

**SUBCHAPTER S: FINANCIAL ASSURANCE FOR ON SITE DISPOSAL OF RADIOACTIVE  
SUBSTANCES AND COMMERCIAL NORM DISPOSAL**  
**§§37.9001, 37.9005, 37.9010, 37.9015, 37.9020, 37.9025**  
**Effective March 12, 2009**

**§37.9001. Applicability.**

This subchapter applies to an owner or operator, including a state or federal government owner or operator, required to provide evidence of financial assurance under Chapter 336, Subchapter F or K of this title (relating to Licensing of Alternative Methods of Disposal of Radioactive Material; Commercial Disposal of Naturally Occurring Radioactive Material Waste From Public Water Systems, respectively). This subchapter establishes requirements and mechanisms for demonstrating financial assurance for closure and post closure.

Adopted February 11, 2009

Effective March 12, 2009

**§37.9005. Definitions.**

Definitions for terms that appear throughout this subchapter may be found in this section, Subchapter A of this chapter (relating to General Financial Assurance Requirements), §336.2 of this title (relating to Definitions), and §336.602 of this title (relating to Definitions), except the following definitions shall apply for this subchapter.

(1) **Annual review** - Conducted on the anniversary date of the establishment of the financial assurance mechanism.

(2) **Closure** - Any one or combination of the following: closure, dismantlement, decontamination, decommissioning, reclamation, disposal, groundwater restoration, stabilization, or monitoring.

(3) **Control and maintenance** - Shall be referenced as post closure.

(4) **Facility** - All contiguous land, water, buildings, structures, and equipment which are or were used for the disposal of radioactive material, including soils and groundwater contaminated by radioactive material.

(5) **Post Closure** - Shall be the same as control and maintenance as used in Chapter 336, Subchapter G of this title (relating to Decommissioning Standards).

(6) **Site** - Shall be used interchangeably with facility.

Adopted August 23, 2000

Effective September 14, 2000

**§37.9010. Submission of Documents.**

An owner or operator required by this subchapter to provide financial assurance for closure or post closure must submit originally signed and effective financial assurance mechanisms to the executive director 60 days prior to commencement of operations.

Adopted February 24, 2000

Effective March 21, 2000

**§37.9015. Financial Assurance Requirements for Closure and Post Closure.**

(a) An owner or operator subject to this subchapter shall establish financial assurance for closure or post closure of the facility that meets the requirements of this section, in addition to the requirements specified under Subchapters A, B, C, and D of this chapter (relating to General Financial Assurance Requirements; Financial Assurance Requirements for Closure, Post Closure, and Corrective Action; Financial Assurance Mechanisms for Closure, Post Closure, and Corrective Action; and Wording of the Mechanisms for Closure, Post Closure, and Corrective Action.)

(1) An owner or operator subject to this subchapter may use any of the mechanisms as specified in §37.9020 of this title (relating to Financial Assurance Mechanisms) to demonstrate financial assurance for closure or post closure. On a case-by-case basis, the executive director may approve other alternative financial assurance mechanisms.

(2) The executive director will respond within 60 days after receiving a written request for a financial assurance reduction in accordance with §37.151 of this title (relating to Decrease in Current Cost Estimate).

(3) An owner or operator may use multiple financial assurance mechanisms provided in §37.41 of this title (relating to Use of Multiple Financial Assurance Mechanisms), but must use only those financial assurance mechanisms specified in §37.9020 of this title.

(4) Insurance, a surety bond for guaranteeing payment, or a surety bond guaranteeing performance for closure or post closure, must provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the owner or operator fails to provide a replacement acceptable to the executive director within 30 days after receipt of notification of cancellation.

(b) The owner or operator shall comply with §37.71 of this title (relating to Incapacity of Owners or Operators, Guarantors, or Issuing Institutions), except financial assurance must be established within 30 days after such an event.

Adopted February 24, 2000

Effective March 21, 2000

**§37.9020. Financial Assurance Mechanisms.**

(a) An owner or operator may satisfy the requirements of a fully funded trust or standby trust fund as provided in §37.201 of this title (relating to Trust Fund), except that 60 days following the executive director's final review and approval of closure or post closure expenditures for reimbursement, release of funds shall occur.

(b) An owner or operator may satisfy the requirements of a surety bond guaranteeing payment as provided in §37.211 of this title (relating to Surety Bond Guaranteeing Payment), or a surety bond guaranteeing performance as provided in §37.221 of this title (relating to Surety Bond Guaranteeing Performance), except:

(1) the surety must also be licensed in the State of Texas;

(2) cancellation may not occur during the 90 days beginning on the date of receipt of the notice of cancellation; and

(3) the bond must guarantee that the owner or operator will provide alternate financial assurance within 30 days after receipt of a notice of cancellation of the bond.

(c) An owner or operator may satisfy the requirements of an irrevocable standby letter of credit as provided in §37.231 of this title (relating to Irrevocable Standby Letter of Credit), except:

(1) the letter of credit shall be automatically extended unless the issuer provides notice of cancellation at least 90 days before the current expiration date. Under the terms of the letter of credit, the 90 days shall begin on the date when both the owner or operator and the executive director have received the notice, as evidenced by the return receipts; and

(2) in accordance with §37.231(h) of this title, the executive director shall draw on the letter of credit, within 30 days after receipt of notice from the issuing institution that the letter of credit will not be extended, or within 60 days of an extension, if the owner or operator fails to establish and obtain approval of such alternate financial assurance from the executive director.

(d) An owner or operator may satisfy the requirements of insurance as provided in §37.241 of this title (relating to Insurance), except:

(1) the insurer must be licensed in Texas; and

(2) cancellation, termination, or failure to renew may not occur during the 90 days beginning with the date of receipt of the notice by both the executive director and the owner or operator, as evidenced by the return receipts.

(e) An owner or operator may satisfy the requirements of financial assurance by demonstrating that it passes a financial test as provided in §37.251 of this title (relating to Financial Test), except the owner or operator which has issued rated bonds must also meet the criteria of paragraphs (1) and (3) of this subsection, or the owner or operator which has not issued rated bonds must also meet the criteria of paragraphs (2) and (3) of this subsection.

(1) The owner or operator must have:

(A) tangible net worth of at least ten times the total current cost estimate (or the current amount required if a certification is used) for all closure activities;

(B) assets located in the United States amounting to at least 90% of total assets or at least ten times the total current cost estimate (or the current amount required if a certification is used) for all closure activities;

(C) a current rating for its most recent bond issuance of AAA, AA, or A as issued by Standard and Poor's, or Aaa, Aa, A as issued by Moody's; and

(D) at least one class of equity securities registered under the Securities Exchange Act of 1934.

(2) The owner or operator must have:

(A) tangible net worth greater than \$10 million, or of at least ten times the total current cost estimate (or the current amount required if a certification is used) for all closure activities, whichever is greater;

(B) assets located in the United States amounting to at least 90% of total assets or at least ten times the total current cost estimate (or the current amount required if a certification is used) for all closure activities;

(C) a ratio of cash flow divided by total liabilities greater than 0.15; and

(D) a ratio of total liabilities divided by net worth less than 1.5.

(3) To demonstrate that the owner or operator meets the test, it must submit the following items to the executive director:

(A) a letter signed by the owner's or operator's chief financial officer and worded identically to the wording specified in §37.9025(a) of this title (relating to Wording of Financial Assurance Mechanisms); and

(B) a written guarantee, hereafter referred to as "self-guarantee," signed by an authorized representative which meets the requirements specified in §37.261 of this title (relating to Corporate Guarantee). The wording of the self-guarantee shall be acceptable to the executive director and must include the following:

(i) the owner or operator will fund and carry out the required closure or post closure activities, or upon issuance of an order by the executive director, the owner or operator will set up and fund a trust, as specified in §37.201 of this title (relating to Trust Fund) in the name of the owner or operator, in the amount of the current cost estimates; and

(ii) if, at any time, the owner's or operator's most recent bond issuance ceases to be rated in any category of "A" or above by either Standard and Poor's or Moody's, the owner or operator will provide notice in writing of such fact to the executive director within 20 days after publication of the change by the rating service. If the owner's or operator's most recent bond issuance ceases to be rated in any category of "A" or above by both Standard and Poor's and Moody's, the owner or operator no longer meets the requirements of paragraph (1) of this subsection.

(f) A parent company controlling a majority of the voting stock of the owner or operator may satisfy the requirements of financial assurance by demonstrating that it passes a financial test as specified in §37.251 of this title, and by meeting the requirements of a corporate guarantee as specified in §37.261 of this title, except a guarantor that is a corporation who has a substantial business relationship with the owner or operator may not use the corporate guarantee. The guarantor shall also comply with the requirements identified in this subsection.

(1) The wording of the corporate guarantee as specified in §37.361 of this title (relating to Corporate Guarantee) shall also include:

(A) the signatures of two officers of the owner or operator and two officers of the guarantor who are authorized to bind the respective entities; and

(B) the corporate seals.

(2) The guarantor shall also certify and submit to the executive director that the guarantor has:

(A) majority control of the owner or operator;

(B) full authority under the laws of the state under which it is incorporated and its articles of incorporation and bylaws to enter into this corporate guarantee;

(C) full approval from its board of directors to enter into this corporate guarantee; and

(D) authorization for each signatory.

(g) An owner or operator that is a nonprofit college, university, or hospital may satisfy the requirements of financial assurance by demonstrating that it passes a financial test as specified in §37.251 of this title, except colleges and universities must also meet either the criteria of paragraphs (1) and (5) or (2) and (5) of this subsection, and hospitals must also meet either the criteria in paragraphs (3) and (5) or (4) and (5) of this subsection.

(1) Colleges or universities that issue bonds must have a current rating for its most recent uninsured, uncollateralized, and unencumbered bond issuance of AAA, AA, or A as issued by Standard and Poor's or Aaa, Aa, or A as issued by Moody's.

(2) For colleges or universities that do not issue bonds, unrestricted endowment must consist of assets located in the United States of at least \$50 million or at least 30 times the total current cost estimate (or the current amount required if a certification is used), whichever is greater, for all closure and post closure activities for which the college or university is responsible as a self-guaranteeing owner or operator.

(3) Hospitals that issue bonds must have a current rating for its most recent uninsured, uncollateralized, and unencumbered bond issuance of AAA, AA, or A as issued by Standard and Poor's or Aaa, Aa, or A as issued by Moody's.

(4) Hospitals that do not issue bonds must meet the following criteria:

(A) total revenues less total expenditures divided by total revenues must be equal to or greater than 0.04;

(B) long-term debt divided by net fixed assets must be less than or equal to 0.67;

(C) current assets plus depreciation fund divided by current liabilities must be greater than or equal to 2.55; and

(D) operating revenues must be at least 100 times the total current cost estimate (or the current amount required if a certification is used) for all closure and post closure activities for which the hospital is responsible as a self-guaranteeing owner or operator.

(5) To demonstrate that the owner or operator meets the financial test, it must submit the following items to the executive director:

(A) a letter signed by the owner's or operator's chief financial officer and worded identically to the wording specified in §37.9025(b) of this title; and

(B) a written guarantee, hereafter referred to as "self-guarantee," signed by an authorized representative which meets the requirements as specified in §37.261 of this title. The wording of the self-guarantee shall be acceptable to the executive director and must include the following:

(i) the owner or operator will fund and carry out the required closure or post closure activities, or upon issuance of an order by the executive director, the owner or operator will set up and fund a trust, as specified in §37.201 of this title, in the name of the owner or operator, in the amount of the current cost estimates; and

(ii) if, at any time, the owner's or operator's most recent bond issuance ceases to be rated in any category of "A" or above by either Standard and Poor's or Moody's, the owner or operator will provide notice in writing of such fact to the executive director within 20 days after publication of the change by the rating service.

(h) A statement of intent may be used by a governmental entity subject to this subchapter. The statement of intent shall be subject to the executive director's approval and shall include the following:

(1) a statement that funds will be made immediately available upon demand by the executive director;

(2) the signature of an authorized official who has the authority to bind the governmental entity into a financial obligation, and has the authority to sign the statement of intent;

- (3) name of facility(ies), license number, and physical and mailing addresses; and
- (4) corresponding current cost estimates.

(i) An owner or operator may satisfy the requirements of financial assurance by establishing an external sinking fund as specified in this subsection. An external sinking fund has two components: a sinking fund account and a financial assurance mechanism such that the total of both equals, at all times, the current cost estimate. A sinking fund account is an account segregated from the owner's or operator's assets and is outside the owner's or operator's administrative control. As the value of the sinking fund account increases, the value of the second financial assurance mechanism decreases. When the external sinking fund account is equal to the current cost estimate, the second financial assurance mechanism will no longer be required to be maintained.

(1) An external sinking fund account shall be approved by the executive director and administered by a third party that is regulated and examined by a federal or state agency.

(2) The external sinking fund is established and maintained by setting aside funds periodically, at least annually.

Adopted February 24, 2000

Effective March 21, 2000

**§37.9025. Wording of Financial Assurance Mechanisms.**

(a) Except as provided in subsection (b) of this section, an owner or operator providing a self-guarantee, as specified in §37.9020(e) of this title (relating to Financial Assurance Mechanisms), must provide a letter from the chief financial officer as specified in §37.351 of this title (relating to Financial Test), except Alternative I and Alternative II as specified in §37.351 of this title shall be replaced with Alternative I and Alternative II of this subsection.

ALTERNATIVE I

- 1. Sum of current cost estimates or the current amount required if a certification is used (total of all current cost estimates shown in the 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 current 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.) \$ \_\_\_\_\_

Indicate either "yes" or "no" to the following questions.

- |     |   |          |
|-----|---|----------|
| 7.  | Is line 2 at least an "A" rating?   | (yes/no) |
| 8.  | Is line 5 at least 10 times line 1?   | (yes/no) |
| *9. | Are at least 90% of the firm's assets located in the U.S.?<br>If not, complete line 10.                             | (yes/no) |
| 10. | Is line 6 at least 10 times line 1?   | (yes/no) |
| 11. | Does the company have at least one class of equity securities registered under the Securities Exchange Act of 1934? | (yes/no) |

\*Denotes figures derived from audited financial statements.

#### ALTERNATIVE II

- |     |  |          |
|-----|--|----------|
| 1.  | Sum of current cost estimates or the current amount required if a certification is used (total of all current cost estimates shown in the paragraphs above)  | \$ _____ |
| *2. | Tangible net worth (if any portion of the current cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line).       | \$ _____ |
| *3. | Cash flow (sum of net income plus depreciation, depletion and amortization)  | \$ _____ |
| *4. | Total liabilities (if any portion of the current cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to line 2 and line 5) | \$ _____ |
| *5. | Net worth  | \$ _____ |
| *6. | Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.)   | \$ _____ |

Indicate either "yes" or "no" to the following questions.

- |     |   |          |
|-----|---|----------|
| 7.  | Is line 2 at least \$10 million?  | (yes/no) |
| 8.  | Is line 2 at least 10 times line 1?   | (yes/no) |
| *9. | Are at least 90% of the firm's assets located in the U.S.?<br>If not, complete line 10. | (yes/no) |
| 10. | Is line 6 at least 10 times line 1?   | (yes/no) |
| 11. | Is line 3 divided by line 4 greater than 0.15?  | (yes/no) |
| 12. | Is line 4 divided by line 5 less than 1.5?  | (yes/no) |

\*Denotes figures derived from audited financial statements.

(b) An owner or operator that is a nonprofit college, university, or hospital providing a self-guarantee as specified in §37.9020(g) of this title, must provide a letter from the chief financial officer of the owner or operator as specified in §37.351 of this title, except Alternative I and Alternative II as specified in §37.351 of this title shall be replaced with Alternative I and Alternative II of this subsection.

#### ALTERNATIVE I

1. Sum of current cost estimates or the current amount required if a certification is used (total of all current cost estimates shown in the paragraphs above) \$ \_\_\_\_\_

For colleges or universities that issue bonds, answer lines 2 through 5.

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. Is line 2 at least an "A" or above rating? (Yes or No)

For colleges or universities that do not issue bonds, answer lines 6 through 9.

\*6. Unrestricted endowment consisting of assets located in the United States \$ \_\_\_\_\_

7. Is line 6 at least \$50 million? (Yes or No)

8. Is line 6 at least 30 times line 1? (Yes or No)

9. If neither line 7 or line 8 is answered yes, indicate which line is greater \_\_\_\_\_

\_\_\_\_\_  
\*Denotes figures derived from audited financial statements.

### ALTERNATIVE II

1. Sum of current cost estimates or the current amount required if a certification is used (total of all current cost estimates shown in the paragraphs above) \$ \_\_\_\_\_

For hospitals that issue bonds, answer lines 2 through 5:

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. Is line 2 at least an "A" or above rating? (Yes or No)

For hospitals that do not issue bonds, answer lines 6 through 17:

\*6. Total revenues \_\_\_\_\_

\*7. Total expenditures \_\_\_\_\_

\*8. Long term debt \_\_\_\_\_

\*9. Net fixed assets \_\_\_\_\_

\*10. Current assets \_\_\_\_\_

\*11. Depreciation \_\_\_\_\_

\*12. Current liabilities \_\_\_\_\_

\*13. Operating revenues \_\_\_\_\_

14. Is line 6 less line 7 divided by line 6 equal to or greater than 0.04? (Yes or No)

15. Is line 8 divided by line 9 less than or equal to 0.67? (Yes or No)

16. Is line 10 plus line 11 divided by line 12 greater than or equal to 2.55? (Yes or No)

17. Is line 13 at least 100 times line 1? (Yes or No)

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\*Denotes figures derived from audited financial statements.

Adopted February 24, 2000

Effective March 21, 2000