



KeyCite Red Flag - Severe Negative Treatment

Adopted Regulation



KeyCite Yellow Flag - Negative Treatment Proposed Regulation

Baldwin's Ohio Administrative Code Annotated

3745 Environmental Protection Agency (Refs & Annos)

Chapter 3745-400. Construction and Demolition Debris Facilities (Refs & Annos)

OAC 3745-400-13

3745-400-13 Financial assurance for construction and demolition debris
facility and construction and demolition debris processing facility final closure

Currentness

[Comment: Financial assurance for construction and demolition debris facilities includes financial assurance for final closure as required by this rule and financial assurance for post-closure care as required by rule 3745-400-18 of the Administrative Code.]

(A) Financial assurance procedures.

(1) Construction and demolition debris facility. The owner or operator of a construction and demolition debris facility shall establish and maintain financial assurance for final closure of the facility as required by paragraph (S) of rule 3745-400-11 of the Administrative Code. Financial assurance may be established and maintained through the use of one of the options specified in paragraphs (B) to (F) of this rule, unless it is demonstrated to the satisfaction of the director or health commissioner of the licensing authority that an alternate option will guarantee funding for final closure. The owner or operator may use the options in combination as specified in paragraph (G) of this rule. Financial assurance documentation shall be submitted and include the information specified in this paragraph and in rule 3745-400-18 of the Administrative Code.

[Comment: Because many local health departments had construction and demolition rules in place prior to September 30, 1996, many existing facilities may have financial assurance mechanisms already established. These mechanisms may be acceptable alternatives to the mechanisms outlined in this rule.]

(a) Final closure cost estimate. Financial assurance documentation shall include an itemized written final closure cost estimate that calculates the cost of conducting final closure activities in accordance with rule 3745-400-12 of the Administrative Code. The amount shall be calculated in current dollars and be based upon a third party conducting all of the final closure activities required by rule 3745-400-12 of the Administrative Code. The amount of the final closure cost estimate shall not be less than thirteen thousand dollars per acre to the nearest tenth of an acre as established in the license application for the construction and demolition debris facility for areas that have been or are being used for disposal.

(b) Amount and funding of financial assurance. Final closure financial assurance shall be funded in an amount not less than the final closure cost estimate calculated in accordance with paragraph (A)(1)(a) of this rule.

If the funded financial assurance for the facility is less than the final closure cost estimate authorized in the license, the owner or operator shall fund an amount not less than the final closure cost estimate not later than thirty days after license issuance. If a portion of the increase in the final closure cost estimate is due to the addition of active licensed disposal area for which a construction certification report has not been submitted in accordance with rule 3745-400-08 of the Administrative Code, the owner or operator may delay funding that portion of the final closure cost estimate necessary to close that uncertified active licensed disposal area until the date of submittal of the construction certification report. The owner or operator shall use any single or combination of financial assurance instruments as specified in paragraphs (B) to (G) of this rule.

(c) Review of the final closure financial assurance.

(i) The final closure cost estimate shall be recalculated in accordance with paragraph (A)(1)(a) of this rule for each renewal of the annual license application and each application for a facility modification.

(a) The final closure cost estimate shall be recalculated if there is a change in the location or an increase in the acreage of the active licensed disposal area established in the facility's most recent issued license.

(b) If there is no change in the location and no increase in the acreage of the active licensed disposal area established in the facility's most recent issued license, the owner or operator may as an alternative to recalculating the final closure cost estimate, adjust the final closure cost estimate established in the facility's most recent issued license for inflation as provided in paragraph (A)(1)(c)(ii) of this rule.

(ii) Adjustment of the final closure cost estimate for inflation. The adjustment shall be made as specified in this paragraph and paragraphs (A)(1)(c)(2)(a) and (A)(1)(c)(2)(b) of this rule, using the preceding February inflation factor derived from the annual implicit price deflator for gross domestic product as published by the United States department of commerce. The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year.

(a) The first adjustment is made by multiplying the final closure cost estimate by the inflation factor. The result is the adjusted final closure cost estimate.

(b) Subsequent adjustments are made by multiplying the most recently adjusted final closure cost estimate by the most recent inflation factor.

(iii) The amount of financial assurance shall not be less than the recalculated final closure cost estimate for each renewal of the annual license application and each application for a facility modification. The financial assurance provided in a current unexpired license may be utilized to fulfill the financial assurance requirements of an annual license application or a modification if the dollar amount of the financial assurance is equal to or greater than the license application's calculated amount as specified in paragraph (A)(1)(a) of this rule.

(d) Final closure financial assurance documentation. Final closure financial assurance documentation shall include the original copy of the financial assurance instruments necessary to achieve compliance with the financial assurance

provisions of this rule. The wording contained in the instruments shall be in accordance with the appropriate paragraph of rule 3745-400-14 of the Administrative Code, unless either of the following are applicable:

(i) A financial assurance instrument that has been established prior to August 1, 2012 is being utilized pursuant to paragraph (A) (1)(c)(iii) of this rule.

(ii) An option other than those specified in paragraphs (B) to (F) of this rule is proposed.

(e) Notice of deficiency. The licensing authority shall notify the license applicant of deficiencies with the final closure cost estimate and final closure financial assurance documentation not later than thirty days after licensing authority receipt of the license application. Such notification shall identify any adjustment in the amount of final closure financial assurance being considered by the licensing authority.

The owner or operator may demonstrate that the final closure cost estimate is based upon a third party conducting all of the final closure activities as required by rule 3745-400-12 of the Administrative Code by submitting one of the following:

(i) Three separate cost quotes from three independent entities that are each valid for the applicable license year.

(ii) Invoices for specified services incurred by the owner or operator at the facility over the previous license year, accompanied by documentation that the entity will continue to offer the service at the same cost for the applicable license year.

(iii) Other documentation acceptable to the director or health commissioner of the licensing authority.

[Comment: Various aids are available to assist owners and operators in the development of financial assurance cost estimates through the Ohio EPA web page or by contacting Ohio EPA. Aides include but are not limited to recorded training on C&DD facility cost estimation, the "Financial Assurance Cost Estimation (FACE) spreadsheet," and "Financial Assurance FAQ's for Ohio C&DD Facilities."]

The director or health commissioner of the licensing authority may adjust the amount of financial assurance in conjunction with the issuance of the annual license provided the director or health commissioner of the licensing authority identifies the deficiencies in the itemized final closure cost estimate and provides an explanation of the rationale for financial assurance exceeding thirteen thousand dollars per acre. The rationale may include information provided to or obtained by Ohio EPA or a local board of health.

(f) Release of funds.

(i) Release of funds prior to final closure certification. The owner or operator, or any other person authorized to perform final closure on behalf of the owner or operator, may request and receive authorization for reimbursement from or a reduction of the financial assurance required under this rule when the director or health commissioner of the licensing authority has provided written approval of the construction certification report for engineered components of the cap system required in paragraph (A)(3) of rule 3745-400-08 of the Administrative Code.

The amount of financial assurance remaining shall not be less than the final closure cost estimate recalculated in accordance with paragraph (A)(1)(a) of this rule. A request for reimbursement from or a reduction of financial assurance shall be submitted to the licensing authority and include the following:

(a) A copy of the director or health commissioner of the licensing authority's written approval with the construction certification report for engineered components of the cap system required in paragraph (A)(3) of rule 3745-400-08 of the Administrative Code.

(b) The amount of reimbursement or reduction of the financial assurance calculated based upon the unit cost of the completed engineered components contained in the current approved final closure cost estimate, or the total acreage of the certified cap system, to the nearest tenth of an acre.

(c) A final closure cost estimate recalculated in accordance with paragraph (A)(1)(a) of this rule.

(d) A comparison of the revised final closure cost estimate to the amount of financial assurance remaining if the requested amount of reimbursement or reduction of the financial assurance is released or reduced.

(ii) Release of funds after final closure certification. The owner or operator, or any other person authorized to perform final closure on behalf of the owner or operator, may request and receive authorization for reimbursement of all remaining funds or termination of the financial assurance required under this rule only after facility final closure is deemed complete in accordance with paragraph (G) of rule 3745-400-12 of the Administrative Code.

(iii) The licensing authority shall make a determination not later than ninety days after receipt of a complete request.

(2) Construction and demolition debris processing facility. The owner or operator of a construction and demolition debris processing facility that does not meet the description contained in paragraph (B) of rule 3745-400-02 of the Administrative Code shall follow the procedures contained in rule 3745-400-56 of the Administrative Code.

(B) Final closure trust fund.

(1) The owner or operator of a construction and demolition debris facility or a construction and demolition debris processing facility may satisfy the requirements of this rule or rule 3745-400-56 of the Administrative Code, as applicable, by establishing a final closure trust fund that conforms to the requirements of paragraphs (B)(1) to (B)(4) of this rule and by sending an originally signed duplicate of the trust agreement to the director or health commissioner of the licensing authority. The trustee shall 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 shall be identical to the wording specified in paragraph (A)(1) of rule 3745-400-14 of the Administrative Code and the trust agreement shall be accompanied by a formal certification of acknowledgment except for a trust agreement established prior to August 1, 2012 that is being utilized pursuant to paragraph (A)(1)(c)(iii) of this rule.

(3) The total dollar amount of the trust fund shall be funded by the owner or operator of a construction and demolition debris facility not later than thirty days after the date of license issuance unless the owner or operator of a construction and demolition debris facility is delaying funding only of that portion of the final closure cost estimate necessary to close that uncertified active licensed disposal area in accordance with paragraph (A)(1)(b) of this rule. The owner or operator shall submit to the licensing authority a receipt from the trustee for the deposit made into the trust fund. The total dollar amount of the trust fund shall be funded by the owner or operator of a construction and demolition debris processing facility prior to issuance of a license.

(4) If the owner or operator of a construction and demolition debris facility or a construction and demolition debris processing facility establishes a final closure trust fund to replace one or more alternative mechanisms specified in this rule, the owner or operator of the construction and demolition debris facility or construction and demolition debris processing facility shall fund the trust in an amount sufficient to ensure that any combination of financial assurance mechanisms provide a total amount at least equal to the final closure cost estimate.

(5) The owner or operator of a construction and demolition debris facility, or any other person authorized to perform final closure, may request release of funds for final closure expenditures in accordance with paragraph (A)(1)(f) of this rule. The director or health commissioner of the licensing authority shall calculate in accordance with paragraph (A)(1)(f) of this rule the amount to be released and instruct the trustee, in writing, to make such release.

(6) The director or health commissioner of the licensing authority shall agree to termination of the trust when either of the following occur:

(a) The owner or operator of a construction and demolition debris facility or a construction and demolition debris processing facility substitutes alternative financial assurance for final closure as specified in this rule or rule 3745-400-56 of the Administrative Code, as applicable.

(b) The director or health commissioner of the licensing authority notifies the owner or operator of a construction and demolition debris facility or a construction and demolition debris processing facility that the owner or operator of the construction and demolition debris facility or construction and demolition debris processing facility is no longer required to maintain financial assurance for final closure of the facility.

(C) Surety bond guaranteeing payment into a final closure trust fund.

(1) The owner or operator of a construction and demolition debris facility or a construction and demolition debris processing facility may satisfy the requirements of this rule or rule 3745-400-56 of the Administrative Code, as applicable, by obtaining a surety bond that conforms to the requirements of paragraphs (C)(1) to (C)(7) of this rule and by submitting the originally signed surety bond to the director or health commissioner of the licensing authority. The surety company issuing the bond shall at a minimum be among those listed as acceptable sureties on federal bonds in the most recent listing of approved sureties as published by the U.S. department of the treasury.

(2) The wording of the surety bond shall be identical to the wording specified in paragraph (B) of rule 3745-400-14 of the Administrative Code except for a surety bond obtained prior to August 1, 2012 that is being utilized pursuant to paragraph (A)(1)(c)(iii) of this rule.

(3) The owner or operator of a construction and demolition debris facility or a construction and demolition debris processing facility who uses a surety bond to satisfy the requirements of this rule shall also establish a standby trust fund not later than the date the bond is obtained. Under the terms of the surety bond, all payments made thereunder shall be deposited by the surety bond company directly into the standby trust fund in accordance with instructions from the director or health commissioner of the licensing authority. This standby trust fund shall meet the requirements specified in paragraph (B) of this rule, except as follows:

(a) An originally signed duplicate of the trust agreement and the surety bond shall be submitted to the director or health commissioner of the licensing authority.

(b) Until the standby trust fund is funded, pursuant to the requirements of this rule, payments into the trust fund as specified in paragraph (B) of this rule are not required.

[Comment: When the Ohio environmental protection agency is the licensing authority, the standby trust fund must be established to hold the funds from the bond for final closure. When a health district is the licensing authority, other financial mechanisms may be possible to hold the funds from the bond for final closure.]

(4) The surety bond shall guarantee that the owner or operator of the construction and demolition debris facility or construction and demolition debris processing facility will do one of the following:

(a) Fund the standby trust fund in an amount equal to the penal sum of the surety bond before the beginning of the construction and demolition debris facility or construction and demolition debris processing facility final closure.

(b) Fund the standby trust fund in an amount equal to the penal sum of the surety bond not later than fifteen days after a mandatory final closure in accordance with paragraph (B) of rule 3745-400-12 of the Administrative Code or paragraph (A) of rule 3745-400-60 of the Administrative Code, as applicable.

(c) Provide alternative financial assurance as specified in this rule, and obtain the director or health commissioner of the licensing authority's written approval of the alternative financial assurance provided, not later than ninety days after the owner or operator of the construction and demolition debris facility or construction and demolition debris processing facility, the director, and health commissioner of the licensing authority receive notice of cancellation of the surety bond from the surety bond company.

(5) Under the terms of the surety bond, the surety bond company shall become liable on the bond obligation when the owner or operator of the construction and demolition debris facility or construction and demolition debris processing facility fails to perform as guaranteed by the bond.

(6) Except as provided in paragraph (G) of this rule, the penal sum of the surety bond shall be in an amount at least equal to the final closure cost estimate determined in accordance with paragraph (A) of this rule or rule 3745-400-56 of the Administrative Code, as applicable.

(7) Under the terms of the surety bond, the surety bond shall remain in full force and effect unless the surety bond company sends written notice of cancellation by certified mail or other form of mail accompanied by a receipt to the owner or operator of the construction and demolition debris facility or construction and demolition debris processing facility, the director, and the health commissioner of the licensing authority. Cancellation shall not occur, however, during the one hundred twenty day period beginning on the first day that the owner or operator of the construction and demolition debris facility or construction and demolition debris processing facility, the director, and the health commissioner of the licensing authority have received the notice of cancellation, as evidenced by the return receipts.

(8) The owner or operator of a construction and demolition debris facility or a construction and demolition debris processing facility may cancel the surety bond if the director or health commissioner of the licensing authority has given prior written consent. The director or health commissioner of the licensing authority shall provide such written consent when one of the following occurs:

(a) The owner or operator of the construction and demolition debris facility or construction and demolition debris processing facility substitutes alternative financial assurance for final closure as specified in this rule or rule 3745-400-56 of the Administrative Code, as applicable.

(b) The director or health commissioner of the licensing authority notifies the owner or operator of the construction and demolition debris facility or construction and demolition debris processing facility that the owner or operator of the construction and demolition debris facility or construction and demolition debris processing facility is no longer required to maintain financial assurance for final closure of the construction and demolition debris facility or construction and demolition debris processing facility.

(D) Surety bond guaranteeing performance of final closure.

(1) The owner or operator of a construction and demolition debris facility or a construction and demolition debris processing facility may satisfy the requirements of this rule or rule 3745-400-56 of the Administrative Code, as applicable, by obtaining a surety bond that conforms to the requirements of this rule and by delivering the originally signed surety bond to the director or health commissioner of the licensing authority. The surety bond company issuing the surety bond shall at a minimum be among those listed as acceptable sureties on federal bonds in the most recent listing of approved sureties as published by the U.S. department of the treasury.

(2) The wording of the surety bond shall be identical to the wording specified in paragraph (C) of rule 3745-400-14 of the Administrative Code except for a surety bond obtained prior to August 1, 2012 that is being utilized pursuant to paragraph (A)(1)(c)(iii) of this rule.

(3) The owner or operator of a construction and demolition debris facility or a construction and demolition debris processing facility who uses a surety bond to satisfy the requirements of this rule shall also establish a standby trust fund not later than the date the surety bond is obtained. Under the terms of the surety bond, all payments made thereunder shall be deposited

by the surety bond company directly into the standby trust fund in accordance with instructions from the director or health commissioner of the licensing authority. This standby trust fund shall meet the requirements specified in paragraph (B) of this rule except as follows:

- (a) An originally signed duplicate of the trust agreement and the surety bond shall be submitted to the director or health commissioner of the licensing authority.
 - (b) Until the standby trust fund is funded, pursuant to the requirements of this rule, a deposit into the trust fund as specified in paragraph (B) of this rule are not required.
- (4) The surety bond shall guarantee that the owner or operator of a construction and demolition debris facility or a construction and demolition debris processing facility will do one of the following:
- (a) Perform final closure in accordance with this chapter, Chapter 3745-501 of the Administrative Code, and any other requirements of the license.
 - (b) Provide alternative financial assurance as specified in this rule or rule 3745-400-56 of the Administrative Code, as applicable, and obtain the director or health commissioner of the licensing authority's written approval of the alternate financial assurance provided, not later than ninety days after the owner or operator of the construction and demolition debris facility or construction and demolition debris processing facility, the director, and the health commissioner of the licensing authority receive notice of cancellation of the bond from the surety as evidenced by the return receipts.
- (5) Under the terms of the surety bond, the surety bond company shall become liable on the surety bond obligation when the owner or operator of the construction and demolition debris facility or construction and demolition debris processing facility fails to perform as guaranteed by the surety bond. Following a determination by the director or health commissioner of the licensing authority, as applicable, that the owner or operator of a construction and demolition debris facility or a construction and demolition debris processing facility has failed to perform final closure activities in accordance with this chapter and the license requirements, the surety shall perform final closure in accordance with rule 3745-400-12 or rule 3745-400-60 of the Administrative Code, as applicable, and the license requirements, or will deposit the amount of the penal sum into the standby trust fund.
- (6) The penal sum of the surety bond shall be in an amount at least equal to the final closure cost estimate determined in accordance with paragraph (A) of this rule or rule 3745-400-56 of the Administrative Code, as applicable.
- (7) Under the terms of the surety bond, the surety bond shall remain in full force and effect unless the surety bond company sends written notice of cancellation by certified mail or other form of mail accompanied by a receipt to the owner or operator of the construction and demolition debris facility or construction and demolition debris processing facility, the director, and the health commissioner of the licensing authority. Cancellation shall not occur, however, during the one hundred twenty day period beginning on the first day that the owner or operator of the construction and demolition debris facility or construction and demolition debris processing facility, the director, and the health commissioner of the licensing authority have received the notice of cancellation as evidenced by the return receipts.

(8) The owner or operator of a construction and demolition debris facility or a construction and demolition debris processing facility may cancel the surety bond if the director or health commissioner of the licensing authority has given prior written approval. The director or health commissioner of the licensing authority shall provide such written approval when one of the following occurs:

(a) The owner or operator of the construction and demolition debris facility or construction and demolition debris processing facility substitutes alternative financial assurance for final closure as specified in this rule or rule 3745-400-56 of the Administrative Code, as applicable.

(b) The director or health commissioner of the licensing authority notifies the owner or operator of the construction and demolition debris facility or construction and demolition debris processing facility that the owner or operator of the construction and demolition debris facility or construction and demolition debris processing facility is no longer required to maintain financial assurance for final closure of the construction and demolition debris facility or construction and demolition debris processing facility.

(9) The surety bond company shall not be liable for deficiencies in the completion of final closure activities by the owner or operator of a construction and demolition debris facility or a construction and demolition debris processing facility after the owner or operator of the construction and demolition debris facility or construction and demolition debris processing facility has been notified by the director or health commissioner of the licensing authority that the owner or operator of the construction and demolition debris facility or construction and demolition debris processing facility is no longer required to maintain financial assurance for final closure of the construction and demolition debris facility or construction and demolition debris processing facility.

(E) Final closure letter of credit.

(1) The owner or operator of a construction and demolition debris facility or a construction and demolition debris processing facility may satisfy the requirements of this rule or rule 3745-400-56 of the Administrative Code, as applicable, by obtaining an irrevocable standby letter of credit that conforms to the requirements of paragraphs (E)(1) to (E)(6) of this rule and by having the originally signed letter of credit delivered to the director or health commissioner of the licensing authority. The issuing institution shall 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 shall be identical to the wording specified in paragraph (D) of rule 3745-400-14 of the Administrative Code except for a letter of credit obtained prior to August 1, 2012 that is being utilized pursuant to paragraph (A)(1)(c)(iii) of this rule.

(3) A owner or operator of a construction and demolition debris facility or a construction and demolition debris processing facility who uses a letter of credit to satisfy the requirements of this rule or rule 3745-400-56 of the Administrative Code, as applicable, shall also establish a standby trust fund not later than the date the letter of credit is obtained. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the director or health commissioner of the licensing authority shall be deposited and directly by the issuing institution into the standby trust fund in accordance with instructions from the director or health commissioner of the licensing authority. The standby trust fund shall meet the requirements of the trust fund specified in paragraph (B) of this rule, except as follows:

(a) An originally signed duplicate of the trust agreement and the letter of credit shall be submitted to the director or health commissioner of the licensing authority.

(b) Until the standby trust fund is funded, pursuant to the requirements of this rule, a deposit into the trust fund as specified in paragraph (B) of this rule is not required.

(4) The letter of credit shall be accompanied by a letter from the owner or operator of the construction and demolition debris facility or construction and demolition debris processing facility referring to the letter of credit by number, issuing institution, and date, and providing the following information: the names and addresses of the construction and demolition debris facility or construction and demolition debris processing facility, the names and addresses of the owner or operator of the construction and demolition debris facility or the construction and demolition debris processing facility, and the amount of funds assured for final closure by the letter of credit.

(5) The letter of credit shall be irrevocable and issued for a period of at least one year. The letter of credit shall provide that the expiration date shall be automatically extended for a period of at least one year unless, at least one hundred twenty days prior to the current expiration date, the issuing institution notifies the owner or operator of the construction and demolition debris facility or construction and demolition debris processing facility, the director, and the health commissioner of the licensing authority by certified mail or other form of mail accompanied by a receipt of a decision not to extend the expiration date. Under the terms of the letter of credit, the one hundred twenty day period shall begin on the day when the owner or operator of the construction and demolition debris facility or construction and demolition debris processing facility, the director, and the health commissioner of the licensing authority have received the notice, as evidenced by the return receipts.

(6) Except as provided in paragraph (G) of this rule, the letter of credit shall be issued in an amount at least equal to the final closure cost estimate determined in accordance with paragraph (A) of this rule or rule 3745-400-56 of the Administrative Code, as applicable.

(7) Following a determination by the director or health commissioner of the licensing authority that the owner or operator of a construction and demolition debris facility or a construction and demolition debris processing facility has, when required to do so, failed to perform final closure activities in accordance with rule 3745-400-12 of the Administrative Code or rule 3745-400-60 of the Administrative Code, as applicable, and the license requirements, the director or health commissioner of the licensing authority may draw on the letter of credit.

(8) If the owner or operator of a construction and demolition debris facility or a construction and demolition debris processing facility does not establish alternative financial assurance as specified in this rule or rule 3745-400-56 of the Administrative Code, as applicable, and obtain written approval of such alternative financial assurance from the director or health commissioner of the licensing authority not later than ninety days after the owner or operator of the construction and demolition debris facility or construction and demolition debris processing facility, the director, and the health commissioner of the licensing authority have received notice from the issuing institution that it will not extend the letter of credit beyond the current expiration date, the director or health commissioner of the licensing authority shall draw on the letter of credit. The director or health commissioner of the licensing authority may delay the drawing if the issuing institution grants an extension of the term of the credit. During the final thirty days of any such extension, the director or health commissioner of the licensing authority shall draw on the letter of credit if the owner or operator of the construction and demolition debris facility or construction and demolition debris processing facility has failed to provide

alternative financial assurance as specified in this rule or rule 3745-400-56 of the Administrative Code, as applicable, and has failed to obtain written approval of such alternative financial assurance from the director or health commissioner of the licensing authority.

(9) The director or health commissioner of the licensing authority shall return the original letter of credit to the issuing institution for termination when one of the following occurs:

(a) The owner or operator substitutes alternative financial assurance for final closure as specified in this rule or rule 3745-400-56 of the Administrative Code, as applicable.

(b) The director or health commissioner of the licensing authority notifies the owner or operator of a construction and demolition debris facility or a construction and demolition debris processing facility that the owner or operator of the construction and demolition debris facility or construction and demolition debris processing facility is no longer required to maintain financial assurance for final closure of the facility.

(F) Final closure insurance.

(1) The owner or operator of a construction and demolition debris facility may satisfy the requirements of this rule by obtaining final closure insurance that conforms to the requirements of this rule and by submitting an originally signed certificate of such insurance to the director or health commissioner of the licensing authority.

(2) The owner or operator of a construction and demolition debris facility using insurance as a financial assurance mechanism shall submit documentation to the director or health commissioner of the licensing authority stating whether the insurer is a subsidiary or has a corporate, legal, or financial affiliation with the owner or operator of the construction and demolition debris facility. If the final closure insurance is issued by a subsidiary or affiliate, the owner or operator of the construction and demolition debris facility shall include a detailed written description of the relationship between the insurer and the owner or operator of the construction and demolition debris facility.

(3) An insurer issuing an insurance policy to satisfy the requirements of this rule shall be licensed to transact the business of insurance, or be eligible to provide insurance as an excess or surplus lines insurer, in one or more states. The owner or operator of a construction and demolition debris facility shall submit to the director or health commissioner of the licensing authority the following information regarding the insurer's qualifications:

(a) The most recent A.M. Best rating of the insurer.

(b) Documentation demonstrating that the insurer is domiciled in the United States.

(c) The most recent report on examination from the insurance department from the insurer's state of domicile.

(d) Documentation demonstrating that the insurer has capital and surplus of at least one hundred million dollars.

- (e) Documentation demonstrating that the insurer received an unqualified opinion of the insurer's annual financial statements from an independent certified public accountant.
- (4) The director or health commissioner of the licensing authority may disallow use of the insurer by the owner or operator of a construction and demolition debris facility on the basis of one or more of the following:
- (a) The A.M. Best rating is less than A-.
 - (b) The report on examination does not demonstrate that the status of the insurer is satisfactory.
 - (c) The opinion expressed by the independent certified public accountant in the report on examination of the insurer's financial statements.
- (5) The wording of the certificate of insurance shall be identical to the wording specified in paragraph (E) of rule 3745-400-14 of the Administrative Code except for a certificate of insurance obtained prior to August 1, 2012 that is being utilized pursuant to paragraph (A)(1)(c)(iii) of this rule.
- (6) Except as provided in paragraph (G) of this rule, the final closure insurance policy shall be issued for a face amount at least equal to the final closure cost estimate determined in accordance with paragraph (A)(1) of this rule. The "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer shall not change the face amount, but the insurer's future liability shall be lowered by the amount of the payments.
- (7) The final closure insurance policy shall guarantee that funds shall be available to close the construction and demolition debris facility and conduct final closure activities whenever final closure is mandated. The policy shall also guarantee that once final closure of the construction and demolition debris facility occurs, the insurer shall be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the director or health commissioner of the licensing authority, to such party or parties as the director or health commissioner of the licensing authority specifies.
- (8) The owner or operator of a construction and demolition debris facility, or any other person authorized to perform final closure, may request reimbursement for final closure expenditures in accordance with paragraph (A)(1)(f) of this rule. The director or health commissioner of the licensing authority shall calculate in accordance with paragraph (A)(1)(f) of this rule the amount to be reimbursed and instruct the insurer, in writing, to make such reimbursement.
- (9) The owner or operator of a construction and demolition debris facility shall maintain the policy in full force and effect until the director or health commissioner of the licensing authority consents to termination of the policy by the owner or operator of the construction and demolition debris facility as specified in paragraph (F)(13) of this rule. Failure to pay the premium, without substitution of alternative financial assurance as specified in this rule, constitutes a violation of these rules, warranting such remedy as the director or health commissioner of the licensing authority deems necessary. Such violation shall be deemed to begin upon receipt by the director or health commissioner of the licensing authority of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

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

(11) The policy shall provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall at a minimum provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending written notice by certified mail or other form of mail accompanied by a receipt to the owner or operator of the construction and demolition debris facility, the director, and the health commissioner of the licensing authority not later than one hundred twenty days prior to the date of cancellation, termination, or failure to renew. Cancellation, termination, or failure to renew shall not occur, however, during the one hundred twenty day period beginning on the first day that the owner or operator of the construction and demolition debris facility, the director, and the health commissioner of the licensing authority have received the notice, as evidenced by the return receipts.

(12) If the director or health commissioner of the licensing authority disallows use of the insurer, the owner or operator of the construction and demolition debris facility shall provide alternative financial assurance as specified in this rule not later than thirty days after notification of the disallowance of the insurer.

(13) The director or health commissioner of the licensing authority shall give written approval that the owner or operator of the construction and demolition debris facility may terminate the insurance policy when one of the following occurs:

(a) The owner or operator of the construction and demolition debris facility substitutes alternative financial assurance for final closure as specified in this rule.

(b) The director or health commissioner of the licensing authority notifies the owner or operator of the construction and demolition debris facility that the owner or operator of the construction and demolition debris facility is no longer required to maintain financial assurance for final closure of the construction and demolition debris facility.

(G) Use of multiple financial mechanisms.

(1) The owner or operator of a construction and demolition debris facility may satisfy the requirements of this rule by establishing more than one financial mechanism for each construction and demolition debris facility. The mechanisms are limited to trust funds, surety bonds guaranteeing payment into a final closure trust fund, letters of credit, and insurance. The mechanisms shall be as specified in paragraphs (B), (C), (E), and (F) of this rule, as applicable, except that it is the combination of mechanisms, rather than each single mechanism, that shall provide financial assurance for an amount at least equal to the current final closure cost estimate. If the owner or operator of a construction and demolition debris facility uses a trust fund in combination with a surety bond or a letter of credit, the owner or operator of the construction and demolition debris facility may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The director or health commissioner of the licensing authority may invoke use of any or all of the mechanisms, in accordance with paragraphs (B), (C), (E), and (F) of this rule, to provide for final closure of the construction and demolition debris facility.

(2) The owner or operator of a processing facility may satisfy the requirements of this rule and rule 3745-400-56 of the Administrative Code by establishing more than one financial mechanism for the processing facility in accordance with rule 3745-400-56 of the Administrative Code.

Credits

HISTORY: 2021-22 OMR pam. # 10 (A), eff. 4-18-22; 2017-18 OMR pam. # 7 (A), eff. 2-10-18; 2011-12 OMR pam. # 12 (A), eff. 8-1-12; 2001-02 OMR 3124 (A), eff. 8-31-02; 1996-97 OMR 91 (E), eff. 9-30-96; 1995-96 OMR 2327 (W), eff. 5-30-96; 1995-96 OMR 2327 (E), eff. 9-30-96.

Periodic review date(s): 2-10-23; 10-12-17; 8-1-17; 11-30-11; 8-31-07; 5-9-01

Rules and appendices are current through June 17, 2022. Emergency rules are more current.

OAC 3745-400-13, OH ADC 3745-400-13

End of Document

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