

**Bold** = new language

~~Strikeout~~ = existing language deleted in this rulemaking

**Bold and single underline** = new language added since preliminary adoption

~~Strikeout and single underline~~ = existing language deleted since preliminary adoption

## **TITLE 329 SOLID WASTE MANAGEMENT DIVISION**

### **PROPOSED RULE AS PRELIMINARILY ADOPTED WITH IDEM'S SUGGESTED CHANGES INCORPORATED**

LSA Document #14-287

#### **DIGEST**

Amends 329 IAC 3.1-14-4, 329 IAC 3.1-14-5, 329 IAC 3.1-14-6, 329 IAC 3.1-14-7, 329 IAC 3.1-14-8, 329 IAC 3.1-14-9, 329 IAC 3.1-14-10, 329 IAC 3.1-14-11, 329 IAC 3.1-14-12, 329 IAC 3.1-14-16, 329 IAC 3.1-14-19, 329 IAC 3.1-14-23, 329 IAC 3.1-14-26, 329 IAC 3.1-14-27, 329 IAC 3.1-14-28, 329 IAC 3.1-14-30, 329 IAC 3.1-14-31, 329 IAC 3.1-14-32, 329 IAC 3.1-14-33, 329 IAC 3.1-14-35, 329 IAC 3.1-15-4, 329 IAC 3.1-15-6, 329 IAC 3.1-15-7, and 329 IAC 3.1-15-10 concerning requirements for financial assurance at hazardous waste facilities. Repeals 329 IAC 3.1-4-10. Effective 30 days after filing with the Publisher.

#### **HISTORY**

First Notice of Comment Period: July 23, 2014, Indiana Register (DIN: 20140723-IR-329140287FNA).

Second Notice of Comment Period: February 12, 2020, Indiana Register (DIN: 20200212-IR-329140287SNA).

Notice of First Hearing: February 12, 2020, Indiana Register (DIN: 20200212-IR-329140287PHA).

Change in Notice of Public Hearing: October 7, 2020, Indiana Register (DIN: 20201007-IR-329140287CHA).

Date of First Hearing: November 18, 2020.

Proposed Rule and Third Comment Period: December 9, 2020, Indiana Register (DIN: 20201209-IR-329140287PRA).

Notice of Second Hearing: December 9, 2020, Indiana Register (DIN: 20201209-IR-329140287PHA).

Date of Second Hearing: February 10, 2021.

**329 IAC 3.1-4-10; 329 IAC 3.1-14-4; 329 IAC 3.1-14-5; 329 IAC 3.1-14-6; 329 IAC 3.1-14-7; 329 IAC 3.1-14-8; 329 IAC 3.1-14-9; 329 IAC 3.1-14-10; 329 IAC 3.1-14-11; 329 IAC 3.1-14-12; 329 IAC 3.1-14-16; 329 IAC 3.1-14-19; 329 IAC 3.1-14-23; 329 IAC 3.1-14-26; 329 IAC 3.1-14-27; 329 IAC 3.1-14-28; 329 IAC 3.1-14-30; 329 IAC 3.1-14-31; 329 IAC 3.1-14-32; 329 IAC 3.1-14-33; 329 IAC 3.1-14-35; 329 IAC 3.1-15-4; 329 IAC 3.1-15-6; 329 IAC 3.1-15-7; 329 IAC 3.1-15-10**

SECTION 1. 329 IAC 3.1-14-4 IS AMENDED TO READ AS FOLLOWS:

**329 IAC 3.1-14-4 Financial assurance for closure and corrective action; approach options**

**Authority:** IC 13-14-8; IC 13-22-2; IC 13-22-8-1; IC 13-22-9-7

**Affected:** IC 13-22

Sec. 4. An owner or operator of each facility shall establish financial assurance for closure **or corrective action, or both**, of the facility, ~~As~~ **in accordance with the following:**

(1) The owner or operator shall choose from the **financial assurance** options as specified in sections 5 through 9 of this rule **to establish financial assurance for corrective action.**

(2) The owner or operator shall establish financial assurance for closure of a facility that is subject to this rule.

(3) The owner or operator shall establish financial assurance for corrective action of a facility that meets the following criteria:

(A) The facility is subject to corrective action under 42 U.S.C. 6928(h) or IC 13-22-13.

(B) The commissioner requires the establishment of financial assurance for corrective action, based on one (1) or more of the following:

(i) After the implementation of interim measures for corrective action, the owner or operator has not attained the cleanup goal.

(ii) Corrective action requires a long-term remedy that may include engineering controls as a component of an environmental restrictive covenant.

(iii) An order requires financial assurance for corrective action.

*(Solid Waste Management Division; 329 IAC 3.1-14-4; filed Jan 24, 1992, 2:00 p.m.: 15 IR 948; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1973; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

SECTION 2. 329 IAC 3.1-14-5 IS AMENDED TO READ AS FOLLOWS:

**329 IAC 3.1-14-5 Corrective action or closure trust fund option**

**Authority:** IC 13-14-8; IC 13-22-2; IC 13-22-8-1; IC 13-22-9-7

**Affected:** IC 13-22

Sec. 5. (a) An owner or operator may satisfy the requirements of section 4 of this rule by establishing a **corrective action** or closure trust fund that conforms to the requirements of this section and submitting an originally signed duplicate of the trust agreement to the commissioner. The trustee ~~shall~~ **must** be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(b) The wording of the trust agreement must be identical to the wording specified in section 26(a) of this rule, and the trust agreement must be accompanied by a formal certification of ~~acknowledgement for example, see~~ **acknowledgment in accordance with** section ~~26(a)~~ **26(b)** of this rule. Schedule A of the trust agreement must be updated within sixty (60) days after a change in the amount of the current **corrective action** or closure cost estimate covered by the agreement.

**(c) For corrective action financial assurance, the owner or operator shall deposit the full amount of the current corrective action cost estimate into the trust fund at the time a trust fund for corrective action financial assurance is established.**

~~(e)~~ **(d) For closure financial assurance**, payments into the trust fund must be made annually by the owner or operator over the twenty (20) years beginning with July 1, 1982, or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereinafter referred to as the pay-in-period. The payments in the closure trust fund must be made as follows:

- (1) The first payment must be made by July 1, 1982, except as provided in subsection ~~(e)~~.
- (f)**. The first payment must be at least equal to the current closure cost estimate, except as provided in section 10 of this rule, divided by the number of years in the pay-in-period.
- (2) Subsequent payments must be made no later than thirty (30) days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by the following formula:

$$\text{Next payment} = \frac{\text{CE} - \text{CV}}{\text{Y}}$$

Where:

CE	=	The current closure cost estimate.
CV	=	The current value of the trust fund.
Y	=	The number of years remaining in the pay-in-period.

~~(d)~~ **(e)** The owner or operator may accelerate payments into the trust fund or the owner or operator may deposit the full amount of the current closure cost estimate at the time the fund is established. ~~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~~ **accordance with** subsection ~~(e)~~. **(d)**.

~~(e)~~ **(f)** If the owner or operator establishes a closure trust fund after having used one (1) or more alternate mechanisms specified in this section and sections 6 through 9 of this rule, the first payment must be in at least the amount that the fund would contain if the trust fund was established initially and annual payments made ~~as specified in~~ **accordance with** subsection ~~(e)~~. **(d)**.

~~(f)~~ **(g)** After the pay-in-period is completed **or the trust fund is fully funded**, whenever the current **corrective action or** closure 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 fund is less than the amount of the new estimate, the owner or operator, within sixty (60) days after the change in the cost estimate, shall either:

- (1) deposit an amount into the fund so that its value after this deposit at least equals the amount of the current **corrective action or** closure cost estimate; or
- (2) obtain other financial assurance ~~as specified in~~ **accordance with** this section and sections 6 through 9 of this rule to cover the difference.

~~(g)~~ **(h)** If the value of the trust fund is greater than the total amount of the current

**corrective action or** closure cost estimate, the owner or operator may submit a written request to the commissioner for release of the amount in excess of the current **corrective action or** closure cost estimate.

~~(h)~~ **(i)** If an owner or operator substitutes other financial assurance ~~as specified in~~ **accordance with** this section and sections 6 through 9 of this rule for all or part of the trust fund, the owner or operator may submit a written request to the commissioner for release of the amount in excess of the current **corrective action or** closure cost estimate covered by the trust fund.

~~(i)~~ **(j)** Within sixty (60) days after receiving a request from the owner or operator for release of funds ~~as specified in~~ **accordance with** subsection ~~(g) or (h)~~ **or (i)**, the commissioner shall instruct the trustee to release to the owner or operator ~~such~~ **the** funds ~~as~~ the commissioner specifies in writing.

~~(j)~~ **(k)** After beginning **corrective action**, partial **closure**, or final closure, an owner or operator or another person authorized to conduct **corrective action**, partial **closure**, or final closure may request reimbursement for **corrective action**, partial **closure**, or final closure expenditures by submitting itemized bills to the commissioner. The owner or operator may request reimbursement for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. No later than sixty (60) days after receiving bills for **corrective action**, partial **closure**, or final closure activities, the commissioner shall instruct the trustee to make reimbursements in ~~those~~ **the** amounts ~~as~~ the commissioner specifies in writing if the commissioner determines that the **corrective action**, partial **closure**, or final closure expenditures are in accordance with the approved **corrective action or** closure plan or otherwise justified. If the commissioner has reason to believe that the maximum cost of **corrective action or** closure over the remaining life of the facility will be significantly greater than the value of the trust fund, the commissioner may withhold reimbursements of ~~such~~ **the** amounts ~~as~~ the commissioner deems prudent until it is determined, in accordance with section 12 of this rule, that the owner or operator is no longer required to maintain financial assurance for **corrective action or** final closure of the facility. If the commissioner does not instruct the trustee to make ~~such~~ reimbursements, the commissioner shall provide to the owner or operator a detailed written statement of reasons.

~~(k)~~ **(l)** The commissioner shall agree to termination of the trust when:

(1) the owner or operator substitutes alternate financial assurance ~~as specified in~~ **accordance with** section 4 of this rule, this section, and sections 6 through 11 of this rule; or

(2) the commissioner releases the owner or operator from the requirements of section 4 of this rule, this section, and sections 6 through 11 of this rule in accordance with section 12 of this rule.

*(Solid Waste Management Division; 329 IAC 3.1-14-5; filed Jan 24, 1992, 2:00 p.m.: 15 IR 948; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1973; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

SECTION 3. 329 IAC 3.1-14-6 IS AMENDED TO READ AS FOLLOWS:

**329 IAC 3.1-14-6 Surety bond guaranteeing payment into a corrective action or closure trust fund option**

**Authority: IC 13-14-8; IC 13-22-2; IC 13-22-8-1; IC 13-22-9-7**

**Affected: IC 13-22**

Sec. 6. (a) An owner or operator may satisfy the requirements of this rule by:

- (1) obtaining a surety bond that conforms to the requirements of this section; and
- (2) submitting the bond to the commissioner.

The surety company issuing the bond must, at a minimum, be authorized to do business in Indiana and be among those listed as acceptable sureties on federal bonds in Circular 570\* of the U.S. Department of the Treasury.

(b) The wording of the surety bond must be identical to the wording specified in:

- (1) section 27 of this rule; **or**
- (2) **if required, the corrective action order or permit.**

(c) The owner or operator who uses a surety bond to satisfy the requirements of sections 4 through 5 of this rule, this section, and sections 7 through 11 of this rule also shall establish a standby trust fund. Under the terms of the bond, all payments ~~made thereunder~~ must be deposited by the surety directly into the standby trust fund in accordance with instructions from the commissioner. ~~This~~ **The** standby trust fund must meet the requirements specified in section 5 of this rule except the following:

- (1) An originally signed duplicate of the trust agreement must be submitted to the commissioner with the surety bond.
- (2) Until the standby trust fund is funded ~~pursuant to~~ **in accordance with** the requirements of sections 4 through 5 of this rule, this section, and sections 7 through 11 of this rule, the following are not required by sections 4 through 5 of this rule, this section, and sections 7 through 11 of this rule:
  - (A) Payments into the trust fund ~~as specified~~ **in accordance with** section 5 of this rule.
  - (B) Updating of Schedule A of the trust agreement (~~see required in~~ **section 26 of this rule to reflect current corrective action or** closure cost estimates.
  - (C) Annual valuations as required by the trust agreement.
  - (D) Notices of nonpayment as required by the trust agreement.

(d) The bond must guarantee that the owner or operator shall complete ~~one (1) of the~~ following, **as applicable**:

- (1) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of **corrective action or** final closure of the facility.
- (2) Fund the standby trust fund in an amount equal to the penal sum within fifteen (15) days after an:
  - (A) administrative order to begin **corrective action or** final closure, issued by the commissioner, becomes final; or ~~within fifteen (15) days after an~~
  - (B) order to begin **corrective action or** final closure is issued by a United States

district court or other court of competent jurisdiction.

(3) Provide alternate financial assurance ~~as specified~~ in **accordance with** section 5 of this rule, this section, and sections 7 through 9 of this rule and obtain the commissioner's written approval of the assurance provided within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice of cancellation of the bond from the surety.

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

(f) The penal sum of the bond must be in an amount at least equal to the current **corrective action or** closure cost estimate except as provided in section 10 of this rule.

(g) Whenever the current **corrective action or** closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within sixty (60) days after the increase, shall either:

(1) cause the penal sum to be increased to an amount at least equal to the current **corrective action or** closure cost estimate and submit evidence of such increase to the commissioner; or

(2) obtain other financial assurance ~~as specified~~ in **accordance with** section 5 of this rule, this section, and sections 7 through 9 of this rule to cover the increase.

Whenever the current **corrective action or** closure cost estimate decreases, the penal sum may be reduced to the amount of the current **corrective action or** closure cost estimate following written approval by the commissioner.

(h) 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 commissioner. 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 commissioner as evidenced by the return receipts.

(i) The owner or operator may cancel the bond if the commissioner has given prior written consent based on the receipt by the commissioner of evidence of alternate financial assurance ~~as specified~~ in **accordance with** section 5 of this rule, this section, and sections 7 through 9 of this rule.

**\*This document is available for viewing at <https://www.fiscal.treasury.gov/surety-bonds/circular-570.html> and may be obtained from the United States Department of the Treasury, Bureau of the Fiscal Service, Surety Bond Program, 3700 East West Highway, Room 6D22, Hyattsville, MD 20782. (Solid Waste Management Division; 329 IAC 3.1-14-6; filed Jan 24, 1992, 2:00 p.m.: 15 IR 949; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1974; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2436)**

SECTION 4. 329 IAC 3.1-14-7 IS AMENDED TO READ AS FOLLOWS:

**329 IAC 3.1-14-7 Corrective action or closure letter-of-credit option**

**Authority:** IC 13-14-8; IC 13-22-2; IC 13-22-8-1; IC 13-22-9-7

**Affected:** IC 13-22; IC 13-30-3

Sec. 7. (a) An owner or operator may satisfy the requirements of sections 4 through 6 of this rule, this section, and sections 8 through 11 of this rule by obtaining an irrevocable standby letter-of-credit that conforms to the requirements of this section and submitting the letter to the commissioner. The issuing institution must be an entity that has the authority to issue letters-of-credit and whose letters-of-credit operations are regulated and examined by a federal or state agency.

(b) The wording of the letter-of-credit must be identical to the wording specified in section 29 of this rule.

(c) An owner or operator who uses a letter-of-credit to satisfy the requirements of sections 4 through 6 of this rule, this section, and sections 8 through 11 of this rule ~~also~~ shall establish a standby trust fund. Under the terms of the letter-of-credit, all amounts paid ~~pursuant to~~ **in accordance with** a draft by the commissioner must be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the commissioner. ~~This~~ **The** standby trust fund must meet the requirements of the trust fund specified in section 5 of this rule except **for** the following:

(1) An originally signed duplicate of the trust agreement must be submitted to the commissioner with the letter-of-credit.

(2) Unless the standby trust fund is funded ~~pursuant to~~ **in accordance with** the requirements of sections 4 through 6 of this rule, this section, and sections 8 through 11 of this rule, the following are not required by sections 4 through 6 of this rule, this section, and sections 8 through 11 of this rule:

(A) Payments into the trust fund ~~as specified in~~ **in accordance with** section 5 of this rule.

(B) Updating of Schedule A of the trust agreement (~~see in~~ section 26 of this rule to reflect current **corrective action or** closure cost estimates.

(C) Annual valuations as required by the trust agreement.

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

(d) The letter-of-credit must be accompanied by a letter from the owner or operator referring to the letter-of-credit by number, issuing institution, and date and provide the following information:

(1) The ~~EPA~~ **United States Environmental Protection Agency (U.S. EPA)** identification number, name, and address of the facility.

(2) The amount of funds assured for **corrective action or** closure of the facility by the letter-of-credit.

(e) The letter-of-credit must be irrevocable and issued for a period of at least one (1) year. The letter-of-credit must provide that the expiration date will be automatically extended for a period of at least one (1) year unless, at least one hundred twenty (120) days before the current

expiration date, the issuing institution notifies both the owner or operator and the commissioner by certified mail of a decision not to extend the expiration date. Under the terms of the letter-of-credit, the one hundred twenty (120) days will begin on the date when both the owner or operator and the commissioner have received the notice as evidenced by the return receipts.

(f) The letter-of-credit must be issued in an amount at least equal to the current **corrective action or** closure cost estimate except as provided in section 10 of this rule.

(g) Whenever the current **corrective action or** closure cost estimate increases to an amount greater than the amount of the credit, the owner or operator, within sixty (60) days after the increase, shall either:

(1) cause the amount of the credit to be increased so that it at least equals the current **corrective action or** closure cost estimate and submit evidence of ~~such~~ **the** increase to the commissioner; or

(2) obtain other financial assurance ~~as specified in~~ **accordance with** sections 4 through 6 of this rule, this section, and sections 8 through 11 of this rule to cover the increase.

Whenever the current **corrective action or** closure cost estimate decreases, the amount of the credit may be reduced to the amount of the current closure cost estimate following written approval by the commissioner.

(h) Following a final administrative determination under IC 13-30-3 or ~~Section 3008 of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, as amended, 42 U.S.C. Section 6901, et seq.~~ that the owner or operator has failed to perform **corrective action or** final closure in accordance with the approved **corrective action or** closure plan when required to do so, the commissioner may draw on the letter-of-credit.

(i) If the owner or operator does not establish alternate financial assurance ~~as specified in~~ **accordance with** sections 5 through 6 of this rule, this section, and sections 8 through 9 of this rule and obtain written approval of ~~such~~ **the** alternate assurance from the commissioner within ninety (90) days after receipt by both the owner or operator and the commissioner 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 commissioner shall draw on the letter-of-credit. The commissioner may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last thirty (30) days of ~~any such~~ **an** extension, the commissioner shall draw on the letter-of-credit if the owner or operator has failed to provide alternate financial assurance ~~as specified in~~ **accordance with** sections 5 through 6 of this rule, this section, and sections 8 through 9 of this rule and obtain written approval of ~~such~~ **the** assurance from the commissioner.

(j) The commissioner shall return the letter-of-credit to the issuing institution for termination when:

(1) the owner or operator substitutes alternate financial assurance ~~as specified in~~ **accordance with** sections 5 through 6 of this rule, this section, and sections 8 through 9 of this rule; or



(2) the commissioner releases the owner or operator from the requirements of sections 4 through 6 of this rule, this section, and sections 8 through 11 of this rule in accordance with section 12 of this rule.

*(Solid Waste Management Division; 329 IAC 3.1-14-7; filed Jan 24, 1992, 2:00 p.m.: 15 IR 950; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1975; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

SECTION 5. 329 IAC 3.1-14-8 IS AMENDED TO READ AS FOLLOWS:

**329 IAC 3.1-14-8 Corrective action or closure insurance option**

**Authority: IC 13-14-8; IC 13-22-2; IC 13-22-8-1; IC 13-22-9-7**

**Affected: IC 13-22**

Sec. 8. (a) An owner or operator may satisfy the requirements of sections 4 through 7 of this rule, this section, and sections 9 through 11 of this rule by obtaining **corrective action or** closure insurance that conforms to the requirements of this section and submitting a certificate of ~~such the~~ insurance to the commissioner. The owner or operator shall submit the certificate of insurance to the commissioner or establish other financial assurance ~~as specified in accordance~~ **with** sections 5 through 7 of this rule, this section, and section 9 of this rule. At a minimum, the insurer ~~shall~~ **must** be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one (1) or more states.

(b) The wording of the certificate of insurance must be identical to the wording specified in section 30 of this rule.

(c) The **corrective action or** closure insurance policy must be issued for a face amount at least equal to the current **corrective action or** closure cost estimate except as provided in section 10 of this rule. As used in this section, "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.

(d) The **corrective action or** closure insurance policy must guarantee that funds will be available to **perform corrective action or** close the facility whenever **corrective action or** final closure occurs. The policy ~~also~~ must guarantee that once **corrective action or** final closure begins, the insurer ~~shall be~~ **is** responsible for paying out funds up to an amount equal to the face amount of the policy, upon the direction of the commissioner, to ~~such the~~ party or parties as the commissioner specifies.

(e) After beginning **corrective action**, partial **closure**, or final closure, an owner or operator or any other person authorized to conduct **corrective action or** closure may request reimbursements for **corrective action or** closure expenditures by submitting itemized bills to the commissioner. The owner or operator may request reimbursements for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within sixty (60) days after receiving bills for **corrective action or** closure activities, the commissioner shall instruct the insurer to make reimbursements

in ~~such~~ amounts as the commissioner specifies in writing if the commissioner determines that the **corrective action**, partial **closure**, or final closure expenditures are in accordance with the approved **corrective action or** closure plan or otherwise justified. If the commissioner has reason to believe that the maximum cost of **corrective action or** closure over the remaining life of the facility will be significantly greater than the face amount of the policy, the commissioner may withhold reimbursement of ~~such~~ amounts as the commissioner deems prudent until it is determined, in accordance with section 12 of this rule, that the owner or operator is no longer required to maintain financial assurance for **corrective action or** final closure of the particular facility. If the commissioner does not instruct the insurer to make ~~such~~ reimbursements, the commissioner shall provide to the owner or operator a detailed written statement of reasons.

(f) The owner or operator shall maintain the policy in full force and effect until the commissioner consents to termination of the policy by the owner or operator ~~as specified in~~ **accordance with** subsection (j). Failure to pay the premium, without substitution of alternate financial assurance ~~as specified in~~ **accordance with** sections 5 through 7 of this rule, this section, and section 9 of this rule, constitutes a ~~major~~ violation of this rule warranting ~~such a~~ remedy as the commissioner deems necessary and is authorized to make. ~~Such~~ **The** violation is deemed to begin upon receipt by the commissioner of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium rather than upon the date of expiration.

(g) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. ~~Such~~ **The** assignment may be conditional upon consent of the insurer provided ~~such~~ consent is not unreasonably refused.

(h) The policy must 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 must, 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 commissioner. Cancellation, termination, or failure to renew may not occur ~~however~~, during the one hundred twenty (120) days beginning with the date of receipt of the notice by both the commissioner and the owner or operator as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy must remain in full force and effect in the event that on or before the date of expiration:

- (1) the commissioner deems the facility abandoned;
- (2) interim status is terminated or revoked;
- (3) **corrective action or** closure is ordered by the commissioner, ~~the Environmental Protection Agency (EPA), U.S. EPA,~~ or court of competent jurisdiction;
- (4) the owner or operator is named as debtor in a voluntary or involuntary bankruptcy proceeding under 11 U.S.C. 101 et seq.; ~~October 1, 1979;~~ or
- (5) the premium due is paid.

(i) Whenever the current **corrective action or** closure cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within sixty (60) days

after the increase, shall either:

- (1) cause the face amount to be increased to an amount at least equal to the current **corrective action or** closure cost estimate and submit evidence of such ~~the~~ increase to the commissioner; or
- (2) obtain other financial assurance ~~as specified in~~ **accordance with** sections 4 through 7 of this rule, this section, and sections 9 through 11 of this rule to cover the increase.

Whenever the current **corrective action or** closure cost estimate decreases, the face amount may be reduced to the amount of the current **corrective action or** closure cost estimate following written approval by the commissioner.

(j) The commissioner shall give written consent to the owner or operator that the owner or operator may terminate the insurance policy when:

- (1) the owner or operator substitutes alternate financial assurance ~~as specified in~~ **accordance with** sections 5 through 7 of this rule, this section, and section 9 of this rule; or
- (2) the commissioner releases the owner or operator from the requirements of sections 4 through 7 of this rule, this section, and sections 9 through 11 of this rule in accordance with section 12 of this rule.

*(Solid Waste Management Division; 329 IAC 3.1-14-8; filed Jan 24, 1992, 2:00 p.m.: 15 IR 951; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1976; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

SECTION 6. 329 IAC 3.1-14-9 IS AMENDED TO READ AS FOLLOWS:

**329 IAC 3.1-14-9 Financial test and guarantee for corrective action or closure option**

**Authority: IC 13-14-8; IC 13-22-2; IC 13-22-8-1; IC 13-22-9-7**

**Affected: IC 13-22**

Sec. 9. (a) An owner or operator may satisfy the requirements of sections 4 through 8 of this rule, this section, and sections 10 through 11 of this rule by demonstrating that the owner or operator passes a financial test ~~as specified in~~ **accordance with** this section. To pass ~~this the~~ **financial** test, the owner or operator shall meet the criteria of either subdivision (1) or (2) as follows:

- (1) The owner or operator shall have the following:
  - (A) Two (2) of the following three (3) ratios:
    - (i) A ratio of total liabilities to net worth less than two (2.0).
    - (ii) A ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than one-tenth (0.1).
    - (iii) A ratio of current assets to current liabilities greater than one and five-tenths (1.5).
  - (B) Net working capital and tangible net worth each at least six (6) times the sum of the current **corrective action**, closure, and post-closure cost estimates.
  - (C) Tangible net worth of at least ten million dollars (\$10,000,000).
  - (D) Assets located in the United States amounting to at least:
    - (i) ninety percent (90%) of total assets; or
    - (ii) six (6) times the sum of the current **corrective action**, closure, and

post-closure cost estimates.

- (2) The owner or operator shall have the following:
- (A) A current rating for the most recent bond issuance of:
    - (i) AAA, AA, A, or BBB as issued by Standard and Poor's; or
    - (ii) Aaa, Aa, A, or Baa as issued by Moody's.
  - (B) Tangible net worth at least six (6) times the sum of the current **corrective action**, closure, and post-closure cost estimates.
  - (C) Tangible net worth of at least ten million dollars (\$10,000,000).
  - (D) Assets located in the United States amounting to at least:
    - (i) ninety percent (90%) of total assets; or
    - (ii) six (6) times the sum of the current **corrective action**, closure, and post-closure cost estimates.

(b) As used in subsection (a), "current **corrective action**, closure, and post-closure cost estimates" refers to the cost estimates required to be shown in ~~section 31 of this rule~~ of the letter from the owner's or operator's chief financial officer **in accordance with section 31 of this rule**.

(c) To demonstrate that the owner or operator meets ~~this~~ **the financial** test, the owner or operator shall submit the following items to the commissioner:

- (1) A letter signed by the owner's or operator's chief financial officer and worded as specified in section 31 of this rule.
- (2) 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.
- (3) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating the following:
  - (A) The independent certified public accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in ~~such~~ **the** financial statements.
  - (B) In ~~connection with that procedure~~, **the comparison in clause (A)**, no matters came to the attention of the independent certified public accountant that caused the independent certified public accountant to believe that the specified data should be adjusted.

(d) After the initial submission of items specified in subsection (c), the owner or operator shall send updated information to the commissioner within ninety (90) days after the close of each succeeding fiscal year. This information must consist of all three (3) items specified in subsection (c).

(e) If the owner or operator no longer meets the requirements of subsection (a), the owner or operator shall send notice to the commissioner of intent to establish alternate financial assurance ~~as specified in~~ **in accordance with** sections 4 through 8 of this rule, this section, and sections 10 through 11 of this rule. The notice must be sent by certified mail within ninety (90) days after the end of the fiscal year for which the year-end financial data reflects that the owner or operator no longer meets the requirements. The owner or operator shall provide the alternate

financial assurance within one hundred twenty (120) days after the end of ~~such~~ **the** fiscal year.

(f) The commissioner may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subsection (a), require reports of financial condition at any time from the owner or operator in addition to those specified in subsection (c). If the commissioner finds, on the basis of ~~such~~ **the** reports or other information, that the owner or operator no longer meets the requirements of subsection (a), the owner or operator shall provide alternate financial assurance ~~as specified in~~ **accordance with** sections 5 through 8 of this rule and this section within thirty (30) days after notification of ~~such a~~ **the** finding.

(g) The commissioner may disallow use of ~~this~~ **the financial** test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the report on examination of the owner's or operator's financial statements (~~See required in~~ subsection (c)(2)). An adverse opinion or a disclaimer of opinion is cause for disallowance. The commissioner shall evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance ~~as specified in~~ **accordance with** sections 4 through 8 of this rule, this section, and sections 10 through 11 of this rule within thirty (30) days after notification of the disallowance.

(h) The owner or operator is no longer required to submit the items specified in subsection (c) when:

- (1) the owner or operator substitutes alternate financial assurance ~~as specified in~~ **accordance with** sections 5 through 8 of this rule and this section; or
- (2) the commissioner releases the owner or operator from the requirements of sections 4 through 8 of this rule, this section, and sections 10 through 11 of this rule in accordance with section 12 of this rule.

(i) An owner or operator may meet the requirements of sections 4 through 8 of this rule, this section, and sections 10 through 11 of this rule by obtaining a written guarantee. ~~hereinafter referred to as guarantee.~~ The guarantor ~~shall~~ **must** be the direct or higher tier parent corporation of the owner or operator or a firm whose parent corporation is also the parent corporation of the owner or operator. The guarantor shall meet the requirements for owners or operators in subsections (a) through (g) and shall comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in section 33 of this rule. The guarantee must accompany the items sent to the commissioner ~~as specified in~~ **accordance with** subsection (c). One (1) of these items must include 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 must describe the value received in consideration of the guarantee. The terms of the guarantee must provide the following:

- (1) If the owner or operator fails to perform **corrective action or** final closure of a facility covered by the guarantee in accordance with the **corrective action or** closure plan and other interim status requirements whenever required to do so, the guarantor shall perform **corrective action or** final closure in accordance with the **corrective action or** closure plan and other interim status requirements or establish a trust fund ~~as specified in~~ **accordance with** section 5 of this rule in the name of the owner or operator.

(2) The guarantee must remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the commissioner. 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 commissioner as evidenced by the return receipts.

(3) **The guarantor shall provide alternate financial assurance in the name of the owner or operator** if the owner or operator fails to:

(A) provide alternate financial assurance ~~as specified~~ **in accordance with** sections 4 through 8 of this rule, this section, and sections 10 through 11 of this rule; and

(B) obtain the written approval of ~~such~~ alternate assurance from the commissioner within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice of cancellation of the guarantee from the guarantor.

~~the guarantor shall provide such alternate financial assurance in the name of the owner or operator.~~

*(Solid Waste Management Division; 329 IAC 3.1-14-9; filed Jan 24, 1992, 2:00 p.m.: 15 IR 952; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1977; errata filed Apr 30, 1996, 10:00 a.m.: 19 IR 2289; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

SECTION 7. 329 IAC 3.1-14-10 IS AMENDED TO READ AS FOLLOWS:

**329 IAC 3.1-14-10 Use of multiple financial mechanisms option**

**Authority:** IC 13-14-8; IC 13-22-2; IC 13-22-8-1; IC 13-22-9-7

**Affected:** IC 13-22

Sec. 10. An owner or operator may satisfy the requirements of sections 4 through 9 of this rule and this section by establishing more than one (1) financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds, letters-of-credit, and insurance. The mechanisms must be ~~as specified~~ **established in accordance with** sections 5 through 8 of this rule, respectively, except that it is the combination of mechanisms rather than the single mechanism, that must provide financial assurance for an amount at least equal to the current **corrective action or** closure cost estimate, **or both cost estimates**. If an owner or operator uses a trust fund in combination with a surety bond or a letter-of-credit, 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 (2) or more mechanisms. The commissioner may use any or all of the mechanisms to provide for **corrective action or** closure, **or both**, of the facility. *(Solid Waste Management Division; 329 IAC 3.1-14-10; filed Jan 24, 1992, 2:00 p.m.: 15 IR 954; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1979; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

SECTION 8. 329 IAC 3.1-14-11 IS AMENDED TO READ AS FOLLOWS:

**329 IAC 3.1-14-11 Use of a financial mechanism for multiple facilities option**

**Authority:** IC 13-14-8; IC 13-22-2; IC 13-22-8-1; IC 13-22-9-7

**Affected:** IC 13-22

Sec. 11. An owner or operator may use a financial assurance mechanism specified in

section 4 of this rule to meet the requirements of section 4 of this rule for more than one (1) facility. Evidence of financial assurance submitted to the commissioner must include a list showing, for each facility, the ~~EPA U.S. EPA~~ identification number, name, address, and the amount of funds for **corrective action or closure, or both**, assured by the mechanism. The amount of funds available through the mechanism must 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 **corrective action or closure, or both**, of any of the facilities covered by the mechanism, the commissioner 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. (*Solid Waste Management Division; 329 IAC 3.1-14-11; filed Jan 24, 1992, 2:00 p.m.: 15 IR 954; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

SECTION 9. 329 IAC 3.1-14-12 IS AMENDED TO READ AS FOLLOWS:

**329 IAC 3.1-14-12 Release of owner or operator from the requirements for financial assurance for corrective action or closure**

**Authority: IC 13-14-8; IC 13-22-2; IC 13-22-8-1; IC 13-22-9-7**

**Affected: IC 13-22**

Sec. 12. (a) Within sixty (60) 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 commissioner shall notify the owner or operator in writing that the owner or operator is no longer required by section 4 of this rule to maintain financial assurance for final closure of the facility, unless the commissioner has reason to believe that final closure has not been in accordance with the approved closure plan. The commissioner shall provide the owner or operator a detailed written statement of any ~~such~~ reason that closure has not been in accordance with the approved closure plan.

**(b) An owner or operator required in section 4 of this rule to establish financial assurance for corrective action of a facility is released from the requirement to maintain financial assurance when:**

**(1) the approved remedy for corrective action has attained the cleanup goal; and**

**(2) the commissioner has notified the owner or operator in writing that financial assurance for corrective action is no longer required.**

(*Solid Waste Management Division; 329 IAC 3.1-14-12; filed Jan 24, 1992, 2:00 p.m.: 15 IR 954; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1979; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

SECTION 10. 329 IAC 3.1-14-16 IS AMENDED TO READ AS FOLLOWS:

**329 IAC 3.1-14-16 Surety bond guaranteeing payment into a post-closure trust fund option**

**Authority: IC 13-14-8; IC 13-22-2; IC 13-22-8-1; IC 13-22-9-7**

**Affected: IC 13-22**

Sec. 16. (a) An owner or operator may satisfy the requirements of section 14 of this rule by:

- (1) obtaining a surety bond that conforms to the requirements of this section; and
- (2) submitting the bond to the commissioner.

The surety company issuing the bond must, at a minimum, be authorized to do business in Indiana and be among those listed as acceptable sureties on federal bonds in Circular 570\* of the U.S. Department of the Treasury.

(b) The wording of the surety bond must be identical to the wording specified in section 27 of this rule.

(c) The owner or operator who uses a surety bond to satisfy the requirements of section 14 of this rule also shall establish a standby trust fund. Under the terms of the bond, all payments ~~made thereunder~~ must be deposited by the surety directly into the standby trust fund in accordance with instructions from the commissioner. ~~This~~ **The** standby trust fund must meet the requirements specified in section 15 of this rule except the following:

- (1) An originally signed duplicate of the trust agreement must be submitted to the commissioner with the surety bond.
- (2) Until the standby trust fund is funded ~~pursuant to~~ **in accordance with** the requirements of sections 14 through 15 of this rule, this section, and sections 17 through 21 of this rule, the following are not required by sections 14 through 15 of this rule, this section, and sections 17 through 21 of this rule:
  - (A) Payments into the trust fund ~~as specified in~~ **accordance with** section 15 of this rule.
  - (B) Updating of Schedule A of the trust agreement in accordance with section 26 of this rule to reflect current post-closure cost estimates.
  - (C) Annual valuations as required by the trust agreement.
  - (D) Notices of nonpayment as required by the trust agreement.

(d) The bond must guarantee that the owner or operator shall complete ~~one (1) of the~~ following, **as applicable**:

- (1) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility.
- (2) Fund the standby trust fund in an amount equal to the penal sum within fifteen (15) days after an:
  - (A) administrative order to begin final closure, issued by the commissioner, becomes final; or ~~within fifteen (15) days after an~~
  - (B) order to begin final closure is issued by a United States district court or other court of competent jurisdiction.
- (3) Provide alternate financial assurance ~~as specified in~~ **accordance with** section 15 of this rule, this section, and sections 17 through 19 of this rule and obtain the commissioner's written approval of the assurance provided within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice of cancellation of the bond from the surety.



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

(f) The penal sum of the bond must be in an amount at least equal to the current post-closure cost estimate except as provided in section 20 of this rule.

(g) Whenever the current post-closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within sixty (60) days after the increase, shall either:

(1) cause the penal sum to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the commissioner; or

(2) obtain other financial assurance ~~as specified~~ in **accordance with** section 15 of this rule, this section, and sections 17 through 19 of this rule to cover the increase.

Whenever the current post-closure cost estimate decreases, the penal sum may be reduced to the amount of the current post-closure cost estimate following written approval by the commissioner.

(h) 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 commissioner. 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 commissioner as evidenced by the return receipts.

(i) The owner or operator may cancel the bond if the commissioner has given prior written consent based on the receipt by the commissioner of evidence of alternate financial assurance ~~as specified~~ in **accordance with** section 15 of this rule, this section, and sections 17 through 19 of this rule.

**\*This document is available for viewing at <https://www.fiscal.treasury.gov/surety-bonds/circular-570.html> and may be obtained from the United States Department of the Treasury, Bureau of the Fiscal Service, Surety Bond Program, 3700 East West Highway, Room 6D22, Hyattsville, MD 20782. (Solid Waste Management Division; 329 IAC 3.1-14-16; filed Jan 24, 1992, 2:00 p.m.: 15 IR 956; errata filed Feb 6, 1992, 3:15 p.m.: 15 IR 1027; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1981; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2437)**

SECTION 11. 329 IAC 3.1-14-19 IS AMENDED TO READ AS FOLLOWS:

**329 IAC 3.1-14-19 Financial test and guarantee for post-closure care option**

**Authority: IC 13-14-8; IC 13-22-2; IC 13-22-8-1; IC 13-22-9-7**

**Affected: IC 13-22**

Sec. 19. (a) An owner or operator may satisfy the requirements of sections 14 through 18 of this rule, this section, and sections 20 through 22 of this rule by demonstrating that the owner or operator passes a financial test ~~as specified~~ in **accordance with** this section. To pass ~~this~~ **the financial** test, the owner or operator shall meet the criteria of either subdivision (1) or (2) as

follows:

- (1) The owner or operator shall have the following:
  - (A) Two (2) of the following three (3) ratios:
    - (i) A ratio of total liabilities to net worth less than two (2.0).
    - (ii) Ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than one-tenth (0.1).
    - (iii) A ratio of current assets to current liabilities greater than one and five-tenths (1.5).
  - (B) Net working capital and tangible net worth each at least six (6) times the sum of the current **corrective action**, closure, and post-closure cost estimates.
  - (C) Tangible net worth of at least ten million dollars (\$10,000,000).
  - (D) Assets located in the United States amounting to at least:
    - (i) ninety percent (90%) of the total assets; or
    - (ii) six (6) times the sum of the current **corrective action**, closure, and post-closure cost estimates.
- (2) The owner or operator shall have the following:
  - (A) A current rating for the most recent bond issuance of:
    - (i) AAA, AA, A, or BBB as issued by Standard and Poor's; or
    - (ii) Aaa, Aa, A, or Baa as issued by Moody's.
  - (B) Tangible net worth at least six (6) times the sum of the current **corrective action**, closure, and post-closure cost estimates.
  - (C) Tangible net worth of at least ten million dollars (\$10,000,000).
  - (D) Assets located in the United States amounting to at least:
    - (i) ninety percent (90%) of the total assets; or
    - (ii) six (6) times the sum of the current **corrective action**, closure, and post-closure cost estimates.

(b) As used in subsection (a), "current **corrective action**, closure, and post-closure cost estimates" refers to the cost estimates required to be shown in the letter from the owner's or operator's chief financial officer in section 31 of this rule.

(c) To demonstrate that the owner or operator meets ~~this~~ **the financial** test, the owner or operator shall submit the following items to the commissioner:

- (1) A letter signed by the owner's or operator's chief financial officer and worded as specified in section 31 of this rule.
- (2) 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.
- (3) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating the following:
  - (A) The independent certified public accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in ~~such~~ **the** financial statements.
  - (B) In ~~connection with that procedure~~, **the comparison in clause (A)**, no matters came to the attention of the independent certified public accountant that caused

the independent certified public accountant to believe that the specified data should be adjusted.

(d) After the initial submission of items specified in subsection (c), the owner or operator shall send updated information to the commissioner within ninety (90) days after the close of each succeeding fiscal year. This information must consist of all three (3) items specified in subsection (c).

(e) If the owner or operator no longer meets the requirements of subsection (a), the owner or operator shall send notice to the commissioner of intent to establish alternate financial assurance ~~as specified in~~ **accordance with** sections 15 through 18 of this rule and this section. The notice must be sent by certified mail within ninety (90) days after the end of the fiscal year for which the year-end financial data reflects that the owner or operator no longer meets the requirements. The owner or operator shall provide the alternate financial assurance within one hundred twenty (120) days after the end of ~~such~~ **the** fiscal year.

(f) The commissioner may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subsection (a), require reports of financial condition at any time from the owner or operator in addition to those specified in subsection (c). If the commissioner finds, on the basis of ~~such~~ **the** reports or other information, that the owner or operator no longer meets the requirements of subsection (a), the owner or operator shall provide alternate financial assurance ~~as specified in~~ **accordance with** sections 15 through 18 of this rule and this section within thirty (30) days after notification of ~~such a~~ **the** finding.

(g) The commissioner may disallow use of ~~this~~ **the financial** test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the report on examination of the owner's or operator's financial statements (~~See required in~~ subsection (c)(2)). An adverse opinion or a disclaimer of opinion is cause for disallowance. The commissioner shall evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance ~~as specified in~~ **accordance with** sections 15 through 18 of this rule and this section within thirty (30) days after notification of the disallowance.

(h) During the period of post-closure care, the commissioner may approve a decrease in the current post-closure cost estimate for which ~~this~~ **the financial** test demonstrates financial assurance if the owner or operator demonstrates to the commissioner that the amount of the cost estimate exceeds the remaining cost of post-closure care.

(i) The owner or operator is no longer required to submit the items specified in subsection (c) when:

- (1) the owner or operator substitutes alternate financial assurance ~~as specified in~~ **accordance with** sections 15 through 18 of this rule and this section; or
- (2) the commissioner releases the owner or operator from the requirements of section 14 of this rule in accordance with section 22 of this rule.

(j) An owner or operator may meet the requirements of sections 14 through 18 of this

rule, this section, and sections 20 through 21 of this rule by obtaining a written guarantee. ~~hereinafter referred to as guarantee.~~ The guarantor ~~shall~~ **must** be the direct or higher tier parent corporation of the owner or operator or a firm whose parent corporation is also the parent corporation of the owner or operator. The guarantor shall meet the requirements for owners or operators in subsections (a) through (h) and shall comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in section 33 of this rule. The guarantee must accompany the items sent to the commissioner ~~as specified in~~ **accordance with** subsection (c). One (1) of these items must include 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 must describe the value received in consideration of the guarantee. The terms of the guarantee must provide the following:

(1) If the owner or operator fails to perform post-closure care of a facility covered by the guarantee in accordance with the post-closure plan and other interim status requirements whenever required to do so, the guarantor shall perform post-closure care in accordance with the post-closure plan and other interim status requirements or establish a trust fund ~~as specified in~~ **accordance with** section 15 of this rule in the name of the owner or operator.

(2) The guarantee must remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and the commissioner. 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 commissioner as evidenced by the return receipts.

(3) **The guarantor shall provide alternate financial assurance in the name of the owner or operator** if the owner or operator fails to:

(A) provide alternate financial assurance ~~as specified in~~ **accordance with** sections 15 through 18 of this rule and this section; and

(B) obtain the written approval of ~~such~~ alternate assurance from the commissioner within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice of cancellation of the guarantee from the guarantor.

~~the guarantor shall provide such alternate financial assurance in the name of the owner or operator.~~

*(Solid Waste Management Division; 329 IAC 3.1-14-19; filed Jan 24, 1992, 2:00 p.m.: 15 IR 960; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1984; errata filed Apr 30, 1996, 10:00 a.m.: 19 IR 2289; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

SECTION 12. 329 IAC 3.1-14-23 IS AMENDED TO READ AS FOLLOWS:

**329 IAC 3.1-14-23 Use of a mechanism for financial assurance of corrective action, closure, and post-closure care**

**Authority:** IC 13-14-8; IC 13-22-2; IC 13-22-8-1; IC 13-22-9-7

**Affected:** IC 13-22

Sec. 23. An owner or operator may satisfy the requirements for financial assurance for ~~both~~ **any combination of corrective action**, closure, and post-closure care for one (1) or more facilities by using a trust fund, surety bond, letter-of-credit, insurance, financial test, or guarantee

that meets the specifications for the mechanism in sections 4 through 12 and 14 through 22 of this rule. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for financial assurance of **corrective action**, closure, and post-closure care. (*Solid Waste Management Division; 329 IAC 3.1-14-23; filed Jan 24, 1992, 2:00 p.m.: 15 IR 962; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1986; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

SECTION 13. 329 IAC 3.1-14-26 IS AMENDED TO READ AS FOLLOWS:

**329 IAC 3.1-14-26 Wording of trust agreements**

**Authority: IC 13-14-8; IC 13-22-2; IC 13-22-8-1; IC 13-22-9-7**

**Affected: IC 13-22**

Sec. 26. (a) A trust agreement for a trust fund, as specified in section 5 or 15 of this rule, 329 IAC 3.1-15-4(b), or 329 IAC 3.1-15-6(b), (~~see 329 IAC 3.1-15-10(a)~~), must be worded as follows except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Trust Agreement

Trust Agreement, the "Agreement", entered into as of [date] by and between [name of the owner or operator], a [name of state] [insert "corporation", "partnership", "association", or "proprietorship"], the "Grantor", and [name of corporate trustee], [insert "incorporated in the state of \_\_\_\_\_" or "a national bank"], the "Trustee".

Whereas, the Indiana Department of Environmental Management, (IDEM), an agency of the State of Indiana, has established certain rules applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility shall provide assurance that funds will be available when needed for **corrective action**, closure, and/or post-closure care of the facility.

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the Trustee under this Agreement, and the Trustee is willing to act as Trustee.

Now, Therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

- (a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.
- (b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

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

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund", for the benefit of the IDEM. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as

consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall neither be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the IDEM.

Section 4. Payment for **Corrective Action**, Closure, and Post-Closure Care. The Trustee shall make payments from the Fund as the IDEM commissioner shall direct, in writing, to provide for the payment of the costs of **corrective action**, closure, and/or post-closure care of the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the IDEM commissioner from the Fund for **corrective action**, closure, and post-closure expenditures in such amounts as the IDEM commissioner shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the IDEM commissioner specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

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

- (a) securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or state government;
- (b) the Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and
- (c) the Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

- (a) to transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating herein; and
- (b) to purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which

are sold by the Trustee. The Trustee may vote such shares in its discretion.

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

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

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

(c) to register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates of the same issue held by the Trustee in any other fiduciary capacity, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) to deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) to compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, at least thirty (30) days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the IDEM commissioner a statement confirming the value of the trust. Any securities in the Fund shall be valued at market value as of no more than sixty (60) days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within ninety (90) days after the statement has been furnished to the Grantor and the IDEM commissioner shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor Trustee and this successor accepts the appointment. The successor Trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor Trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor Trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee or for instructions. The successor Trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor, the IDEM commissioner, and the present Trustee by certified mail ten (10) days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the IDEM commissioner to the Trustee shall be in writing, signed by the IDEM commissioner, or designee of the commissioner, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice of the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the IDEM hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the IDEM, except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor and the IDEM commissioner, by certified mail within ten (10) days following the expiration of the thirty (30) day period after the anniversary of the establishment of the trust, if no payment is received from the Grantor during that period. After the pay-in-period is completed, the Trustee shall not be required to see a notice of nonpayment.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the IDEM commissioner, or by the Trustee and the IDEM commissioner if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the IDEM commissioner, or by the Trustee and the IDEM commissioner if the Grantor ceases to exist. Upon termination of the trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this trust, or in carrying out any directions by the Grantor or the IDEM commissioner issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the



Grantor or from the trust fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in the defense of the Trustee in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Indiana.

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

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 329 IAC 3.1-14-26 as such rule was constituted on the date first above written.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

(Note: Corporate seal is not required by Indiana law.)

(b) The following is an example of the certification of ~~acknowledgement~~ **acknowledgment** that must accompany the trust agreement for a trust fund as specified in section 5 or 15 of this rule and 329 IAC 3.1-15-4(b) or 329 IAC 3.1-15-6(b):

Form of certification of ~~acknowledgement~~ **acknowledgment**.

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 that 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)

(c) The following is an example of the Indiana form of ~~acknowledgement~~ **acknowledgment that must be used for** trust agreements notarized in Indiana: ~~must use this form of acknowledgement~~.):

Form of Indiana certification of ~~acknowledgement~~ **acknowledgment**.

**ACKNOWLEDGEMENT ACKNOWLEDGMENT**

State of \_\_\_\_\_

County of \_\_\_\_\_

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared [owner or operator] to be known by me to be the person who [(only for corporate party)], as [insert title] of \_\_\_\_\_, Inc., the corporation that executed the foregoing instrument, signed the same and acknowledged to me that he/she did so sign the same [in the name and on behalf of the said corporation as such officer], and the same is his free act and deed [and the free corporate act and deed of said corporation, and that he/she was duly authorized by the Board of Directors of said corporation] and the statements made in the foregoing instrument are true.

IN WITNESS WHEREOF, I have set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_\_\_. [year].

State of: \_\_\_\_\_

County of residence: \_\_\_\_\_

Notary Public

Commission Expires: \_\_\_\_\_

*(Solid Waste Management Division; 329 IAC 3.1-14-26; filed Jan 24, 1992, 2:00 p.m.: 15 IR 965; errata filed Feb 6, 1992, 3:15 p.m.: 15 IR 1027; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1992; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

SECTION 14. 329 IAC 3.1-14-27 IS AMENDED TO READ AS FOLLOWS:

**329 IAC 3.1-14-27 Wording of instrument; surety bonds**

**Authority: IC 13-14-8; IC 13-22-2; IC 13-22-8-1; IC 13-22-9-7**

**Affected: IC 13-22; IC 13-11-2-71**

Sec. 27. A surety bond guaranteeing payment into a trust fund, as specified in section 6 or 16 of this rule, 329 IAC 3.1-15-4(c), or 329 IAC 3.1-15-6(c), (~~see 329 IAC 3.1-15-10(b)~~), must be worded as follows except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Financial Guarantee 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 U.S. EPA** identification number, name, address, and **corrective action**, closure, and/or post-closure amount(s) for each facility guaranteed by this bond [indicate **corrective action**, closure, and post-closure amounts separately]:

Total penal sum of bond: \$ \_\_\_\_\_

Surety's bond number: \_\_\_\_\_

We, the Principal and Surety(ies) hereto are firmly bound to the Indiana Department of Environmental Management (~~hereinafter~~ (IDEM), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the

Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the environmental management laws as defined at IC 13-11-2-71 and 329 IAC 3.1, to have a permit or interim status in order to own or operate each hazardous waste management facility identified above, and

Whereas said Principal is required to provide financial assurance for **corrective action**, closure, ~~or closure and~~ **and/or** post-closure care, as a condition of the permit or interim status, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of **corrective action or** final closure of each facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

Or, if the Principal shall fund the standby trust fund in such amount(s) within fifteen (15) days after a final order to begin **corrective action or** closure is issued by the IDEM or a U.S. district court or other court of competent jurisdiction,

Or, if the Principal shall provide alternate financial assurance, ~~as specified in~~ **accordance with** 329 IAC 3.1-14 or 329 IAC 3.1-15, as applicable, and obtain the IDEM commissioner's written approval of such assurance, within ninety (90) days after the date notice of cancellation is received by both the Principal and the IDEM commissioner from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the IDEM commissioner that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the IDEM commissioner.

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

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the IDEM commissioner, provided, however, that cancellation shall not occur during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the Principal and the IDEM commissioner, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the IDEM commissioner.

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

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new **corrective action**, closure, and/or post-closure amount, provided that the penal sum does not increase by more than twenty percent (20%) in any one (1) year, and no

decrease in the penal sum takes place without the written permission of the IDEM commissioner.

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 329 IAC 3.1-14-27 as such rule was constituted on the date this bond was executed.

Principal

[Signature(s)]  
[Name(s)]  
[Title(s)]  
[Corporate seal]

Corporate Surety(ies)

[Name and address] \_\_\_\_\_  
State of incorporation: \_\_\_\_\_  
Liability limit: \$ \_\_\_\_\_  
[Signature(s)]  
[Name(s) and title(s)]  
[Corporate seal]

[For every co-surety, provide signature(s) and other information in the same manner as for Surety above.]

Bond premium: \$ \_\_\_\_\_

(Note: The corporate seal is not required by Indiana law.)

*(Solid Waste Management Division; 329 IAC 3.1-14-27; filed Jan 24, 1992, 2:00 p.m.: 15 IR 969; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1995; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

SECTION 15. 329 IAC 3.1-14-28 IS AMENDED TO READ AS FOLLOWS:

**329 IAC 3.1-14-28 Wording of performance bonds**

**Authority: IC 13-14-8; IC 13-22-2; IC 13-22-8-1; IC 13-22-9-7**

**Affected: IC 13-22; IC 13-11-2-71**

Sec. 28. A surety bond guaranteeing performance of **corrective action**, closure, ~~and/or~~ **or** post-closure care, as specified in 329 IAC 3.1-15-4(d) or 329 IAC 3.1-15-6(d), (~~see 329 IAC 3.1-15-10(e)~~), must be worded as follows except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Performance 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 U.S. EPA** identification number, name, address, and **corrective action**, closure, and/or post-closure amount(s) for each facility guaranteed by this bond [indicate **corrective action**, closure, and post-closure amounts separately]: \_\_\_\_\_

Total penal sum of bond: \_\_\_\_\_

Surety's bond number: \_\_\_\_\_

We, the Principal and Surety(ies) hereto are firmly bound to the Department of Environmental Management of the State of Indiana (~~hereinafter~~ (IDEM), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the environmental management laws as defined at IC 13-11-2-71, to have a permit in order to own or operate each hazardous waste management facility identified above, and

Whereas said Principal is required to provide financial assurance for **corrective action**, closure, ~~or closure and~~ **and/or** post-closure care, as a condition of the permit, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of this obligation are such that if the Principal shall faithfully perform **corrective action or** closure, whenever required to do so, of each facility for which this bond guarantees **corrective action or** closure, in accordance with the **corrective action or** closure plan and other requirements of the permit as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended.

And, if the Principal shall faithfully perform post-closure care of each facility for which this bond guarantees post-closure care, in accordance with the post-closure care plan and other requirements of the permit, as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

Or, if the Principal shall provide alternate financial assurance ~~as specified in~~ **accordance with** 329 IAC 3.1-15, and obtain the IDEM commissioner's written approval of such assurance, within ninety (90) days after the date notice of cancellation is received by both the Principal and the IDEM commissioner from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the IDEM commissioner that the Principal has been found in violation of the **corrective action or** closure requirements of 329 IAC 3.1-9, for a facility for which this bond guarantees performance of **corrective action or** closure, Surety(ies) shall either perform **corrective action or** closure in accordance with the **corrective action or** closure plan and other permit requirements or place the **corrective action or** closure amount guaranteed for

the facility into the standby trust fund as directed by the IDEM commissioner.

Upon notification by the IDEM commissioner that the Principal has been found in violation of the post-closure requirements of 329 IAC 3.1-9 for a facility for which this bond guarantees performance of post-closure care, the Surety(ies) shall either perform post-closure care in accordance with the post-closure plan and other permit requirements or place the post-closure amount guaranteed for the facility into the standby trust fund as directed by the IDEM commissioner.

Upon notification by the IDEM commissioner that the Principal has failed to provide alternate financial assurance ~~as specified in~~ **accordance with** 329 IAC 3.1-15, and obtain written approval of such assurance from the IDEM commissioner during the ninety (90) days following receipt by both the Principal and the IDEM commissioner of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the IDEM commissioner.

The Surety(ies) hereby waive(s) notification of amendments to **corrective action or** closure plans, permits, applicable laws, statutes, rules, and regulations and agree(s) that no such amendment shall in any way alleviate its (their) obligation on this bond.

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

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the IDEM commissioner, provided, however, that cancellation shall not occur during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the Principal and the IDEM commissioner, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies) provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the IDEM commissioner.

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

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new **corrective action**, closure, and/or post-closure amount, provided that the penal sum does not increase by more than twenty percent (20%) in any one (1) year, and no decrease in the penal sum takes place without the written permission of the IDEM commissioner.

In Witness Whereof, The Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 329 IAC 3.1-14-28 as such rule was constituted on the date this bond was executed.

Principal

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

Corporate Surety(ies)

[Name and address] \_\_\_\_\_

State of incorporation: \_\_\_\_\_

Liability limit: \$ \_\_\_\_\_

[Signature(s)]

[Name(s) and title(s)] \_\_\_\_\_

[Corporate seal]:

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

Bond premium: \$ \_\_\_\_\_

(Note: The corporate seal is not required by Indiana law.)

*(Solid Waste Management Division; 329 IAC 3.1-14-28; filed Jan 24, 1992, 2:00 p.m.: 15 IR 970; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1996; errata filed Apr 30, 1996, 10:00 a.m.: 19 IR 2289; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

SECTION 16. 329 IAC 3.1-14-30 IS AMENDED TO READ AS FOLLOWS:

**329 IAC 3.1-14-30 Wording of certificates of insurance**

**Authority: IC 13-14-8; IC 13-22-2; IC 13-22-8-1; IC 13-22-9-7**

**Affected: IC 13-22**

Sec. 30. A certificate of insurance, as specified in section 8 or 18 of this rule, 329 IAC 3.1-15-4(f), or 329 IAC 3.1-15-6(f), (~~see 329 IAC 3.1-15-10(e)~~), must be worded as follows except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certificate of Insurance for **Corrective Action**, Closure, or Post-Closure Care

Name and Address of Insurer (herein called the "Insurer"): \_\_\_\_\_

Name and Address of Insured (herein called the "Insured"): \_\_\_\_\_

Facilities Covered: [List for each facility: the ~~EPA U.S. EPA~~ identification number, name, address, and the amount of insurance for **corrective action**, closure, and/or the amount for post-closure. (These amounts for all facilities covered must total the face amount shown below.)]

Face Amount: \_\_\_\_\_

Policy Number: \_\_\_\_\_

Effective Date: \_\_\_\_\_

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for [insert "**corrective action**", "closure", ~~or "closure and post-closure care"~~, or **and/or** "post-closure care"] for the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of 329 IAC 3.1-14-8, 329 IAC 3.1-14-18, 329 IAC 3.1-15-4(f), or 329 IAC 3.1-15-6(f) (~~see 329 IAC 3.1-15-10(e)~~) as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the Indiana Department of Environmental Management (IDEM) commissioner, the Insurer agrees to furnish to the IDEM commissioner a duplicate original of the policy listed above including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in 329 IAC 3.1-14-30 as such rule was constituted on the date shown immediately below.

[Authorized signature for Insurer]

[Name of person signing]

[Title of person signing]

Signature of witness or notary: \_\_\_\_\_

[Date]

(Solid Waste Management Division; 329 IAC 3.1-14-30; filed Jan 24, 1992, 2:00 p.m.: 15 IR 973; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1998; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 17. 329 IAC 3.1-14-31 IS AMENDED TO READ AS FOLLOWS:

**329 IAC 3.1-14-31 Wording of chief financial officer letters for corrective action, closure, or post-closure**

**Authority: IC 13-14-8; IC 13-22-2; IC 13-22-8-1; IC 13-22-9-7**

**Affected: IC 13-22**

Sec. 31. A letter from the chief financial officer, as specified in section 9 or 19 of this rule, 329 IAC 3.1-15-4(g), or 329 IAC 3.1-15-6(g), (~~see 329 IAC 3.1-15-10(f)~~), must be worded as follows except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Letter from Chief Financial Officer

[Address to commissioner of the Indiana Department of Environmental Management]

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance, ~~as specified in~~ **accordance with** 329 IAC 3.1-14 or 329 IAC 3.1-15.

[Complete the following four (4) paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its ~~EPA U.S. EPA~~ identification number, name, address, and current **corrective action**, closure, and/or post-closure cost estimates. Identify each cost estimate as to whether it is for **corrective action**, closure, or post-closure care.]

1. This firm is the owner or operator of the following facilities for which financial assurance for **corrective action**, closure, or post-closure care is demonstrated through the financial test specified in 329 IAC 3.1-14 or 329 IAC 3.1-15. The current **corrective action**, closure and/or post-closure cost estimates covered by the **financial** test are shown for each facility: \_\_\_\_\_.

2. This firm guarantees, through the guarantee specified in 329 IAC 3.1-14 or 329 IAC 3.1-15, the **corrective action**, closure, or post-closure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the **corrective action**, closure, or post-closure care so guaranteed are shown for each facility: \_\_\_\_\_.

The firm identified above is [insert either or both, as applicable: "the direct or higher tier parent corporation of the owner or operator" or "owned by the same parent corporation as the parent corporation of the owner or operator and receiving the following value in consideration of this guarantee \_\_\_\_\_"].



3. In states other than Indiana, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the **corrective action**, closure, or post-closure care of the following facilities **either to the United States Environmental Protection Agency (U.S. EPA) or to an authorized state** through the use of a **financial test** specified in 329 IAC 3.1-14 or 329 IAC 3.1-15: **at least equivalent to 40 CFR 264 Subpart H or 40 CFR 265 Subpart H**. The current **corrective action**, closure, and/or post-closure cost estimates covered by such a **financial test** are shown for each facility: \_\_\_\_\_.

4. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for **corrective action**, closure, or, if a disposal facility, post-closure care is not demonstrated either to the ~~Environmental Protection Agency (EPA)~~ **U.S. EPA** or a state through the financial test or any other financial assurance mechanism specified in 40 CFR 264 Subpart H and 40 CFR 265 Subpart H, or equivalent or substantially equivalent state mechanisms. The current **corrective action**, closure, and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: \_\_\_\_\_.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk (\*) are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Alternative I if the criteria of 329 IAC 3.1-15-4(g)(1)(A), 329 IAC 3.1-15-6(g)(1)(A), 329 IAC 3.1-14-9(a)(1), or 329 IAC 3.1-14-19(a)(1) are used. Fill in Alternative II if the criteria of 329 IAC 3.1-15-4(g)(1)(B), 329 IAC 3.1-15-6(g)(1)(B), 329 IAC 3.1-14-9(a)(2), or 329 IAC 3.1-14-19(a)(2) are used.]

Alternative I

1.	Sum of current <b>corrective action</b> , closure, and post-closure cost estimates [total of all cost estimates shown in the four paragraphs above].	\$ _____
*2.	Total liabilities [if any portion of the <b>corrective action</b> , closure, or post-closure cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4].	\$ _____
*3.	Tangible net worth.	\$ _____
*4.	Net worth.	\$ _____
*5.	Current assets.	\$ _____
*6.	Current liabilities.	\$ _____
7.	Net working capital [line 5 minus line 6].	\$ _____
*8.	The sum of net income plus depreciation, depletion, and amortization.	\$ _____
*9.	Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.).	\$ _____

YES NO

- 
- 10. Is line 3 at least \$10 million?
  - 11. Is line 3 at least 6 times line 1?
  - 12. Is line 7 at least 6 times line 1?
  - \*13. Are at least 90% of firm's assets located in the U.S.? If not, complete line 14.

14. Is line 9 at least 6 times line 1?
15. Is line 2 divided by line 4 less than 2.0?
16. Is line 8 divided by line 2 greater than 0.1?
17. Is line 5 divided by line 6 greater than 1.5?

Alternative II

1. Sum of current **corrective action**, closure, and post-closure cost estimates [total of all cost estimates shown in the four paragraphs above]. \$\_\_\_\_\_
2. Current bond rating of most recent issuance of this firm and name of rating service.
3. Date of issuance of bond.
4. Date of maturity of bond.
- \*5. Tangible net worth (if any portion of the **corrective action**, closure, and post-closure cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line). \$\_\_\_\_\_
- \*6. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.). \$\_\_\_\_\_

YES NO

7. Is line 5 at least \$10 million?
8. Is line 5 at least 6 times line 1?
- \*9. Are at least 90% of firm's assets located in the U.S.? If not, complete line 10.
10. Is line 6 at least 6 times line 1?

I hereby certify that the wording of this letter is identical to the wording specified in 329 IAC 3.1-14-31 as such rule was constituted on the date shown immediately below.

[Signature]  
 [Name]  
 [Title]  
 [Date]

*(Solid Waste Management Division; 329 IAC 3.1-14-31; filed Jan 24, 1992, 2:00 p.m.: 15 IR 973; filed Apr 1, 1996, 11:00 a.m.: 19 IR 1999; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

SECTION 18. 329 IAC 3.1-14-32 IS AMENDED TO READ AS FOLLOWS:

**329 IAC 3.1-14-32 Wording of chief financial officer letters for liability coverage**

**Authority: IC 13-14-8; IC 13-22-2; IC 13-22-8-1; IC 13-22-9-7**

**Affected: IC 13-22**

Sec. 32. A letter from the chief financial officer, as specified in section 24 of this rule or 329 IAC 3.1-15-8(e), (~~see 329 IAC 3.1-15-10(g)~~), must be worded as follows except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Letter from Chief Financial Officer (to demonstrate liability coverage or to demonstrate both liability coverage and assurance of **corrective action**, closure, or post-closure care).

[Address to commissioner of the Indiana Department of Environmental Management, State of Indiana]

I am the chief financial officer of [firm's name and address]. This letter is in support of

the use of the financial test to demonstrate financial responsibility for liability coverage [insert "and **corrective action**, closure, and/or post-closure care" if applicable] ~~as specified in accordance with~~ 329 IAC 3.1-14 or 329 IAC 3.1-15.

[Complete the following paragraphs regarding facilities and liability coverage. For each facility, include its ~~EPA U.S. EPA~~ identification number, name, and address. **If there are no facilities that belong in a particular paragraph, write "None" in the space indicated.**]

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden", "nonsudden", or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified in 329 IAC 3.1-14 or 329 IAC 3.1-15.

**[Or]**

The firm identified above guarantees, through the guarantee specified in 329 IAC 3.1-14 and 329 IAC 3.1-15, liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the following: \_\_\_\_\_. The firm identified above is [insert either or both, as applicable: "the direct or higher tier parent corporation of the owner or operator" or "owned by the same parent corporation as the parent corporation of the owner or operator and receiving the following value in consideration of this guarantee \_\_\_\_\_."].

[If you are using the financial test to demonstrate coverage of both liability and **corrective action**, closure, and/or post-closure care, fill in the following four (4) paragraphs regarding facilities and associated **corrective action**, closure, and post-closure cost estimates. ~~If there are no facilities that belong in a particular paragraph, write "None" in the space indicated.~~ For each facility, include its ~~EPA U.S. EPA~~ identification number, name, address, and current **corrective action**, closure, and/or post-closure cost estimates. Identify each cost estimate as to whether it is for **corrective action**, closure, or post-closure care.]

1. The firm identified above owns or operates the following facilities for which financial assurance for **corrective action**, closure, or post-closure care or liability coverage is demonstrated through the financial test specified in 329 IAC 3.1-14 or 329 IAC 3.1-15. The current **corrective action**, closure, and/or post-closure cost estimates covered by the **financial** test are shown for each facility: \_\_\_\_\_.

2. The firm identified above guarantees, through the guarantee specified in 329 IAC 3.1-14 or 329 IAC 3.1-15, the **corrective action**, closure, and post-closure care or liability coverage of the following facilities owned or operated by the guaranteed party. The current cost estimates for the **corrective action**, closure, or post-closure care so guaranteed are shown for each facility: \_\_\_\_\_.

3. **In states other than Indiana**, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the **corrective action**, closure, or post-closure care of the following facilities **either to the United States Environmental Protection Agency (U.S. EPA) or to an authorized state** through the use of a **financial** test ~~specified in 329 IAC 3.1-14 or 329 IAC 3.1-15.~~ **at least equivalent to 40 CFR 264 Subpart H or 40 CFR 265 Subpart H.** The current **corrective action**, closure, and/or post-closure cost estimates covered by such a **financial** test are shown for each facility:\_\_\_\_\_.

4. The firm identified above owns or operates the following hazardous waste management facilities for which financial assurance for **corrective action**, closure, or, if

a disposal facility, post-closure care is not demonstrated either to the ~~Environmental Protection Agency (EPA)~~ **U.S. EPA** or a state through the financial test or any other financial assurance mechanism specified in 40 CFR 264 Subpart H and 40 CFR 265 Subpart H, or equivalent or substantially equivalent state mechanisms. The current **corrective action**, closure, and/or post-closure cost estimates not covered by such financial assurance are shown for each facility:\_\_\_\_\_.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk (\*) are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Part A if you are using the financial test to demonstrate coverage ONLY for the liability requirements.]

**Part A. Liability Coverage for Accidental Occurrences**

[Fill in Alternative I if the criteria of 329 IAC 3.1-15-8(e)(1)(A) or 329 IAC 3.1-14-24(f)(1)(A) are used. Fill in Alternative II if the criteria of 329 IAC 3.1-15-8(e)(1)(B) or 329 IAC 3.1-14-24(f)(1)(B) are used.]

**Alternative I**

1.	Amount of annual aggregate liability coverage to be demonstrated.	\$_____
*2.	Current assets.	\$_____
*3.	Current liabilities.	\$_____
4.	Net working capital (line 2 minus line 3).	\$_____
*5.	Tangible net worth.	\$_____
*6.	If less than 90% of assets are located in the U.S., give total U.S. assets.	\$_____
		YES NO
7.	Is line 5 at least \$10 million?	
8.	Is line 4 at least 6 times line 1?	
9.	Is line 5 at least 6 times line 1?	
*10.	Are at least 90% of assets located in the U.S.? If not, complete line 11.	
11.	Is line 6 at least 6 times line 1?	

**Alternative II**

1.	Amount of annual aggregate liability coverage to be demonstrated.	\$_____
2.	Current bond rating of most recent issuance and name of rating service.	
3.	Date of issuance of bond.	
4.	Date of maturity of bond.	
*5.	Tangible net worth.	\$_____
*6.	Total assets in U.S. (required only if less than 90% of assets are located in the U.S.).	\$_____
		YES NO
7.	Is line 5 at least \$10 million?	
8.	Is line 5 at least 6 times line 1?	
*9.	Are at least 90% of assets located in the U.S.? If not, complete line 10.	
10.	Is line 6 at least 6 times line 1?	

[Fill in Part B if you are using the financial test to demonstrate assurance of both liability

coverage AND **corrective action**, closure, and/or post-closure care.]

**Part B. Corrective Action, Closure or Post-Closure Care and Liability Coverage**

[Fill in Alternative I if the criteria of 329 IAC 3.1-15-4(g)(1)(A) or 329 IAC 3.1-15-6(g)(1)(A) and 329 IAC 3.1-15-8(e)(1)(A) are used or if 329 IAC 3.1-14-9(a)(1) or 329 IAC 3.1-14-19(a)(1) and 329 IAC 3.1-14-24(f)(1)(A) are used. Fill in Alternative II if the criteria of 329 IAC 3.1-15-4(g)(1)(B) or 329 IAC 3.1-15-6(g)(1)(B) and 329 IAC 3.1-15-8(e)(1)(B) are used or if 329 IAC 3.1-14-9(a)(2) or 329 IAC 3.1-14-19(a)(2) and 329 IAC 3.1-14-24(f)(1)(B) are used.]

Alternative I

- 1. Sum of current **corrective action**, closure, and post-closure cost estimates (total of all cost estimates listed above). \$\_\_\_\_\_
- 2. Amount of annual aggregate liability coverage to be demonstrated. \$\_\_\_\_\_
- 3. Sum of lines 1 and 2. \$\_\_\_\_\_
- \*4. Total liabilities (if any portion of your **corrective action**, closure, or post-closure cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6). \$\_\_\_\_\_
- \*5. Tangible net worth. \$\_\_\_\_\_
- \*6. Net worth. \$\_\_\_\_\_
- \*7. Current assets. \$\_\_\_\_\_
- \*8. Current liabilities. \$\_\_\_\_\_
- 9. Net working capital (line 7 minus line 8). \$\_\_\_\_\_
- \*10. The sum of net income plus depreciation, depletion, and amortization. \$\_\_\_\_\_
- \*11. Total assets in U.S. (required only if less than 90% of assets located in the U.S.). \$\_\_\_\_\_

YES NO

- 12. Is line 5 at least \$10 million?
- 13. Is line 5 at least 6 times line 3?
- 14. Is line 9 at least 6 times line 3?
- \*15. Are at least 90% of assets located in the U.S.? If not, complete line 16.
- 16. Is line 11 at least 6 times line 3?
- 17. Is line 4 divided by line 6 less than 2.0?
- 18. Is line 10 divided by line 4 greater than 0.1?
- 19. Is line 7 divided by line 8 greater than 1.5?

Alternative II

- 1. Sum of current **corrective action**, closure, and post-closure cost estimates (total of all cost estimates listed above). \$\_\_\_\_\_
- 2. Amount of annual aggregate liability coverage to be demonstrated. \$\_\_\_\_\_
- 3. Sum of lines 1 and 2. \$\_\_\_\_\_
- 4. Current bond rating of most recent issuance and name of rating service.
- 5. Date of issuance of bond.
- 6. Date of maturity of bond.
- \*7. Tangible net worth (if any portion of the **corrective action**, closure, or post-closure cost estimates is included in "total liabilities" on your financial statements, you may add that portion to this line). \$\_\_\_\_\_
- \*8. Total assets in the U.S. (required only if less than 90% of assets are located in the U.S.). \$\_\_\_\_\_

- 9. Is line 7 at least \$10 million?
- 10. Is line 7 at least 6 times line 3?
- \*11. Are at least 90% of assets located in the U.S.? If not, complete line 12.
- 12. Is line 8 at least 6 times line 3?

I hereby certify that the wording of this letter is identical to the wording specified in 329 IAC 3.1-14-32 as such rule was constituted on the date shown immediately below.

[Signature]  
 [Name]  
 [Title]  
 [Date]

*(Solid Waste Management Division; 329 IAC 3.1-14-32; filed Jan 24, 1992, 2:00 p.m.: 15 IR 975; filed Apr 1, 1996, 11:00 a.m.: 19 IR 2000; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

SECTION 19. 329 IAC 3.1-14-33 IS AMENDED TO READ AS FOLLOWS:

**329 IAC 3.1-14-33 Wording of guarantees for corrective action, closure, or post-closure care**

**Authority: IC 13-14-8; IC 13-22-2; IC 13-22-8-1; IC 13-22-9-7**  
**Affected: IC 13-22**

Sec. 33. A guarantee, as specified in section 9 or 19 of this rule, 329 IAC 3.1-15-4(g), or 329 IAC 3.1-15-6(g), (~~see 329 IAC 3.1-15-10(h)~~), must be worded as follows except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Guarantee for **Corrective Action**, Closure, or Post-Closure Care

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the State of [insert state's name], herein referred to as guarantor. This guarantee is made on behalf of the [owner or operator] of [business address], which is [one (1) of the following: "our subsidiary" or "a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary"] to the Department of Environmental Management of the State of Indiana (IDEM).

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors ~~as specified in~~ **accordance with** 329 IAC 3.1-14-9 and 329 IAC 3.1-14-19 or 329 IAC 3.1-15-4(g) and 329 IAC 3.1-15-6(g).
2. [Owner or operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee: [List for each facility: ~~EPA U.S. EPA~~ identification number, name, and address. Indicate for each whether guarantee is for **corrective action**, closure, **and/or** post-closure. ~~or both.~~]
3. "**Corrective action plan**", "closure plan", and "post-closure plan" as used below refer to the plans maintained as required by 329 IAC 3.1-14 and 329 IAC 3.1-15 for the **corrective action**, closure, and post-closure care of facilities as identified above.
4. For value received from [owner or operator], guarantor guarantees to IDEM that in the event that [owner or operator] fails to perform [insert "**corrective action**", "closure",

**and/or** "post-closure care"] or "~~closure and post-closure care~~" of the above facility(ies) in accordance with the **corrective action**, closure, or post-closure plans and other permit or interim status requirements whenever required to do so, the guarantor shall do so or establish a trust fund ~~as specified in~~ **accordance with** 329 IAC 3.1-14 and 329 IAC 3.1-15, as applicable, in the name of [owner or operator] in the amount of the current **corrective action**, closure, or post-closure cost estimates ~~as specified~~ **determined in accordance with** 329 IAC 3.1-14 and 329 IAC 3.1-15.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within ninety (90) days, by certified mail, notice to the IDEM commissioner and to [owner or operator] that the guarantor intends to provide alternate financial assurance ~~as specified in~~ **accordance with** 329 IAC 3.1-14 and 329 IAC 3.1-15, as applicable, in the name of [owner or operator]. Within one hundred twenty (120) days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [owner or operator] has done so.

6. The guarantor agrees to notify the IDEM commissioner by certified mail, of a voluntary or involuntary bankruptcy proceeding under 11 U.S.C. 101 et seq., ~~October 1, 1979,~~ naming guarantor as debtor, within ten (10) days after commencement of the proceeding.

7. Guarantor agrees that within thirty (30) days after being notified by the IDEM commissioner of a determination that guarantor no longer meets the financial test criteria or that the guarantor is disallowed from continuing as a guarantor of **corrective action**, closure, or post-closure care, the guarantor shall establish alternate financial assurance ~~as specified in~~ **accordance with** 329 IAC 3.1-14 and 329 IAC 3.1-15, as applicable, in the name of [owner or operator] unless [owner or operator] has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the **corrective action**, closure, or post-closure plan, amendment or modification of the permit, the extension or reduction of the time of performance of **corrective action**, closure, or post-closure, or any other modification or alteration of an obligation of the owner or operator pursuant to 329 IAC 3.1-10 or 329 IAC 3.1-9.

9. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial assurance requirements of 329 IAC 3.1-14 and 329 IAC 3.1-15 for the above-listed facilities except as provided in paragraph 10 of this guarantee.

10. Guarantor may terminate this guarantee by sending notice by certified mail to the IDEM commissioner and to [owner or operator], provided that this guarantee may not be terminated unless and until [owner or operator] obtains, and the IDEM commissioner approves, alternate **corrective action**, closure, **and/or** post-closure care ~~or closure and post-closure care~~ coverage complying with 329 IAC 3.1-14 or 329 IAC 3.1-15, or both.

11. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance ~~as specified in~~ **accordance with** 329 IAC 3.1-14 and 329 IAC 3.1-15, as applicable, and obtain written approval of such assurance from the IDEM commissioner within ninety (90) days after a notice of cancellation by the guarantor is received by the IDEM commissioner from guarantor, guarantor shall provide such alternate financial

assurance in the name of [owner or operator].

12. Guarantor expressly waives notice of acceptance of this guarantee by the IDEM commissioner or by [owner or operator]. Guarantor also expressly waives notice of amendments or modifications of the **corrective action**, closure, and/or post-closure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in 329 IAC 3.1-14-33 as such rule was constituted on the date first above written.

Effective date: \_\_\_\_\_

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary: \_\_\_\_\_

*(Solid Waste Management Division; 329 IAC 3.1-14-33; filed Jan 24, 1992, 2:00 p.m.: 15 IR 978; filed Apr 1, 1996, 11:00 a.m.: 19 IR 2002; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

SECTION 20. 329 IAC 3.1-14-35 IS AMENDED TO READ AS FOLLOWS:

**329 IAC 3.1-14-35 Wording of instrument; hazardous waste facility liability endorsement form**

**Authority: IC 13-14-8; IC 13-22-2; IC 13-22-8-1; IC 13-22-9-7**

**Affected: IC 13-22**

Sec. 35. A hazardous waste facility liability endorsement, as required in section 24 of this rule or 329 IAC 3.1-15-8, (~~see 329 IAC 3.1-15-10(i)~~), must be worded as follows except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**Hazardous Waste Facility Liability Endorsement**

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with the ~~Insurer's~~ **Insured's** obligation to demonstrate financial responsibility under 329 IAC 3.1-14-24 or 329 IAC 3.1-15-8. The coverage applies at [list ~~EPA U.S. EPA~~ identification number, name, and address for each facility] for [insert "sudden accidental occurrences", "nonsudden accidental occurrences", or "sudden and nonsudden accidental occurrences"]. If coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs.

2. The insurance afforded with respect to such occurrence is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with this paragraph are hereby amended to conform with the following:

- (a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy to which this endorsement is attached.
- (b) The Insurer is liable for the payment of amounts within any deductible



applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to the amount of any deductible for which coverage is demonstrated as specified in **accordance with** 329 IAC 3.1-14-24 or 329 IAC 3.1-15-8.

(c) Whenever requested by the commissioner of the Indiana Department of Environmental Management (IDEM), the Insurer agrees to furnish to the IDEM commissioner a signed duplicate original of the policy and all endorsements.

(d) Cancellation of this endorsement, whether by the Insurer or the insured, a parent corporation providing insurance coverage for its subsidiary, or a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the IDEM commissioner.

(e) Any other termination of this endorsement will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the IDEM commissioner.

Attached to and forming part of policy number \_\_\_\_\_ issued by [name of Insurer], herein called the Insurer, of [address of Insurer] to [name of insured] of [address] this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_. [year]. The effective date of said policy is \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_. [year].

I hereby certify that the wording of this endorsement is identical to the wording specified in 329 IAC 3.1-14-35 as such rule was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one (1) or more states.

[Signature of authorized representative of Insurer]

[Type name]

[Title], Authorized Representative of [name of Insurer]

[Address of representative]

*(Solid Waste Management Division; 329 IAC 3.1-14-35; filed Jan 24, 1992, 2:00 p.m.: 15 IR 979; filed Apr 1, 1996, 11:00 a.m.: 19 IR 2005; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

SECTION 21. 329 IAC 3.1-15-4 IS AMENDED TO READ AS FOLLOWS:

**329 IAC 3.1-15-4 Financial assurance for closure and corrective action**

**Authority: IC 13-14-8; IC 13-22-2; IC 13-22-8-1; IC 13-22-9-7**

**Affected: IC 13-22; IC 13-30-3**

Sec. 4. (a) ~~At~~ **The owner or operator of each facility shall establish financial assurance for closure or corrective action, or both, of the facility, in accordance with the following:**

**(1) The owner or operator shall choose from the financial assurance options as specified in subsections (b) through (g) to establish financial assurance for corrective action.**

**(2) The owner or operator shall establish financial assurance for closure of a facility that is subject to this rule.**

**(3) The owner or operator shall establish financial assurance for corrective action of a facility that meets the following criteria:**

**(A) The facility is subject to corrective action under 40 CFR 264.100\* and 40 CFR 264.101\*.**

**(B) The commissioner requires the establishment of financial assurance for corrective action, based on one (1) or more of the following:**

**(i) After the implementation of interim measures for corrective action, the owner or operator has not attained the cleanup goal.**

**(ii) Corrective action requires a long-term remedy that includes engineering controls as a component of an environmental restrictive covenant.**

**(iii) A permit or an order requires financial assurance for corrective action.**

(b) The requirements for a **corrective action or** closure trust fund are as follows:

(1) An owner or operator may satisfy the requirements of this section by establishing a **corrective action or** closure trust fund that conforms to the requirements of this subsection and submitting an originally signed duplicate of the trust agreement to the commissioner. An owner or operator of a new facility shall submit the originally signed duplicate of the trust agreement to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, recovery, or disposal. The trustee ~~shall~~ **must** be an entity that 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 must be identical to the wording specified in section 10(a) of this rule, and the trust agreement must be accompanied by a formal certification of ~~acknowledgement~~ **acknowledgment in accordance with 329 IAC 3.1-14-26(b)**. Schedule A of the trust agreement must be updated within sixty (60) days after a change in the amount of the current **corrective action or** closure cost estimate covered by the agreement.

**(3) For corrective action financial assurance, the owner or operator shall deposit the full amount of the current corrective action cost estimate into the trust fund at the time a trust fund for corrective action financial assurance is established.**

~~(3)~~ **(4) For closure financial assurance,** payments into the trust fund must be made annually by the owner or operator over the term of the initial final state permit or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereinafter referred to as the pay-in-period. The payments into the closure trust fund must be made as follows:

(A) For a new facility, the first payment must be made before the initial receipt of hazardous waste for treatment, storage, recovery, or disposal. A receipt from the trustee for this payment must be submitted by the owner or operator to the commissioner before this initial receipt of hazardous waste. The first payment must be at least equal to the current closure cost estimate, except as provided in subsection (h), divided by the number of years in the pay-in-period. Subsequent payments must be made no later than thirty (30) days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by the following formula:

$$\text{Next payment} = \text{CE} - \text{CV}$$

Y

Where: CE = The current closure cost estimate.  
CV = The current value of the trust fund.  
Y = The number of years remaining in the pay-in-period.

(B) If an owner or operator establishes a trust fund ~~as specified in~~ **accordance with** this subsection, and the value of ~~that the~~ trust fund is less than the current closure cost estimate when a permit is awarded for the facility, the amount of the current closure cost estimate still to be paid into the trust fund must be paid in over the pay-in-period as ~~defined~~ **described** in this subdivision. Payments must continue to be made no later than thirty (30) days after each anniversary date of the first payment made ~~pursuant to~~ **under** 329 IAC 3.1-14. The amount of each payment must be determined by the following formula:

$$\text{Next payment} = \frac{\text{CE} - \text{CV}}{\text{Y}}$$

Where: CE = The current closure cost estimate.  
CV = The current value of the trust fund.  
Y = The number of years remaining in the pay-in-period.

~~(4)~~ **(5)** The owner or operator may accelerate payments into the trust fund or the owner or operator may deposit the full amount of the current closure cost estimate at the time the fund is established. ~~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~~ **accordance with** subdivision ~~(3)~~: **(4)**.

~~(5)~~ **(6)** If the owner or operator establishes a closure trust fund after having used one (1) or more alternate mechanisms specified in **accordance with** this section or in 329 IAC 3.1-14, the first payment must be in at least the amount that the fund would contain if the trust fund was established initially and annual payments made according to specifications of this section and 329 IAC 3.1-14-5 as applicable.

~~(6)~~ **(7)** After the pay-in-period is completed **or the trust fund is fully funded**, whenever the current **corrective action or** closure 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 fund is less than the amount of the new estimate, the owner or operator, within sixty (60) days after the change in the cost estimate, shall either:

(A) deposit an amount into the fund so that its value after this deposit at least equals the amount of the current **corrective action or** closure cost estimate; or

(B) obtain other financial assurance ~~as specified in~~ **accordance with** this section to cover the difference.

~~(7)~~ **(8)** If the value of the trust fund is greater than the total amount of the current **corrective action or** closure cost estimate, the owner or operator may submit a written request to the commissioner for release of the amount in excess of the current **corrective action or** closure cost estimate.

~~(8)~~ **(9)** If an owner or operator substitutes other financial assurance ~~as specified in~~ **accordance with** this section for all or part of the trust fund, the owner or operator may submit a written request to the commissioner for release of the amount in excess of the current **corrective action or** closure cost estimate covered by the trust fund.

~~(9)~~ **(10)** Within sixty (60) days after receiving a request from the owner or operator for

release of funds as specified in **accordance with** subdivision ~~(7) or~~ (8) or (9), the commissioner shall instruct the trustee to release to the owner or operator ~~such the~~ funds as the commissioner specifies in writing.

~~(10)~~ (11) After beginning **corrective action**, partial **closure**, or final closure, an owner or operator or another person authorized to conduct **corrective action**, partial **closure**, or final closure may request reimbursements for **corrective action**, partial **closure**, or final closure expenditures by submitting itemized bills to the commissioner. 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 its remaining operating life. Within sixty (60) days after receiving bills for **corrective action**, partial **closure**, or final closure activities, the commissioner shall instruct the trustee to make reimbursements in ~~those the~~ amounts as the commissioner specifies, in writing, if the commissioner determines that the **corrective action**, partial **closure**, or final closure expenditures are in accordance with the approved **corrective action or closure plan** or otherwise justified. If the commissioner has reason to believe that the maximum cost of **corrective action or closure** over the remaining life of the facility will be significantly greater than the value of the trust fund, the commissioner may withhold reimbursements of ~~such~~ amounts as the commissioner deems prudent until it is determined, in accordance with subsection (j) or (k), that the owner or operator is no longer required to maintain financial assurance for **corrective action or final closure** of the facility. If the commissioner does not instruct the trustee to make ~~such~~ reimbursements, the commissioner shall provide the owner or operator with a detailed written statement of reasons.

~~(11)~~ (12) The commissioner shall agree to termination of the trust when:

(A) the owner or operator substitutes alternate financial assurance as specified in **accordance with** this section; or

(B) the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j) or (k).

(c) The requirements for a surety bond guaranteeing payment into a **corrective action or closure** trust fund are as follows:

(1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond that conforms to the requirements of this subsection and submitting the bond to the commissioner. An owner or operator of a new facility shall submit the bond to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, recovery, or disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be:

(A) authorized to do business in Indiana; and

(B) ~~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 must be identical to the wording specified in section 10(b) of this rule.

(3) The owner or operator who uses a surety bond to satisfy the requirements of this section ~~also~~ shall establish a standby trust fund. Under the terms of the bond, all

payments ~~made thereunder~~ must be deposited by the surety directly into the standby trust fund in accordance with instructions from the commissioner. This standby trust fund must meet the requirements specified in subsection (b) except the following:

(A) An originally signed duplicate of the trust agreement must be submitted to the commissioner with the surety bond.

(B) Until the standby trust fund is funded ~~pursuant to~~ **in accordance with** the requirements of this section, the following are not required by this rule:

(i) Payments into the trust fund ~~as specified in~~ **accordance with** subsection (b).

(ii) Updating of Schedule A of the trust agreement in accordance with section 10(a) of this rule to reflect current **corrective action or** closure cost estimates.

(iii) Annual valuations as required by the trust agreement.

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

(4) The bond must guarantee that the owner or operator shall complete ~~one (1) of~~ the following, **as applicable**:

(A) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of **corrective action or** final closure of the facility.

(B) Fund the standby trust fund in an amount equal to the penal sum within fifteen (15) days after an:

(i) administrative order to begin **corrective action or** final closure, issued by the commissioner, becomes final; or ~~within fifteen (15) days after an~~

(ii) order to begin **corrective action or** final closure is issued by a United States district court or other court of competent jurisdiction.

(C) Provide alternate financial assurance ~~as specified in~~ **accordance with** this section, and obtain the commissioner's written approval of the assurance provided, within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety ~~shall become~~ **becomes** 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 must be in an amount at least equal to the current **corrective action or** closure cost estimate except as provided in subsection (h).

(7) Whenever the current **corrective action or** closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within sixty (60) days after the increase, shall either:

(A) cause the penal sum to be increased to an amount at least equal to the current **corrective action or** closure cost estimate and submit evidence of ~~such the~~ increase to the commissioner; or

(B) obtain other financial assurance ~~as specified in~~ **accordance with** this section to cover the increase.

Whenever the current **corrective action or** closure cost estimate decreases, the penal sum may be reduced to the amount of the current **corrective action or** closure cost estimate following written approval by the commissioner.

(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 commissioner.

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 commissioner as evidenced by the return receipts.

(9) The owner or operator may cancel the bond if the commissioner has given prior written consent based on the receipt by the commissioner of evidence of alternate financial assurance ~~as specified in~~ **accordance with** this section.

(d) The requirements for a surety bond guaranteeing performance of **corrective action or** closure are as follows:

(1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond that conforms to the requirements of this subsection and submitting the bond to the commissioner. An owner or operator of a new facility shall submit the bond to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, recovery, or disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be:

(A) authorized to do business in Indiana; and

(B) ~~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 must be identical to the wording specified in section 10(c) of this rule.

(3) The owner or operator who uses a surety bond to satisfy the requirements of this section ~~also~~ shall establish a standby trust fund. Under the terms of the bond, all payments ~~made thereunder~~ must be deposited by the surety directly into the standby trust fund in accordance with instructions from the commissioner. This standby trust fund must meet the requirements specified in subsection (b) except the following:

(A) An originally signed duplicate of the trust agreement must be submitted to the commissioner with the surety bond.

(B) Unless the standby trust fund is funded ~~pursuant to~~ **in accordance with** the requirements of this section, the following are not required by this rule:

(i) Payments into the trust fund ~~as specified in~~ **accordance with** subsection (b).

(ii) Updating of Schedule A of the trust agreement in accordance with section 10(a) of this rule to reflect current **corrective action or** closure cost estimates.

(iii) Annual valuations as required by the trust agreement.

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

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

(A) perform **corrective action or** final closure in accordance with the **corrective action or** closure plan and other requirements of the permit for the facility whenever required to do so; or

(B) provide alternate financial assurance ~~as specified in~~ **accordance with** this section and obtain the commissioner's written approval of the assurance provided, within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety ~~shall become~~ **becomes** liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final administrative determination under IC 13-30-3 or 42 U.S.C. 6928 that the owner or operator has failed to perform **corrective action or** final closure in accordance with the approved **corrective action or** closure plan and other permit requirements when required to do so, under the terms of the bond, the surety shall perform **corrective action or** final closure as guaranteed by the bond or shall deposit the amount of the penal sum into the standby trust fund.

(6) The penal sum of the bond must be in an amount at least equal to the current **corrective action or** closure cost estimate.

(7) Whenever the current **corrective action or** closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within sixty (60) days after the increase, shall either:

(A) cause the penal sum to be increased to an amount at least equal to the current **corrective action or** closure cost estimate and submit evidence of ~~such the~~ increase to the commissioner; or

(B) obtain other financial assurance ~~as specified in~~ **accordance with** this section.

Whenever the current **corrective action or** closure cost estimate decreases, the penal sum may be reduced to the amount of the current **corrective action or** closure cost estimate following written approval by the commissioner.

(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 commissioner. 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 commissioner as evidenced by the return receipts.

(9) The owner or operator may cancel the bond if the commissioner has given prior written consent. The commissioner shall provide ~~such~~ written consent when:

(A) the owner or operator substitutes alternate financial assurance ~~as specified in~~ **accordance with** this section; or

(B) the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j) **or (k)**.

(10) The surety shall not be liable for deficiencies in the performance of **corrective action or** closure by the owner or operator after the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j) **or (k)**.

(e) The requirements for a **corrective action or** closure letter-of-credit are as follows:

(1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter-of-credit that conforms to the requirements of this subsection and submitting the letter to the commissioner. An owner or operator of a new facility shall submit the letter-of-credit to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, recovery, or disposal. The letter-of-credit must be effective before this initial receipt of hazardous waste. The issuing institution must be an entity that has the authority to issue a letter-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 must be identical to the wording specified in section 10(d) of this rule.

(3) An owner or operator who uses a letter-of-credit to satisfy the requirements of this section ~~also~~ shall establish a standby trust fund. Under the terms of the letter-of-credit, all amounts paid ~~pursuant to~~ **in accordance with** a draft by the commissioner must be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the commissioner. This standby trust fund must meet the requirements of the trust fund specified in subsection (b) except the following:

(A) An originally signed duplicate of the trust agreement must be submitted to the commissioner with the letter-of-credit.

(B) Unless the standby trust fund is funded ~~pursuant to~~ **in accordance with** the requirements of this section, the following are not required by this rule:

(i) Payments into the trust fund ~~as specified~~ **in accordance with** subsection (b).

(ii) Updating of Schedule A of the trust agreement in accordance with section 10(a) of this rule to reflect current **corrective action or** closure cost estimates.

(iii) Annual valuations as required by the trust agreement.

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

(4) The letter-of-credit must be accompanied by a letter from the owner or operator referring to the letter-of-credit by number, issuing institution, and date, and provide the following information:

(A) The ~~EPA U.S.~~ **EPA** identification number, name, and address of the facility.

(B) The amount of funds assured for **corrective action or** closure of the facility by the letter-of-credit.

(5) The letter-of-credit must be irrevocable and issued for a period of at least one (1) year. The letter-of-credit must provide that the expiration date will be automatically extended for a period of at least one (1) year unless, at least one hundred twenty (120) days before the current expiration date, the issuing institution notifies both the owner or operator and the commissioner by certified mail of a decision not to extend the expiration date. Under the terms of the letter-of-credit, the one hundred twenty (120) days will begin on the date when both the owner or operator and the commissioner have received the notice as evidenced by the return receipts.

(6) The letter-of-credit must be issued in an amount at least equal to the current **corrective action or** closure cost estimate except as provided in subsection (h).

(7) Whenever the current **corrective action or** closure cost estimate increases to an amount greater than the amount of the credit, the owner or operator, within sixty (60) days after the increase, shall either:

(A) cause the amount of the credit to be increased so that it at least equals the current **corrective action or** closure cost estimate and submit evidence of ~~such~~ **the** increase to the commissioner; or

(B) obtain other financial assurance ~~as specified~~ **in accordance with** this section to cover the increase.

Whenever the current **corrective action or** closure cost estimate decreases, the amount of the credit may be reduced to the amount of the current **corrective action or** closure cost



estimate following written approval by the commissioner.

(8) Following a final administrative determination under IC 13-30-3 or 42 U.S.C. 6928 that the owner or operator has failed to perform **corrective action or** final closure in accordance with the **corrective action or** closure plan and other permit requirements when required to do so, the commissioner may draw on the letter-of-credit.

(9) The commissioner shall draw on the letter-of-credit if the owner or operator does not establish alternate financial assurance ~~as specified in~~ **accordance with** this section and obtain written approval of ~~such~~ alternate assurance from the commissioner within ninety

(90) days after receipt by both the owner or operator and the commissioner of a notice from the issuing institution of the current expiration date. The commissioner may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last thirty (30) days of ~~any such an~~ extension, the commissioner shall draw on the letter-of-credit if the owner or operator has failed to provide alternate financial assurance ~~as specified in~~ **accordance with** this section and to obtain written approval of ~~such the~~ assurance from the commissioner.

(10) The commissioner shall return the letter-of-credit to the issuing institution for termination when:

(A) the owner or operator substitutes alternate financial assurance ~~as specified in~~ **accordance with** this section; or

(B) the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j) **or (k)**.

(f) The requirements for **corrective action or** closure insurance are as follows:

(1) An owner or operator may satisfy the requirements of this section by obtaining **corrective action or** closure insurance that conforms to the requirements of this subsection and submitting a certificate of ~~such~~ insurance to the commissioner. An owner or operator of a new facility shall submit the certificate of insurance to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, recovery, or disposal. The insurance must be effective before ~~this the~~ initial receipt of hazardous waste. At a minimum, the insurer ~~shall~~ **must** be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one (1) or more states.

(2) The wording of the certificate of insurance must be identical to the wording specified in section 10(e) of this rule.

(3) The **corrective action or** closure insurance policy must be issued for a face amount at least equal to the current **corrective action or** closure cost estimate except as provided in subsection (h). As used in this subsection, "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 **corrective action or** closure insurance policy must guarantee that funds will be available to **perform corrective action or** close the facility whenever **corrective action or** final closure occurs. The policy ~~also~~ must guarantee that once **corrective action or** final closure begins, the insurer ~~shall be~~ **is** responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the commissioner, to

~~such~~ the party or parties as the commissioner specifies.

(5) After beginning **corrective action**, partial **closure**, or final closure, an owner or operator or any other person authorized to conduct **corrective action or closure** may request reimbursements for **corrective action or closure** expenditures by submitting itemized bills to the commissioner. The owner or operator may request reimbursements for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within sixty (60) days after receiving bills for **corrective action or closure** activities, the commissioner shall instruct the insurer to make reimbursements in ~~such~~ amounts as the commissioner specifies in writing if the commissioner determines that the **corrective action, partial closure, or final closure** expenditures are in accordance with the approved **corrective action or closure** plan or otherwise justified. If the commissioner has reason to believe that the maximum cost of **corrective action or closure** over the remaining life of the facility will be significantly greater than the face amount of the policy, the commissioner may withhold reimbursements of ~~such~~ amounts as the commissioner deems prudent until it is determined, in accordance with subsection (j) **or (k)**, that the owner or operator is no longer required to maintain financial assurance for **corrective action or final closure** of the facility. If the commissioner does not instruct the insurer to make ~~such~~ reimbursements, the commissioner shall provide the owner or operator with a detailed written statement of reasons.

(6) The owner or operator shall maintain the policy in full force and effect until the commissioner consents to termination of the policy by the owner or operator ~~as specified~~ in **accordance with** subdivision (10). Failure to pay the premium, without substitution of alternate financial assurance ~~as specified~~ in **accordance with** this section, constitutes a ~~major~~ violation of this article warranting ~~such a~~ remedy as the commissioner deems necessary and is authorized to make. ~~Such~~ **The** violation is deemed to begin upon receipt by the commissioner 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 must contain a provision allowing assignment of the policy to a successor owner or operator. ~~Such~~ **The** assignment may be conditional upon consent of the insurer provided ~~such the~~ consent is not unreasonably refused.

(8) The policy must 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 must, 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 commissioner. Cancellation, termination, or failure to renew may not occur ~~however~~, during the one hundred twenty (120) days beginning with the date of receipt of the notice by both the commissioner and the owner or operator as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy must remain in full force and effect in the event that on or before the date of expiration:

- (A) the commissioner deems the facility abandoned;
- (B) the permit is terminated or revoked or a new permit is denied;
- (C) **corrective action or closure** is ordered by the commissioner or a United

States district court or other court of competent jurisdiction;

(D) the owner or operator is named as debtor in a voluntary or involuntary bankruptcy proceeding under ~~Title 11, United States Code;~~ **11 U.S.C. 101 et seq.;**

or

(E) the premium due is paid.

(9) Whenever the current **corrective action or** closure cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within sixty (60) days after the increase, shall either:

(A) cause the face amount to be increased to an amount at least equal to the current **corrective action or** closure cost estimate and submit evidence of such ~~the~~ **the** increase to the commissioner; or

(B) obtain other financial assurance ~~as specified in~~ **accordance with** this section to cover the increase.

Whenever the current **corrective action or** closure cost estimate decreases, the face amount may be reduced to the amount of the current **corrective action or** closure cost estimate following written approval by the commissioner.

(10) The commissioner shall give written consent to the owner or operator that the owner or operator may terminate the insurance policy when:

(A) the owner or operator substitutes alternate financial assurance ~~as specified in~~ **accordance with** this section; or

(B) the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j) **or (k).**

(g) The requirements for a financial test and guarantee for **corrective action or** closure are as follows:

(1) An owner or operator may satisfy the requirements of this section by demonstrating that the owner or operator passes a financial test ~~as specified in~~ **accordance with** this subsection. To pass ~~this~~ **the financial** test, the owner or operator shall meet the criteria of either clause (A) or (B) as follows:

(A) The owner or operator shall have the following:

(i) Two (2) of the following three (3) ratios:

(AA) A ratio of total liabilities to net worth less than two (2.0).

(BB) A ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than one-tenth (0.1).

(CC) A ratio of current assets to current liabilities greater than one and five-tenths (1.5).

(ii) Net working capital and tangible net worth each at least six (6) times the sum of the current **corrective action**, closure, and post-closure cost estimates.

(iii) Tangible net worth of at least ten million dollars (\$10,000,000).

(iv) Assets located in the United States amounting to at least:

(AA) ninety percent (90%) of the total assets; or

(BB) six (6) times the sum of the current **corrective action**, closure, and post-closure cost estimates.

(B) The owner or operator shall have the following:

- (i) A current rating for the most recent bond issuance of:
    - (AA) AAA, AA, A, or BBB as issued by Standard and Poor's; or
    - (BB) Aaa, Aa, A, or Baa as issued by Moody's.
  - (ii) Tangible net worth at least six (6) times the sum of the current **corrective action**, closure, and post-closure cost estimates.
  - (iii) Tangible net worth of at least ten million dollars (\$10,000,000).
  - (iv) Assets located in the United States amounting to at least:
    - (AA) ninety percent (90%) of the total assets; or
    - (BB) six (6) times the sum of the current **corrective action**, closure, and post-closure cost estimates.
- (2) As used in subdivision (1), "current **corrective action**, closure, and post-closure cost estimates" refers to the cost estimates required to be shown in paragraphs 1 through 4 of the letter from the owner's or operator's chief financial officer.
- (3) To demonstrate that the owner or operator meets ~~this~~ **the financial** test, the owner or operator shall submit the following items to the commissioner:
- (A) A letter signed by the owner's or operator's chief financial officer and worded as specified in section 10(f) of this rule.
  - (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.
  - (C) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating the following:
    - (i) The independent certified public accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in ~~such~~ **the** financial statements.
    - (ii) In ~~connection with that procedure~~, **the comparison in item (i)**, no matters came to the attention of the independent certified public accountant that caused the independent certified public accountant to believe that the specified data should be adjusted.
- (4) An owner or operator of a new facility shall submit the items specified in subdivision (3) to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, recovery, or disposal.
- (5) After the initial submission of items specified in subdivision (3), the owner or operator shall send updated information to the commissioner within ninety (90) days after the close of each succeeding fiscal year. This information must consist of all three (3) items specified in subdivision (3).
- (6) If the owner or operator no longer meets the requirements of subdivision (1), the owner or operator shall send notice to the commissioner of intent to establish alternate financial assurance ~~as specified in~~ **accordance with** this section. The notice must be sent by certified mail within ninety (90) days after the end of the fiscal year for which the year-end financial data reflects that the owner or operator no longer meets the requirements. The owner or operator shall provide the alternate financial assurance within one hundred twenty (120) days after the end of ~~such~~ **the** fiscal year.
- (7) The commissioner may, based on a reasonable belief that the owner or operator may

no longer meet the requirements of subdivision (1), require reports of financial condition at any time from the owner or operator in addition to those specified in subdivision (3). If the commissioner finds, on the basis of ~~such~~ **the** reports or other information, that the owner or operator no longer meets the requirements of subdivision (1), the owner or operator shall provide alternate financial assurance ~~as specified in~~ **accordance with** this section within thirty (30) days after notification of ~~such a~~ **the** finding.

(8) The commissioner may disallow use of ~~this~~ **the financial** test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the report on examination of the owner's or operator's financial statements. An adverse opinion or a disclaimer of opinion is cause for disallowance. The commissioner shall evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance ~~as specified in~~ **accordance with** this section within thirty (30) days after notification of the disallowance.

(9) The owner or operator is no longer required to submit the items specified in subdivision (3) when:

(A) the owner or operator substitutes alternate financial assurance ~~as specified in~~ **accordance with** this section; or

(B) the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j) **or (k)**.

(10) An owner or operator may meet the requirements of this section by obtaining a written guarantee. ~~hereinafter referred to as guarantee~~. The guarantor ~~shall~~ **must** be the direct or higher tier parent corporation of the owner or operator or a firm whose parent corporation is also the parent corporation of the owner or operator. The guarantor shall meet the requirements for owners or operators in subdivisions (1) through (8) and shall comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in section 10(h) of this rule. The guarantee must accompany the items sent to the commissioner ~~as specified in~~ **accordance with** subdivision (3). One (1) of these items must include 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 must describe the value received in consideration of the guarantee. The terms of the guarantee must provide the following:

(A) If the owner or operator fails to perform **corrective action or** final closure of a facility covered by the guarantee in accordance with the **corrective action or** closure plan and other permit requirements whenever required to do so, the guarantor shall perform **corrective action or** final closure in accordance with the **corrective action or** closure plan and other permit requirements or establish a trust fund ~~as specified in~~ **accordance with** subsection (b) in the name of the owner or operator.

(B) The guarantee must remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the commissioner. 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 commissioner, as evidenced by the return receipts.

(C) **The guarantor shall provide alternative financial assurance in the name of the owner or operator** if the owner or operator fails to:

- (i) provide alternate financial assurance ~~as specified~~ in **accordance with** this section; and
- (ii) obtain the written approval of ~~such an~~ alternate assurance from the commissioner within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice of cancellation of the guarantee from the guarantor.

~~the guarantor shall provide such alternative financial assurance in the name of the owner or operator.~~

(h) An owner or operator may satisfy the requirements of this section by establishing more than one (1) financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters-of-credit, and insurance. The mechanisms must be ~~as specified~~ **established in accordance with** subsections (b) through (c) and (e) through (f), respectively, except that it is the combination of mechanisms rather than the single mechanism, that must provide financial assurance for an amount at least equal to the current **corrective action or** closure cost estimate, **or both cost estimates**. If an owner or operator uses a trust fund in combination with a surety bond or a letter-of-credit, 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 (2) or more mechanisms. The commissioner may use any or all of the mechanisms to provide for **corrective action or** closure, **or both**, of the facility.

(i) An owner or operator may use a financial assurance mechanism specified in this section to meet the requirements of this section for more than one (1) facility. Evidence of financial assurance submitted to the commissioner must include a list showing, for each facility, the ~~EPA U.S. EPA~~ identification number, name, address, and the amount of funds for **corrective action or** closure, **or both**, assured by the mechanism. The amount of funds available through the mechanism must 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 **corrective action or** closure, **or both**, of any of the facilities covered by the mechanism, the commissioner 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.

(j) Within sixty (60) 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 commissioner shall notify the owner or operator in writing that the owner or operator is no longer required by this section to maintain financial assurance for final closure of the facility unless the commissioner has reason to believe that final closure has not been in accordance with the approved closure plan. The commissioner shall provide the owner or operator a detailed written statement of any ~~such~~ reason that closure has not been in accordance with the approved closure plan.

**(k) An owner or operator required in subsection (a) to establish financial assurance for corrective action of a facility is released from the requirement to maintain financial**

assurance when:

- (1) the approved remedy for corrective action has attained the cleanup goal; and
- (2) the commissioner has notified the owner or operator in writing that financial assurance for corrective action is no longer required.

**\*These documents are incorporated by reference. Copies of these documents may be obtained from the Government Publishing Office, [www.gpo.gov](http://www.gpo.gov), or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, Indiana 46204.**

**\*\*This document is available for viewing at <https://www.fiscal.treasury.gov/surety-bonds/circular-570.html> and may be obtained from the United States Department of the Treasury, Bureau of the Fiscal Service, Surety Bond Program, 3700 East West Highway, Room 6D22, Hyattsville, MD 20782. (Solid Waste Management Division; 329 IAC 3.1-15-4; filed Jan 24, 1992, 2:00 p.m.: 15 IR 983; errata filed Feb 6, 1992, 3:15 p.m.: 15 IR 1027; filed Apr 1, 1996, 11:00 a.m.: 19 IR 2018; errata filed Apr 30, 1996, 10:00 a.m.: 19 IR 2289; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2438)**

SECTION 22. 329 IAC 3.1-15-6 IS AMENDED TO READ AS FOLLOWS:

**329 IAC 3.1-15-6 Financial assurance for post-closure care**

**Authority: IC 13-14-8; IC 13-22-2; IC 13-22-8-1; IC 13-22-9-7**

**Affected: IC 13-22; IC 13-30-3**

Sec. 6. (a) The owner or operator of a hazardous waste management unit subject to the requirements of section 5 of this rule shall establish financial assurance for post-closure care in accordance with the approved post-closure plan for the facility sixty (60) days prior to the initial receipt of hazardous waste or the effective date of this rule, whichever is later. The owner or operator shall choose from the options in this section.

(b) The requirements for a post-closure trust fund are as follows:

(1) An owner or operator may satisfy the requirements of this section by establishing a post-closure trust fund that conforms to the requirements of this subsection and submitting an originally signed duplicate of the trust agreement to the commissioner. An owner or operator of a new facility shall submit the originally signed duplicate of the trust agreement to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for disposal. The trustee ~~shall~~ **must** be an entity that 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 must be identical to the wording specified in section 10(a) of this rule, and the trust agreement must be accompanied by a formal certification of ~~acknowledgement~~ **acknowledgment** in accordance with 329 IAC 3.1-14-26(b). Schedule A of the trust agreement must be updated within sixty (60) days after a

change in the amount of the current post-closure cost estimate covered by the agreement. (3) Payments into the trust fund must be made annually by the owner or operator over the term of the first final (state) permit or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereinafter referred to as the pay-in-period. The payments into the post-closure trust fund must be made as follows:

(A) For a new facility, the first payment must be made before the initial receipt of hazardous waste for disposal. A receipt from the trustee for this payment must be submitted by the owner or operator to the commissioner before this initial receipt of hazardous waste. The first payment must be at least equal to the current post-closure cost estimate, except as provided in subsection (h), divided by the number of years in the pay-in-period. Subsequent payments must be made no later than thirty (30) days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by the following formula:

$$\text{Next payment} = \frac{\text{CE} - \text{CV}}{\text{Y}}$$

Where: CE = The current post-closure cost estimate.  
CV = The current value of the trust fund.  
Y = The number of years remaining in the pay-in-period.

(B) If an owner or operator establishes a trust fund ~~as specified in~~ **accordance with** this section, and the value of that trust fund is less than the current post-closure cost estimate when a permit is awarded for the facility, the amount of the current post-closure cost estimate still to be paid into the trust fund must be paid in over the pay-in-period as defined in this subdivision. Payments must continue to be made no later than thirty (30) days after each anniversary date of the first payment made ~~pursuant to~~ **under** 329 IAC 3.1-14. The amount of each payment must be determined by the following formula:

$$\text{Next payment} = \frac{\text{CE} - \text{CV}}{\text{Y}}$$

Where: CE = The current post-closure cost estimate.  
CV = The current value of the trust fund.  
Y = The number of years remaining in the pay-in-period.

(4) The owner or operator may accelerate payments into the trust fund, or the owner or operator may deposit the full amount of the current post-closure cost estimate at the time the fund is established. ~~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~~ **accordance with** subdivision (3).

(5) If the owner or operator establishes a post-closure trust fund after having used one (1) or more alternate mechanisms specified in this section or 329 IAC 3.1-14-15, the first payment must be in at least the amount that the fund would contain if the trust fund was established initially and annual payments made according to specifications of this section and 329 IAC 3.1-14-15 as applicable.

(6) After the pay-in-period is completed, whenever the current post-closure cost estimate changes during the operating life of the facility, 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 fund is less than the amount of the new estimate, the owner or operator, within sixty (60) days after the change in the cost estimate, shall either:

- (A) deposit an amount into the fund so that its value after this deposit at least equals the amount of the current post-closure cost estimate; or
- (B) obtain other financial assurance ~~as specified in~~ **accordance with** this section to cover the difference.

(7) During the operating life of the facility, if the value of the trust fund is greater than the total amount of the current post-closure cost estimate, the owner or operator may submit a written request to the commissioner for release of the amount in excess of the current post-closure cost estimate.

(8) If an owner or operator substitutes other financial assurance ~~as specified in~~ **accordance with** this section for all or part of the trust fund, the owner or operator may submit a written request to the commissioner for release of the amount in excess of the current post-closure cost estimate covered by the trust fund.

(9) Within sixty (60) days after receiving a request from the owner or operator for release of funds ~~as specified in~~ **accordance with** subdivision (7) or (8), the commissioner shall instruct the trustee to release to the owner or operator ~~such~~ funds as the commissioner specifies in writing.

(10) During the period of post-closure care, the commissioner may approve a release of funds if the owner or operator demonstrates to the commissioner that the value of the trust fund exceeds the remaining cost of post-closure care.

(11) An owner or operator or any other person authorized to conduct post-closure care may request reimbursements for post-closure care expenditures by submitting itemized bills to the commissioner. Within sixty (60) days after receiving bills for post-closure care activities, the commissioner shall instruct the trustee to make reimbursements in ~~those~~ amounts as the commissioner specifies in writing, if the commissioner determines that the post-closure care expenditures are in accordance with the approved post-closure plan, or otherwise justified. If the commissioner does not instruct the trustee to make ~~such~~ reimbursements, the commissioner shall provide the owner or operator with a detailed written statement of reasons.

(12) The commissioner shall agree to termination of the trust when:

- (A) the owner or operator substitutes alternate financial assurance ~~as specified in~~ **accordance with** this section; or
- (B) the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j).

(c) The requirements for a surety bond guaranteeing payment into a post-closure trust fund are as follows:

(1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond that conforms to the requirements of this subsection and submitting the bond to the commissioner. An owner or operator of a new facility shall submit the bond to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be:

- (A) authorized to do business in Indiana; and
  - (B) ~~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 must be identical to the wording specified in section 10(b) of this rule.
- (3) The owner or operator who uses a surety bond to satisfy the requirements of this section ~~also~~ shall establish a standby trust fund. Under the terms of the bond, all payments ~~made thereunder~~ must be deposited by the surety directly into the standby trust fund in accordance with instructions from the commissioner. This standby trust fund must meet the requirements specified in subsection (b) except the following:
- (A) An originally signed duplicate of the trust agreement must be submitted to the commissioner with the surety bond.
  - (B) Until the standby trust fund is funded ~~pursuant to~~ **in accordance with** the requirements of this section, the following are not required by this rule:
    - (i) Payments into the trust fund ~~as specified in accordance with~~ subsection (b).
    - (ii) Updating of Schedule A of the trust agreement in accordance with section 10(a) of this rule to reflect current post-closure cost estimates.
    - (iii) Annual valuations as required by the trust agreement.
    - (iv) Notices of nonpayment as required by the trust agreement.
- (4) The bond must guarantee that the owner or operator shall complete ~~one (1) of~~ the following, **as applicable**:
- (A) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility.
  - (B) Fund the standby trust fund in an amount equal to the penal sum within fifteen (15) days after an:
    - (i) administrative order to begin final closure, issued by the commissioner, becomes final; or ~~within fifteen (15) days after an~~
    - (ii) order to begin final closure is issued by a United States district court or other court of competent jurisdiction.
  - (C) Provide alternate financial assurance ~~as specified in accordance with~~ this section, and obtain the commissioner's written approval of the assurance provided within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice of cancellation of the bond from the surety.
- (5) Under the terms of the bond, the surety ~~shall become~~ **becomes** 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 must be in an amount at least equal to the current post-closure cost estimate except as provided in subsection (h).
- (7) Whenever the current post-closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within sixty (60) days after the increase, shall either:
- (A) cause the penal sum to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of ~~such~~ **the** increase to the commissioner; or
  - (B) obtain other financial assurance ~~as specified in accordance with~~ **in accordance with** this section

to cover the increase.

Whenever the current post-closure cost estimate decreases, the penal sum may be reduced to the amount of the current post-closure cost estimate following written approval by the commissioner.

(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 commissioner.

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 commissioner as evidenced by the return receipts.

(9) The owner or operator may cancel the bond if the commissioner has given prior written consent based on the receipt by the commissioner of evidence of alternate financial assurance ~~as specified in~~ **accordance with** this section.

(d) The requirements for a surety bond guaranteeing performance of post-closure care are as follows:

(1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond that conforms to the requirements of this subsection and submitting the bond to the commissioner. An owner or operator of a new facility shall submit the bond to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be:

(A) authorized to do business in Indiana; and

(B) ~~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 must be identical to the wording specified in section 10(c) of this rule.

(3) The owner or operator who uses a surety bond to satisfy the requirements of this section ~~also~~ shall establish a standby trust fund. Under the terms of the bond, all payments ~~made thereunder~~ must be deposited by the surety directly into the standby trust fund in accordance with instructions from the commissioner. This standby trust fund must meet the requirements specified in subsection (b) except the following:

(A) An originally signed duplicate of the trust agreement must be submitted to the commissioner with the surety bond.

(B) Unless the standby trust fund is funded ~~pursuant to~~ **in accordance with** the requirements of this section, the following are not required by this rule:

(i) Payments into the trust fund ~~as specified in~~ **accordance with** subsection (b).

(ii) Updating of Schedule A of the trust agreement in accordance with section 10(a) of this rule to reflect current post-closure cost estimates.

(iii) Annual valuations as required by the trust agreement.

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

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

(A) perform post-closure care in accordance with the post-closure plan and other requirements of the permit for the facility; or

(B) provide alternate financial assurance ~~as specified in~~ **accordance with** this

section, and obtain the commissioner's written approval of the assurance provided within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety ~~shall become~~ **becomes** liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final administrative determination under IC 13-30-3 or 42 U.S.C. 6928 that the owner or operator has failed to perform post-closure care in accordance with the approved post-closure plan and other permit requirements, under the terms of the bond, the surety shall perform post-closure care in accordance with the post-closure plan and other permit requirements or shall deposit the amount of the penal sum into the standby trust fund.

(6) The penal sum of the bond must be in an amount at least equal to the current post-closure cost estimate.

(7) Whenever the current post-closure cost estimate increases to an amount greater than the penal sum during the operating life of the facility, the owner or operator, within sixty (60) days after the increase, shall either:

(A) cause the penal sum to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of ~~such~~ **the** increase to the commissioner; or

(B) obtain other financial assurance ~~as specified in~~ **accordance with** this section.

Whenever the current post-closure cost estimate decreases during the operating life of the facility, the penal sum may be reduced to the amount of the current post-closure cost estimate following written approval by the commissioner.

(8) During the period of post-closure care, the commissioner may approve a decrease in the penal sum if the owner or operator demonstrates to the commissioner that the amount exceeds the remaining cost of post-closure care.

(9) 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 commissioner. 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 commissioner, as evidenced by the return receipts.

(10) The owner or operator may cancel the bond if the commissioner has given prior written consent. The commissioner shall provide ~~such~~ written consent when:

(A) the owner or operator substitutes alternate financial assurance ~~as specified in~~ **accordance with** this section; or

(B) the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j).

(11) The surety shall not be liable for deficiencies in the performance of post-closure care by the owner or operator after the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j).

(e) The requirements for a post-closure letter-of-credit are as follows:

(1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter-of-credit that conforms to the requirements of this subsection and submitting the letter to the commissioner. An owner or operator of a new facility

shall submit the letter-of-credit to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for disposal. The letter-of-credit must be effective before this initial receipt of hazardous waste. ~~This~~ **The** issuing institution must be an entity that 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 must be identical to the wording specified in section 10(d) of this rule.

(3) The owner or operator who uses a letter-of-credit to satisfy the requirements of this section ~~also~~ shall establish a standby trust fund. Under the terms of the letter-of-credit, all amounts paid ~~pursuant to~~ **in accordance with** a draft by the commissioner must be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the commissioner. This standby trust fund must meet the requirements of the trust fund specified in subsection (b) except the following:

(A) An originally signed duplicate of the trust agreement must be submitted to the commissioner with the letter-of-credit.

(B) Unless the standby trust fund is funded ~~pursuant to~~ **in accordance with** the requirements of this section, the following are not required by this rule:

(i) Payments into the trust fund ~~as specified in~~ **in accordance with** subsection (b).

(ii) Updating of Schedule A of the trust agreement in accordance with section 10(a) of this rule to reflect current post-closure cost estimates.

(iii) Annual valuations as required by the trust agreement.

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

(4) The letter-of-credit must be accompanied by a letter from the owner or operator referring to the letter-of-credit by number, issuing institution, and date and provide the following information:

(A) The ~~EPA U.S. EPA~~ identification number, name, and address of the facility.

(B) The amount of funds assured for post-closure care of the facility by the letter-of-credit.

(5) The letter-of-credit must be irrevocable and issued for a period of at least one (1) year. The letter-of-credit must provide that the expiration date will be automatically extended for a period of at least one (1) year unless, at least one hundred twenty (120) days before the current expiration date, the issuing institution notifies both the owner or operator and the commissioner by certified mail of a decision not to extend the expiration date. Under the terms of the letter-of-credit, the one hundred twenty (120) days will begin on the date when both the owner or operator and the commissioner have received the notice as evidenced by the return receipts.

(6) The letter-of-credit must be issued in an amount at least equal to the current post-closure cost estimate except as provided in subsection (h).

(7) Whenever the current post-closure cost estimate increases to an amount greater than the amount of the credit during the operating life of the facility, the owner or operator, within sixty (60) days after the increase, shall either:

(A) cause the amount of the credit to be increased so that it at least equals the current post-closure cost estimate and submit evidence of ~~such~~ **the** increase to the commissioner; or

(B) obtain other financial assurance ~~as specified~~ in **accordance with** this section to cover the increase.

Whenever the current post-closure cost estimate decreases during the operating life of the facility, the amount of the credit may be reduced to the amount of the current post-closure cost estimate following written approval by the commissioner.

(8) During the period of post-closure care, the commissioner may approve a decrease in the amount of the letter-of-credit if the owner or operator demonstrates to the commissioner that the amount exceeds the remaining cost of post-closure care.

(9) Following a final administrative determination under IC 13-30-3 or 42 U.S.C. 6928 that the owner or operator has failed to perform post-closure care in accordance with the approved post-closure plan and other permit requirements, the commissioner may draw on the letter-of-credit.

(10) The commissioner shall draw on the letter-of-credit if the owner or operator does not establish alternate financial assurance ~~as specified~~ in **accordance with** this section and obtain written approval of ~~such~~ alternate assurance from the commissioner within ninety (90) days after receipt by both the owner or operator and the commissioner 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 commissioner may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last thirty (30) days of any ~~such~~ extension, the commissioner shall draw on the letter-of-credit if the owner or operator has failed to provide alternate financial assurance ~~as specified~~ in **accordance with** this section and obtain written approval of ~~such~~ the assurance from the commissioner.

(11) The commissioner shall return the letter-of-credit to the issuing institution for termination when:

(A) the owner or operator substitutes alternate financial assurance ~~as specified~~ in **accordance with** this section; or

(B) the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j).

(f) The requirements for post-closure insurance are as follows:

(1) An owner or operator may satisfy the requirements of this section by obtaining post-closure insurance that conforms to the requirements of this subsection and submitting a certificate of ~~such~~ the insurance to the commissioner. An owner or operator of a new facility shall submit the certificate of insurance to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for disposal. The insurance must be effective before this initial receipt of hazardous waste. At a minimum, the insurer ~~shall~~ **must** be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one (1) or more states.

(2) The wording of the certificate of insurance must be identical to the wording specified in section 10(e) of this rule.

(3) The post-closure insurance policy must be issued for a face amount at least equal to the current post-closure cost estimate except as provided in subsection (h). As used in this subsection, "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 post-closure insurance policy must guarantee that funds will be available to provide post-closure care of the facility whenever the post-closure period begins. The policy ~~also~~ must guarantee that once post-closure care begins, the insurer ~~shall be~~ **is** responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the commissioner, to ~~such the~~ party or parties as the commissioner specifies.

(5) An owner or operator or any other person authorized to perform post-closure care may request reimbursement for post-closure expenditures by submitting itemized bills to the commissioner. Within sixty (60) days after receiving bills for post-closure activities, the commissioner shall instruct the insurer to make reimbursement in ~~those~~ amounts as the commissioner specifies in writing, if the commissioner determines that the post-closure care expenditures are in accordance with the approved post-closure plan, or otherwise justified. If the commissioner does not instruct the insurer to make ~~such~~ reimbursements, the commissioner shall provide the owner or operator with a detailed written statement of reasons.

(6) The owner or operator shall maintain the policy in full force and effect until the commissioner consents to termination of the policy by the owner or operator ~~as specified in~~ **accordance with** subdivision (11). Failure to pay the premium, without substitution of alternate financial assurance ~~as specified in~~ **accordance with** this section, constitutes a ~~major~~ violation of this article, warranting ~~such a~~ remedy as the commissioner deems necessary and is authorized to make. ~~Such~~ **The** violation is deemed to begin upon receipt by the commissioner 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 must contain a provision allowing assignment of the policy to a successor owner or operator. ~~Such~~ **The** assignment may be conditional upon consent of the insurer provided ~~such the~~ consent is not unreasonably refused.

(8) The policy must 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 must, 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 commissioner. Cancellation, termination, or failure to renew may not occur ~~however,~~ during the one hundred twenty (120) days beginning with the date of receipt of the notice by both the commissioner and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy must remain in full force and effect in the event that on or before the date of expiration:

(A) the commissioner deems the facility abandoned;

(B) the permit is terminated or revoked or a new permit is denied;

(C) closure is ordered by the commissioner or a United States district court or other court of competent jurisdiction;

(D) the owner or operator is named as debtor in a voluntary or involuntary bankruptcy proceeding under ~~Title 11, United States Code;~~ **11 U.S.C. 101 et seq.;**

or

- (E) the premium due is paid.
- (9) Whenever the current post-closure cost estimate increases to an amount greater than the face amount of the policy during the operating life of the facility, the owner or operator, within sixty (60) days after the increase, shall either:
  - (A) cause the face amount to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of ~~such~~ **the** increase to the commissioner; or
  - (B) obtain other financial assurance ~~as specified in~~ **accordance with** this section to cover the increase.

Whenever the current post-closure cost estimate decreases during the operating life of the facility, the face amount may be reduced to the amount of the current post-closure cost estimate following written approval by the commissioner.

(10) Commencing on the date that liability to make payments ~~pursuant to~~ **in accordance with** the policy accrues, the insurer shall thereafter annually increase the face amount of the policy. ~~Such~~ **The** increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to eighty-five percent (85%) of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Department of the Treasury for twenty-six (26) week Treasury securities.

(11) The commissioner shall give written consent to the owner or operator that the owner or operator may terminate the insurance policy when:

- (A) the owner or operator substitutes alternate financial assurance ~~as specified in~~ **accordance with** this section; or
- (B) the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j).

(g) The requirements for a financial test and guarantee for post-closure care are as follows:

(1) An owner or operator may satisfy the requirements of this section by demonstrating that the owner or operator passes a financial test ~~as specified in~~ **accordance with** this subsection. To pass ~~this~~ **the financial** test, the owner or operator shall meet the criteria of either clause (A) or (B) as follows:

- (A) The owner or operator shall have the following:
  - (i) Two (2) of the following three (3) ratios:
    - (AA) A ratio of total liabilities to net worth less than two (2.0).
    - (BB) A ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than one-tenth (0.1).
    - (CC) A ratio of current assets to current liabilities greater than one and five-tenths (1.5).
  - (ii) Net working capital and tangible net worth each at least six (6) times the sum of the current **corrective action**, closure, and post-closure cost estimates.
  - (iii) Tangible net worth of at least ten million dollars (\$10,000,000).
  - (iv) Assets located in the United States amounting to at least:
    - (AA) ninety percent (90%) of the total assets; or
    - (BB) six (6) times the sum of the current **corrective action**,



closure, and post-closure cost estimates.

(B) The owner or operator shall have the following:

- (i) A current rating for the most recent bond issuance of:
  - (AA) AAA, AA, A, or BBB as issued by Standard and Poor's; or
  - (BB) Aaa, Aa, A, or Baa as issued by Moody's.
- (ii) Tangible net worth at least six (6) times the sum of the current **corrective action**, closure, and post-closure cost estimates.
- (iii) Tangible net worth of at least ten million dollars (\$10,000,000).
- (iv) Assets located in the United States amounting to at least:
  - (AA) ninety percent (90%) of the total assets; or
  - (BB) six (6) times the sum of the current **corrective action**, closure, and post-closure cost estimates.

(2) As used in subdivision (1), "current **corrective action**, closure, and post-closure cost estimates" refers to the cost estimates required to be shown in paragraphs 1 through 4 of the letter from the owner's or operator's chief financial officer.

(3) To demonstrate that the owner or operator meets ~~this~~ **the financial** test, the owner or operator shall submit the following to the commissioner:

(A) A letter signed by the owner's or operator's chief financial officer and worded as specified in section 10(f) of this rule.

(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.

(C) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating the following:

- (i) The independent certified public accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in ~~such~~ **the** financial statements.
- (ii) In ~~connection with that procedure~~, **the comparison in item (i)**, no matters came to the attention of the independent certified public accountant that caused the independent certified public accountant to believe that the specified data should be adjusted.

(4) An owner or operator of a new facility shall submit the items specified in subdivision (3) to the commissioner at least sixty (60) days before the date on which hazardous waste is first received for disposal.

(5) After the initial submission of items specified in subdivision (3), the owner or operator shall send updated information to the commissioner within ninety (90) days after the close of each succeeding fiscal year. This information must consist of all three (3) items specified in subdivision (3).

(6) If the owner or operator no longer meets the requirements of subdivision (1), the owner or operator shall send notice to the commissioner of intent to establish alternate financial assurance ~~as specified in~~ **accordance with** this section. The notice must be sent by certified mail within ninety (90) days after the end of the fiscal year for which the year-end financial data reflects that the owner or operator no longer meets the requirements. The owner or operator shall provide the alternate financial assurance within

one hundred twenty (120) days after the end of ~~such~~ **the** fiscal year.

(7) The commissioner may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subdivision (1), require reports of financial condition at any time from the owner or operator in addition to those specified in subdivision (3). If the commissioner finds, on the basis of ~~such~~ **the** reports or other information, that the owner or operator no longer meets the requirements of subdivision (1), the owner or operator shall provide alternate financial assurance ~~as specified in~~ **accordance with** this section within thirty (30) days after notification of ~~such a~~ **the** finding.

(8) The commissioner may disallow use of ~~this~~ **the financial** test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the report on examination of the owner's or operator's financial statements. An adverse opinion or a disclaimer of opinion is cause for disallowance. The commissioner shall evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance ~~as specified in~~ **accordance with** this section within thirty (30) days after notification of the disallowance.

(9) During the period of post-closure care, the commissioner may approve a decrease in the current post-closure cost estimate for which ~~this~~ **the financial** test demonstrates financial assurance if the owner or operator demonstrates to the commissioner that the amount of the cost estimate exceeds the remaining cost of post-closure care.

(10) The owner or operator is no longer required to submit the items specified in subdivision (3) when:

(A) the owner or operator substitutes alternate financial assurance ~~as specified in~~ **accordance with** this section; or

(B) the commissioner releases the owner or operator from the requirements of this section in accordance with subsection (j).

(11) An owner or operator may meet the requirements of this section by obtaining a written guarantee. ~~hereinafter referred to as guarantee.~~ The guarantor ~~shall~~ **must** be the direct or higher tier parent corporation of the owner or operator or a firm whose parent corporation is also the parent corporation of the owner or operator. The guarantor shall meet the requirements for owners or operators in subdivisions (1) through (9) and shall comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in section 10(h) of this rule. The guarantee must accompany the items sent to the commissioner ~~as specified in~~ **accordance with** subdivision (3). One (1) of these items must include 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 must describe the value received in consideration of the guarantee. The terms of the guarantee must provide the following:

(A) If the owner or operator fails to perform post-closure care of a facility covered by the guarantee in accordance with the post-closure plan and other permit requirements whenever required to do so, the guarantor shall perform post-closure care in accordance with the post-closure plan and other permit requirements or establish a trust fund ~~as specified in~~ **accordance with** subsection (b) in the name of the owner or operator.

(B) The guarantee must remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the commissioner.

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 commissioner as evidenced by the return receipts.

**(C) The guarantor shall provide alternate financial assurance in the name of the owner or operator** if the owner or operator fails to:

(i) provide alternate financial assurance ~~as specified~~ in **accordance with** this section; and

(ii) obtain the written approval of ~~such~~ alternate assurance from the commissioner within ninety (90) days after receipt by both the owner or operator and the commissioner of a notice of cancellation of the guarantee from the guarantor.

~~the guarantor shall provide such alternate financial assurance in the name of the owner or operator.~~

(h) An owner or operator may satisfy the requirements of this section by establishing more than one (1) financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters-of-credit, and insurance. The mechanisms must be ~~as specified~~ **established in accordance with** subsections (b) through (c) and (e) through (f), respectively, except that it is the combination of mechanisms rather than the single mechanism, that must provide financial assurance for an amount at least equal to the current post-closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter-of-credit, 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 (2) or more mechanisms. The commissioner may use any or all of the mechanisms to provide for post-closure care of the facility.

(i) An owner or operator may use a financial assurance mechanism specified in this section to meet the requirements of this section for more than one (1) facility. Evidence of financial assurance submitted to the commissioner must include a list showing, for each facility, the ~~EPA U.S. EPA~~ identification number, name, address, and the amount of funds for post-closure care assured by the mechanism. The amount of funds available through the mechanism must 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 post-closure care of any of the facilities covered by the mechanism, the commissioner 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.

(j) Within sixty (60) days after receiving certification from the owner or operator and an independent registered professional engineer that the post-closure care period has been completed for a hazardous waste disposal unit in accordance with the approved plan, the commissioner shall notify the owner or operator that the owner or operator is no longer required to maintain financial assurance for post-closure care of ~~that the~~ unit, unless the commissioner has reason to believe that post-closure care has not been in accordance with the approved post-closure plan. The commissioner shall provide the owner or operator with a detailed written statement of any ~~such~~ reason that post-closure care has not been in accordance with the approved

post-closure plan.

**\*This document is available for viewing at <https://www.fiscal.treasury.gov/surety-bonds/circular-570.html> and may be obtained from the United States Department of the Treasury, Bureau of the Fiscal Service, Surety Bond Program, 3700 East West Highway, Room 6D22, Hyattsville, MD 20782.** *(Solid Waste Management Division; 329 IAC 3.1-15-6; filed Jan 24, 1992, 2:00 p.m.: 15 IR 991; filed Apr 1, 1996, 11:00 a.m.: 19 IR 2026; errata filed Apr 30, 1996, 10:00 a.m.: 19 IR 2289; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1110; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2445)*

SECTION 23. 329 IAC 3.1-15-7 IS AMENDED TO READ AS FOLLOWS:

**329 IAC 3.1-15-7 Use of a mechanism for financial assurance of corrective action, closure, and post-closure care**

**Authority:** IC 13-14-8; IC 13-22-2; IC 13-22-8-1; IC 13-22-9-7

**Affected:** IC 13-22

Sec. 7. An owner or operator may satisfy the requirements for financial assurance for ~~both~~ **any combination of corrective action**, closure, and post-closure care for one (1) or more facilities by using a trust fund, surety bond, letter-of-credit, insurance, financial test, or guarantee that meets the specifications for the mechanism in both sections 4 and 6 of this rule. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for financial assurance of **corrective action**, closure, and post-closure care. *(Solid Waste Management Division; 329 IAC 3.1-15-7; filed Jan 24, 1992, 2:00 p.m.: 15 IR 998; filed Apr 1, 1996, 11:00 a.m.: 19 IR 2034; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

SECTION 24. 329 IAC 3.1-15-10 IS AMENDED TO READ AS FOLLOWS:

**329 IAC 3.1-15-10 Wording of instruments**

**Authority:** IC 13-14-8; IC 13-22-2; IC 13-22-8-1; IC 13-22-9-7

**Affected:** IC 13-22

Sec. 10. (a) A trust agreement for a trust fund, as specified in section 4(b) or 6(b) of this rule, 329 IAC 3.1-14-5, or 329 IAC 3.1-14-15, must be worded identically ~~as in~~ **to** 329 IAC 3.1-14-26 except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

(b) A surety bond guaranteeing payment into a trust fund, as specified in section 4(c) or 6(c) of this rule, 329 IAC 3.1-14-6, or 329 IAC 3.1-14-16, must be worded identically: ~~as in:~~ **(1) to** 329 IAC 3.1-14-27 except that instructions in brackets are to be replaced with relevant information and the brackets deleted; **or**  
**(2) if required, as specified in the corrective action order or permit.**

(c) A surety bond guaranteeing performance of **corrective action**, closure, **or** post-

closure care, ~~or closure and post-closure care~~, as specified in section 4(d) or 6(d) of this rule, must be worded identically to 329 IAC 3.1-14-28 except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

(d) A letter-of-credit, as specified in section 4(e) or 6(e) of this rule, 329 IAC 3.1-14-7, or 329 IAC 3.1-14-17, must be worded identically to 329 IAC 3.1-14-29 except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

(e) A certificate of insurance, as specified in section 4(f) or 6(f) of this rule, 329 IAC 3.1-14-8, or 329 IAC 3.1-14-18, must be worded identically to 329 IAC 3.1-14-30 except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

(f) A letter from the chief financial officer, as specified in section 4(g) or 6(g) of this rule, 329 IAC 3.1-14-9, or 329 IAC 3.1-14-19, must be worded identically to 329 IAC 3.1-14-31 except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

(g) A letter from the chief financial officer, as specified in section 8(e) of this rule or 329 IAC 3.1-14-24(f), must be worded identically to 329 IAC 3.1-14-32 except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

(h) A guarantee, as specified in section 4(g) or 6(g) of this rule, 329 IAC 3.1-14-9, or 329 IAC 3.1-14-19, must be worded identically to 329 IAC 3.1-14-33 except that instructions in brackets are to be replaced with relevant information and the brackets deleted. A guarantee, as specified in section 8(f) of this rule or 329 IAC 3.1-14-24(g), must be worded identically to 329 IAC 3.1-14-34 except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

(i) A hazardous waste facility liability endorsement, as required in section 8 of this rule or 329 IAC 3.1-14-24, must be worded identically to 329 IAC 3.1-14-35 except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

(j) A certificate of liability insurance, as required in section 8 of this rule or 329 IAC 3.1-14-24, must be worded identically to 329 IAC 3.1-14-36 except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

(k) A letter-of-credit for liability coverage, as required in section 8(g) of this rule or 329 IAC 3.1-14-24(h), must be worded identically to 329 IAC 3.1-14-37 except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

(l) A surety bond for liability coverage, as required in section 8(h) of this rule or 329 IAC 3.1-14-24(i), must be worded identically to 329 IAC 3.1-14-38 except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

(m) A trust agreement for liability coverage, as required in section 8(i) of this rule or 329

IAC 3.1-14-24(j), must be worded identically to 329 IAC 3.1-14-39 except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

(n) A standby trust agreement for liability coverage, as required in section 8 of this rule or 329 IAC 3.1-14-24, must be worded identically to 329 IAC 3.1-14-40 except that instructions in brackets are to be replaced with relevant information and the brackets deleted. (*Solid Waste Management Division; 329 IAC 3.1-15-10; filed Jan 24, 1992, 2:00 p.m.: 15 IR 1001; errata filed Feb 6, 1992, 3:15 p.m.: 15 IR 1027; filed Apr 1, 1996, 11:00 a.m.: 19 IR 2039; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

SECTION 25. 329 IAC 3.1-4-10 IS REPEALED.