

1 **DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

2 **Solid and Hazardous Waste Commission/Hazardous Materials and**
3 **Waste Management Division**

4 **6 CCR 1007-2**

5 **PART 1 - REGULATIONS PERTAINING TO SOLID WASTE SITES AND FACILITIES**

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7
8 **Amendment of the Solid Waste Financial Assurance Regulations**

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10
11 **1) Section 1 of the Table of Contents of the Solid Waste Regulations is being**
12 **amended by deleting and reserving Section 1.8 to read as follows:**

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14
15 **PART 1 - REGULATIONS PERTAINING TO SOLID WASTE SITES AND FACILITIES**

16
17
18 **TABLE OF CONTENTS**

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20
21 **PART A**

22
23 **GENERAL REQUIREMENTS AND INFORMATION CONCERNING**
24 **ALL SOLID WASTE DISPOSAL SITES AND FACILITIES**
25 **IN THE STATE OF COLORADO**

26
27
28 **SECTION 1 ADMINISTRATIVE INFORMATION**
29 1.1 General information
30 1.2 Definitions
31 1.3 Scope and effective date
32 1.4 Exemptions
33 1.5 Waiver processes and procedures
34 1.6 Application for certificate of designation
35 1.7 Solid waste authorization and fees
36 1.8 ~~Financial assurance-Reserved~~
37 1.9 Inspections and enforcement

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39 *****

42 2) Section 4 of the Table of Contents of the Solid Waste Regulations is being
43 amended by revising Section 4 to read as follows:

44
45 PART 1 - REGULATIONS PERTAINING TO SOLID WASTE SITES AND FACILITIES
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49
50 TABLE OF CONTENTS
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54 PART B
55 REQUIREMENTS AND INFORMATION CONCERNING
56 ALL SOLID WASTE DISPOSAL SITES AND FACILITIES
57 IN THE STATE OF COLORADO
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59
60 *****

61
62 SECTION 4 ~~FINANCIAL ASSURANCE REQUIREMENTS CONSTRUCTION DEBRIS AND~~
63 ~~INERT MATERIAL LANDFILL SITES AND FACILITIES [RESERVED]~~

- 64 4.1 General Provisions
65 4.1.1 Purpose
66 4.1.2 Scope and Availability
67 4.1.3 Exemptions
68 4.1.4 Duration of Financial Assurance Coverage
69 4.1.5 Definition of terms as used in this Section
70 4.2 Closure Cost Estimates
71 4.3 Post-Closure Cost Estimates
72 4.4 Corrective Action Cost Estimates
73 4.5 Revising Closure, Post-Closure and Corrective Action Cost Estimates
74 4.5.1 Annual Inflation Revision
75 4.5.2 Adjustments and Reimbursements of Financial Assurance
76 Mechanisms
77 4.5.3 Five-Year Revised Cost Estimate
78 4.6 Financial Assurance Requirements
79 4.6.1 General Requirements
80 4.6.2 Trust Funds
81 4.6.3 Letters of Credit
82 4.6.4 Surety Bonds Guaranteeing Performance or Payment
83 4.6.5 Insurance
84 4.6.6 Corporate Financial Test
85 4.6.7 Local Government Financial Test
86 4.6.8 Corporate Guarantee
87 4.6.9 Local Government Guarantee
88 4.6.10 Certificates of Deposit

89 4.6.11 Use of Multiple Financial Mechanisms

90 4.6.12 Use of a Financial Mechanism for Multiple Sites

91 4.6.13 Release of the Owner or Operator from the Requirements of this
92 Section

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98 **3) Section 1.8 (Financial Assurance Criteria), which includes §1.8.1 through**
99 **§1.8.19, is deleted in its entirety and the section is reserved to read as follows:**

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102 **SECTION 1.8 RESERVED FINANCIAL ASSURANCE CRITERIA**

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106 **4) Section 2.4 (Recordkeeping) is amended to read as follows:**

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108
109 **2.4 RECORDKEEPING**

110
111 2.4.1 All operating records shall be part of the engineering design and operation report and shall be
112 maintained at the facility, unless otherwise approved by the Department.

113
114 2.4.2 The owner or operator of a solid waste disposal site and facility shall record and retain in an
115 operating record the following information as it becomes available:

116
117 (A) Location restriction demonstration required under ~~Sub~~section 3.1;

118
119 (B) Inspection records, and training procedures;

120
121 (C) Gas monitoring results from monitoring and any remediation plans required by Section 2.3;

122
123 (D) Design documentation for controlling leachate or gas condensate;

124
125 (E) Demonstrations, certifications, findings, data or documents required by ~~Sub~~section 2.2;

126
127 (F) Closure and post closure care plans and any monitoring, testing, or analytical data as required
128 by ~~Sub~~section 2.5 ~~A~~and 2.6;

129
130 (~~G~~) Cost estimates and financial assurance documentation required by ~~Sub~~section ~~4~~1.8; and

131
132 (~~H~~) Information demonstrating compliance with waivers as required by Section 1.5.
133
134

135 **5) The existing placeholder for Section 4 (Construction Debris and inert Material**
136 **Landfill Sites and Facilities [Reserved]) is deleted and a new Section 4 (Financial**
137 **Assurance Regulations) is added to read as follows:**
138
139

140 **SECTION 4**

141
142
143 **~~CONSTRUCTION DEBRIS AND INERT MATERIAL LANDFILL SITES AND FACILITIES [RESERVED]~~**
144

145
146
147 **SECTION 4.0 FINANCIAL ASSURANCE REQUIREMENTS**
148

149 **4.1 General Provisions**

- 150 4.1.1 Purpose
- 151 4.1.2 Scope and Availability
- 152 4.1.3 Exemptions
- 153 4.1.4 Duration of Financial Assurance Coverage
- 154 4.1.5 Definition of terms as used in this Section

155 **4.2 Closure Cost Estimates**

156 **4.3 Post-Closure Cost Estimates**

157 **4.4 Corrective Action Cost Estimates**

158 **4.5 Revising Closure, Post-Closure and Corrective Action Cost Estimates**

- 159 4.5.1 Annual Inflation Revision
- 160 4.5.2 Adjustments and Reimbursements of Financial Assurance Mechanisms
- 161 4.5.3 Five-Year Revised Cost Estimate

162 **4.6 Financial Assurance Requirements**

- 163 4.6.1 General Requirements
- 164 4.6.2 Trust Funds
- 165 4.6.3 Letters of Credit
- 166 4.6.4 Surety Bonds Guaranteeing Performance or Payment
- 167 4.6.5 Insurance
- 168 4.6.6 Corporate Financial Test
- 169 4.6.7 Local Government Financial Test
- 170 4.6.8 Corporate Guarantee
- 171 4.6.9 Local Government Guarantee
- 172 4.6.10 Certificates of Deposit
- 173 4.6.11 Use of Multiple Financial Mechanisms
- 174 4.6.12 Use of a Financial Mechanism for Multiple Sites
- 175 4.6.13 Release of the Owner or Operator from the Requirements of this Section

176
177
178 **SECTION 4.0 FINANCIAL ASSURANCE REQUIREMENTS**
179

180 **4.1 General Provisions**
181

182 4.1.1 Purpose: Colorado law prohibits the operation of solid waste disposal sites and facilities
183 without adequate financial assurance. The purpose of financial assurance is to ensure, at any
184 point in the operating life of a solid waste disposal site and facility, the availability of adequate
185 funds such that the State of Colorado may use those funds to pay the costs of closing the facility,
186 the costs of needed post-closure care of the site and facility, and the costs associated with
187 corrective action of any releases from the site and facility, in the case of bankruptcy or financial
188 insolvency of the owner or operator.

189
190 4.1.2 Scope and Applicability: This Section 4 applies to any person owning or operating a solid
191 waste disposal site and facility. This includes all locations and facilities at which the deposit and
192 final treatment of solid wastes occur, and includes the following facility types:

- 193
194 (A) Landfills (Sections 2 and 3 of these regulations)
195 (B) Asbestos Waste Disposal Areas (Section 5 of these regulations)
196 (C) Incinerator Ash Disposal Sites (Section 6 of these regulations)
197 (D) Solid Waste Surface Impoundments (Section 9 of these regulations)
198 (E) Waste Tire Monofills, Waste Tire Processors, and Waste Tire Collection Facilities
199 (Section 10 of these regulations)
200 (F) Solid Waste Incineration Facilities (Section 11 of these regulations)
201 (G) Water Treatment Plant Sludge Disposal Facilities (Section 12 of these regulations)
202 (H) Medical Waste Facilities (Section 13 of these regulations)
203 (I) Composting Facilities (Section 14 of these regulations), and
204 (J) Commercial Exploration and Production Waste Impoundments (Section 17 of these
205 regulations)
206 (K) Waste Grease Transporters and Waste Grease Facilities (Section 18 of these
207 regulations)

208
209 4.1.3 Exemptions: This Section 4 does not apply to the following facility types:

- 210
211 (A) Transfer Stations (Section 7 of these regulations)
212 (B) Recycling Facilities (Section 8 of these regulations)

213
214 4.1.4 Duration of Financial Assurance Coverage: Financial assurance coverage must be
215 provided before the solid waste disposal site and facility commences operation or any waste is
216 accepted and must continue until a release is granted by the department.

217
218 4.1.5 Definition of terms as used in this Section:

- 219
220 (A) Captive Insurance Company - a closely-held company owned by one or more
221 organizations or parents, whose original purpose was, and may continue to be, to insure
222 some or all of the risks of shareholders or affiliated organizations.
223
224 (B) Corrective Action – cleanup or remediation of contamination required by or performed
225 under these Regulations and/or Subpart E of the federal regulations promulgated
226 pursuant to the provisions of subtitle D of the federal “Resources Conservation and
227 Recovery Act of 1976,” as amended.
228
229 (C) Parent Company or Parent - a company that controls other businesses by owning an
230 influential amount of voting stock or control.

231
232 (D) Subsidiary - a company that is partly or completely owned by the parent company,
233 which holds a controlling interest in the subsidiary company.

234
235 (E) Consultation – the department will inform the local governing authority of their
236 opportunity to comment on certain financial assurance activities per the requirements of
237 this Section 4 and deadlines by which comments must be received.

238
239 Consultation between the department and the local governing authority may
240 consist of telephone conversations, written communications, or meetings,
241 dependent upon the particular circumstances. In the case where a solid waste
242 disposal site and facility is owned or operated by the local governing authority,
243 the department may consult the local governing authority on matters concerning
244 financial assurance but shall retain final decision making and approval authority.

245
246 (F) Notification - the department or solid wastes disposal site and facility will provide
247 written notice to the local governing authority of certain financial assurance activities per
248 the requirements of this Section 4.

249 250 **4.2 Closure Cost Estimates**

251
252 4.2.1 Prior to operating, the owner or operator of a solid waste disposal site and facility must have
253 a detailed written estimate, in current dollars, approved by the department, of the cost of closing
254 the facility.

255
256 (A) The estimate must equal the cost of final closure at the point in the facility's active life
257 when the extent and manner of its operation would make closure the most expensive, as
258 indicated by its closure plan.

259
260 (B) The closure cost estimate must be based on the costs of hiring a third party to close
261 the facility. A third party is a party who is neither a parent nor a subsidiary of the owner
262 or operator. The owner or operator may use costs for on site disposal if the owner or
263 operator can demonstrate that on site disposal can be accomplished in conformance with
264 other applicable sections of these regulations and disposal capacity will exist at all times
265 over the life of the facility.

266
267 (C) The closure cost estimate may not incorporate any salvage value that may be
268 realized with the sale of solid wastes, facility structures or equipment, land, or other
269 assets associated with the facility at the time of partial or final closure.

270
271 (D) The owner or operator may not incorporate a zero cost for solid wastes that might
272 have an economic value.

273 274 **4.3 Post-Closure Cost Estimates**

275
276 4.3.1: Prior to operating, the owner or operator of a landfill, surface impoundment, land treatment
277 unit, or any other unit where wastes will remain in the unit after closure must have a detailed
278 written estimate, in current dollars, approved by the department, of the cost of post closure care
279 of the site and facility.

280
281 (A) The post closure cost estimate must be based on the costs to the owner or operator
282 of hiring a third party to conduct post closure care at such a site and facility. A third party
283 is a party who is neither a parent nor a subsidiary of the owner or operator.

284
285 (B) The post closure cost estimate must be calculated by multiplying the annual post
286 closure costs by the number of years that post closure care will be required. All solid
287 waste disposal sites and facilities needing to implement post-closure care must initially
288 provide enough financial assurance to provide for thirty (30) years of post-closure care,
289 maintenance, and monitoring unless a shorter period has been approved by the
290 department.

291 **4.4 Corrective Action Cost Estimates**

292
293
294 4.4.1: Once a corrective action plan has been approved, and when required by the department,
295 the owner or operator of any facility with a release of solid waste(s) into the environment that
296 requires corrective action must have a detailed written estimate, in current dollars, approved by
297 the department, of the cost of corrective action.

298
299 (A) The corrective action cost estimate must be based on the costs to the owner or
300 operator of hiring a third party to conduct corrective action activities. A third party is a
301 party who is neither a parent nor a subsidiary of the owner or operator.

302
303 (B) The corrective action cost estimate must be calculated by determining the initial
304 remediation costs and adding a multiple of the annual corrective action costs for the
305 number of years corrective action activities will be required.

306 **4.5 Revising Closure, Post-Closure, and Corrective Action Cost Estimates**

307
308
309 4.5.1 Annual Inflation Revision: During the active life of the solid waste disposal site and facility,
310 the owner or operator must annually revise the closure, post-closure, and any corrective action
311 cost estimate for inflation and must submit this estimate for department approval. This estimate
312 must occur at least sixty (60) days prior to the anniversary date of the establishment of the
313 financial instrument(s) used to comply with this Section 4. For owners and operators using the
314 financial test or guarantee, the revised cost estimate must be updated for inflation within thirty
315 (30) days after the close of the entity's fiscal year and submitted for department approval. The
316 annual adjustment may be made by recalculating the maximum costs of closure, post-closure,
317 and/or corrective action in current dollars, or by using an inflation factor derived from the most
318 recent Implicit Price Deflator for Gross National Product as published by the U.S. Department of
319 Commerce in its Survey of Current Business. The inflation factor is the result of dividing the
320 latest published annual Deflator by the Deflator for the previous year.

321
322 (A) The first adjustment is made by multiplying the original cost estimate by the inflation
323 factor. The result is the revised cost estimate.

324
325 (B) Subsequent adjustments are made by multiplying the latest revised cost estimate by
326 the latest inflation factor.

327 **4.5.2: Adjustments and Reimbursements of Financial Assurance Mechanisms**

329
330 (A) Whenever the current closure, post-closure, and corrective action cost estimates
331 increase to an amount greater than the current amount of the financial assurance
332 mechanism, the owner or operator, within sixty (60) days after the increase, must either
333 increase the value of the mechanism and submit evidence of such increase to the
334 department or obtain other financial assurance to cover the increase.

335
336 (B) Whenever the closure, post-closure, and corrective action cost estimates decrease,
337 the financial assurance mechanism may be reduced to the amount of the current closure,
338 post-closure, or corrective action cost estimate following the submittal of sufficient
339 justification to the department and written approval by the department. Justification for a
340 decrease can include partial closure of a facility or any other occurrence that legitimately
341 decreases the ultimate costs of closure, post-closure, or corrective action. Such
342 justification shall be made a permanent part of the operating record of the site and facility.

343
344 (C) After beginning partial or final closure, an owner or operator or another person
345 authorized to conduct partial or final closure may request releases for the amount of
346 financial assurance covering the partial or final closure expenditures by submitting
347 itemized receipts to the department. If the department concurs with the accuracy of the
348 justification, the amount in excess of the current closure or post closure cost estimates
349 shall be released. Additional procedures for partial expenditure releases may appear for
350 each mechanism within Subsection 4.6.1(D).

351
352 (D) If an alternate mechanism is approved by the department, or if the facility is released
353 from the financial assurance requirement, the original mechanism will be returned to the
354 facility.

355
356 4.5.3 Five-Year Revised Cost Estimate: After department approval of the initial cost estimate,
357 and during the active life of the facility, the owner or operator must replace original cost estimates
358 with new cost estimates every five (5) years unless otherwise required by the department. This
359 five-year revised cost estimate is intended to capture changes in, or additions to, facility
360 operations and must be a complete re-evaluation of the closure, post-closure, and corrective
361 action costs.

362
363 4.5.4: The owner or operator must submit the closure, post-closure, and any corrective action
364 cost estimates, and all annual, five-year revised cost estimates, or other revisions, to the
365 department for review and approval.

366 367 **4.6 Financial Assurance Requirements**

368 369 4.6.1: General Requirements

370
371 (A) All owners and operators must establish financial assurance for closure and post-
372 closure of, and if necessary corrective action at, the solid waste disposal site and facility
373 in the amounts determined by the cost estimates required in Sections 4.2 through 4.5 of
374 these regulations.

375
376 (B) The department shall consult with the local governing authority in the following
377 circumstances:

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(1) Prior to accepting a solid waste disposal site and facility's initial financial assurance via an application for a Certificate of Designation or other application or department requirement.

(2) Prior to accepting initial financial assurance for corrective action.

(3) Prior to terminating a site and facility's financial assurance pursuant to Section 4.6.13.

(4) As necessary in Section 4.6.12.

(C) No local governing authority shall require an applicant for a certificate of designation to obtain any financial assurance mechanism or amount in addition to that required by the provisions of these regulations.

(D) The following are allowable financial assurance mechanisms and instruments that an owner or operator may use, alone or in combination, subject to approval by the department:

- (1) Trust fund
- (2) Letter of credit
- (3) Surety bond
- (4) Insurance
- (5) Corporate financial test
- (6) Local government financial test
- (7) Corporate guarantee
- (8) Local government guarantee
- (9) Certificate of Deposit

(E) All owners and operators shall annually provide, concurrently to the department and the local governing authority, proof of sufficiency of the financial assurance required by these regulations.

(F) An owner or operator may use a financial assurance mechanism specified in this section to meet the requirements of more than one facility. However, per Section 4.6.12, all solid waste disposal sites and facilities under a multiple facility financial instrument must be located in Colorado, and the owner and operator must be the same for all facilities unless special approval of the department is first obtained.

(G) No certificate of designation shall be effective unless and until the required financial assurance mechanism has been fully implemented as required by this section. Failure to properly maintain financial assurance as required by this section may result in the suspension or revocation of the certificate of designation. No solid waste disposal site and facility shall operate without being in compliance with the financial assurance requirements contained in this Section 4.

(H) A financial assurance instrument may not be transferred to a new owner or operator unless, as part of the process, the assignment or transfer of the financial instrument(s) or

427 alternate financial assurance has been reviewed and approved by the department and
428 the local governing authority.

429
430 (I) The department will give written consent to the owner or operator to terminate the
431 financial assurance mechanism identified Subsection 4.6.1(D) when:

432
433 (1) The owner or operator provides alternate financial assurance as specified in
434 this Section; or

435
436 (2) The department, after consultation with the local governing authority, releases
437 the owner or operator from maintaining financial assurance for closure, post-
438 closure care, or corrective action pursuant to Section 4.6.13.

439
440 (J) In the event that the owner and operator are separate parties, both will be a part of
441 any discussions prior to the release of the financial instrument.

442
443 (K) The department shall assess a fee per Section 1.7.2 to offset the costs of the
444 department's review of the financial assurance information.

445
446 (L) If at any time the department shall determine that an owner or operator has
447 insufficient financial assurance or otherwise is not in full compliance with these
448 regulations, it shall notify the owner or operator and may take whatever enforcement
449 actions it deems necessary, including altering pay-in periods and schedules.

450
451 (M) No release or reimbursement of funds will be made if a known release has occurred
452 at a site/facility and the owner or operator does not then have sufficient financial
453 assurance to implement the corrective action plan for such release. Further, if within
454 ninety (90) days of a known release, an owner or operator has not established sufficient
455 financial assurance for that release, the department will take whatever enforcement
456 actions it deems necessary. This may include a recommendation to the local governing
457 authority that they suspend or revoke the certificate of designation for the site and facility
458 with the known release. This may also include the department applying the available
459 closure and post-closure funds to implement the corrective action and assess the owner
460 or operator for any deficiency in the closure or post-closure funds which results.

461
462 (N) The department is authorized to expend such monies for the third party closure, post
463 closure, or corrective action as available to the department from the financial assurance
464 mechanisms provided by the owner or operator of the solid waste disposal site and
465 facility.

466
467 (O) The department is authorized to contract with one or more private contractors to
468 conduct the third-party closure, post closure care, or corrective action at a solid waste
469 disposal site and facility, as may be necessary.

470
471 (1) Any such contract shall be between the department and the private
472 contractor and the owner or operator shall not be a party to such contract.

473
474 (2) The department may disallow a contractor because of conflicts of interest or
475 other reasons.

476
477 (3) The department may contract with the local governing authority that issued
478 the certificate of designation to conduct such third party closure, post closure
479 care, or corrective action.
480

481 4.6.2 Trust Funds

482 (A) Subject to department approval, an owner or operator may establish a trust fund
483 which conforms to the requirements of this Section. The trustee must be an entity which
484 has the authority to act as a trustee and whose trust operations are regulated and
485 examined by a federal or state agency. An owner or operator of a new or existing facility
486 must submit an originally signed duplicate of the trust agreement to the depart-ment. A
487 trust fund must contain, at the end of the operating life of the facility, or within the
488 timeframes defined in this section, sufficient funds to cover closure, post closure and
489 corrective action costs.
490

491
492 (B) The trustee, to be validated by the comptroller or banking commission, shall be the
493 trust department of a federal or state chartered bank with capital and surplus of not less
494 than \$10,000,000, selected by the operator and acceptable to the department. Said bank
495 must be located and legally chartered to operate in one of the fifty (50) states. The
496 trustee shall direct the investment of funds in the trust, using the standard of care of a
497 fiduciary. The investment objectives of the trust are primarily preservation of capital and
498 access to liquidity, and secondarily investment return on capital investment. Investments
499 in the trust may include fixed income mutual funds with average durations of less than
500 five years; United States Treasury bills, notes and bonds with maturities less than ten
501 years; United State agency bonds; money market mutual funds invested solely in United
502 States Treasury or Agency bonds; pre-refunded municipal bonds backed by United State
503 Treasuries or Agencies; bank certificates of deposit and money market accounts up to
504 Federal Deposit Insurance Corporation (FDIC) insurance limits; commercial paper bonds
505 rated "A2P2" or better, corporate bonds rated "AA" or better by Standard and Poor's
506 Financial Services, or any combination of these investments. If individual bonds are used,
507 a minimum of 10 bonds shall be used with roughly equal spacing of maturities and with
508 the intent to hold such bonds to maturity. No funds shall be released, disbursed, or
509 transferred by the trustee from this trust without the express written authorization of the
510 department.
511

512 (C) The wording of the trust agreement must be identical to the wording specified in
513 Appendix A, and no changes will be allowed without department approval. The trust
514 agreement must be accompanied by a formal certification of acknowledgment. Schedule
515 A of the trust agreement must be updated within sixty (60) days after a change in the
516 amount of the current cost estimate covered by the agreement or any change in facility
517 name or ownership.
518

519 (D) Trust Funds for Closure and Post-Closure for Landfills: The following facility types
520 will be considered "landfills" for the purposes of this Subsection 4.6.2(D): Landfills
521 (covered by Sections 2 and 3 of these regulations); Asbestos Waste Disposal Areas
522 (covered by Section 5 of these regulations); Incinerator Ash Disposal Sites (covered by
523 Section 6 of these regulations); Waste Tire Monofills (covered by Section 10 of these

524 regulations); and Water Treatment Plant Sludge Disposal Facilities (covered by Section
525 12 of these regulations).

526
527 (1) For landfills, payments into the trust fund for closure and post-closure by the
528 owner or operator must, at a minimum, be made annually over the operating life
529 of the facility or twenty (20) years, whichever period is shorter, as estimated in
530 the closure and post closure plan. This period is hereafter referred to as the "pay
531 in period". The payments into the trust fund must be made as follows:

532
533 (a) For a new landfill, the first payment must be made before the initial
534 receipt of waste. A receipt from the trustee for this payment must be
535 submitted by the owner or operator to the department and local
536 governing authority before this initial receipt of waste.

537
538 (b) A receipt for the initial payment must be submitted to the department
539 by the trustee for both new and existing landfills. The first payment for
540 must be at least equal to the current closure, and post closure cost
541 estimate, divided by the number of years in the pay in period.

542
543 The amount of each subsequent payment must be determined by this
544 formula:

545
546
$$\text{NEXT PAYMENT} = \frac{\text{CE CV}}{\text{Y}}$$

547
548
549 Where CE is the current closure and post closure cost estimate, CV is
550 the current value of the trust fund, and Y is the number of years
551 remaining in the pay in period. After the first year, and annually
552 thereafter, the CE shall be multiplied times the preceding year's annual
553 rate of inflation before subtracting CV.

554
555 (c) In lieu of using the formula expressed in Subsection 4.6.2(D)(1)(b),
556 the equivalent annual payments into the trust fund may be determined by
557 calculating the net present value of CE.

558
559 (2) The owner or operator may accelerate payments into the trust fund or may
560 deposit the full amount of the current cost estimates at the time the fund is
561 established, or at any time thereafter. However, the value of the fund must be
562 maintained at no less than the value that the fund would have if annual payments
563 were made as specified in Subsection 4.6.2(D)(1).

564
565 (3) If the owner or operator establishes a trust fund after having used one or
566 more alternate mechanisms specified in Subsection 4.6.1(D), the first payment
567 must be at least the amount that the fund would contain if the trust fund were
568 established initially and all annual payments had been made.

569
570 (4) Whenever the current closure and post closure cost estimates increase or
571 decrease, and are approved by the department, the owner or operator must
572 recalculate the payments into the trust fund based on the new cost estimate (new

573 CE). If the current valuation of the fund is less than the amount which is required
574 using the new CE, the owner or operator must, within sixty (60) days of the
575 approval of the new estimate, either (a) deposit an amount into the fund such that
576 the fund equals the amount in the new CE for the current point in the pay-in
577 period, or (b) obtain other financial assurance as specified in this section to cover
578 the difference.

579
580 (E) Trust Funds for Closure and Post-Closure for Other Types of Solid Waste Disposal
581 Sites and Facilities: The following facility types will be considered other types of solid
582 waste disposal sites and facilities for the purposes of this Subsection 4.6.2(E): Solid
583 Waste Surface Impoundments (covered by Section 9 of these regulations); Solid Waste
584 Incineration Facilities (covered by Section 11 of these regulations); Medical Waste
585 Facilities (covered by Section 13 of these regulations); Composting Facilities (covered by
586 Section 14 of these regulations); and Commercial Exploration and Production Waste
587 Impoundments (covered by Section 17 of these regulations)

588
589 (1) For all facilities listed in Subsection 4.6.2(E) above that were in operation
590 prior to the effective date of this Section 4 (Xxxxx yy, 2018), a trust fund may be
591 funded as described in Subsection 4.6.2(D).

592
593 (2) For all new facilities listed in Subsection 4.6.2(E) above that were not in
594 operation on the effective date of this Section 4 (Xxxxx yy, 2018), a trust fund
595 must be fully funded, with no pay-in period, and approved by the department
596 before any waste is accepted in the facility.

597
598 (F) Trust Funds for Corrective Action: Whenever a trust fund will be used to assure
599 performance of corrective action, the owner or operator will calculate a corrective action
600 cost estimate as required by Section 4.4, submit it to the department for approval, and
601 place 100% of the corrective action cost estimate amount into the closure and post-
602 closure trust fund, or a separate trust fund, within sixty (60) days after department
603 approval.

604
605 (G) Reimbursements

606
607 (1) Adjustments to the amount of a trust fund must comply with Section 4.5.2.

608
609 (2) If an owner or operator substitutes other financial assurance as specified in
610 this section for all or part of the trust fund, the owner or operator may submit a
611 written request to the department, and copy the local governing authority, for
612 release of the amount in excess of the current cost estimate covered by the trust
613 fund.

614
615 (3) Within sixty (60) days after approving a request from the owner or operator
616 for release of funds as specified in this section, the department will instruct the
617 trustee to release to the owner or operator such funds as the department
618 specifies in writing.

619
620 (4) After beginning partial or final closure, an owner or operator or another
621 person authorized to conduct partial or final closure may request reimbursements

622 for partial or final closure expenditures by submitting itemized receipts to the
623 department. The owner or operator may request reimbursements for partial
624 closure only if sufficient funds are remaining in the trust fund to cover the
625 maximum costs of closing the facility over its remaining operating life. Within
626 sixty (60) days after receiving receipts for partial or final closure activities, the
627 department will instruct the trustee to make reimbursements in those amounts as
628 the department determines that the partial or final closure expenditures are in
629 accordance with the approved closure plan, or otherwise justified. If the
630 department has reason to believe that the maximum cost of closure over the
631 remaining life of the facility will be significantly greater than the value of the trust
632 fund, it may withhold reimbursements of such amounts as is deemed prudent
633 until it determines, that the owner or operator is no longer required to maintain
634 financial assurance for final closure of the facility. If the department does not
635 instruct the trustee to make such reimbursements, it will provide the owner or
636 operator with a detailed written statement of reasons.

637
638 (5) An owner or operator or any other person authorized to conduct post closure
639 care may request reimbursements for post closure care expenditures by
640 submitting itemized bills to the department. Within sixty (60) days after receiving
641 bills for post closure care activities, the department will instruct the trustee to
642 make reimbursements in those amounts as the department specifies in writing, if
643 the department determines that the post closure care expenditures are in
644 accordance with the approved post closure plan or otherwise justified. If the
645 department does not instruct the trustee to make such reimbursements, it will
646 provide the owner or operator with a detailed written statement of reasons.

647
648 (6) If there is one trust fund for both closure and post-closure care, then there
649 will not be any reimbursement for closure costs if there are not sufficient funds to
650 cover both the remaining closure and post-closure care costs.

651 652 653 4.6.3 Letters of Credit

654
655 (A) Subject to department approval, an owner or operator may obtain an irrevocable
656 standby letter of credit from an institution that has the authority to issue such letters and
657 whose operations are regulated and examined by a federal or state agency. An owner
658 or operator of a new facility must submit the letter of credit to the department. The letter
659 of credit must be effective before this initial receipt of waste.

660
661 (B) A letter of credit must be in full conformance with Article 5 of the uniform commercial
662 code, C.R.S. 4-5-101 et seq., as amended.

663
664 (C) The wording of the letter of credit must be identical to the wording specified in
665 Appendix A.

666
667 (D) The letter of credit must be irrevocable and issued for a period of at least one (1)
668 year. The letter of credit must provide that the expiration date will be automatically
669 extended for a period of at least one (1) year unless, at least one hundred twenty (120)
670 days before the current expiration date, the issuing institution notifies the owner or

671 operator and the department by certified mail, or other trackable delivery service, of a
672 decision not to extend the expiration date. Under the terms of the letter of credit, the one
673 hundred twenty (120) days will begin on the date when the owner or operator and the
674 department have received the notice, as evidenced by the return receipts.

675
676 (E) The letter of credit must be issued in an amount at least equal to the current closure,
677 post closure and corrective action cost estimates, less any amount covered by alternative
678 assurance mechanisms.

679
680 (F) Adjustments to the amount of a letter of credit must comply with Section 4.5.2.

681
682 (G) Following a determination that the owner or operator has failed to perform final
683 closure or post closure or corrective action in accordance with the closure or post closure
684 or corrective action plan and other permit requirements when required to do so, the
685 department may draw on the letter of credit.

686
687 (H) If the owner or operator does not establish alternate financial assurance as specified
688 and obtain written approval of such alternate assurance from the department, the
689 department will draw on the letter of credit. The department may delay the drawing if the
690 issuing institution grants an extension of the term of the credit. During the last thirty (30)
691 days of any such extension the department will draw on the letter of credit if the owner or
692 operator has failed to provide alternate financial assurance as specified in this section
693 and obtain written approval of such assurance from the department. The department will
694 notify the local governing authority if it draws on the letter of credit.

695 696 4.6.4 Surety Bonds Guaranteeing Performance or Payment

697
698 (A) Subject to department approval, an owner or operator may secure a guarantee from
699 a surety company, in the form of a bond, that all closure, post-closure care and corrective
700 action requirements will be fulfilled. An owner or operator of a new facility must submit
701 the bond to the department at least ninety (90) business days before waste is first
702 received. The bond must be effective before this initial receipt of waste. The surety
703 company issuing the bond and any co sureties must, at a minimum, be among those
704 listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of
705 the Treasury, and should be conducting business in Colorado and issue the bond subject
706 to the laws and jurisdiction of the state of Colorado. If the surety is using reinsurance, a
707 treasury reinsurance form must be submitted with the bond or within forty-five (45) days
708 thereafter.

709
710 (B) The wording of the surety bond must be identical to the wording in Appendix A.

711
712 (C) The bond must guarantee that the owner or operator will provide alternate financial
713 assurance as specified in this Section 4, and obtain the approval of the department within
714 (90) days after receipt by the owner or operator and the department of a notice of
715 cancellation of the bond from the surety.

716
717 (D) Under the terms of the bond, the surety will become liable on the bond obligation
718 when the owner or operator fails to perform as guaranteed by the bond.

720 (E) The penal sum of the bond must be in an amount at least equal to the current
721 closure, post closure, and corrective action cost estimate, less amounts covered by
722 alternative mechanisms.

723
724 (F) Under the terms of the bond, the surety may cancel the bond by sending notice of
725 cancellation by certified mail, or other trackable delivery service, to the owner or operator
726 and to the department. Cancellation may not occur until one hundred twenty (120) days
727 after the notice of cancellation has been received by both the owner or operator and the
728 department, as evidenced by return receipts. The department will notify the local
729 governing authority of any such cancellation.

730 4.6.5 Insurance

731
732
733 (A) Subject to department approval, an owner or operator may satisfy the requirements
734 of this Section by obtaining insurance which conforms to the requirements of this
735 paragraph and submitting a certificate of such insurance to the department. An owner or
736 operator of a new facility must submit a copy of the insurance policy and all
737 endorsements to the department at least ninety (90) days before the date on which waste
738 is first received. If an owner or operator changes a current insurance policy, the owner or
739 operator must submit a copy of the proposed insurance policy and all endorsements to
740 the department at least ninety (90) days before changing or replacing the insurance
741 policy.

742
743 (B) The insurer must be licensed to transact the business of insurance or be eligible to
744 provide insurance as an excess or surplus lines insurer, in one or more states, and
745 comply with the Title 10 Insurance Code, C.R.S., as amended. The insurance company
746 must be conducting business in Colorado and assure the policy is subject to the laws and
747 jurisdiction of the State of Colorado.

748
749 (C) The wording of the certificate of insurance must be identical to the wording specified
750 in Appendix A.

751
752 (D) The owner or operator shall submit annually to the department on the anniversary of
753 the insurance policy the following information regarding the insurer's qualifications:

754
755 (1) The most recent A.M. Best rating of A- (A minus) or better for the insurer; and

756
757 (2) Documentation demonstrating that the insurer is domiciled within an NAIC
758 accredited jurisdiction and is licensed and deemed in good standing in Colorado.

759
760 (E) The owner or operator of a facility using a Captive Insurance Company, as
761 that term is defined in Section 4.1.5, must do the following:

762
763 (1) Annually submit to the department on the anniversary of the insurance policy,
764 items specified in Subsections 4.6.5(D)(1) and (2);

765
766 (2) Utilize a Captive Insurance Company that is domiciled in an NAIC accredited
767 jurisdiction and is deemed in good standing with the domiciliary regulator;
768

769 (3) Annually submit to the department a Certificate of Good Standing for the
770 Captive Insurance Company, or its equivalent issued by the domiciliary regulator;
771 and

772
773 (4) If the parent company decides to cancel the captive insurance policy, or if the
774 Captive Insurance Company no longer meets the requirements of this
775 Subsection 4.6.5 (E), the owner or operator or Captive Insurance Company must
776 provide a one hundred eighty (180) day notice to the department of their intent to
777 cancel the policy and/or their inability to comply with this Section, and must put in
778 place another financial assurance mechanism allowed in Subsection 4.6.1(D)
779 before the end of the 180-day period.

780
781 (F) The department may disallow use of the insurer or the Captive Insurance Company
782 by the owner or operator if the applicable requirements of Subsections 4.6.5(D)(1) and
783 (2) and (E) are not met.

784
785 (G) The insurance policy must be issued for a face amount at least equal to the current
786 closure, post closure and corrective action cost estimate. The term "face amount" means
787 the total amount the insurer is obligated to pay under the policy. Actual payments by the
788 insurer will not change the face amount, although the insurer's future liability will be
789 lowered by the amount of the payments.

790
791 (H) The Insurance Policy:

792
793 (1) Must guarantee that, where the department determines the owner or
794 operator has failed to perform, funds will be available to the department to close,
795 provide post closure care of the site and facility, and to provide any necessary
796 corrective action at the site and facility whenever closure, post closure and
797 corrective action occurs. The policy must also guarantee that once closure, post
798 closure and corrective action begin, the insurer will be responsible for paying out
799 funds, if department determines the owner or operator has failed to perform, up
800 to an amount equal to the face amount of the policy, upon the direction of the
801 department, to such party or parties as the department specifies.

802
803 (2) Each policy must contain a provision allowing assignment of the policy to a
804 successor owner or operator. Such assignment may be conditional upon consent
805 of the insurer, provided that such consent is not unreasonable withheld.

806
807 (I) The owner or operator must maintain the policy in full force and effect until the
808 department consents to termination of the policy by the owner or operator as specified in
809 this section. Failure to pay the premium, without substitution of alternate financial
810 assurance as specified in this section, will constitute a violation of these regulations,
811 warranting such remedy as the department deems necessary. Such violation will be
812 deemed to begin upon receipt by the department of a notice of future cancellation,
813 termination, or failure to renew due to nonpayment of the premium, rather than upon the
814 date of expiration. The department will notify the local governing authority in the event of
815 any policy termination.

816

817 (J) The policy must provide that the insurer may not cancel, terminate, or fail to renew
818 the policy except for failure to pay the premium. The automatic renewal of the policy
819 must, at a minimum, provide the insured with the option of renewal at the face amount of
820 the expiring policy. If there is a failure to pay the premium, the insurer may elect to
821 cancel the policy by sending notice of cancellation by certified mail, or other trackable
822 delivery service, to the owner or operator and the department, one hundred twenty (120)
823 days in advance of cancellation. The department will notify the local governing authority
824 of any such cancellation. However, cancellation, termination, or failure to renew may not
825 occur and the policy will remain in full force and effect in the event that on or before the
826 date of expiration:

827
828 (1) The department, after consultation with the local governing authority, deems
829 the facility abandoned; or

830
831 (2) The certificate of designation is terminated or revoked or a new certificate of
832 designation is denied; or

833
834 (3) Closure is ordered by the department or the local governing authority or a
835 State or other court of competent jurisdiction; or

836
837 (4) The owner or operator is named as debtor in a voluntary or involuntary
838 proceeding under Title 11 (bankruptcy), U.S. Code; or

839
840 (5) The premium due is paid.

841
842 (K) If the insurer cancels the policy, the owner or operator must obtain replacement
843 financial assurance as required by this Section 4.

844
845 (L) All premiums shall be paid annually and proof of payment shall be supplied to the
846 department and local governing authority.

847
848 (M) Adjustments to the amount of an insurance policy must comply with Section 4.5.2.

849
850 (N) Commencing on the date that liability to make premium payments for the insurance
851 policy occurs, the owner or operator will thereafter annually increase the face amount of
852 the policy as required by Section 4.5.

853
854 (O) Any policy issued pursuant to this section, including by a Captive Insurance
855 Company, will specifically identify each facility covered and the amount of coverage for
856 each facility.

857
858 (P) For insurance policies providing coverage for post-closure care, commencing on the
859 date that liability to make payments pursuant to the policy accrues, the insurer will
860 thereafter annually increase the face amount of the policy. Such increase must be
861 equivalent to the face amount of the policy, less any payments made, multiplied by an
862 amount equivalent to eighty five (85) percent of the most recent investment rate or of the
863 equivalent coupon-issue yield announced by the U.S. Treasury for 26-week Treasury
864 securities

866 4.6.6 Corporate Financial Test

867
868 (A) Subject to department approval, an owner or operator may demonstrate financial
869 assurance if characteristics of the owner's or operator's corporation meet the following:

870
871 (1) The owner or operator must satisfy one of the following three conditions:

872
873 (a) A current rating for its senior unsubordinated debt of AAA, AA, or A
874 as issued by Standard and Poor's or Aaa, Aa, or A as issued by Moody's;
875 or

876
877 (b) A ratio of less than 1.5 comparing total liabilities to net worth; or

878
879 (c) A ratio of greater than 0.10 comparing the sum of net income plus
880 depreciation, depletion and amortization, minus \$10 million, to total
881 liabilities.

882
883 (2) The tangible net worth of the owner or operator must be greater than:

884
885 (a) The sum of the current closure, post closure care, corrective action
886 cost estimates and any other environmental obligations, including
887 guarantees, covered by a financial test plus \$10 million except as
888 provided in Subsection 4.6.6(A)(2)(b).

889
890 (b) \$10 million in net worth plus the amount of any guarantees that have
891 not been recognized as liabilities on the financial statements provided all
892 of the current closure, post closure care, and corrective action costs and
893 any other environmental obligations covered by a financial test are
894 recognized as liabilities on the owner's or operator's audited financial
895 statements, and subject to the approval of the department.

896
897 (3) The owner or operator must have assets located in the United States
898 amounting to at least the sum of current closure, post closure care, corrective
899 action cost estimates and any other environmental obligations covered by a
900 financial test.

901
902 (B) Record keeping and reporting requirements.

903
904 (1) The owner or operator must place the following items into the facility's
905 operating record:

906
907 (a) A letter signed by the owner's or operator's chief financial officer that:

908
909 (i) Lists all the current cost estimates covered by a financial test,
910 including, but not limited to, cost estimates required for solid
911 waste disposal sites and facilities under Section 4 of these
912 regulations and cost factors for all other environmental
913 obligations, if applicable; and

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(ii) Provides evidence demonstrating that the owner/operator meets the conditions of either Subsection 4.6.6(A)(1)(a), or (b), or (c) and Subsections 4.6.6(A)(2) and 4.6.6(A)(3).

(b) A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest full fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance, with the potential exception for qualified opinions provided in the next sentence. The department may evaluate qualified opinions on a case by case basis and allow use of the financial test in cases where the department deems that the matters which form the basis for the qualification are insufficient to warrant disallowance of the financial test. If the department does not allow use of the test, the owner or operator must provide alternate financial assurance that satisfies the requirements of this Section.

(c) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that owner or operator satisfies Subsection 4.6.6(A)(1)(b) or (c) that are different from data in the audited financial statements referred to in Subsections 4.6.6(B)(1) and (2) or any other audited financial statement or data filed with the Securities and Exchange Commission, then a special report from the owner's or operator's independent certified public accountant is required. The special report shall be based upon an agreed upon procedures of engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

(d) If the chief financial officer's letter provides a demonstration that the solid waste disposal site and facility has provided financial assurance for environmental obligations as provided in Subsection 4.6.6(A)(2)(b), then the letter shall include a report from the independent certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements, how these obligations have been measured and reported, and that the tangible net worth of the firm is at least \$10 million plus the amount of any guarantees provided.

(2) An owner or operator must place the items specified in Subsection 4.6.6(B)(1) in the operating record and send a copy to the department indicating that these items have been placed in the operating record before the initial receipt of waste or before the effective date of the requirements of this Section, whichever is later in the case of closure, and post closure care, or no later than one hundred twenty

964 (120) days after the corrective action remedy has been selected in accordance
965 with the requirements of these regulations.

966
967 (3) After the initial placement of items specified in Subsection 4.6.6(B)(1) in the
968 operating record, the owner or operator must annually update the information
969 and place updated information in the operating record and send a copy to the
970 department within ninety (90) days following the close of the owner or operator's
971 fiscal year. The department may provide up to an additional forty-five (45) days
972 for an owner or operator who can demonstrate that ninety (90) days is insufficient
973 time to acquire audited financial statements. The updated information must
974 consist of all items specified in Subsection 4.6.6(B)(1).

975
976 (4) The owner or operator is no longer required to submit the items specified in
977 this Subsection 4.6.6(B) or comply with the requirements of this Section 4.6.6
978 when:

979
980 (a) The owner or operator substitutes alternate financial assurance as
981 specified in this section that is not subject to these record keeping and
982 reporting requirements; or

983
984 (b) The owner or operator is released from the requirements of this
985 Section in accordance with these regulations.

986
987 (5) If the owner or operator no longer meets the requirements of Subsection
988 4.6.6(A), the owner or operator shall, within one hundred twenty (120) days
989 following the close of the owner or operator's fiscal year, obtain alternative
990 financial assurance satisfy the requirements of this Section, place the required
991 submissions for assurance in the operating record, and notify the department that
992 the owner or operator no longer meets the criteria of the financial test and that
993 alternate financial assurance has been obtained.

994
995 (6) The department may, based on a reasonable belief that the owner or operator
996 no longer meet the requirements of Subsection 4.6.6(A), require at any time the
997 owner or operator to provide reports of its financial condition in addition to or
998 including current financial test documentation as specified in Subsection 4.6.6(B).
999 If the department finds that the owner or operator no longer meets the
1000 requirements of Subsection 4.6.6(A), the owner or operator must provide
1001 alternate financial assurance that meets the requirements of this Section.

1002
1003 (7) When calculating the current cost estimates for closure, post closure care,
1004 corrective action, or the sum of the combination of such costs to be covered, and
1005 any other environmental obligations assured by a financial test referred to in this
1006 Section 4.6.6, the owner or operator must include cost estimates required for
1007 municipal solid waste disposal sites and facilities under this part, as well as cost
1008 estimates required for other environmental obligations, if applicable.

1009 4.6.7 Local Government Financial Test
1010
1011

1012 (A) Subject to department approval, an owner or operator may demonstrate financial
1013 assurance at least equal to the cost estimates for closure, post-closure care and
1014 corrective action if the owner or operator is a local government and meets the following:
1015

1016 (1) The owner or operator must satisfy one of the following two conditions:
1017

1018 (a) If the owner or operator has outstanding, rated, gener-al obligation
1019 bonds, that are not secured by insurance, a letter of credit, or other
1020 collateral or guarantee, it must have a current rating of Aaa, Aa, or A, as
1021 issued by Moody's, or AAA, AA, or A, as issued by Standard and Poor's
1022 on all outstanding general obligation bonds; or,
1023

1024 (b) The owner or operator must satisfy each of the following financial
1025 ratios based on the owner or operator's most recent audited annual
1026 financial statement:
1027

1028 (i) A ratio of cash plus marketable securities to total
1029 expenditures greater than or equal to 0.05; and
1030

1031 (ii) A ratio of annual debt service to total expenditures less than
1032 or equal to 0.20; and
1033

1034 (2) The owner or operator must prepare its financial statements and have them
1035 audited in conformity with generally accepted accounting principles for
1036 governments and have its financial statements audited by an independent
1037 certified public accountant.
1038

1039 (3) A local government is not eligible to assure its obligations under this Section
1040 4.6.7 if it:
1041

1042 (a) Is currently in default on any outstanding general obligation bonds, or
1043

1044 (b) Has an outstanding general obligation bond rated lower than Baa as
1045 issued by Moody's or BBB as issued by Standard and Poor's, or
1046

1047 (c) Operated at a deficit equal to five percent or more of total annual
1048 revenue in each of the past two fiscal years, unless the owner or
1049 operator demonstrates, through the submission of an auditor's statement
1050 to the department, that this deficit was caused by expenditures from
1051 specific funds previously set aside and budgeted in prior fiscal years and
1052 not by general expenditures for the applicable fiscal year exceeding total
1053 annual revenue by an amount equal to or greater than five percent, or
1054

1055 (d) Receives an adverse opinion, disclaimer of opinion, or other qualified
1056 opinion from the independent certified public accountant (or appropriate
1057 State agency) auditing its financial statement as required under
1058 Subsection 4.6.7(A)(2). However, the department may evaluate qualified
1059 opinions on a case by case basis and allow use of the financial test in

1060 cases where the department deems the qualification insufficient to
1061 warrant disallowance of the test.

1062
1063 (B) Public Notice Component

1064
1065 The local government owner or operator must place a reference to the closure, post
1066 closure care, or corrective action costs assured through the financial test into its next
1067 comprehensive annual financial report (CAFR) or audited financial statement after the
1068 effective date of this Section or prior to the initial receipt of waste at the facility, whichever
1069 is later. Disclosure must include the nature and source of closure and post-closure care
1070 requirements, the reported liability at the balance sheet date, the estimated total closure
1071 and post-closure care costs remaining to be recognized, the percentage of landfill
1072 capacity used to date, and the estimated landfill life in years. A reference to corrective
1073 action costs must be placed in the CAFR not later than one hundred twenty (120) days
1074 after the corrective action remedy has been selected in accordance with the requirements
1075 of these regulations. For the first year after the financial test is issued to assure costs at a
1076 particular facility, the reference may instead be placed in the operation record until
1077 issuance of the next available CAFR if timing does not permit the reference to be
1078 incorporated into the most recently issued CAFR or budget. For closure and post-closure
1079 costs, conformance with Government Accounting Standards Board Statement 18 assures
1080 compliance with this public notice. The reference must include the amount of each cost
1081 estimate and the year(s) in which the local government expects these costs to be
1082 incurred. References in the budget must occur as budgeted line items if the activities are
1083 to occur in the period covered by the budget, but may appear in a supplemental data
1084 section if the activities will not occur until after the period covered by the budget.

1085
1086 (C) Recordkeeping and Reporting Requirements

1087
1088 (1) The local government owner or operator must place the following items in the
1089 facility's operating record and deliver a copy to the department:

1090
1091 (a) A letter signed by the local government's chief financial officer that:

1092
1093 (i) Lists all the current cost estimates covered by a financial test,
1094 as described in Subsection 4.6.7(B);

1095
1096 (ii) Provides evidence and certifies that the local government
1097 meets the conditions of Subsections 4.6.7(A)(1)(a),
1098 4.6.7(A)(1)(b), and 4.6.7(A)(1)(c); and

1099
1100 (iii) Certifies that the local government meets the conditions of
1101 Subsection 4.6.7(D).

1102
1103 (b) The local government's independently audited year end financial
1104 statements for the latest fiscal year, including the unqualified opinion of
1105 the auditor who must be an independent, certified public accountant or
1106 an appropriate State agency that conducts equivalent comprehensive
1107 audits; and

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(c) A report to the local government from the local government's independent certified public accountant (CPA) based on performing agreed upon procedures relative to the financial ratios required by Subsection 4.6.7(A)(1), if applicable, and the requirements of Subsections 4.6.7(A)(2) and 4.6.7(A)(3). The CPA report should state the procedures performed and the CPA findings.

(d) A copy of the comprehensive annual financial report used to comply with this section and or certification that the requirements of General Accounting Standards Board Statement 18 have been met.

(2) The items required in Subsection 4.6.7(C)(1) must be placed in the facility operating record as follows:

(a) In the case of closure and post closure care, prior to the initial receipt of waste at the facility, or

(b) In the case of corrective action, not later than one hundred twenty (120) days after the corrective action remedy is selected in accordance with the requirements of Section 2.2 and Appendix B6.

(3) After the initial placement of the items in the facility's operating record, the local government owner or operator must update the information and place the updated information in the operating record within six (6) months following the close of the owner or operator's fiscal year, or as otherwise agreed to by the department.

(4) The local government owner or operator is no longer required to meet the requirements of Subsection 4.6.7(C) when:

(a) The owner or operator substitutes alternate financial assurance as specified in Subsection 4.6.7(C)(5); or

(b) The owner or operator is released from the requirements of this Section in accordance with Section 4.6.13.

(5) A local government must satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test it must, within two hundred ten (210) days following the close of the owner or operator's fiscal year, obtain alternative financial assurance that meets the requirements of Section 4, place the required submissions for that assurance in the operating record, and notify the department that the owner or operator no longer meets the criteria of the financial test and that alternate assurance has been obtained.

(6) The department, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the department finds, on the basis of such reports or

1158 other information, that the owner or operator no longer meets the requirements of
1159 the local government financial test, the local government must provide alternate
1160 financial assurance in accordance with Subsection 4.6.7(C)(5).

1161
1162 (D) Calculation of Costs to be Assured: The portion of the closure, post closure, and
1163 corrective action costs for which an owner or operator can assure under this paragraph is
1164 determined as follows:

1165
1166 (1) If the local government owner or operator does not assure other
1167 environmental obligations through a financial test, it may assure closure, post
1168 closure, and corrective action costs that equal up to 43 percent of the local
1169 government's total annual revenue.

1170
1171 (2) If the local government assures other environmental obligations through a
1172 financial test it must add those costs to the closure, post closure, and corrective
1173 action costs it seeks to assure under this Subsection 4.6.7(D). The total of all
1174 environmental obligations must not exceed 43 percent of the local government's
1175 total annual revenue.

1176
1177 (3) The owner or operator must obtain an alternate financial assurance
1178 instrument for those costs that exceed the limits set in Subsections 4.6.7(D)(1)
1179 and (2).

1180
1181
1182 4.6.8 Corporate Guarantee.
1183

1184 (A) Subject to department approval, an owner or operator may meet the requirements of
1185 this Section by obtaining a written guarantee. The guarantor must be the direct or higher
1186 tier parent corporation of the owner or operator, a firm whose parent corporation is also
1187 the parent corporation of the owner or operator, or a firm with a "substantial business
1188 relationship" with the owner or operator. The guarantor must meet the requirements for
1189 owners or operators in Section 4.6.6 and must comply with the terms of the guarantee. A
1190 certified copy of the guarantee must be placed in the facility's operating record along with
1191 copies of the letter from the guarantor's chief financial officer and accountants' opinions.
1192 If the guarantor's parent corporation is also the parent corporation of the owner or
1193 operator, the letter from the guarantor's chief financial officer must describe the value
1194 received in consideration of the guarantee. If the guarantor is a firm with a "substantial
1195 business relationship" with the owner or operator, this letter must describe this
1196 "substantial business relationship" and the value received in consideration of the
1197 guarantee.

1198
1199 (B) The guarantee must be effective and all required submissions placed in the operating
1200 record and a copy submitted to the department before the initial receipt of waste or
1201 before the effective date of the requirements of these regulations whichever is later, in
1202 the case of closure and post closure care, or in the case of corrective action no later than
1203 one hundred twenty (120) days after the corrective action remedy has been selected in
1204 accordance with the requirements of these regulations.

1205
1206 (C) The terms of the guarantee must provide that:

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(1) If the owner or operator fails to perform closure, post closure care, and/or corrective action of a facility covered by the guarantee, the guarantor will:

(a) Perform, or pay a third party to perform, closure, post closure care, and/or corrective action as required (performance guarantee); or

(b) Establish a fully funded trust fund as specified in Section 4.6.2 in the name of the owner or operator (payment guarantee).

(2) The guarantee will remain in force for as long as the owner or operator is required to comply with the applicable financial assurance requirements or unless the guarantor sends prior notice of cancellation by certified mail, or other trackable delivery service, to the owner or operator and to the department. Cancellation may not occur, however, during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the department, as evidenced by the return receipts.

(3) If notice of cancellation is given, the owner or operator must, within ninety (90) days following receipt of the cancellation notice by the owner or operator and the department, obtain alternate financial assurance, place evidence of that alternate financial assurance in the facility operating record, and notify the department. If the owner or operator fails to provide alternate financial assurance within the 90 day period, the guarantor must provide that alternate assurance within one hundred twenty (120) days of the cancellation notice, obtain alternative assurance, place evidence of the alternate assurance in the facility operating record, and notify the department.

(D) If a corporate guarantor no longer meets the requirements of Subsection 4.6.6(A), the owner or operator must, within ninety (90) days, obtain alternative assurance, place evidence of the alternate assurance in the facility operating record, and notify the department. If the owner or operator fails to provide alternate financial assurance within the 90 day period, the guarantor must provide that alternate assurance within the next thirty (30) days.

(E) The owner or operator is no longer required to meet the requirements of this Section 4.6.8 when:

(1) The owner or operator substitutes alternate financial assurance as specified in this section; subject to department approval or

(2) The owner or operator is released by the department from the requirements of this Section in accordance with these regulations.

4.6.9 Local Government Guarantee

(A) Subject to department approval, an owner or operator may meet the requirements of this Section by obtaining a written guarantee provided by a local government. The

1255 guarantor must meet the requirements of the local government financial test in Section
1256 4.6.7, and must comply with the terms of a written guarantee.

1257
1258 (B) Terms of the Written Guarantee The guarantee must be effective before the initial
1259 receipt of waste or before the effective date of this Section, whichever is later, in the case
1260 of closure, post closure care, or no later than one hundred twenty (120) days after the
1261 corrective action remedy has been selected in accordance with the requirements of these
1262 regulations. The guarantee must provide that:

1263
1264 (1) If the owner or operator fails to perform closure, post closure care, and/or
1265 corrective action of a facility covered by the guarantee, the guarantor will:

1266
1267 (a) Perform, or pay a third party to perform, closure, post closure care,
1268 and/or corrective action as required; or

1269
1270 (b) Establish a fully funded trust fund as specified in Section 4.6.2 in the
1271 name of the owner or operator.

1272
1273 (2) The guarantee will remain in force unless the guarantor sends notice of
1274 cancellation by certified mail, or other trackable delivery service, to the owner or
1275 operator and to the department. Cancellation may not occur, however, during the
1276 one hundred twenty (120) days beginning on the date of receipt of the notice of
1277 cancellation by both the owner or operator and the department, as evidenced by
1278 the return receipts.

1279
1280 (3) If a guarantee is canceled, the owner or operator must, within ninety (90)
1281 days following receipt of the cancellation notice by the owner or operator and the
1282 department, obtain alternate financial assurance, place evidence of that alternate
1283 financial assurance in the facility operating record, and notify the department. If
1284 the owner or operator fails to provide alternate financial assurance within the 90
1285 day period, the guarantor must provide that alternate assurance within one
1286 hundred twenty (120) days following the guarantor's notice of cancellation, place
1287 evidence of the alternative assurance in the facility operating record, and notify
1288 the department.

1289
1290 (C) Recordkeeping and Reporting

1291
1292 (1) The owner or operator must place a certified copy of the guarantee along
1293 with the items required under Section 4.6.7 into the site and facility's operating
1294 record before the initial receipt of waste or before the effective date of this
1295 section, whichever is later, in the case of closure, post closure care, or no later
1296 than one hundred twenty (120) days after the corrective action remedy has been
1297 selected in accordance with the requirements of these regulations.

1298
1299 (2) If a local government guarantor no longer meets the requirements of Section
1300 4.6.9, the owner or operator must, within ninety (90) days following the close of
1301 the guarantor's fiscal year, obtain alternative assurance, place evidence of the
1302 alternate assurance in the facility operating record, and notify the department. If
1303 the owner or operator fails to provide alternate financial assurance within the 90

1304 day period, the guarantor must provide that alternate assurance within next thirty
1305 (30) days.

1306
1307 (3) A local government guarantor must satisfy the requirements for the local
1308 government guarantee at the close of each fiscal year. A demonstration that the
1309 local government meets all requirements of the local government guarantee
1310 under this section of the regulations must be placed in the operating records and
1311 with the department within one hundred eighty (180) days following the close of
1312 the guarantor's fiscal year.

1313 1314 4.6.10 Certificates of Deposit

1315
1316 (A) Subject to department approval, an owner or operator may establish a certificate of
1317 deposit. An owner or operator of a new or existing facility must submit the original
1318 certificate of deposit to the department. The certificate of deposit must be effective before
1319 the initial receipt of waste. The issuing institution must have the authority to issue
1320 certificate of deposits and must be regulated, insured, and examined by a federal or state
1321 agency.

1322
1323 (B) The issuing institution, to be validated by the comptroller or banking commission,
1324 shall be a federal or state chartered bank with capital and surplus of not less than
1325 \$10,000,000, selected by the operator and acceptable to the department. Said bank
1326 must be located and legally chartered to operate in one of the fifty (50) states. The
1327 institution shall direct the investment of funds in the certificate of deposit, using the
1328 standard of care of a fiduciary. No funds shall be released, disbursed, or transferred by
1329 the institution from this certificate of deposit without the express written authorization of
1330 the department.

1331
1332 (C) The wording of the certificate of deposit must be identical to the wording specified in
1333 Appendix A, unless otherwise approved by the department.

1334
1335 (D) Certificates of Deposit for Closure and Post-Closure Care for Landfills: The following
1336 facility types will be considered "landfills" for the purposes of this Subsection 4.6.10(D):
1337 Landfills (covered by Sections 2 and 3 of these regulations); Asbestos Waste Disposal
1338 Areas (covered by Section 5 of these regulations); Incinerator Ash Disposal Sites
1339 (covered by Section 6 of these regulations); Waste Tire Monofills (covered by Section 10
1340 of these regulations); and Water Treatment Plant Sludge Disposal Facilities (covered by
1341 Section 12 of these regulations).

1342
1343 (1) For landfills, payments into the certificate of deposit for closure, post-closure
1344 and corrective action by the owner or operator must, at a minimum, be made
1345 annually over the operating life of the facility or twenty (20) years, whichever
1346 period is shorter, as estimated in the closure and post closure plan. This period
1347 is hereafter referred to as the "pay in period". The payments into the certificate
1348 of deposit must be made as follows:

1349
1350 (a) For a new landfill, the first payment must be made before the initial
1351 receipt of waste. A receipt from the issuing institution for this payment

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must be submitted by the owner or operator to the department before this initial receipt of waste.

(b) A receipt for the initial payment must be submitted to the department by the issuing institution for both new and existing landfills. The first payment must be at least equal to the current closure and post closure cost estimate, divided by the number of years in the pay in period.

The amount of each subsequent payment must be determined by this formula:

$$\text{NEXT PAYMENT} = \frac{\text{CE CV}}{Y}$$

Where CE is the current closure and post closure cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay in period. After the first year, and annually thereafter, the CE shall be multiplied times the preceding year's annual rate of inflation before subtracting CV.

(c) In lieu of using the formula expressed in Subsection 4.6.10(D)(1), the equivalent annual payments into the certificate of deposit may be determined by calculating the net present value of CE.

(2) The owner or operator may accelerate payments into the certificate of deposit or may deposit the full amount of the current cost estimates at the time the fund is established, or at any time thereafter. However, the value of the certificate of deposit must be maintained at no less than the value that the certificate of deposit would have if annual payments were made as specified in Subsection 4.6.10(D)(1).

(3) If the owner or operator establishes a closure and post closure certificate of deposit after having used one or more alternate mechanisms specified in Subsection 4.6.1(D), the first payment must be at least the amount that the certificate of deposit would contain if the certificate of deposit were established initially and all annual payments had been made.

(4) Whenever the current closure and post closure cost estimates increase or decrease, and are approved by the department, the owner or operator must recalculate the payments into the certificate of deposit based on the new cost estimate (new CE). If the current valuation of the certificate of deposit is less than the amount which is required using the new CE, the owner or operator must, within sixty (60) days of the approval of the new estimate, either (a) deposit an amount into the certificate of deposit such that the fund equals the amount in the new CE for the current point in the pay-in period, or (b) obtain other financial assurance as specified in this section to cover the difference.

(E) Certificates of Deposit for Closure and Post-Closure Care for Other Types of Solid Waste Disposal Sites and Facilities: The following facility types will be considered other

1401 types of solid waste disposal sites and facilities for the purposes of this Subsection
1402 4.6.10(E): Solid Waste Surface Impoundments (covered by Section 9 of these
1403 regulations); Solid Waste Incineration Facilities (covered by Section 11 of these
1404 regulations); Medical Waste Facilities (covered by Section 13 of these regulations);
1405 Composting Facilities (covered by Section 14 of these regulations); and Commercial
1406 Exploration and Production Waste Impoundments (covered by Section 17 of these
1407 regulations)

1408
1409 (1) For all facilities listed in this section that were in operation prior to the
1410 effective date of this Section 4 (Xxxxx yy, 2018), a certificate of deposit may be
1411 funded as described in Subsection 4.6.10(D).

1412
1413 (2) For all new facilities listed in Subsection 4.6.10(E) above that were not in
1414 operation on the effective date of this Section 4 (Xxxxx yy, 2018), a certificate of
1415 deposit must be fully funded, with no pay-in period, and approved by the
1416 department before any waste is accepted in the facility.

1417
1418 (F) Certificate of Deposit for Corrective Action: Whenever a certificate of deposit will be
1419 used to assure performance of corrective action, the owner or operator will calculate a
1420 corrective action cost estimate as required by Section 4.4, submit it to the department for
1421 approval, and place 100% of the corrective action cost estimate amount into the closure
1422 and post-closure certificate of deposit, or a separate certificate of deposit, within sixty
1423 (60) days after department approval.

1424
1425 (G) The certificate of deposit must be accompanied by an original signed copy of a
1426 Collateral Assignment of Certificate of Deposit form. The wording of the collateral
1427 assignment of certificate of deposit must be identical to the wording specified in Appendix
1428 A, unless otherwise approved by the department.

1429
1430 (H) The certificate of deposit must provide that the expiration date will be automatically
1431 extended unless, at least sixty (60) days before the current expiration date, the issuing
1432 institution notifies the owner or operator and the department, by certified mail or other
1433 trackable delivery service, of a decision not to extend the expiration date. Under the
1434 terms of the certificate of deposit, the sixty (60) days will begin on the date when the
1435 owner or operator and the department has received the notice, as evidenced by the
1436 return receipts. The issuing institution shall give thirty (30) day notification of maturity of
1437 the certificate of deposit to the department and the owner or operator. If both the owner
1438 or operator and the department have received notice from the issuing institution that it
1439 has decided not to extend the certificate of deposit beyond the current expiration date,
1440 the owner or operator must establish adequate alternative financial assurance as
1441 required by these regulations. If the owner or operator does not establish alternate
1442 financial assurance and obtain written approval of such alternate assurance from the
1443 department within forty-five (45) days of such notice by the issuing institution, the
1444 department will withdraw the money in the certificate of deposit. The department will
1445 notify the local governing authority if the department draws on the certificate of deposit.
1446 The money will be kept by the department until needed for closure, post-closure, and/or
1447 corrective action or until the owner or operator has established a department-approved
1448 alternate financial assurance mechanism.

1450 (I) The issue amount of the certificate of deposit must be in an amount at least equal to
1451 the current closure, post closure and corrective action cost estimates, less amounts
1452 covered by alternative mechanisms.

1453
1454 (J) Following a determination that the owner or operator has failed to perform final
1455 closure or post closure or corrective action in accordance with the closure or post closure
1456 or corrective action plan and other permit requirements when required to do so, the
1457 department may draw on the certificate of deposit.

1458
1459 (K) The department will return the certificate of deposit to the issuing institution for
1460 termination when the requirements of Section 4.5.2 have been satisfied.

1461
1462 4.6.11 Use of Multiple Financial Mechanisms:
1463

1464 An owner or operator may satisfy the requirements of this Section by establishing more than one
1465 financial mechanism per solid waste disposal site and facility. The mechanisms must be as
1466 specified in Subsection 4.6.1(D) of this Section, except that it is the combination of mechanisms,
1467 rather than the single mechanism, which must provide full financial assurance for an amount at
1468 least equal to the current closure, post closure and corrective action cost estimates. The amount
1469 of financial assurance for each financial mechanism shall be stated on each agreement per these
1470 Regulations. When use of a financial mechanism for closure and post closure care or corrective
1471 action of the site and facility becomes necessary, the department may choose the order in which
1472 to use the mechanisms or may choose to use all concurrently. The department will notify the local
1473 governing authority how the mechanisms will be utilized.

1474
1475 4.6.12 Use of a Financial Mechanism for Multiple Facilities:
1476

1477 An owner or operator may use a financial assurance mechanism specified in Subsection 4.6.1(D)
1478 to meet the requirements of more than one solid waste disposal site and facility; provided,
1479 however, that all solid waste disposal sites and facilities are located in Colorado and the owner
1480 and operator are the same, unless special approval of the department is first obtained.

1481
1482 All solid waste disposal sites and facilities under a single financial instrument must be located in
1483 Colorado. The owner and operator must be the same for all sites and facilities unless special
1484 approval of the department, after consultation with the local governing authority, is first obtained.
1485 Evidence of financial assurance submitted to the department and the local governing authority
1486 must include a list showing, for each facility, name, address, and the amount of funds for closure
1487 assured by the mechanism. The amount of funds available through the mechanism must be no
1488 less than the sum of funds that would be available if a separate mechanisms have been
1489 established and maintained for each site and facility. In directing funds available through the
1490 mechanism for closure, post closure or corrective action of any of the sites and facilities covered
1491 by the mechanism, the department, with notice to the local governing authority, may direct only
1492 the amount of funds designated for that site and facility, unless the owner or operator agrees to
1493 the use of additional funds available under the mechanism.

1494
1495 4.6.13 Release of the Owner or Operator from the Requirements of this Section After receiving
1496 certifications from the owner or operator and a Colorado registered professional engineer that
1497 final closure, post-closure and corrective action has been completed in accordance with the
1498 approved plans, the department shall verify that the closure, post-closure and corrective action

1499 has met the requirements as established and shall consult with the local governing authority.
1500 Once verified, the department will notify the owner and operator that they are no longer subject to
1501 the requirements of this Section.

1502
1503 If there is reason to believe that the closure, post-closure and corrective action activities have not
1504 been made in accordance with the approved plan(s), the department shall provide the owner or
1505 operator with a detailed written statement of any deficiencies.

1506
1507 4.6.14 Failure to properly maintain financial assurance as required by this Section 4 and the
1508 certificate of designation may result in the suspension or revocation of a certificate of designation.
1509

1510
1511 **6) Section 9.2.2 is revised to read as follows:**

1512
1513
1514 **9.2.2 FINANCIAL ASSURANCE:**

1515
1516 The owner or operator of a Type A waste impoundment shall establish and maintain financial assurance
1517 in accordance with Section ~~4.84~~ of these Solid Waste Regulations.
1518

1519
1520 **7) Section 9.2.5 is revised to read as follows:**

1521
1522 **9.2.5 CLOSURE:** The owner or operator of each Type A waste impoundment shall develop a closure
1523 plan and submit it for Department approval. The closure plan must present sufficient detail to support the
1524 closure cost estimates required in Sections ~~4.84~~ and 9.2.2 above and to enable the Department to
1525 evaluate the adequacy of financial assurance. For some Type A impoundments, the scope of the
1526 closure plan will be limited to sludge and impacted soil removal, disposal and verification sampling to
1527 ensure residual contamination is below acceptable levels in soil and ground water.
1528

1529
1530 **8) Section 9.3.3 is amended by revising paragraph (J) to read as follows:**

1531
1532
1533 **9.3.3 FACILITY OPERATION REQUIREMENTS**

1534
1535 The owners or operator shall operate a Type B Waste Impoundment in accordance with the approved
1536 EDOP.

1537 *****

1538
1539 (J) **Financial Assurance:** The owner or operator shall maintain financial assurance of an
1540 adequate amount to cover closure and post-closure care costs in accordance with Section ~~4.84~~ of
1541 these Solid Waste Regulations.
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1544
1545 **9) Section 9.3.4 is amended by revising paragraph (F)(1)(i) to read as follows:**
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9.3.4 ENGINEERING DESIGN AND OPERATIONS PLAN

(F) **Closure Plan:** The EDOP shall include a closure plan that describes the steps necessary to close each impoundment at any point during its active life and at the end of the facility’s active life. The facility may either: 1) close the waste in place as a solid waste landfill in accordance with these Solid Waste Regulations, or 2) remove all solid waste and residual contamination to meet unrestricted use concentrations. Option 2, also known as “clean closure,” eliminates the need for post-closure care. Both Option 1 and Option 2 require the owner or operator of a waste impoundment to develop a closure plan.

- (1) The closure plan shall include the following information consistent with Section 9.3.6:

- (i) Cost estimates for closure and post-closure and proof of financial assurance equal to or greater than those cost estimates consistent with Section ~~4.84~~ of the solid Waste Regulations.

10) Section 10.5.5 is amended to read as follows:

10.5.5 WASTE TIRE MONOFILL FINANCIAL ASSURANCE

Any person who owns or operates a Waste Tire Monofill must maintain financial assurance for any required reclamation and for closure and post-closure care of the Facility pursuant to section ~~4.84~~ of these Regulations.

11) Section 10.6.6 is amended to read as follows:

10.6.6 WASTE TIRE PROCESSOR FINANCIAL ASSURANCE

All Waste Tire Processors must maintain financial assurance for any required reclamation and for closure and post-closure care of the Facility pursuant to section ~~4.84~~ of these Regulations.

12) Section 10.8.6 is amended to read as follows:

10.8.6 WASTE TIRE COLLECTION FACILITY FINANCIAL ASSURANCE

1594 All owners or operators of Waste Tire Collection Facilities must maintain financial assurance for any
1595 required reclamation and for closure and post-closure care of the Facility pursuant to section ~~1.84~~
1596 of these Regulations.
1597
1598

1599 **13) Section 13.7.3 is amended to read as follows:**
1600

1601 **13.7 ENGINEERING DESIGN AND OPERATION PLAN REQUIREMENTS FOR COMMERCIAL**
1602 **STORAGE AND TREATMENT FACILITIES**
1603

1604
1605 *****
1606

1607 **13.7.3** Fees and financial assurance - All medical waste facilities subject to regulation
1608 under this Section 13.7 shall be subject to applicable solid waste fees as required
1609 under Section 1.7 and financial assurance as required under Section ~~1.84~~ of these
1610 regulations.
1611

1612
1613 **14) Section 14.2.2(B) is amended to read as follows:**
1614

1615 **14.2.2 Class I Composting Facility Pre-Operations Requirements**
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1617 *****
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1619 (B) **Financial Assurance:** Prior to commencing composting or feedstock storage, the owner/operator
1620 Class I composting facility must establish financial assurance in accordance with Section ~~1.84~~ of these
1621 Regulations.
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1623 *****
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1626 **15) Section 14.2.4(B) is amended to read as follows:**
1627

1628 **14.2.4 Class I Composting Facility Operational Requirements**
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1630 *****
1631

1632 (B) **Financial Assurance:** The owner/operator of a Class I composting facility must maintain financial
1633 assurance in accordance with Section ~~1.84~~ of these Regulations.
1634

1635 *****
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1638 **16) Section 14.3.2(B) is amended to read as follows:**
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1640 **14.3.2 Class II Composting Facility Pre-Operations Requirements**

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(B) **Financial Assurance:** Prior to commencing composting or feedstock storage, the owner/operator Class II composting facility must establish financial assurance in accordance with Section ~~4.84~~ of these Regulations.

17) Section 14.3.5(B) is amended to read as follows:

14.3.5 Class II Composting Facility Design and Operations Plan: Operations

(B) **Financial Assurance:** The EDOP for a Class II composting facility must include current financial assurance estimates in accordance with Section ~~4.84~~ of these Solid Waste Regulations. A Class II composting facility must maintain adequate financial assurance in accordance with its EDOP and with Section 1.8 of these Solid Waste Regulations.

18) Section 14.4.2(B) is amended to read as follows:

14.4.2 Class III Composting Facility Pre-Operations Requirements

(B) **Financial Assurance:** Prior to commencing composting or feedstock storage, the owner/operator Class III composting facility must establish financial assurance in accordance with Section ~~4.84~~ of these Regulations.

19) Section 14.4.5(B) is amended to read as follows:

14.4.5 Class III Composting Facility Design and Operations Plan: Operations

(B) **Financial Assurance:** The EDOP for a Class III composting facility must include current financial assurance estimates in accordance with Section ~~4.84~~ of these Solid Waste Regulations. A Class III

1687 composting facility must maintain adequate financial assurance in accordance with its EDOP and with
1688 Section 1.8 of these Solid Waste Regulations.

1689 *****
1690

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1692
1693 **20) Section 17.3.3(N) is amended to read as follows:**

1694
1695 **17.3.3 Operating Requirements**

1696 *****
1697

1698
1699 **17.3.3(N) Financial Assurance:** Financial assurance of an adequate amount to cover closure and post-
1700 closure care costs shall be established in accordance with Section ~~4.84~~ of these Solid Waste
1701 Regulations.

1702
1703
1704 **21) Section 18.3.5 is amended to read as follows:**

1705
1706
1707 **18.3.5 FINANCIAL ASSURANCE**

1708
1709 A person transporting a load of more than 55 gallons of waste grease at one time must acquire
1710 and maintain financial assurance in the amount of \$10,000 for the cleanup and proper disposal of
1711 waste grease in accordance with Section ~~4.84~~ of these Regulations.

1712
1713
1714 **22) Section 18.4.7 is amended to read as follows:**

1715
1716
1717 **18.4.7 FINANCIAL ASSURANCE**

1718
1719 All Waste Grease Facilities must acquire and maintain financial assurance for any required
1720 reclamation and for closure of the Facility in accordance with Section ~~4.84~~ of these Regulations.

1721 **23) Appendix A (Financial Assurance Instrument Language) is amended to read**
1722 **as follows:**

1723
1724 **Appendix A**
1725 **FINANCIAL ASSURANCE INSTRUMENT LANGUAGE**

1726
1727 **WORDING OF THE INSTRUMENTS**

1728
1729 **I. (A) Trust Agreement**

1730
1731 A trust agreement for a trust fund, in this section, must be worded as follows, except that instruction in
1732 brackets are to be replaced with the relevant information and the brackets deleted:

1733
1734 **Trust Agreement**

1735
1736 Trust Agreement, the "~~Agreement~~agreement", entered into as of [date] by and between [name of
1737 the owner or operator], a [name of state][insert "corporation", "partnership", "association", or
1738 "proprietorship"], the "~~Grantor~~grantor", and [name of corporate trustee], [insert "incorporated in the
1739 State of Colorado" or "a national bank"], the "~~Trustee~~trustee."

1740
1741 Whereas, the Colorado Department of Public Health and Environment, Hazardous Materials and
1742 Waste Management Division, a regulatory agency of the State of Colorado, has established certain
1743 regulations applicable to the ~~Grantor~~grantor, requiring that an owner or operator of a solid waste
1744 disposal site and facility shall provide assurance that funds will be available when needed for
1745 closure ~~and/or~~ post-closure and corrective action care of the facility,

1746
1747 Whereas, the ~~Grantor~~grantor has elected to establish a trust fund to provide all or a part of such
1748 financial assurance for the facilities identified herein,

1749
1750 Whereas, the ~~Grantor~~grantor, acting through its duly authorized officers, has selected the
1751 ~~Trustee~~trustee to be the trustee under this ~~Agreement~~agreement, and the ~~Trustee~~trustee is willing
1752 to act as trustee,

1753
1754 Now, therefore, the ~~Grantor~~grantor and the ~~Trustee~~trustee agree as follows:

1755
1756 Section 1. Definitions as used in this Agreement:

1757
1758 (A) The term "~~Grantor~~grantor" means the owner or operator who enters into this
1759 ~~Agreement~~agreement and any successors or ~~assigns~~assignors of the ~~Grantor~~grantor.

1760
1761 (B) The term "~~Trustee~~trustee" means the ~~Trustee~~trustee who enters into this
1762 ~~Agreement~~agreement and any successor ~~Trustee~~trustee.

1763
1764 Section 2. Identification of ~~Facilities~~facilities and ~~Cost Estimates~~cost estimates This

1765 ~~Agreement~~agreement pertains to the facilities and cost estimates identified on attached Schedule A
1766 [on Schedule A, for each facility list the ~~EPA identification number~~, name, address, and the current
1767 closure and/or post-closure cost estimates, and/or corrective action, or portions thereof, for which
1768 financial assurance is demonstrated by this ~~Agreement~~agreement].

1769
1770 Section 3. Establishment of ~~Fund~~fund The grantor and the trustee hereby establish a trust fund,
1771 the "~~Fund~~fund", for the benefit of the Colorado Department of Public Health and Environment,
1772 Hazardous Materials and Waste Management Division. The grantor and the trustee intend that no
1773 third party have access to the fund except as herein provided. The fund is established initially as
1774 consisting of the property which is acceptable to the trustee, described in Schedule B attached
1775 hereto. Such property and any other property subsequently transferred to the trustee is referred to
1776 as the fund, together with all earnings and profits thereon, less any payments or distributions made
1777 by the trustee pursuant to this ~~Agreement~~agreement.

1778
1779 The fund shall be held by the trustee, IN TRUST, as hereinafter provided. The trustee shall not be
1780 responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to
1781 collect from the grantor, any payments necessary to discharge any liabilities of the grantor
1782 established by the ~~Department~~department.

1783
1784 Section 4. Payment for ~~Closure~~closure, post-closure and ~~Post-Closure Care~~corrective action care
1785 The trustee shall make payments from the fund as the ~~Department~~department shall direct, in
1786 writing, to provide for the payment of the costs of closure, and/or corrective action, and/or
1787 post-closure care of the facilities covered by this ~~Agreement~~agreement. The trustee shall
1788 reimburse the grantor or other persons as specified by the ~~Department~~department from the fund for
1789 closure ~~and~~, post-closure and corrective action expenditures in such amount as the
1790 ~~Department~~department shall direct in writing. In addition, the trustee shall refund to the grantor
1791 such amounts as the ~~Department~~department specifies in writing. Upon refund, such funds shall no
1792 longer constitute part of the fund as defined herein.

1793
1794 Section 5. Payment ~~Comprising~~comprising the ~~Fund~~fund Payments made to the trustee for the
1795 fund shall consist of cash or securities acceptable to the trustee.

1796
1797 Section 6. Trustee ~~Management~~management The trustee shall invest and reinvest the principal
1798 and income of the fund and keep the fund invested as a single fund, without distinction between
1799 principal and income, in accordance with general investment policies and guidelines which the
1800 grantor may communicate in writing to the trustee from time to time, subject, however, to the
1801 provisions of this ~~Section~~section. In investing reinvesting, exchanging, selling, and managing the
1802 fund, the trustee shall discharge his duties with respect to the trust fund solely in the interest of the
1803 beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing
1804 which persons of prudence, acting in a like capacity and familiar with such matters, would use in the
1805 conduct of an enterprise of a like character and with like aims; except that:

- 1806
1807 (A) Securities or other obligations of the grantor, or any other owner or operator of the facilities,
1808 or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15

1809 U.S.C. 80A-2.(A), shall not be acquired or held, unless they are securities or other obligations of
1810 the ~~Federal~~federal or a ~~State~~state government;

1811
1812 (B) The trustee is authorized to invest the fund in time or demand deposits of the trustee, to the
1813 extent insured by an agency of the ~~Federal~~federal or ~~State~~state government; and

1814
1815 (C) The trustee is authorized to hold cash awaiting investment or distribution uninvested for a
1816 reasonable time and without liability for the payment of interest thereon.

1817
1818 (D) The investment objectives of the trust are primarily preservation of capital and access to
1819 liquidity, and secondarily investment return on capital investment. Investments in the trust may
1820 include fixed income mutual funds with average durations of less than five years; United States
1821 Treasury bills, notes and bonds with maturities less than ten years; United State agency bonds;
1822 money market mutual funds invested solely in United States Treasury or Agency bonds; pre-
1823 refunded municipal bonds backed by United State Treasuries or Agencies; bank certificates of
1824 deposit and money market accounts up to Federal Deposit Insurance Corporation (FDIC)
1825 insurance limits; commercial paper bonds rated "A2P2" or better, corporate bonds rated "AA" or
1826 better by Standard and Poor's Financial Services, or any combination of these investments. If
1827 individual bonds are used, a minimum of 10 bonds shall be used with roughly equal spacing of
1828 maturities and with the intent to hold such bonds to maturity.

1829
1830 Section 7. Commingling and ~~Investment~~investment The trustee is expressly authorized in its
1831 discretion:

1832
1833 (A) To transfer from time to time any or all of the assets of the fund to any common,
1834 commingled, or collective trust fund created by the trustee in which the fund is eligible to
1835 participate, subject to all of the provisions thereof, to be commingled with the assets of other
1836 trusts participating therein; ~~and~~

1837
1838 ~~(B) To purchase shares in any investment company registered under the investment company~~
1839 ~~act of 1940, 15 U.S.C. 80A-1 et seq., including one which may be created, managed,~~
1840 ~~underwritten, or to which investment advice is rendered or the shares of which are sold by the~~
1841 ~~trustee. The trustee may vote such shares in its discretion.~~

1842
1843 Section 8. Express ~~Powers~~powers of ~~Trustee~~trustee Without in any way limiting the powers and
1844 discretions conferred upon the trustee by the other provision of this Agreement~~agreement~~ or by
1845 law, the trustee is expressly authorized and empowered:

1846
1847 (A) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by
1848 public or private sale. No person dealing with the trustee shall be bound to see to the
1849 application of the purchase money or to inquire into the validity or expediency of any such sale
1850 or other disposition;

1851
1852 (B) To make, execute, acknowledge, and deliver any and all documents of transfer and

1853 conveyance and any and all other instruments that may be necessary or appropriate to carry out
1854 the powers herein granted;

1855
1856 (C) To register any securities held in the fund in its own name or in the name of a nominee and
1857 to hold any security in bearer form or in book entry, or to combine certificates representing such
1858 securities with certificates of the same issue held by the trustee in other fiduciary capacities, or
1859 to deposit or arrange for the deposit of such securities in a qualified central depository even
1860 though, when so deposited, such securities may be merged and held in bulk in the name of the
1861 nominee of such depository with other securities deposited therein by another person, or to
1862 deposit or arrange for the deposit of any securities issued by the United States Government, or
1863 any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records
1864 of the trustee shall at all times show that all such securities are part of the fund;

1865
1866 (D) To deposit any cash in the fund in interest-bearing accounts maintained or savings
1867 certificates issued by the trustee, in its separate corporate capacity, or in any other banking
1868 institution affiliated with the trustee, to the extent insured by an agency of the Federal or State
1869 government; and

1870
1871 (E) To compromise or otherwise adjust all claims in favor of or against the fund.

1872
1873 Section 9. Taxes and Expensesexpenses All taxes of any kind that may be assessed or levied
1874 against or in respect of the fund and all brokerage commissions incurred by the fund shall be paid
1875 from the fund. All other expenses incurred by the trustee in connection with the administration of
1876 this trust, including fees for legal services rendered to the trustee, the compensation of the trustee
1877 to the extent not paid directly by the grantor, and all other proper charges and disbursements of the
1878 trustee shall be paid from the fund.

1879
1880 Section 10. Annual Valuationvaluation The trustee shall annually, at least 30 days prior to the
1881 anniversary date of establishment of the fund, furnish to the grantor and to the Colorado
1882 Department of Public Health and Environment a statement confirming the value of the trust. Any
1883 securities in the fund shall be valued at market value as of no more than 60 days prior to the
1884 anniversary date of establishment of the fund. The failure of the grantor to object in writing to the
1885 trustee within 90 days after the statement has been furnished to the grantor and the
1886 Departmentdepartment shall constitute a conclusively binding assent by the grantor, barring the
1887 grantor from asserting any claim or liability against the trustee with respect to matters disclosed in
1888 the statement.

1889
1890 Section 11. Advice of Counselcounsel The trustee may from time to time consult with counsel,
1891 who may be counsel to the grantor, with respect to any question arising as to the construction of
1892 this Agreementagreement or any action to be taken hereunder. The trustee shall be fully protected,
1893 to the extent permitted by law, in acting upon the advise of counsel.

1894
1895 Section 12. Trustee Compensationcompensation The trustee shall be entitled to reasonable
1896 compensation for its services as agreed upon in writing from time to time with the grantor.

1897
1898 Section 13. Successor ~~Trustee~~trustee The trustee may resign or the grantor may replace the
1899 trustee, but such resignation or replacement shall not be effective until the grantor has appointed a
1900 successor trustee and this successor accepts the appointment. The successor trustee shall have
1901 the same powers and duties as those conferred upon the trustee hereunder. Upon the successor
1902 trustee's acceptance of the appointment, the trustee shall assign, transfer and pay over to the
1903 successor trustee the funds and properties then constituting the fund. If for any reason the grantor
1904 cannot or does not act in the event of the resignation of the trustee, the trustee may apply to a court
1905 of competent jurisdiction for the appointment of a successor trustee or for instructions. The
1906 successor trustee shall specify the date on which it assumes the administration of the trust in a
1907 writing sent to the grantor, the ~~Department~~department, and the present trustee by certified mail, or
1908 other trackable delivery service, 10 days before such change becomes effective. Any expenses
1909 incurred by the trustee as a result of any of the acts contemplated by this Section 13 shall be paid
1910 as provided in Section 9.

1911
1912 Section 14. Instructions to the ~~Trustee~~trustee All orders, requests, and instructions by the grantor
1913 to the trustee shall be in writing, signed by such persons as are designated in the attached Exhibit
1914 A or such other designees as the grantor may designate by amendment to Exhibit A. The trustee
1915 shall be fully protected in acting without inquiry in accordance with the ~~Grantor's~~grantor's orders,
1916 requests, and instructions. All orders, requests, and instructions by the ~~Department~~department to
1917 the trustee shall be in writing, signed by the director or his designees, and the trustee shall act and
1918 shall be fully protected in acting in accordance with such orders, requests, and instructions. The
1919 trustee shall have the right to assume, in the absence of written notice to the contrary, that no event
1920 constituting a change or a termination of the authority of any person to act on behalf of the grantor
1921 or ~~Department~~department hereunder has occurred. The trustee shall have no duty to act in the
1922 absence of such orders, requests, and instructions from the grantor and/or the
1923 ~~Department~~department, except as provided for herein.

1924
1925 Section 15. Notice of ~~Nonpayment~~nonpayment The trustee shall notify the grantor and the
1926 ~~Department~~department, by certified mail, or other trackable delivery service, within 10 days
1927 following the expiration of the 30-days period after the anniversary of the establishment of the trust,
1928 if no payment is received from the grantor during that period. After the pay-in period is completed,
1929 the trustee shall not be required to send a notice of nonpayment.

1930
1931 Section 16. Amendment of ~~Agreement~~agreement This ~~Agreement~~agreement may be amended by
1932 an instrument in writing executed by the grantor, the trustee, and the ~~Department~~department, or by
1933 the trustee and the ~~Department~~department if the grantor ceases to exist.

1934
1935 Section 17. Irrevocability and ~~Termination~~termination Subject to the right of the parties to amend
1936 this ~~Agreement~~agreement as provided in Section 16, this trust shall be irrevocable and shall
1937 continue until terminated at the written agreement of the grantor, the trustee and the
1938 ~~Department~~department, or by the trustee and the ~~Department~~department, if the grantor ceases to
1939 exist. Upon termination of the trust, all remaining trust property, less final trust administration
1940 expenses, shall be delivered to the grantor.

1941
1942 Section 18. Immunity and ~~Indemnification~~indemnification The trustee shall not incur personal
1943 liability of any nature in connection with any act or omission, made in good faith, in the
1944 administration of this trust, or in carrying out any directions by the grantor or the
1945 ~~Department~~department issued in accordance with this Agreementagreement. The trustee shall be
1946 indemnified and saved harmless by the grantor or from the trust fund, or both, from and against any
1947 personal liability to which the trustee may be subjected by reason of any act or conduct in its official
1948 capacity, including all expenses reasonably incurred in its defense in the event the grantor fails to
1949 provide such defense.

1950
1951 Section 19. Choice of ~~Law~~law This Agreementagreement shall be administered, construed, and
1952 enforced according to the laws of the State of Colorado.

1953
1954 Section 20. Interpretation As used in this Agreementagreement, words in the singular include the
1955 plural and words in the plural include the singular. The descriptive headings for each section of this
1956 Agreementagreement shall not affect the interpretation or the legal efficacy of this
1957 Agreementagreement.

1958
1959 In witness whereof the parties have caused this Agreementagreement to be executed by their
1960 respective officers duly authorized and their corporate seals to be hereunto affixed and attested as
1961 of the date first above written: The parties below certify that the wording of this
1962 Agreementagreement is identical to the wording specified in these regulations were constituted on
1963 the date first above written.

1964
1965 ~~{Signature of grantor}~~
1966 ~~{Title}~~
1967 ~~{Seal}~~

1968
1969 ~~Attest: _____ {Signature of attester}~~
1970 ~~{Title}~~

1971
1972
1973 ~~{Signature of trustee}~~
1974 ~~{Name of trustee}~~
1975 ~~{Title}~~
1976 ~~{Seal}~~

1977
1978 ~~-Attest: {Signature of attester}~~
1979 ~~{Title}~~

1980
1981 ~~(B) The following is an example of the certification of acknowledgment which must accompany the~~
1982 ~~trust agreement for a trust fund as specified in of these regulations.~~

1983
1984 State of _____ [County of _____]

1985 County of _____
1986

1987 On this [date], before me personally came [owner or operator] to me known, who, being by me
1988 duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of
1989 [corporation], the corporation described in and which executed the above instrument; that she/he
1990 knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal;
1991 that it was so affixed by order of the board of directors of said corporation, and that she/he signed
1992 her/his name thereto by like order.

1993
1994 [Signature of notary public]
1995

1996
1997 **II. Standby Trust Agreement**
1998

1999 ~~(A) A trust agreement for a standby trust fund, in this section, must be worded as follows, except that~~
2000 ~~instruction in brackets are to be replaced with the relevant information and the brackets deleted:~~

2001
2002 **Standby Trust Agreement**
2003

2004 ~~Standby Trust Agreement, the "Agreement", entered into as of [date] by and between [name of the~~
2005 ~~owner or operator], a [name of state] [insert "corporation", "partnership", "association", or~~
2006 ~~"proprietorship"], the "Grantor", and [name of corporate Trustee], [insert "incorporated in the State~~
2007 ~~of Colorado" or "a national bank"], the "Trustee."~~

2008
2009 ~~Whereas, the Colorado Department of Public Health and Environment, Hazardous Materials and~~
2010 ~~Waste Management Division, a regulatory agency of the State of Colorado, has established certain~~
2011 ~~regulations applicable to the Grantor, requiring that an owner or operator of a solid waste facility~~
2012 ~~shall provide assurance that funds will be available when needed for closure and/or post-closure~~
2013 ~~care of the facility,~~

2014
2015 ~~Whereas, the Grantor has elected to establish a standby trust to provide all or a part of such~~
2016 ~~financial assurance for the facilities identified herein,~~

2017
2018 ~~Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the~~
2019 ~~trustee under this Agreement, and the Trustee is willing to act as trustee,~~

2020
2021 ~~Now, therefore, the Grantor and the Trustee agree as follows:~~

2022
2023 **Section 1. Definitions as used in this Agreement:**
2024

2025 ~~(A) The term "Grantor" means the owner or operator who enters into this Agreement and any~~
2026 ~~successors or assigns of the Grantor.~~

2027
2028 ~~(B) The term "Trustee" means the trustee who enters into this Agreement and any successor~~

2029 Trustee.

2030
2031 ~~Section 2. Identification of Facilities and Cost Estimates~~ This Agreement pertains to the facilities
2032 and cost estimates identified on attached Schedule A [on Schedule A, for each facility list the EPA
2033 identification number, name, address, and the current closure and/or post-closure cost estimates,
2034 or portions thereof, for which financial assurance is demonstrated by this Agreement].

2035
2036 ~~Section 3. Establishment of Fund~~ The grantor and the trustee hereby establish a trust fund, the
2037 "Fund", for the benefit of the Colorado Department of Public Health and Environment, Hazardous
2038 Materials and Waste Management Division. The grantor and the trustee intend that no third party
2039 have access to the fund except as herein provided. The fund is established initially as consisting of
2040 the property which is acceptable to the trustee, described in Schedule B attached hereto. Such
2041 property and any other property subsequently transferred to the trustee is referred to as the fund,
2042 together with all earnings and profits thereon, less any payments or distributions made by the
2043 trustee pursuant to this Agreement.

2044 The fund shall be held by the trustee, IN TRUST, as hereinafter provided. The trustee shall not be
2045 responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to
2046 collect from the grantor, any payments necessary to discharge any liabilities of the grantor
2047 established by the Department.

2048
2049 ~~Section 4. Payment for Closure and Post-Closure Care~~

2050 The trustee shall make payments from the fund as the Department shall direct, in writing, to provide
2051 for the payment of the costs of closure and/or post-closure care of the facilities covered by this
2052 Agreement. The trustee shall reimburse the grantor or other persons as specified by the
2053 Department from the fund for closure and post-closure expenditures in such amount as the
2054 Department shall direct in writing. In addition, the trustee shall refund to the grantor such amounts
2055 as the Department specifies in writing. Upon refund, such funds shall no longer constitute part of
2056 the fund as defined herein.

2057
2058 ~~Section 5. Payment Comprising the Fund~~ payments made to the trustee for the fund shall consist
2059 of cash or securities acceptable to the trustee.

2060
2061 ~~Section 6. Trustee Management~~ The trustee shall invest and reinvest the principal and income of
2062 the fund and keep the fund invested as a single fund, without distinction between principal and
2063 income, in accordance with general investment policies and guidelines which the grantor may
2064 communicate in writing to the trustee from time to time, subject, however, to the provisions of this
2065 Section. In investing, reinvesting, exchanging, selling, and managing the fund, the trustee shall
2066 discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with
2067 the care, skill, prudence, and diligence under the circumstances then prevailing which persons of
2068 prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an
2069 enterprise of a like character and with like aims; except that:

2070
2071 (A) ~~Securities or other obligations of the grantor, or any other owner or operator of the facilities,~~
2072 or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15

2073 U.S.C. 80A-2.(a), shall not be acquired or held, unless they are securities or other obligations of
2074 the Federal or a State government;

2075
2076 (B) The trustee is authorized to invest the fund in time or demand deposits of the trustee, to the
2077 extent insured by an agency of the Federal or State government; and

2078
2079 (C) The trustee is authorized to hold cash awaiting investment or distribution uninvested for a
2080 reasonable time and without liability for the payment of interest thereon.

2081
2082 Section 7. Commingling and Investment The trustee is expressly authorized in its discretion:

2083
2084 (A) To transfer from time to time any or all of the assets of the fund to any common,
2085 commingled, or collective trust fund created by the trustee in which the fund is eligible to
2086 participate, subject to all of the provisions thereof, to be commingled with the assets of other
2087 trusts participating therein; and

2088
2089 (B) To purchase shares in any investment company registered under the Investment Company
2090 Act of 1940, 15 U.S.C. 80A-1 et seq., including one which may be created, managed,
2091 underwritten, or to which investment advice is rendered or the shares of which are sold by the
2092 trustee. The trustee may vote such shares in its discretion.

2093
2094 Section 8. Express Powers of Trustee Without in any way limiting the powers and discretions
2095 conferred upon the trustee by the other provision of this Agreement or by law, the trustee is
2096 expressly authorized and empowered:

2097
2098 (A) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by
2099 public or private sale. No person dealing with the trustee shall be bound to see to the
2100 application of the purchase money or to inquire into the validity or expediency of any such sale
2101 or other disposition;

2102
2103 (B) To make, execute, acknowledge, and deliver any and all documents of transfer and
2104 conveyance and any and all other instruments that may be necessary or appropriate to carry out
2105 the powers herein granted;

2106
2107 (C) To register any securities held in the fund in its own name or in the name of a nominee and
2108 to hold any security in bearer form or in book entry, or to combine certificates representing such
2109 securities with certificates of the same issue held by the trustee in other fiduciary capacities, or
2110 to deposit or arrange for the deposit of such securities in a qualified central depository even
2111 though, when so deposited, such securities may be merged and held in bulk in the name of the
2112 nominee of such depository with other securities deposited therein by another person, or to
2113 deposit or arrange for the deposit of any securities issued by the United States Government, or
2114 any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records
2115 of the trustee shall at all times show that all such securities are part of the fund;

21.17 ~~(D) To deposit any cash in the fund in interest-bearing accounts maintained or savings~~
21.18 ~~certificates issued by the trustee, in its separate corporate capacity, or in any other banking~~
21.19 ~~institution affiliated with the trustee, to the extent insured by an agency of the Federal or State~~
21.20 ~~government; and~~

21.21
21.22 ~~(E) To compromise or otherwise adjust all claims in favor of or against the fund.~~

21.23
21.24 ~~Section 9. Taxes and Expenses All taxes of any kind that may be assessed or levied against or in~~
21.25 ~~respect of the fund and all brokerage commissions incurred by the fund shall be paid from the fund.~~
21.26 ~~All other expenses incurred by the trustee in connection with the administration of this trust,~~
21.27 ~~including fees for legal services rendered to the trustee, the compensation of the trustee to the~~
21.28 ~~extent not paid directly by the grantor, and all other proper charges and disbursements of the~~
21.29 ~~trustee shall be paid from the fund.~~

21.30
21.31 ~~Section 10. Advice of Counsel The trustee may from time to time consult with counsel, who may be~~
21.32 ~~counsel to the grantor, with respect to any question arising as to the construction of this Agreement~~
21.33 ~~or any action to be taken hereunder. The trustee shall be fully protected, to the extent permitted by~~
21.34 ~~law, in acting upon the advise of counsel.~~

21.35
21.36 ~~Section 11. Trustee Compensation The trustee shall be entitled to reasonable compensation for its~~
21.37 ~~services as agreed upon in writing from time to time with the grantor.~~

21.38
21.39 ~~Section 12. Successor Trustee The trustee may resign or the grantor may replace the trustee, but~~
21.40 ~~such resignation or replacement shall not be effective until the grantor has appointed a successor~~
21.41 ~~trustee and this successor accepts the appointment. The successor trustee shall have the same~~
21.42 ~~powers and duties as~~
21.43 ~~those conferred upon the trustee hereunder. Upon the successor trustee's acceptance of the~~
21.44 ~~appointment, the trustee shall assign, transfer and pay over to the successor trustee the funds and~~
21.45 ~~properties then constituting the fund. If for any reason the grantor cannot or does not act in the~~
21.46 ~~event of the resignation of the trustee, the trustee may apply to a court of competent jurisdiction for~~
21.47 ~~the appointment of a successor trustee or for instructions. The successor trustee shall specify the~~
21.48 ~~date on which it assumes the administration of the trust in a writing sent to the grantor, the~~
21.49 ~~Department, and the present trustee by certified mail 10 days before such change becomes~~
21.50 ~~effective. Any expenses incurred by the trustee as a result of any of the acts contemplated by this~~
21.51 ~~Section shall be paid as provided in Section 9.~~

21.52
21.53 ~~Section 13. Instructions to the Trustee All orders, requests, and instructions by the grantor to the~~
21.54 ~~trustee shall be in writing, signed by such persons as are designated in the attached exhibit A or~~
21.55 ~~such other designees as the grantor may designate by amendment to Exhibit A. The trustee shall~~
21.56 ~~be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and~~
21.57 ~~instructions. All orders, requests, and instructions by the Department to the trustee shall be in~~
21.58 ~~writing, signed by the director or his designees, and the trustee shall act and shall be fully protected~~
21.59 ~~in acting in accordance with such orders, requests, and instructions. The trustee shall have the~~
21.60 ~~right to assume, in the absence of written notice to the contrary, that no event constituting a change~~

21.61 or a termination of the authority of any person to act on behalf of the grantor or department
21.62 hereunder has occurred. The trustee shall have no duty to act in the absence of such orders,
21.63 requests, and instructions from the grantor and/or the Department, except as provided for herein.
21.64

21.65 ~~Section 14. Amendment of Agreement~~ This Agreement may be amended by an instrument in
21.66 writing executed by the grantor, the trustee, and the Department, or by the trustee and the
21.67 Department if the grantor ceases to exist.
21.68

21.69 ~~Section 15. Irrevocability and Termination~~ Subject to the right of the parties to amend this
21.70 Agreement as provided in Section 14, this trust shall be irrevocable and shall continue until
21.71 terminated at the written agreement of the grantor, the trustee and the Department, or by the
21.72 trustee and the Department, if the grantor ceases to exist. Upon termination of the trust, all
21.73 remaining trust property, less final trust administration expenses, shall be delivered to the grantor.
21.74

21.75 ~~Section 16. Immunity and Indemnification~~ The trustee shall not incur personal liability of any nature
21.76 in connection with any act or omission, made in good faith, in the administration of this trust, or in
21.77 carrying out any directions by the grantor or the Department issued in accordance with this
21.78 Agreement. The trustee shall be indemnified and saved harmless by the grantor or from the trust
21.79 fund, or both, from and against any personal liability to which the trustee may be subjected by
21.80 reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its
21.81 defense in the event the grantor fails to provide such defense.
21.82

21.83 ~~Section 17. Choice of Law~~ This Agreement shall be administered, construed, and enforced
21.84 according to the laws of the State of Colorado.
21.85

21.86 ~~Section 18. Interpretation~~ As used in this Agreement, words in the singular include the plural and
21.87 words in the plural include the singular. The descriptive headings for each section of this
21.88 Agreement shall not affect the interpretation or the legal efficacy of this Agreement.
21.89

21.90 In witness whereof the parties have caused this Agreement to be executed by their respective
21.91 officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date
21.92 first above written. The parties below certify that the wording of this Agreement is identical to the
21.93 wording specified in these regulations were constituted on the date first above written.
21.94

21.95 [Signature of grantor]

21.96 [Title]

21.97 [Seal]

21.98
21.99 Attest: _____ [Signature of attester]

22.00 _____ [Title]

22.01
22.02 [Signature of trustee]

22.03 [Name of trustee]

22.04 [Title]

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2248

[Seal]

Attest: _____ [Signature of attester]
 [Title]

(B) ~~The following is an example of the certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in of these regulations.~~

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]

Exhibit A

The following have been designated to give instruction to the trustee:

[Name and title of designated person] _____

[Signature] _____

[Name and title of designated person] _____

[Signature] _____

Schedule A

Facility name: _____

2249 Facility address: _____

2250
2251 _____

2252
2253 Facility phone number: _____

2254
2255 Facility email address: _____

2256
2257
2258 Current closure cost estimate: _____

2259
2260 Current post-closure cost estimate: _____

2261
2262 Current corrective action cost estimate (if applicable): _____

2263
2264
2265
2266 **Schedule B**

2267
2268 **Financial Institution Information**

2269
2270 Name and address of financial institution where trust is located:

2271
2272 Name: _____

2273
2274 Address: _____

2275
2276 _____

2277
2278 Contact/Representative name: _____

2279
2280 Contact phone number: _____

2281
2282 Contact email: _____

2283
2284
2285 **Account Information**

2286
2287 Trust account number: _____

2288
2289 Initial funding amount: _____

2290
2291
2292

2293 **III. Irrevocable Standby Letter of Credit.**

2294
2295 *A letter of credit, specified in these regulations, must be worded as follows, except that instructions*
2296 *in brackets are to be replaced with the relevant information and the brackets deleted.*

2297
2298 **Irrevocable Standby Letter of Credit**

2299
2300 Director
2301 Colorado Department of Public Health and Environment
2302 Hazardous Materials and Waste Management Division
2303 4300 Cherry Creek Drive South
2304 Denver, Colorado 80246-1530

2305
2306 Dear Sir or Madam:

2307
2308 We hereby establish our irrevocable standby letter of credit no. _____ in your favor, at the request
2309 and for the account of [owner's or operator's name and address] up to the aggregate amount of [in
2310 words] U.S. Dollars \$_____, available upon presentation of:

2311
2312 (1) Your sight draft bearing reference to this letter of credit no. _____, and

2313
2314 (2) Your signed statement reading as follows: "I certify that the amount of the draft is payable
2315 pursuant to regulations issued under authority of the Colorado Solid Wastes Disposal Sites
2316 and Facilities Act as amended."

2317
2318 This letter of credit is effective as of [date] and shall expire on [date at least 1 year later], but such
2319 expiration date shall be automatically extended for a period of [at least 1 year] on [date] and on
2320 each successive expiration date, unless, at least 120 days before the current expiration date, we
2321 notify both you and [owner's or operator's name] by certified mail, or other trackable delivery
2322 service, that we have decided not to extend this letter of credit beyond the current expiration date.
2323 In the event you are so notified, any unused portion of the credit shall be available upon
2324 presentation of your sight draft, for 120 days after the date of receipt by both you and [owner's or
2325 operator's name], as shown on the signed return receipts.

2326
2327 Whenever this letter of credit is drawn on under and in compliance with the terms of this letter of
2328 credit, we shall duly honor such draft upon presentation to us, and we shall deposit the specified
2329 amount of the draft ~~directly into the standby trust fund of [owner's or operator's name]~~, in
2330 accordance with your instructions, unless an alternate mechanism has been established by the
2331 State of Colorado to directly receive monies.

2332
2333 We certify that the wording of this letter of credit is identical to the wording specified as such
2334 regulations were constituted on the date shown immediately below.

2335
2336 [Signature(s) and title(s) of official(s) of issuing institution]

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2376
2377
2378
2379
2380

~~{date}~~

Signature: _____

Printed: _____

Title: _____

Date: _____

This letter of 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"*].

IVIII. Surety Bond

A surety bond guaranteeing payment ~~into a trust fund~~, as specified in these regulations, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Financial Guarantee Surety Bond

Date bond executed: _____

Effective date: _____

Principal: [*legal name and business address of owner or operator*] _____

Type of organization: [*insert "individual", "joint venture", "partnership", or "corporation"*] _____

State of incorporation: _____

Surety(ies): [*name(s) and business address(es)*] _____

~~EPA Identification Number, name~~Name, address, and closure and/or post-closure amount(s) for each facility guaranteed by this bond: [*Indicate closure and/or post-closure and/or corrective action amount separately*] _____

2381 Total penal sum of bond: \$ _____
2382 Surety's bond number: _____
2383

2384 Know all persons by these presents, that we, the principal and surety(ies) hereto are firmly
2385 bound to the Colorado Department of Public Health and Environment, Hazardous Materials and
2386 Waste Management Division (the "department") in the above penal sum for the payment of which
2387 we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and
2388 severally; provided that, where the surety(ies) are corporations acting as co-sureties, we, the
2389 sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint
2390 action or action against any or all of us, and for all other purposes each surety binds itself, jointly
2391 and severally with the principal, for the payment of such sum only as is set forth opposite the name
2392 of such surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the
2393 penal sum.

2394
2395 Whereas said principal is required, under the Colorado regulations pertaining to Solid Waste
2396 Disposal Sites and Facilities, to have a ~~permit or interim status certificate of designation~~ in order to
2397 own or operate each solid waste management facility identified above, and
2398

2399 Whereas said principal is required to provide financial assurance for closure, or closure and
2400 post-closure care, as a condition of the ~~permit or interim status~~certificate of designation, and
2401

2402 Whereas said principal ~~shall establish a standby trust fund as~~ is required ~~when a surety bond is~~
2403 ~~used~~ to provide such financial assurance, ~~unless an alternate mechanism has been established by~~
2404 ~~the State of Colorado to directly receive monies for any corrective action required at Solid Waste~~
2405 ~~Disposal Sites and Facilities.~~
2406

2407 Now, therefore, the conditions of the obligation are such that if the principal shall faithfully,
2408 before the beginning of final closure of each facility identified above, ~~fund~~ provide funding directly to
2409 the ~~standby trust fund~~department in the amount(s) identified above for the facility,
2410

2411 Or, if the principal shall fund the standby trust fund in such amount(s) within 15 days after an
2412 order to begin closure is issued by the ~~Department~~department or a U.S. District court or other court
2413 of competent jurisdiction,
2414

2415 Or, if the principal shall provide alternate financial assurance, as specified in these regulations
2416 and obtain the ~~Department's~~department's written approval of such assurance, within 90 days after
2417 the date notice of cancellation is received by both the principal and the ~~Department~~department from
2418 the surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and
2419 effect.
2420

2421 The surety(ies) shall become liable on this bond obligation only when the principal has failed to
2422 fulfill the conditions described above. Upon notification by the ~~Department~~department that the
2423 principal has failed to perform as guaranteed by this bond, the surety(ies) shall ~~place~~ provide funds
2424 in the amount guaranteed for the facility(ies) ~~into the standby trust fund~~ as directed by the

2425 ~~Department~~department.

2426
2427 The liability of the surety(ies) shall not be discharged by any payment or succession of payments
2428 hereunder, unless and until such payment or payments shall amount in the aggregate to the penal
2429 sum of the bond, but in no event shall the obligation of the surety(ies) hereunder exceed the
2430 amount of said penal sum.

2431
2432 The surety(ies) may cancel the bond by sending notice of cancellation by certified mail, or other
2433 trackable delivery service, to the principal and to the ~~Department~~department, provided, however,
2434 that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice
2435 of cancellation by both the principal and the ~~Department~~department, as evidenced by the return
2436 receipts.

2437
2438 The principal may terminate this bond by sending written notice to the surety(ies), provided,
2439 however, that no such notice shall become effective until the surety(ies) receive(s) written
2440 authorization for termination of the bond by the ~~Department~~department.

2441
2442 *[The following paragraph is an optional rider that may be included but is not required:]*

2443
2444 The principal and surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it
2445 guarantees a new closure, ~~and/or~~ post-closure and/or corrective action amount, provided that the
2446 penal sum does not increase by more than 20 percent in any one year, and no decrease in the
2447 penal sum takes place without the written permission of the ~~Department~~department.

2448
2449 In witness whereof, the principal and surety(ies) have executed this financial-guarantee surety
2450 bond and have affixed their seals on the date set forth above.

2451
2452 The persons whose signatures appear below hereby certify that they are authorized to execute
2453 this surety bond on behalf of the principal and surety(ies) and that the wording of this surety bond is
2454 identical to the wording specified in the applicable regulations were constituted on the date this
2455 bond was executed.

2456
2457 Principal _____
2458 [Signature(s)] _____
2459 [Name(s) and Titles] _____

2460
2461 [Title(s)] _____

2462
2463 *[Corporate seal]*

2464
2465 Corporate Surety(ies) _____

2466
2467 *[Name and address]* _____

2469 State of incorporation: _____

2470
2471 Liability limit: \$ _____

2472
2473 [Signature(s)] _____

2474 [Name(s) and title(s)] _____

2475
2476 [Corporate seal]

2477
2478
2479 [For every co-surety, provide signature(s), Corporate seal, and other information in the same
2480 manner as for surety above.]

2481
2482
2483 Bond premium: \$ _____

2484
2485
2486 **IV. Performance Bond**

2487
2488 *A surety bond guaranteeing performance of closure and/or post-closure care, or corrective action as*
2489 *specified, must be worded as follows, except that the instructions in brackets are to be replaced with*
2490 *the relevant information and the brackets deleted.*

2491
2492 Performance Bond

2493 Date bond executed: _____

2494 Effective date: _____

2495 Principal:[legal name and business address of owner or operator] _____
2496 _____
2497 _____

2498
2499 Type of organization: [insert "individual", "joint venture", "Partnership", or "corporation"] _____

2500 State of incorporation: _____

2501
2502 Surety(ies):[Name(s) and business address(es)] _____
2503 _____
2504 _____

2505
2506 **EPA Identification Number, nameName**, address, and closure and/or post-closure **corrective action**
2507 amount(s) for each facility guaranteed by this bond (indicate closure and post-closure amounts
2508 separately): _____

2509 _____
2510 _____

2511
2512 Total penal sum of bond: \$ _____

2513
2514 Surety's bond number: _____
2515

2516 Know all persons by these presents, that we, the principal and surety(ies) hereto are firmly
2517 bound to the Colorado Department of Public Health and Environment (the "department")
2518 ~~(hereinafter referred to as the Department)~~, in the above penal sum for the payment of which we
2519 bind ourselves, our heirs, executors, administrators successors, and assigns jointly and severally;
2520 provide that, where the surety(ies) are corporations acting as co-sureties, we, the sureties, bind
2521 ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or
2522 actions against any or all of us, and for all other purposes each surety binds itself, jointly and
2523 severally with the principal, for the payment of such sum only as is set forth opposite the name of
2524 such surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the
2525 penal sum.
2526

2527 Whereas said principal is required, under the Colorado Solid Wastes Disposal Sites and
2528 Facilities Act as amended, to have a ~~permit in order~~certificate of designation in order to own or
2529 operate each solid waste ~~management~~ disposal site and facility identified above; and
2530

2531 Whereas said principal is required to provide financial assurance for closure, or closure and
2532 post-closure care, as a condition of the certificate of designation~~permit, and Whereas said principal~~
2533 ~~shall establish a standby trust fund as is required when a surety bond is used to provide such~~
2534 ~~financial assurance, unless an alternate mechanism has been established by the State of Colorado~~
2535 ~~to directly receive monies; and~~
2536

2537 Whereas said principal is required to provide financial assurance for any corrective action
2538 required at Solid Waste Disposal Sites and Facilities.
2539

2540 Now, therefore, the conditions of this obligation are such that if the principal shall faithfully
2541 perform closure, whenever required to do so, of each facility for which this bond guarantees
2542 closure, in accordance with the closure plan and other requirements of the ~~permit~~certificate of
2543 designation as such plan and ~~permit~~certificate of designation may be amended, pursuant to all
2544 applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may
2545 be amended.
2546

2547 And, if the principal shall faithfully perform post-closure care of each facility for which this bond
2548 guarantees post-closure care, in accordance with the post-closure plan and other requirements of
2549 the ~~permit~~certificate of designation, as such plan and ~~permit~~certificate of designation may be
2550 amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes,
2551 rules, and regulations may be amended.
2552

2553 Or, if the principal shall provide alternate financial assurance as specified in these regulations,
2554 and obtain the ~~Department's~~department's written approval of such assurance, within 90 days after
2555 the date notice of cancellation is received by both the principal and the ~~Department~~department from
2556 the surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and

2557 effect.

2558

2559 The surety(ies) shall ~~be come~~become liable on this bond obligation only when the principal has
2560 failed to fulfill the conditions described above.

2561

2562 Upon notification by the ~~Department~~department that the principal has been found in violation of
2563 the closure requirements of these regulations, for a facility for which this bond guarantees
2564 performances of closure, the surety(ies) shall either perform closure in accordance with the closure
2565 plan and other permit requirements or place the closure amount guaranteed for the facility into the
2566 standby trust fund as directed by the ~~Department~~department.

2567

2568 Upon notification by the ~~Department~~department that the principal has failed to provide alternate
2569 financial assurance as specified in these regulations, and obtain written approval of such assurance
2570 from the ~~Department~~department during the 90 days following receipt by both the principal and the
2571 ~~Department~~department of a notice of cancellation of the bond, the surety(ies) shall place funds in
2572 the amount guaranteed for the facility(ies) into the standby trust fund as directed by the
2573 ~~Department~~department.

2574

2575 The surety(ies) hereby waive(s) notification of amendments to closure plans, permits, applicable
2576 laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate
2577 its (their) obligation on this bond.

2578

2579 The liability of the surety(ies) shall not be discharged by any payment or succession of payments
2580 hereunder, unless and until such payment or payments shall amount in the aggregate to the penal
2581 sum of the bond, but in no event shall the obligation of the surety(ies) hereunder exceed the
2582 amount of said penal sum.

2583

2584 The surety(ies) may cancel the bond by sending notice of cancellation by certified mail, or other
2585 trackable delivery service, to the owner or operator and to the ~~Department~~department provided,
2586 however, that cancellation shall not occur during the 120 days beginning on the date of receipt of
2587 the notice of cancellation by both the principal and the ~~Department~~department, as evidenced by the
2588 return receipts.

2589

2590 The principal may terminate this bond by sending written notice to the surety(ies), provided,
2591 however, that no such notice shall become effective until the surety(ies) receive(s) written
2592 authorization for termination of the bond by the ~~Department~~department.

2593

2594 [*The following paragraph is an optional rider that may be included but is not required.*]

2595

2596 Principal and surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it
2597 guarantees a new closure and/or post-closure and corrective action amount, provided that the
2598 penal sum does not increase by more than 20 percent in any one year, and no decrease in the
2599 penal sum takes place without the written permission of the ~~Department~~department.

2600

2601 In witness whereof, the principal and surety(ies) have executed this performance bond and have
2602 affixed their seals on the date set forth above.

2603
2604 The persons whose signatures appear below hereby certify that they are authorized to execute
2605 this surety bond on behalf of the principal and surety(ies) and that the wording of this surety bond is
2606 identical to the wording specified in the applicable regulations.

2607
2608 Principal _____

2609
2610 [Signature(s)] _____

2611 [Name(s) *and Title(s)*] _____

2612 [~~Title(s)~~]

2613 [Corporate seal]

2614
2615
2616
2617
2618 Corporate Surety(ies)

2619 [Name and address]

2620 State of incorporation:

2621 Liability limit: \$

2622 [Signature(s)]

2623 [Name(s) and title(s)]

2624
2625 [Corporate seal]

2626
2627
2628 [For every co-surety, provide signature(s), ~~corporate~~Corporate seal, and other information in the
2629 same manner as for surety above.]

2630
2631 Bond premium: \$

2632
2633
2634 **VI. Insurance**

- 2635
2636 (1) The standard insurance industry certificate of insurance form (ACORD form), as prescribed by
2637 the Colorado Insurance Commission, shall be used to evidence closure and/or post-closure care
2638 and/or corrective action coverage. The following information is to be included in the certificate of
2639 insurance:

2640
2641 (A) Name, address, email and telephone number of agency; and the underwriter

2642
2643 (B) Name ~~and EPA I.D. Number if applicable~~ of facility being covered (if list is too long additional
2644 pages may be attached).

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(C) Indication of type of coverage (closure, post-closure and/or corrective action).

(D) Amount of coverage (closure, post-closure and/or corrective action).

(E) A statement of certification, in the comment section, worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

"This certificate certifies that the policy to which this certificate applies, provides [insert and/or closure and/or post-closure care or corrective action coverage] in connection with the insured's obligation to demonstrate financial responsibility under ~~Section 4-8.94.6.5~~ of the regulations pertaining to Solid Waste Disposal Sites and Facilities 6 CCR 1007-2, as amended.

(F) Authorized company representatives' signature

- (2) Cancellation of this policy, whether by the insurer or the insured, will be effective only upon written notice and only after the expiration of sixty (60) days after a written notice of cancellation is received by the ~~Department~~department.

VII. Certificate of Deposit

~~(1) The following information is to be included on the Certificate of Deposit:~~

~~(A) Name, address, and telephone number of issuing bank.~~

~~(B) Name and EPA I.D. Number if applicable of facility being covered (if list is too long additional pages may be attached).~~

COLLATERAL ASSIGNMENT OF CERTIFICATE OF DEPOSIT

Instructions: CDPHE requires an original signed copy with Italic text replaced.
Bank and Assignor may also require original signed copies.

(Note: No individual certificate of deposit or the total of all deposits of the assignor at any individual savings institution should exceed \$250,000 or the maximum insurable amount by F.D.I.C).

PART I

(To: be completed by Assignor)

~~(C) Payable To: The undersigned assignor (the "Assignor"), as responsible operator or owner~~

2689 for (Name and Address of Facility) ("the Facility"), does hereby assign, transfer to, and pledge to
2690 the Director, of the Hazardous Materials and Waste Management Division of the Colorado
2691 Department of Public Health and Environment ("CDPHE"), Hazardous Materials and Waste
2692 Management Division. right, title, and interest in and to the Certificate of Deposit issued by or
2693 carried with _____, and its successors or assigns, with an office located at
2694 (Address and Telephone Number of Bank or Savings Institution) and identified as Certificate of
2695 Deposit # _____ ("CD") including its principal amount and any interest that will
2696 accrue or already has accrued on the CD ("Assignment"). This Assignment is binding on
2697 Assignor, its/his/her/their heirs, devisees, personal representatives, successors, and assigns.

2698
2699 ~~(D) Indication of type of coverage (closure, post-closure and/or corrective action).~~

2700
2701 ~~(E) Amount of coverage (closure, post-closure and/or corrective action).~~

2702
2703 ~~(F) Authorized Bank's signature~~

2704
2705 ~~(G) Automatic renewal of the Certificate of Deposit with interest added to the principal unless~~
2706 ~~otherwise instructed in writing by the Department.~~

2707
2708 ~~(2) (A) Cancellation of this Certificate of Deposit, whether by the insurer or the insured, will be~~
2709 ~~effective only upon written notice and only after expiration of sixty (60) days after a written notice~~
2710 ~~of cancellation is received by the Department.~~

2711
2712 ~~(B) A thirty (30) day written notice of maturity of the Certificate of Deposit will be sent to the~~
2713 ~~Department and facility.~~

2714
2715 **PURPOSE**

2716
2717 This Assignment is made as, and shall constitute, collateral security for closure, post-closure, and
2718 corrective action costs associated with the Facility in accordance with section 30-20-104.5, C.R.S.
2719 and 6 CCR 1007-2, § 4.0. Pursuant to 6 CCR 1007-2, § 4.5, the aforesaid costs shall be updated
2720 every five (5) years, adjusted annually to account for inflation or deflation by using the implicit price
2721 deflator for the gross domestic product or its successor as published by the U.S. Department of
2722 Commerce ("Cost Estimate"), or as requirements change at the Facility.

2723
2724 The principal amount of the CD shall be equal or greater to the current Cost Estimate. If the Cost
2725 Estimate increases to an amount greater than the principal amount of the CD, the owner or
2726 operator, during the seven (7) day grace period after the maturity date of the CD ("Grace Period"),
2727 shall contribute additional funding to the CD so that the principal amount of the CD is at least
2728 equal to the Cost Estimate. In the alternative, the Facility may implement another financial
2729 assurance mechanism as set forth in 6 CCR 1007-2, § 4.6.1(D) to satisfy the disparity between the
2730 principal amount of the CD and the Cost Estimate. The owner and operator shall provide
2731 confirmation that the principal amount of the CD or the alternative financial mechanism covers the
2732 Cost Estimate to CDPHE within ten (10) days of the aforesaid contribution or establishment of

2733 other financial assurance mechanism.

2734
2735 During every Grace Period, the owner or operator of the Facility shall increase the principal
2736 amount of the CD to account for the inflationary adjustment as determined pursuant to 6 CCR
2737 1007-2, § 4.5 and shall provide written notice of such increase to CDPHE ten (10) days thereafter.

2738
2739 If the Cost Estimate decreases during the operating life of the Facility or during post-closure, the
2740 principal amount of the CD may be reduced to the amount of the Cost Estimate following
2741 CDPHE's consultation with the local governing authority and written approval by CDPHE.

2742
2743 Upon request by CDPHE, the Assignor shall provide within ten (10) days to CDPHE a complete
2744 copy of the most recent account statement of the CD, which, at a minimum, shows its principal
2745 amount and accrued interest. The Assignor also irrevocably consents and authorizes
2746 _____ to release any information regarding the CD and a recent
2747 account statement to CDPHE if CDPHE should contact this bank directly.

2748
2749 **DURATION OF ASSIGNMENT**

2750
2751 This Assignment shall be for a period from the date hereof until CDPHE declares this Assignment
2752 to be terminated by written notice to _____ and Assignor.
2753 Consequently, the CD shall be automatically renewed for successive new terms identical to the
2754 CD's original term unless and until _____ receives written notice of
2755 termination of the Assignment. Assignor hereby agrees to not cancel or otherwise act on the CD
2756 without CDPHE's written approval and that Assignor is liable for any fees or penalties associated
2757 with any payment of the CD to CDPHE.

2758
2759 **CDPHE'S RIGHT TO DRAW UPON CERTIFICATE OF DEPOSIT**

2760
2761 Following a determination by CDPHE that the owner or operator has failed to perform final closure
2762 or post-closure or corrective action in accordance with the closure or post-closure or corrective
2763 action plan and other certificate of designation requirements, if applicable, CDPHE may draw on
2764 the CD without further notice to or the consent of Assignor.

2765
2766 The undersigned hereby constitutes and appoints CDPHE as Power of Attorney of the
2767 undersigned to demand, collect, and receive all amounts that may become due under the terms of
2768 this Assignment, and to endorse the CD for payment or negotiation and to endorse any
2769 commercial paper given in payment of the CD.

2770
2771 **PRESENTATION OF CERTIFICATE OF DEPOSIT**

2772
2773 The undersigned represents and warrants that a receipt for the CD is contemporaneously being
2774 delivered to CDPHE with the execution of this Assignment; that the CD is to remain assigned to
2775 CDPHE until authorized for release pursuant to 6 CCR 1007-2, § 4.4.6.13; that the CD is genuine
2776 and is in all respects what it purports to be; that the undersigned is the owner thereof free and

2777 clear of all liens and encumbrances of any nature whatsoever; and that the undersigned has full
2778 power, right, and authority to execute and deliver this Assignment.

2779
2780 **NOTICES**

2781
2782 All notices required under this Assignment shall be sent to:

2783
2784 Financial Assurance Program Manager
2785 Colorado Department of Public Health and Environment
2786 Mail Code: HMWMD-SWP-B2
2787 4300 Cherry Creek Drive South
2788 Denver, Colorado 80246-1530

2789
2790 The undersigned further represents and warrants that any assignments of this CD made while the
2791 CD is pledged to the CDPHE shall be subordinate to this Assignment.

2792
2793 **ASSIGNOR: (Name of the Owner or Operator of the Facility)**

2794
2795 _____
2796 Name (Print) _____ Title _____
2797 Signature _____ Date _____

2798
2799
2800 **PART II**

2801 (To be completed by bank or savings institution)

2802
2803 **SIGNATURE GUARANTEE AND UNDERTAKING BY THE FINANCIAL INSTITUTION**

2804
2805 The signature of the Assignor appearing on PART I of this document was made in the presence of
2806 the undersigned officer of _____ and such signature is herewith
2807 guaranteed by _____.

2808
2809 This institution is an association/bank doing business in this state whose accounts are insured by
2810 the Federal Deposit Insurance Corporation. The above Assignment carries with it the right in and
2811 to the insurance of this account provided by the Federal Deposit Insurance Corporation.

2812
2813 _____ hereby certifies that the CD identified on page one (1) has a
2814 principal amount of \$ _____ ; that the signature of the Assignor above is comparable to
2815 signatures on file with _____ ; and that
2816 _____ has no knowledge of any other lien, encumbrance, right,
2817 hold, claim to, or obligation on the assigned CD.

2818
2819 The CD is issued for a period of _____ year(s), beginning on _____, and shall be
2820 automatically renewable for a like term and at Bank's standard interest rate in effect as of the

2821 applicable renewal date for a CD of such term and principal amount, with interest automatically
2822 rolling into the principal on each maturity date. In accordance with 6 CCR 1007-2, § 4.6.10(H),
2823 _____ shall provide a thirty (30) day written notice of maturity of
2824 the CD to the Assignor and will make a good faith effort to provide same notice to CDPHE.
2825 _____ may elect at any time not to renew the CD as of a particular
2826 maturity date, subject to the requirement that, at least sixty (60) days before the applicable
2827 maturity date.

2828
2829 _____ shall notify the Assignor and CDPHE by certified mail or
2830 other trackable delivery service, of such decision. Such notice shall be effective upon receipt.
2831 Upon maturity of the CD following _____'s notice of non-renewal,
2832 _____ shall disburse all funds as directed by CDPHE.

2833
2834 _____ understands and agrees that the procedures governing the
2835 forfeiture of this CD are specified in 6 CCR 1007-2, § 4.6.10(J), and that, upon
2836 _____ 's receipt of written notice from CDPHE that the Facility has
2837 not complied with its requisite final closure or post-closure or corrective action plan,
2838 _____ will forward to CDPHE within ten (10) days the principal
2839 amount of the CD plus any accrued interest, less any early withdrawal penalty, without further
2840 notice to the Assignor.

2841
2842 On this date, the maximum penalty for early withdrawal of this Certificate of Deposit is:
2843 \$ _____. Any penalty shall be deducted from interest accrued,
2844 and if to the extent that such amount is insufficient, shall be deducted from the principal of the CD.

2845
2846 _____ herein states that so long as this agreement remains in
2847 effect, it has no other interests in this CD other than its sole responsibility to act as the agent for
2848 the purpose of holding the CD for CDPHE's exclusive use until otherwise approved by CDPHE in
2849 writing, and agrees not to act on the CD except as otherwise provided in this agreement or
2850 pursuant to written approval by CDPHE. _____ agrees that any
2851 claim or lien, which may result from this Assignment, or which it may acquire in the future against
2852 the Assignor, will be subordinate and junior to CDPHE's interest in the CD.

2853
2854 _____ agrees that except as otherwise provided in this agreement,
2855 no modification will be made to the terms and conditions of the CD which would affect the interest
2856 of the CDPHE under this assignment, without first notifying and obtaining written approval from the
2857 CDPHE. Written notice of any proposed modification or change in the terms or conditions of this
2858 CD shall be provided to the Financial Assurance Program Manager at the address listed in PART I
2859 above.

2860
2861 _____ understands that this Certificate of Deposit is being pledged
2862 to the CDPHE by the Assignor as financial assurance under 6 CCR 1007-2, § 4.0.
2863 _____ has retained a copy of this Assignment and has properly
2864 documented this Assignment in the appropriate records of this institution.

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2880

Name of Financial Institution

Name

Title

Signature

Date

Accepted By:

Colorado Department of Public Health and Environment

Signature

Date

Division Director

Hazardous Materials and Waste Management Division