

Text of proposed regulations for:

FINANCIAL ASSURANCE, R-2007-06
OFFICE OF ADMINISTRATIVE LAW NOTICE FILE NUMBER: Z-2009-0326-01

Key to Changes:
Underline: New Text
Strikeout: Deleted Text

Amend title 22, division 4.5, chapter 10, article 2, section 66260.10 to read:

§ 66260.10. Definitions.

Additional definitions applicable to management of universal wastes are found in section 66273.9. When used in this division, the following terms have the meanings given below:

...

"Operating life" see "Active life."

"Other uses of the financial test" means any financial assurances or guarantees required by any other governmental agency (as defined at Civ. Code, § 1633.2, subd. (i)) for which the owner or operator is using the financial test or its equivalent to satisfy.

"Owner" means the person who owns a facility or part of a facility.

...

Note: Authority cited: Sections 25141, 25150, 25158.1, 25158.4, 25159, 25159.5, 25187.7, 25200.10, 25204, 25214.9, 25214.10.2, 25218.3(d), 25245, 25316, 25355.5, 25356.9, 25358.3, 25358.9 and 58012, Health and Safety Code; Governor's Reorganizational Plan #1 of 1991; and Sections 42475.1 and 42475.2, Public Resources Code. Reference: Sections 25110.02, 25110.1, 25110.5, 25111, 25112, 25112.5, 25113, 25114, 25115, 25117, 25117.1, 25117.3, 25117.8, 25117.9, 25117.11, 25118, 25119, 25120, 25121, 25121.5, 25122.7, 25123, 25123.3, 25123.5, 25123.6, 25141, 25150, 25158.2, 25159, 25159.5, 25187.7, 25200.10, 25201.6, 25204, 25214.9, 25218.1(f), 25218.3, 25229, 25245, 25316, 25354(b), 25355.5, 25355.6, 25356.9, 25358.1, 25358.9, 25359.8, 25361, 25501, 25529 and 58012, Health and Safety Code; Section 42463(f)(1), Public Resources Code; and 40 Code of Federal Regulations Sections 260.10, 261.1, 262.21, 264.551, 264.1031, 268.2, 270.2 and 273.6.

Amend title 22, division 4.5, chapter 14, article 6, section 66264.101 to read:

§ 66264.101. Corrective Action for Waste Management Units.

(a) The owner or operator of a facility seeking a permit for the transfer, treatment, storage, or disposal of hazardous waste shall institute corrective action as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid or hazardous waste management unit at the facility, regardless of the time at which waste was placed in such unit.

(b) The Department shall require financial assurance for corrective action at the earliest possible time when the Department determines that it is able to make a reasonable determination of the amount of financial assurance required, preferably at the commencement of corrective action. The Department shall review all relevant available data prior to issuing a permit or order.

(bc) Corrective action will be specified in the permit or order in accordance with this article, article 15.5, or article 17, and Health and Safety Code sections 25200.10, 25187, or 25200.14, or section 25358.9 where as provided for under the provisions of that section the Department has excluded the removal or remedial action at a site from the hazardous waste facilities permit required by Health and Safety Code section 25201. The permit or order will contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing such corrective action.

(ed) The owner or operator shall implement corrective actions beyond the facility boundary, where necessary to protect human health or the environment, unless the owner or operator demonstrates to the satisfaction of the Department, that despite the owner or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such actions. The owner or operator is not relieved of all responsibility to cleanup a release that has migrated beyond the facility boundary where off-site access is denied. On-site measures to address such release will be determined on a case-by-case basis. Assurance of financial responsibility for such corrective action shall be provided.

Note: Authority cited: Sections 25150, 25159, 25187, 25200.10, 25355.5, 25356.9, 25358.3, 25358.9, 58004 and 58012, Health and Safety Code. Reference: Sections 25150, 25159.5, 25187, 25200, 25200.10, 25355.5, 25356.9, 25358.3 and 25358.9, Health and Safety Code; 40 CFR Section 264.101.

Amend title 22, division 4.5, chapter 14, article 7, section 66264.117 to read:

§ 66264.117. Post-Closure Care and Use of Property.

(a) This section pertains to facilities at which all hazardous wastes, waste residues, contaminated materials and contaminated soils will not be removed during closure. Additional requirements for such facilities are cited in title 23 of the California Code of Regulations.

~~(b)(4)~~ Post-closure care for each hazardous waste management unit subject to the requirements of sections 66264.117 through 66264.120 shall begin after completion of closure of the unit and, ~~except as provided in subsections (b)(2)(A) and (b)(2)(B),~~ continue for ~~30 years~~ after that date, except as provided in subsection (g) and (h). and Post-closure care shall consist of at least the following:

(A~~1~~) monitoring and reporting in accordance with the requirements of articles 6, 11, 12, 13, 14, and 16 of this chapter; and

(B~~2~~) maintenance and monitoring of waste containment systems in accordance with the requirements of articles 6, 11, 12, 13, 14, and 16 of this chapter.

~~(2) Any time preceding partial closure of a hazardous waste management unit subject to post-closure care requirements or final closure, or any time during the post-closure period for a particular unit, the Department shall, in accordance with the permit modification procedures in chapters 20 and 21 of this division:~~

~~(A) shorten the post-closure care period applicable to the hazardous waste management unit, or facility, if all disposal units have been closed, if the owner or operator demonstrates to the satisfaction of the Department and the Department finds that the reduced period is sufficient to protect human health and the environment (e.g., leachate or ground-water monitoring results, characteristics of the hazardous wastes, application of advanced technology, or alternative disposal, treatment, or re-use techniques indicate that the hazardous waste management unit or facility is secure); or~~

~~(B) extend the post-closure care period applicable to the hazardous waste management unit or facility if the Department finds that the extended period is necessary to protect human health and the environment (e.g., leachate or ground-water monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).~~

(c) The Department shall require, at partial and final closure, continuation of any of the security requirements of section 66264.14 during part or all of the post-closure period when:

(1) hazardous wastes may remain exposed after completion of partial or final closure; or

(2) access by the public or domestic livestock may pose a hazard to human health.

(d) Post-closure use of property on or in which hazardous wastes remain after partial or final closure shall never be allowed to disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the facility's monitoring systems, unless the Department finds that the disturbance:

(1) is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or

(2) is necessary to reduce a threat to human health or the environment.

(e) All post-closure care activities shall be in accordance with the provisions of the approved post-closure plan as specified in section 66264.118.

(f) Upon closure of a hazardous waste facility wherein hazardous wastes remain on-site, no construction, filling, grading, excavating or mining shall occur without the issuance of a variance by the Department. No variance may be granted which is inconsistent with subsection (d) of this section.

(g) Post-closure care shall continue until the Department finds that post-closure care is no longer necessary to protect human health and the environment.

(h) The Department may terminate the period of post-closure care at any time in either of the following two ways.

(1) The owner or operator or any member of the public may petition the Department to terminate post-closure care applicable to a hazardous waste management unit or facility based on cause.

(A) The petition shall include evidence demonstrating that:

1. the secure nature of the hazardous waste management unit or facility makes the post-closure requirement(s) unnecessary (e.g., leachate or groundwater monitoring results, characteristics of the wastes, application of advanced technology, or alternative disposal, treatment, or re-use techniques indicate that the facility is secure), or

2. the requested termination of post-closure care requirements shall not result in potential threats to human health and the environment (e.g., leachate or groundwater monitoring results indicate no potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).

(B) The Department shall consider a petition only when it presents new and relevant information not previously considered by the Department.

(C) When considering a petition, the Department shall:

1. provide the owner or operator and the affected public, through a newspaper notice, the opportunity to submit written comments within 30 days of the date of the notice,

2. hold a public hearing, in response to a request or at the Department's own discretion, whenever a hearing might clarify one or more issues concerning the termination of post-closure care, and

3. give notice of the hearing at least 30 days before it occurs. Public notice of the hearing may be given at the same time as notice of the opportunity for written public comments, and the two notices may be combined.

(D) After considering the comments, the Department shall issue a final determination, based upon the criteria set forth in subsection (h)(1)(A) of this section.

(E) If the Department denies the petition, the Department shall send the petitioner a brief written response giving a reason for the denial.

(2) The Department may propose to terminate post-closure care applicable to a hazardous waste management unit or facility based on the criteria set forth in subsection (h)(1)(A).

(A) The Department shall provide the owner or operator and the affected public, through a newspaper notice, the opportunity to submit written comments within 30 days of the date of the notice and provide the opportunity for a public hearing as in subsection (h)(1)(C) of this section.

(B) After considering the comments, the Department shall issue a final determination, based upon the criteria as required for petitions under subsection (h)(1)(A) of this section.

Note: Authority cited: Sections ~~208~~, 25150, 25159 and 25245, Health and Safety Code.
Reference: Sections 25159, 25159.5, 25245 and 25246, Health and Safety Code; 40
CFR Section 264.117.

Amend title 22, division 4.5, chapter 14, article 8, section 66264.141 to read:

§ 66264.141. Definition of Terms As Used in This Article.

(a) The following terms, as defined in section 66260.10 are used in the specifications for the financial tests for closure, post-closure care, and liability coverage. The definitions are intended to assist in the understanding of these regulations and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices.

"Assets"

"Current assets"

"Current liabilities"

"Current plugging and abandonment cost estimate"

"Independently audited"

"Liabilities"

"Net working capital"

"Net worth"

"Other uses of the financial test"

"Substantial business relationship"

"Tangible net worth"

(b) In the liability coverage requirements the terms "bodily injury" and "property damage" as defined in section 66260.10 shall have the meanings given these terms by applicable State law. However, these terms do not include those liabilities which, consistent with standard industry practices, are excluded from coverage in liability policies for bodily injury and property damage. The Department intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry. The definitions given below and defined in section 66260.10 are intended to assist in the understanding of these regulations and are not intended to limit their meanings in a way that conflicts with general insurance industry usage.

"Accidental occurrence"

"Legal defense costs"

"Nonsudden accidental occurrence"

"Sudden accidental occurrence"

Note: Authority cited: Sections ~~208~~, 25150, 25159, 25159.5 and 25245, Health and Safety Code. Reference: Section 25245, Health and Safety Code; 40 CFR Section 264.141.

Amend title 22, division 4.5, chapter 14, article 8, section 66264.143 to read:

§ 66264.143. Financial Assurance for Closure.

An owner or operator of each facility shall establish and demonstrate to the Department financial assurance for closure of the facility. The owner or operator shall choose from the options as specified in subsections (a) through (f) and (i) of this section or section 66264.146 of this article.

...

(e) Closure insurance.

(1) An owner or operator may satisfy the requirements of this section by obtaining closure insurance which conforms to the requirements of this section and submitting a certificate of such insurance to the Department. An owner or operator of a new facility shall submit the certificate of insurance to the Department at least 60 days before the date on which hazardous waste is first received for transfer, treatment, storage or disposal. The insurance shall be effective before this initial receipt of hazardous waste. At a minimum, the insurer shall be:

(A) licensed to transact the business of insurance in the State of California, or
(B) ~~or~~ eligible to provide insurance as an excess or surplus lines insurer, in the State of California one or more States. This insurance shall be transacted by and through a surplus lines broker currently licensed by the California Department of Insurance.

...

(f) Financial test and guarantee for closure.

(1) An owner or operator may satisfy the requirements of this section by demonstrating that he or she passes a financial test as specified in this subsection. To pass this test the owner or operator shall meet the criteria of either subsection (f)(1)(A) or (B) and comply with the requirements of subsection (f)(11) of this section.

(A) The owner or operator shall have:

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

2. a current rating for his or her corporate credit rating of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

3. net working capital and tangible net worth each at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates; and

34. tangible net worth of at least \$1020 million; and

45. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and postclosure cost estimates for hazardous waste facilities regulated by the Department, current amounts of other uses of the financial test as defined in section 66260.10, and the current plugging and abandonment cost estimates.

(B) The owner or operator shall have:

1. a current rating for his or her most recent senior, unsecured bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

2. tangible net worth at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates; and

3. tangible net worth of at least \$~~10~~20 million; and

4. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and postclosure cost estimates for hazardous waste facilities regulated by the Department, current amounts of other uses of the financial test as defined in section 66260.10, and the current plugging and abandonment cost estimates.

(2) The phrase "current closure and postclosure cost estimates" as used in subsection (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1 through 46 of the letter from the owner's or operator's chief financial officer as specified in section 66264.151, subsection (f). The phrase "current plugging and abandonment cost estimates" as used in subsection (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1 through 46 of the letter from the owner's or operator's chief financial officer.

(3) To demonstrate that this test has been met, the owner or operator shall submit the following items to the Department:

(A) a letter signed by the owner's or operator's chief financial officer. The letter shall be on the owner or operator's official letterhead stationery, shall contain an original signature and shall be completed as specified in section 66264.151, subsection (f); and

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

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

1. the independent certified public accountant has compared the data which 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 financial statements; and

~~2. in connection with that procedure, no matters came to the independent certified public accountant's attention which caused that accountant to believe that the specified data should be adjusted.~~ shall identify the specific accounting standards and guidance relied upon to prepare the report.

...

(11) The owner or operator shall establish a trust fund that conforms to the requirements specified in subsection (a) of this section, within six months of the effective date of this section or the date of the next submittal required by subsection (f)(5) of this section, whichever is later. The value of the trust fund shall be equal to 20 percent of the current closure cost estimate as specified in section 66264.142. Payments may be made over a period of 10 years beginning with establishment of the fund. The payments into the trust fund shall comply with the following schedule:

_____ (A) An initial payment shall be made upon establishment of the trust fund in an amount equal to two percent of the current closure cost as specified in section 66264.142.

_____ (B) Subsequent annual payments shall be equivalent to two percent of the current closure cost estimate as specified in section 66264.142 until the value of the trust fund is equal to 20 percent of the closure cost estimate.

_____ (C) Once the current value of the trust fund is equal to 20 percent of the closure cost estimate as specified in sections 66264.142, the owner or operator shall maintain the trust fund at a minimum value of 20 percent of the current closure cost estimate.

...

Note: Authority cited: Sections 25150, 25159, 25159.5 and 25245, Health and Safety Code. Reference: Section 25245, Health and Safety Code; 40 CFR Section 264.143.

Amend title 22, division 4.5, chapter 14, article 8, section 66264.144 to read:

§ 66264.144. Cost Estimate for Postclosure Care.

(a) The owner or operator of a disposal surface impoundment, disposal miscellaneous unit, land treatment unit, or landfill unit, or of a surface impoundment or waste pile required under section 66264.228 and section 66264.258 to prepare a contingent closure and postclosure plan, shall prepare and submit to the Department a detailed written estimate, in current dollars, of the annual cost of postclosure monitoring and maintenance of the facility in accordance with the applicable postclosure regulations in sections 66264.117 through 66264.120, 66264.228, 66264.258, 66264.280, 66264.310 and 66264.603.

(1) The postclosure cost estimate shall be based on the costs to the owner or operator of hiring a third party to conduct postclosure care activities. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in section 66260.10).

(2) The postclosure cost estimate is calculated by multiplying the annual postclosure cost estimate by ~~the number of 30 years or as of postclosure care~~ required under section 66264.117. This period may be reset to thirty years each time the postclosure permit is issued or renewed. This period will be determined consistent with determinations made in section 66264.117.

(b) During the active life of the facility, the owner or operator shall adjust the postclosure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with section 66264.145. For owners or operators using the financial test or corporate guarantee, the postclosure cost estimate shall be updated for inflation within 30 days after the close of the firm's fiscal year and before the submission of updated information to the Department as specified in section 66264.145(f)(5). The adjustment shall be made by recalculating the postclosure cost estimate in current dollars or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business as specified in subsections (b)(1) and (b)(2) of this section. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

(1) The first adjustment is made by multiplying the postclosure cost estimate by the inflation factor. The result is the adjusted postclosure cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted postclosure cost estimate by the latest inflation factor.

(c) During the active life of the facility, the owner or operator shall revise the postclosure cost estimate within 30 days after the Department has approved the request to modify the postclosure plan, if the change in the postclosure plan increases the cost of postclosure care. The revised postclosure cost estimate shall be adjusted for inflation as specified in section 66264.144(b).

(d) The owner or operator shall keep the following at the facility during the operating life of the facility: the latest postclosure cost estimate prepared in accordance with section 66264.144(a) and (c) and, when this estimate has been adjusted in accordance with section 66264.144(b), the latest adjusted postclosure cost estimate.

Note: Authority cited: Sections ~~208~~, 25150, 25159, 25159.5 and 25245, Health and Safety Code. Reference: Section 25245, Health and Safety Code; 40 CFR Section 264.144.

Amend title 22, division 4.5, chapter 14, article 8, section 66264.145 to read:

§ 66264.145. Financial Assurance for Postclosure Care.

The owner or operator of a hazardous waste management unit subject to the requirements of section 66264.144 shall establish and demonstrate to the Department financial assurance for postclosure care in accordance with the approved postclosure plan for the facility 60 days prior to the initial receipt of hazardous waste or the effective date of the regulation, whichever is later. The owner or operator shall choose from the following options as specified in subsections (a) through (f) and (i) of this section.

...

(e) Postclosure insurance.

(1) An owner or operator may satisfy the requirements of this section by obtaining postclosure insurance which conforms to the requirements of this subsection and submitting a certificate of such insurance to the Department. An owner or operator of a new facility shall submit the certificate of insurance to the Department at least 60 days before the date on which hazardous waste is first received for disposal. The insurance shall be effective before this initial receipt of hazardous waste. At a minimum, the insurer shall be:

(A) licensed to transact the business of insurance in the State of California or, (B) or eligible to provide insurance as an excess or surplus lines insurer, in the State of California one or more States. This insurance shall be transacted by and through a surplus lines broker currently licensed by the California Department of Insurance.

...

(f) Financial test and guarantee for postclosure care.

(1) An owner or operator may satisfy the requirements of this section by demonstrating that he or she passes a financial test as specified in this section. To pass this test the owner or operator shall meet the criteria of either subsections (f)(1)(A) or (f)(1)(B) and comply with the requirements of subsection (f)(12) of this section.

(A) the owner or operator shall have:

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

2. a current rating for his or her corporate credit rating of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

3. net working capital and tangible net worth each at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates; and

4. tangible net worth of at least \$1020 million; and

5. assets in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and postclosure cost estimates for hazardous waste facilities regulated by the Department, current amounts of other uses

_____ and the current plugging and abandonment cost estimates.

(B) the owner or operator shall have:

1. a current rating for his or her most recent senior, unsecured bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

2. tangible net worth at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates; and

3. tangible net worth of at least \$~~10~~20 million; and

4. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and postclosure cost estimates for hazardous waste facilities regulated by the Department, current amounts of other uses of the financial test as defined in section 66260.10, and the current plugging and abandonment cost estimates.

(2) The phrase "current closure and postclosure cost estimates" as used in subsection (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1 through ~~46~~ of the letter from the owner's or operator's chief financial officer (section 66264.151, subsection (f)). The phrase "current plugging and abandonment cost estimates" as used in subsection (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1 through ~~46~~ of the letter from the owner's or operator's chief financial officer.

(3) To demonstrate that this test has been met, the owner or operator shall submit the following items to the Department:

(A) a letter signed by the owner's or operator's chief financial officer and worded as specified in section 66264.151, subsection (f). The letter shall be on the owner or operator's official letterhead stationery, and shall contain an original signature; and

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

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

1. the independent certified public accountant has compared the data which the letter from the chief financial officer specified as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

2. ~~in connection with that procedure, no matters came to the independent certified public accountant's attention which caused a belief that the specified data should be adjusted.~~ shall identify the specific accounting standards and guidance relied upon to prepare the report.

...

(12) The owner or operator shall establish a trust fund that conforms to the requirements specified in subsection (a) of this section, within six months of the effective date of this section or the date of the next submittal required by subsection (f)(5) of this section, whichever is later. The value of the trust fund shall be equal to 20 percent of the current postclosure cost estimate as specified in section 66264.144.

fund. The payments into the trust fund shall comply with the following schedule:

(A) An initial payment shall be made upon establishment of the trust fund in an amount equal to two percent of the current postclosure cost as specified in section 66264.144.

(B) Subsequent annual payments shall be equivalent to two percent of the current postclosure cost estimate as specified in section 66264.144 until the value of the trust fund is equal to 20 percent of the postclosure cost estimate.

(C) Once the current value of the trust fund is equal to 20 percent of the postclosure cost estimate as specified in section 66264.144, the owner or operator shall maintain the trust fund at a minimum value of 20 percent of the current postclosure cost estimate.

...

Note: Authority cited: Sections 25150, 25159, 25159.5 and 25245, Health and Safety Code. Reference: Section 25245, Health and Safety Code; 40 CFR Section 264.145.

Amend title 22, division 4.5, chapter 14, article 8, section 66264.147 to read:

§ 66264.147. Liability Requirements.

(a) Coverage for sudden accidental occurrences. An owner or operator of a hazardous waste transfer, treatment, storage or disposal facility or a group of such facilities, shall demonstrate to the Department financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for sudden accidental occurrences in the amount of at least \$1 million per occurrence with an annual aggregate of at least \$2 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in subsections (a)(1) through (7) of this section.

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this subsection.

(A) At a minimum, the insurer shall be:

1. licensed to transact the business of insurance in the State of California, or
2. or eligible to provide insurance as an excess or surplus lines insurer, in the State of California one or more states. This insurance shall be transacted by and through a surplus lines broker currently licensed by the California Department of Insurance.

...

(b) Coverage for nonsudden accidental occurrences. An owner or operator of a surface impoundment, as defined in section 66260.10, landfill, as defined in section 66260.10, land treatment facility, as defined in section 66260.10 or disposal miscellaneous unit which is used to manage hazardous waste, or a group of such facilities, shall demonstrate to the Department financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least \$3 million per occurrence, as defined in section 66260.10, with an annual aggregate of at least \$6 million, exclusive of legal defense costs. An owner or operator who must meet the requirements of this section may combine the required per-occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences must maintain liability coverage in the amount of at least \$4 million per occurrence and \$8 million annual aggregate. This liability coverage may be demonstrated, as specified in subsections (b)(1) through (b)(7) of this section.

(1) An owner or operator may demonstrate the required liability coverage by obtaining liability insurance as specified in this subsection.

(A) At a minimum, the insurer shall be:

1. licensed to transact the business of insurance in the State of California or,
2. or eligible to provide insurance as an excess or surplus lines insurer, in the State of California one or more states. This insurance shall be transacted by and

Insurance.

...

(f) Financial test for liability coverage.

(1) An owner or operator may satisfy the requirements of this section by demonstrating that he or she passes a financial test as specified in this subsection. To pass this test the owner or operator shall meet the criteria of subsection (f)(1)(A) or (B).

(A) The owner or operator shall have:

1. net working capital and tangible net worth each at least six times the amount of liability coverage to be demonstrated by this test; and

2. a current rating for his or her corporate credit rating of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

3. tangible net worth of at least \$~~10~~20 million; and

~~4~~3. assets in the United States amounting to either:

a. at least 90 percent of total assets; or

b. at least six times the amount of liability coverage to be demonstrated by this

test.

(B) The owner or operator shall have:

1. a current rating for the most ~~recent~~ senior, unsecured bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's, or Aaa, Aa, A or Baa as issued by Moody's; and

2. tangible net worth of at least \$~~10~~20 million; and

3. tangible net worth at least six times the amount of liability coverage to be demonstrated by this test; and

4. assets in the United States amounting to either:

a. at least 90 percent of total assets; or

b. at least six times the amount of liability coverage to be demonstrated by this

test.

(2) The phrase "amount of liability coverage" as used in subsection (f)(1) of this section refers to the annual aggregate amounts for which coverage is required under subsections (a) and (b) of this section.

(3) To demonstrate that this test can be met, the owner or operator shall submit the following items to the Department:

(A) a letter signed by the owner's or operator's chief financial officer and worded as specified in section 66264.151, subsection (g). The letter shall be on the official letterhead stationery of the owner or operator, and shall contain an original signature. An owner or operator may use the financial test to demonstrate both assurance for closure or postclosure care, as specified by sections 66264.143, subsection (f), 66264.145, subsection (f), 66265.143, subsection (e) and 66265.145, subsection (e), and liability coverage as specified in subsections (a) and (b) of this section. If an owner or operator is using the financial test to cover both forms of financial responsibility, a separate letter is not required;

(B) a copy of the owner's or operator's financial statements and 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 that:

1. the independent certified public accountant has compared the data which 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 financial statements; and

2. ~~in connection with that procedure, no matters came to the independent certified public accountant's attention which caused him or her to believe that the specified data should be adjusted.~~ shall identify the specific accounting standards and guidance relied upon to prepare the report.

(4) An owner or operator of a new facility shall submit the items specified in subsection (f)(3) of this section to the Department at least 60 days before the date on which hazardous waste is first received for transfer, treatment, storage or disposal.

(5) After the initial submission of items specified in subsection (f)(3) of this section, the owner or operator shall send updated information to the Department within 90 days after the close of each succeeding fiscal year. This information shall consist of all items specified in subsection (f)(3) of this section.

(6) If the owner or operator no longer meets the requirements of subsection (f)(1) of this section, liability coverage shall be obtained for the entire amount of coverage as described in this section by use of the financial mechanisms described in this section. Notice shall be sent to the Department of the owner's or operator's intent to obtain the required coverage; notice shall be sent by either registered mail or by certified mail within 90 days after any occurrence that prevents the owner or operator from meeting the test requirements. Evidence of liability coverage shall be submitted to the Department within 90 days after any occurrence that prevents the owner or operator from meeting the requirements.

(7) The Department may, based on a reasonable belief that the owner or operator no longer meets the requirements of subsection (f)(1) of this section, require reports of financial condition at any time from the owner or operator in addition to those specified in subsection (f)(3) of this section. If the Department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subsection (f)(1) of this section, the owner or operator shall provide alternate financial assurance for closure and postclosure care and evidence of the required liability coverage as specified in this section within 30 days after notification of such a finding.

(8) The Department may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his or her report on examination of the owner's or operator's financial statements (see subsection (f)(3)(B) of this section). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Department will evaluate other qualifications on an individual basis. The owner or operator shall provide evidence of liability coverage for the amount required as specified in this section within 30 days after notification of disallowance.

(9) The owner or operator is no longer required to submit the items specified in subsection (f)(3) of this section when:

(A) an owner or operator substitutes alternate financial assurance for closure and postclosure care and evidence of liability insurance as specified in this section; or

(B) the Department releases the owner or operator from the requirements of this section in accordance with sections 66264.143, subsection (j), 66264.145, subsection (j) and 66264.147, subsection (e).

(g) Guarantee for liability coverage.

(1) Subject to subsection (g)(2) of this section, an owner or operator may meet the requirements of this section by obtaining a written guarantee, hereafter referred to as "guarantee." The guarantor shall 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, or a firm with a "substantial business relationship" with the owner or operator. The guarantor shall meet the requirements for owners or operators in subsections (f)(1) through (f)(6) of this section. The wording of the guarantee shall be identical to the wording specified in section 66264.151, subsection (h)(2) and shall have original signatures. A certified copy of the guarantee shall accompany the items sent to the Department as specified in subsection (f)(3) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter shall describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter shall describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee shall provide that:

(A) if the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden or nonsudden accidental occurrences (or both as the case may be), arising from the operation of facilities covered by this guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor shall do so up to the limits of coverage;

(B) the guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Department. This guarantee shall not be terminated unless and until the Department approve(s) alternate liability coverage complying with section 66264.147 and/or section 66265.147.

(2)(A) In the case of corporations incorporated in states other than California, a guarantee may be used to satisfy the requirements of this section only if the Attorney General or Insurance Commissioner of:

1. the State in which the guarantor is incorporated, and
2. each state in which a facility covered by the guarantee is located have submitted a written statement to the Department that a guarantee executed as described in this section is a legally valid and enforceable obligation in that State.

(B) In the case of corporations incorporated outside the United States, a guarantee may be used to satisfy the requirements of this section only if;

1. the non-U.S. corporation has identified a registered agent for service of process in the State in which a facility covered by the guarantee is located and in the State in which it has its principal place of business, and

2. the Attorney General or Insurance Commissioner of the State in which a facility covered by the guarantee is located and the State in which the guarantor corporation has its principal place of business, has submitted a written statement to the Department that a guarantee executed as described in this section is a legally valid and enforceable obligation in this State.

...

Note: Authority cited: Sections 25150, 25159, 25159.5, 25245, 58004 and 58012, Health and Safety Code. Reference: Sections 25200.1 and 25245, Health and Safety Code; 40 CFR Section 264.147.

Amend title 22, division 4.5, chapter 14, article 8, section 66264.151 to read:

§ 66264.151. Wording of the Instruments.

...

(e) A certificate of insurance, as specified in section 66264.143, subsection (e) or section 66264.145, subsection (e) or section 66265.143, subsection (d) or section 66265.145, subsection (d) of this division, shall 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 CLOSURE OR POSTCLOSURE CARE

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

California License Number:

Admitted [] Excess or Surplus Lines []

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

Facilities Covered: [List for each facility/transportable treatment unit (TTU): The EPA Identification Number, name, address, and the amount of insurance for closure and/or the amount for postclosure care (these amounts for all facilities covered shall 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 "closure" or "closure and postclosure care" or "postclosure care"] for the facilities/TTU(s) identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, section 66264.143, subsection (e), section 66264.145, subsection (e), section 66265.143, subsection (d) and section 66265.145, subsection (d) as applicable and as such regulations were constituted on the date shown below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

The Insurer certifies that it will not cancel, terminate, or fail to renew this policy except for failure to pay the premium, and that the automatic renewal of the policy provides the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium and the Insurer elects to cancel, terminate, or not renew the policy, the Insurer will send notice by either registered or certified mail to the owner or operator and the Department of Toxic Substances Control (DTSC). 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 the owner or operator and the DTSC as evidence by the return receipt. Cancellation, termination or failure to renew will not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:

- (1) The DTSC deems the facility/TTU abandoned; or
- (2) The permit is terminated or revoked or a new permit is denied by the DTSC;

or

- (3) Closure is ordered by the DTSC; or any other State or Federal agency, or a court of competent jurisdiction; or
- (4) The owner or operator is named as a debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy) U. S. Code; or
- (5) The premium due is paid.

The Insurer certifies that:

(A) it is licensed to transact the business of insurance in the State of California;

or

(B) it is eligible to provide insurance as an excess or surplus lines insurer, in the State of California and this insurance has been transacted by and through a surplus lines broker currently licensed by the California Department of Insurance.

Whenever requested by the Department of Toxic Substances Control (DTSC) of the State of California, the Insurer agrees to furnish to DTSC a duplicate original of the original policy listed above, including all endorsements thereon.

In the event this policy is used in combination with another mechanism, this policy shall be considered [insert "primary" or "excess"] coverage.

The parties below certify that the wording of this certificate is identical to the wording specified in California Code of Regulations, title 22, section 66264.151, subsection (e) and is being executed in accordance with the requirements of California Code of Regulations, title 22, division 4.5, chapters 14 and 15, article 8.

[Authorized signature for Insurer]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

[Date]

(f) A letter from the chief financial officer, as specified in section 66264.143, subsection (f) or section 66264.145, subsection (f), or section 66265.143, subsection (e) or section 66265.145, subsection (e) of this division, shall 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

Department of Toxic Substances Control
Financial Responsibility Section
8800 Cal Center Drive
Sacramento, California 95826

I am the chief financial officer of [insert name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance for closure and/or postclosure costs, as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8.

[Fill out the following paragraphs regarding facilities/transportable treatment units (TTU) and associated cost estimates. If your firm has no facilities/TTUs that belong in a particular paragraph, write "None" in the space indicated. For each facility/TTU, include its EPA Identification Number, name, address and current closure and/or postclosure cost estimates. Identify each cost estimate separately as to whether it is for closure or postclosure care.]

1. This firm is the owner or operator of the following facilities/TTUs for which financial assurance for closure or postclosure care is demonstrated through the financial test specified in section 66264.143, subsection (f), section 66264.145, subsection (f), section 66265.143, subsection (e), and section 66265.145, subsection (e) of California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8. The current closure and/or postclosure cost estimates covered by the test are shown for each facility/TTU:_____.

2. This firm guarantees, through the guarantee specified in section 66264.143, subsection (f), section 66264.145, subsection (f), section 66265.143, subsection (e), and section 66265.145, subsection (e) of California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, the closure and/or postclosure care of the following facilities/TTUs owned or operated by the guaranteed party. The current cost estimates for the closure or postclosure care so guaranteed are shown for each facility/TTU:_____.

The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) 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 [insert dollars]; or (3) engaged in the following substantial business relationship with the owner or operator [insert business relationship], and receiving the following value in consideration of the guarantee [insert dollars]]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.]

3. In states where the U.S. Environmental Protection Agency is not administering the financial requirements of subpart H of 40 CFR parts 264 and 265, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or postclosure care of the following facilities/TTUs through the use of a test equivalent or substantially equivalent to the financial test specified in subpart H of 40 CFR parts 264 and 265 or California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8. The current closure and/or postclosure cost estimates covered by such a test are shown for each facility/TTU:_____.

4. This firm is the owner or operator of the following hazardous waste management facilities/TTUs for which financial assurance for closure or, if a disposal facility, postclosure care, is not demonstrated either to U.S. Environmental Protection Agency or a State through the financial test or any other financial assurance mechanism specified in subpart H of 40 CFR parts 264 and 265, California Code of Regulations, title 22, division 4.5, chapter 14 or 15, article 8 or equivalent or substantially equivalent State mechanisms. The current closure and/or postclosure cost estimates not covered by such financial assurance are shown for each facility/TTU:_____.

5. This firm is using the financial test, or its equivalent, to provide financial assurance or guarantee to the following governmental agencies: [list each agency and the amount assured]

56. This firm is the owner or operator of the following Underground Injection Control facilities for which financial assurance for plugging and abandonment is required

under 40 CFR part 144. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility:_____.

This firm [insert "is" 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 [insert 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 [insert date].

This firm is using [insert "Alternative I" or "Alternative II"].

[Fill in Alternative I if the criteria of paragraph (f)(1)(A) of sections 66264.143 and 66264.145, or of paragraph (e)(1)(A) of sections 66265.143 and 66265.145 of this division are used. Fill in Alternative II if the criteria of paragraph (f)(1)(B) of sections 66264.143 and 66265.145, or of paragraph (e)(1)(B) of sections 66265.143 and 66265.145 of this division are used.]

ALTERNATIVE I

1. Sum of current closure and postclosure cost estimate (total of all cost estimates shown in the ~~five~~ six paragraphs above) \$ _____

*2. Total liabilities (if any portion of the closure or postclosure 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.) \$ _____

10. Is line 3 at least \$~~1020~~ million? [Yes/No]

11. Is line 3 at least 6 times line 1? [Yes/No]

12. Is line 7 at least 6 times line 1? [Yes/No]

*13. Are at least 90% of firm's assets located in the U.S.? If not, complete line 14 [Yes/No]

14. Is line 9 at least 6 times line 1? [Yes/No]

15. Is line 2 divided by line 4 less than 2.0? [Yes/No]

16. Is line 8 divided by line 2 greater than 0.1? [Yes/No]

17. Is line 5 divided by line 6 greater than 1.5? [Yes/No]

18. Current corporate credit rating of this firm and name of rating service

19. Date of corporate credit rating

ALTERNATIVE II

1. Sum of current closure and postclosure cost estimates [total of all cost estimates shown in the ~~five~~ six paragraphs above] \$ _____

2. Current bond rating of most recent senior, unsecured bond 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 closure and postclosure 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.) \$ _____
7. Is line 5 at least \$~~2040~~ million? [Yes/No]
8. Is line 5 at least 6 times line 1? [Yes/No]
- *9. Are at least 90% of firm's assets located in the U.S.? If not, complete line 10 [Yes/No]
10. Is line 6 at least 6 times line 1? [Yes/No]

I hereby certify that the wording of this letter is identical to the wording as specified in California Code of Regulations, title 22, section 66264.151, subsection (f) and is being executed in accordance with the requirements of California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8.

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

(g) A letter from the chief financial officer, as specified in section 66264.147, subsection (f) or section 66265.147, subsection (f) of this division, shall 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

Department of Toxic Substances Control
 Financial Responsibility Section
 8800 Cal Center Drive
 Sacramento, California 95826

I am the chief financial officer of [insert 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 closure and/or postclosure care" if applicable] as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8.

[Fill out the following paragraphs regarding facility(ies)/transportable treatment unit (TTU) and liability coverage. If there are no facility(ies)/ TTU(s) that belong in a particular paragraph, write "None" in the space indicated. For each facility/TTU, include the hazardous waste facility/TTU EPA Identification Number, name, and address, and current liability coverage (indicate sudden and nonsudden coverage amounts separately)].

The firm identified above is the owner or operator of the following facility(ies)/TTU(s) for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences is being demonstrated through

the financial test specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.147 and 66265.147:

The firm identified above guarantees, through the guarantee specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.147 and 66265.147, liability coverage for [insert "sudden" or "nonsudden" or both "sudden and nonsudden"] accidental occurrences at the following facility(ies)/TTU(s) owned or operated by the following:

The firm identified above is [insert one or more: (1) the direct or higher tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of the guarantee [insert dollars]; or (3) engaged in the following substantial business relationship with the owner or operator [insert business relationship], and receiving the following value in consideration of the guarantee [insert dollars]]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.]

[If you are using the financial test to demonstrate coverage of both liability and financial assurance for closure and/or postclosure care, fill in the following five paragraphs regarding facilities and associated closure and postclosure cost estimates. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility/TTU, include its hazardous waste facility/TTU EPA Identification Number, name, address and current closure and/or postclosure cost estimates. Identify each cost estimate separately as to whether it is for closure or postclosure care.]

1. The firm identified above is the owner or operator of the following facilities/TTUs for which financial assurance for closure and/or postclosure or liability coverage is demonstrated through the financial test as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, section 66264.143, subsection (f), section 66264.145, subsection (f), section 66265.143, subsection (e), and section 66265.145, subsection (e). The current closure and/or postclosure cost estimates covered by the test are shown for each facility/TTU:

2. The firm identified above guarantees, through the guarantee as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, section 66264.143, subsection (f), section 66264.145, subsection (f), section 66265.143, subsection (e), and section 66265.145, subsection (e), the closure and/or postclosure care or liability coverage of the following facilities/TTUs owned or operated by the guaranteed party. The current cost estimates for the closure or postclosure care so guaranteed are shown for each facility/TTU:

3. In States where the U.S. Environmental Protection Agency is not administering the financial requirements of subpart H of 40 CFR parts 264 and 265, this firm as owner, operator or guarantor is demonstrating financial assurance for the closure or postclosure care of the following facilities/TTUs through the use of a financial test equivalent or substantially equivalent to the financial test specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, section 66264.143, subsection (f), section 66264.145, subsection (f), section 66265.143, subsection (e), and section 66265.145, subsection (e). The current closure and/or postclosure cost estimates covered by such a test are shown for each facility/TTU:

4. The firm identified above is the owner or operator of the following facilities/TTUs for which financial assurance for closure or, if a disposal facility, postclosure care, is not demonstrated either to U.S. Environmental Protection Agency

or a State through the financial test or any other financial assurance mechanism as specified in California Code of Regulations, title 22, division 4.5, chapters 14 and 15, article 8 or equivalent or substantially equivalent State mechanisms. The current closure and/or postclosure cost estimates not covered by such financial assurance are shown for each facility/TTU:

5. This firm is using the financial test, or its equivalent, to provide financial assurance or guarantee to the following governmental agencies: [list each agency and the amount assured]

56. The firm is the owner or operator or guarantor of the following Underground Injection Control facilities for which financial assurance for plugging and abandonment is required under 40 CFR part 144 and is assured through a financial test. The current closure cost estimates as specified in 40 CFR144.62 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 [insert date]. 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 [insert date].

This firm is using [insert "Alternative I" or "Alternative II"] for Part A [and [if this financial test includes closure and/or postclosure care, insert "Alternative I" or "Alternative II"] for Part B].

Part A. Liability Coverage for Accidental Occurrences

[Fill in Alternative I if the criteria of paragraph (f)(1)(A) of section 66264.147 or section 66265.147 are used. Fill in Alternative II if the criteria of paragraph (f)(1)(B) of section 66264.147 or section 66265.147 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 percent of assets are located in the United States, give total United States assets \$ _____

7. Is line 5 at least \$4020 million? [Yes/No]

8. Is line 4 at least 6 times line 1? [Yes/No]

9. Is line 5 at least 6 times line 1? [Yes/No]

10. Are at least 90 percent of assets located in the United States? If not, complete line 11. [Yes/No]

11. Is line 6 at least 6 times line 1? [Yes/No]

12. Current corporate credit rating of this firm and name of rating service

13. Date of corporate credit rating

ALTERNATIVE II

1. Amount of annual aggregate liability coverage to be demonstrated \$ _____

2. Current bond rating of most senior, unsecured bond 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 the United States [required only if less than 90 percent of assets are located in the United States] \$ _____

7. Is line 5 at least \$~~2040~~ million? [Yes/No]

8. Is line 5 at least 6 times line 1? [Yes/No]

*9. Are at least 90 percent of assets located in the United States? [Yes/No]

10. Is line 9 at least 6 times line 1? [Yes/No]

[Fill in Part B if you are using the financial test to demonstrate assurance of both liability coverage and closure or postclosure care.]

Part B. Closure or Postclosure Care and Liability Coverage

[Fill in Alternative I if the criteria of paragraphs (f)(1)(A) of 66264.143 or 66264.145 and/or (f)(1)(A) of 66264.147 are used or if the criteria of paragraphs (e)(1)(A) of 66265.143 or 66265.145 and/or (f)(1)(A) of 66265.147 are used. Fill in Alternative II if the criteria of paragraphs (f)(1)(B) of 66264.143 or 66264.145 and/or (f)(1)(B) of 66264.147 are used or if the criteria of paragraphs (e)(1)(B) of 66265.143 or 66265.145 and (f)(1)(B) of 66265.147 are used.]

ALTERNATIVE I

1. Sum of current closure and postclosure cost estimates (Total of all cost estimates shown in the paragraphs of the letter to the Director of the Department of Toxic Substances Control) \$ _____

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 closure or postclosure cost estimate 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 the United States (required only if less than 90 percent of firm's assets are located in the United States) \$ _____

12. Is line 5 at least \$~~2040~~ million? [Yes/No]

13. Is line 5 at least 6 times line 3? [Yes/No]

14. Is line 9 at least 6 times line 3? [Yes/No]

*15. Are at least 90 percent of the firm's assets located in the United States? If not, complete line 16 [Yes/No]

16. Is line 11 at least 6 times line 3? [Yes/No]

17. Is line 4 divided by line 6 less than 2.0? [Yes/No]

18. Is line 10 divided by line 4 greater than 0.1? [Yes/No]

19. Is line 7 divided by line 8 greater than 1.5? [Yes/No]

20. Current corporate credit rating of this firm and name of rating service

21. Date of corporate credit rating

ALTERNATIVE II

1. Sum of current closure and postclosure cost estimates (Total of all cost estimates shown in the paragraphs of the letter to the Director of the Department of Toxic Substances Control \$ _____)

2. Amount of annual aggregate liability coverage to be demonstrated \$ _____

3. Sum of lines 1 and 2 \$ _____

4. Current bond rating of most recent senior, unsecured bond 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 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.) _____

*8. Total assets in the United States (required only if less than 90 percent of firm's assets are located in the United States) \$ _____

9. Is line 7 at least \$~~20~~40 million? [Yes/No]

10. Is line 7 at least 6 times line 3? [Yes/No]

*11. Are at least 90 percent of the firm's assets located in the United States? If not, complete line 12. [Yes/No]

12. Is line 8 at least 6 times line 3? [Yes/No]

I hereby certify that the wording of this letter is identical to the wording as specified in California Code of Regulations, title 22, section 66264.151, subsection (g) and is being executed in accordance with the requirements of California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8.

[Signature]

[Name]

[Title]

[Date]

(h)(1) A corporate guarantee, as specified in section 66264.143, subsection (f) or section 66264.145, subsection (f), or section 66265.143, subsection (e) or section 66265.145, subsection (e) of this division, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CORPORATE GUARANTEE FOR CLOSURE OR POSTCLOSURE CARE

Department of Toxic Substances Control
Financial Responsibility Section
8800 Cal Center Drive
Sacramento, California 95826

Guarantee made this [insert date] by [insert name of guaranteeing entity], a business corporation organized under the laws of the State of [insert name of State], herein referred to as guarantor, to the Department of Toxic Substances Control (DTSC), obligee, on behalf of our subsidiary [insert owner or operator name and business address].

This guarantee is made on behalf of the [insert owner or operator name], which is [one of the following: "our subsidiary"; "a subsidiary of (name and address of common parent corporation) of which guarantor is a subsidiary"; or "an entity with which the guarantor has a substantial business relationship, as defined in California Code of Regulations, title 22, division 4.5, chapter 10, article 2, section 66260.10"] to the DTSC.

RECITALS

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, section 66264.143, subsection (f), section 66264.145, subsection (f), section 66265.143, subsection (e), and section 66265.145, subsection (e).

2. [Insert owner or operator's name] owns at least 50 percent of the voting stock of and/or operates the following hazardous waste management facility(ies)/transportable treatment unit(s) (TTU) covered by this guarantee: [List for each facility/TTU: EPA Identification Number, name, and address. Indicate for each whether guarantee is for closure, postclosure care, or both. Include closure and postclosure amounts, shown separately.]

3. "Closure plans" and "postclosure plans" as used below refer to the plans maintained as required by California Code of Regulations, title 22, division 4.5, chapters 14 and 15, article 7, for the closure and postclosure care of facilities/TTU(s) as identified above.

4. For value received from [insert owner or operator name], guarantor guarantees to DTSC that in the event that [insert owner or operator name] fails to perform [insert "closure", "postclosure care" or "closure and postclosure care"] of the above facility(ies)/TTU(s) in accordance with the closure or postclosure 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 California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, as applicable, in the name of [insert owner or operator name] in the amount of the current closure or postclosure cost estimates as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8.

5. Guarantor agrees that if, at any time during or at the end of any fiscal year before the termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to DTSC and to [insert owner or operator name] that he or she intends to provide alternate financial assurance as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8 as applicable, in the name of [insert owner or operator name]. Within 120 days after the end of such fiscal year or other occurrence, the guarantor

shall establish such alternate financial assurance unless [insert owner or operator name] has done so.

6. The guarantor agrees to notify DTSC by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code, naming guarantor as debtor within ten (10) days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by DTSC of a determination that guarantor no longer meets the financial test criteria or that he or she is disallowed from continuing as a guarantor of closure or postclosure care, he or she shall establish alternate financial assurance as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, as applicable, in the name of [insert owner or operator name] unless [insert owner or operator name] has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure or postclosure plan, amendment or modification of the permit, the extension or reduction of the time of performance of closure or postclosure, or any other modification or alteration of an obligation of the owner or operator pursuant to California Code of Regulations, title 22, division 4.5.

9. Guarantor agrees to remain bound under this guarantee for as long as [insert owner or operator name] shall comply with the applicable financial assurance requirements of California Code of Regulations, title 22, division 4.5 for the above listed facilities/TTUs, except as provided in paragraph 10 of this agreement.

10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:

Guarantor may terminate this guarantee by sending notice by certified mail to DTSC and to [insert owner or operator name], provided that this guarantee may not be terminated unless and until the [insert owner or operator name] obtains, and DTSC approve(s), alternate closure and/or postclosure care coverage complying with California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with its owner or operator.]

Guarantor may terminate this guarantee 120 days following the receipt of notification, through either registered or certified mail, by DTSC and by [insert owner or operator name].

11. Guarantor agrees that if [insert owner or operator name] fails to provide alternate financial assurance as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, as applicable, and obtain written approval of such assurance from DTSC within 90 days after a notice of cancellation by the guarantor is received by DTSC from guarantor, guarantor shall provide such alternate financial assurance in the name of [insert owner or operator name].

12. Guarantor expressly waives notice of acceptance of this guarantee by DTSC or by [insert owner or operator name]. Guarantor also expressly waives notice of amendments or modifications of the closure and/or postclosure plan and of amendments or modifications of the facility/TTU permit(s).

The parties hereby certify that the wording of this guarantee is identical to the wording specified in California Code of Regulations, title 22, section 66264.151,

subsection (h)(1) and is being executed in accordance with the requirements of California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

(2) A guarantee, as specified in section 66264.147, subsection (f) or section 66265.147, subsection (f) of this division, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

GUARANTEE FOR LIABILITY COVERAGE

Department of Toxic Substances Control
Financial Responsibility Section
8800 Cal Center Drive
Sacramento, California 95826

Guarantee made by this [insert date] by [insert name of guaranteeing entity] a business corporation organized under the laws of [if incorporated within the United States, insert "the State of [insert name of State]"; if incorporated outside the United States, insert the name of the country in which incorporated, the principal place of business within the United States, and the name and address of the registered agent in the State of the principal place of business], herein referred to as guarantor. This guarantee is made on behalf of [insert owner or operator name] of [insert business address] which is one of the following: [insert "our subsidiary"; "a subsidiary of [insert name and address of common parent corporation] of which guarantor is a subsidiary"; or "an entity with which guarantor has a substantial business relationship, as defined in California Code of Regulations, title 22, division 4.5, chapter 10, article 2, section 66260.10"], to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [insert "sudden" and/or "nonsudden"] accidental occurrences arising from operation of the facility(ies)/transportable treatment unit(s) (TTU) covered by this guarantee.

RECITALS

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.147 and 66265.147.

2. [Insert owner or operator name] owns or operates the following hazardous waste management facility(ies)/TTU(s) covered by this guarantee: [List for each facility/TTU: EPA Identification Number, name, and address; and if guarantor is incorporated outside the United States, list the name and address of the guarantor's registered agent in each State.]. This corporate guarantee satisfies California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, third-party liability

requirements for [insert "sudden", "nonsudden" or "both sudden and nonsudden"] accidental occurrences in the above-named owner or operator facility(ies)/TTU(s) for coverage in the amount of \$ [insert dollar amount] per facility/TTU per occurrence and \$ [insert dollar amount] annual aggregate.

3. For value received from [insert owner or operator name], guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [insert "sudden" and/or "nonsudden"] accidental occurrences arising from operations of the facility(ies)/TTU(s) covered by this guarantee that in the event that [insert owner or operator name] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [insert "sudden" and/or "nonsudden"] accidental occurrences, arising from the operation of the above-named facility(ies)/TTU(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage identified above.

4. Such obligation does not apply to the following:

(a) Bodily injury or property damage for which [insert owner or operator name] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert owner or operator name] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert owner or operator name] under a workers' compensation, disability benefits, or unemployment compensation law or any similar laws.

(c) Bodily injury to:

(1) An employee of [insert owner or operator name] arising from, and in the course of, employment by [insert owner or operator name]; or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert owner or operator name]. This exclusion applies:

(A) Whether [insert owner or operator name] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who shall pay damages because of the injury to persons identified in paragraphs (A) and (B).

(d) Bodily injury or property, damages arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert owner or operator name];

(2) Premises that are sold, given away, or abandoned by [insert owner or operator name] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert owner or operator name];

(4) Personal property in the care, custody, or control of [insert owner or operator name];

(5) That particular part of real property on which the [insert owner or operator name] or any contractor or subcontractors working directly or indirectly on behalf of the [insert owner or operator name] are performing operations, if the property damage arises out of these operations.

5. Guarantor agrees that if, at any time during or 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

Department of Toxic Substances Control (DTSC) and to [insert owner or operator name] that he or she intends to provide alternate liability coverage as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.147 and 66265.147, as applicable, in the name of [insert owner or operator name]. Within 90 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless [insert owner or operator name] has done so.

6. The guarantor agrees to notify the DTSC by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code, naming guarantor as debtor, within ten (10) days after commencement of the proceedings.

7. Guarantor agrees that within thirty (30) days after being notified by the DTSC of a determination that the guarantor no longer meets the financial test criteria or that he or she is disallowed from continuing as a guarantor, he or she shall establish alternate liability coverage as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.147 and 66265.147 in the name of [insert owner/operator name], unless the [insert owner or operator name name] has done so.

8. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability requirements set by California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.147 and 66265.147, provided that such modification shall become effective only if DTSC does not disapprove the modification within thirty (30) days of receipt of notification of the modification.

9. Guarantor agrees to remain bound under this guarantee for so long as [insert owner/operator name] shall comply with the applicable requirements of California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.147 and 66265.147 for the above-listed facility(ies)/TTU(s), except as provided in paragraph 10 of this agreement.

10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator name]:

Guarantor may terminate this guarantee by sending notice by certified mail to DTSC, and to [insert owner or operator name], provided that this guarantee may not be terminated unless and until the [insert owner or operator name] obtains, and DTSC approves alternate liability coverage complying with California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.147 and 66265.147.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator].

Guarantor may terminate this guarantee 120 days following receipt of notification, through certified mail, by DTSC and by [insert owner or operator name].

11. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.

12. Guarantor agrees that this guarantee is in addition to and does not affect any other responsibility or liability of the guarantor with respect to the covered facility(ies)/TTU(s).

13. The guarantor shall satisfy a third-party liability claim only on receipt of one of the following documents:

(a) Certification from the Principal and the third-party liability claimant(s) that the liability claim should be paid. The certification shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATION OF VALID CLAIM

The undersigned, as parties [insert principal name] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [insert "sudden" and/or "nonsudden"] accidental occurrence arising from operating [insert Principal's name and facility type(s) hazardous waste "treatment", "storage" or disposal" facility/transportable treatment unit (TTU)] should be paid in the amount of \$ [insert dollars].

[Signatures]

Principal

(Notary) Date

[Signatures]

Claimant(s)

(Notary) Date

(b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility/TTU or group of facility(ies)/TTU(s).

14. In the event of combination of this guarantee with another mechanism to meet liability requirements, this guarantee will be considered [insert "primary" or "excess"] coverage.

I hereby certify that the wording of this guarantee is identical to the wording as specified in California Code of Regulations, title 22, section 66264.151, subsection (h)(2) and is being executed in accordance with the requirements of California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness of notary:

(i) A hazardous waste facility liability endorsement as required in section 66264.147 or section 66265.147 shall 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 Insurer has issued liability insurance covering bodily injury and property damage to [name of insured], [address of insured] in connection with the insured's obligation to demonstrate financial responsibility under California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.147 and 66265.147. The coverage applies at [list EPA Identification Number, name, and address for each facility/transportable treatment unit (TTU)] 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. The coverage provided by the above policy is [insert "primary" or "excess"]. If excess coverage, the primary coverage mechanism shall also be demonstrated.

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with subsections (a) through (e) of this Paragraph 1 are hereby amended to conform with subsections (a) through (e). The Insurer certifies the following with respect to the insurance described above:

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy.

(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 that amount of any deductible for which coverage is demonstrated as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.147 and 66265.147.

(c) Whenever requested by the Department of Toxic Substances Control (DTSC), the Insurer agrees to furnish to DTSC a signed duplicate original of the policy and all endorsements.

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

(e) Any other termination of the insurance 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 DTSC as evidenced by the return receipt.

3. The Insurer certifies that:

(A) it is licensed to transact the business of insurance in the State of California;

or

(B) it is eligible to provide insurance as an excess or surplus lines insurer, in the State of California, and the insurance has been transacted by and through a surplus lines broker currently licensed by the California Department of Insurance.

Attached to and forming part of policy No. [insert policy number] issued by [insert name of Insurer], herein called the Insurer, of [insert address of Insurer] to [insert name of insured] of [insert address of insured] this [insert day] day of [insert month] , [insert year] . The effective date of said policy is [insert day] day of [insert month]. California License Number: _____ Admitted [] Excess or Surplus Lines []

I hereby certify that the wording of this endorsement is identical to the wording specified in California Code of Regulations, title 22, section 66264.151, subsection (i), is being executed in accordance with the requirements of California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, and that the Insurer is licensed to transact the business of insurance in the State of California, or eligible to provide

insurance as an excess or surplus lines insurer, ~~in one or more states~~ in the State of California.

[Signature of Authorized Representative of Insurer]
[Type name]
[Title], Authorized Representative of [name of Insurer]
[Address of Representative]

(j) A certificate of liability insurance as required in section 66264.147 or section 66265.147 shall be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

HAZARDOUS WASTE FACILITY CERTIFICATE OF LIABILITY INSURANCE

1. [Insert name of Insurer], (the "Insurer"), of [insert address of Insurer] hereby certifies that it has issued liability insurance covering bodily injury and property damage to [insert name of insured], (the "insured"), of [insert address of insured] in connection with the insured's obligation to demonstrate financial responsibility under California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.147 and 66265.147. The coverage applies at the facilities/transportable treatment units (TTU) [list EPA Identification Number, name, and address for each facility/TTU] 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. The coverage is provided under policy number [insert policy number], issued on [insert date]. The effective date of said policy is [insert date]. The coverage provided by the above policy is [insert "primary" or "excess"]. If excess coverage, the primary coverage mechanism shall also be demonstrated.

2. The Insurer further certifies the following with respect to the insurance described above:

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy.

(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 that amount of any deductible for which coverage is demonstrated as specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, section 66264.147 and 66265.147.

(c) Whenever requested by the Department of Toxic Substances Control (DTSC), the Insurer agrees to furnish to DTSC a signed duplicate of the original of the policy and all endorsements.

(d) Cancellation of the insurance, whether by the Insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility/TTU will be effective only upon written

notice and only after the expiration of 60 days after a copy of such written notice is received by DTSC as evidenced by the return receipt.

(e) Any other termination of the insurance 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 DTSC as evidenced by the return receipt.

3. The Insurer certifies that:

(A) it is licensed to transact the business of insurance in the State of California;

or

(B) it is eligible to provide insurance as an excess or surplus lines insurer, in the State of California, and the insurance has been transacted by and through a surplus lines broker currently licensed by the California Department of Insurance.

I hereby certify that the wording of this instrument is identical to the wording specified in California Code of Regulations, title 22, section 66264.151, subsection (j), is being executed in accordance with California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, and that the Insurer is licensed to transact the business of insurance in the State of California, or eligible to provide insurance as an excess or surplus lines insurer, ~~in one or more states~~ the State of California. California License Number: _____ Admitted [] Excess or Surplus Lines []

[Signature of authorized representative of Insurer]

[Type name]

[Title],

Authorized Representative of [name of Insurer]

[Address of Representative]

...

Note: Authority cited: Sections 25150, 25159, 25159.5 and 25245, Health and Safety Code. Reference: Section 25245, Health and Safety Code; and 40 CFR Section 264.151.

Amend title 22, division 4.5, chapter 15, article 7, section 66265.117 to read:

§ 66265.117. Post-Closure Care and Use of Property.

(a) This section pertains to facilities at which all hazardous wastes, waste residues, contaminated materials and contaminated soils will not be removed during closure. Additional requirements for such facilities are cited in Title 23 of the California Code of Regulations.

~~(b)(4)~~ Post-closure care for each hazardous waste management unit subject to the requirements of sections 66265.117 through 66265.120 shall begin after completion of closure of the unit and continue for 30 years after that date, except as provided in subsection (g) and (h). ~~Post-closure care~~ shall consist of at least the following:

~~(1A)~~ monitoring and reporting in accordance with the requirements of articles 6, 11, 12, 13, and 14 of this chapter; and

~~(2B)~~ maintenance and monitoring of waste containment systems in accordance with the requirements of articles 6, 11, 12, 13, and 14 of this chapter.

~~(2)~~ Any time preceding closure of a hazardous waste management unit subject to post-closure care requirements or final closure, or any time during the post-closure period for a particular hazardous waste disposal unit, the Department shall:

~~(A)~~ shorten the post-closure care period applicable to the hazardous waste management unit, or facility, if all disposal units have been closed, if the Department finds that the reduced period is sufficient to protect human health and the environment (e.g., leachate or ground-water monitoring results, characteristics of the hazardous waste, application of advanced technology, or alternative disposal, treatment, or re-use techniques indicate that the hazardous waste management unit or facility is secure); or

~~(B)~~ extend the post-closure care period applicable to the hazardous waste management unit or facility, if the Department finds that the extended period is necessary to protect human health and the environment (e.g., leachate or groundwater monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).

(c)(1) The Department shall require, at partial and final closure, continuation of any of the security requirements of section 66265.14 during part or all of the post-closure period when:

(A) hazardous wastes may remain exposed after completion of partial or final closure; or

(B) access by the public or domestic livestock may pose a hazard to human health.

(2) To extend any of these requirements during post closure period, the Department will use the procedures of sections 66265.118(d) and (f).

(d) Post-closure use of property on or in which hazardous wastes remain after partial or final closure shall never be allowed to disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the facility's monitoring systems, unless the Department finds that the disturbance:

(1) is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or

(2) is necessary to reduce a threat to human health or the environment.

(e) All post-closure care activities shall be in accordance with the provisions of the approved post-closure plan as specified in section 66265.118.

(f) Upon closure of a hazardous waste facility wherein hazardous wastes remain on-site no construction, filling, grading, excavating or mining shall occur without the issuance of a variance by the Department. No variance may be granted which is inconsistent with subsection (d) of this section.

(g) Post-closure care shall continue until the Department finds that post-closure care is no longer necessary to protect human health and the environment.

(h) The Department may terminate the period of post-closure care at any time in either of the following two ways.

(1) The owner or operator or any member of the public may petition the Department to terminate post-closure care applicable to a hazardous waste management unit or facility based on cause.

(A) The petition shall include evidence demonstrating that:

1. the secure nature of the hazardous waste management unit or facility makes the post-closure requirement(s) unnecessary (e.g., leachate or groundwater monitoring results, characteristics of the wastes, application of advanced technology, or alternative disposal, treatment, or re-use techniques indicate that the facility is secure), or

2. the requested termination of post-closure care requirements shall not result in potential threats to human health and the environment (e.g., leachate or groundwater monitoring results indicate no potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).

(B) The Department shall consider a petition only when it presents new and relevant information not previously considered by the Department.

(C) When considering a petition, the Department shall:

1. provide the owner or operator and the affected public, through a newspaper notice, the opportunity to submit written comments within 30 days of the date of the notice,

2. hold a public hearing, in response to a request or at the Department's own discretion, whenever a hearing might clarify one or more issues concerning the termination of post-closure care, and

3. give notice of the hearing at least 30 days before it occurs. Public notice of the hearing may be given at the same time as notice of the opportunity for written public comments, and the two notices may be combined.

(D) After considering the comments, the Department shall issue a final determination, based upon the criteria set forth in subsection (h)(1)(A) of this section.

(E) If the Department denies the petition, the Department shall send the petitioner a brief written response giving a reason for the denial.

(2) The Department may propose to terminate post-closure care applicable to a hazardous waste management unit or facility based on the criteria set forth in subsection (h)(1)(A).

(A) The Department shall provide the owner or operator and the affected public, through a newspaper notice, the opportunity to submit written comments within 30 days of the date of the notice and provide the opportunity for a public hearing as in subsection (h)(1)(C) of this section.

(B)) After considering the comments, the Department shall issue a final determination, based upon the criteria as required for petitions under subsection (h)(1)(A) of this section.

Note: Authority cited: Sections ~~208~~, 25150, 25159 and 25245, Health and Safety Code.
Reference: Sections 25159, 25159.5, 25245 and 25246, Health and Safety Code; 40
CFR Section 264.117.

Amend title 22, division 4.5, chapter 15, article 8, section 66265.141 to read:

§ 66265.141. Definitions As Used in This Article.

(a) The following terms, as defined in section 66260.10, are used in the specifications for the financial tests for closure, post-closure care, and liability coverage. The definitions are intended to assist in the understanding of these regulations and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices.

"Assets"

"Current assets"

"Current liabilities"

"Current plugging and abandonment cost estimate"

"Independently audited"

"Liabilities"

"Net working capital"

"Net worth"

"Other uses of the financial test"

"Substantial business relationship"

"Tangible net worth"

(b) In the liability coverage requirements the terms "bodily injury" and "property damage" as defined in section 66260.10 shall have the meanings given these terms by applicable State law. However, these terms do not include those liabilities which, consistent with standard industry practice, are excluded from coverage in liability policies for bodily injury and property damage. The Department intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry. The definitions given below and defined in section 66260.10 are intended to assist in the understanding of these regulations and are not intended to limit their meanings in a way that conflicts with general insurance industry usage.

"Accidental occurrence"

"Legal defense costs"

"Nonsudden accidental occurrence"

"Sudden accidental occurrence"

Note: Authority cited: Sections ~~208~~, 25150, 25159, 25159.5 and 25245, Health and Safety Code. Reference: Section 25245, Health and Safety Code; 40 CFR Section 265.141.

Amend title 22, division 4.5, chapter 15, article 8, section 66265.143 to read:

§ 66265.143. Financial Assurance for Closure.

An owner or operator of each facility shall establish and demonstrate to the Department financial assurance for closure of the facility. The owner or operator shall choose from the options as specified in subsections (a) through (e) and (h) of this section.

...

(d) Closure insurance.

(1) An owner or operator may satisfy the requirements of this section by obtaining closure insurance which conforms to the requirements of this section and submitting a certificate of such insurance to the Department. The owner or operator shall submit to the Department a letter from an insurer stating that the insurer is considering issuance of closure insurance conforming to the requirements of this subsection to the owner or operator. The owner or operator shall submit the certificate of insurance to the Department or establish other financial assurance as specified in this section. At a minimum, the insurer shall be:

(A) licensed to transact the business of insurance in the State of California, or (B) eligible to provide insurance as an excess or surplus lines insurer, in the State of California. This insurance shall be transacted by and through a surplus lines broker currently licensed by the California Department of Insurance.

...

(e) Financial test and guarantee for closure.

(1) An owner or operator may satisfy the requirements of this section by demonstrating that he or she passes a financial test as specified in this subsection. To pass this test the owner or operator shall meet the criteria of either subsection (e)(1)(A) or (B) and comply with the requirements of subsection (e)(10) of this section:

(A) the owner or operator shall have:

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

2. a current rating for his or her corporate credit rating of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

3. net working capital and tangible net worth each at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates; and

~~34.~~ tangible net worth of at least ~~\$4020~~ million; and

~~45.~~ assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and postclosure cost estimates for hazardous waste facilities regulated by the Department, current amounts of other uses of the financial test as defined in section 66260.10, and the current plugging and abandonment cost estimates.

(B) The owner or operator shall have:

1. a current rating for his or her most ~~recent~~ senior, unsecured bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

2. tangible net worth at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates; and

3. tangible net worth of at least ~~\$10~~20 million; and

4. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and postclosure cost estimates for hazardous waste facilities regulated by the Department, current amounts of other uses of the financial test as defined in section 66260.10, and the current plugging and abandonment cost estimates.

(2) The phrase "current closure and postclosure cost estimates" as used in subsection (e)(1) of this section refers to the cost estimates required to be shown in paragraphs 1-~~4~~6 of the letter from the owner's or operator's chief financial officer as specified in section 66264.151 subsection (f). The phrase "current plugging and abandonment cost estimates" as used in subsection (e)(1) of this section refers to the cost estimates required to be shown in paragraphs 1-~~4~~6 of the letter from the owner's or operator's chief financial officer.

(3) To demonstrate that this test has been met, the owner or operator shall submit the following items to the Department:

(A) a letter signed by the owner's or operator's chief financial officer. The letter shall be on the owner's or operator's official letterhead stationery, shall contain an original signature and shall be worded as specified in section 66264.151, subsection (f); and

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

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

1. the independent certified public accountant has compared the data which 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 financial statements; and

~~2. in connection with that procedure, no matters came to the independent certified public accountant's attention which caused the accountant to believe that the specified data should be adjusted.~~ shall identify the specific accounting standards and guidance relied upon to prepare the report.

...

(10) The owner or operator shall establish a trust fund that conforms to the requirements specified in subsection (a) of this section, within six months of the effective date of this section or the date of the next submittal required by subsection (e)(5) of this section, whichever is later. The value of the trust fund shall be equal to 20 percent of the current closure cost estimate as specified in section 66265.142. Payments may be made over a period of 10 years beginning with establishment of the fund. The payments into the trust fund shall comply with the following schedule:

(A) An initial payment shall be made upon establishment of the trust fund in an amount equal to two percent of the current closure cost as specified in section 66265.142.

(B) Subsequent annual payments shall be equivalent to two percent of the current closure cost estimate as specified in section 66265.142 until the value of the trust fund is equal to 20 percent of the closure cost estimate.

(C) Once the current value of the trust fund is equal to 20 percent of the closure cost estimate as specified in section 66265.142, the owner or operator shall maintain the trust fund at a minimum value of 20 percent of the current closure cost estimate.

...

Note: Authority cited: Sections 25150, 25159, 25159.5 and 25245, Health and Safety Code. Reference: Sections 25245 and 25245.4, Health and Safety Code; 40 CFR Section 264.143.

Amend title 22, division 4.5, chapter 15, article 8, section 66265.144 to read:

§ 66265.144. Cost Estimate for Post-Closure Care.

(a) The owner or operator of a hazardous waste disposal unit shall prepare and submit to the Department a detailed written estimate, in current dollars, of the annual cost of postclosure monitoring and maintenance of the facility in accordance with the applicable postclosure regulations in sections 66265.117 through 66265.120, 66265.228, 66265.258, 66265.280 and 66265.310.

(1) The postclosure cost estimate must be based on the costs to the owner or operator of hiring a third party to conduct postclosure care activities. A third party is a party who is neither a parent nor subsidiary of the owner or operator. (See definition of parent corporation in section 66260.10).

(2) The postclosure cost estimate is calculated by multiplying the annual postclosure cost estimate by ~~the number of~~ thirty years or as ~~of postclosure care~~ required under section 66265.117. This period may be reset to thirty years each time the postclosure permit is issued or renewed. This period will be determined consistent with determinations made in section 66265.117.

(b) During the active life of the facility, the owner or operator shall adjust the postclosure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with section 66265.145. For owners or operators using the financial test or corporate guarantee, the postclosure care cost estimate shall be updated for inflation no later than 30 days after the close of the firm's fiscal year and before submission of updated information to the Department as specified in section 66265.145(d)(5). The adjustment shall be made by recalculating the postclosure cost estimate in current dollars or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business as specified in subsections (b)(1) and (b)(2) of this section. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

(1) The first adjustment is made by multiplying the postclosure cost estimate by the inflation factor. The result is the adjusted postclosure cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted postclosure cost estimate by the latest inflation factor.

(c) During the active life of the facility, the owner or operator shall revise the postclosure cost estimate no later than 30 days after a revision to the postclosure plan which increases the cost of postclosure care. If the owner or operator has an approved postclosure plan, the postclosure cost estimate shall be revised no later than 30 days after the Department has approved the request to modify the plan, if the change in the postclosure plan increases the cost of postclosure care. The revised postclosure cost estimate shall be adjusted for inflation as specified in subsection (b) of this section.

(d) The owner or operator shall keep the following at the facility during the operating life of the facility: the latest postclosure cost estimate prepared in accordance with subsections (a) and (c) of this section and, when this estimate has been adjusted in accordance with subsection (b) of this section, the latest adjusted postclosure cost estimate.

NOTE: Authority cited: Sections ~~208~~, 25150, 25159, 25159.5 and 25245, Health and Safety Code. Reference: Section 25245, Health and Safety Code; 40 CFR Section 265.144.

Amend title 22, division 4.5, chapter 15, article 8, section 66265.145 to read:

§ 66265.145. Financial Assurance for Postclosure Care.

An owner or operator of a facility with a hazardous waste disposal unit shall establish and demonstrate to the Department financial assurance for postclosure care of the disposal unit(s). The owner or operator shall choose from the options as specified in subsections (a) through (e) and (h) of this section.

...

(d) Postclosure insurance.

(1) An owner or operator may satisfy the requirements of this section by obtaining postclosure insurance which conforms to the requirements of this subsection and submitting a certificate of such insurance to the Department. The owner or operator shall submit to the Department a letter from an insurer stating that the insurer is considering issuance of postclosure insurance conforming to the requirements of this section to the owner or operator. The owner or operator shall submit the certificate of insurance to the Department or establish other financial assurance as specified in this section. At a minimum, the insurer shall be:

(A) licensed to transact the business of insurance in the State of California, or (B) eligible to provide insurance as an excess or surplus lines insurer, in the State of California one or more states. If coverage is obtained from an excess or surplus lines insurer, the insurance shall be transacted by and through a surplus lines broker currently licensed by the California Department of Insurance.

...

(e) Financial test and guarantee for postclosure care.

(1) An owner or operator may satisfy the requirements of this section by demonstrating that he or she passes a financial test as specified in this section. To pass this test the owner or operator shall meet the criteria either of subsection (e)(1)(A) or (B) and comply with the requirements of subsection (e)(11) of this section.

(A) the owner or operator shall have:

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

2. a current rating for his or her corporate credit rating of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

3. net working capital and tangible net worth each at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates; and

~~34.~~ tangible net worth of at least \$4020 million; and

~~45.~~ assets in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and postclosure cost estimates for hazardous waste facilities regulated by the Department, current amounts of other uses of the financial test as defined in section 66260.10, and the current plugging and abandonment cost estimates.

(B) the owner or operator shall have:

1. a current rating for his or her most recent senior, unsecured bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

2. tangible net worth at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates; and

3. tangible net worth of at least \$~~10~~20 million; and

4. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and postclosure cost estimates for hazardous waste facilities regulated by the Department, current amounts of other uses of the financial test as defined in section 66260.10, and the current plugging and abandonment cost estimates.

(2) The phrase "current closure and postclosure cost estimates" as used in subsection (e)(1) of this section refers to the cost estimates required to be shown in paragraphs 1 through ~~4~~6 of the letter from the owner's or operator's chief financial officer as specified in section 66264.151 subsection (f). The phrase "current plugging and abandonment cost estimates" as used in subsection (e)(1) of this section refers to the cost estimates required to be shown in paragraphs 1 through ~~4~~6 of the letter from the owner's or operator's chief financial officer.

(3) To demonstrate that this test can be met, the owner or operator shall submit the following items to the Department:

(A) a letter signed by the owner's or operator's chief financial officer and worded as specified in section 66264.151, subsection (f). The letter shall be on the owner's or operator's official letterhead stationery, and shall contain an original signature, and

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

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

1. the independent certified public accountant has compared the data which 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 financial statements; and

~~2. in connection with that procedure, no matters came to the independent certified public accountant's attention which caused him or her to believe that the specified data should be adjusted.~~ shall identify the specific accounting standards and guidance relied upon to prepare the report.

...

(11) The owner or operator shall establish a trust fund that conforms to the requirements specified in subsection (a) of this section, within six months of the effective date of this section or the date of the next submittal required by subsection (e)(5) of this section, whichever is later. The value of the trust fund shall be equal to 20 percent of the current postclosure cost estimate as specified in section 66265.144. Payments may be made over a period of 10 years beginning with establishment of the fund. The payments into the trust fund shall comply with the following schedule:

(A) An initial payment shall be made upon establishment of the trust fund in an amount equal to two percent of the current postclosure cost as specified in section 66265.144.

(B) Subsequent annual payments shall be equivalent to two percent of the current postclosure cost estimate as specified in section 66265.144 until the value of the trust fund is equal to 20 percent of the postclosure cost estimate.

(C) Once the current value of the trust fund is equal to 20 percent of the postclosure cost estimate as specified in section 66265.144, the owner or operator shall maintain the trust fund at a minimum value of 20 percent of the current postclosure cost estimate.

...

Note: Authority cited: Sections 25150, 25159, 25159.5 and 25245, Health and Safety Code. Reference: Section 25245, Health and Safety Code; 40 CFR Section 265.145.

Amend title 22, division 4.5, chapter 15, article 8, section 66265.147 to read:

§ 66265.147. Liability Requirements.

(a) Coverage for sudden accidental occurrences. An owner or operator of a hazardous waste transfer, treatment, storage or disposal facility or a group of such facilities, shall demonstrate to the Department financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. Except as specified in Section 67450.16, the owner or operator shall have and maintain liability coverage for sudden accidental occurrences in the amount of at least \$1 million per occurrence with an annual aggregate of at least \$2 million, exclusive of legal defense costs. This liability coverage may be demonstrated, as specified in subsections (a)(1), (2), (3), (4), (5), (6) or (8) of this section, and for an operator which is a public agency proposing to operate a household hazardous waste collection facility, subsection (7).

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this subsection.

(A) At a minimum, the insurer shall be:

1. licensed to transact the business of insurance in the State of California, or
2. eligible to provide insurance as an excess or surplus lines insurer, in the State of California one or more states. This insurance shall be transacted by and through a surplus lines broker currently licensed by the California Department of Insurance.

...

(b) Coverage for non-sudden accidental occurrences. An owner or operator of a surface impoundment as defined in section 66260.10, landfill as defined in section 66260.10, or land treatment facility as defined in section 66260.10 which is used to manage hazardous waste, or a group of such facilities, shall demonstrate to the Department financial responsibility for bodily injury and property damage to third parties caused by non-sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for non-sudden accidental occurrences in the amount of at least \$3 million per occurrence, as defined in section 66260.10 with an annual aggregate of at least \$6 million, exclusive of legal defense costs. An owner or operator who must meet the requirements of this section may combine the required per-occurrence coverage levels for sudden and non-sudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and non-sudden accidental occurrences shall maintain liability coverage in the amount of at least \$4 million per occurrence and \$8 million annual aggregate. This liability coverage may be demonstrated as specified in subsections (b)(1) through (7) of this section.

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this subsection.

(A) At a minimum, the insurer shall be

1. licensed to transact the business of insurance in the State of California, or
2. eligible to provide insurance as an excess or surplus lines insurer, in the State of California one or more states. This insurance shall be transacted by and through a surplus lines broker currently licensed by the California Department of Insurance.

...

(f) Financial test for liability coverage.

(1) An owner or operator may satisfy the requirements of this section by demonstrating that he or she passes a financial test as specified in this subsection. To pass this test the owner or operator shall meet the criteria of subsection (f)(1)(A) or (B) of this section.

(A) the owner or operator shall have:

1. net working capital and tangible net worth each at least six times the amount of liability coverage to be demonstrated by this test; and
2. a current rating for his or her corporate credit rating of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and
3. tangible net worth of at least \$~~10~~20 million; and
3. assets in the United States amounting to either:
a. at least 90 percent of total assets; or
b. at least six times the amount of liability coverage to be demonstrated by this test.

(B) the owner or operator shall have:

1. a current rating for his or her most recent ~~recent~~ senior, unsecured bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's, or Aaa, Aa, A or Baa as issued by Moody's; and
2. tangible net worth of at least \$~~10~~20 million; and
3. tangible net worth at least six times the amount of liability coverage to be demonstrated by this test; and
4. assets in the United States amounting to either:
a. at least 90 percent of total assets; or
b. at least six times the amount of liability coverage to be demonstrated by this test.

(2) The phrase "amount of liability coverage" as used in subsection (f)(1) of this section refers to the annual aggregate amounts for which coverage is required under subsections (a) and (b) of this section and sections 67450.14 and 67450.15.

(3) To demonstrate that this test can be met, the owner or operator shall submit the following items to the Department:

(A) a letter signed by the owner's or operator's chief financial officer and worded as specified in section 66264.151, subsection (g). The letter shall be on the official letterhead stationery of the owner or operator, and shall contain an original signature. An owner or operator may use the financial test to demonstrate both assurance for closure or postclosure care, as specified in section 66264.143, subsection (f), section 66264.145, subsection (f), section 66265.143, subsection (e), section 66265.145, subsection (e) and section 67450.13, and liability coverage as specified in section 66264.147, subsection (a), section 66264.147, subsection (b), section 66265.147, subsection (a), section 66265.147, subsection (b), sections 67450.14 and 67450.15. If an owner or operator is using the financial test to cover both forms of financial responsibility, a separate letter is not required.

(B) a copy of the owner's or operator's financial statements and 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 that:

1. the independent certified public accountant has compared the data which 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 financial statements; and

2. ~~in connection with that procedure, no matters came to the independent certified public accountant's attention which caused him or her to believe that the specified data should be adjusted.~~ shall identify the specific accounting standards and guidance relied upon to prepare the report.

...

Note: Authority cited: Sections 25150, 25159, 25159.5, 25245, 58004 and 58012, Health and Safety Code. Reference: Sections 25200.1 and 25245, Health and Safety Code; 40 CFR Section 265.147.