



## Ohio Administrative Code

### Rule 3745-51-143 Financial assurance condition - management of excluded hazardous secondary materials.

Effective: June 12, 2023

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Under paragraph (A)(24)(f)(vi) of rule 3745-51-04 of the Administrative Code, an owner or operator of a reclamation or intermediate facility shall have financial assurance as a condition of the exclusion as required under paragraph (A)(24) of rule 3745-51-04 of the Administrative Code. The owner or operator shall choose from the options as specified in paragraphs (A) to (E) of this rule.

(A) Trust fund.

(1) An owner or operator may satisfy the requirements of this rule by establishing a trust fund which conforms to the requirements of this paragraph and submitting an originally signed duplicate of the trust agreement to the director. The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(2) The wording of the trust agreement shall be identical to the wording specified in paragraph (A)(1) of rule 3745-51-151 of the Administrative Code, and the trust agreement shall be accompanied by a formal certification of acknowledgment (for example, see paragraph (A)(2) of rule 3745-51-151 of the Administrative Code.) "Schedule A" of the trust agreement shall be updated within sixty days after a change in the amount of the current cost estimate covered by the agreement.

(3) The trust fund shall be funded for the full amount of the current cost estimate before the trust fund may be relied upon to satisfy the requirements of this rule.

(4) Whenever the current cost estimate changes, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the trust fund is less than the amount of the new estimate, the owner or operator, within sixty days after the change in the cost estimate, shall either deposit an amount into the trust fund so that the value of the trust fund after this deposit at least equals the amount of the current cost estimate, or obtain other financial assurance as specified in this rule to cover the difference.



(5) If the value of the trust fund is greater than the total amount of the current cost estimate, the owner or operator may submit a written request to the director for release of the amount in excess of the current cost estimate.

(6) If an owner or operator substitutes other financial assurance as specified in this rule for all or part of the trust fund, the owner or operator may submit a written request to the director for release of the amount in excess of the current cost estimate covered by the trust fund.

(7) Within sixty days after receiving a request from the owner or operator for release of funds as specified in paragraph (A)(5) or (A)(6) of this rule, the director will instruct the trustee to release to the owner or operator such funds as the director specifies in writing. If the owner or operator begins final closure under rules 3745-55-10 to 3745-55-20 of the Administrative Code or rules 3745-66-10 to 3745-66-21 of the Administrative Code, an owner or operator may request reimbursements for partial or final closure expenditures by submitting itemized bills to the director. The owner or operator may request reimbursements for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over the remaining operating life of the facility. No later than sixty days after receiving bills for partial or final closure activities, the director will instruct the trustee to make reimbursements in those amounts as the director specifies in writing, if the director determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the director has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, the director may withhold reimbursements of such amounts as the director deems prudent until the director determines, in accordance with paragraph (I) of rule 3745-66-43 of the Administrative Code that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the director does not instruct the trustee to make such reimbursements, the director will provide to the owner or operator a detailed written statement of reasons.

(8) The director will agree to termination of the trust when:

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

(b) The director releases the owner or operator from the requirements of this rule in accordance with



paragraph (I) of this rule.

(B) Surety bond guaranteeing payment into a trust fund.

(1) An owner or operator may satisfy the requirements of this rule by obtaining a surety bond which conforms to the requirements of this paragraph and submitting the bond to the director. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on federal bonds in "Circular 570" of the U.S. department of the treasury.

(2) The wording of the surety bond shall be identical to the wording specified in paragraph (B) of rule 3745-51-151 of the Administrative Code.

(3) The owner or operator who uses a surety bond to satisfy the requirements of this rule shall also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the director. This standby trust fund shall meet the requirements specified in paragraph (A) of this rule, except that:

(a) An originally signed duplicate of the trust agreement shall be submitted to the director with the surety bond; and

(b) Until the standby trust fund is funded pursuant to the requirements of this rule, the following are not required by these rules:

(i) Payments into the trust fund as specified in paragraph (A) of this rule;

(ii) Updating "Schedule A" of the trust agreement (see paragraph (A) of rule 3745-51-151 of the Administrative Code) to show current cost estimates;

(iii) Annual valuations as required by the trust agreement; and

(iv) Notices of nonpayment as required by the trust agreement.



(4) The bond shall guarantee that the owner or operator will:

(a) Fund the standby trust fund in an amount equal to the penal sum of the bond before loss of the exclusion under paragraph (A)(24) of rule 3745-51-04 of the Administrative Code; or

(b) Fund the standby trust fund in an amount equal to the penal sum within fifteen days after an administrative order to begin closure issued by the director becomes final, or within fifteen days after an order to begin closure is issued by a U.S. district court or other court of competent jurisdiction; or

(c) Provide alternate financial assurance as specified in this rule, and obtain the director's written approval of the assurance provided, within ninety days after receipt by both the owner or operator and the director of a notice of cancellation of the bond from the surety.

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

(6) The penal sum of the bond shall be in an amount at least equal to the current cost estimate, except as provided in paragraph (F) of this rule.

(7) Whenever the current cost estimate increases to an amount greater than the penal sum, the owner or operator, within sixty days after the increase, shall either cause the penal sum to be increased to an amount at least equal to the current cost estimate and submit evidence of such increase to the director, or obtain other financial assurance as specified in this rule to cover the increase. Whenever the current cost estimate decreases, the penal sum may be reduced to the amount of the current cost estimate after written approval by the director.

(8) Under the terms of the bond, the surety may cancel the bond by sending 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.

(9) The owner or operator may cancel the bond if the director has given prior written consent based on his receipt of evidence of alternate financial assurance as specified in this rule.



(C) Letter of credit.

(1) An owner or operator may satisfy the requirements of this rule by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph and submitting the letter to the director. The issuing institution shall be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(2) The wording of the letter of credit shall be identical to the wording specified in paragraph (C) of rule 3745-51-151 of the Administrative Code.

(3) An owner or operator who uses a letter of credit to satisfy the requirements of this rule shall also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the director will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the director. This standby trust fund shall meet the requirements of the trust fund specified in paragraph (A) of this rule, except that:

(a) An originally signed duplicate of the trust agreement shall be submitted to the director with the letter of credit; and

(b) Unless the standby trust fund is funded pursuant to the requirements of this rule, the following are not required by these rules:

(i) Payments into the trust fund as specified in paragraph (A) of this rule;

(ii) Updating of "Schedule A" of the trust agreement (see paragraph (A) of rule 3745-51-151 of the Administrative Code) to show current cost estimates;

(iii) Annual valuations as required by the trust agreement; and

(iv) Notices of nonpayment as required by the trust agreement.



(4) The letter of credit shall be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the U.S. EPA identification number (if any issued), name, and address of the facility, and the amount of funds assured for the facility by the letter of credit.

(5) The letter of credit shall be irrevocable and issued for a period of at least one year. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one year unless, at least one hundred twenty days before the current expiration date, the issuing institution notifies both the owner or operator and the director by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the one hundred twenty days will begin on the date when both the owner or operator and the director have received the notice, as evidenced by the return receipts.

(6) The letter of credit shall be issued in an amount at least equal to the current cost estimate, except as provided in paragraph (F) of this rule.

(7) Whenever the current cost estimate increases to an amount greater than the amount of the credit, the owner or operator, within sixty days after the increase, shall either cause the amount of the credit to be increased so that the amount of the credit at least equals the current cost estimate and submit evidence of such increase to the director, or obtain other financial assurance as specified in this rule to cover the increase. Whenever the current cost estimate decreases, the amount of the credit may be reduced to the amount of the current cost estimate after written approval by the director.

(8) Following a determination by the director that the hazardous secondary materials do not meet the conditions of the exclusion under paragraph (A)(24) of rule 3745-51-04 of the Administrative Code, the director may draw on the letter of credit.

(9) If the owner or operator does not establish alternate financial assurance as specified in this rule and obtain written approval of such alternate assurance from the director within ninety days after receipt by both the owner or operator and the director of a notice from the issuing institution that the issuing institution has decided not to extend the letter of credit beyond the current expiration date, the director will draw on the letter of credit. The director may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last thirty days of any such



extension the director will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this rule and obtain written approval of such assurance from the director.

(10) The director will return the letter of credit to the issuing institution for termination when:

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

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

(D) Insurance.

(1) An owner or operator may satisfy the requirements of this rule by obtaining insurance which conforms to the requirements of this paragraph and submitting a certificate of such insurance to the director. At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.

(2) The wording of the certificate of insurance shall be identical to the wording specified in paragraph (D) of rule 3745-51-151 of the Administrative Code.

(3) The insurance policy shall be issued for a face amount at least equal to the current cost estimate, except as provided in paragraph (F) of this rule. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(4) The insurance policy shall guarantee that funds will be available whenever needed to pay the cost of removal of all hazardous secondary materials from the unit, to pay the cost of decontamination of the unit, to pay the costs of the performance of activities required under rules 3745-55-10 to 3745-55-20 of the Administrative Code or rules 3745-66-10 to 3745-66-21 of the Administrative Code, as applicable, for the facilities covered by this policy. The policy also shall guarantee that once funds are needed, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the director, to such party or parties as the director



specifies.

(5) After beginning partial or final closure under Chapters 3745-54 to 3745-57 and 3745-205 of the Administrative Code or Chapters 3745-65 to 3745-69 and 3745-256 of the Administrative Code, as applicable, an owner or operator or any other authorized person may request reimbursements for closure expenditures by submitting itemized bills to the director. The owner or operator may request reimbursements only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over the facility's remaining operating life. Within sixty days after receiving bills for closure activities, the director will instruct the insurer to make reimbursements in such amounts as the director specifies in writing if the director determines that the expenditures are in accordance with the approved plan or otherwise justified. If the director has reason to believe that the maximum cost over the remaining life of the facility will be significantly greater than the face amount of the policy, the director may withhold reimbursement of such amounts as the director deems prudent until the director determines, in accordance with paragraph (H) of this rule, that the owner or operator is no longer required to maintain financial assurance for the particular facility. If the director does not instruct the insurer to make such reimbursements, the director will provide to the owner or operator a detailed written statement of reasons.

(6) The owner or operator shall maintain the policy in full force and effect until the director consents to termination of the policy by the owner or operator as specified in paragraph (I)(10) of this rule. Failure to pay the premium, without substitution of alternate financial assurance as specified in this rule, will constitute a significant violation of these rules warranting such remedy as the director deems necessary. Such violation will be deemed to begin upon receipt by the director of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

(7) Each policy shall contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

(8) The policy shall provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a





failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the director. Cancellation, termination, or failure to renew may not occur, however, during the one hundred twenty days beginning with the date of receipt of the notice by both the director and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:

- (a) The director deems the facility abandoned; or
  - (b) Conditional exclusion or interim status is lost, terminated, or revoked; or
  - (c) Closure is ordered by the director or a U.S. district court or other court of competent jurisdiction;  
or
  - (d) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or
  - (e) The premium due is paid.
- (9) Whenever the current cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within sixty days after the increase, shall either cause the face amount to be increased to an amount at least equal to the current cost estimate and submit evidence of such increase to the director, or obtain other financial assurance as specified in this rule to cover the increase. Whenever the current cost estimate decreases, the face amount may be reduced to the amount of the current cost estimate after written approval by the director.
- (10) The director will give written consent to the owner or operator that the owner or operator may terminate the insurance policy when:
- (a) An owner or operator substitutes alternate financial assurance as specified in this rule; or
  - (b) The director releases the owner or operator from the requirements of this rule in accordance with paragraph (I) of this rule.



(E) Financial test and corporate guarantee.

(1) An owner or operator may satisfy the requirements of this rule by demonstrating that the owner or operator passes a financial test as specified in this paragraph. To pass this test, the owner or operator shall meet the criteria of either paragraph (E)(1)(a) or (E)(1)(b) of this rule:

(a) The owner or operator shall have:

(i) Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

(ii) Net working capital and tangible net worth each at least six times the sum of the current cost estimates and the current plugging and abandonment cost estimates; and

(iii) Tangible net worth of at least ten million dollars; and

(iv) Assets located in the United States amounting to at least ninety per cent of total assets or at least six times the sum of the current cost estimates and the current plugging and abandonment cost estimates.

(b) The owner or operator shall have:

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

(ii) Tangible net worth at least six times the sum of the current cost estimates and the current plugging and abandonment cost estimates; and

(iii) Tangible net worth of at least ten million dollars; and

(iv) Assets located in the United States amounting to at least ninety per cent of total assets or at least



six times the sum of the current cost estimates and the current plugging and abandonment cost estimates.

(2) The phrase "current cost estimates" as used in paragraph (E)(1) of this rule refers to the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer [paragraph (E) of rule 3745-51-151 of the Administrative Code]. The phrase "current plugging and abandonment cost estimates" as used in paragraph (E)(1) of this rule refers to the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer [rules 3745-34-13 to 3745-34-15 of the Administrative Code].

(3) To demonstrate that the owner or operator meets this test, the owner or operator shall submit the following items to the director:

(a) A letter signed by the owner's or operator's chief financial officer and worded as specified in paragraph (E) of rule 3745-51-151 of the Administrative Code; and

(b) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(c) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies paragraph (E)(1)(a) of this rule that are different from the data in the audited financial statements referred to in paragraph (E)(3)(b) 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 the comparison, and the reasons for any differences.

(4) The owner or operator may obtain an extension of the time allowed for submittal of the documents specified in paragraph (E)(3) of this rule if the fiscal year of the owner or operator ends during the ninety days prior to the first effective date of this rule and if the year-end financial



statements for that fiscal year will be audited by an independent certified public accountant. The extension will end no later than ninety days after the end of the owner's or operator's fiscal year. To obtain the extension, the owner's or operator's chief financial officer shall send, by the first effective date of this rule, a letter to the director of each U.S. EPA region in which the owner's or operator's facilities to be covered by the financial test are located. This letter from the chief financial officer shall:

- (a) Request the extension;
  - (b) Certify that the chief financial officer has grounds to believe that the owner or operator meets the criteria of the financial test;
  - (c) Specify for each facility to be covered by the test the U.S. EPA identification number (if any issued), name, address, and current cost estimates to be covered by the test;
  - (d) Specify the date ending the owner's or operator's last complete fiscal year before the first effective date of this rule in rules 3745-51-140 to 3745-51-151 of the Administrative Code;
  - (e) Specify the date, no later than ninety days after the end of such fiscal year, when the owner or operator will submit the documents specified in paragraph (E)(3) of this rule; and
  - (f) Certify that the year-end financial statements of the owner or operator for such fiscal year will be audited by an independent certified public accountant.
- (5) After the initial submittal of items specified in paragraph (E)(3) of this rule, the owner or operator shall send updated information to the director within ninety days after the close of each succeeding fiscal year. This information shall consist of all three items specified in paragraph (E)(3) of this rule.
- (6) If the owner or operator no longer meets the requirements of paragraph (E)(1) of this rule, the owner or operator shall send notice to the director of intent to establish alternate financial assurance as specified in this rule. The notice shall be sent by certified mail within ninety days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets



the requirements. The owner or operator shall provide the alternate financial assurance within one hundred twenty days after the end of such fiscal year.

(7) The director may, based on a reasonable belief that the owner or operator may no longer meet the requirements of paragraph (E)(1) of this rule, require reports of financial condition at any time from the owner or operator in addition to those specified in paragraph (E)(3) of this rule. If the director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of paragraph (E)(1) of this rule, the owner or operator shall provide alternate financial assurance as specified in this rule within thirty days after notification of such a finding.

(8) The director may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements [see paragraph (E)(3)(b) of this rule]. An adverse opinion or a disclaimer of opinion will be cause for disallowance. The director will evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in this rule within thirty days after notification of the disallowance.

(9) The owner or operator is no longer required to submit the items specified in paragraph (E)(3) of this rule when:

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

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

(10) 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 paragraphs (E)(1) to (E)(8) of this rule and shall comply with the terms of the guarantee. The wording of the guarantee shall be identical to the wording specified in paragraph (G)(1) of rule 3745-51-151 of the Administrative Code. A certified copy of the guarantee shall accompany the items sent to the director as specified in paragraph (E)(3) 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, this letter shall describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee shall provide that:

(a) Following a determination by the director that the hazardous secondary materials at the owner or operator's facility covered by this guarantee do not meet the conditions of the exclusion under paragraph (A)(24) of rule 3745-51-04 of the Administrative Code, the guarantor will dispose of any hazardous secondary material as hazardous waste and close the facility in accordance with closure requirements in Chapters 3745-54 to 3745-57 and 3745-205 of the Administrative Code or Chapters 3745-65 to 3745-69 and 3745-256 of the Administrative Code, as applicable, or establish a trust fund as specified in paragraph (A) of this rule in the name of the owner or operator in the amount of the current cost estimate.

(b) The corporate guarantee will remain in force unless the guarantor sends 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 the owner or operator fails to provide alternate financial assurance as specified in this rule and obtain the written approval of such alternate assurance from the director within ninety days after receipt by both the owner or operator and the director of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternate financial assurance in the name of the owner or operator.

(F) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this rule by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds, letters of credit, and insurance. The mechanisms shall be as specified in paragraphs (A) to (D) of this rule, respectively, of this rule, except that it is the combination of mechanisms, rather than the single mechanism, which shall provide financial assurance for an amount at least equal to the current cost estimate. If an owner or operator uses a trust fund in



combination with a surety bond or a letter of credit, he the owner or operator may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The director may use any or all of the mechanisms to provide for the facility.

(G) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in this rule to meet the requirements of this rule for more than one facility. Evidence of financial assurance submitted to the director shall include a list showing, for each facility, the U.S. EPA identification number (if any issued), name, address, and the amount of funds assured by the mechanism. If the facilities covered by the mechanism are in more than one U.S. EPA region, identical evidence of financial assurance shall be submitted to and maintained with the directors of all such regions. The amount of funds available through the mechanism shall be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for any of the facilities covered by the mechanism, the director may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

(H) Removal and decontamination plan for release

(1) An owner or operator of a reclamation facility or an intermediate facility who wishes to be released from his financial assurance obligations under paragraph (A)(24)(f)(vi) of rule 3745-51-04 of the Administrative Code shall submit a plan for removing all hazardous secondary material residues to the director at least one hundred eighty days prior to the date on which he the owner or operator expects to cease to operate under the exclusion.

(2) The plan shall include, at least:

(a) For each hazardous secondary materials storage unit subject to financial assurance requirements under paragraph (A)(24)(f)(vi) of rule 3745-51-04 of the Administrative Code, a description of how all excluded hazardous secondary materials will be recycled or sent for recycling, and how all residues, contaminated containment systems (liners, etc.), contaminated soils, subsoils, structures, and equipment will be removed or decontaminated as necessary to protect human health and the



environment, and

(b) A detailed description of the steps necessary to remove or decontaminate all hazardous secondary material residues and contaminated containment system components, equipment, structures, and soils including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination necessary to protect human health and the environment; and

(c) A detailed description of any other activities necessary to protect human health and the environment during this timeframe, including, but not limited to, leachate collection, run-on and run-off control, etc.; and

(d) A schedule for conducting the activities described which, at a minimum, includes the total time required to remove all excluded hazardous secondary materials for recycling and decontaminate all units subject to financial assurance under paragraph (A)(24)(f)(vi) of rule 3745-51-04 of the Administrative Code and the time required for intervening activities which will allow tracking of the progress of decontamination.

(3) The director will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the plan and request modifications to the plan no later than thirty days from the date of the notice. The director, in response to a request or at the director's discretion, also shall hold a public hearing whenever such a hearing might clarify one or more issues concerning the plan. The director will give public notice of the public hearing at least thirty days before the public hearing occurs. (Public notice of the public hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The director will approve, modify, or disapprove the plan within ninety days of receipt of the plan. If the director does not approve the plan, the director shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator shall modify the plan or submit a new plan for approval within thirty days after receiving such written statement. The director will approve or modify this plan in writing within sixty days. If the director modifies the plan, this modified plan becomes the approved plan. The director shall assure that the approved plan is consistent with paragraph (H) of this rule. A copy of the modified plan with a detailed statement of reasons for the modifications shall be mailed to the owner or operator.





(4) Within sixty days after completion of the activities described for each hazardous secondary materials management unit, the owner or operator shall submit to the director, by registered mail, a certification that all hazardous secondary materials have been removed from the unit and the unit has been decontaminated in accordance with the specifications in the approved plan. The certification shall be signed by the owner or operator and by a qualified professional engineer. Documentation supporting the professional engineer's certification shall be furnished to the director, upon request, until the director releases the owner or operator from the financial assurance requirements for paragraph (A)(24)(f)(vi) of rule 3745-51-04 of the Administrative Code.

(I) Release of the owner or operator from the requirements of this rule. Within sixty days after receiving certifications from the owner or operator and a qualified professional engineer that all hazardous secondary materials have been removed from the facility or a unit at the facility and the facility or a unit has been decontaminated in accordance with the approved plan per paragraph (H) of this rule, the director will notify the owner or operator in writing that the owner or operator is no longer required under paragraph (A)(24)(f)(vi) of rule 3745-51-04 of the Administrative Code to maintain financial assurance for that facility or a unit at the facility, unless the director has reason to believe that all hazardous secondary materials have not been removed from the facility or unit at a facility or that the facility or unit has not been decontaminated in accordance with the approved plan. The director shall provide the owner or operator a detailed written statement of any such reason to believe that all hazardous secondary materials have not been removed from the unit or that the unit has not been decontaminated in accordance with the approved 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."]