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CHAPTER 7

FINANCIAL ASSURANCE REQUIREMENTS

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Section 1. In General.

(a) Authority: The authority for the rules and regulations promulgated in this chapter is the Wyoming Environmental Quality Act, W.S. 35-11-306 and W.S. 35-11-504.

(b) Applicability:

(i) This chapter governs all solid waste management facilities that are required to demonstrate financial assurance under W.S. 35-11-504. Exempt solid waste management facilities include those:

(A) Solid waste landfills regulated under Chapter 2 of these rules and regulations which are owned or operated by a municipality provided that the facility is a participating facility under W.S. 35-11-515(o)(iii);

(B) Owned and operated by the person disposing of solid waste generated at the facility who annually demonstrates to the director compliance with the financial assurance requirements of the Resource Conservation and Recovery Act, P.L. 94-580, as amended as of January 1, 1989;

(C) Which are also subject to bonding or financial assurance requirements under Article 2, 3, or 4 of the act if the director determines that the bond or financial assurance under Articles 2, 3, or 4 satisfies the requirements of this chapter;

(D) Which are subject to bonding or financial assurance requirements under W.S. 30-5-104(d)(i)(D) or 30 U.S.C. 226(g) as amended as of January 1, 1989;

(E) Owned or operated by an electric utility disposing of solid waste generated by an electric generation facility pursuant to a permit or license issued by the department, provided that the exemption may be

revoked by the council upon petition of the director for a period of time established by the council to secure remedial action in the event of any discharge of pollution to the air, land or to waters of the state which is in violation of a permit, standard, rule or requirement established under the provisions of the act;

(F) Solid waste management facilities other than those regulated under Chapter 2, which are owned or operated by a municipality;

(G) Type I and Type II sanitary landfills regulated under Chapter 2 which ceased receipt of wastes before October 9, 1991;

(H) Type I sanitary landfills regulated under Chapter 2 which received waste after October 9, 1991 but ceased receipt of waste before October 9, 1993 and installed an approved final cover system before October 9, 1994;

(I) Type II sanitary landfills regulated under Chapter 2 which received waste after October 9, 1991 but cease receipt of wastes before October 9, 1997 and install an approved final cover system before October 9, 1998; and

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

(c) Objective: The objective of these rules and regulations is to provide financial assurance for the purposes specified in W.S. 35-11-504(a) and to establish the procedures for participating facilities as provided in W.S. 35-11-515.

(d) Severability: If any section or provision of this chapter, or the application of that section or provision to any person, situation, or circumstance is adjudged invalid for any reason, the adjudication does not affect any other section or provision of these regulations or the application of the adjudicated section or provision to any other person, situation, or circumstance. The Environmental Quality Council declares that it would have

adopted the valid portions and applications of this chapter without the invalid part, and to this end the provisions of this chapter are declared to be severable.

Section 2. Requirements to Demonstrate Financial Assurance.

(a) Financial assurance requirement for new nonmunicipally owned solid waste management facilities: Financial assurance and compliance with the department's rules and regulations will be required of all new nonmunicipally owned facilities, as specified by Section 1(b) of this chapter, prior to issuance of a permit.

(b) Financial assurance requirement for existing nonmunicipally owned solid waste management facilities: Compliance with these financial assurance rules and regulations will be required of all existing nonmunicipally owned solid waste management facilities as specified by Section 1(b) of this chapter no later than June 8, 1991.

(c) Financial assurance requirement for conditionally exempt facilities: Financial assurance will be required of all existing, conditionally exempt solid waste management facilities specified in Section 1(b)(i)(E):

(i) If the director determines the facility is in violation of the department's rules and regulations resulting in the release of contamination to the air, land or water, the director shall issue an order to the operator of the regulated facility to show cause why financial assurance is not required. Opportunity for a public hearing before the council shall be provided. If a hearing is requested the director shall inform all interested parties of the time and place of the hearing. Upon failure of the operator to show cause why financial assurance should not be required, the council shall require financial assurance for a period of time needed to secure remedial action. The financial assurance requirement may be removed when the violations have been corrected to the director’s satisfaction. No financial assurance requirement shall be unreasonably prolonged.

(ii) The financial assurance requirement specified in paragraph (c) of this section shall become effective upon thirty (30) days notice to the applicant.

(d) Financial assurance requirements for municipally-owned or operated solid waste landfills regulated under Chapter 2 of these rules and regulations: Compliance with these financial assurance rules and regulations will be required of all new and existing municipally-owned or operated Type I solid waste landfills regulated under Chapter 2 of these rules and regulations effective April 9, 1997. Compliance for Type II solid waste landfills regulated under Chapter 2 of these rules and regulations will be required effective October 9, 1997. Notwithstanding these effective dates, if the effective date for compliance with financial assurance requirements for any category of existing sanitary landfills contained in 40 CFR part 258 is modified by the U.S. Environmental Protection Agency, then the effective dates for compliance specified by this subsection shall be the modified USEPA date, for the applicable category of landfills. Compliance shall be demonstrated as follows:

(i) For financial assurance for the costs of closure and post-closure care, operators shall demonstrate compliance using either the requirements of Sections 3 through 8 of these rules and regulations, or the requirements of Section 9;

(ii) For financial assurance for the costs of corrective action requirements, if needed, operators shall demonstrate compliance using the requirements of Sections 3 through 8 of these rules and regulations.

Section 3. Coverage.

(a) General purpose and scope: Permits for regulated facilities require closure, post-closure and corrective action financial assurance plans as prescribed in this chapter for the purpose of assuring that operators of these facilities are financially responsible for protection of public health and the environment. This chapter contains general requirements governing closure, post-closure care and corrective action for violations of a permit, standard, rule or requirement. These

requirements may be supplemented by site specific closure, post-closure care and corrective action permit conditions. Together with the factors used to produce cost estimates, these maintenance requirements form the basis of the financial assurance standards included in this chapter.

(b) Closure and post-closure requirements:

(i) Notification:

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

(B) If the facility has been open to the general public, the operator shall publish notice of closure in an area newspaper, as well as post one sign at each facility access point notifying all persons of the closing and prohibition against further receipt of waste materials. Further, suitable barriers shall be installed at former accesses to prevent new waste from being deposited.

(ii) Closure and post-closure standards:

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

(B) The operator shall close the facility in a manner that minimizes the need for post-closure maintenance and controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, the post-closure escape of leachate, surface run-off or waste decomposition products to the groundwater, surface water or the atmosphere. The post-closure monitoring period shall continue for a minimum of thirty (30) years after the date of completing

closure of the regulated facility, unless shortened by the director under Chapter 2, Section 7(b) of these rules and regulations. The minimum post-closure monitoring period shall be extended if the director determines it is needed to protect human health and the environment.

(iii) Inspection:

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

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

(c) Corrective action requirements.

(i) Notification:

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

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

(C) If the facility is closed, the operator shall post one sign notifying all persons of the closing and prohibition against further receipt of waste materials. Further, suitable barriers shall be installed

at former accesses to prevent new waste from being deposited.

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

(A) Initiate immediate measures to:

(I) Prevent further release to the environment.

(II) Prevent further migration of the released substance into surrounding soils and waters of the state.

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

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

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

(II) A schedule for conducting the investigation.

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

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

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

(E) If required by the administrator, develop a comprehensive plan for mitigation and cleanup.

The remediation plan shall be submitted to the administrator for approval. The remediation plan shall be implemented as soon as the administrator has approved the plan and all necessary permits have been obtained. The remediation plan shall contain an estimate of the costs for a third party to perform the tasks identified by the plan.

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

(e) Cost estimates:

(i) Cost estimate for facility closure:

(A) In submitting a closure plan as required by these regulations, the operator of a regulated facility shall include therein an itemized written estimate of the cost of closing the facility. The estimated closing cost shall be determined by the director on a case-by-case basis, considering information supplied by the operator. Such costs shall be based on the work

required for a third party contractor. If written bids are used to estimate costs, the director may obtain additional bids to substantiate the accuracy of the estimated costs.

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

(I) The size and topography of the site.

(II) The daily or weekly volume of waste to be received at the site.

(III) Availability of cover and fill material needed for site grading.

(IV) The type of waste to be received at the site.

(V) Disposal method and sequential disposal plan.

(VI) The location of the site and the character of the surrounding area.

(VII) Requirements for surface drainage.

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

(IX) Environmental quality monitoring system.

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

(XI) Site storage capacity for solid waste, incinerator residue and compost material.

(XII) Off-site disposal requirements.

(XIII) Vector control requirements.

(XIV) A minimum of fifteen percent (15%) variable contingency fee to cover other closure costs as determined appropriate by the director.

(XV) Other site specific factors.

(D) Revised closure cost estimates will be submitted to the director as specified in this subsection. When the revised estimates are approved by the director, the operator shall submit revised financial assurance for the revised closure costs.

(I) If written bids are used to estimate closure costs, the operator shall provide revised closure cost estimates on an annual basis.

(II) If written bids are not used to estimate closure costs, the operator shall provide revised closure cost estimates every four years or with the permit renewal application, whichever comes first.

(ii) Cost estimate for facility post-closure:

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

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

(I) The size and topography of the site.

(II) The type and quantity of waste received.

(III) Disposal method and sequential disposal plan.

(IV) The potential for significant leachate production and the possibility of contaminating water supplies.

(V) Environmental quality monitoring systems.

(VI) Soil conditions.

(VII) The location of the site and the character of the surrounding area.

(VIII) A minimum of fifteen percent (15%) contingency fee to cover other post-closure costs as determined appropriate by the director.

(IX) Other site specific factors.

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

(I) If written bids are used to estimate post-closure costs, the operator shall provide revised post-closure cost estimates on an annual basis.

(II) If written bids are not used to estimate post-closure costs, the operator shall provide revised post-closure cost estimates every four years or with the permit renewal application whichever comes first.

(iii) Cost estimate for corrective action:

(A) For solid waste management facilities regulated under W.S. 35-11-504, the operator shall provide a supplemental financial assurance in an amount sufficient to meet the requirements of Section 3(c) of this chapter no later than thirty (30) days after the director approves the investigation or mitigation plan under Section 3(c)(ii)(C) or (E).

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

(I) Soils, geologic and hydrogeologic conditions at the site.

(II) The type and quantity of waste received.

(III) Disposal method and sequential disposal plan.

(IV) The potential for significant leachate production and the possibility of contaminating groundwater.

(V) Environmental quality monitoring systems.

(VI) The location of the site and the character of the surrounding area.

(VII) A minimum of fifteen percent (15%) contingency fee to cover other corrective action and cleanup costs as determined appropriate by the director.

(VIII) The ability of the facility to prevent and detect a release and to facilitate cleanup activities. The criteria used to evaluate this ability shall include design, construction, operation, monitoring and contingency plans submitted as part of the application package.

(IX) The class, use, value and

environmental vulnerability of surface and groundwater resources which may be impacted by a release.

(X) Other site specific factors.

(f) Financial assurance for facility closure, post-closure and corrective action:

(i) General:

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

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

(ii) Forms of financial assurance: Financial assurance may be provided in one or a combination of the following forms executed in the amount calculated as the estimated closure and post-closure costs in accordance with W.S. 35-11-504(a)(i). These forms may also be available for financial assurance for corrective actions at a regulated facility.

(A) Self bond;

(B) Surety bond;

(C) Federally insured certificates of deposit;

(D) Government-backed securities;

(E) Cash;

(F) Letters of credit.

(g) Transfer of permits: Permits may be transferred from one operator to another only if the new operator can demonstrate compliance with the financial assurance

requirements of this chapter.

Section 4. Forms of Financial Assurance.

(a) Self bonding:

(i) Initial application to self bond: Initial application to self bond shall be made at the time the operator makes written application to the director to construct, operate or modify a regulated facility. The application shall be on forms furnished by the director and shall contain:

(A) Identification of operator by:

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

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

(B) Amount of bond required, to be determined in accordance with W.S. 35-11-504(a)(i) or W.S. 35-11-306(d). If the self bond amount is proposed to be less than the full bond amount, the amount which is proposed to be under a self bond is the bond required.

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

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

(I) The director may allow a joint

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

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

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

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

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

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

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

(IV) Notwithstanding the language in

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

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

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

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

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

(IV) If the operator chooses (II) or (III), the two ratios shall be calculated with the proposed self bond amount added to the current or total liabilities for the current year. The operator may deduct the costs currently accrued for reclamation which appear on the balance sheet.

(H) A statement listing any notices issued by the Securities and Exchange Commission or proceedings initiated by any party alleging a failure to comply with

any public disclosure or reporting requirements under the securities laws of the United States. Such statement shall include a summary of each such allegation, including the date, the requirement alleged to be violated, the party making the allegation, and the disposition or current status thereof.

(I) A statement which:

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

(II) Identifies by name, address and telephone number, a registered agent, which agent must be either an individual resident in this state, whose business office is identical with such registered office, or a domestic corporation, or a foreign corporation authorized to transact business in the state, having a business office identical with such registered office. The registered agent so appointed by the operator shall be an agent to such operator upon whom any process, notice or demand required or permitted by law to be served upon the operator may be served.

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

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

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

(J) The director may accept a written guarantee for an operator's self bond from a parent corporation guarantor or from a federal agency, if the guarantor or federal agency satisfies the financial criteria of this chapter as if it were the operator. The operator must only supply information addressing requirements not met by the parent corporation guarantor. The terms of the parent corporate or federal agency guarantee shall provide for the following:

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

(II) The parent corporate or federal agency guarantee shall remain in force unless the guarantor sends notice of cancellation by registered or certified mail to the operator and to the director at least ninety (90) days in advance of the cancellation date, and the director accepts the cancellation. The cancellation shall be accepted by the director if the operator obtains a suitable replacement bond before the cancellation date, if the lands for which the self bond, or portion thereof, was accepted have not been disturbed, or if the lands have been released under W.S. 35-11-504.

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

States.

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

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

(I) Approve or reject such application and declare in writing its reasons for such action to the operator or his registered agent. The decision shall be based on the information submitted and shall be sufficient to meet the demonstrations required by W.S. 35-11-504(a).

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

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

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

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

agreement.

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

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

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

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

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

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

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

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

b. Securities shall only include those which are United States government securities or those state government securities acceptable to the director. Securities shall meet the requirements specified in the definition of "Collateral" found in Chapter 1, Section 1(e).

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

i. Property which is already being used as collateral, or

ii. Goods which the operator sells in the ordinary course of his business, or

iii. Fixtures, or

iv. Certificates of deposit which are not federally insured or where the depository is unacceptable to the director.

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

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

i. In the case of a federal or state lease, a status report prepared by an attorney, satisfactory to the director as disinterested and competent to so evaluate the asset, and an affidavit from the owner in fee establishing that the leasehold could be transferred upon default.

ii. In the case of a

fee simple interest, a title certificate or similar evidence of title and encumbrances prepared by an abstract office authorized to transact business within the state and satisfactory to the director.

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

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

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

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

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

(III) If the director accepts

personal property as collateral to support a self bond, the director shall require:

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

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

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

(IV) If the director accepts any property as collateral to support a self bond, the director shall, as applicable, require possession by the director of the personal property, or a mortgage or security agreement executed by the operator in favor of the Department of Environmental Quality. The requirement shall be that which is sufficient to vest such interest in the property in the director to secure the right and power to sell or otherwise dispose of the property by public or private proceedings so as to insure reclamation of the affected lands in accordance with the act. Personal property collateral to support a self bond shall be secured under the provisions of the Uniform Commercial Code as required by (2.) below.

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

(2.) Any security interest created by a security agreement shall be perfected by filing a financing statement or taking possession of the collateral in accordance with W.S. 34-21-950 through W.S. 34-21-955 (1977). The director shall have all rights and duties set forth in W.S. 34-21-926 (1977) when the collateral is in its possession as a secured party, as defined in W.S. 34-21-905(a)(ix). Any money received from

the collateral during this period of time shall be remitted to the operator. When the collateral is left in the possession of the operator, the security agreement shall require that, upon default, the operator shall assemble the collateral and make it available to the director at a place to be designated by the director which is reasonably convenient to both parties.

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

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

(iii) Renewal bonds:

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

(I) Amount of bond required, which shall be determined in accordance with W.S. 35-11-504. If the self bond amount is proposed to be less than the full bond amount, the amount which is proposed to be under a self bond is the bond required.

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

(III) If the director has accepted a

mortgage, any evidence of change in value, title and possession of the property shall be submitted.

(IV) If the director deems it necessary to revalue any asset, it may appoint the appraiser or appraisers mutually acceptable to the director and the operator. Any such reappraisal shall be expeditiously made, and copies thereof furnished to the director and the operator. The expense of the appraisal shall be borne by the operator. The findings of the appraisal shall be final and binding unless both parties agree to a reappraisal.

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

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

(C) Any valid initial self bond shall carry the right of successive renewal as long as the above listed information is submitted which demonstrates that the guarantor remains qualified under W.S. 35-11-504.

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

(A) The director may require the operator to substitute a good and sufficient corporate surety licensed to do business in the state if the director determines in writing that the self bond of the operator fails to provide this protection consistent with the objectives and purposes of W.S. 35-11-504. The director shall require this substitution if the financial information submitted or requested under Section (4)(a)(ii)(A)(II) indicates that the operator no longer qualifies under the self bonding program. Substitution of an alternate bond shall be made within thirty (30) days. The operator may also request substitution. This request is contingent upon the operator meeting all the requirements of the bond provisions, W.S. 35-11-504. If

these requirements are met, the director shall accept substitution.

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

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

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

(II) Retain from the operator sufficient assets within the department so as to cover that period of time of the disposal operation which is not covered by the substituted surety. Those assets not retained shall be returned to the operator within sixty (60) days free from the department's encumbrances, liens, mortgages or security interests.

(v) Requirements for forfeiture and release:

(A) All requirements as to bond forfeiture proceedings and the release of bonds shall be consistent with W.S. 35-11-504, excepting the requirements as to notification to the surety. When the director has required a mortgage, and the bond has been forfeited, foreclosure procedures shall be in accordance with W.S. 34-4-101 through 34-4-113 (1977).

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

(b) Surety bonds:

(i) A corporate surety shall not be considered good and sufficient for purposes of W.S. 35-11-504 or unless:

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

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

(C) The surety agrees:

(I) Not to cancel bond, except as provided for in W.S. 35-11-504 or where the director gives prior written approval of a good and sufficient replacement surety with transfer of the liability that has accrued against the operator on the permit area;

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

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

(ii) The provisions applicable to cancellation of the surety's license in W.S. 35-11-504 shall also apply if for any other reason the surety becomes unable to fulfill its obligations under the bond. Upon such occurrence the operator shall provide the required notice. Failure to comply with this provision shall result in suspension of the permit.

(c) Federally insured certificate of deposit: The director shall not accept an individual certificate of deposit in an amount in excess of $100,000 or the maximum insurable amount as determined by the FDIC or the Federal Savings and Loan Insurance Corporation. Such certificates of deposit shall be made payable to the department both in writing and upon the records of the bank issuing these certificates. The director shall require the banks

issuing these certificates to waive all rights of set off or liens against the certificates. The bond amount may be calculated to include any amount which would be deducted as a penalty for payment before maturity.

(d) Government-backed securities: In lieu of a bond, the operator or its principal may deposit government securities registered solely in the department's name and backed by the full faith and credit of the United States.

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

(f) Letters of credit:

(i) Letters of credit shall be subject to the following conditions:

(A) The letter shall be irrevocable during its term, which shall coincide with the annual bonding period. The director may approve the use of letters of credit as security in accordance with a schedule approved with the permit. Any bank issuing a letter of credit shall notify the director in writing at least ninety (90) days prior to the maturity date of such letter or the expiration of the letter of credit agreement. Letters of credit utilized as security in areas requiring continuous bond coverage shall be collected by the director if not replaced by other suitable evidence of financial responsibility at least thirty (30) days before the expiration date of the letter of credit agreement;

(B) The letter must be payable to the department in part or in full upon demand and receipt from the director of a notice of forfeiture issued in accordance with W.S. 35-11-504;

(C) The letter shall not be in excess of 10 percent (10%) of the bank's capital surplus account as shown on a balance sheet certified by a Certified Public Accountant;

(D) The director shall only accept bank letters of credit issued in accordance with W.S. 13-3-402;

(E) The letter of credit shall provide that:

(I) The bank will give written notice within three (3) working days to the permittee and the director of any notice received or action filed alleging the insolvency or bankruptcy of the bank, or alleging any violations of regulatory requirements which could result in suspension or revocation of the bank's charter or license to do business,

(II) In the event the bank becomes unable to fulfill its obligations under the letter of credit for any reason, written notice shall be given immediately to the permittee and the director, and

(III) Upon the incapacity of a bank by reason of bankruptcy, insolvency, or suspension or revocation of its charter or license, the permittee shall be deemed to be without performance bond coverage in violation of the act. The director shall issue a notice of violation against any operator who is without bond coverage, specifying a reasonable period to replace bond coverage, not to exceed sixty (60) days. During this period the director or his or her designated representative shall conduct weekly inspections to ensure continuing compliance with other permit requirements, the regulations and the act. If the notice is not abated in accordance with the schedule, a cessation order shall be issued.

(ii) Agent for service of process: The letter may only be issued by a bank organized to do business in the U.S. which identified by name, address, and telephone number an agent upon whom any process, notice or demand required or permitted by law to be served upon the bank may be served. Letters of credit from U.S. branches of foreign banks are not acceptable.

(A) If the bank fails to appoint or maintain an agent in this state, or whenever any such agent cannot be reasonably found, then the Wyoming Secretary of State shall be an agent for such bank upon whom any process, notice or demand may be served for the

purpose of this chapter. In the event of any such process, the Wyoming Secretary of State shall immediately cause one copy of such process, notice or demand to be forwarded, by certified or registered mail to the bank at its principle place of business. The Wyoming Secretary of State shall keep a record of all processes, notices, or demands served upon him or her under this paragraph, and shall record therein the time of such service and his or her action with reference thereto;

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

Section 5. Bond or Other Forms of Financial Assurance Release.

(a) Any bond or other form of financial assurance may be canceled by the surety only after ninety (90) days written notice to the director, and upon receipt of the director's written consent, which may be granted only when the requirements of the bond have been fulfilled.

(b) When the director determines that the violation has been remedied or the damage abated, the director shall release that portion of the bond or financial assurance instrument being held under W.S. 35-11-504(a). When the director determines that closure activities have been successfully completed at any regulated facility, the director shall release that portion of the bond or financial assurance being held to guarantee performance of activities specified in W.S. 35-11-504(a). The remaining portion of the bond or financial assurance shall be held for a period of not less than thirty (30) years after the date of facility closure, or so long thereafter as necessary to assure proper performance of any post-closure and corrective activities specified in W.S. 35-11-504(a) unless the post-closure period is terminated at an earlier date under Chapter 2, Section 7(b).

(c) Release of the owner or operator from the closure financial assurance requirements of this chapter: Within sixty (60) days after receiving certification from the owner or operator that closure has been accomplished

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

(d) Release of the owner or operator from the post-closure financial assurance requirements of this chapter: Within sixty (60) days of the director's determination under Chapter 2, Section 7(b), that the facility has been adequately stabilized, the director shall notify the owner or operator in writing that the owner or operator is no longer required to maintain financial assurance for the post-closure care of the regulated facility. Such notice shall release the owner or operator only from the requirements for financial assurance for post-closure care of the facility; it does not release the owner or operator from legal responsibility to take corrective action as necessary to protect public health or the environment from releases from the facility.

Section 6. Bond or Other Forms of Financial Assurance Recalculations. Financial assurance amounts will be recalculated on a yearly basis.

Section 7. Bond or Other Forms of Financial Assurance Forfeiture.

(a) Bond or other financial assurance forfeiture proceedings shall occur only after the director provides

notice to the operator and any surety in accordance with W.S. 35-11-504(h) that a violation exists and the council has approved the request of the director to begin forfeiture proceedings.

(b) With the approval of the council the director may:

(i) Expend forfeited funds to remedy and abate the circumstances with respect to which any financial assurance was provided; and

(ii) Expend funds from the trust and agency account under W.S. 35-11-504(a) to remedy and abate any immediate danger to human health, safety and welfare.

(c) If the forfeited bond or other financial assurance instrument is inadequate to cover the costs to carry out the activities specified in W.S. 35-11-504(a) or in any case where the director has expended trust and agency account monies, the attorney general shall bring suit to recover the cost of performing the activities where recovery is deemed possible.

Section 8. Incapacity of Institution Issuing Financial Assurance. An owner or operator who fulfills the requirements of Section 3 of this chapter by obtaining a surety bond or a certificate of deposit or irrevocable letter of credit will be deemed to be without the required financial assurance in the event of bankruptcy, insolvency or a suspension or revocation of the license or charter of the issuing institution. The owner or operator must establish other financial assurance within sixty (60) days of such event.

Section 9. Closure and Post-Closure Account for Municipally-Owned Solid Waste Disposal Facilities.

(a) Applicability: This section is applicable to municipally-owned or operated solid waste landfills regulated under Chapter 2 of these rules and regulations electing to participate in the state guarantee trust account [the account] provided under W.S. 35-11-515. Such facilities shall be known as participating facilities.

(b) Initial requirements: The requirements of this paragraph apply to participating facilities upon their initial election to participate in the account. The requirements of this paragraph also apply to participating facilities upon the, fourth and subsequent four-year anniversaries, following the initial election to participate in the account. Each facility shall:

(i) Either prepare a closure and post-closure plan complying with Section 3(b)(ii), and containing a closure and post-closure cost estimate complying with Section 3(e)(i) and (ii) of this chapter, or calculate the facility closure and post-closure costs using a standard cost estimate prepared by the director; and

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

(iii) Calculate the annual amount to be paid to the account using the formula:

Annual Payment Amount = (0.03 X (closure cost + post-closure cost) / years of remaining disposal capacity) - the total of previous payments to the account.

(iv) For existing Type I facilities, the owner shall pay the amount in paragraph (b)(iii) of this section to the department no later than April 9, 1997 (no later than October 9, 1997 for existing Type II facilities). Existing nonparticipating Type I facilities making an initial election to participate in the account after April 9, 1997 (after October 9, 1997 for existing Type II facilities), shall pay the amount in paragraph (b)(iii) of this section prior to receiving approval from the director to terminate any alternate form of financial assurance approved under Section 3(d) of this chapter;

(v) For new Type I facilities permitted after April 9, 1997 (after October 9, 1997 for new Type II facilities), the owner shall pay the amount in paragraph (b)(iii) of this section prior to the issuance of a permit from the director.

(c) Subsequent requirements: Each facility shall

pay the amount specified in paragraph (b)(iii) of this section to the director no later than the anniversary dates following the initial election to participate in the account.

(d) Estimating closure and post-closure costs:

(i) Closure and post-closure costs may be calculated using a site specific cost estimate prepared by the operator or a standard cost estimate prepared by the director.

(e) Refunds from the account for closure guarantees: Following certification of closure by a registered professional engineer in accord with the requirements of Chapter 2, Section 7, the owner may apply to the director for a refund of that portion of the annual fee paid by the owner to the account for closure guarantee costs. If the director determines that closure activities have been adequately completed, the department shall, within thirty 30 days, approve a refund from the account equal to ninety percent (90%) of the total amount paid by the owner, less any expenditures from the account under W.S. 35-11-515(k) which have not been recovered under W.S. 35-11-515(m).

(f) Refunds from the account for post-closure guarantees: Following certification of the proper completion of the post-closure period by a registered professional engineer in accord with the requirements of Chapter 2, Section 7, the owner may apply to the director for a refund of that portion of the annual fee paid by the owner to the account for post-closure guarantee costs. The director shall, within 30 days of the administrator's determination that the facility has been adequately stabilized in accord with the requirements of Chapter 2, Section 7(b), approve a refund from the account equal to ninety percent (90%) of the total amount paid by the owner, less any expenditures from the account under W.S. 35-11-515(k) which have not been recovered under W.S. 35-11-515(m).

(g) Election to withdraw as a participating facility: Upon the election by a facility owner to withdraw from participation in the account, the owner may apply to the director for a refund of the closure and

post-closure annual fees paid to the account. The director shall, within thirty (30) days, approve a refund from the account equal to ninety percent (90%) of the total amount paid by the owner, less any expenditures from the account under W.S. 35-11-515(k) which have not been recovered under W.S. 35-11-515(m). Prior to the director approving a refund for a withdrawing facility, the facility owner shall demonstrate compliance with the financial assurance requirements of this chapter as specified in Section 3(d).

(h) Use of a combination of financial assurance mechanisms: An owner may elect to participate in the account for purposes of demonstrating compliance only with the closure cost financial assurance requirement, only with the post-closure cost financial assurance requirement, or both. Any owner electing to participate in the account only for the purposes of satisfying the closure or post-closure cost financial assurance requirement shall use another financial assurance mechanism as specified in Section 3(d) of this chapter to complete his or her obligation to demonstrate adequate financial assurance for both closure and post-closure costs.

(i) Expenditures from the account: The director may authorize expenditures from the account if the facility owner, after receiving a notice of violation and order directing the performance of closure or post-closure obligation under this chapter or Chapter 2 of these rules and regulations, has failed to adequately perform such obligation. The director shall provide in any such order that failure to perform the closure or post-closure obligation will result in the director’s authorizing an expenditure from the account. The amount to be expended shall be specified by the director in the order. The availability of an opportunity to appeal the order under W.S. 35-11-701(c) shall be considered the owner’s opportunity to appeal the amount to be expended, under W.S. 35-11-515(k).