ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264, 265, 280, and 761

[FRL-3861-7]

RIN 2050-AC71

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Financial Responsibility

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is today proposing to amend its financial assurance requirements under subtitle C of the Resource Conservation and Recovery Act (RCRA). First, EPA is proposing to revise the financial test criteria for closure and post-closure care by amending the financial ratio requirements and to revise the financial tests for closure and post-closure care and third-party liability coverage by amending the net-worth and net-working-capital multiples. Second, EPA is proposing to amend the claims reporting provision and the provisions for obtaining a letter of credit in the recently promulgated regulations that expanded the allowable financial assurance mechanisms for liability coverage (53 FR 33938, September 1, 1988). Third, the Agency is proposing to allow a nonparent company to provide a guarantee as a demonstration of financial assurance for closure and post-closure care. Finally, today's proposal would require the owner or operator of a disposal facility to certify compliance with deed notice requirements after closure of a hazardous waste facility, before being released from closure financial assurance requirements.

Today's notice addresses in part a rulemaking petition submitted by the National Solid Wastes Management Association on February 16, 1990. A related notice elsewhere in today's issue makes technical revisions to the language of the liability coverage requirements.

DATES: Comments must be submitted on or before August 30, 1991.

ADDRESSES: Written comments on today's proposal should be addressed to the docket clerk at the following address: Environmental Protection Agency, RCRA Docket (OS-305), 401 M St. SW., Washington, DC 20460. Commenters should send one original and two copies and place the docket number (F-91-RCFP-FFFFF) on the comments. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. Docket materials may be reviewed by appointment by calling (202) 475-9327. Copies of docket materials may be made at no cost, with a maximum of 100 pages of material from any one regulatory docket. Additional copies are $.15 per page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline at 1-800-424-9346 (in Washington, DC, call 382-3000), or Ed Coe at (202) 382-6259, Office of Solid Waste (OS-341), U.S. Environmental Protection Agency, Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority

This proposed rule is issued under the authority of section 3004 of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. 6924.

II. National Solid Wastes Management Association Rulemaking Petition

On February 16, 1990, the National Solid Wastes Management Association submitted to the Agency a rulemaking petition related to RCRA and other EPA financial responsibility requirements. The petition requested the Agency to initiate rulemakings to: (1) Revise methods of establishing individual amounts of financial assurance; (2) revise several of the mechanisms (including the corporate financial test and the corporate guarantee) currently used to demonstrate financial responsibility requirements under RCRA subtitle C and related programs; and (3) consider centralized Federal management of financial assurance. As part of the centralized Federal management approach, NSWMA suggested changes to the methods of calculating financial assurance levels and suggested that states should not be allowed to set financial assurance requirements that deviate from the Federal.

Many of the issues raised by NSWMA in its petition were not new to the Agency. For example, at the time that the petition was submitted, the Agency was in the process of developing the revisions to the subtitle C corporate financial test that are proposed today. Though not developed in response to the petition, the Agency believes that the proposed revisions to the financial test address many of the concerns related to the financial test that were raised by NSWMA in its petition.

In its petition, NSWMA pointed out that in the September 1, 1988 rulemaking related to third party liability, the Agency had allowed the use of the corporate guarantee by firms that are not the direct parent of the facility owners or operators. NSWMA urged the Agency to extend the non-parent corporate guarantee to closure and post-closure financial assurance requirements as well. The revisions to the corporate guarantee, proposed in this notice and discussed in section V of this preamble, respond to this portion of NSWMA's petition.

III. Proposed Revisions to the Financial Test

A. Background

Section 3004 of subtitle C of the Resource Conservation and Recovery Act (RCRA) of 1976, requires the Environmental Protection Agency (EPA) to promulgate regulations establishing such performance standards applicable to owners and operators of facilities for the treatment, storage, or disposal of

hazardous waste as may be necessary to protect human health and the environment. Section 3004(a)(6) states that these standards shall include requirements respecting "* * * the maintenance of operation of such facilities and requiring such additional qualifications as to ownership, continuity of operation, * * * and *financial responsibility as may be necessary or desirable* * * *" (emphasis added). "Financial responsibility," while not defined in the original RCRA or subsequent amendments, has been defined by Congress in other legislation (including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, or CERCLA) as being demonstrable through a variety of mechanisms, including passing a test of corporate financial strength (hereafter, a financial test).

Pursuant to its statutory authority under RCRA, EPA proposed in 1978 a set of financial assurance regulations requiring owners or operators of TSDFs to provide demonstrations that they possess adequate resources to cover the costs of closure and post-closure care (43 FR 59006, December 18, 1978). The original financial assurance proposal included only the trust fund as a mechanism for assuring the costs of closure and post-closure care. After receiving comments contending that allowing only trust funds was financially burdensome, the Agency added several alternative mechanisms, including a financial test, in the revised proposal of May 19, 1980 (45 FR 33260). The proposed financial test provided a set of financial criteria which, if passed, allowed the owner or operator to demonstrate financial assurance without actually setting aside funds in a trust fund for closure or post-closure care or obtaining a third-party financial assurance mechanism that would guarantee an available source of funds (e.g., letter of credit or insurance). After receiving many comments on the May 19, 1980 reproposal suggesting other criteria for evaluating financial viability, the Agency conducted an extensive analysis of possible financial tests that resulted in the current financial test for closure and post-closure care that was promulgated in the interim final rule of April 7, 1982 (47 FR 15032). These requirements are in 40 CFR parts 264 and 265, subpart H, which cover permitted and interim status facilities respectively.

The Agency proposed financial assurance requirements for third-party liability coverage simultaneously with the proposal for closure and post-closure care financial assurance (43 FR 59006, December 18, 1978). In developing a financial test for liability coverage, the Agency applied the same basic analytical approach used for evaluating potential financial tests for closure and post-closure care. The Agency's financial test analysis led to the promulgation on April 16, 1982, of the current financial test in 40 CFR parts 264 and 265 subpart H for liability coverage (47 FR 16544).

Under the current regulations, which have been in effect since 1982, TSDF owners or operators can satisfy the requirements for financial assurance of closure and post-closure care by demonstrating that they meet either of the following sets of criteria:

Closure/Post Closure Care

Alternative I:

(A) Two of the following three ratios:
  (1) A ratio of total liabilities to net worth of less than 2.0;
  (2) A ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities of greater than 0.1; and,
  (3) A ratio of current assets to current liabilities of greater than 1.5; and
(B) Net working capital and tangible net worth each at least six times the sum of current closure and post-closure care cost estimates being covered by the test; and
(C) Tangible net worth of at least $10 million; and
(D) Assets in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure care cost estimates being covered by the test.

Alternative II:

(A) A current rating for the owner or operator's most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and
(B) Tangible net worth at least six times the sum of current closure and post-closure care cost estimates being covered by the test; and
(C) Tangible net worth of at least $10 million; and
(D) Assets in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure care cost estimates being covered by the test.

Under the current regulations, owners or operators can satisfy the requirements for financial assurance for liability coverage by demonstrating that they meet either of the following sets of financial test criteria:

Alternative I:

(A) Tangible net worth of at least $10 million; and
(B) Net working capital and tangible net worth each at least six times the sum of liability coverage to be demonstrated by the test; and
(C) Assets in the United States amounting to at least 90 percent of total assets or at least six times the sum of liability coverage to be demonstrated by the test.

Alternative II:

(A) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and
(B) Tangible net worth at least six times the sum of liability coverage to be demonstrated by the test; and
(C) Tangible net worth of at least $10 million; and
(D) Assets in the United States amounting to at least 90 percent of total assets or at least six times the sum of liability coverage to be demonstrated by the test.

B. Development of the Financial Test

1. 1981 Analysis and Results

In developing the current financial test regulations, EPA performed an extensive analysis of financial test options for demonstrating financial responsibility for the costs of closure, post-closure care, and liability coverage under RCRA subpart H. This analysis is described fully in the Background Document for the Financial Test and Municipal Revenue Test: Financial Assurance for Closure and Post-Closure Care, U.S. EPA, November 30, 1981, and is summarized below.

The methodology used by the Agency to select financial tests in 1981 consisted of the following basic steps:

(1) Establish minimum net worth requirement for firms using the financial test.
(2) Analyze the performance of various financial tests in discriminating between bankrupt and viable firms.
(3) Evaluate those tests that best discriminate between viable and bankrupt firms according to a "least cost" criterion.
(4) Impose "multiples requirements" on firms using the test for closure, post-closure care, and/or liability coverage.
(5) Establish bond rating alternative for firms with unique financial characteristics.

Each of these steps is discussed below.

a. Establish Minimum Net Worth Requirement. If a firm uses a financial test for demonstrating financial assurance, it does not have to set aside funds or purchase a financial assurance mechanism from a third party (e.g., letter of credit) to satisfy the financial assurance requirements. Thus, if a firm passes the financial test as its demonstration of financial assurance and then experiences financial duress or goes bankrupt, it is unlikely that the firm will be able to cover the required costs (e.g., the costs of closure and post-closure care) in a timely manner. To help ensure that the financial test included criteria that protected against financial duress and possibly bankruptcy, the Agency imposed a $10 million minimum net worth requirement for firms using the test. Data available to the Agency in 1981 indicated that the business failure rate for firms with less than $10 million in net worth was as much as double the failure rate for firms with more than $10 million in net worth, suggesting that the smaller firms could be more likely to declare bankruptcy and leave unfunded obligations. Moreover, the Agency was concerned that the expense of environmental obligations could drive small TSDF owners into bankruptcy if they failed to plan for these future costs. The Agency compared the size of potential closure, post-closure care, and liability obligations (which range from $100,000 to over $10 million) with net worth and determined that a $10 million minimum net worth requirement would help to ensure that the costs of conducting closure and post-closure care activities and compensation for third-party damages would not themselves be burdensome enough to cause TSDF owners to go into bankruptcy.

b. Analyze Performance of Alternative Financial Tests. The Agency was concerned that a minimum net worth requirement alone would not be sufficient to preclude firms from passing the financial test and later going bankrupt. Thus, the Agency examined over 300 alternative sets of mesures, consisting largely of different combinations of financial ratios that have long been used in the financial community to assess the financial performance of firms, for possible inclusion in a financial test (financial ratios are discussed in more detail in the next section).

To measure the performance of alternative tests in discriminating between viable and bankrupt firms, the Agency constructed a sample of 178 non-bankrupt firms and a sample of 66 bankrupt firms. The non-bankrupt firm sample consisted of firms with available financial information for the years 1973–1975 that did not declare bankruptcy in that period. Because data on the actual owners of TSDFs were not readily available to the Agency in 1981, the sample of firms used as a proxy for actual owners was drawn from industries identified through Moody's Industrial Manual as likely to generate, treat, store, or dispose of hazardous waste on-site. The bankrupt firm sample consisted of firms that had filed for bankruptcy under chapters 10 or 11 of the Federal Bankruptcy Act between 1966 and 1979 and had available financial information for the three years prior to bankruptcy. These firms were selected from a broader range of industrial categories than the non-bankrupt firms and included categories unlikely to manage hazardous waste. This broader range of categories was necessary to ensure an adequate sample size, since bankruptcy is a relatively rare event.

The candidate financial tests were then evaluated against the bankrupt and non-bankrupt firm samples in terms of their ability to (1) "pass" non-bankrupt firms capable of meeting their financial assurance obligations, and at the same time (2) "fail" bankrupt firms that would enter bankruptcy without the means to meet those obligations. The Agency quantified these performance indicators using the following two measures:

Availability (A): Availability of the financial test was measured as the percentage of non-bankrupt firms with over $10 million in net worth that can pass the test.

Bankruptcy Misprediction (M): Misprediction of the test was measured as the percentage of bankrupt firms that pass the financial test within three years before bankruptcy. The Agency assumed that even if a firm failed the financial test up to three years prior to bankruptcy, there may not be sufficient time or capability for the owner or operator to obtain alternate assurance prior to bankruptcy.

The optimal tests would maximize the number of viable firms that pass the test—i.e., maximize "availability" of the test, or the "A" measure—and minimize the number of bankrupt firms that pass the test—i.e., minimize the number of firms that are "mispredicted," the "M" measure. As documented in the 1981 analysis, there is a trade-off between these two performance measures. No financial test will allow every viable firm to pass the test while at the same time screening out all future bankrupt firms from using the test prior to bankruptcy. More difficult tests will, in general, prevent more future bankrupt firms from being able to pass the test, but will be more difficult for viable firms to pass (i.e., more difficult tests will be less "available" to viable firms). By contrast, less difficult tests have the advantage of being widely available to healthy firms but also tend to allow more bankrupt firms to pass.

After measuring the performance of all candidate tests in terms of their ability to discriminate between bankrupt and nonbankrupt firms, the Agency selected for further analysis a group of "dominant" tests. Dominant tests were those that passed the largest number of non-bankrupt firms for given levels of misprediction rates. If one test passed more non-bankrupt firms than another test but screened out the same number of bankrupt firms, the first test was considered to "dominate" the second test and was used in the Agency's group of "best tests."

c. Evaluate "Best" Tests According to a Least-Cost Criterion. Because any financial test involves a tradeoff between availability to viable firms and screening of firms that later go bankrupt, the choice of an optimal test depends on the Agency's objectives in allowing a test, and requires the Agency to select criteria for determining which "mix" of performance is best. In 1981, the Agency used a "least-cost" criterion for selecting the optimal financial test. That is, EPA calculated the costs to the public and to the regulated community associated with each test that had been identified previously as a "best test" and selected the test with the lowest total costs. For each financial test evaluated, the Agency calculated (1) the costs of the public sector ("public costs") of paying for necessary response actions for firms that pass the test but later go bankrupt without setting aside firms for closure and post-closure care and, if necessary, third-party liability judgments through other financial assurance mechanisms, and (2) the costs to viable firms ("private costs") of obtaining alternative financial assurance mechanisms (e.g., letters of credit or trust funds) when they cannot pass the test. Because the financial test is virtually a costless means of demonstrating financial responsibility, the more available the test the lower the cost of the regulated community. Widely available tests have relatively low private costs because relatively few viable firms are forced to pay for other financial assurance mechanisms (e.g., letters of credit or trust funds). Conversely, the more available the test, the more likely the test is to allow bankrupt firms to pass the test. As a result, highly available tests have the result of higher public costs because more firms go bankrupt

without setting aside funds for closure and post-closure care and, if applicable, third-party liability judgments. Tests with better ability to screen bankrupt firms have relatively low public costs because relatively few bankrupt firms have leave unfunded environmental obligations by using the financial test and later going bankrupt. The Agency selected the test with the lowest sum of both public and private costs.

The lowest-cost financial test that the Agency analyzed in 1981 for closure and post-closure care specified three financial ratios and required that firms pass two of these three ratios.

This test was projected to allow about 96 percent of viable firms to pass, while screening out about half of firms that later go bankrupt within three years of passing the test. This balance of availability to viable firms and screening out of bankrupt firms resulted in the lowest combined costs to the public and private sectors of any other test that included a $10 million in net worth requirement.

The Agency also analyzed alternative financial tests for liability coverage by measuring the public and private costs of potential tests. The results of this analysis differed from the results of the cost analysis for alternative tests for closure and post-closure care, however, because the public costs of third-party liability coverage are different from the public and private costs of closure and post-closure care. Unlike the public costs related to closure and post-closure care, which are incurred every time a firm using the financial test goes bankrupt without providing alternate assurance, public costs related to liability coverage are incurred only when a firm using the financial test enters bankruptcy and is required to pay liability claims. Because the probability of bankruptcy is low, and the probability of a firm having to pay liability claims is low, the combined probability of both events occurring is very low. Therefore, the public costs of a financial test for liability coverage are significantly lower than public costs of the closure and post-closure care test even when the ability of a test to screen out bankrupt firms is relatively weak. As a result, the test that minimized the total costs (i.e, the sum of public and private costs) did not include any ratio requirements. An easier test without ratio requirements reduced private costs because of its greater availability to viable firms without significantly increasing public costs (because few bankrupt firms able to pass the test are likely to face a liability obligation).

d. Impose Multiples Requirements. In 1981 the Agency included in all tests a requirement that firms have tangible net worth and net working capital equal to at least six times the amount of the financial assurance obligations covered by the test. These "six times" or "multiples" requirements were imposed to provide a cushion of financial resources for firms that might experience rapid financial deterioration after passing other components of the financial test. Agency data had indicated that some firms in the sample of bankrupt firms were able to pass most of the ratio tests analyzed and yet deteriorated quickly into bankruptcy. The Agency performed an analysis of those firms and concluded that the six times multiples would provide an adequate cushion to ensure that even rapidly deteriorating firms would have resources adequate to cover the costs of closure, post-closure care, and third-party liability judgments.

e. Establish Bond Rating Alternative. The analysis summarized above resulted in the selection of financial tests for closure and post-closure care and for liability coverage. Both of these tests included net working capital requirements: For closure and post-closure care, the test required a net working capital multiple of six times the closure/post-closure cost estimate and a current ratio of greater than 1.5; for liability coverage, the test required a net working capital multiple of six times the required liability coverage. In the course of its analysis, the Agency found that the net working capital multiple requirements would make the subtitle C financial test unavailable to many electric utilities, despite their overall financial strength, because many utilities typically operate with negative net working capital. Thus, the Agency considered allowing firms to pass an investment grade bond rating requirement as an alternative to the tests selected for closure/post-closure care and for liability coverage.

An investment grade bond rating was believed to be a good demonstration of financial strength because it reflected the expert opinion of the bond rating service and the financial community. Electric utilities, and any other firms with similar financial characteristics, could pass such a requirement without having to have positive net working capital. Moreover, the Agency performed a quantitative analysis indicating that bond ratings have historically been a reasonably good indicator for predicting default, and noted that none of the firms in its sample of bankrupt firms between 1966 and 1979 had an investment grade rated bond issuance. After analyzing the performance of bond ratings in predicting default, the Agency decided that allowing the bond rating alternative test would enhance the availability of the financial test to financially sound firms in industries with unusual financial characteristics, such as the electric utility industry, while ensuring that firms passing the requirement have sufficient financial strength to fund the potential costs of closure, post-closure care and third-party liability actions.

2. Rationale for Revising Current Financial Tests

The Agency decided to reevaluate alternative financial tests and revise the current provisions for the subtitle C financial tests for a number of reasons. First, the current tests have come under criticism from both the private and public sectors for not performing as the Agency had expected. Second, the Agency recognized that while the original analysis of alternative tests was analytically rigorous and used the best available information, it was based on very limited data on the universe of firms owning TSDFs as well as limited data on the average costs of closure, post-closure care, and third-party liability. The Agency has since compiled additional data in these areas. Finally, the Agency's analysis confirmed that the current financial tests are not performing as well as the Agency originally estimated in terms of their availability to viable firms, while the tests were not performing any better than estimated in screening out bankrupt firms.

a. Criticisms of the Existing Tests. Since the financial tests were promulgated, parties in both the private and public sectors have criticized the current financial test for closure and post-closure care and the financial test for liability coverage. The two key criticisms are: (1) The financial test is not as accurate a predictor of firm bankruptcy as estimated in the 1981 analysis, and (2) the financial test is not available to some large, financially strong firms.

The General Accounting Office criticized the bankruptcy prediction accuracy of the financial test in a February 1986 report.[1] The report states that the 1981 estimate of the percentage of firms that would pass the test but later go bankrupt without providing financial assurance was understated, and that the financial test may therefore be an inadequate mechanism for providing adequate financial assurance.

[1] Environmental Safeguards Jeopardized When Facilities Cease Operating, U.S. General Accounting Office, February, 1986.

On the other hand, criticism from the private sector has focused on the unavailability of the tests to large, financially sound firms. For example, commenters on the proposed financial responsibility rule for subtitle D municipal solid waste landfills, which encouraged States to adopt the Subtitle C financial test and other financial assurance mechanisms in developing State regulations (53 FR 33314, August 30, 1988), stated that the test is unavailable to many strong firms and thus unnecessarily raises the cost of providing financial assurance by requiring alternate assurance mechanisms to be obtained.

b. *Limitations of the 1981 Analysis.* The comments and criticisms regarding the financial tests substantiate Agency concerns that the 1981 analysis leading to the selection of the tests was limited in two important respects: (1) Samples of firms used, and (2) limited information on the potential costs of closure, post-closure care, and liability coverage. Each of these limitations is discussed below.

Samples of Firms Used. At the time of the original analysis, the owners and operators of TSDFs had not been fully identified. Therefore, the samples of firms used in the 1981 analysis, while drawn from the best available sources at the time, were not necessarily representative of the types of firms that own TSDFs. The Agency's sample of non-bankrupt firms was drawn from general industrial categories that included on-site handlers of hazardous waste; the bankrupt firm samples was drawn from a even broader base of industrial categories. As a result, in both samples, the firms considered by the Agency were not known TSDF owners or operators.

Limited Information on Potential Financial Assurance Costs. At the time of the Agency's original financial test analysis, little information was available on the numbers and types of facilities owned and on the costs of closure and post-closure care. These limitations had several significant effects on the evaluation of alternative financial test.

First, the lack of data on the costs of closure and post-closure care made it very difficult for the Agency to analyze the impact of the multiples requirements on the performance of financial tests for closure and post-closure care in terms of availability to viable firms and ability to screen out bankrupt firms. Estimates of closure and post-closure care costs are necessary to calculate the amount of tangible net worth and net working capital a firm must have to satisfy the required six times multiples. In the absence of this information, the Agency was unable to incorporate the multiples requirements into the calculation of availability and bankruptcy misprediction for alternative financial tests, and imposed the requirements separately as a protection against premature closure and post-closure obligations themselves causing bankruptcy.

Second, the lack of data on the types of facilities owned by each firm limited the Agency's ability to test the impact of the multiples requirements on the performance of alternative financial tests for liability coverage. In the case of liability coverage, information on whether a firm owns land disposal or non-land disposal facilities is necessary to determine the required "six times" multiple for net worth and net working capital. A firm owning at least one land disposal facility must have six times the required $8 million aggregate coverage (i.e., $48 million) in net working capital and net worth, while a firm owning facilities with only container storage, tank, incinerator, or waste pile units must have six times the required $2 million in aggregate coverage (i.e., $12 million) in net worth and net working capital. In the absence of information on types of facilities, the Agency was unable to incorporate the multiples requirements into the calculation of availability and bankruptcy misprediction for alternative financial tests, and imposed the requirements separately as a protection against third party liability judgments themselves causing bankruptcy.

The effect of not including the multiples requirements in the analysis of the performance of alternative financial tests is that the current financial tests are more difficult to pass than the Agency predicted. In the case of the closure/post-closure test, the actual test includes the six times multiples requirements for net worth and net working capital in addition to the $10 million in net worth requirement and the two of three ratios requirement analyzed quantitatively by the Agency. Therefore, a firm that had sufficient net worth to pass the $10 million in net worth criterion required by the test in the 1981 analysis might fail the actual test which required additional net worth as well as net working capital to satisfy the multiples requirements. Because the current test (including the multiples requirements) is more difficult than the test originally analyzed (which did not include the multiples requirements), it is highly likely that fewer non-bankrupt firms are actually able to pass the test than the Agency anticipated. In addition, it follows that fewer bankrupt firms should be able to pass the test than the Agency anticipated.

Similarly, in the case of the financial test for liability coverage, the actual test includes the six times multiples requirements for net worth and net working capital in addition to the $10 million in net worth requirement. A firm that had sufficient net worth to pass the $10 million in net worth criterion required by the test in the 1981 analysis might fail the actual test which required additional net worth as well as net working capital to satisfy the multiples requirements. Again, because the current test is more difficult than the test originally analyzed (because the current test includes multiples requirements), it is highly likely that fewer viable firms are actually able to pass the test than the Agency anticipated. In addition, it is likely that fewer bankrupt firms should be able to pass the test than the Agency anticipated.

In the years since the original financial test analysis was completed, the Agency has compiled a data base containing financial and facility information for owners and operators of regulated TSDFs. This data base provides ownership and financial information for TSDFs, including the types of units present at each facility (the data base is described in more detail in the next section). The Agency has also developed more refined estimates of the cost of closure and post-closure care for each facility, based on the types of units present at each facility. These data enabled the Agency to test explicitly the impact of the current multiples requirements in the financial tests, as well as alternative requirements, in an evaluation of alternative financial tests.

c. *Preliminary Analysis of Current Test Performance.* As a preliminary step to the reevaluation of financial tests, the Agency analyzed the financial test for closure and post-closure care and the financial test for liability coverage, to compare the actual performance of the tests relative to the Agency's estimates in 1981. In this analysis, the current financial tests were analyzed using the same performance measures as in the 1981 analysis, but against new samples of bankrupt and non-bankrupt firms developed by the Agency (the new samples are explained in more detail in the next section). The results of this analysis showed that the current financial test for closure and post-closure care was not performing as well for firms with TSFDs as the Agency had predicted in the 1981 analysis of firms in various industrial categories. The test was available to about two-thirds of

viable firms with greater than $10 million in net worth, compared to the Agency's original estimate of 96 percent availability. The test was slightly better (less than ten percent) at screening out bankrupt firms than the Agency originally estimated. The results of this analysis showed that the financial test for liability coverage also was not performing as well as indicated by previous Agency estimates. The test was only available to 62 percent of viable firms compared to the Agency's 1981 estimate of 100 percent availability. In contrast, the test actually screened 25 percent more bankrupt firms than the Agency anticipated due to the difficulty of passing the multiples requirements of the test. Because the results of this analysis were so different from the original estimates, the Agency decided to reevaluate alternative financial tests.

3. 1989 Analysis Methodology

Today's proposed revisions to the financial test for closure and post-closure care and for liability coverage are a result of an analysis of the existing financial tests and numerous regulatory alternatives to these tests. In this analysis, the Agency used the same basic goals in promulgating a financial test as those used in the 1981 analysis: (1) Funds should be available to pay for the cost of environmental obligations in a timely manner to ensure the protection of human health and the environment; (2) as a matter of equity, the parties responsible for environmental obligations (i.e., owners and operators) should pay for those costs; (3) total costs of providing assurance should be minimized; and (4) cost to the regulated community of providing financial assurance should be as low as possible, while satisfying other goals. The analysis of alternative tests was significantly enhanced by the availability of better data and other enhancements.

The analysis of financial tests alternatives for this proposal follows closely the approach used by the Agency in the 1981 analysis. First, a minimum net worth requirement was established. Second, the Agency analyzed the performance of various financial tests in discriminating between bankrupt and viable firms. Third, those tests that best discriminated between viable and bankrupt firms were evaluated according to a "least cost" criterion, and a new revised financial test was selected. Each of these analytical steps is described immediately below, while the conclusions reached as a result of this analysis are set forth in section III. C. of this preamble.

a. *Establish Minimum Net Worth Requirement.* The Agency reviewed data on firm failure rates by size of net worth to determine if a minimum net worth requirement significantly reduces the likelihood of bankruptcy among firms using the financial test. Because the 1981 analysis used information on firm failure rates largely from the early 1970's, EPA obtained updated information from Dun and Bradstreet (D&B) and U.S. Census data for the years 1983–1987 to derive average annual failure rates for manufacturing firms (which represent nearly all RCRA firms) by various net worth categories. Using the derived firm failure rates by net worth category, EPA analyzed the effect of various net worth thresholds on the probability that firms passing the financial test would later go bankrupt without providing alternate assurance.

b. *Evaluate the Performance of Alternative Financial Tests.* The Agency followed the same basic approach for evaluating alternative tests as in the 1981 analysis. First, the Agency evaluated available financial measures and then selected a number of individual financial measures for inclusion into a set of alternative financial tests. This set of measures consisted of measures commonly used by financial analysis and financial institutions in gauging the financial strength of a firm. Second, the set of alternative tests was analyzed for their availability to viable firms and ability to screen out bankrupt firms, and the "best" performing tests were identified. "Best" performing tests, or "dominant" tests, were defined as those that were the most available to viable firms for a given level of bankruptcy screening. Third, these "best" performing tests were analyzed for their total public and private costs, a key element in the selection of alternative tests. Public costs were defined as the costs to the public of paying for the unfunded obligations of firms that passed the financial test and later went bankrupt, and private costs were defined as the costs to viable firms unable to use the test of paying for alternative financial assurance mechanisms. Each of these steps is discussed below.

Analysis of Individual Financial Measures. A research of financial literature was conducted to identify possible financial ratios, which generally fell into one of three categories of financial ratios typically used for bankruptcy prediction:

(1) Profitability ratios—measure a firm's net income or cash flow in relation to firm size (e.g., cash flow/total liabilities), and reflect the ability of a firm to use its assets profitably and sustain operations over time;

(2) Leverage ratios—measure a firm's debt in relation to firm size (e.g., total liabilities/net worth), and measure the degree of difficulty a firm might face in meeting principal and interest repayments over time (and the willingness of lenders to extend additional credit to the firm); and

(3) Liquidity ratios—measure a firm's cash or current assets in relation to firm size or current liabilities (e.g., current assets/current liabilities), and reflect the degree to which a firm can meet its short-term obligations with readily available liquid assets.

In addition to financial ratios, the Agency also evaluated a variety of multiples requirements for net worth and net working capital (i.e., one through six times the size of the financial obligation). The Agency also analyzed "additive" requirements that required firms to have a certain level of net worth (in addition to the minimum net worth requirement of $10 million) based on the amount of costs they wished to cover with the test. Under this approach, for example, if a test required a six times additive for net worth, a firm would have to have a minimum of $10 million in net worth plus an additional amount of net worth equal to six times the financial assurance obligations covered by the test. (In contrast, the current tests allow net worth to be applied both to the minimum net worth requirement and to the net worth multiple requirement). Requiring a net worth additive over and above the $10 million net worth requirement ensures that a firm using the financial test will maintain a $10 million minimum net worth even after paying the cost of environmental obligations covered by the test. Thus, this provision protects against the risk of environmental obligations causing bankruptcy for firms that use the financial test.

To measure the performance of these individual financial measures in discriminating between viable and bankrupt firms, the Agency used the new samples of bankrupt and non-bankrupt firms described in the previous section. These samples incorporate data on actual owners of TSDFs compiled by the Agency in recent years. A sample of 608 non-bankrupt firms was created from the Agency's firm/facility/financial data base (F3DB) of known RCRA TSDF owners who had not gone bankrupt while they owned a facility. A sample of 31 firms that had gone bankrupt while owning a facility was developed from the F3DB and supplemented by a data base of owners of facilities included on

CERCLIS. By creating new samples of bankrupt and non-bankrupt firms from owners or operators of hazardous waste facilities, the Agency could evaluate how the individual financial measures and financial tests combining those measures actually perform against firms affected by the regulations.

The candidate financial measures were evaluated against the bankrupt and non-bankrupt firm samples in terms of their ability to (1) "pass" non-bankrupt firms capable of meeting their financial assurance obligations, and at the same time (2) fail bankrupt firms that would enter bankruptcy without the means to meet those obligations. Each financial measure was evaluated using two performance measures:

Availability (A): Measured as the percentage of total financial assurance obligations (i.e., costs of closure, post-closure care, and third-party liability coverage) facing non-bankrupt firms with over $10 million in net worth that can be covered using a particular financial measure or financial test.

Misprediction (M): Measured as the percentage of total financial assurance obligation facing bankrupt firms that can be covered by bankrupt firms using the financial test.

In the 1981 analysis, availability was measured as the percentage of non-bankrupt firms able to use the financial test to cover all of their financial assurance obligations, and misprediction was measured as the percentage of bankrupt firms able to use the financial test to cover all of their obligations. In the 1989 analysis, availability is measured as the percentage of financial assurance obligations (i.e., the percentage of closure/post-closure care obligations or required liability coverage) covered by non-bankrupt firms using the test, and misprediction measured as the percentage of obligations covered by bankrupt firms using the test. These "dollar-based" percentage measurements are used because they produce a more accurate calculation of public and private costs, as discussed in the next section.

Those individual financial measures that performed relatively well at differentiating between the two samples had a high differential between the availability (A) and misprediction (M) measures; i.e., they allow viable firms to cover a relatively large percentage of obligations and, at the same time, screen out a large share of obligations of bankrupt firms. Those measures that performed relatively poorly had about the same availability to viable firms and bankrupt firms; i.e., they allowed bankrupt and non-bankrupt firms to cover a similar percentage of obligations. In some cases, poorly-performing measures had a negative differential—they allowed bankrupt firms to cover a higher percentage of obligations than non-bankrupt firms.

The Agency's analysis of ratio measures found that profitability ratios (e.g., cash flow/total liabilities) and leverage ratios (i.e., total liabilities/net worth) were particularly good at discriminating between bankrupt and non-bankrupt firms. For financial tests based on a single profitability ratio or a single leverage ratio, the difference between the percentage of environmental obligations covered by non-bankrupt firms (defined as "A," or availability), and the percentage covered by bankrupt firms (defined as "M," or misprediction), was about 30 percent. A large number of the "dominant" financial tests identified in the next step of the analysis consisted of a combination of one profitability ratio and one leverage ratio. All of the most cost-effective financial test alternatives identified in the last step of the analysis required firms to pass either a profitability ratio or a leverage ratio (the required thresholds for each ratio were different for different tests).

In contrast to the results for the profitability and the leverage ratios, the liquidity ratios (i.e., current assets/current liabilities and net working capital/total assets) were particularly poor discriminators between bankrupt and non-bankrupt firms. In some cases, financial tests consisting of a single liquidity ratio allowed bankrupt firms to cover a larger percentage of environmental obligations than non-bankrupt firms. This result may reflect the fact that firms will often liquidate assets to meet their pressing cash obligations in the years just prior to entering bankruptcy or may reflect attempts to reschedule short-term obligations over longer periods. An anaylsis of the bankrupt firm sample showed that liquidity measures in general rose over the three-year period prior to bankruptcy. Therefore, liquidity ratios were not included in alternative financial test configurations.

The Agency's analysis of multiples and additive requirements showed that the multiples for net worth and net working capital and the net worth additive requirement did not discriminate very well between bankrupt and non-bankrupt firms (i.e., there was little difference in the percentage of obligations covered by viable and bankrupt firms passing the requirement). However, these requirements are not intended to be bankruptcy predictors but rather are designed to ensure that a large environmental obligation will not itself cause bankruptcy. Therefore, each of the potential multiples and additive requirements initially analyzed were incorporated into the alternative financial test configurations.

The various profitability and leverage ratios that performed well at distinguishing between bankrupt and non-bankrupt firms combined to form alternative financial tests. In addition, a variety of possible multiple and additive requirements for net worth were also added to each combination of financial ratios. This process led to the development of over 500 alternative financial tests to be evaluated against the samples of bankrupt and non-bankrupt firms.

Analysis of Alternative Financial Tests. The set of candidate financial tests, similar to the set of individual financial measures, were evaluated against the bankrupt and non-bankrupt firm samples in terms of their ability to pass non-bankrupt firms capable of meeting their financial assurance obligations (availability or "A") and their ability to screen out bankrupt firms that would enter bankruptcy without the means to meet those obligations (misprediction or "M"). In general the alternative tests, which were combinations of the individual measures previously analyzed, performed better at discriminating between bankrupt and viable firms that the individual measures alone. Thus, the Agency focused on these combination tests for further analysis.

Establish Set of "Best" Tests. As discussed earlier, there is a fundamental trade-off between the availability and misprediction performance measures. No test allows every viable firm to pass the test and at the same time screens out all future bankrupt firms from using the test prior to bankruptcy. As in 1981, the Agency narrowed the set of potential tests by selecting a group of "dominant" tests, i.e., tests with the highest ability to pass non-bankrupt firms for given levels of bankruptcy misprediction. A separate group of dominant tests was selected for both closure/post-closure care and for liability coverage.

c. *Evaluate Test Based on a Least-Cost Criterion.* As in the 1981 analysis, the Agency calculated the public and private costs of each "dominant" test selected in the previous step. Consistent with earlier analyses, the Agency defined public costs as the costs to the public sector of paying for financial assurance obligations for firms that pass the test but later go bankrupt without funding their obligations, and private

costs as the cost to viable firms of obtaining alternative financial assurance mechanisms when they cannot pass the test. The amount of public and private costs associated with a particular test depends on the test's performance in terms of its availability to viable firms and its ability to screen out bankrupt firms. The higher the availability of a test to viable firms, the lower the private costs because fewer firms must pay the costs of obtaining alternate financial assurance. Conversely, the better the test is at screening out bankrupt firms from using the test, the lower the public costs because fewer firms will leave unfunded obligations after bankruptcy.

The Agency calculated these costs for each candidate test and selected the lowest-cost tests that best satisfied Agency policy considerations for further analysis. In contrast to the 1981 analysis, in which the lowest-total-cost test was selected for promulgation, the Agency chose in the 1989 analysis to identify a set of low-cost tests and select a test from that group based on policy considerations. This approach was used because several tests had very similar total costs but different balances between public and private costs. Using this modified cost-effectiveness approach, the Agency could consider the balance of public and private costs among tests of approximately equal total costs. The Agency solicits comment on this approach.

While the methodology used to calculate public and private costs was consistent with the 1981 analysis, the Agency had significantly better data available for the current analysis. For example, more recent data on firm failure rates were used to estimate the likelihood that a firm passing the financial test would later go bankrupt and leave unfunded obligations (i.e., public costs). The Agency has also compiled better data on the costs of other financial assurance mechanisms which are the basis for estimating the costs to firms of obtaining alternate assurance if they are unable to pass the financial test (i.e., private costs).

The calculation of costs was also enhanced by basing the A and M performance measures on the percentage of obligations (i.e., the percentage of closure/post-closure costs or required liability coverage) covered by a financial test rather than the percentage of firms able to pass the financial test for their total financial assurance obligations. Because the Agency had better data available on the costs of closure and post-closure care and had specific information on facility ownership, it could compare the total amount of financial responsibility required for each firm with that firm's capacity to pass a financial test for that specified amount. If the firm could not pass the test for the entire amount, then the Agency calculated the percentage of the financial assurance requirements that could be covered using the test. In contrast, because of the lack of data on costs and facility ownership, the 1981 analysis assumed that all firms faced similar costs and either covered all or none of their obligations with the financial test.

Calculating costs covered by a financial test as a percent of total financial responsibility required improves the calculation of total costs for two major reasons: (1) The approach accounts for the differences among firms in terms of their impact on total public and private costs; and (2) the approach accounts for the combinations of financial assurance mechanisms that firms are allowed to use in providing coverage of obligations.

First, if a viable firm is unable to pass the financial test, the annual cost of obtaining an alternate financial assurance mechanism is equal to a percentage of the amount of financial assurance obligations covered by the mechanism. For example, the annual cost of a letter of credit may equal 1.5 percent of the closure cost estimate for which assurance is provided. If the firm faces substantial financial assurance obligations (e.g., it owns several disposal facilities with high closure and post-closure costs) and cannot pass the financial test, then private costs are increased by a much greater amount than if a viable firm with only limited obligations (e.g., a firm with one small facility) cannot pass the test. Similarly, if a firm facing substantial financial assurance obligations goes bankrupt after using the financial test, the public costs will be much greater than if a firm with minimal obligations goes bankrupt. By counting availability and misprediction in terms of the percentage of obligations facing firms that can be covered using the financial test, the relative impact of a viable firm's inability to pass the test (which results in private costs) or of a bankrupt firm's ability to pass the test (which results in public costs) is incorporated into the cost analysis. Second, a dollar-based measure of availability and misprediction also allowed the Agency's analysis to reflect the fact that financial assurance regulations allow firms to combine the financial test with other financial assurance mechanisms. In the case of closure and post-closure care, the regulations allow firms to use the financial test to cover the obligations of some facilities, and use other mechanisms to cover the obligations of other facilities. In the case of liability coverage, regulations explicitly allow firms to use the financial test to cover as much of their liability requirements as possible, and use other mechanisms to cover the remainder of their liability requirements. Because the financial test can be combined with other mechanisms in many cases, and because the financial test is likely to be at least-cost financial assurance mechanism, the Agency assumed that all firms will use the financial test to cover as much of their financial assurance obligations as possible and then cover remaining obligations with other mechanisms. For example, if a firm can satisfy the financial test requirements sufficiently to cover 70 percent of its closure, post-closure care and liability coverage obligations, then the Agency assumed that the firm would obtain alternate financial assurance mechanisms to cover the remaining 30 percent of its obligations.

C. Section-by-Section Analysis of Proposed Financial Test Revisions

1. Summary of Proposed Revisions

The Agency is proposing regulatory language that would allow an owner or operator to satisfy the financial assurance requirements for closure and post-closure care by meeting either of the following sets of criteria:

Alternative I

(A) One of the following two ratios:

(1) a ratio of total liabilities to net worth less than 1.5; or

(2) a ratio of cash flow (net income plus depreciation, depletion, and amortization) minus $10 million to total liabilities greater than 0.1; and

(B) Tangible net worth of at least $10 million plus the sum of all financial assurance obligations covered by the financial test (i.e., $10 million plus current closure and post-closure care cost estimates covered by the test); and

(C) Assets in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure care cost estimates.

Alternative II

(A) A current rating for the owner or operator's most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

(B) Tangible net worth greater than the sum of the current closure and post-

closure cost estimates and any other obligation covered by the financial test plus $10 million; and

(C) Assets in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure care cost estimates and any other obligations covered by the financial test.

The Agency is also proposing regulatory language that would allow an owner or operator to satisfy the financial assurance requirements for liability coverage by demonstrating that he meets the following criteria:

Alternative I

(A) Tangible net worth of at least $10 million plus the sum of liability coverage requirements; and

(B) Assets in the United States amounting to at least 90 percent of total assets or at least six times the amount of aggregate liability coverage to be demonstrated.

Alternative II

(A) A current rating for the owner or operator's most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

(B) Tangible net worth of at least $10 million plus the sum of liability coverage requirements; and

(C) Assets in the United States amounting to at least 90 percent of total assets or at least six times the amount of aggregate liability coverage to be demonstrated.

It should be noted that both proposed revised tests retain the requirement that the owner or operator have assets in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates. This provision serves to ensure that assets are available within the United States in the event that either the United States or a State seeks assets to such assets to carry out the assured task. Because this requirement serves a purpose other than prediction of financial condition, the Agency is not revising this provision as part of its amendments to the financial tests.

2. Financial Test for Closure and Post-Closure Care

The financial test for closure and post-closure care comprises a minimum net worth requirement and a set of financial ratios. These are discussed below.

Minimum Net Worth Requirements. The current financial test requires firms to have over $10 million in tangible net worth. This cutoff was established because data available to the Agency in 1981 indicated that firms with less than $10 million in net worth were more likely to go bankrupt than were firms with more than $10 million in net worth. Moreover, it was assumed that a $10 million minimum net worth requirement would help to ensure that the costs of closure, post-closure care, and liability judgments would not themselves cause TSDF owners to go into bankruptcy. In addition to the ordinary business misfortunes that lead to bankruptcy, the expense of meeting the costs of closure, post-closure care, and third party liabilities could drive small TSDF owners into bankruptcy if they fail to plan for these obligations.

The Agency reevaluated the validity of this assumption and is proposing to retain the $10 million minimum net worth requirement. The Agency continues to believe that the failure rate for TSDF owners with less than $10 million in net worth could be substantially higher than for larger firms. An analysis of a sample of RCRA bankrupt firms showed that firms with less than $10 million in net worth failed four times more frequently than firms with greater than $10 million in net worth. The Agency also is concerned to ensure that the costs of closure and post-closure care and liability judgments, which could result in costs of millions of dollars, do not themselves cause smaller firms to go bankrupt. In order to avoid the potential for increased public costs due to smaller firms going bankrupt and leaving unfunded environmental obligations, the Agency is proposing to limit eligibility for the financial test to firms with greater than $10 million in net worth.

The Agency does not believe that making the test available to firms with less than $10 million in net worth would significantly reduce the costs of financial responsibility to the regulated community. Although allowing firms with less than $10 million in net worth to use the test would reduce the private costs of obtaining alternate mechanisms, the Agency believes that these savings would be largely offset by the costs of audits required to use the financial test. The reporting requirements of the financial test require that firms have audited financial statements. Most TSDF owners with less than $10 million are privately-held firms that are not required by the SEC to have audited statements. The Agency estimates that the costs of obtaining audits would represent over 50 percent of the savings to firms with less than $10 million in net worth of using the financial test.

The Agency considered raising the minimum net worth requirement to $20 million in net worth because data on average failure rates for all manufacturing firms suggested that firms with less than $20 million in net worth had a significantly higher failure rate than those with greater than $20 million. The Agency, however, rejected this option. The Agency analyzed the public and private costs associated with a $20 million in net worth requirement and concluded that the savings in public costs of such a requirement (i.e., the savings due to a reduction in the number of firms using the test that later would go bankrupt) would not offset the additional costs to the regulated community (i.e., the private costs) of obtaining alternative financial assurance mechanisms.

Ratios and Multiple/Additive Requirements. As discussed in section III, the best financial ratios (i.e., those that discriminated relatively well between viable and bankrupt firms) were combined with a series of possible multiple and additive requirements for net worth and net working capital to form over 500 alternative tests for further analysis. These tests were then evaluated against the samples of viable and bankrupt firms in terms of availability (A) and misprediction (M) (as defined above). Those tests that proved "dominant," or better performing than other tests, were further evaluated in terms of their public and private costs. The best tests according to the cost evaluation were then selected for today's proposal.

EXHIBIT 1.—RESULTS OF ALTERNATIVE FINANCIAL TESTS FOR CLOSURE AND POST-CLOSURE CARE

Test	Test requirements	Private costs ($ thousands)	Public costs ($ thousands)	Total costs ($ thousands)
C/PC-94	Net Worth of at least $10 Million Pass Either of Two Ratios: —Cashflow – (0.66 X FR) / Total Liabilities > 0.05 or	$2,868	$15,408	$18,277

EXHIBIT 1.—RESULTS OF ALTERNATIVE FINANCIAL TESTS FOR CLOSURE AND POST-CLOSURE CARE—Continued

Test	Test requirements	Private costs ($ thousands)	Public costs ($ thousands)	Total costs ($ thousands)
C/PC-902	—Total Liabilities / Net Worth < 2.5 Net Worth at least 1 X Closure and Post-Closure Care Cost Estimate Net Worth of at least $10 Million Plus Net Worth in the amount of Closure and Post-Closure Care Cost Estimate. Pass Either of Two Ratios: —Cashflow – $10 Million / Total Liabilities > 0.10 or —Total Liabilities / Net Worth < 1.5	12,075	6,898	18,972
Current Test	Net Worth of at least $10 Million Pass Two of Three Ratios: —Cashflow / Total Liabilities > 0.10 —Total Liabilities / Net Worth < 2.0 —Current Assets / Current Liabilities > 1.5 Both Net Worth and Net Working Capital at least 6 X Closure and Post-Closure Care Cost Estimate	21,828	9,752	31,580

Exhibit 1 presents total public and private costs of the top two tests for closure and post-closure care in comparison to the current test. These tests each have a cash flow ratio, a total liabilities to net worth ratio, and a $10 million in net worth requirement. In addition, Test 94 has a net worth multiple requirement of one (i.e., a firm must have net worth of one times the closure/post-closure cost estimate), and Test 902 has a net worth additive requirement of one (i.e., a firm must have net worth at least equal to the closure/post-closure cost estimate in addition to $10 million in net worth). The Agency believes that there are advantages to both Test 94 and Test 902.

Test 94 was the lowest-cost test analyzed. However, the test includes a tax rate adjustment in the cash flow ratio which may change over time, thus making it a more difficult test to implement and verify. (The estimate shown in Exhibit 1 is that all firms are subject to a 34 percent corporate tax rate). In addition, the Agency is concerned that a test with a net worth multiple of one does not provide sufficient assurance that a firm will have adequate funds to cover closure and post-closure care activities when they are required. Allowing a firm to use the financial test to cover obligations equal to the net worth of the firm could result in the firm going bankrupt if it were forced to pay for the costs of closure and post-closure care earlier than expected. Because the results of the Agency's analysis do not account for these unforseen bankruptcies, the estimates of public costs in Exhibit 1 may be underestimated.

Test 902 was the second most cost-effective test, with private costs of $12.1 million and public costs of $6.9 million for a total cost of about $19 million. Test 902 also has substantially lower total costs than the current test, which has costs of over $31 million.

The Agency prefers Test 902 for several reasons. First, the test requires a cash flow ratio adjusted by $10 million rather than by a tax adjusted cost estimate, which will be much easier to verify. Second, the test includes a net worth additive requirement of one instead of the multiple requirement of one used in Test 94. The net worth additive requirement would ensure that a firm has net worth sufficient to cover its financial assurance obligations and has an additional $10 million in net worth to cover other debts and obligations as necessary.

Third, Test 902 has a different balance of public and private costs than Test 94. Because it is less available to firms, it has higher private costs than Test 94. However, the substantial improvement in bankruptcy screening (lower misprediction, or "M") leads to far lower public costs than Test 94, so that the total costs are close to the total costs of Test 94. The Agency has developed proposed language that reflects this balance of public and private costs because it believes that public costs may be understated by the calculations shown. The calculations assume that public costs for closure and post-closure care activities for a given facility will equal the estimated private cost for these activities. In the time it takes to address closure and post-closure care activities using public funds, the costs of those activities may be significantly higher than if they were addressed immediately by the firm responsible for the activities. Furthermore, selection of a test that results in lower public costs in consistent with the Agency's position that it is equitable to make the party who creates the environmental obligation pay for it. Test 902 results in lower public costs than Test 94, and is one of the most cost-effective tests examined by the Agency.

The Agency has developed proposed regulatory language for Test 902 but, in light of the fact that Test 94 is the lowest cost test, the Agency solicits comment on both Test 94 and 902. If, after evaluating public comment, the Agency decides that the benefit of Test 94 (lowest cost test) outweighs the benefits of Test 902 described above, the Agency will develop regulatory language for Test 94 in the final rule.

3. Financial Test for Liability Coverage

The Agency analyzed alternative tests for liability coverage using the same set of alternative tests as in the analysis for alternative test for closure and post-closure care. As discussed earlier, the analysis shows different results than the analysis for closure and post-closure care because the public and private costs for liabilty coverage are different than for closure and post-closure care.

Exhibit 2.—RESULTS OF ALTERNATIVE FINANCIAL TESTS FOR LIABILITY COVERAGE

Test	Test requirements	Private costs ($ thousands)	Public costs ($ thousands)	Total costs ($ thousands)
L-37	Net Worth of at least $10 Million	$389	$2,943	$3,331
L-43	Net Worth of 1 × Liability Coverage Requirement Net Worth of a least $10 Million Plus Net Worth in the amount of the Liability Coverage Requirement.	7,107	2,659	9,767

Exhibit 2.—Results of Alternative Financial Tests for Liability Coverage—Continued

Test	Test requirements	Private costs ($ thousands)	Public costs ($ thousands)	Total costs ($ thousands)
Current Test	Net Worth of at least $10 Million Both Net Worth and Net Working Capital at least 6 × Liability Coverage Requirement	30,698	2,080	32,779

Exhibit 2 shows the total public and private costs of two of the top ten financial tests for liability coverage. The least-cost test, Test 37, is very easy to pass. It requires an owner or operator to have $10 million in net worth and to have net worth one times the liability coverage requirement (the net worth of a firm can be applied to both requirements simultaneously). The test has very low private costs because almost every firm with over $10 million in net worth can pass it. At the same time, although every bankrupt firm in the Agency's sample of firms can pass the test, the public costs of the test are relatively low. Because public costs for third party liability judgments are not incurred unless a firm goes bankrupt and faces a liability judgment, which are both low probability events, public costs of the alternative tests are relatively low.

The Agency, however, does not prefer Test 37 because, as discussed in the previous section, tests with net worth multiples of one may actually lead to more substantial public costs than shown in the calculations because a liability obligation itself may cause bankruptcy. While the probability of a liability judgment facing a bankrupt firm is low, the potential amount of one incident could be in the millions of dollars, causing a firm with low net worth (i.e., $10 million) to declare bankruptcy. In such a case, the public costs could be much higher than the $2.9 million shown for Test 37 in Exhibit 2. While the Agency recognizes that the nature of liability coverage may dictate an easier test than for closure and post-closure care, the Agency is mandated to protect human health and the environment, and thus prefers a test that is less likely to risk a failure to address significant compensation of third parties in a timely manner.

Thus, the Agency prefers Test 43, a net worth additive requirement of one. This test, like Test 37, is a minimal requirement with no ratios. It has high availability to viable firms (about 95 percent of obligations covered) and thus much lower private costs than the current test (which has private costs of over $30 million). Test 43 also provides assurance that a firm passing the test will have a sufficient cushion of net worth to prevent a liability obligation from causing bankruptcy, thus it is more reliable at controlling public costs than Test 37.

However, in light of the fact that Test 37 is the lowest cost test, the Agency solicits comment on both Test 37 and Test 43. The Agency has developed proposed regulatory language for Test 43. If, after evaluating public comment, the Agency decides that the benefit of Test 37 (lowest cost test) outweighs the benefits of Test 43 described above, the Agency will develop regulatory language for Test 37 in the final rule.

4. Financial Test for Closure, Post-Closure Care, and Liability Coverage

The Agency also analyzed alternative tests for use in providing financial assurance for the combination of closure, post-closure care, and liability coverage. Under the current regulations, firms are required to pass the financial test for closure and post-closure care in order to provide coverage for the combination of closure, post-closure care, and liability coverage. The Agency examined alternative tests for the combined obligations to determine whether this approach is still appropriate.

Exhibit 3.—Results of Alternative Financial Tests for Closure/Post Closure Care After Providing Liability Coverage

Test	Test requirements	Private costs ($ thousands)	Public costs ($ thousands)	Total costs ($ thousands)
C/PC-902	Net Worth of at least $10 Million Plus Net Worth in the amount of Closure, Post-Closure Care, and Liability Cost Estimate. Pass Either of Two Ratios: —Cashflow – $10 Million/Total Liabilities > 0.10 or —Total Liabilities/Net Worth < 1.5	$13,052	$4,181	$17,233
C/PC-95	Net Worth of at least $10 Million Pass Either of Two Ratios: —Cashflow – (0.66 × FR)/Total Liabilities > 0.10 or —Total Liabilities/Net Worth < 1.5 Net Worth at least 1 × Closure Post-Closure Care, and Liability Cost Estimates	11,223	7,218	18,441
Current Test	Net Worth of at least $10 Million Pass Two of Three Ratios: —Cashflow/Total Liabilities > 0.10 —Total Liabilities/Net Worth < 2.0 —Current Assets/Current Liabilities > 1.5 Both Net Worth and Net Working Capital at least 6 × Closure, Post-Closure Care, and Liability Cost Estimate	27,368	8,889	36,257

Exhibit 3 shows the total public and private costs of the two lowest cost financial tests for the combined obligations. The lowest cost test, Test 902, is the same test as the one preferred by the Agency for closure and post-closure care only. This test requires a firm to pass either a cash flow ratio or a leverage ratio, and to have net worth at least equal to the total cost estimates for closure and post-closure care and the liability coverage requirement, in addition to $10 million in net worth (an additive requirement). Test 95, the second lowest cost test, requires a firm

to pass either a cash flow ratio or a leverage ratio, and to have net worth of one times the total cost estimates for closure and post-closure care and the liability coverage requirement (a multiple requirement).

The Agency prefers Test 902 for firms using the test to cover the combination of closure, post-closure, and liability coverage. This test was the lowest cost test when the combined obligations were imposed on sample firms. It is also consistent with the Agency's current approach of requiring the closure/post-closure requirements to be passed for firms using the test for the combination of obligations. Finally, unlike Test 95, Test 902 imposes the net worth additive requirement and thus protects against the potential for increased public costs that may result from a closure, post-closure, or liability obligation causing bankruptcy. The Agency requests comment on its proposed decision to adopt Test 902 for firms using the test to cover the combination of closure, post-closure, and liability coverage.

The Agency has developed proposed regulatory language for Test 902 but also solicits comment on Test 95. If, after evaluating public comment, the Agency decides to adopt Test 95, the Agency will develop regulatory language for Test 95 in the final rule.

Commenters should note that the current financial tests for closure and post-closure, third party liability, and combined coverage are consistent in approach in that they all have a minimum net worth additive requirement. The Agency believes that a consistent approach among the three tests is desirable and assists in implementation, thus, the Agency seeks to adopt revised tests with a consistent approach as well. Commenters should consider consistency in approach when evaluating the proposed financial tests described above.

5. Bond Rating Alternative

The Agency is proposing to include a bond rating alternative in the revised financial tests for closure and post-closure and for liability coverage. As discussed in section III.B.1.(e) of this preamble, when the Agency developed the current financial tests in 1981, it included a bond rating alternative because it found that the net working capital requirements of the tests discriminated against electric utilities. The Agency believed that an investment grade bond rating was a good demonstration of financial strength because it reflected the expert opinion of the bond rating service and the financial community. The Agency also believed that allowing a bond rating alternative would enhance the availability of the financial test to financially sound firms with unusual characteristics while ensuring that firms passing the requirement have sufficient financial strength to fund the potential costs of closure and post-closure and third party liability.

As a result of the revisions to the financial tests that are proposed today, the Agency believes there is less need for a bond rating alternative than there was in 1981. However, bond ratings reflect the expert opinion of bond rating services, which are organizations that have established credibility in the financial community for their predictions. And, the Agency believes that investment grade bond ratings are a good demonstration of financial strength. Absent a compelling indication that bond ratings have permitted inappropriate companies to pass the financial test, the Agency does not believe it should eliminate a market-oriented option currently available to the regulated community.

As part of the bond rating alternative proposed today, the Agency is also proposing to eliminate the requirement for having net worth equal to six times the amount assured and replacing this requirement with a $10 million additive requirement. The Agency believes that this change is supported by the analysis provided in connection with other revisions to the ratio-based financial test.

The Agency solicits comment on its proposal to include bond rating altenatives in the financial tests for closure and post-closure and for liability coverage.

6. Integration with Other Programs and Conforming Changes

Integration with Other Programs. The Agency has a number of financial responsibility programs in place that allow an owner or operator to use a financial test as a way to demonstrate financial responsibility. In order for the subtitle C financial test to effectively ensure that an owner or operator will not go bankrupt without fulfilling his closure/post-closure or liability coverage obligations, the financial strength of the firm must be sufficient to cover all of its obligations, including routine business expenditures and environmental obligations under all Agency programs. If the financial test criteria do not require a firm to account for all financial assurance obligations under all programs, a firm could use the same financial measures to demonstrate financial strength for multiple programs, which could undermine the effectiveness of the test. For example, if a firm is subject to financial responsibility requirements under both subtitle C and the Underground Injection Control (UIC) program and uses the financial test to demonstrate financial responsibility for each program separately, the firm would be demonstrating only that it could afford the obligations of each program independently. However, if the firm incurred costs to cover closure of a UIC well, its financial position could deteriorate to the extent that it could not afford any subtitle C costs despite its ability to pass the test for those costs alone.

The current subtitle C financial test requirements require owners or operators to account for both the subtitle C obligations being covered by the financial test and plugging and abandonment costs associated with Class I UIC wells that are covered by the financial test allowed under 40 CFR part 144. Since the promulgation of the current subtitle C financial test, the Agency has adopted additional financial assurance requirements applicable to the costs of closure of PCB commercial storage facilities under 40 CFR part 761, and corrective action and third-party liability coverage for underground petroleum storage tanks under 40 CFR part 280. All of these programs included a financial test as an allowable financial assurance mechanism.

The Agency continues to believe that the effectiveness of the subtitle C financial test could be jeopardized if the obligations of other financial assurance programs are not incorporated into the requirements of the subtitle C financial test. Thus, the Agency is proposing to require that a firm using the financial test for subtitle C closure, post-closure care, or liability coverage must account for all obligations also covered by a financial test under parts 144, 280, and/or 761. Specifically, a firm using the subtitle C financial test must have net worth of $10 million plus net worth in the amount of the subtitle C closure, post-closure, and liability obligations being covered, and net worth in the amount of any obligations being covered by a financial test, including those under parts 144, 280, and/or 761.

Conforming Changes. As noted above, the Agency has promulgated financial responsibility requirements under 40 CFR part 144 for Class I hazardous waste underground injection facilities, part 280 for underground storage tanks, and part 761 for PCB commercial storage facilities, all of which include a financial test similar or identical to the one included under RCRA subtitle C.

The financial assurance requirements for owners and operators of underground petroleum storage tanks under 40 CFR part 280 allow the use of a financial test for providing financial assurance for the costs of corrective action and third party liability coverage. The financial test in part 280 includes two alternative sets of financial criteria that may be used. The second alternative (§ 280.95(c)(1)) allows an owner or operator to satisfy the subtitle C financial test for liability coverage (§ 264.147(f)(1)). As a result of this rule, owners and operators of underground storage tanks wishing to use the § 280.95(c)(1) alternative to demonstrate third-party liability coverage would have to meet the requirements of the revised § 264.147(f)(1).

40 CFR part 761 requires that commercial storers of PCB wastes demonstrate financial responsibility for the costs of closure either by obtaining specific financial assurance mechanisms (e.g., trust funds, letters of credit) that will ensure that funds will be available to cover the costs of closure, or by passing a specified financial test. These provisions are found in 40 CFR part 761.65 (f) and (g). The financial assurance mechanisms in the PCB notification and manifesting rule are essentially the same as those allowed in 40 CFR parts 264 and 265 governing hazardous waste TSDFs. The regulations in 40 CFR part 761, in fact, incorporate sections of part 264 by reference, including § 264.143(f) which covers the provisions of the subtitle C financial test. Therefore, to the extent that today's proposed revisions to parts 264 or 265 modify the requirements that are incorporated by reference in part 761, those modifications would apply with equal force and effect to PCB commercial storage facilities subject to 40 CFR 761.65 (f) and (g).

The Agency is not proposing changes to the financial test requirements under 40 CFR part 144 regarding Class I underground injection facilities. The Agency is still assessing the applicability of the revised Subtitle C corporate financial test upon owners or operators of UICs and may propose to adopt the revised subtitle C corporate financial test at a later date.

7. Combining the Financial Test with Other Mechanisms

The current subtitle C financial responsibility requirements for closure and post-closure care allow owners and operators of TSDFs to use the financial test or guarantee to cover multiple facilities, and to combine the use of the financial test with another mechanism (or mechanisms) to cover multiple facilities. However, the regulations prohibit combining the financial test or guarantee with another mechanism for one particular facility. The Agency was concerned that if a firm did not have sufficient financial strength to cover the full amount of closure and post-closure care for a facility, there could be a greater risk that the firm would go bankrupt without fulfilling its obligations.

The Agency is proposing to amend this requirement to allow owners and operators to combine the financial test or guarantee with any other mechanism for a particular facility.

The Agency does not believe that combining the financial test or guarantee with another mechanism to demonstrate financial assurance being provided by the firm. In designing a financial test, the objective is to ensure that a firm has sufficient financial strength to cover the amount of financial obligations being covered by the test. Therefore, allowing an owner or operator to use a financial test for part of his obligations will not affect the effectiveness of the test as long as another instrument is used to cover the balance of the obligations.

It should be noted, however, that the Agency is not proposing to allow the combining of a financial test with a guarantee or a particular facility. The Agency believes that where the financial test is the only mechanism relied on to cover the costs of closure or post-closure, either by the owner or operator itself or the guarantor, one or the other should have the requisite financial strength to guarantee those costs for the entire facility.

IV. Amendments to the September 1, 1988 Rule Regarding Third Party Liability Coverage

A. Background

On September 1, 1988, the Agency issued a final rule that expanded the instruments available to owners and operators to demonstrate financial responsibility for third party liability. (*see* 53 FR 33938). Prior to the September 1, 1988 rule, the RCRA regulations at 40 CFR 264.147 allowed the use of a financial test or a parent corporate guarantee for third party liability assurance; the Agency, in that rulemaking, expanded the options to include the letter of credit, surety bond, trust fund, and non-parent corporate guarantee. The September 1, 1988 rulemaking also established in §§ 264.147 and 265.145 a claims reporting requirement for third-party claims.

Chemical Waste Management, Inc. (CWM) challenged several provisions of the September 1, 1988 rulemaking, in particular, several provisions related to the letter of credit and the claims reporting requirement. On February 23, 1990 the parties entered into a Joint Stipulation of Settlement in which the Agency agreed to: (1) Revise the claims reporting requirement of §§ 264.147 and 265.147 to clarify the type of claims that must be reported; (2) amend § 264.151(k) to authorize the creation of a standby trust fund for owners and operators who obtain letters of credit to demonstrate liability coverage; and (3) issue a correction to §§ 264.147(a)(2) and 265.147(a)(2) to insert a reference to the financial test. In accordance with the February 23 settlement agreement, this notice proposes changes to the claims reporting requirement of §§ 264.147 and 265.147 and the use of a standby trust fund under § 264.151(k). The technical correction to §§ 264.147(a)(2) and 265.147(a)(2) can be found in a correction notice published elsewhere in today's issue.

In addition to the changes resulting from the settlement agreement, the Agency is proposing to amend §§ 264.147(f)(6) and 265.147(f)(6) to expand the instruments available to owners and operators that no longer meet the requirements of the financial test for liability coverage.

B. Claims Reporting Requirement

As is discussed above, the September 1, 1988 rule established in §§ 264.147 and 265.147 a requirement that owners and operators report, in writing, to the Regional Administrator whenever: (1) A claim for bodily injury or property damages caused by the operation of a hazardous waste management facility is made against the owner, operator, or instrument providing financial assurance for liability coverage; and (2) the amount of financial assurance for liability coverage is reduced. In its complaint filed in response to the September 1, 1988 rulemaking, CWM challenged that the claims reporting requirement, as worded, was overly broad and thereby unduly burdensome. CWM pointed out that it required reporting of every claim filed against the owner or operator, no matter how valid.

This reporting requirement is intended to provide the Agency with early warning of potential instrument failure due to pending claims and to provide the Agency with data concerning the incidence of third party claims. Today's notice proposes to revise §§ 264.147(a)(2), 264.147(b)(2), 265.147(a)(2), and 265.147(b)(2) to clarify

that intent and require reporting of third party claims only when: (1) A claim results in reduction of the amount of an instrument; (2) a Certification of Valid Claim is entered between the owner or operator and third party claimant; or (3) when a final court order establishing a judgment is issued. The Agency believes that this revised reporting requirement would allow the Agency to collect the information it intended to collect without being unduly burdensome.

C. Standby Trust for Owners and Operators Who Use a Letter of Credit to Demonstrate Liability Coverage

In establishing the letter of credit as an instrument available for third party liability coverage, the September 1, 1988 rule required, in §§ 264.147(h), 265.147(h), and 264.151(k), that owners or operators using letters of credit demonstrate liability coverage to designate third-party claimants as beneficiaries in the event of a valid claim. As promulgated, those provisions required the issuer of the letter to determine whether a claim is valid and should be paid. In accordance with the February 23 settlement agreement, today's notice proposes to amend the letter of credit requirements (§§ 264.147(h) and 265.147(h)) and the language of the letter of credit mechanism (§ 264.151(k)) to allow for the creation of the standby trust fund and the designation of an independent trustee as beneficiary. As a result of this change, the trustee, rather than the issuer of the letter of credit, would be responsible for distributing funds to the claimants when a claim for damages is filed against the owner or operator. The proposed rule would also add new sections in 264.147(l), 265.147(l) and 264.151(n) relating specifically to the requirements and instrument language of the standby trust. The Agency believes that these revisions would make the letter of credit more available to owners and operators without reducing its integrity.

D. Instruments Available to Owners and Operators that no Longer Meet the Requirements of the Financial Test

The Agency is also proposing conforming changes to §§ 264.147(f)(6) and 265.147(f)(6). Those provisions currently require owners or operators that have been using the financial test to assure for third party liability, but no longer meet the requirements of the test, to obtain insurance. Today's proposal would expand the available instruments to allow those owners and operators to obtain insurance or a letter of credit, surety bond, trust fund, or a guarantee. This proposed change is a conforming change that implements the intent of the September 1, 1988 rule expanding the allowable instruments for third party liability coverage.

V. Release from Financial Assurance Requirements for Closure

The current RCRA regulations at §§ 264.119(b) and 265.119(b) require owners and operators to record notations on property deeds within 60 days of certifying closure and submit to the Regional Administrator a certification that the deed notation has been recorded. The deed notation is designed to notify potential buyers that the land has been used to manage hazardous wastes and that its use is restricted under 40 CFR subpart G regulations.

At the same time, §§ 264.143(i) and 265.143(h) provide that the Regional Administrator will release owners and operators from financial assurance requirements within 60 days of receiving certification that final closure has been completed in accordance with the approved closure plan (unless the Regional Administrator has reason to believe that final closure has not been completed in accordance with the approved closure plan). There is currently no explicit language stating that release from financial assurance requirements is conditioned upon a demonstration that the owner or operator has fully complied with the requirements of §§ 264.119(b) and 265.119(b).

Today's proposal would explicitly require that the owner or operator fully comply with any applicable provisions of §§ 264.119(b) or 265.119(b) before being released from financial assurance obligations under current §§ 264.143(i) and 265.143(h). While this requirement would impose no additional regulatory burden on owners or operators, the Agency believes it would assure prompt compliance with §§ 264.119(b) and 265.119(b).

VI. The Expanded Guarantee for Demonstrating Financial Assurance for Closure and Post-Closure Care

The Agency is proposing in this notice to amend the requirements for the guarantee for closure and post-closure care to allow guarantees to be provided by a non-parent firm.

The use of a parent corporate guarantee for liability coverage was authorized in an interim final rule on July 11, 1986 (51 FR 5350) and promulgated as a final regulation on November 18, 1987 (52 FR 44314). Several commenters on the interim final rule urged EPA to allow non-parent firms to provide guarantees. After analyzing the validity and enforceability of guarantee contracts by non-parent firms, the Agency, in the September 1, 1988 rulemaking discussed in section III of this preamble, authorized guarantees for third-party liability coverage provided by (1) corporate grandparents, (2) corporate "sibling" firms, and (3) firms with a "substantial business relationship" with the owner or operator. Further discussion of the non-parent guarantee can be found in the September 1, 1988 rule (53 FR 33938).

Since authorizing the non-parent guarantee as an allowable mechanism for third party liability coverage, the Agency has received many requests to extend its use to closure and post-closure care financial responsibility requirements, including the petition submitted by NSWMA and discussed earlier in this notice. Today's notice proposes a conforming change to §§ 264.143, 264.145, 265.143, and 265.145 to allow the same non-parent guarantee for closure and post-closure as is currently allowed for third-party liability.

VII. Automated Financial Responsibility Reporting System

In addition to the regulatory provisions proposed today, the Agency is considering the development of an automated financial responsibility reporting system. Using information from public databases, such a system could perform many activities including updating cost estimates for inflation, calculating the financial test, and verifying that the value of another instrument matches the cost estimate. Since the system could use public databases, it could significantly reduce the administrative burden on the regulated community as well as on the States and the Agency. Such a system could also track obligations of multistate firms in all states and provide comprehensive and consistent information about those firms to the Agency and the states. The Agency today solicits comment on the utility of developing an automated financial responsibility reporting system.

VIII. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State (See 40 CFR part 271 for the standards and requirements for authorization). Following authorization, the Agency retains enforcement authority under

sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in a State where the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA requirements and prohibitions apply in authorized States in the interm.

B. Effect of Rule on State Authorizations

Today's rule proposes standards that would not be effective in authorized States since the requirements would not be imposed pursuant to the HSWA. Thus, the requirements would be applicable only in those States that do not have final authorization. In authorized States, the requirements would not be applicable until the State revises its program to adopt equivalent requirements under State law.

In general, 40 CFR 271.21(e)(2) requires States that have final authorization to modify their programs to reflect Federal program changes and to subsequently submit the modifications to EPA for approval. It should be noted, however, that authorized States are only required to modify their programs when EPA promulgates Federal standards that are more stringent or broader in scope than the existing Federal standards. Section 3009 of RCRA allows States to impose standards more stringent than those in the Federal program. For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs (See 40 CFR 271.1(i)).

Several provisions in today's proposed rule are more stringent than the current Federal program. Because the Agency believes that today's proposed revisions to the corporate financial test at §§ 264.143(f) (1) and (2), 264.145(f) (1) and (2), 264.147(f) (1), 265.143(e) (1) and (2), 265.145(e) (1) and (2), and 265.147(f)(1), and the corresponding revisions to the instruments at 264.151 (f) and (g), would result in a test that would screen potentially bankrupt firms more effectively than the current test, the Agency is classifying those revisions as more stringent than the current federal program. As a result, an authorized State that allows a financial test to demonstrate financial responsibility for closure and post-closure care or third-party liability coverage would have to modify its program to adopt this or an equivalent test in accordance with the deadlines specified in 40 CFR part 271. An authorized State that does not allow use of a financial test would not be required to adopt one as a result of today's proposed rule.

In addition, today's proposed revisions to §§ 2264.119(b)(2), 264.143(i), 265.119(b)(2), and 265.143(h), which provide that release from financial responsibility requirements be conditioned on compliance with the deed notification requirements, are more stringent than the current program requirements.

40 CFR 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect more stringent Federal program changes and must subsequently submit the modification to EPA for approval. The deadline by which a State must modify its program to adopt the more stringent provisions of today's proposed rule will be determined by the date of promulgation of the final rule in accordance with § 271.21(e). This deadline can be extended in exceptional cases (40 CFR 271.21(e)(3)). Once EPA approves the revision, the State requirements become subtitle C RCRA requirements.

States with authorized RCRA programs may already have requirements similar to those in today's rule. These State requirements have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to carry out these requirements in lieu of the Agency until the State requirements are approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law.

States that submit official applications for final authorization less than 12 months after the effective date of these standards are not required to include standards equivalent to these standards in their application. However, the State must modify its program by the deadlines set forth in § 271.21(e). States that submit official applications for final authorization 12 months after the effective date of those standards must include standards in their application. 40 CFR 271.3 sets forth the requirements a State must meet when submitting its final authorization application.

The provisions of today's rule that would expand the allowable instruments for demonstrating financial assurance are less stringent than the current program. Those proposed revisions are: (1) Revisions to §§ 264.147(h) (4) and (5), 265.147(h) (4) and (5), and 264.151(k), and addition of new section 264.151(n), which would provide for the use of a stand-by trust with the letter of credit to demonstrate financial assurance for liability coverage requirements; (2) revisions to §§ 264.143(f)(10), 264.145(f)(11), 265.143(e)(10), and 265.145(e)(11), which would extend the use of the expanded guarantee to closure and post-closure care financial assurance, and the corresponding modified instrument at § 264.151(h); (3) revisions to §§ 264.143(g), 264.145(g), 265.143(f), and 265.145(f), which would allow the combining of the financial test or guarantee with another instrument to demonstrate financial assurance at a single facility; and (4) revisions to §§ 264.147(f)(6) and 265.147(f)(6), which would expand the mechanisms available to owners and operators that no longer meet the requirements of the financial test for liability coverage. For these Federal program changes that are less stringent or would reduce the scope of the Federal program, an authorized State would not be required to modify its authorized program. If the State does modify its program, EPA must approve the modification for the State requirements to become subtitle C RCRA requirements.

The September 1, 1988 rule related to liability coverage established a claims reporting requirement at §§ 264.147(a)(7) and (b)(7) and 265.147(a)(7) and (b)(7). The preamble characterized all provisions of that rule as less stringent and, therefore, authorized States were not required to adopt the new provisions, including the claims reporting requirement. However, upon further consideration the Agency has determined that this claims reporting requirement is, in fact, more stringent

than the Federal program in effect at that time.

Because the claims reporting requirement of § 264.147(a)(2), 264.147(b)(2), 265.147(a)(2), and 265.147(b)(2) was more stringent than the Federal program in place prior to the September 1, 1988 rule, States should have been required to modify their programs to include it in order to maintain an equivalent program. In accordance with § 271.21(e)(2), the deadline for States to modify their programs to reflect changes adopted on September 1, 1988 was July 1, 1990. However, the States were not notified of this obligation since the rule was originally classified as less stringent. Because of the confusion related to the stringency characterization of the claims reporting requirement and the fact that the Agency is in the process of clarifying that requirement, the Agency will, for State authorization purposes, treat the claims reporting requirement of the September 1, 1988 rule as if it were promulgated on the date that the final clarified version is promulgated. States that have not yet adopted the reporting requirement of the September 1, 1988 rule should not do so but should adopt the clarified version when promulgated. The deadline for adopting the provision will be the applicable deadline under § 271.21(e)(2) for the final rule promulgating the clarified reporting requirement. States that wish to adopt other provisions of the September 1, 1988 rule may do so and may apply for authorization for those provisions at any time.

The revisions to the claims reporting requirement that are proposed today, however, are less stringent than the current claims reporting requirement at §§ 264.147 (a)(7) and (b)(7) and 265.147 (a)(7) and (b)(7) promulgated in the September 1, 1988 rule. Therefore, States that have already adopted the current claims reporting requirement would not be required to adopt the clarified reporting requirement.

States whose programs have been modified to adopt the current claims reporting requirement but wish to adopt the less stringent clarified reporting requirement should follow the deadlines of 40 CFR 271.21(e)(2) for the final rule promulgating the clarified reporting requirement.

IX. REGULATORY ANALYSIS

A. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major" and thus whether it must prepare and consider a Regulatory Impact Analysis in connection with the rule. Today's rule is not major because it will not result in an annual effect on the economy of $100 million or more, nor will it result in an increase in costs or prices to industry. There will be no adverse impact on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore the Agency has not prepared a Regulatory Impact Analysis for today's rule. This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* at the time an Agency publishes a proposed or final rule, it must prepare a Regulatory Flexibility Analysis that describes the impact of the rule on small entities, unless the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities. Today's rule modifies the Corporate Financial Test such that a greater number of viable firms may pass the test while excluding those firms which become bankrupt than the previous test. Therefore, pursuant to 5 U.S.C. 601b, I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

Dated: June 17, 1991.

William K. Reilly,

Administrator.

List of Subjects

40 CFR 264

Hazardous Waste Insurance, Reporting and recordkeeping requirements.

40 CFR 265

Hazardous Waste Insurance, Reporting and recordkeeping requirements.

40 CFR 280

Hazardous substances, Hazardous waste.

40 CFR 761

Environmental Protection, Hazardous substances, Polychlorinated biphenyls (PCB's), Reporting and Recordkeeping requirements.

40 CFR part 264 is amended as follows:

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 264 continues to read as follows:

Authority: 41 U.S.C. 6905, 6912(a), 6924 and 6925.

2. Section 264.119 is amended by adding a sentence to the end of paragraph (b)(2) to read as follows:

§ 264.119 Post-closure notices.

* * * * *

(b) * * *

(2) * * * The Regional Administrator shall not release the owner or operator from financial assurance requirements under § 264.143(i) until the owner or operator has complied with the provisions of this paragraph.

* * * * *

3. Section 264.143 is amended by revising paragraphs (f)(1) and (f)(2), the introductory text of paragraph (f)(10), and paragraphs (g) and (i) to read as follows:

§ 264.143 Financial assurance for closure.

* * * * *

(f) *Financial test and guarantee for closure.* (1) An owner or operator may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria of either paragraph (f)(1) (i) or (ii) of this section.

(i) The owner or operator must have:

(A) Either a ratio of total liabilities to net worth less than 1.5; or, a ratio of the sum of net income plus depreciation, depletion and amortization, minus $10 million, to total liabilities greater than 0.10; and

(B) Tangible net worth greater than the sum of the current closure and post-closure cost estimates and any other obligations covered by a financial test plus $10 million; and

(C) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of current closure and post-closure cost estimates and any other obligations covered by a financial test.

(ii) The owner or operator must have:

(A) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

(B) Tangible net worth greater than the sum of the current closure and post-closure cost estimates and any other

obligations covered by a financial test plus $10 million; and

(C) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and any other obligations covered by a financial test.

(2) The phrase "current closure and post-closure cost estimates" as used in paragraph (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1–7 of the letter from the owner's or operator's chief financial officer (264.151(f)).

* * * * *

(10) An owner or operator may meet the requirements of this section by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraphs (f) (1) through (8) of this section and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in § 264.151(h). A certified copy of the guarantee must accompany the items sent to the Regional Administrator as specified in paragraph (f)(3) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee must provide that:

* * * * *

(g) *Use of multiple financial mechanisms.* An owner or operator may satisfy the requirements of this section by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, insurance, and financial test and guarantee, except that the financial test and guarantee may not be combined. The mechanisms must be as specified in paragraphs (a), (b), (d), (e), and (f), respectively, of this section, except that it is the combination of mechanisms rather than the single mechanism that must provide financial assurance for an amount at least equal to the cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or letter of credit, he may use the trust fund as the standby trust fund for the other mechanism. A single trust fund may be established for two or more mechanisms. The Regional Administrator may use any or all of the mechanisms to provide for closure of the facility.

* * * * *

(i) *Release of the owner or operator from the requirements of this section.* Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, and, for facilities subject to § 264.119, after receiving the certification required under § 264.119(b)(2), the Regional Administrator will notify the owner or operator in writing that he is no longer required by this section to maintain financial assurance for final closure of the facility, unless the Regional Administrator has reason to believe that final closure has not been in accordance with the approved closure plan or that the owner or operator has failed to comply with the applicable requirements of § 264.119. The Regional Administrator shall provide the owner or operator a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan or that the owner or operator has failed to comply with the applicable requirements of § 264.119.

4. Section 264.145 is revised by amending paragraphs (f)(1) and (f)(2), the introductory text of paragraph (f)(11), and paragraph (g) to read as follows:

§ 264.145 Financial assurance for post-closure care.

* * * * *

(f) *Financial test and guarantee for post-closure care.* (1) An owner or operator may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria of either paragraph (f)(1) (i) or (ii) of this section.

(i) The owner or operator must have:

(A) Either a ratio of total liabilities to net worth less than 1.5; or, a ratio of the sum of net income plus depreciation, depletion and amortization, minus $10 million, to total liabilities greater than 0.10; and

(B) Tangible net worth greater than the sum of the current closure and post-closure cost estimates and any other obligations covered by a financial test plus $10 million; and

(C) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of current closure and post-closure cost estimates and any other obligations covered by a financial test.

(ii) The owner or operator must have:

(A) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

(B) Tangible net worth greater than the sum of the current closure and post-closure cost estimates and any other obligations covered by a financial test plus $10 million; and

(C) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and any other obligations covered by a financial test.

(2) The phrase "current closure and post-closure cost estimates" as used in paragraph (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1–7 of the letter from the owner's or operator's chief financial officer (264.151(f)).

* * * * *

(11) An owner or operator may meet the requirements of this section by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owner or operators in paragraphs (f) (1) through (9) of this section and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in § 264.151(h). A certified copy of the guarantee must accompany the items sent to the Regional Administrator as specified in paragraph (f)(3) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in

consideration of the guarantee. The terms of the guarantee must provide that:

* * * * *

(g) *Use of multiple financial mechanisms.* An owner or operator may satisfy the requirements of this section by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, insurance, and financial test and guarantee, except that the financial test and guarantee may not be combined. The mechanisms must be as specified in paragraphs (a), (b), (d), (e), and (f), respectively, of this section, except that it is the combination of mechanisms rather than the single mechanism that must provide financial assurance for an amount at least equal to the cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or letter of credit, he may use the trust fund as the standby trust fund for the other mechanism. A single trust fund may be established for two or more mechanisms. The Regional Administrator may use any or all of the mechanisms to provide for post-closure of the facility.

* * * * *

5. Section 264.147 is amended by revising paragraphs (a)(7), (b)(7), (f)(1), and (f)(6) and by adding new paragraphs (h)(4) and (h)(5) to read as follows:

§ 264.147 Liability requirements.

(a) * * *

(7) An owner or operator shall notify the Regional Administrator in writing within 30 days whenever:

(i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in paragraphs (a)(1) through (a)(6) of this section; or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under paragraphs (a)(1) through (a)(6) of this section; or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under paragraphs (a)(1) through (a)(6) of this section.

(b) * * *

(7) An owner or operator shall notify the Regional Administrator in writing within 30 days whenever:

(i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in paragraphs (b)(1) through (b)(6) of this section; or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under paragraphs (b)((1) through (b)(6) of this section; or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under paragraphs (b)(1) through (b)(6) of this section.

* * * * *

(f) *Financial test for liability coverage.* (1) An owner or operator may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria of paragraph (f)(1)(i) or (f)(1)(ii) of this section.

(i) The owner or operator must have:

(A) Tangible net worth greater than the sum of the amount of liability coverage to be demonstrated by this test plus $10 million;

(B) Assets located in the United States amounting to at least 90 percent of total assets or at lest six times the sum of the amount of liability coverage and any other obligations covered by a financial test.

(ii) The owner or operator must have:

(A) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

(B) Tangible net worth greater than the sum of the amount of liability coverage to be demonstrated by this test plus $10 million; and

(C) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the amount of liability coverage and any other obligations covered by a financial test.

* * * * *

(6) If the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, he must obtain insurance, a letter of credit, a surety bond, a trust fund, or a guarantee for the entire amount of required liability coverage as specified in this section. Evidence of liability coverage must be submitted to the Regional Administrator within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.

* * * * *

(h) * * *

(4) An owner or operator who uses a letter of credit to satisfy the requirements of this section may also establish a standby trust fund. Under the terms of such a letter of credit, all amounts paid pursuant to a draft by the trustee of the standby trust will be deposited by the issuing institution into the standby trust in accordance with instructions from the trustee. The trustee of the standby trust fund must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(5) The wording of the standby trust fund must be identical to the wording specified in § 264.151(n).

* * * * *

7. Section 264.151 is amended by revising paragraphs (f), (g), (h), and (k) and adding a new paragraph (n) to read as follows:

§ 264.151 Wording of the instruments.

* * * * *

(f) A letter from the chief financial officer, as specified in § 264.143(f) or § 264.145(f) or § 265.143(e) or § 265.145(e) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Letter from Chief Financial Officer

[Address to Regional Administrator of every Region in which facilities for which financial responsibility is to be demonstrated through the financial test are located].

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance for closure and or post-closure costs, as specified in subpart H of 40 CFR parts 264 and 265.

[Fill out the following two paragraphs. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its

EPA Identification Number, name, and address].

The firm identified above is the owner or operator of the following facilities for which financial assurance for closure and/or post-closure costs is being demonstrated through the financial test specified in subpart H of 40 CFR parts 264 and 265: _____.

The firm identified above guarantees, through the guarantee specified in Subpart H of 40 CFR parts 264 and 265, financial assurance for closure and/or post-closure costs at the following facilities owned or operated by the following: _____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee _____; or (3) engaged in the following substantial business relationship with the owner or operator _____, and receiving the following value in consideration of this guarantee _____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

[Fill out the following four paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, address, and current closure and/or post-closure cost estimates. Identify each cost estimate as to whether it is for closure or post-closure care].

1. This firm is the owner or operator of the following facilities for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in subpart H of 40 CFR parts 264 and 265. The current closure and/or post-closure cost estimates covered by the test are shown for each facility: _____.

2. This firm guarantees, through the guarantee specified in subpart H of 40 CFR parts 264 and 265, the closure or post-closure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: _____.

3. In States where EPA is not administering the financial requirements of subpart H of 40 CFR part 264 or 265, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in subpart H of 40 CFR parts 264 and 265. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility: _____.

4. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in subpart H of 40 CFR parts 264 and 265 or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: _____.

[Fill out the following three paragraphs regarding facilities and associated assured costs. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, address, and amount of assured costs].

5. This firm is the owner or operator or guarantor of the following UIC facilities for which financial assurance for plugging and abandonment is required under part 144 and is assured through a financial test. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility: _____

6. This firm is the owner or operator or guarantor of the following petroleum underground storage tank facilities for which financial assurance is required under part 280 and is assured through a financial test. The amount of assurance required is shown for each facility: _____

7. This firm is the owner or operator or guarantor of the following PCB commercial storage facilities for which financial assurance is required under part 761 and is assured through a financial test. The amount of assurance required is shown for each facility. _____

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Alternative I if the criteria of paragraph (f)(1)(i) of § 264.143 or § 264.145, or of paragraph (e)(1)(i) of § 265.143 or § 265.145 of this chapter are used. Fill in Alternative II if the criteria of paragraph (f)(1)(ii) of § 264.143 or § 264.145, or of paragraph (e)(1)(ii) of § 265.143 or § 265.145 of this chapter are used].

Alternative I

1. Sum of current closure and post-closure cost estimates and other environmental costs to be assured [total of all cost estimates shown in the seven paragraphs above]_____

$ _____

*2. Total liabilities (if any portion of the closure or post-closure cost estimates is included in total liabilities, you may deduct the amount of the portion from this line and add that amount to lines 3 and 4). _____

*3. Tangible net worth _____

*4. Net worth _____

*5. The sum of net income plus depreciation, depletion, and amortization _____

*6. Total assets in the U.S. (required only if less than 90 percent of firm's assets are located in the U.S.).

	yes	no
7. Is line 3 minus line 1 least $10 million? _____		
8. Is line 2 divided by line 4 less than 1.5? _____		
9. Is line 5 divided by line 2 greater than 0.1? _____		
*10. Is line 6 greater than six times line 1 (required only if less than 90 percent of firm's assets are located in the U.S.)? _____		
11. Does the firm answer YES to *either* of question 8 or 9, *and* question 7 and 10? _____		

Alternative II

1. Sum of current closure and post-closure cost estimates and other environmental costs to be assured [total of all cost estimates shown in the seven paragraphs above] _____$

2. Current bond rating of most recent issuance of this firm and name of rating service _____

3. Date of issuance of bond _____

4. Date of maturity of bond _____

*5. Tangible net worth [if any portion of the closure and post-closure cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line] _____

*6. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.).

	yes	no
7. Is line 5 minus line 1 at less $10 million? _____		
*8. Is line 6 greater than six times line 1 (required only if less than 90 percent of firm's assets are located in the U.S.)? _____		

I hereby certify that the wording of this letter is identical to the wording specified in 40 CFR 264.151(f) as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

(g) A letter from the chief financial officer, as specified in § 264.147(f) or § 265.147(f) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Letter from Chief Financial Officer

[Address to Regional Administrator of every Region in which facilities for which financial responsibility is to be demonstrated through the financial test are located].

I am the chief financial officer of [firm's name and address]. This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage [insert "and closure and/or post-closure care" if applicable] as specified in subpart H of 40 CFR parts 264 and 265.

[Fill out the following paragraphs regarding facilities and liability coverage. If there are

no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, and address].

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified in subpart H of 40 CFR parts 264 and 265: _____

The firm identified above guarantees, through the guarantee specified in subpart H of 40 CFR parts 264 and 265, liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the following: _____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee _____; or (3) engaged in the following substantial business relationship with the owner or operator _____, and receiving the following value in consideration of this guarantee _____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

[If you are using the financial test to demonstrate coverage of both liability and closure and post-closure care, fill in the following four paragraphs regarding facilities and associated closure and post-closure cost estimates. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, address, and current closure and/or post-closure cost estimates. Identify each cost estimate as to whether it is for closure or post-closure care].

1. The firm identified above owns or operates the following facilities for which financial assurance for closure or post-closure care or liability coverage is demonstrated through the financial test specified in subpart H of 40 CFR parts 264 and 265. The current closure and/or post-closure cost estimate covered by the test are shown for each facility: _____.

2. The firm identified above guarantees, through the guarantee specified in subpart H of 40 CFR parts 264 and 265, the closure and post-closure care or liability coverage of the following facilities owned or operated by the guaranteed party. The current cost estimates for closure or post-closure care so guaranteed are shown for each facility: _____.

3. In States where EPA is not administering the financial requirements of subpart H of 40 CFR parts 264 and 265, this firm is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in subpart H or 40 CFR parts 264 and 265. The current closure or post-closure cost estimates covered by such a test are shown for each facility: _____.

4. The firm identified above owns or operates the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanisms specified in subpart H of 40 CFR parts 264 and 265 or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: _____

[Fill out the following three paragraphs regarding facilities and associated assured costs. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, address, and amount of assured costs].

5. This firm is the owner or operator or guarantor of the following UIC facilities for which financial assurance for plugging and abandonment is required under part 144 and is assured through a financial test. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility: _____

6. This firm is the owner or operator or guarantor of the following petroleum underground storage tank facilities for which financial assurance is required under part 280 and is assured through a financial test. The amount of assurance required is shown for each facility: _____

7. This firm is the owner or operator or guarantor of the following PCB commercial storage facilities for which financial assurance is required under part 761 and is assured through a financial test. The amount of assurance required is shown for each facility. _____

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in part A if you are using the financial test to demonstrate coverage only for the liability requirements under parts 264 and 265].

Part A. Liability Coverage for Sudden and Non-Sudden Occurrences

[Fill in Alternative I if the criteria of paragraph (f)(1)(i) of § 264.147 or § 265.147 are used. Fill in Alternative II if the criteria of paragraph (f)(1)(ii) of § 264.147 or § 265.147 are used].

Alternative I

1. Sum of required sudden and nonsudden liability coverage.
*2. Tangible net worth.
*3. Total assets in the U.S. (required only if less than 90 percent of the firm's assets are located in the U.S.).

	yes	no

4. Is line 2 minus line 1 at least $10 million?
*5. Is line 3 greater than six times line 1 (required only if less than 90 percent of firm's assets are located in the U.S.)?
6. Does the firm answer YES to both questions 4 and 5?

Alternative II

1. Amount of annual aggregate liability coverage to be demonstrated.
2. Current bond rating of most recent issuance and name of rating service.
3. Date of issuance of bond.
4. Date of maturity of bond.
*5. Tangible net worth.
*6. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.).

	yes	no

7. Is line 5 minus line 1 at least $10 million?
*8. Is line 6 greater than six times line 1 (required only if less than 90 percent of firm's assets are located in the U.S.)?

Part B. Closure or Post-Closure Care and Liability Coverage

[Fill in Alternative I if the criteria of paragraphs (f)(1)(i) of § 264.143 or § 264.145 and (f)(1)(i) of § 264.147 are used or if the criteria of paragraphs (e)(1)(i) of § 265.143 or § 265.145 and (f)(1)(i) of § 265.147 are used. Fill in Alternative II if the criteria of paragraphs (f)(1)(ii) of § 264.143 or § 264.145 and (f)(1)(ii) of § 264.147 are used or if the criteria of paragraphs (e)(1)(ii) of § 265.143 or § 265.145 and (f)(1)(ii) or § 265.147 are used].

Alternative I

1. Sum of current closure and post-closure cost estimates and other environmental costs to be assured [total of all cost estimates shown in the seven paragraphs above].

$ _____

2. Amount of annual aggregate liability coverage to be demonstrated.

$ _____

3. Sum of lines 1 and 2.

$ _____

*4. Total liabilities (if any portion of the closure or post-closure cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 5 and 6).
*5. Tangible net worth
*6. Net worth
*7. The sum of net income plus depreciation, depletion, and amortization
*8. Total assets in the U.S. (required only if less than 90 percent of firm's assets are located in the U.S.).

	yes	no

9. Is line 5 minus line 3 at least $10 million?
10. Is line 4 divided by line 6 less than 1.5?
11. Is line 7 divided by line 4 greater than 0.1?
*12. Is line 8 greater than six times line 3 (required only if less than 90 percent of firm's assets are located in the U.S.)?
13. Does the firm answer YES to either to question 10 or 11, *and* questions 9 and 12?

Alternative II

1. Sum of current closure and post-closure cost estimates and other environmental costs to be assured (total of all cost estimates shown in the seven paragraphs above).
$ ———
2. Amount of annual aggregate liability coverage to be demonstrated.
$ ———
3. Sum of lines 1 and 2.
$ ———
4. Current bond rating of most recent issuance and name of rating service
5. Date of issuance of bond
6. Date of maturity of bond
*7. Tangible net worth (if any portion of the closure or post-closure cost estimates is included in "total liabilities" on your financial statements you may add that portion to this line)
*8. Total assets in the U.S. (required only if less than 90% of assets are located in the U.S.).

	yes	no
9. Is line 7 minus line 3 at least $10 million?		
*10. Is line 8 greater than six times line 1 (required only if less than 90 percent of firm's assets are located in the U.S.)?		

I hereby certify that the wording of this letter is identical to the wording specified in 40 CFR 264.151(g) as such regulations were constituted on the date shown immediately below.

[Signature] ———
[Name] ———
[Title] ———
[Date] ———

(h)(1) A corporate guarantee, as specified in § 264.143(f) or § 264.145(f) or § 265.143(e) or § 265.145(e) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Corporate Guarantee for Closure or Post-Closure Care

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the State of [insert name of State], herein referred to as guarantor, to the United States Environmental Protection Agency (EPA), obligee, on behalf of [owner or operator] of [business address], which is [one of the following: "our subsidiary;" "a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary;" or "an entity with which guarantor has a substantial business relationship, as defined in 40 CFR [either 264.141(h) or 265.141(h)]".

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in 40 CFR 264.143(f), 264.145(f), 265.143(e), and 265.145(e).

2. [Owner or operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee: [List for each facility: EPA Identification Number, name, and address. Indicate for each whether guarantee is for closure, post-closure care, or both].

3. "Closure plans" and "post-closure plans" as used below refer to the plans maintained as required by subpart G of 40 CFR parts 264 and 265 for the closure and post-closure care of facilities as identified above.

4. For value received from [owner or operator], guarantor guarantees to EPA that in the event that [owner or operator] fails to perform [insert "closure," "post-closure care" or "closure and post-closure care"] of the above facility(ies) in accordance with the closure or post-closure plans and other permit or interim status requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in subpart H of 40 CFR part 264 or 265, as applicable, in the name of [owner or operator] in the amount of the current closure or post-closure cost estimates as specified in subpart H of 40 CFR parts 264 and 265.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is (are) located and to [owner or operator] that he intends to provide alternate financial assurance as specified in Subpart H of 40 CFR part 264 or 265, as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [owner or operator] has done so.

6. The guarantor agrees to notify the EPA Regional Administrator by certified mail, of a voluntary or involuntary proceeding under title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by an EPA Regional Administrator of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure or post-closure care, he shall establish alternate financial assurance as specified in subpart H of 40 CFR part 264 or 265, as applicable, in the name of [owner or operator] unless [owner or operator] has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: Amendment or modification of the closure or post-closure plan, amendment or modification of the permit, the extension or reduction of the time of performance of closure or post-closure, or any other modification or alteration of an obligation of the owner or operator pursuant to 40 CFR part 264 or 265.

9. Guarantor agrees to remain bound under this guarantee for as long as [owner or operator] must comply with the applicable financial assurance requirements of Subpart H of 40 CFR parts 264 and 265 for the above-listed facilities, except as provided in paragraph 9 of this agreement. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:

Guarantor may cancel this guarantee by sending notice by certified mail to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is(are) located and to [owner or operator], provided that this guarantee may not be canceled unless and until [the owner or operator] obtains, and the EPA Regional Administrator(s) approve(s), alternate closure and/or post closure care coverage complying with 40 CFR 264.143, 264.145, 265.143, and/or 265.145.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with its owner or operator]

Guarantor may cancel this guarantee 120 days following the receipt of notification, through certified mail, by the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is(are) located and by [the owner or operator].

10. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance as specified in subpart H of 40 CFR part 264 or 265, as applicable, and obtain written approval of such assurance from the EPA Regional Administrator(s) within 90 days after a notice of cancellation by the guarantor is received by an EPA Regional Administrator from guarantor, guarantor shall provide such alternate financial assurance in the name of [owner or operator].

11. Guarantor expressly waives notice of acceptance of this guarantee by the EPA or by [owner or operator]. Guarantor also expressly waives notice of amendments or modifications of the closure and/or post-closure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in 40 CFR 264.151(h) as such regulations were constituted on the date first above written.

Effective date: ———

[Name of guarantor]
[Authorized signature for guarantor]
[Name of person signing]
[Title of person signing]
Signature of witness or notary: ——— ———

(2) A guarantee, as specified in § 264.147(g) or § 265.147(g) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Guarantee for Liability Coverage

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of [if incorporated within the United States insert "the State of ———" and insert name of State; if incorporated outside the United States insert the name of the country in which incorporated, the principal place of business within the United States, and the name and address of the registered agent in the State of the principal place of business], herein referred to as guarantor. This guarantee is made on behalf of [owner or operator] of [business address], which is one of the following: "our subsidiary;" "a subsidiary of

[name and address of common parent corporation], of which guarantor is a subsidiary;" or "an entity with which guarantor has a substantial business relationship, as defined in 40 CFR [either 264.141(h) or 265.141(h)]"], to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in 40 CFR 264.147(g) and 265.147(g).

2. [Owner or operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee: [List for each facility: EPA Identification Number, name, and address; and if guarantor is incorporated outside the United States list the name and address of the guarantor's registered agent in each State]. This corporate guarantee satisfies RCRA third-party-liability requirements for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences in above-named owner or operator facilities for coverage in the amount of [insert dollar amount] for each occurrence and [insert dollar amount] annual aggregate.

3. For value received from [owner or operator], guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operations of the facility(ies) covered by this guranatee that in the event that [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [sudden and/or nonsudden] accidental occurrences, arising from the operation of the above-named facilities, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s) or settlement agreement(s) up to the limits of coverage identified above.

4. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for what [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert owner or operator] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert owner or operator]. This exclusion applies:

(A) Whether [insert owner or operator] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert owner or operator];

(2) Premises that are sold, given away or abandoned by [insert owner or operator] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert owner or operator];

(4) Personal property in the care, custody or control of [insert owner or operator];

(5) That particular part of real property on which [insert owner or operator] or any contractors or subcontractors working directly or indirectly on behalf of [insert owner or operator] are performing operations, if the property damage arises out of these operations.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the EPA Regional Administrator[s] for the Region[s] in which the facility[ies] is[are] located and to [owner or operator] that he intends to provide alternate liability coverage as specified in 40 CFR 264.147 and 265.147, as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless [owner or operator] has done so.

6. The guarantor agrees to notify the EPA Regional Administrator by certified mail of a voluntary or involuntary proceeding under title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by an EPA Regional Administrator of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate liability coverage as specified in 40 CFR 264.147 or 265.147 in the name of [owner or operator], unless [owner or operator] has done so.

8. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability requirements set by 40 CFR 264.147 and 265.147, provided that such modification shall become effective only if a Regional Administrator does not disapprove the modification within 30 days of receipt of notification of the modification.

9. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable requirements of 40 CFR 264.147 and 265.147 for the above-listed facility(ies), except as provided in paragraph 10 of this agreement.

10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:

Guarantor may terminate this guarantee by sending notice by certified mail to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is (are) located and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the EPA Regional Administrator(s) approve(s), alternate liability coverage complying with 40 CFR 264.147 and/or 265.147.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator]:

Guarantor may terminate this guarantee 120 days following receipt of notification, through certified mail, by the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is (are) located and by [the owner or operator].

11. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.

12. Guarantor agrees that this guarantee is in addition to and does not affect any other responsibility or liability of the guarantor with respect to the covered facilities.

13. The Guarantor shall satisfy a third-party liability claim only on receipt of one of the following documents:

(a) Certification from the Principal and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Principal] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Principal's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $[ ].

[Signatures]
Principal

(Notary) Date

[Signatures]
Claimant(s)

(Notary) Date

(b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

14. In the event of combination of this guarantee with another mechanism to meet liability requirements, this guarantee will be considered [insert "primary" or "excess"] coverage.

I hereby certify that the wording of the guarantee is identical to the wording specified in 40 CFR 264.151(h)(2) as such regulations were constituted on the date shown immediately below.

Effective date: _____

[Name of guarantor]

[Authorized signature for guarantor]
[Name of person signing]
[Title of person signing]
Signature of witness of notary:
* * * * *

(k) A letter of credit, as specified in § 264.147(h) or § 265.147(h) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Irrevocable Standby Letter of Credit

Name and Address of Issuing Institution
Regional Administrator(s)
Region(s)
U.S. Environmental Protection Agency

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. _____ in the favor of ["any and all third-party liability claimants or insert name of trustee of the standby trust fund], at the request and for the account of [owner or operator's name and address] for third-party liability awards or settlements up to [in words] U.S. dollars $_____ per occurrence and the annual aggregate amount of [in words] U.S. dollars $_____, for sudden accidental occurrences and/or for third-party liability awards or settlements up to the amount of [in words] U.S. dollars $_____ per occurence, and the annual aggregate amount of [in words] U.S. dollars $_____, for nonsudden accidental occurences available upon presentation of a sight draft bearing reference to this letter of credit No. _____, and [insert the following language if the letter of credit is being used without a standby trust fund:] "(1) a signed certificate reading as follows:

Certificate of Valid Claim

The undersigned, as parties [insert principal] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operations of [principal's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $_____. We hereby certify that the claim does not apply to any of the following:

(a) Bodily injury or property damage for which [insert principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert principal] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert principal] arising from, and in the course of, employment by [insert principal]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal].

This exclusion applies:

(A) Whether [insert principal] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert principal];

(2) Premises that are sold, given away or abandoned by [insert principal] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert principal];

(4) Personal property in the care, custody or control of [insert principal];

(5) That particular part of real property on which [insert principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert principal] are performing operations, if the property damage arises out of these operations.

[Signatures]
Grantor

[Signatures]
Claimant(s)

or (2) a valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

This letter of credit is effective as of [date] and shall expire on [date at least one year later], but such expiration date shall be automatically extended for a period of [at least one year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you, the USEPA Regional Administrator for Region [Region #], and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us.

[Insert the following language if a standby trust fund is not being used: "In the event that this letter of credit is used in combination with another mechanism for liability coverage, this letter of credit shall be considered [insert "primary" or "excess" coverage]."

We certify that the wording of this letter of credit is identical to the wording specified in 40 CFR 264.151(k) as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution] [Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits published by the International Chamber of Commerce" or "the Uniform Commercial Code"].

(l) * * *

(n)(1) A standby trust agreement, as specified in § 264.147(h) or § 265.147(h) of this chapter, must be worded as follows, except that institutions in brackets are to be replaced with the relevant information and the brackets deleted:

Standby Trust Agreement

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator] a [name of a State] [insert "corporation," "partneship," association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert, "incorporated in the State of _____" or "a national bank"], the "trustee."

Whereas the United States Environmental Protection Agency, "EPA," an agency of the United States Government, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility or group of facilities must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental ocurrences arising from operations of the facility or group of facilities.

Whereas, the Grantor has elected to establish a standby trust into which the proceeds from a letter of credit may be deposited to assure all or part of such financial responsibility for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. *Definitions.* As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. *Identification of Facilities.* This agreement pertains to the facilities identified on attached schedule A [on schedule A, for each facility list the EPA Identification Number, name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement].

Section 3. *Establishment of Fund.* The Grantor and the Trustee hereby establish a standby trust fund, hereafter the "Fund," for the benefit of any and all third parties injured or damaged by [sudden and/or nonsudden] accidential occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of _____ [up to $1 million] per occurrance and _____ [up to $2 million] annual aggregate for sudden accidental occurrences and _____ [up to $3 million] per occurrence and _____ [up to $6 million] annual aggregate for nonsudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert Grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This

exclusion does not apply to liability for damages that [insert Grantor] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert Grantor] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee or [insert Grantor] arising from, and in the course of, employment by [insert Grantor]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Grantor].

This exclusion applies:

(A) Whether [insert Grantor] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert Grantor];

(2) Premises that are sold, given away or abandoned by [insert Grantor] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert Grantor];

(4) Personal property in the care, custody or control of [insert Grantor];

(5) That particular part of real property on which [insert Grantor] or any contractors or subcontractors working directly or indirectly on behalf of [insert Grantor] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the fund shall be considered [insert "primary" or "excess"] coverage.

The Fund is established initially as consisting of the proceeds of the letter of credit deposited into the Fund. Such proceeds and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by EPA.

Section 4. *Payment for Bodily Injury or Property Damage.* The Trustee shall satisfy a third party liability claim by drawing on the letter of credit described in Schedule B and by making payments from the Fund only upon receipt of one of the following documents:

(a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Grantor] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Grantor's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $[ ].

[Signatures]
Grantor

[Signatures]
Claimant(s)

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

Section 5. *Payments Comprising the Fund.* Payments made to the Trustee for the Fund shall consist of the proceeds from the letter of credit drawn upon by the Trustee in accordance with the requirements of 40 CFR 264.151(k) and section 4 of this Agreement.

Section 6. *Trustee Management.* The Trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a–2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or a State Government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. *Commingling and Investment.* The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a–1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. *Express Powers of Trustee.* Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. *Taxes and Expenses.* All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements to the Trustee shall be paid from the Fund.

Section 10. *Advice of Counsel.* The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. *Trustee Compensation.* The Trustee shall be entitled to reasonable

compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. *Successor Trustee.* The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot of does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the EPA Regional Administrator and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. *Instructions to the Trustee.* All orders, requests, certifications of valid claims, and instructions to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the EPA Regional Administrator hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or EPA, except as provided for herein.

Section 14. *Amendment of Agreement.* This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the EPA Regional Administrator, or by the Trustee and the EPA Regional Administrator if the Grantor ceases to exist.

Section 15. *Irrevocability and Termination.* Subject to the right of the parties to amend this Agreement as provided in section 14, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the EPA Regional Administrator, or by the Trustee and the EPA Regional Administrator, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be paid to the Grantor.

The Regional Administrator will agree to termination of the Trust when the owner or operator substitutes alternative financial assurance as specified in this section.

Section 16. *Immunity and Indemnification.* The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor and the EPA Regional Administrator issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. *Choice of Law.* This Agreement shall be administered, construed, and enforced according to the laws of the State of [enter name of State].

Section 18. *Interpretation.* As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation of the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 40 CFR 264.151(n) as such regulations were constituted on the date first above written.

[Signature of Grantor]
[Title]
Attest:
[Title]
[Seal]

[Signature of Trustee]
Attest:
[Title]
[Seal]

(2) The following is an example of the certification of acknowledgement which must accompany the trust agreement for a standby trust fund as specified in §§ 264.147(h) or 265.147(h) or this chapter. State requirements may differ on the proper content of this acknowledgement.

State of

County of

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

40 CFR part 265 is amended as follows:

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

2. Section 265.119 is amended by adding a sentence to the end of paragraph (b)(2) as follows.

§ 265.119 Post-closure notices.

* * * * *

(b) * * *

(2) * * * The Regional Administrator shall not release the owner or operator from financial assurance requirements under § 265.143(h) until the owner or operator has complied with the provisions of this paragraph.

* * * * *

3. Section 265.143 is amended by revising paragraphs (e)(1), (e)(2), (e)(10) introductory text, (f), and (h) to read as follows:

§ 265.143 Financial assurance for closure.

* * * * *

(e) *Financial test and guarantee for closure.* (1) An owner or operator may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria of either paragraph (e)(1)(i) or (ii) of this section.

(i) The owner or operator must have:

(A) Either a ratio of total liabilities to net worth less than 1.5; or, a ratio of the sum of net income plus depreciation, depletion and amortization, minus $10 million, to total liabilities greater than 0.10; and

(B) Tangible net worth greater than the sum of the current closure and post-closure cost estimates and any other obligations covered by a financial test plus $10 million; and

(C) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of current closure and post-closure cost estimates and any other obligations covered by a financial test.

(ii) The owner or operator must have:

(A) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

(B) Tangible net worth greater than the sum of the current closure and post-closure cost estimates and any other

obligations covered by a financial test plus $10 million; and

(C) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and any other obligations covered by a financial test.

(2) The phrase "current closure and post-closure cost estimates" as used in paragraph (e)(1) of this section refers to the cost estimates required to be shown in paragraphs 1–7 of the letter from the owner's or operator's chief financial officer (264.151(f)).

* * * * *

(10) An owner or operator may meet the requirements of this section by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraphs (e)(1) through (8) of this section and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified § 264.151(h). A certified copy of the guarantee must accompany the items sent to the Regional Administrator as specified in paragraph (e)(3) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee must provide that:

* * * * *

(f) *Use of multiple financial mechanisms.* An owner or operator may satisfy the requirements of this section by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, insurance, and financial test and guarantee, except that the financial test and guarantee may not be combined. The mechanisms must be as specified in paragraphs (a), (b), (d), (e), and (f), respectively, of this section, except that it is the combination of mechanisms rather than the single mechanism that must provide financial assurance for an amount at least equal to the cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or letter of credit, he may use the trust fund as the standby trust fund for the other mechanism. A single trust fund may be established for two or more mechanisms. The Regional Administration may use any or all of the mechanisms to provide for closure of the facility.

* * * * *

(h) *Release of the owner or operator from the requirements of this section.* Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, and, for facilities subject to § 265.119, after receiving the certification required under § 265.119(b)(2), the Regional Administrator will notify the owner or operator in writing that he is no longer required by this section to maintain financial assurance for final closure of the facility, unless the Regional Administrator has reason to believe that final closure has not been in accordance with the approved closure plan or that the owner or operator has failed to comply with the applicable requirements of § 265.119. The Regional Administrator shall provide the owner or operator a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan or that the owner or operator has failed to comply with the applicable requirements of § 265.119.

4. Section 265.145 is amended by revising paragraphs (e)(1) and (2), the introductory text of paragraph (e)(11), and paragraph (f) to read as follows:

§ 265.145 Financial assurance for post-closure care.

* * * * *

(e) *Financial test and guarantees for post-closure care.* (1) An owner or operator may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria of either paragraph (e)(1)(i) or (ii) of this section.

(i) The owner or operator must have:

(A) Either a ratio of total liabilities to net worth less than 1.5; or, a ratio of the sum of net income plus depreciation, depletion and amortization, minus $10 million, to total liabilities greater than 0.10; and

(B) Tangible net worth greater than the sum of the current closure and post-closure cost estimates and any other obligations covered by a financial test plus $10 million; and

(C) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of current closure and post-closure cost estimates and any other obligations covered by a financial test.

(ii) The owner or operator must have:

(A) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

(B) Tangible net worth greater than the sum of the current closure and post-closure cost estimates and any other obligations covered by a financial test plus $10 million; and

(C) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and any other obligations covered by a financial test.

(2) The phrase "current closure and post-closure cost estimates" as used in paragraph (e)(1), of this section refers to the cost estimates required to be shown in paragraphs 1–7 of the letter from the owner's or operator's chief financial officer (264.151(f)).

* * * * *

(11) An owner or operator may meet the requirements of this section by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraphs (e) (1) through (9) of this section and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified § 264.151(h). A certified copy of the guarantee must accompany the items sent to the Regional Administrator as specified in paragraph (e)(3) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The

terms of the guarantee must provide that:

* * * * *

(f) *Use of multiple financial mechanisms.* An owner or operator may satisfy the requirements of this section by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, insurance, and financial test and guarantee, except that the financial test and guarantee may not be combined. The mechanisms must be as specified in paragraphs (a), (b), (d), (e), and (f), respectively, of this section, except that it is the combination of mechanisms rather than the single mechanism that must provide financial assurance for an amount at least equal to the cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or letter of credit, he may use the trust fund as the standby trust fund for the other mechanism. A single trust fund may be established for two or more mechanisms. The Regional Admininstrator may use any or all of the mechanisms to provide for post-closure of the facility.

* * * * *

5. Section 265.147 is amended by revising paragraphs (a)(7), (b)(7), (f)(1), and (f)(6), and by adding new paragraphs (h)(4) and (h)(5) to read as follows:

§ 265.147 Liability requirements.

(a) * * *

(7) An owner or operator shall notify the Regional Administrator in writing within 30 days whenever:

(i) a claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in paragraphs (a)(1) through (a)(6) of this section; or

(ii) a Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under paragraphs (a)(1) through (a)(6) of this section; or

(iii) a final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under paragraphs (a)(1) through (a)(6) of this section.

(b) * * *

(7) An owner or operator shall notify the Regional Administrator in writing within 30 days whenever:

(i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in paragraphs (b)(1) through (b)(6) of this section; or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under paragraphs (b)(1) through (b)(6) of this section; or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under paragraphs (b)(1) through (b)(6) of this section.

* * * * *

(f) *Financial test for liability coverage.* (1) An owner or operator may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria of paragraph (f)(1)(i) or (f)(1)(ii) of this section.

(i) The owner or operator must have:

(A) Tangible net worth greater than the sum of the amount of liability coverage to be demonstrated by this test plus $10 million;

(B) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the amount of liability coverage and any other obligations covered by a financial test.

(ii) The owner or operator must have:

(A) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

(B) Tangible net worth greater than the sum of the amount of liability coverage to be demonstrated by this test plus $10 million; and

(C) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the amount of liability coverage and any other obligations covered by a financial test.

* * * * *

(6) If the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, he must obtain insurance, a letter of credit, a surety bond, a trust fund, or a guarantee for the entire amount of required liability coverage as specified in this section. Evidence of liability coverage must be submitted to the Regional Administrator within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.

* * * * *

(h) * * *

(4) an owner or operator who uses a letter of credit to satisfy the requirements of this section may also establish a standby trust fund. Under the terms of such a letter of credit, all amounts paid pursuant to a draft by the trustee of the standby trust will be deposited by the issuing institution into the standby trust in accordance with instructions from the trustee. The trustee of the standby trust fund must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(5) The wording of the standby trust fund must be identical to the wording specified in § 264.151(n).

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