

INITIAL STATEMENT OF REASONS
Financial Assurance
Department of Toxic Substances Control Reference Number: R-2007-06
Office of Administrative Law Notice File Number: Z-2009-0326-01

EFFORT TO AVOID DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS

The proposed regulations do not duplicate or conflict with federal regulations for financial assurance, postclosure care, or corrective action because the Resource Conservation and Recovery Act (RCRA) of 1976, as amended (42 U.S.C. § 6901 et seq.), allows states to be more stringent and/or broader in scope, but not less stringent. The proposed regulations are both more stringent and broader in scope than the federal regulations.

STUDIES RELIED ON

DTSC has found this rulemaking to be exempt under the California Environmental Quality Act (Pub. Resources Code, §21000 et seq.). A draft Notice of Exemption is available for review with the rulemaking file and will be filed with the State Clearinghouse when the regulations are adopted.

Economic Analysis on the Financial Assurance Regulations prepared by the Air Resources Board, Agency-wide Economic Analysis Unit on January 12, 2009. See Appendix A of this document.

ALTERNATIVES CONSIDERED

DTSC held three public workshops from late 2005 to early 2006 to discuss whether the existing regulations adequately addressed the postclosure period, the financial test and the use of captive insurance. A broad range of interested parties, including local agencies, environmental advocates and industry representatives, participated in the discussions. Comments received during and after the workshops were used to develop language for the proposed regulations. DTSC received a rulemaking petition requesting that DTSC clarify when financial assurance for corrective action is required. DTSC has reviewed the petition and has decided to amend the existing regulation to incorporate the petition's recommendation.

The alternatives considered are presented by subject area.

Alternatives:

FINANCIAL ASSURANCE

Chosen Alternative. The chosen alternative will modify three parts of the financial

assurance regulations. 1) Modify the existing financial test. The alternative chosen will add a credit rating to the financial ratios test, require all financial tests to be supported by a 20 percent trust fund, and update the regulations to account for changing economic conditions and inflation factors since the original regulations were promulgated approximately 20 years ago. 2) Limit insurance as a financial assurance mechanism to companies licensed or authorized in the State of California to strengthen financial assurance by making this mechanism subject to the relatively strict reporting and supervision requirements of the California Department of Insurance. 3) Clarify the point at which financial assurance for corrective action is required.

Alternative 1. Do nothing. This alternative would allow the effectiveness of the financial test to continue to erode due to changing economic conditions and the passage of time. Owners and operators would be allowed to continue to use captive insurance policies without additional requirements. The point at which financial assurance for corrective action is required would also remain unclear. This alternative was rejected because of DTSC's responsibility to protect state funds and to ensure that the owners and operators of hazardous waste management facilities will restore their facilities to a clean condition at the end of their operation.

Alternative 2. This alternative would allow corporations to use the existing financial test criteria if they also achieve a specified Altman Z- Score. This alternative would only modify the financial test.

In 2004, DTSC held workshops to address some concerns with the financial test. The existing financial test had not been modified since its adoption in the federal regulations in 1982. One of the proposals DTSC asked for comment on was the use of the Altman Z-Score, a measure of financial insolvency. The Z- Score was developed in the late 1960's by Professor Edwin Altman of the New York University, School of Business. The Z- Score is a composite of five, weighted, financial ratios. Professor Altman stated that the Z- Score was capable of predicting a corporation's likelihood of insolvency within two years of the rating. Altman stated that a Z-Score of 2.99 (for a public company), 2.60 (for a private company) or greater made that company highly unlikely to become insolvent. A score lower than 1.81 (public), 1.1 (private) would indicate a company that would likely become insolvent within the next two years.

In the original proposal, DTSC indicated that a corporation would need an Altman Z-Score of 3.0 or greater to qualify for the financial test. DTSC has rejected this proposal because of the limited nature of the data on which Professor Altman based his ratings. The data was collected from midsized manufacturing companies. The universe of companies using the financial test in California represents a broader range of size and industry (more than just manufacturing). Since Professor Altman based these ratios on this limited set of data, DTSC felt that it did not adequately reflect the actual businesses DTSC regulates.

Alternative 3: The modified financial test mechanism used by the State of Alabama

allows single parent captive insurance companies to provide financial assurance, when these companies qualify for and make all filings required by the financial test. However, DTSC concluded that any company qualifying for this hybrid mechanism could also pass the financial test, therefore DTSC considered this mechanism unnecessary and unduly cumbersome.

POSTCLOSURE PERIOD

Chosen alternative: Clarify the regulation to implement a “rolling 30 years.” Postclosure care is required at closed hazardous waste facilities until the facility no longer poses a threat to human health and the environment. DTSC has identified several postclosure facilities that will require a postclosure period that will be longer than 30 years. Hazardous Waste Permits are issued for a maximum of ten years. A facility is typically required to provide 30 years of financial assurance when a postclosure permit is issued or renewed. Certain facilities are required to provide 30 years of financial assurance during the active life of the facility. The financial assurance mechanisms identified in the regulations and the preparation of cost estimates are designed for a projection of costs to 30 years. During the permit renewal process, the postclosure cost estimate is reviewed and revised prompting a new or updated 30 year financial assurance mechanism.

For facilities that will require a postclosure care period that exceeds 30 years, the alternative would allow at least 20 years of financial assurance to be maintained during the postclosure permit period. The postclosure financial assurance mechanism will be allowed to be “drawn down” each year during the life of the permit (10 years) and then funded again at a full 30 years when the permit is renewed. This approach would require the facility to keep between 20 and 30 years, or as is required in the permit, of postclosure financial assurance in the financial mechanism at any point in time.

Alternatives considered:

Alternative 1: Do nothing. This alternative would maintain the status quo and retain the ambiguity in the regulations about the length of the postclosure period and may lead to the conclusion that the postclosure period would cease after 30 years, even if the postclosure care period for a specific facility exceeds 30 years.

This alternative was rejected because of the ambiguity and to maintain that the owner/operator or responsible party is still responsible for postclosure care until it is determined that engineering controls or environmental monitoring is no longer necessary. DTSC is overseeing land disposal facilities that will require postclosure care for periods of more than 30 years. In some cases, public funds are currently being used to maintain the required postclosure care.

DTSC views the postclosure period as a “rolling 30 year” period. That is, with each post closure permit issuance, the postclosure period may be specified as 30 years. DTSC

chose to use this rolling period to allow operators to fund a postclosure financial assurance mechanism with a specific period of time (30 years). However, some operators have interpreted this 30 year period as the limit of their postclosure financial assurance obligation.

Alternative 2. This alternative would disallow reduction of the postclosure financial assurance mechanism, keeping at least 30 years of postclosure financial assurance at all times.

The alternative was rejected because it does not allow a financially sound operator to draw funds from a postclosure mechanism when postclosure costs are incurred. Under the existing regulations, DTSC may take into consideration the current conditions at a facility and allow a sound company to draw funds from or reduce the value of the postclosure mechanism for actual costs incurred. Maintaining the postclosure mechanism at funding for 30 years of postclosure costs does not accurately reflect the estimated costs for postclosure care during the remainder of the postclosure permit.

Alternative 3. Create a new, extended postclosure period that would require an additional postclosure period (after the first 30 years) and an associated financial assurance mechanism. This proposal would set the existing postclosure period to a maximum period of 30 years. Then, an extended postclosure period (beyond 30 years) and the associated financial assurance would be created for the post 30 year postclosure period. This would not change the existing postclosure financial assurance, but would require a new approach for preparing the cost estimate and financial assurance for the extended postclosure care period. Because the traditional postclosure financial assurance is based upon a maximum 30 year life of the financial mechanism, the mechanisms for the extended period would require DTSC to accept new and alternative financial assurance mechanisms and included a present worth discount in the cost estimate.

As a result of comments from the workshops, DTSC initially considered this concept. This alternative was rejected because the alternative would require a concurrence from US Environmental Protection Agency (US EPA) that the RCRA postclosure financial assurance requirements are based upon a maximum 30 year postclosure period and that a post 30 year postclosure period would not be limited to the cost estimates and financial assurance mechanisms in the existing regulations. US EPA has indicated in comments to DTSC financial assurance staff that they do not concur with this interpretation.

DETAILED STATEMENT OF REASONS

The proposed regulations modify California Code of Regulations, title 22, division 4.5, chapters 10, 14 and 15.

Chapter 10

Article 2

Section 66260.10¹: Adds a definition of “other uses of the financial test.” This definition is necessary to ensure that an accurate definition for the term can be found when someone encounters it in title 22, division 4.5. (See statement of reasons for §66264.143, subsec. (f)(1)(A)5., §66264.143, subsec. (f)(1)(B)4., §66264.145, subsec. (f)(1)(A)5., §66264.145, subsec. (f)(1)(B)4., §66265.143, subsec. (e)(1)(A)5., §66265.143, subsec. (e)(1)(B)4., §66265.145, subsec. (e)(1)(A)5., §66265.145, subsec. (e)(1)(B)4., below)

1. For purposes of this Initial Statement of Reasons, all regulatory references are to the California Code of Regulations, title 22, division 4.5, unless otherwise specified.

Chapter 14

Article 6

Section 66264.101, adds new subsection (b) to clarify the point in time at which financial assurance is required for corrective action. This requirement is necessary to provide more certainty that a facility can provide funding for all phases of corrective action. The proposed regulations instruct the Department to review all relevant data prior to issuing a permit or order so that, if appropriate, requirements for financial assurance may be incorporated into the permit or order. However, this proposed regulation does not preclude the Department from requiring financial assurance prior to investigation or interim measures. Subsections (b) and (c) are renumbered to accommodate the insertion of new text into subsection (b).

Article 7

Section 66264.117, subsection (b)(1) clarifies the period of postclosure care to be a future date upon which the Department finds that postclosure care is no longer necessary to protect human health and the environment. The question of how long the period of postclosure should be for facilities has been an issue for disposal facilities since the inception of hazardous waste laws. The change is necessary to carry out the intention of both federal and state law to ensure the availability of sufficient financial resources, provided by the owner/operators, for use by regulatory agencies to complete postclosure care in order to protect human health and the environment throughout the length of postclosure.

Generally, the period of postclosure has been described as the length of time the waste remains a risk without the benefits of the closure structures. Unless or until the waste material degrades into a material that will not pose a risk as unrestricted use, some level of postclosure maintenance and monitoring is required. Land disposal facilities pose particular challenges. Based on the type of waste that has and continues to be placed in land disposal units, the material will remain a risk for hundreds or thousands of years without maintenance of containment structures and engineering controls. In addition, the monitoring programs associated with these units are critical components of evaluating the continuing effectiveness of the containment structures.

Existing regulations require postclosure permits to be issued for 10 years that require 30 years of postclosure financial assurance. The permit is renewed every ten years throughout the postclosure period, as required, based on facility-specific conditions. Before DTSC issues a permit or permit renewal to a land disposal facility, DTSC determines if operation, maintenance, or monitoring activities will be required at the facility for the next thirty years from the date of the new permit. The regulations establish at least a 100 year postclosure period for land disposal and surface impoundment facilities [§§66264.228 subsec. (a), 66264.310 subsec. (a), 66265.228 subsec. (a), and 66265.310, subsec. (a)]. DTSC has concluded that the postclosure

period for land disposal facilities is indefinite and would extend until perpetuity, since the waste remains onsite. However, it is likely that certain monitoring requirements (and possibly other postclosure requirements) could be revised over time.

Additionally, DTSC can only release facilities from financial assurance requirements after all postclosure care requirements have been met [§66264.145 subsec. (j) and 66265.145, subsec. (i)]. This has been referred to as a “rolling thirty-year period.” For other facilities that require postclosure care or other long-term operation, maintenance, or monitoring, the period of financial assurance is based on site-specific conditions. This approach will require facilities to fund postclosure for at least 30 years and will require funding when postclosure care and monitoring requirements are still needed.

Section 66264.117, subsection (b)(2) deletes the procedure requiring the Department to make a finding before the postclosure care period can be shortened or extended. This subsection is no longer necessary because proposed subsections (g) and (h) provide the Department with the discretion to determine when postclosure care is no longer necessary.

Section 66264.117, subsection (g) provides that postclosure care continues until the Department finds that postclosure care is no longer necessary to protect human health and the environment. This subsection eliminates the ambiguous requirement that facilities may only be subject to postclosure care for thirty years. It is necessary to maintain the Department’s discretion in deciding when postclosure care is no longer necessary, similar to current subsection (b)(2), which allows the Department to shorten or extend the postclosure period. Also, this proposed subsection would eliminate a significant gap in funding for postclosure care at a facility that requires maintenance and monitoring for over 100 years (§66264.228, subsec. (a) and 66264.310, subsec. (a)).

Section 66264.117, subsection (h) changes are necessary to ensure that vital postclosure care will continue as long as necessary rather than an arbitrary length of time. There will now be a well defined procedure for ending postclosure care that is controlled by owner/operator, with the final decision made by DTSC. In addition, this important decision will now be made with public input and not automatically end after 30 years without any public input. Finally, this approach is consistent with the findings of the Legislative Analyst Office (LAO), who in 2006, recommended that the regulations be changed to address the need for financial assurances to account for all costs associated with ensuring that sites, particularly land disposal facilities do not pose a threat to the public or the environment. (See, The LAO Report, Financial Assurances: Strengthening Public Safety of Waste Facilities and Surface Mines, (4/06).)

Section 66264.117, subsection (h)(1) establishes the first procedure for how postclosure care can be terminated. It provides that an owner or operator or any member of the public may petition the Department to terminate postclosure care.

Section 66264.117, subsection (h)(1)(A) is necessary to identify the types of evidence

that must be presented in a petition to terminate postclosure care.

Section 66264.117, subsection (h)(1)(B) is necessary to identify the circumstances in which the Department may consider petitions to terminate postclosure care.

Section 66264.117, subsection (h)(1)(C) is necessary to establish the requirements of the Department when it considers a petition, including the requirement to provide public comment. Notice in a newspaper with a circulation that includes the hazardous waste management facility address should provide local residents with sufficient notification. It makes clear that the Department has discretion to hold a public hearing whenever a hearing might clarify one or more issues concerning termination of postclosure care. It requires the Department to give 30 days public notice before the hearing is to be held, 30 days is a common public notice period and should provide the public with adequate time to review the petition. It makes clear that notice of the hearing may be given at the same time as notice of the opportunity for written public comments and that the two notices may be combined.

Section 66264.117, subsection (h)(1)(D) is necessary to establish that the Department's determination shall be based on the criteria set forth in subsection (h)(1)(A) relating to the types of evidence that must be presented in a petition to terminate postclosure care.

Section 66264.117, subsection (h)(1)(E) is necessary to require that the Department inform the petitioner by a brief written response the reason for a denial of the petition.

Section 66264.117, subsection (h)(2) is necessary to establish the second procedure for how postclosure care can be terminated. It gives the Department the ability to propose termination of postclosure care based on the criteria set forth in subsection (h)(1)(A) relating to the types of evidence that must be presented in a petition to terminate postclosure care.

Section 66264.117, subsection (h)(2)(A) is necessary to establish the requirements of the Department when it proposes to terminate postclosure care, including the requirement to provide public comment. It requires the Department to provide notice, through a newspaper notice, of the opportunity to submit written comments within 30 days of the notice and the opportunity for a public hearing. It makes clear that notice of the hearing may be given at the same time as notice of the opportunity for written public comments and that two notices may be combined.

Section 66264.117, subsection (h)(2)(B) is necessary to require the Department to consider comments and to base the final determination on the criteria set forth in subsection (h)(1)(A) relating to the types of evidence that must be presented in a petition to terminate postclosure care.

Article 8

Section 66264.141, subsection (a) incorporates the definition of “other uses of the financial test” into this article. (See statement of reasons for §66264.143, subsec. (f)(1)(A)5., §66264.143, subsec. (f)(1)(B)4., §66264.145, subsec. (e)(1)(A)5., §66265.145, subsec. (e)(1)(B)4. below)

Section 66264.143, subsection (e)(1) currently requires, in regard to the provision of insurance as a financial assurance mechanism, that “At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.” DTSC proposes to require that the insurer be licensed in the State of California or eligible to provide excess or surplus lines of insurance in the State of California. This section further requires that excess or surplus lines of insurance be issued through a broker licensed by the California Department of Insurance in accordance with Insurance Code sections 1761 and 1765.1.

This change is necessary because California has some of the strictest insurance regulations in the nation. In contrast, regulations in other states are insufficient to provide the necessary level of financial assurance to the State of California for hazardous waste facilities in that many other states do not require that insurance companies provide the same level of financial reserves to ensure payment of their policy liabilities, do not monitor insurance companies as closely as does California, and/or do not make available the submission from the insurance companies that are required to demonstrate financial stability.

Section 66264.143, subsection (f)(1) identifies the criteria to meet the financial test and guarantee for closure. The amendment is necessary to incorporate the requirements of added section 66264.143, subsection (f)(11) into the financial test.

Section 66264.143, subsection (f)(1)(A)2., is a new subsection, it adds a requirement for a minimum corporate credit rating to an alternate version of the financial test. The incorporation of this requirement is intended to strengthen the assurance of financial ability to meet the requirements of this article.

Section 66264.143, subsection (f)(1)(A)3. is renumbered from the previous section 66264.143, subsection (f)(1)(A)2. to accommodate the new subparagraph (A)2. added above.

Section 66264.143, subsection (f)(1)(A)4. is renumbered from the previous section 66264.143, subsection (f)(1)(A)3. to accommodate the new subparagraph (A)2. added above. This section also increases the amount of tangible net worth that a facility must demonstrate to qualify for this version of the financial test from \$10 million to \$20 million. This accounts for the effect of inflation since the financial test was originally authorized. The start date is April 7, 1982, the date the Interim Final Rule (47 FR 15032) authorizing the Financial Test became effective and ending December 31, 2008, an estimated effective date for the change. The Gross Domestic Product Implicit Price Deflator was at 62.302 on April 1, 1982. The January 1, 2008 number was 121.339. This equates to a 59.307 deflator differential between the two dates and an increase of 94.76% (i.e., inflation) between those two dates. Applying that percentage increase to the \$10,000,000 total net worth requirement when the regulations were implemented in April 1982, an increase of \$9,475,940 is necessary to provide the same equivalent total net worth value in today's dollars. The result is \$19,475,940 and is rounded off to \$20,000,000.

Section 66264.143, subsection (f)(1)(A)5. is renumbered from the previous Section 66264.143, subsection(f)(1)(A)4. to accommodate the new subparagraph (A)2. added above.

Section 66264.143, subsection (f)(1)(A)5. currently requires that the financial test demonstrate assets in the United States equal to 90 percent of total assets or six times the closure cost estimate for the facility to which the test applies. A company with multiple facilities would be able to use the same assets to demonstrate compliance for each of the several facilities, resulting in an actual absence of adequate assets to cover all of the facilities. The proposed change requires that the financial test demonstrate assets in the United States equal to 90 percent of total assets or six times the closure cost estimate for the aggregate of all liabilities for which assets are offered as a financial assurance. This ensures that the financial assurances offered will not be diminished by other similar obligations.

Section 66264.143, subsection (f)(1)(B)1. changes the existing requirement for a minimum bond rating from the most recent to the most senior issuance. This strengthens the financial assurance by making it dependent on the longest lived corporate bond.

Section 66264.143, subsection (f)(1)(B)3. increases the amount of tangible net worth that a facility must demonstrate to qualify for this version of the financial test from \$10 million to \$20 million. This accounts for the effect of inflation since the financial test was originally authorized. See above statement of reasons for section 66264.143 subsection (f)(1)(A)4.

Section 66264.143, subsection (f)(1)(B)4. currently requires that the financial test demonstrate assets in the United States equal to 90 percent of total assets or six times the closure cost estimate for the facility to which the test applies. A company with multiple facilities would be able to use the same assets to demonstrate compliance for each of the several facilities, resulting in an actual absence of adequate assets to cover all of the facilities. This section is changed to require that the financial test demonstrate assets in the United States equal to 90 percent of total assets or six times the closure cost estimate for the aggregate of all liabilities for which assets are offered as a financial assurance.

Section 66264.143, subsection (f)(2) changes the references to “paragraphs 1 through 4 of the letter from the owner's or operator's chief financial officer” to read “paragraphs 1 through 6 of the letter from the owner's or operator's chief financial officer” to account for the changes to this subsection. The current text should read “paragraphs 1 through 5 of the letter from the owner's or operator's chief financial officer” because paragraph 5 also contains the terms listed within subsection (f)(2). Changing the text to read “paragraphs 1 through 6” corrects this oversight. The reference to section 66264.151, subsection (f) was added to this subsection to identify the location of the letter.

Section 66264.143, subsection (f)(3)(B) adds a requirement that “a copy of the owner's or operator's financial statements” be submitted to the Department as part of the financial test application. The existing regulation requires the submission of “the independent certified public accountant's (CPA) report on examination of the owner's or operator's financial statements for the latest completed fiscal year”. The addition of this requirement allows the Department to examine the documents upon which the CPA letter is based to ensure accuracy. A small but significant number of CPA letters submitted have not accurately reflected the financial statements upon which they are required to have been based.

Section 66264.143, subsection (f)(3)(C)2., the existing regulation requires that there be a statement in the “special report from the owner's or operator's independent certified public accountant to the owner or operator”, that “no matters came to the independent certified public accountant's attention which caused that accountant to believe that the specified data should be adjusted”. This statement is known in accounting as a "negative assurance."

The American Institute of Certified Public Accountants (AICPA) is the standards organization for Public Accounting in the United States. The AICPA standards govern acceptable practices for certified public accountants in the United States. After the US Environmental Protection Agency had created the negative assurance requirement, the AICPA changed the professional standards to prohibit the use of a negative assurance in any document related to compliance with a regulatory or statutory requirement. The applicable standards and rules include, but are not limited to: Statement on Standards for Attestation Engagements numbers 10, 11, and 12 and Statement on Auditing Standards number 75; and their associated rules.

Ownership of corporations can be either public or private. Public corporations are those companies that publically trade stock. The passage of the Sarbanes-Oxley Act of 2002 (SOX) added a further layer of complexity. SOX requires that publically traded corporations meet accounting rules developed by the Public Company Accounting Oversight Board (PCAOB). While these will likely be harmonized with the rules of the AICPA, there is the possibility that two different corporations could use a financial test with the same operating conditions, but be subject to different accounting rules.

While DTSC could issue different sets of rules for public and private corporations, DTSC feels that it would add an additional layer of complexity upon an already difficult rule to interpret. As a result, DTSC is requiring the corporation's independent certified public accountant to specify the compliance standards the accounting firm is using.

This statement is changed to require that the independent certified public accountant “identify the specific accounting standards and guidance relied upon to prepare the report.” This change is necessary to bring the regulation into conformance with current

accounting regulations and standards which do not allow the type of statement mandated by the regulation as it now exists.

Section 66264.143, subsection (f)(11) is added to require that the owner or operator giving a financial test and guarantee for closure establish and maintain a trust account that conforms to the requirements specified in subsection (a) of section 66264.143, except as otherwise set forth in this subsection. Payments into the trust fund are required over a maximum of ten years until the trust account is equal to twenty percent of the financial guarantee. The purpose of this new requirement is to protect public funds in the event of the sudden financial decline of a guarantor and to provide ready access to funds for the initial phase of closure. Twenty percent was chosen as the required amount of ready funds due to the start up costs that the Department has experienced in closure of sites where financial assurance was lacking or unavailable. The ten year pay in period is intended to mitigate the economic burden on facilities using the financial test. Subparagraph (C) requires that the trust fund account for the effects of inflation and be maintained at 20% of the total amount of the financial guarantee amount.

Section 66264.144, subsection (a)(2) addresses the calculation of the postclosure cost estimate. The proposed regulations require the annual postclosure cost estimate to be multiplied by 30 years or the number of years required under 66264.117, since the 30 year time period for postclosure care would be deleted from 66264.117 but not DTSC's authority to reduce the time period. The regulations propose that upon issuing or renewing a postclosure permit that includes a postclosure cost estimate, the time period multiplier may be 30 years or a figure determined by DTSC in accordance with 66264.117. These amendments are consistent with existing regulations that require postclosure permits to be issued for 10 years and require 30 years of postclosure financial assurance, also known as the "rolling thirty-year period", see section 66264.117 statement of reasons above for more extensive discussion

Although section 66264.143 applies to Financial Assurance for Closure and section 66264.145 applies to Financial Assurance for Postclosure Care, the regulatory requirements and proposed changes for 66264.145 are similar to 66264.143 so the statement of reasons for 66264.143 amendments would apply to 66264.145 amendments. The references to section 66264.143 listed below identify where to find the statement of reasons for each amendment to section 66264.145.

Section 66264.145, subsection (e)(1), see above statement of reasons for section 66264.143, subsection (e)(1).

Section 66264.145, subsection (f)(1) identifies the criteria to meet the financial test and guarantee for closure. The amendment is necessary to incorporate the requirements of added section 66264.145, subsection (f)(12) into the financial test.

Section 66264.145, subsection (f)(1)(A)2., see above statement of reasons for section 66264.143, subsection (f)(1)(A)2.

Section 66264.145, subsection (f)(1)(A)3., see above statement of reasons for section 66264.143, subsection (f)(1)(A)3.

Section 66264.145, subsection (f)(1)(A)4., see above statement of reasons for section 66264.143, subsection (f)(1)(A)4.

Section 66264.145, subsection (f)(1)(A)5., see above statement of reasons for section 66264.143, subsection (f)(1)(A)5.

Section 66264.145, subsection (f)(1)(B)1., see above statement of reasons for section 66264.143, subsection (f)(1)(B)1.

Section 66264.145, subsection (f)(1)(B)3., see above statement of reasons for section 66264.143, subsection (f)(1)(B)3.

Section 66264.145, subsection (f)(1)(B)4., see above statement of reasons for section 66264.143, subsection (f)(1)(B)4.

Section 66264.145, subsection (f)(2), see section 66264.143, subsection (f)(2), supra. In addition, the current text incorrectly references section 66265.151, which does not exist, so the proposed text corrects the reference to 66264.151.

Section 66264.145, subsection (f)(3)(B), see above statement of reasons for section 66264.143, subsection (f)(3)(B).

Section 66264.145, subsection (f)(3)(C)2., see above statement of reasons for section 66264.143, subsection (f)(3)(C)2.

Section 66264.145, subsection (f)(12) is added to require that the owner or operator giving a financial test and guarantee for postclosure establish and maintain a trust account that conforms to the requirements specified in subsection (a) of section 66264.145, except as otherwise set forth in this subsection. Payments into the trust fund are required over a maximum of ten years until the trust account is equal to twenty percent of the financial guarantee. The purpose of this new requirement is to protect public funds in the event of the sudden financial decline of a guarantor and to provide ready access to funds for the initial phase of postclosure. Twenty percent was chosen as the required amount of ready funds due to the start up costs that the Department has experienced in postclosure of sites where financial assurance was lacking or unavailable. The ten year pay in period is intended to mitigate the economic burden on facilities using the financial test. Subparagraph (C) requires that the trust fund account for the effects of inflation and be maintained at 20% of the total amount of the financial guarantee amount.

Although section 66264.143 applies to Financial Assurance for Closure and section 66264.147 applies to Liability Requirements, the regulatory requirements and proposed changes for 66264.147 are similar to 66264.143 so the statement of reasons for 66264.143 amendments would apply to 66264.147 amendments. The references to section 66264.143 listed below identify where to find the statement of reasons for each amendment to section 66264.147.

Section 66264.147, subsection (a)(1)(A), see above statement of reasons for section 66264.143, subsection (e)(1).

Section 66264.147, subsection (b)(1)(A), see above statement of reasons for section 66264.143, subsection (e)(1).

Section 66264.147, subsection (f)(1)(A)2., see above statement of reasons for section 66264.143, subsection (f)(1)(A)2.

Section 66264.147, subsection (f)(1)(A)3. See above statement of reasons for section 66264.143, subsection (f)(1)(A)4. for discussion of tangible net worth increase. This section is renumbered from the previous section 66264.147, subsection (f)(1)(A)2. to accommodate the new subparagraph (A)2. added.

Section 66264.147, subsection (f)(1)(A)4. This section is renumbered from the previous section 66264.147, subsection (f)(1)(A)3. to accommodate the new subparagraph (A)2. added above.

Section 66264.147, subsection (f)(1)(B)1., see above statement of reasons for section 66264.143, subsection (f)(1)(B)1.

Section 66264.147, subsection (f)(1)(B)2., see above statement of reasons for section 66264.143, subsection (f)(1)(B)3.

Section 66264.147, subsection (f)(3)(B), see above statement of reasons for section 66264.143, subsection (f)(3)(B).

Section 66264.147, subsection (f)(3)(C)2., see above statement of reasons for section 66264.143, subsection (f)(3)(C)2.

Section 66264.147, subsection (f)(6) amendment corrects spelling of "occurrence".

Section 66264.151, subsection (e) sets forth the form of a Certificate of Insurance for Closure or Postclosure Care. Amendments to this subsection reflect amendments made to section 66264.143, subsection (e) or section 66264.145, subsection (e). or section 66265.143, subsection (d) or section 66265.145, subsection (d) by this rulemaking.

Section 66264.151, subsection (f) sets forth the form of a letter from the Chief Financial Officer in support of an application for the financial test for closure or post closure. Amendments to this subsection reflect amendments made to section 66264.143, subsection (f) or section 66264.145, subsection (f), or section 66265.143, subsection (e) or section 66265.145, subsection (e).

Section 66264.151, subsection (g) sets forth the form of a letter from the Chief Financial Officer in support of an application for the financial test for liability or for closure, postclosure and liability. Amendments to this subsection reflect amendments made to section 66264.143, subsection (f); 66264.145, subsection (f); 66264.147, subsection (f); 66265.143, subsection (e); 66264.145, subsection (e); 66264.147, subsection (f) . Amendments also removed inappropriate "\$" were information requested involved dates or bond ratings.

Section 66264.151, subsection (i) sets forth the form of a Hazardous Waste Facility Liability Endorsement. This section adds to the form the information required by section 66264.147 or section 66265.147.

Section 66264.151, subsection (j) sets forth the form of a Hazardous Waste Facility Certificate of Liability Insurance. This section adds to the form the information required by section 66264.147 or section 66265.147.

Chapter 15

Article 8

Section 66265.117, see above statement of reasons for section 66264.117.

Section 66265.141, subsection (a) incorporates the definition of “other uses of the financial test” into this article. (See statement of reasons below for §66265.143, subsec. (e)(1)(A)5., §66265.143, subsec. (e)(1)(B)4., §66265.145, subsec. (e)(1)(A)5., §66265.145, subsec. (e)(1)(B)4.)

Although section 66264.143 is located in chapter 14 “Standards for Owners and Operators of Hazardous Waste Transfer, Treatment, Storage, and Disposal Facilities” and section 66265.143 is located in chapter 15 “Interim Status Standards for Owners and Operators of Hazardous Waste Transfer, Treatment, Storage, and Disposal Facilities”, both sections apply to Financial Assurance for Closure. The regulatory requirements and proposed changes for 66264.143 are similar to 66265.143 so the statement of reasons for 66264.143 amendments would apply to 66265.143 amendments. The references to section 66264.143 listed below identify where to find the statement of reasons for each amendment to section 66265.143.

Section 66265.143, subsection (d)(1), see above statement of reasons for section 66264.143, section (e)(1).

Section 66265.143, subsection (e)(1) identifies the criteria to meet the financial test and guarantee for closure. The amendment is necessary to incorporate the requirements of added section 66265.143, subsection (e)(10) into the financial test.

Section 66265.143, subsection (e)(1)(A)2., see above statement of reasons for section 66264.143, subsection (f)(1)(A)2.

Section 66265.143, subsection (e)(1)(A)3., see above statement of reasons for section 66264.143, subsection (f)(1)(A)3.

Section 66265.143, subsection (e)(1)(A)4., see above statement of reasons for section 66264.143, subsection (f)(1)(A)4.

Section 66265.143, subsection (e)(1)(A)5., see above statement of reasons for section 66264.143, subsection (f)(1)(A)5.

Section 66265.143, subsection (e)(1)(B)1., see above statement of reasons for section 66264.143, subsection (f)(1)(B)1.

Section 66265.143, subsection (e)(1)(B)3., see above statement of reasons for section 66264.143, subsection (f)(1)(B)3.

Section 66265.143, subsection (e)(1)(B)4., see above statement of reasons for section 66264.143, subsection (f)(1)(B)4.

Section 66265.143, subsection (e)(2), see above statement of reasons for section 66264.143, subsection (f)(2).

Section 66265.143, subsection (e)(3)(B), see above statement of reasons for section 66264.143, subsection (f)(3)(B).

Section 66265.143 subsection (e)(3)(C)2., see above statement of reasons for section 66264.143 subsection (f)(3)(C)2.

Section 66265.143 subsection (e)(10), see above statement of reasons for section 66264.143 subsection (f)(11), except that reference to “subsection (a) of section 66264.143” should instead refer to “subsection (a) of section 66265.143”.

Section 66265.144, subsection (a)(2) addresses the calculation of the postclosure cost estimate. The proposed regulations require the annual postclosure cost estimate to be multiplied by 30 years or the number of years required under 66265.117, since the 30 year time period for postclosure care would be deleted from 66265.117 but not DTSC’s authority to reduce the time period. The regulations propose that upon issuing or renewing a postclosure permit that includes a postclosure cost estimate, the time period multiplier may be 30 years or a figure determined by DTSC in accordance with 66265.117. These amendments are consistent with existing regulations that require postclosure permits to be issued for 10 years and require 30 years of postclosure financial assurance, also known as the “rolling thirty-year period”, see section 66264.117 statement of reasons above for more extensive discussion.

Although section 66264.145 is located in chapter 14 “Standards for Owners and Operators of Hazardous Waste Transfer, Treatment, Storage, and Disposal Facilities” and section 66265.145 is located in chapter 15 “Interim Status Standards for Owners and Operators of Hazardous Waste Transfer, Treatment, Storage, and Disposal Facilities”, both sections have some similar regulatory requirements. The proposed changes for 66264.143 are similar to 66265.145 so the statement of reasons for 66264.143 amendments would apply to 66265.145 amendments. The references to section 66264.143 listed below identify where to find the statement of reasons for each amendment to section 66265.145.

Section 66265.145, subsection (d)(1), see above statement of reasons for section 66264.143, subsection (e)(1).

Section 66265.145, subsection (e)(1), see above statement of reasons for section 66264.145, subsection (f)(1).

Section 66265.145, subsection (e)(1) identifies the criteria to meet the financial test and guarantee for closure. The amendment is necessary to incorporate the requirements of added section 66265.145, subsection (e)(11) into the financial test.

Section 66265.145, subsection (e)(1)(A)2., see above statement of reasons for section 66264.143, subsection (f)(1)(A)2.

Section 66265.145, subsection (e)(1)(A)3., see above statement of reasons for section 66264.143, subsection (f)(1)(A)3.

Section 66265.145, subsection (e)(1)(A)4., see above statement of reasons for section 66264.143, subsection (f)(1)(A)4.

Section 66265.145, subsection (e)(1)(A)5., see above statement of reasons for section 66264.143, subsection (f)(1)(A)5.

Section 66265.145, subsection (e)(1)(B)1., see above statement of reasons for section 66264.143, subsection (f)(1)(B)1.

Section 66265.145, subsection (e)(1)(B)3., see above statement of reasons for section 66264.143, subsection (f)(1)(B)3.

Section 66265.145, subsection (e)(1)(B)4., see above statement of reasons for section 66264.143, subsection (f)(1)(B)4.

Section 66265.145, subsection (e)(2), see above statement of reasons for section 66264.143, subsection (f)(2).

Section 66265.145, subsection (e)(3)(B), see above statement of reasons for section 66264.143, subsection (f)(3)(B).

Section 66265.145, subsection (e)(3)(C), see above statement of reasons for section 66264.143, subsection (f)(3)(C).

Section 66265.145, subsection (e)(11) is added to require that the owner or operator giving a financial test and guarantee for postclosure establish and maintain a trust account that conforms to the requirements specified in subsection (a) of section 66265.145, except as otherwise set forth in this subsection. Payments into the trust fund are required over a maximum of ten years until the trust account is equal to twenty percent of the financial guarantee. The purpose of this new requirement is to protect public funds in the event of the sudden financial decline of a guarantor and to provide ready access to funds for the initial phase of postclosure. Twenty percent was chosen as the required amount of ready funds due to the start up costs that the Department has experienced in postclosure of sites where financial assurance was lacking or unavailable. The ten year pay in period is intended to mitigate the economic burden on facilities using the financial test. Subparagraph (C) requires that the trust fund account for the effects of inflation and be maintained at 20% of the total amount of the financial guarantee amount.

Although section 66264.143 is located in chapter 14 “Standards for Owners and Operators of Hazardous Waste Transfer, Treatment, Storage, and Disposal Facilities” and section 66265.147 is located in chapter 15 “Interim Status Standards for Owners and Operators of Hazardous Waste Transfer, Treatment, Storage, and Disposal Facilities”, both sections have some similar regulatory requirements. The proposed changes for 66264.143 are similar to 66265.147 so the statement of reasons for 66264.143 amendments would apply to 66265.147 amendments. The references to section 66264.143 listed below identify where to find the statement of reasons for each amendment to section 66265.147.

Section 66265.147, subsection (a)(1)(A), see above statement of reasons for section 66264.143, subsection (e)(1).

Section 66265.147, subsection (b)(1)(A), see above statement of reasons for section 66264.143, subsection (e)(1).

Section 66265.147, subsection (f)(1)(A)2., see above statement of reasons for section 66264.143, subsection (f)(1)(A)2..

Section 66265.147, subsection (f)(1)(A)3. See above statement of reasons for section 66264.143, subsection (f)(1)(A)4. for discussion of tangible net worth increase. This section is renumbered from the previous section 66265.147, subsection (f)(1)(A)2. to accommodate the new subparagraph (A)2. added.

Section 66265.147, subsection (f)(1)(A)4. This section is renumbered from the previous section 66265.147, subsection (f)(1)(A)3. to accommodate the new subparagraph (A)2. added above.

Section 66265.147, subsection (f)(1)(B)1., see above statement of reasons for section 66264.143, subsection (f)(1)(B)1.

Section 66265.147, subsection (f)(1)(B)2., see above statement of reasons for section 66264.143, subsection (f)(1)(B)3.

Section 66265.147, subsection (f)(3)(B), see above statement of reasons for section 66264.143, subsection (f)(3)(B).

Section 66265.147, subsection (f)(3)(C), see above statement of reasons for section 66264.143, subsection (f)(3)(C).

APPENDIX A