all of the requirements of a post-

closure plan before the end of the 30-year period, the excess portion of the trust fund must be released by the Regional Administrator.

(ii) At the end of the post-closure care period or the end of 30 years of post-closure care, whichever comes earlier, the Regional Administrator must direct the trustee to release any funds remaining in the trust to the owner or operator.

(16) The terms of the trust must require the trustee to make disbursements as specified in this paragraph. The trustee will disburse monies from the trust fund to parties designated by the Regional Administrator upon written notification from the Regional Administrator that:

(i) The value of the trust fund during the operating life of the facility exceeds the amount of the adjusted post-closure cost estimate; or

(ii) The itemized bills are in accordance with the approved post-closure plan or are otherwise justified; or

(iii) The owner or operator has established other financial assurance for post-closure care as allowed in this section for part or all of the trust fund; or

(iv) There has been a legal determination, a copy of which is attached to this notification, of a violation of the post-closure requirements of these regulations rendered in a proceeding brought pursuant to Section 3008 of RCRA; or

(v) The post-closure care period has ended or the requirements for post-closure care have been reduced.

(b) *Surety bond guaranteeing a lump-sum payment for post-closure care.* (1) An owner or operator may meet the requirements of this section by obtaining a surety bond guaranteeing a lump-sum payment into a post-closure trust fund. A surety company issuing a bond in accordance with these regulations must, at a minimum, be authorized to do business in the United States and be certified by the U.S. Treasury Department, in Circular 570, to write bonds in the penal sum of the bond to be issued. The obligee of the bond must be the U.S. Environmental Protection Agency.

(2) The bond must be executed on EPA Form 8700–20 (see Appendix VII). The terms of the bond must provide that the surety will send the properly executed bond to the Regional Administrator by certified mail within 10 days after the effective date of the bond.

(3) Such surety bond must guarantee that the owner or operator will, within 30 days after the beginning of closure of the facility, pay a lump sum equal to the final post-closure cost estimate prepared in accordance with § 265.144 into a trust fund that complies with the provisions of paragraph (a) of this section. The surety bond must be written so that whenever closure activities begin or are ordered to begin by the Regional Administrator during the term of the bond, the bond coverage includes completion of the payment obligation guaranteed by the bond.

(4) If the post-closure cost estimate increases beyond the amount of the penal sum of the bond, the owner or operator must, within 30 days of such increase in the estimate, cause the penal sum of the bond to be increased or obtain other financial assurance, as specified in this section, to cover the increase. If the post-closure cost estimate decreases, the penal sum of the bond may be reduced to the amount of the adjusted post-closure cost estimate. At the request of the owner or operator, the Regional Administrator must send written notice to the surety of any reduction in the required penal sum within 30 days after receiving the request.

(5) The terms of the surety bond must provide that the surety company may cancel the bond by sending notice to the owner or operator and to the Regional Administrator by certified mail. Cancellation must not be effective for at least 90 days after the Regional Administrator receives the notice. The owner or operator, within 5 days of receiving a notice of cancellation from the surety, must notify the Regional Administrator by certified mail that he has received such a notice. The owner or operator may cancel the bond by providing 30 days' notice to the surety company if the Regional Administrator has given prior written consent based on his having received evidence of other financial assurance as specified in this section.

(6) Thirty days after receiving a notice of cancellation from the surety, the Regional Administrator may order the owner or operator to begin closure unless the Regional Administrator has received evidence of other financial assurance as specified in this section.

(7) A surety becomes liable on a bond obligation only when the owner or operator fails to perform as guaranteed by the bond and fails to provide other financial assurance of post-closure care as specified in this section.

(8) The Regional Administrator must notify the surety in writing within 60 days after the beginning of closure that the owner or operator has:

(i) Established financial assurance for post-closure care that satisfies the requirements of this section; or

(ii) Failed to fulfill the payment obligation guaranteed by the bond. The Regional Administrator will then direct the surety in the placement of funds in a trust fund meeting the specifications of paragraph (a) of this section.

(c) *Standby letter of credit assuring a lump-sum payment at the time of closure for post-closure care.* (1) An owner or operator may meet the requirements of this section by obtaining an irrevocable standby letter of credit assuring a lump-sum payment at the time of closure to provide for post-closure care. The letter must be written in favor of the Regional Administrator of the U.S. Environmental Protection Agency and must be for a period of at least one year. The letter of credit may be issued by any bank which is a member of the Federal Reserve System.

(2) The letter of credit must be executed on EPA Form 8700–17 (see Appendix IV). The terms of the letter must provide that the issuing bank will send the properly executed letter of credit to the Regional Administrator by certified mail within 10 days after the effective date of the letter.

(3) The credit must be issued for an amount equal to the adjusted post-closure cost estimate (see § 265.144).

(4) If the post-closure cost estimate increases beyond the amount of the credit, the owner or operator must, within 30 days of such increase in the estimate, cause the credit to be increased or obtain other financial assurance, as specified in this section, to cover the increase. If the post-closure cost estimate decreases, the credit may be reduced to the amount of the adjusted post-closure cost estimate. At the request of the owner or operator, the Regional Administrator must send written notice to the issuing bank of any reduction in the required credit within 30 days after receiving the request.

(5) The letter of credit must contain a clause providing for automatic annual extensions of the credit subject to 60 days' written notice by the issuing bank to both the owner or operator and the Regional Administrator, by certified mail, of the bank's intention not to renew the credit. The owner or operator, within 5 days of receiving a notice of nonrenewal from the bank, must notify the Regional Administrator by certified mail that he has received such a notice. The owner or operator may cancel the letter of credit by providing 30 days' notice to the issuing bank if the Regional Administrator has given prior written consent based on his having received

evidence of other financial assurance as specified in this section.

(6) Thirty days after receiving a notice of nonrenewal from the bank, the Regional Administrator may draw upon the credit up to the full amount of the credit unless he has evidence that the owner or operator has established other financial assurance as specified in this section. The terms of the letter must provide that if the Regional Administrator draws upon the letter of credit following a notice of nonrenewal the issuing bank will deposit the amount of the draft immediately and directly into an interest-bearing escrow account. Disbursements from the escrow account must be made in the same manner as specified for trust funds in paragraphs (a)(12)–(16) of this section.

(7) If the post-closure cost estimate increases beyond the amount of the funds in the escrow account, the owner or operator must, within 30 days of such increase, add to the account or establish other financial assurance as specified in this section to cover the increase. If the owner or operator fails to do so, the Regional Administrator may order him to begin closure.

(8) The Regional Administrator may otherwise draw on the credit only if the owner or operator fails to establish, within 30 days after the beginning of closure, other financial assurance for post-closure care as specified in this section. The issuing bank must, under the terms of the letter, deposit the amount of such a draft immediately and directly into an interest-bearing escrow account. Disbursements from the escrow account must be made in the same manner as specified for trust funds in paragraphs (a)(13)–(16) of this section.

(d) *Surety bond guaranteeing performance of post-closure duties.* (1) An owner or operator may meet the requirements of this section by obtaining a surety bond guaranteeing performance of post-closure care. A surety company issuing a bond in accordance with these regulations must, at a minimum, be authorized to do business in the United States and be certified by the U.S. Treasury Department, in Circular 570, to write bonds in the penal sum of the bond to be issued. The obligee of the bond must be the U.S. Environmental Protection Agency.

(2) The bond must be executed on EPA Form 8700–21 (see Appendix VIII). The terms of the bond must provide that the surety will send the properly executed bond to the Regional Administrator by certified mail within 10 days after the effective date of the bond.

(3) The surety bond must guarantee that the owner or operator will satisfy the post-closure care requirements of these regulations for 30 years or for the post-closure care period, whichever period is shorter. The surety bond must be written in the amount of the adjusted post-closure cost estimate (see § 265.144).

(4) If the post-closure cost estimate increases beyond the amount of the penal sum of the bond, the owner or operator must, within 30 days of such increase in the estimate, cause the penal sum of the bond to be increased or obtain other financial assurance, as specified in this section, to cover the increase. If the post-closure cost estimate decreases, the penal sum of the bond may be reduced to the amount of the adjusted post-closure cost estimate. At the request of the owner or operator, the Regional Administrator must send written notice to the surety of any reduction in the required penal sum within 30 days after receiving the request.

(5) Under the terms of the bond, the surety company may cancel the bond during the operating life of the facility by sending notice to the Regional Administrator and to the owner or operator by certified mail. Cancellation must not be effective for at least 90 days after the Regional Administrator receives the notice. The owner or operator, within 5 days of receiving notice of cancellation from the surety, must notify the Regional Administrator by certified mail that he has received such a notice. The owner or operator may cancel the bond at any time by providing 30 days' notice to the surety company if the Regional Administrator has given prior written consent based on his having received evidence of other financial assurance as specified in this section.

(6) Thirty days after receiving a cancellation notice from the surety, the Regional Administrator may order the owner or operator to begin closure unless the Regional Administrator has received evidence of other financial assurance as specified in this section.

(7) The surety bond must be written so that whenever closure activities begin or the Regional Administrator orders them to begin during the term of the bond, the bond coverage extends to the end of 30 years of post-closure care or to the end of the post-closure care period, whichever is shorter. The owner or operator, as the principal of the bond, must notify the surety of the date on which post-closure care begins in accordance with the post-closure plan for the facility.

(8) As post-closure obligations are completed, the penal sum of the bond may be reduced commensurately, so that the balance of the penal sum of the bond will equal the remaining cost obligations of the owner or operator for post-closure care. At the request of the owner or operator, the Regional Administrator must send written notice to the surety of any reduction in the required penal sum within 30 days after receiving the request.

(9) A surety becomes liable on a bond obligation only when a proceeding brought pursuant to the provisions of Section 3008 of RCRA has determined that the owner or operator has violated the post-closure requirements of these regulations. Following such a determination the surety must:

(i) Complete post-closure care of the facility in accordance with the post-closure plan; or

(ii) Pay the amount of the penal sum of the bond into a trust fund meeting the specifications of paragraph (a) of this section as directed by the Regional Administrator.

(e) *Standby letter of credit assuring funds during the post-closure period.* (1) An owner or operator may meet the requirements of this section by obtaining an irrevocable standby letter of credit assuring availability of funds during the post-closure period. The letter must be written in favor of the Regional Administrator of the U.S. Environmental Protection Agency and must be for a period of at least one year. The letter of credit may be issued by any bank which is a member of the Federal Reserve System.

(2) The letter of credit must be executed on EPA Form 8700–17 (see Appendix IV). The terms of the letter must provide that the issuing bank will send the properly executed letter of credit to the Regional Administrator by certified mail within 10 days after the effective date of the letter.

(3) The credit must be issued for the amount of the adjusted post-closure cost estimate (see § 265.144).

(4) If the post-closure cost estimate increases beyond the amount of the credit, the owner or operator must, within 30 days of such increase in the estimate, cause the amount of the credit to be increased or obtain other financial assurance, as specified in this section, to cover the increase. If the post-closure cost estimate decreases, the amount of the credit may be reduced to the amount of the adjusted post-closure cost estimate. At the request of the owner or operator, the Regional Administrator must send written notice to the surety of any reduction in the required credit

within 30 days after receiving the request.

(5) As post-closure obligations are completed, the credit guarantee may be reduced commensurately, so that the remaining credit will equal the remaining cost obligations of the owner or operator for post-closure care. At the request of the owner or operator, the Regional Administrator must send written notice to the bank of any reduction in the required credit guarantee within 30 days after receiving the request.

(6) The letter of credit must contain a clause providing for automatic annual extensions of the credit subject to 60 days' written notice by the issuing bank to both the owner or operator and the Regional Administrator, by certified mail, of the bank's intention not to renew the credit. The owner or operator, within 5 days of receiving a notice of nonrenewal from the bank, must notify the Regional Administrator by certified mail that he has received such a notice. The owner or operator may cancel the letter of credit by providing 30 days' notice to the issuing bank if the Regional Administrator has given prior written consent based on his having received evidence of other financial assurance as specified in this section.

(7) Thirty days after receiving a notice of nonrenewal from the bank, the Regional Administrator may draw upon the credit up to the full amount of the credit unless he has received evidence that the owner or operator has established other financial assurance as specified in this section. The terms of the letter must provide that if the Regional Administrator draws upon the letter of credit following a notice of nonrenewal, the issuing bank will deposit the amount of the draft immediately and directly into an interest-bearing escrow account. Disbursements from the escrow account must be made in the same manner as specified for trust funds in paragraphs (a)(12)–(16) of this section.

(8) If the escrow account specified in paragraph (e)(7) of this section is established during operating life, and if the post-closure cost estimate increases beyond the amount of the funds in the escrow account, the owner or operator must, within 30 days of such increase, add to the account or establish other financial assurance as specified in this section to cover the increase. If the owner or operator fails to do so, the Regional Administrator may order him to begin closure.

(9) The Regional Administrator may otherwise draw upon the letter of credit only upon a legal determination of a violation of the post-closure requirements of these regulations rendered in a proceeding brought pursuant to the provisions of Section 3008 of RCRA. The terms of the letter must provide that if the Regional Administrator draws upon the letter of credit following such a determination, the issuing bank will immediately and directly deposit the amount of the draft into an interest-bearing escrow account. The letter of credit must require the escrow depositary to disburse monies from the escrow account to persons designated by the Regional Administrator to carry out post-closure care of the facility.

(f) *Use of more than one type of financial instrument.* An owner or operator may meet the requirements of this section by establishing more than one type of financial instrument. These instruments are limited to a trust fund, surety bonds, or letters of credit as specified in paragraphs (a) through (e) of this section (e.g., a letter of credit may assure half the post-closure cost and a trust fund the remaining half).

(g) *Financial test and guaranty for post-closure care.* (1) An owner or operator may meet the requirements of this section by having all of the following financial characteristics:

(i) At least $10 million in net worth in the United States.

(ii) A total-liabilities-to-net-worth ratio of not more than three.

(iii) Net working capital in the United States of at least twice the adjusted post-closure cost estimate (see § 265.144).

(2) These characteristics must be demonstrated in a financial statement which has been audited by an independent certified public accountant and which contains unconsolidated balance sheets dated no more than 140 days prior to the current date. The owner or operator who intends to use a financial test to meet both closure and post-closure requirements for a single facility or to meet closure and/or post-closure requirements for more than one facility must indicate in the statement which requirements are to be met for which facilities through the financial test and must demonstrate that his net working capital in the United States is at least twice the sum of all the adjusted estimates of closure and post-closure costs to be covered by the financial test. The owner or operator must have the financial statement available at the facility and must provide data from the statement if requested as part of annual reports to the Regional Administrator under § 265.75.

(3) If the owner or operator fails to meet the requirements of paragraph (g)(1) of this section at any time before the end of the post-closure care period or 30 years of post-closure care, whichever comes earlier, he must notify the Regional Administrator by certified mail within 5 days of learning of failure to meet the requirements. Evidence of other financial assurance as specified in this section must be sent to the Regional Administrator by certified mail within 30 days from the time that the owner or operator learns of failure to meet the requirements of paragraph (g)(1). If he does not establish other financial assurance, and this lapse in financial assurance occurs during operating life, the Regional Administrator may order the owner or operator to begin closure.

(4) An owner or operator may meet the requirements of this section by obtaining another entity's written guaranty providing financial assurance, in an amount equal to the adjusted post-closure cost estimate, for compliance by the owner or operator with the post-closure requirements of these regulations. The guarantor must meet the requirements for owners or operators in paragraphs (g) (1) and (2) of this section.

(5) The guaranty must be executed on EPA Form 8700–18 (see Appendix V). The owner or operator must send the properly executed guaranty to the Regional Administrator by certified mail within 10 days after the effective date of the guaranty.

(6) Under the terms of the guaranty, the guarantor must notify the Regional Administrator and the owner or operator by certified mail if he fails to meet the requirements of paragraph (g)(1) of this section at any time before the end of the post-closure period or the end of 30 years of post-closure care, whichever comes earlier. The guarantor must send such notice within 5 days after learning of failure to meet the requirements.

(7) The owner or operator must, within 30 days of such notification, establish other financial assurance as specified in this section and provide evidence of such assurance to the Regional Administrator. If he fails to do so, and such failure occurs during operating life, the Regional Administrator may order him to begin closure.

(8) The guarantor may cancel the guaranty during the operating life of the facility with 90 days' notice to the Regional Administrator and the owner or operator by certified mail, except that the guaranty must remain in effect if closure begins or is ordered to begin by the Regional Administrator before the end of the 90 days. Evidence of other financial assurance as specified in this

section must be provided to the Regional Administrator within 30 days after a notice of cancellation is received by the Regional Administrator; otherwise, he may order the owner or operator to begin closure.

(9) The guaranty may be cancelled at any time following the mutual written consent of the owner or operator, the Regional Administrator, and the guarantor.

(10) Under the guaranty, in the event of a legal determination of a violation of the post-closure requirements rendered in a proceeding brought pursuant to Section 3008 of RCRA, the guarantor must pay parties designated by the Regional Administrator to complete post-closure care for 30 years or the post-closure care period, whichever period is shorter.

(h) *Revenue test for municipalities.* (1) If the owner or operator is a municipality (as defined by RCRA), it may meet the requirements of this section by having annual revenues from property, sales, and/or income taxes equal to 10 times the adjusted post-closure cost estimate (see § 265.144). To be acceptable, these tax revenues must be legally available to cover post-closure responsibilities, i.e., they must not be dedicated to other purposes or otherwise precluded from use for post-closure care.

(2) The owner or operator must send a letter signed by the chief financial officer of the municipality to the Regional Administrator stating that the municipality meets the requirements of paragraph (h)(1) of this section. The letter must be sent by certified mail within 10 days after the owner or operator begins use of the revenue test to meet the requirements of this section.

(3) If the annual tax revenues fail to meet the minimum multiple specified in paragraph (h)(1) at any time before the end of the post-closure care period or 30 years of post-closure care, whichever comes earlier, the owner or operator must notify the Regional Administrator by certified mail within 5 days of learning of failure to meet the requirements. The owner or operator must send evidence of other financial assurance as specified in this section to the Regional Administrator by certified mail within 30 days from the time that the owner or operator learns of failure to meet the minimum multiple. If he does not establish other financial assurance, and this lapse in financial assurance occurs during operating life, the Regional Administrator may order the owner or operator to begin closure.

(i) *Use of a single financial mechanism for multiple facilities.* An owner or operator may use a single financial mechanism, as specified in paragraphs (a) through (h) of this section, to meet the requirements of this section for more than one facility of which he is the owner or operator. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established for each facility.

§ 265.146 Use of a single mechanism for financial assurance of both closure and post-closure care.

An owner or operator may use a single mechanism to provide financial assurance for both closure and post-closure care of one or more facilities of which he is the owner or operator. Such a mechanism must be one of the following:

(a) A trust fund that meets the specifications of both § 265.143(a) and § 265.145(a).

(b) A surety bond that meets the specifications of both § 265.143(b) and § 265.145 (b) or (d).

(c) A letter of credit that meets the specifications of both § 265.143(c) and § 265.145 (c) or (e).

(d) A guaranty that meets the specifications of both § 265.143(e) and § 265.145(g).

(e) The financial test as specified under both § 265.143(e) and § 265.145(g).

(f) The revenue test as specified under both § 265.143(f) and § 265.145(h).

The amount of funds available under the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established for financial assurance of closure and of post-closure care of each facility.

§ 265.147 Liability requirement.

An owner or operator of a hazardous waste treatment, storage, or disposal facility or group of facilities must have and maintain liability insurance from an insurer licensed or eligible to insure facilities in the jurisdiction where any one facility is located, for sudden and accidental occurrences in the amount of $1 million per occurrence with an annual aggregate per firm of $2 million, exclusive of legal defense costs, for claims arising out of injury to persons or property from the operations of each such hazardous waste facility or group of facilities. The deductible written into the insurance policy must not exceed 5 percent of the per incident limit of liability of the policy.

§ 265.148 [Reserved]

§ 265.149 Applicability of State financial requirements.

(a) A facility may be located in a State in which existing hazardous waste regulations include liability requirements and requirements for financial assurance for closure and post-closure care. If so, the owner or operator may use existing State-authorized financial mechanisms in meeting the requirements of §§ 265.143, 265.145, and 265.147 provided that:

(1) The State-authorized mechanism is a mechanism allowed in §§ 265.143, 265.145, or 265.147; or

(2) The State mechanism provides substantially equivalent assurance (e.g., escrow account) or liability coverage as the mechanisms of §§ 265.143, 265.145, and 265.147.

The owner or operator must obtain an additional financial assurance mechanism for closure or for post-closure care, chosen from § 265.143 for closure and from § 265.145 for post-closure care, or additional liability insurance as specified in § 265.147, if the amount of funds available from the State mechanisms is less than that required by this Subpart. The total amount of funds available through the combination of the State and Federal mechanisms must equal at least the amount required in §§ 265.143, 265.145, and 265.147.

(b) If a State assumes legal responsibility for an owner's or operator's compliance with the closure or post-closure requirements or liability requirements of these regulations *or* assures that funds will be available from State sources to cover such requirements, the owner or operator will be in compliance with such requirements of this Subpart to the extent the State's assurances are substantially equivalent to meeting the requirements of this Subpart. The owner or operator must send a letter to the Regional Administrator describing the nature of the State's responsibility regarding his facility's closure, post-closure care, and/or his liability, and citing the State regulation providing for such assumption of responsibility. The letter must be sent by certified mail within 10 days after the effective date of these EPA regulations or the date on which State assumption of responsibility for the facility becomes effective. A copy of the letter must be sent to the responsible State agency(ies).

Appendix I to Part 265

The following is an example of the calculation in § 265.143(a)(7) using these assumptions: The closure cost estimate at the time the closure trust fund was established

was $70,000. Five annual payments have been made. The current value of the fund is $25,000 (including earnings of the fund and yearly increases in the payments as a result of the adjustment for inflation required by paragraph (a)(6)). The total pay-in period is 20 years. Now the owner or operator has changed the estimate to $120,000 because of a change in the closure plan and therefore needs to recalculate his next payment.

Step 1—The adjusted estimate, $120,000, divided by the pay-in period, 20 years, is $6,000.

Step 2—$6,000 multiplied by the number of payments made, 5, is $30,000.

Step 3—$30,000 minus the current value of the fund, $25,000, is $5,000.

Step 4—$5,000 divided by the remaining years in the pay-in period, 15, is $333.

Step 5—Adding $333 to the $6,000 from Step 1 gives the new payment, $6,333.

Appendix II to Part 265

EPA Form 8700–15

U.S. Environmental Protection Agency

Closure Trust Agreement

As provided for in 40 CFR 265.143(a) under authority of the Resource Conservation and Recovery Act of 1976, as amended (42 USC 6901)

[1] EPA Facility Identification No. ————

Adjusted closure cost estimate, in accordance with 40 CFR 265.142: $ ————

On this —— day of ————, 19——, I (owner or operator) ————, am placing property described below in trust for the U.S. Environmental Protection Agency (EPA) to be held by (name of financial institution) ———— as trustee under the terms set forth below. The trust shall be named the "Closure Trust" for the following hazardous waste management facilities:

(name and address of facility, or write in "see attached Schedule A"[1] if more than one facility).

1. Purpose Clause

Pursuant to the financial assurance requirements of 40 CFR 265.143, the purpose of this trust is to pay for the costs of closing the above-named facility(ies) in accordance with the closure requirements of 40 CFR Part 265.

2. Property Clause

It is agreed to by (owner or operator) ———— as grantor of this trust that the trust will be funded in accordance with the requirements of § 265.143(a) of the regulations. The initial transfer of property to the trust shall consist of the property listed in Schedule B, attached hereto.[2]

3. Period Clause

This trust shall continue until terminated upon the happening of one of the following conditions:

(a) When (owner or operator) ———— presents to the trustee the original or an authenticated copy of the letter(s) signed by the EPA Regional Administrator(s) stating that he is no longer required to provide financial assurance for closure of the above-named facility(ies). In such an event, all remaining trust property, less final trust administration expenses, shall be delivered to (owner or operator) ————.

(b) By the mutual written consent of the grantor of this trust, the EPA Regional Administrator(s) of the Region(s) in which the facility(ies) is (are) located, the trustee of this trust at any time.

4. Operation of the Trust, Duties of the Trustee

(name of financial institution acting as trustee) ———— acknowledges below its receipt of the trust property listed in Schedule B and its acceptance of the obligations and duties of the trustee as defined below.

(a) The trustee agrees to notify the EPA Regional Administrator(s) by certified mail within five days following the expiration of the thirty-day period after the anniversary of the establishment of the trust, as specified in § 265.143(a)(5).

(b) The trustee may resign from its obligations as trustee by submitting a written notice of its intent to the grantor and to the EPA Regional Administrator(s).

(c) The trustee is to make payments out of the trust only under the conditions specified in 40 CFR 265.143(a)(15).

(date) (signature of grantor)

(address of grantor) ————

(authorized signature for trustee) ————

(name of trustee) ————

(address of trustee) ————

(signature of notary) ————

Mail original to the EPA Regional Administrator within 10 days of the effective date by certified mail. If more than one facility is covered and the facilities are in more than one Region, send original to Regional Administrator of Region in which the largest number of facilities are located and copies to the other Regional Administrator(s), by certified mail.

Appendix III to Part 265

EPA Form 8700–16

U.S. Environmental Protection Agency

Closure Performance Bond

As provided for in 40 CFR 265.143(b) under authority of the Resource Conservation and Recovery Act of 1976, as amended (42 USC 6901)

[1] EPA Facility Identification No. ————

Adjusted closure cost estimate, in accordance with 40 CFR 265.142: $ ————

Know all men by these presents, that we, (owner of operator) ———— of (address) ————, as Principal and (name of surety company) ————, a company created and existing under the laws of (State) ————, as Surety, are held and firmly bound unto the U.S. Environmental Protection Agency (EPA) in the penal sum of ———— U.S. dollars ($——) for payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, and firmly by these presents.

Whereas, the Principal intends to obtain interim status, as defined by Section 3005 of the Resource Conservation and Recovery Act of 1976, as amended, for one or more hazardous waste management facilities, and such status depends upon compliance with the standards of 40 CFR Part 265, which includes the requirement, specified in § 265.143, that the owner or operator of each such facility must establish financial assurance that the applicable closure requirements of Part 265 will be met, and

Whereas, this bond is written to assure compliance with the closure requirements of Part 265 for the following hazardous waste management facilities: (name and address of facility or write in "see attached Schedule A"[1] if more than one facility) ————, and shall inure to the benefit of EPA in accordance with Part 265,

Now, therefore, the condition of this obligation is such that, if the Principal shall faithfully fulfill the closure requirements of 40 CFR Part 265 at each of the facilities guaranteed by this bond, pursuant to all applicable statutes, rules and regulations, and shall close each such facility in accordance with the closure plan required by the said Part 265, then, and only then, the above obligation shall be void; otherwise to be and to remain in full force and effect.

The Surety shall become liable on this bond obligation only upon legal determination rendered in a proceeding brought pursuant to Section 3008 of the Resource Conservation and Recovery Act, as amended, that the Principal has violated the closure requirements of 40 CFR Part 265. Following such a determination, the Surety must either complete closure of the facility in accordance with the approved closure plan for the facility or pay the amount of the penal sum into an escrow account as directed by an EPA Regional Administrator.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the Surety's obligation hereunder exceed the amount of said penal sum. The insolvency or bankruptcy of the Principal shall not constitute a defense to the Surety with regard to claims of liability on the bond obligations, and in the event of said insolvency or bankruptcy, the Surety must pay any unsatisfied final judgments obtained on such claims. The Surety agrees to furnish written notice forthwith to the Regional Administrator(s) of the EPA Region(s) in which the facility(ies) is (are) located of all suits filed, judgments rendered, and payments made by the Surety under this bond.

This bond is effective the ———— day of ————, 19——, at the address of the Principal as stated herein and shall continue in force until terminated as hereinafter provided. The Surety may terminate this bond by written notice sent by certified mail

[1] If closure of more than one facility is covered by the trust, list on a separate sheet the EPA Facility Identification Numbers, names, and addresses, and adjusted closure cost estimates for all the facilities, clearly label this list "Schedule A," and attach it to this agreement. Show total of cost estimates.

[2] List property included in initial transfer on separate sheet, clearly label this list "Schedule B," and attach it to this agreement.

[1] If closure of more than one facility is covered by the bond, list on a separate sheet the EPA Facility Identification Numbers, names, addresses, and adjusted closure cost estimates for all the facilities, clearly label this list "Schedule A," and attach it to this bond. Show total of cost estimates.

to the Principal and to the EPA Regional Administrator(s) of the Region(s) in which the facility(ies) is (are) located, such termination to become effective ninety (90) days after actual receipt of said notice by EPA; provided, however, no such termination shall become effective with respect to any facility closure guaranteed by this bond if closure of said facility has begun or has been ordered to begin by an EPA Regional Administrator. The Principal may terminate this bond by sending written notice to the Surety, such termination to become effective thirty (30) days after receipt of such notice by the Surety; provided, however, that such notice is accompanied by written authorization for termination of the bond by the Regional Administrator(s) of the EPA Region(s) in which the bonded facility(ies) is (are) located.

If more than one surety company joins in executing this bond, such action shall constitute joint and several liability on the part of the sureties.

In witness whereof, the Principal and Surety have executed this instrument on the ———— day of ————, 19——.

(Seal) ————————————
(Surety)
(Seal) ————————————
(Principal)
(Seal) ————————————
(attorney-in-fact) (address of Principal) ————————————

Surety Bond No. ————

Mail original to the EPA Regional Administrator within 10 days of the effective date by certified mail. If more than one facility is covered and the facilities are in more than one Region, send original to Regional Administrator of Region in which the largest number of facilities are located and copies to the other Regional Administrator(s), by certified mail.

Appendix IV to Part 265

EPA Form 8700-17

U.S. Environmental Protection Agency

Standby Letter of Credit

As provided for in 40 CFR 265.143(c), 265.145(c), and 265.145(e) under authority of the Resource Conservation and Recovery Act of 1976, as amended (42 USC 6901)

[1]EPA Facility Identification No. ————
Adjusted cost estimate(s) for the facility, for closure and/or post-closure care to be covered by this Letter of Credit, in accordance with 40 CFR 265.142 and 265.144: $———— (closure) $———— (post-closure)

Administrator(s) for Region(s)————
U.S. Environmental Protection Agency
Address(es) ————
(Address to EPA Regional Administrator(s) of Region(s) in which the facility(ies) is (are) located.)

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. ————, in favor of the Regional Administrator(s) for Region(s) —— of the U.S. Environmental Protection Agency for the account of (owner or operator) ———— up to the aggregate amount of ———— U.S. dollars ($——) available by your drafts as specified below.

This Letter of Credit is effective as of today's date and will expire on the ———— day of ———— 19——, subject to the operation of the renewal clause below.

The purpose of this Letter of Credit is to provide financial assurance to the U.S. Environmental Protection Agency of compliance with the ("closure," "post-closure," or "closure and post-closure") ———— requirements of 40 CFR Part 265 as they apply to (name and address of facility, or write in "see attached Schedule A" [1] if more than one facility) ————. Such assurance is required for closure by 40 CFR 265.143 and for post-closure care by 40 CFR 265.145. This Letter of Credit provides assurance for (check those that apply):

—Closure in accordance with the letter-of-credit specifications of 40 CFR 265.143(c)

—A lump-sum payment at closure for the purpose of assuring post-closure care in accordance with letter-of-credit specifications of 40 CFR 265.145(c)

—Funds for the performance of post-closure care in accordance with letter-of-credit specifications of 40 CFR 265.145(e)

All drafts on this Letter of Credit submitted in writing and accompanied by your signature will be promptly paid and deposited in an interest-bearing escrow account in this Bank. If a draft on the escrow account is accompanied by a copy of an order from a Federal Administrative Law Judge or a Federal District Court Judge setting forth a determination of a violation of the above-mentioned closure and/or post-closure requirements, we will pay the party or parties designated by the court or the EPA Regional Administrator(s).

Alternatively, payments may be made out of any amount in escrow following a draft upon this Letter of Credit by the mutual written consent of (owner or operator) ———— and the EPA Regional Administrator(s), pursuant to 40 CFR 265.143(c)(6), 265.145(c)(6) and (8), or 265.145(e)(7), as applicable.

It is a condition of this Letter of Credit that it will be automatically extended for one-year periods from the expiration date set forth above, unless sixty (60) days before that date we notify you by certified mail of our intent not to renew the credit. In that case, for the remainder of the period of the Letter of Credit, you may draw upon the credit up to the aggregate amount of the credit remaining, such draft to be deposited in escrow as described above. This Letter of Credit may be terminated by (owner or operator) ———— by sending written notice to this Bank, such termination to become effective thirty (30) days after receipt of such notice by this Bank; provided, however, that such notice is accompanied by your written authorization for termination of the Letter of Credit.

This Letter of Credit is subject to Article Five of the Uniform Commercial Code and the "Uniform Customs and Practices for Documentary Credits" (1974 Revision) described in International Chamber of Commerce Brochure No. 290.

All communications concerning this Letter of Credit are to be addressed to: (name and address of responsible officer of the issuing bank) ————.

(date) (authorized signature)
(print or type name of person signing) ————
(title of person signing) ————
(name of bank)————

Mail to the EPA Regional Administrator(s) within 10 days of the effective date by certified mail.

[1]If more than one facility is covered by this Letter of Credit, list on a separate sheet the EPA Facility Identification Numbers, names, addresses, and adjusted closure and/or post-closure cost estimates for all the facilities, clearly label this list "Schedule A," and attach it to this Letter of Credit. Show total(s) of cost estimates.

Appendix V to Part 265

EPA Form 8700-18

U.S. Environmental Protection Agency

Guaranty

As provided for in 40 CFR 265.143(e) and 265.145(g), under authority of the Resource Conservation and Recovery Act of 1976, as amended (42 USC 6901)

[1]EPA Facility Identification No.———— — Adjusted cost estimates(s) for the facility, for closure and/or post-closure care to be covered by this guaranty, in accordance with 40 CFR 265.142 and 265.144: $———— (closure) $———— (post-closure)

Guaranty made this ———— day of ————, 19——, by (name of guaranteeing entity) ————, a business entity organized under the laws of the State of ————, with its principal office at ————, herein referred to as guarantor, to the U.S. Environmental Protection Agency (EPA) as obligee on behalf of (owner or operator) ———— of (business address) ————.

Recitals

1. Guarantor meets or exceeds the financial test requirements of 40 CFR 265.143(e) and/or 265.145(g). Guarantor agrees to notify the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) listed below is (are) located and (owner or operator) ———— within five days after the guarantor learns of its failure to meet any of the test requirements at any time during the life of this guaranty.

2. (Owner or operator) ———— operates or owns a hazardous waste facility at (address of facility, or write in "see attached Schedule A" [1] if more than one facility is covered) ————.

Statement of Guaranty

For value received from (owner or operator) ————, the guarantor guarantees to the U.S. Environmental Protection Agency (EPA) that in the event that (owner or operator) ————, fails to comply with the ("closure," "post-closure," or "closure and post-closure") ———— requirements of 40 CFR part 265 applicable to (name and address of facility or write in "see attached Schedule A") ————, the

[1]If more than one facility is covered by this guaranty, list on a separate sheet the EPA Facility Identification Numbers, names, addresses, and the adjusted closure and/or post-closure estimates for all the facilities, clearly label this list "Schedule A," and attach it to this guaranty. Show total(s) of cost estimates.

guarantor agrees to pay the persons(s) designated by EPA or to pay EPA itself, following a legal determination of a violation of the regulations, an amount sufficient to bring the above-mentioned facility(ies) into compliance with the applicable regulations, but not to exceed the adjusted cost estimate(s) as prepared in accordance with 40 CFR 265.142 and 265.144.

This guaranty is good for so long as (owner or operator) ———— must comply with the applicable financial assurance requirements of 40 CFR 265.143 and 265.145 for the above-named facility(ies).

The guarantor may terminate this guaranty by sending notice by certified mail to the EPA Administrator(s) for the Region(s) in which the facility(ies) is (are) located and to (owner or operator) ————, such termination to become effective ninety (90) days after actual receipt of the notice by EPA; provided, however, that no such termination shall become effective if closure begins or is ordered to begin by an EPA Regional Administrator before the end of the 90 days. Furthermore, if compliance with post-closure requirements is guaranteed, no such termination may become effective if closure has taken place.

This guaranty may be terminated at any time subject to the mutual, prior written consent of the guarantor, the EPA Regional Administrator(s) of the Region(s) in which the facility(ies) is (are) located, and (owner or operator) ————.

(effective date)————(name of guarantor)

(authorized signature for guarantor) ————
(print or type name of person signing) ————
(title of person signing) ————
(signature of witness or notary) ————

Mail original to the EPA Regional Administrator within 10 days of the effective date by certified mail. If more than one facility is covered and the facilities are in more than one Region, send original to Regional Administrator of Region in which the largest number of facilities are located and copies to the other Regional Administrator(s), by certified mail.

Appendix VI to Part 265

EPA Form 8700-19

U.S. Environmental Protection Agency

Post-Closure Trust Agreement

As provided for in 40 CFR 265.145(a), under authority of the Resource Conservation and Recovery Act of 1976, as amended (42 USC 6901)

[1] EPA Facility Identification No. ————
Adjusted post-closure cost estimate, in accordance with 40 CFR 265.144: $ ————

On this —— day of ————, 19 ——, I (owner or operator)————, am placing property described below in trust for the U.S. Environmental Protection Agency (EPA) to be held by (name of financial institution) ————as trustee under the terms set forth below. The trust shall be named the "Post-Closure Trust" for the following hazardous waste management facility(ies):

(name and address of facility, or write in "see attached Schedule A"[1] if more than one facility).

1. Purpose Clause

Pursuant to the financial assurance requirements of 40 CFR 265.145, the purpose of this trust is to pay for the costs of post-closure care of the above-named facility(ies) in accordance with the post-closure requirements of 40 CFR Part 265.

2. Property Clause

It is agreed to by (owner or operator) ———— as grantor of this trust that the trust will be funded in accordance with the requirements of § 265.145(a) of the regulations. The initial transfer of property to the trust shall consist of the property listed in Schedule B, attached hereto.[2]

3. Period Clause

This trust shall continue until terminated upon the happening of one of the following conditions:

—(a) Upon written notice(s) from the EPA Regional Administrator(s) that (owner or operator) ———— is no longer required to maintain financial assurance for post-closure care of the above-named facility(ies). In such an event, all remaining trust property, less final trust administration expenses, shall be delivered to (owner or operator) ————.

(b) By the mutual written consent of the grantor of this trust, the EPA Regional Administrator(s) of the Region(s) in which the facility(ies) is (are) located, the trustee of this trust at any time.

4. Operation of the Trust, Duties of the Trustee

(name of financial institution acting as trustee) ———— acknowledges below its receipt of the trust property listed in Schedule B and its acceptance of the obligations and duties of the trustee as defined below.

(a) The trustee agrees to notify the EPA Regional Administrator(s) by certified mail within five days following the expiration of the thirty-day period after the anniversary of the establishment of the trust, as specified in § 265.145(a)(5).

(b) The trustee may resign from its obligations as trustee by submitting written notice of its intent to the grantor and to the EPA Regional Administrator(s).

(c) The trustee is to make payments out of the trust only under the conditions specified in 40 CFR 265.145(a)(16).

(date) (signature of grantor)

(address of grantor) ————
(authorized signature for trustee) ————
(name of trustee) ————
(address of trustee) ————
(signature of notary) ————

Mail original to the EPA Regional Administrator within 10 days of the effective date by certified mail. If more than one facility is covered and the facilities are in more then one Region, send original to Regional Administrator of Region in which the largest number of facilities are located and copies to the other Regional Administrator(s), by certified mail.

Appendix VII to Part 265

EPA Form 8700-20

U.S. Environmental Protection Agency

Bond for Payment to Post-Closure Care Trust Fund

As provided for in 40 CFR 265.145(b) under authority of the Resource Conservation and Recovery Act of 1976, as amended (42 USC 6901)

[1] EPA Facility Identification No. ————
Adjusted post-closure cost estimate, in accordance with 40 CFR 265.144: $ ————

Know all men by these presents, that we, (owner of operator) ———— of (address) ————, as Principal and (name of surety company) ————, a company created and existing under the laws of (State) ————, as Surety, are held and firmly bound unto the U.S. Environmental Protection Agency (EPA) in the penal sum of ———— U.S. dollars ($————) for payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, and firmly by these presents.

Whereas, the Principal intends to obtain interim status, as defined by Section 3005 of the Resource Conservation and Recovery Act of 1976, as amended, for one or more hazardous waste disposal facilities, and such status depends upon compliance with the standards of 40 CFR Part 265, which includes the requirement, specified in § 265.145, that the owner or operator of each such facility must establish financial assurance that the applicable requirements of Part 265 for post-closure care will be met, and

Whereas, this bond is written to assure that the Principal will establish a trust fund in accordance with § 265.145 for the purpose of providing for post-closure care of the following hazardous waste disposal facilities: (name and address of facility or write in "see attached Schedule A"[1] if more than one facility) ————, and shall inure to the benefit of EPA in accordance with said Part 265,

Now, therefore, the condition of this obligation is such that, if the Principal shall faithfully, for each of the facilities guaranteed by this bond, within 30 days after beginning closure, make full payment in the amount of the final adjusted post-closure cost estimate calculated in accordance with § 265.144 into a trust fund meeting the requirements of § 265.145(a) to assure the costs of 30 years of post-closure care, pursuant to all applicable statutes, rules and regulations, then and only then, the above obligation shall be void; otherwise to be and to remain in full force and effect.

The Surety shall become liable on this bond obligation only when the Principal fails

[1] If post-closure care of more than one facility is covered by the trust, list on a separate sheet the EPA Facility Identification Numbers, names, and addresses, and adjusted post-closure cost estimates for the facilities, clearly label this list "Schedule A," and attach it to this agreement. Show total of cost estimates.

[2] List property included in initial transfer on separate sheet, clearly label this list "Schedule B," and attach it to this agreement.

[1] If provision for post-closure care of more than one facility is covered by the bond, list on a separate sheet the EPA Facility Identification Numbers, names, addresses, and adjusted post-closure cost estimates for all the facilities, clearly lable this list "Schedule A," and attach it to this bond. Show total of cost estimates.

to make payment in accordance with § 265.145(b)(3). Upon notification by an EPA Regional Administrator that the Principal has failed to fulfill the payment obligation, the Surety will place funds in the amount of the payment obligation into a trust fund as directed by an EPA Regional Administrator.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the Surety's obligation hereunder exceed the amount of said penal sum. The insolvency or bankruptcy of the Principal shall not constitute a defense to the Surety with regard to claims of liability on the bond obligations, and in the event of said insolvency or bankruptcy, the Surety must pay any unsatisfied final judgments obtained on such claims. The Surety agrees to furnish written notice forthwith to the Regional Administrator(s) of the EPA Region(s) in which the facility(ies) is (are) located of all suits filed, judgments rendered, and payments made by the Surety under this bond.

This bond is effective the ———— day of ————, 19——, at the address of the Principal as stated herein and shall continue in force for each facility guaranteed by this bond until ninety (90) days following the beginning of closure of that facility or until receipt of written notice sent by EPA to the Surety of satisfactory completion of the financial assurance obligation of the Principal with regard to post-closure care of that facility, the sooner, or until otherwise terminated as hereinafter provided. The Surety may terminate this bond by written notice sent by certified mail to the Principal and to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is (are) located, such termination to become effective ninety (90) days after actual receipt of said notice by EPA; provided, however, that no such termination shall become effective if closure of said facility has begun, or has been ordered to begin by an EPA Regional Administrator. The Principal may terminate this bond by sending written notice to the Surety, such termination to become effective thirty (30) days after receipt of such notice by the Surety; provided, however, that such notice is accompanied by written authorization for termination of the bond by the Regional Administrator(s) of the EPA Region(s) in which the bonded facility(ies) is (are) located.

If more than one surety company joins in executing this bond, such action shall constitute joint and several liability on the part of the sureties.

In witness whereof, the Principal and Surety have executed this instrument on the ———— day of ————, 19——.

(Seal) ————————
(Surety)
(Seal) ————————
(Principal)
(Seal) ————————
(attorney-in-fact) (address of Principal) ————————

Surety Bond No. ————

Mail original to the EPA Regional Administrator within 10 days of the effective date by certified mail. If more than one facility is covered and the facilities are in more than one Region, send original to Regional Administrator of Region in which the largest number of facilities are located and copies to the other Regional Administrator(s), by certified mail.

Appendix VIII to Part 265

EPA Form 8700-21

U.S. Environmental Protection Agency

Post-Closure Performance Bond

As provided for in 40 CFR 265.145(d), under authority of the Resource Conservation and Recovery Act of 1976, as amended (42 USC 6901)

[1] EPA Facility Identification No. ————
Adjusted post-closure cost estimate, in accordance with 40 CFR 265.144: $ ————

Know all men by these presents, that we, (owner or operator) ———— of (address) ————, as Principal and (name of surety company) ————, a company created and existing under the laws of (State) ————, as Surety, are held and firmly bound unto the U.S. Environmental Protection Agency (EPA) in the penal sum of ———— U.S. dollars ($——) for payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, and firmly by these presents.

Whereas, the Principal intends to obtain interim status, as defined by Section 3005 of the Resource Conservation and Recovery Act of 1976, as amended, for one or more hazardous waste disposal facilities, and such status depends upon compliance with the standards of 40 CFR Part 265, which includes the requirement, specified in § 265.145, that the owner or operator of each such facility must establish financial assurance that the applicable requirements of Part 265 for post-closure care will be met, and

Whereas, this bond is written to assure compliance with the post-closure requirements of 40 CFR Part 265 for the following hazardous waste disposal facilities: (name and address of facility or write in "see attached Schedule A" [1] if more than one facility) ————, and shall inure to the benefit of EPA in accordance with said Part 265,

Now, therefore, the condition of this obligation is such that, if the Principal shall faithfully fulfill the applicable post-closure requirements set forth in 40 CFR Part 265 for each of the facilities guaranteed by this bond, pursuant to all applicable statutes, rules and regulations, and shall carry out the post-closure plan required by Part 265, then, and only then, the above obligation shall be void; otherwise to be and to remain in full force and effect.

The Surety shall become liable on this bond obligation only upon a legal determination rendered in a proceeding pursuant to Section 3008 of the Resource Conservation and Recovery Act, as amended, that the Principal has violated the post-closure requirements of 40 CFR Part 265. Following such a determination, the Surety must either complete post-closure care of the facility in accordance with the approved post-closure plan for the facility or pay the amount of the penal sum into a trust fund as directed by an EPA Regional Administrator.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the Surety's obligation hereunder exceed the amount of said penal sum. The insolvency or bankruptcy of the Principal shall not constitute a defense to the Surety with regard to claims of liability on the bond obligations, and in the event of said insolvency or bankruptcy, the Surety must pay any unsatisfied final judgments obtained on such claims. The Surety agrees to furnish written notice forthwith to the Regional Administrator(s) of the EPA Region(s) in which the facility(ies) is (are) located of all suits filed, judgments rendered, and payments made by said Surety under this bond.

This bond is effective the ———— day of ————, 19——, at the address of the Principal as stated herein and shall continue in force until the end of 30 years of post-closure care unless prior notice is received by the Surety from EPA, or until terminated as hereinafter provided. The Surety may terminate this bond by written notice sent by certified mail to the Principal and to the EPA Regional Administrator(s) of the Region(s) in which the facility(ies) is (are) located, such termination to become effective ninety (90) days after actual receipt of such notice by the Agency; provided, however, that no such termination shall become effective if closure of any said facility has taken place, has begun, or has been ordered to begin by an EPA Regional Administrator. The Principal may terminate this bond by sending written notice to the Surety, such termination to become effective thirty (30) days after receipt of such notice by the Surety; provided, however, that such notice is accompanied by written authorization for termination of the bond by the Regional Administrator(s) of the EPA Region(s) in which the bonded facility(ies) is (are) located.

If more than one surety company joins in executing this bond, such action shall constitute joint and several liability on the part of the sureties.

In witness whereof, the Principal and Surety have executed this instrument on the ———— day of ————, 19——.

(Seal) ————————
(Surety)
(Seal) ————————
(Principal)
————————
(attorney-in-fact) (address of Principal) ————————

Surety Bond No. ————

Mail original to the EPA Regional Administrator within 10 days of the effective date by certified mail. If more than one facility is covered and the facilities are in

[1] If post-closure care of more than one facility is covered by the bond, list on a separate sheet the EPA Facility Identification Numbers, names, and addresses, and adjusted post-closure cost estimates for all the facilities, clearly label this list "Schedule A," and attach it to this bond. Show total of cost estimates.

more then one Region, send original to Regional Administrator of Region in which the largest number of facilities are located and copies to the other Regional Administrator(s), by certified mail.

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