



Ohio Administrative Code

Rule 3745-267-143 Financial assurance for closure - financial requirements for standardized permits.

Effective: [March 7, 2025](#)

The owner or operator shall establish financial assurance for closure of each storage or treatment unit. In establishing financial assurance for closure, the owner or operator shall choose from the financial assurance mechanisms in paragraphs (A) to (G) of this rule. The owner or operator may also use a combination of mechanisms for a single facility if the mechanisms meet the requirement in paragraph (H) of this rule, or may use a single mechanism for multiple facilities as in paragraph (I) of this rule. The director will release the owner or operator from the requirements of this rule after the owner or operator meets the criteria in paragraph (J) of this rule.

(A) Closure trust fund. Owners and operators may use the "closure trust fund," that is specified in paragraphs (A)(1), (A)(2), and (A)(6) to (A)(11) of rule 3745-55-43 of the Administrative Code. For purposes of this paragraph, the following provisions also apply:

(1) Payments into the trust fund for a new facility shall be made annually by the owner or operator over the remaining operating life of the facility as estimated in the closure plan, or over three years, whichever period is shorter. This period of time is hereafter referred to as the "pay-in period."

(2) For a new facility, the first payment into the closure trust fund shall be made before the facility may accept the initial storage. A receipt from the trustee shall be submitted by the owner or operator to the director before this initial storage of waste. The first payment shall be at least equal to the current closure cost estimate, divided by the number of years in the pay-in period, except as provided in paragraph (H) of this rule for multiple mechanisms. Subsequent payments shall be made no later than thirty days after each anniversary date of the first payment. The owner or operator determines the amount of each subsequent payment by subtracting the current value of the trust fund from the current closure cost estimate, and dividing this difference by the number of years remaining in the pay-in period. Mathematically, the formula is:

Next payment = (current closure estimate - current value of the trust fund) divided by years remaining in the pay-in period



(3) The owner or operator of a facility existing on the first effective date of this rule may establish a trust fund to meet this paragraph's financial assurance requirements. If the value of the trust fund is less than the current closure cost estimate when a final approval of the permit is granted for the facility, the owner or operator shall pay the difference into the trust fund within sixty days.

(4) The owner or operator may accelerate payments into the trust fund or deposit the full amount of the closure cost estimate when establishing the trust fund. However, the owner or operator shall maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in paragraph (A)(2) or (A)(3) of this rule.

(5) The owner or operator shall submit a trust agreement with the wording specified in paragraph (A)(1) of rule 3745-55-51 of the Administrative Code.

(B) Surety bond guaranteeing payment into a closure trust fund. Owners and operators may use the "surety bond guaranteeing payment into a closure trust fund," as specified in paragraph (B) of rule 3745-55-43 of the Administrative Code, including the use of the surety bond instrument specified in paragraph (B) of rule 3745-55-51 of the Administrative Code, and the standby trust specified in paragraph (B)(3) of rule 3745-55-43 of the Administrative Code.

(C) Surety bond guaranteeing performance of closure. Owners and operators may use the "surety bond guaranteeing performance of closure," as specified in paragraph (C) of rule 3745-55-43 of the Administrative Code, the submittal and use of the surety bond instrument specified in paragraph (C) of rule 3745-55-51 of the Administrative Code, and the standby trust specified in paragraph (C)(3) of rule 3745-55-43 of the Administrative Code.

(D) Closure letter of credit. Owners and operators may use the "closure letter of credit" specified in paragraph (D) of rule 3745-55-43 of the Administrative Code, the submittal and use of the irrevocable letter of credit instrument specified in paragraph (D) of rule 3745-55-51 of the Administrative Code, and the standby trust specified in paragraph (D)(3) of rule 3745-55-43 of the Administrative Code.

(E) Closure insurance. Owners and operators may use "closure insurance," as specified in paragraph



(E) of rule 3745-55-43 of the Administrative Code, utilizing the certificate of insurance for closure specified in paragraph (E) of rule 3745-55-51 of the Administrative Code.

(F) Corporate financial test. An owner or operator that satisfies the requirements of this paragraph may demonstrate financial assurance up to the amount specified in this paragraph:

(1) Financial component.

(a) The owner or operator shall satisfy one of the following three conditions:

(i) A current rating for its senior unsecured debt of "AAA, AA, A, or BBB" as issued by "Standard and Poor's" or "Aaa, Aa, A or Baa" as issued by "Moody's"; or

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

(iii) A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus ten million dollars, to total liabilities.

(b) The tangible net worth of the owner or operator shall be greater than:

(i) The sum of the current environmental obligations [see paragraph (F)(2)(a)(i)(a) of this rule], including guarantees, covered by a financial test plus ten million dollars, except as provided in paragraph (F)(1)(b)(ii) of this rule.

(ii) Ten million dollars in tangible net worth plus the amount of any guarantees that have not been recognized as liabilities on the financial statements provided all of the environmental obligations [see paragraph (F)(2)(a)(i)(a) of this rule] covered by a financial test are recognized as liabilities on the owner's or operator's audited financial statements, and subject to the approval of the director.

(c) The owner or operator shall have assets located in the United States amounting to at least the sum of environmental obligations covered by a financial test as described in paragraph (F)(2)(a)(i)(a) of this rule.



(2) Recordkeeping and reporting requirements.

(a) The owner or operator shall submit the following items to the director:

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

(a) Lists all the applicable current types, amounts, and sums of environmental obligations covered by a financial test. These obligations include both obligations in the programs which U.S. EPA directly operates and obligations where U.S. EPA has delegated authority to a state or approved a state's program. These obligations include, but are not limited to:

(i) Liability, closure, post-closure and corrective action cost estimates required for hazardous waste treatment, storage, and disposal facilities under rules 3745-54-101, 3745-55-42, 3745-55-44, 3745-55-47, 3745-66-42, and 3745-66-47 of the Administrative Code;

(ii) Cost estimates required for municipal solid waste management facilities under 40 CFR 258.71, 258.72, and 258.73;

(iii) Current plugging cost estimates required for underground injection control facilities under 40 CFR 144.62;

(iv) Cost estimates required for petroleum underground storage tank facilities under 40 CFR 280.93;

(v) Cost estimates required for polychlorinated biphenyl storage facilities under 40 CFR 761.65;

(vi) Any financial assurance required under, or as part of an action undertaken under, the comprehensive environmental response, compensation, and liability act; and

(vii) Any other environmental obligations that are assured through a financial test.

(b) Provides evidence demonstrating that the firm meets the conditions of either paragraph (F)(1)(a)(i), (F)(1)(a)(ii), or (F)(1)(a)(iii) of this rule and paragraphs (F)(1)(b) and (F)(1)(c) of this rule.



(ii) A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements shall 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 director may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the director deems that the matters which form the basis for the qualification are insufficient to warrant disallowance of the test. If the director does not allow use of the test, the owner or operator shall provide alternate financial assurance that meets the requirements of this rule within thirty days after the notification of disallowance.

(iii) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies paragraph (F)(1)(a)(ii) or (F)(1)(a)(iii) of this rule that are different from data in the audited financial statements referred to in paragraph (F)(2)(a)(ii) of this rule or any other audited financial statement or data filed with the U.S. securities and exchange commission, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures 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.

(iv) If the chief financial officer's letter provides a demonstration that the firm has assured for environmental obligations as provided in paragraph (F)(1)(b)(ii) of this rule, 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 ten million dollars plus the amount of any guarantees provided.

(b) The owner or operator of a new facility shall submit the items specified in paragraph (F)(2)(a) of



this rule to the director at least sixty days before placing waste in the facility.

(c) After the initial submittal of items specified in paragraph (F)(2)(a) of this rule, the owner or operator shall send updated information to the director within ninety days after the close of the owner or operator's fiscal year. The director may provide up to an additional forty-five days for an owner or operator who can demonstrate that ninety days is insufficient time to acquire audited financial statements. The updated information shall consist of all items specified in paragraph (F)(2)(a) of this rule.

(d) The owner or operator is no longer required to submit the items specified in paragraph (F)(2) of this rule or comply with the requirements of paragraph (F) of this rule when:

(i) The owner or operator substitutes alternate financial assurance as specified in this rule that is not subject to the recordkeeping and reporting requirements in this rule; or

(ii) The director releases the owner or operator from the requirements of this rule in accordance with paragraph (J) of this rule.

(e) An owner or operator who no longer meets the requirements of paragraph (F)(1) of this rule may not use the financial test to demonstrate financial assurance. Instead an owner or operator who no longer meets the requirements of paragraph (F)(1) of this rule shall:

(i) Send notice to the director of intent to establish alternate financial assurance as specified in this rule. The owner or operator shall send this notice by certified mail within ninety days after the close the owner's or operator's fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements of this rule.

(ii) Provide alternative financial assurance within one hundred twenty days after the end of such fiscal year.

(f) Based on a reasonable belief that the owner or operator may no longer meet the requirements of paragraph (F)(1) of this rule, at any time the director may require the owner or operator to provide reports of the facility's financial condition in addition to or including current financial test



documentation as specified in paragraph (F)(2) of this rule. If the director finds that the owner or operator no longer meets the requirements of paragraph (F)(1) of this rule, the owner or operator shall provide alternate financial assurance that meets the requirements of this rule.

(G) Corporate guarantee.

(1) An owner or operator may meet the requirements of this rule by obtaining a written guarantee. The guarantor shall be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor shall meet the requirements for owners or operators in paragraph (F) of this rule and shall comply with the terms of the guarantee. The wording of the guarantee shall be identical to the wording in paragraph (H) of rule 3745-55-51 of the Administrative Code. The certified copy of the guarantee shall accompany the letter from the guarantor's chief financial officer and accountants' opinions. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter from the guarantor's chief financial officer shall describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter shall describe this "substantial business relationship" and the value received in consideration of the guarantee.

(2) For a new facility, the guarantee shall be effective and the guarantor shall submit the items in paragraph (G)(1) of this rule and the items specified in paragraph (F)(2)(a) of this rule to the director at least sixty days before the owner or operator places waste in the facility.

(3) The terms of the guarantee shall provide that:

(a) If the owner or operator fails to perform closure at a facility covered by the guarantee, the guarantor will:

(i) Perform, or pay a third party to perform, closure (performance guarantee); or

(ii) Establish a fully funded trust fund as specified in paragraph (A) of this rule in the name of the owner or operator (payment guarantee).



(b) The guarantee will remain in force for as long as the owner or operator is required to comply with the applicable financial assurance requirements of rules 3745-267-140 to 3745-267-151 of the Administrative Code unless the guarantor sends prior notice of cancellation by certified mail to the owner or operator and to the director. Cancellation may not occur, however, during the one hundred twenty days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the director, as evidenced by the return receipts.

(c) If notice of cancellation is given, the owner or operator, within ninety days after receipt of the cancellation notice by the owner or operator and the director, shall obtain alternate financial assurance, and submit documentation for that alternate financial assurance to the director. If the owner or operator fails to provide alternate financial assurance and obtain the written approval of such alternative assurance from the director within the ninety-day period, the guarantor shall provide that alternate assurance in the name of the owner or operator and submit the necessary documentation for the alternative assurance to the director within one hundred twenty days after the cancellation notice.

(4) If a corporate guarantor no longer meets the requirements of paragraph (F)(1) of this rule, the owner or operator, within ninety days, shall obtain alternative assurance, and submit the assurance to the director for approval. If the owner or operator fails to provide alternate financial assurance within the ninety-day period, the guarantor shall provide the alternate assurance within the next thirty days, and submit the alternate financial assurance to the director for approval.

(5) The guarantor is no longer required to meet the requirements of paragraph (G) of this rule when:

(a) The owner or operator substitutes alternate financial assurance as specified in this rule; or

(b) The owner or operator is released from the requirements of this rule in accordance with paragraph (J) of this rule.

(H) Use of multiple financial mechanisms. An owner or operator may use more than one mechanism at a particular facility to satisfy the requirements of this rule. The acceptable mechanisms are trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, insurance, the financial test, and the guarantee, except owners or operators may not combine the financial test with the



guarantee. The mechanisms shall be as specified in paragraphs (A), (B), (D), (E), (F), and (G) of this rule, except it is the combination of mechanisms rather than a single mechanism that shall provide assurance for an amount at least equal to the cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or letter of credit, the owner or operator may use the trust fund as the standby trust for the other mechanisms. A single trust fund may be established for two or more mechanisms. The director may use any or all of the mechanisms to provide for closure of the facility.

(I) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial mechanism for multiple facilities, as specified in paragraph (H) of rule 3745-55-43 of the Administrative Code.

(J) Release of the owner or operator from the requirements of this rule. Within sixty days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the director will notify the owner or operator in writing that the owner or operator is no longer required by this rule to maintain financial assurance for final closure of the facility, unless the director has reason to believe that final closure has not been completed in accordance with the approved closure plan. The director shall provide the owner or operator with a detailed written statement of any such reasons to believe that closure has not been conducted in accordance with the approved closure plan.

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see rule 3745-50-11 of the Administrative Code titled "Incorporated by reference."]