



Ohio Administrative Code

Rule 3745-267-147 Liability requirements - financial requirements for standardized permits.

Effective: [March 7, 2025](#)

(A) Coverage for sudden accidental occurrences. An owner or operator of a hazardous waste treatment or storage facility, or a group of such facilities, shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for sudden accidental occurrences in the amount of at least one million dollars per occurrence with an annual aggregate of at least two million dollars, exclusive of legal defense costs. The liability coverage may be demonstrated as specified in paragraphs (A)(1) to (A)(7) of this rule:

(1) Trust fund for liability coverage. An owner or operator may meet the requirements of this rule by obtaining a trust fund for liability coverage as specified in paragraph (J) of rule 3745-55-47 of the Administrative Code.

(2) Surety bond for liability coverage. An owner or operator may meet the requirements of this rule by obtaining a surety bond for liability coverage as specified in paragraph (I) of rule 3745-55-47 of the Administrative Code.

(3) Letter of credit for liability coverage. An owner or operator may meet the requirements of this rule by obtaining a letter of credit for liability coverage as specified in paragraph (H) of rule 3745-55-47 of the Administrative Code.

(4) Insurance for liability coverage. An owner or operator may meet the requirements of this rule by obtaining liability insurance as specified in paragraph (A)(1) of rule 3745-55-47 of the Administrative Code.

(5) Financial test for liability coverage. An owner or operator may meet the requirements of this rule by passing a financial test as specified in paragraph (F) of this rule.



(6) Guarantee for liability coverage. An owner or operator may meet the requirements of this rule by obtaining a guarantee as specified in paragraph (G) of this rule.

(7) Combination of mechanisms. An owner or operator may demonstrate the required liability coverage through the use of combinations of mechanisms as allowed by paragraph (A)(6) of rule 3745-55-47 of the Administrative Code.

(8) An owner or operator shall notify the director in writing within thirty days whenever:

(a) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in paragraphs (A)(1) to (A)(7) of this rule; or

(b) A certification of valid claim for bodily injury or property damages caused by a sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under paragraphs (A)(1) to (A)(7) of this rule; or

(c) A final court order establishing a judgment for bodily injury or property damage caused by a sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under paragraphs (A)(1) to (A)(7) of this rule.

(B) [Reserved.]

(C) [Reserved.]

(D) [Reserved.]

(E) Period of coverage. 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 liability coverage from that facility, unless the director has reason to believe that closure has not been in accordance with the



approved closure plan.

(F) Financial test for liability coverage. An owner or operator that satisfies the requirements of this paragraph may demonstrate financial assurance for liability up to the amount specified in paragraphs (F)(1) to (F)(2) of this rule:

(1) Financial component.

(a) If using the financial test for only liability coverage, the owner or operator shall have tangible net worth greater than the sum of the liability coverage to be demonstrated by the financial test plus ten million dollars.

(b) The owner or operator shall have assets located in the United States amounting to at least the amount of liability covered by the financial test.

(c) An owner or operator who is demonstrating coverage for liability and any other environmental obligations, including closure under paragraph (F) of rule 3745-267-143 of the Administrative Code, through a financial test shall meet the requirements of paragraph (F) of rule 3745-267-143 of the Administrative Code.

(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 provides evidence demonstrating that the firm meets the conditions of paragraphs (F)(1)(a) and (F)(1)(b) of this rule. If the firm is providing only liability coverage through a financial test for:

(a) A facility or facilities with a permit under Chapter 3745-267 of the Administrative Code, the letter shall use the wording in paragraph (B) of rule 3745-267-151 of the Administrative Code.

(b) Facilities regulated under Chapter 3745-267 of the Administrative Code and also Chapters 3745-54 to 3745-57 and 3745-205 and 3745-65 to 3745-69 and 3745-256 of the Administrative Code, the



firm shall use the letter in paragraph (G) of rule 3745-55-51 of the Administrative Code.

(c) A facility or facilities with a permit under Chapter 3745-267 of the Administrative Code, and the facility assures closure costs or any other environmental obligations through a financial test, the firm shall use the letter in paragraph (A) of rule 3745-267-151 of the Administrative Code for the facilities issued a permit under Chapter 3745-267 of the Administrative Code.

(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 paragraphs (F)(1)(a) and (F)(1)(b) 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 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.

(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 of 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. 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 notice by certified mail within ninety days after the close of the owner 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) Guarantee for liability coverage.

(1) Subject to paragraph (G)(2) of this rule, an owner or operator may meet the requirements of this rule by obtaining a written guarantee, hereinafter referred to as "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 paragraphs (F)(1) to (F)(3) of this rule. The wording of the guarantee shall be identical to the wording specified in paragraph (H)(2) of rule 3745-55-51 of the Administrative Code. A certified copy of the guarantee shall accompany the items sent to the director as specified in paragraph (F)(2) of this rule. One of these items shall be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter 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, the letter shall describe the "substantial business relationship" and the value received in consideration of the guarantee.

(a) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden accidental occurrences arising from the operation of facilities covered by the corporate guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor will do so up to the limits of coverage.

(b) [Reserved.]

(2)

(a) In the case of corporations incorporated in the United States, a guarantee may be used to satisfy the requirements of this rule only if the attorneys general or insurance commissioners of the state in which the guarantor is incorporated, and each state in which a facility covered by the guarantee is located, have submitted a written statement to Ohio EPA that a guarantee executed as described in this rule and paragraph (H)(2) of rule 3745-55-51 of the Administrative Code is a legally valid and



enforceable obligation in that state.

(b) In the case of corporations incorporated outside the United States, a guarantee may be used to satisfy the requirements of this rule only if:

(i) The non-U.S. corporation has identified a registered agent for service of process in each state in which a facility covered by the guarantee is located and in the state in which the corporation has its principal place of business; and

(ii) The attorney general or insurance commissioner of each state in which a facility covered by the guarantee is located and the state in which the guarantor corporation has its principal place of business, has submitted a written statement to Ohio EPA that a guarantee executed as described in this rule and paragraph (H)(2) of rule 3745-55-51 of the Administrative Code is a legally valid and enforceable obligation in that state.