

401 KAR 48:310. Financial requirements and bonds.

RELATES TO: KRS 224.01-010-224.01-070, 224.40-100-224.43-345, 224.99-010, Chapter 355

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.40-650, 40 C.F.R. Parts 257, 258

CERTIFICATION STATEMENT:

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.40-305 requires the cabinet to promulgate administrative regulations for the managing, processing, or disposal of wastes. KRS 224.40-650 requires that persons engaging in the management, processing, and disposal of waste obtain a permit. KRS 224.650 and KRS 224.40-110 require permit applicants to post a performance bond with a mechanism of financial assurance. This chapter establishes the minimum technical standards for solid waste sites or facilities. This administrative regulation sets forth the financial requirements for closure, closure care, and corrective action.

Section 1. Financial Assurance Criteria. The financial assurance criteria and bond requirements apply to each owner and operator of any solid waste disposal site or facility. Any owner or operator that is a city, county, urban-county government, 109 district, taxing district, political subdivision of the Commonwealth, the Commonwealth, or any agency thereof, or any entity whose debts and liabilities are the debts and liabilities of the above entities, shall be required to comply with Sections 2, 3, and 15 of this administrative regulation.

Section 2. Closure Cost Estimate. Except as provided by KRS 224.40-120, the owner or operator shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to close the solid waste disposal site or facility in accordance with the closure plan developed to satisfy the closure requirements in Section 4(1) of 401 KAR 48:060, Section (15) of 401 KAR 48:070, Section 4 of 401 KAR 48:170, Section 5 of 401 KAR 48:200, and KRS 224.40.650.

(1) The estimate shall equal the cost of closing the solid waste disposal site or facility at the point in the active life when the extent and manner of its operation would make closure the most expensive. The cabinet shall adjust the figure for inflation and other factors each year. The owner or operator shall base the cost estimate on the following elements:

- (a) Design;
- (b) Site grading and drainage;
- (c) Hauling and placing of each element of the approved cap;
- (d) Final grading and drainage of the cap;
- (e) Revegetation of the cap; and
- (f) Quality control and construction certification.

(2) The owner or operator shall increase the closure cost estimate and the amount of financial assurance provided under Section 5 of this administrative regulation if changes to the closure plan or solid waste disposal site or facility conditions increase the maximum cost of closure at any time during the active life.

(3) The owner or operator may request a reduction in the closure cost estimate and the amount of financial assurance provided under Section 5 of this administrative regulation if he can demonstrate that the cost estimate exceeds the maximum cost of closure at any time over the life of the solid waste disposal site or facility.

(4) The owner or operator shall keep a copy of the latest closure cost estimate at the solid waste disposal site or facility until the owner or operator has been notified by the cabinet that he has been released from closure financial assurance requirements under Section 5 of this administrative regulation.

Section 3. Closure Care Cost Estimate.

(1) Except as provided for by KRS 224.40-120, the owner or operator of each solid waste site or facility shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct each phase of closure care monitoring and maintenance in accordance with the closure care plan developed to satisfy the closure care requirements of Section 3 of 401 KAR 48:060, Section 14 of 401 KAR 48:090, and Section 3 of 401 KAR 48:170. The closure care cost estimate for each phase of closure care used to demonstrate financial assurance in Section 6 of this administrative regulation shall be calculated by multiplying the annual cost estimate for each phase of closure care by the number of years of closure care required. For contained landfills, the closure care estimate mandated by KRS 224.40-650 shall be a minimum of \$10,000 per year, using 1990 as the baseline year.

(2) The cost estimate for each phase of closure care shall be based on the most expensive costs of closure care during that phase. The cabinet shall adjust the figure each year for inflation and other factors.

(3) The owner or operator shall increase the amount of the closure care cost estimate and the amount of financial assurance provided under Section 6 of this administrative regulation if changes in the closure care plan or facility conditions increase the maximum costs of closure care.

(4) The owner or operator may request a reduction in the closure cost estimate and the amount of financial assurance provided under Section 6 of this administrative regulation if he can demonstrate to the satisfaction of the cabinet that the cost estimate exceeds the maximum costs of closure care remaining over the closure care period.

(5) The owner or operator shall keep a copy of the latest closure care cost estimate at the facility until he has been notified by the cabinet that he has been released from closure care financial assurance requirements for the entire facility under Section 6 of this administrative regulation.

Section 4. Financial Mechanisms. The mechanisms used to demonstrate financial assurance under this administrative regulation shall ensure that the funds necessary to meet the costs of closure and closure care will be available in a timely manner whenever they are needed. The owner or operator shall execute a performance bond specified in Section 7 with one (1) or a combination of the financial mechanisms in Sections 9, 10, 11, 12, and 13 of this administrative regulation, that satisfies the following criteria:

(1) The financial assurance mechanism shall ensure that the amount of funds is sufficient to cover the costs of closure and closure care;

(2) The financial assurance mechanism shall ensure that funds shall be available in a timely fashion;

(3) The financial assurance mechanism shall guarantee the availability of the required amount of coverage from May 8, 1990, or prior to the initial receipt of solid waste, whichever is later, until the owner or operator establishes an alternative financial assurance mechanism or is released from the financial assurance requirements under Sections 5, 6, 7, and 14 of this administrative regulation. The amount of financial assurance obtained from a single financial institution shall not exceed the limit of federal insurance, when such assurance is provided by a financial institution that uses federal insurance to guarantee the availability of funds.

Section 5. Closure Financial Assurance. Except as provided by KRS 224.40-120, the owner or operator of each solid waste disposal site or facility shall establish, in accordance with Section 4 of this administrative regulation, financial assurance for closure of the facility, in an amount equal to the most recent closure cost estimate prepared in accordance with Section 2 of this administrative regulation. The owner or operator shall provide continuous coverage for closure until released from financial assurance requirements. The owner or

operator may be released from financial assurance requirements for closure after a site visit by a cabinet representative and approval by the cabinet. For contained landfills, the owner or operator shall submit the certification that closure has been completed in accordance with the approved closure plan. Following receipt of the closure certification or completion of the closure inspection, the cabinet shall:

- (1) Notify the owner or operator in writing that he is no longer required to maintain financial assurance for closure; or
- (2) Provide the owner or operator with a detailed written statement of any reason to believe that closure has not been conducted in accordance with the approved closure plan.

Section 6. Closure Care. Except as provided by KRS 224.40-120, the owner or operator of each solid waste site or facility shall provide for closure care as required under Section 3 of 401 KAR 48:060, Section 13 of 401 KAR 48:090, and Section 3 of 401 KAR 48:170 for the required period following the cabinet's acceptance of closure. The owner or operator of a contained landfill may be released from closure care requirements after the cabinet has received a certification that the closure care period has been completed in accordance with the approved plan as required under Section 14 of 401 KAR 48:090. Following receipt of the closure care certification, the cabinet shall notify the owner or operator with a detailed written statement of any reason to believe that closure care has not been conducted in accordance with the approved closure care plan.

Section 7. Performance Bond. Before the cabinet shall issue a permit, the owner or operator of a solid waste disposal site or facility that is required to execute a performance bond and post a financial assurance mechanism or other security pursuant to KRS 224.40-650 shall complete the performance bond and financial assurance mechanism in a manner approved by the cabinet. To satisfy the financial requirement, the owner or operator shall submit a performance bond (see Section 8 of this administrative regulation) and one (1) or more of the following five (5) financial mechanisms:

- (1) Surety bond as specified in Section 9 of this administrative regulation;
- (2) Letter of credit as specified in Section 10 of this administrative regulation;
- (3) Escrow agreement as specified in Section 11 of this administrative regulation;
- (4) Trust agreement as specified in Section 12 of this administrative regulation; or
- (5) Insurance policy as specified in Section 13 of this administrative regulation.

Section 8. Wording of the Performance Bond. A performance bond guaranteeing performance of closure and closure care, or closure individually and closure care individually, shall be executed on DEP Form 6053-A, entitled "Performance Bond" (November 2016), which is hereby incorporated by reference. This document may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, from 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, excluding state holidays, or from the Web site at eec.ky.gov/environmental-protection/waste.

Section 9. Wording of Surety Bond.

- (1) A surety bond, as allowed in Sections 4 and 7 of this administrative regulation, shall be executed on DEP Form 6053-L, entitled "Surety Bond" (November 2016), which is hereby incorporated by reference. This document may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, from 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, excluding state holidays, or from the Web site at eec.ky.gov/environmental-protection/waste.
- (2) To be eligible to issue a surety bond, a surety shall be listed as acceptable in the current edition of U.S. Treasury Circular 570. The penal sum of the bond shall not exceed the amount of the surety's underwriting limitation.

Section 10. Wording of the Instrument for a Letter of Credit. A letter of credit, as allowed by Sections 4 and 7 of this administrative regulation, shall be executed on DEP Form 6053-B, entitled "Irrevocable Letter of Credit" (November 2016), which is hereby incorporated by reference. This document may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, from 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, excluding state holidays, or from the Web site at eec.ky.gov/environmental-protection/waste.

Section 11. Wording of the Escrow Agreement. An escrow agreement, as allowed in Sections 4 and 7 of this administrative regulation, shall be executed on DEP Form 6053-C, entitled "Escrow Agreement" (November 2016), which is hereby incorporated by reference. This document may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, from 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, excluding state holidays, or from the Web site at eec.ky.gov/environmental-protection/waste. If a certificate of deposit is used in conjunction with the escrow agreement, it shall be made payable to the financial institution as the escrow agent.

Section 12. Wording of Trust Fund Agreement. A trust fund, as allowed by Sections 4 and 7 of this administrative regulation, shall be executed on DEP Form 6053-K, entitled "Trust Fund Agreement" (September 1994), which is hereby incorporated by reference. This document may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, from 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, excluding state holidays, or from the Web site at eec.ky.gov/environmental-protection/waste.

Section 13. Insurance Policies.

(1) The owner or operator of a solid waste disposal site or facility may provide an insurance policy to demonstrate the financial assurance for closure or closure care of the facility. The insurance policy shall conform with the requirements of this section and shall be submitted along with DEP Form 6053-D, entitled "Certificate of Insurance for Closure or Closure Care" (November 2016), which is hereby incorporated by reference. DEP Form 6053-D may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, from 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, excluding state holidays, or from the Web site at eec.ky.gov/environmental-protection/waste.

(2) The insurance policy shall guarantee that the funds will be available to close the solid waste disposal site or facility when closure occurs or to provide closure care for the solid waste site or facility when the closure care period begins, whichever is applicable. The policy shall guarantee that once closure or closure care begins, whichever is applicable, the insurer will be responsible for the paying out of funds to the owner or operator or other person authorized to conduct closure or closure care, up to an amount equal to the face amount of the policy. The insurance policy shall be issued for a face amount at least equal to the current closure cost estimate for closure or the current closure care cost estimate, whichever is applicable. The term "face value" refers to the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer shall not change the face amount, although the insurer's future liability will be lowered by the amount of payments.

(3) The owner or operator, or any other person authorized to conduct closure or closure care, may receive reimbursements for closure or closure care expenditures. Requests for reimbursement for expenditures shall be made by submitting itemized bills to the cabinet. The cabinet shall determine whether the closure or closure care expenditures are in accordance with the approved closure or closure care plan, or are otherwise justified, and

if so, shall instruct the insurer to make reimbursements in such amounts as the cabinet specifies in writing. If the cabinet has reason to believe that the cost of closure or closure care will be greater than the face amount of the policy, then the cabinet may withhold reimbursement of such amounts and set forth the reasons for the withholding in writing.

(4) An insurance policy shall contain a provision allowing assignment of the policy to a successor owner or operator. This assignment may be conditional upon consent of the insurer, provided the consent is not unreasonably refused.

(5) The insurance policy shall provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of the cancellation by certified mail to the owner or operator and to the cabinet 120 days or more in advance of the cancellation. Cancellation, termination, or failure to renew shall not occur, and the policy shall remain in force, if on or before the date of expiration:

(a) Closure is ordered by the cabinet or a court of competent jurisdiction;

(b) The owner or operator is named as debtor in a voluntary or involuntary bankruptcy proceeding under Title 11 U.S. Code; or

(c) The premium is paid.

(6) If the insurer cancels the policy, the owner or operator shall obtain by the effective date of the cancellation, alternate financial assurance as specified in this administrative regulation.

(7) For insurance policies providing coverage for closure care, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer shall thereafter annually increase the face amount of the policy. This increase shall be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to eighty-five (85) percent of the most recent investment rate or the equivalent coupon-issued yield announced by the U.S. Treasury for twenty-six (26)-week treasury securities.

(8) The owner or operator may cancel the insurance policy only if alternate financial insurance is substituted and approved by the cabinet, as specified in this administrative regulation, or if the owner or operator is no longer required to demonstrate financial assurance in accordance with Section 14 of this administrative regulation and 401 KAR Chapters 47 and 48.

(9) If the owner or operator chooses to purchase an insurance policy to cover the cost of closure or closure care, whichever is applicable, the chosen insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one (1) or more states of the United States of America.

(10) The owner or operator shall submit a copy of the insurance policy and an executed DEP Form 6053-D to the cabinet for approval prior to this method of financial insurance being accepted. The owner or operator shall also execute a performance bond in accordance with Section 7 of this administrative regulation.

Section 14. Release of Financial Assurance Mechanisms and Performance Bonds.

(1) Financial assurance mechanisms and performance bonds posted to assure proper closure of a solid waste disposal site or facility shall be released two (2) years after the date that the cabinet determines the final cover has been constructed and revegetated with permanent vegetation and all of requirements of the approved closure plan have been accomplished. The cabinet may withhold a portion of the financial assurance mechanism in the amount necessary to correct deficiencies in the solid waste disposal site or facility or its closure system.

(2) Financial assurance mechanisms and performance bonds posted to assure performance and closure of landfarming facilities shall be released when the owner or

operator demonstrates to the cabinet's satisfaction that the site has been closed and is in compliance with 401 KAR 47:030, 401 KAR 48:300, and KRS Chapter 224.

(3) Financial assurance mechanisms and performance bonds posted to assure proper closure care shall be released when the owner or operator demonstrates to the cabinet's satisfaction that the solid waste disposal site or facility has completed closure care activities in conformance with the approved closure care plan under Section 3 of 401 KAR 48:060, Section 14 of 401 KAR 48:090, or Section 3 of 401 KAR 48:170.

Section 15. Financial Assurance for Publicly-Owned Facilities. The owner or operator of a publicly-owned solid waste disposal facility shall provide a budget for the permitting, construction, operation, closure, and closure care of the facility consistent with the permit application, closure plan, and closure care cost estimates. The budget shall be revised and submitted annually. When elements of the facility's permitting, construction, operation, closure, or closure care are to be accomplished by contract or agreement, a copy of the contract or agreement shall be submitted to the cabinet.

Section 16. Financial Assurance for Captive Facilities.

(1) A solid waste disposal site or facility that is operated exclusively by a solid waste generator on property owned by the solid waste generator for the purpose of accepting industrial solid waste exclusively from the solid waste generator may meet the financial assurance requirements of this administrative regulation by completing a performance bond and submitting one (1) of the following financial assurance mechanisms: any of the five (5) mechanisms set forth in Section 7 of this administrative regulation; a corporate guarantee, in accordance with Section 17 of this administrative regulation and executed on DEP Form 6053-E; a corporate financial test, in accordance with Section 17 and executed on DEP form 6053-F; or any alternative mechanism that meets the criteria of Section 4 of this administrative regulation and is approved by the cabinet.

(2)

(a) The following documents are hereby incorporated by reference:

1. DEP Form 6053-E, entitled "Corporate Guarantee for Closure or Closure Care" (November 2016); and
2. DEP form 6053-F, entitled "Letter from Chief Financial Officer on Corporate Financial Test" (November 2016).

(b) The documents referenced in paragraph (a) of this subsection may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, from 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, excluding state holidays, or from the Web site at eec.ky.gov/environmental-protection/waste.

Section 17. Financial Test and Corporate Guarantee.

(1) The owner of a captive facility as defined in Section 16 of this administrative regulation may satisfy the requirements of this administrative regulation by demonstrating that he passes a financial test as specified in this section. To pass this test, the owner or operator shall meet the criteria set forth in paragraph (a) and either paragraph (b) or (c) of this subsection:

(a) Less than fifty (50) percent of the parent corporations' gross revenues are derived from solid waste disposal operations.

(b) The owner or operator shall have:

1. Satisfaction of at least two (2) of the following ratios: a ratio of total liabilities to net worth less than two (2.0); a ratio of the sum of net income plus depreciation, depletion, and amortization to total liability greater than one-tenth (0.1); or a ratio of current assets to current liabilities greater than one and five-tenths (1.5);

2. Net working capital and tangible net worth each at least six (6) times the sum of the current closure and current closure care cost estimates;
3. Tangible net worth of at least ten (10) million dollars; and
4. Assets in the United States amounting to at least ninety (90) percent of total assets or at least six (6) times the sum of the current closure and current closure care cost estimates.

(c) The owner or operator shall have:

1. A current rating for his most recent 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";
2. Tangible net worth at least six (6) times the sum of the current closure and current closure care cost estimates;
3. Tangible net worth of at least ten (10) million dollars; and
4. Assets located in the United States amounting to at least ninety (90) percent of total assets or at least six (6) times the sum of the current closure and current closure care cost estimates.

(2) The phrase "current closure and current closure care cost estimates" as used in subsection (1) of this section refers to the cost estimates required under Sections 2 and 3 of this administrative regulation and referenced in the letter from the owner or operator's chief financial officer.

(3) To demonstrate that requirements of this test are met, the owner or operator shall submit the following items to the cabinet:

(a) A letter signed by the owner or operator's chief financial officer and worded as specified on DEP Form 6053-F;

(b) A copy of a report by an independent certified public accountant examining the owner or operator's financial statements for the most recently 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 auditor has compared the data that the letter from the chief financial officer specified as having been derived from the independently audited year-end financial statements for the most recent fiscal year with the amounts in such financial statements; and

2. In connection with that procedure, no matters came to his attention that caused him to believe that the specified data should be adjusted.

(4) After the initial submission of the items specified in subsection (3) of this section, the owner or operator shall send updated information to the cabinet not later than ninety (90) days after the close of each succeeding fiscal year. This information shall include all three (3) items specified in subsection (3) of this section.

(5) If the owner or operator no longer meets the requirements of subsection (1) of this section, notice shall be sent to the cabinet of the intent to establish alternate financial assurance, as specified in this administrative regulation. The notice shall be sent by certified mail no later than ninety (90) days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator shall provide that alternate financial assurance no later than 120 days after the end of that fiscal year.

(6) The cabinet may, based on a reasonable belief that the owner or operator no longer meets the requirements of subsection (1) of this section, require reports of financial condition at any time from the owner or operator in addition to those specified in subsection (3) of this section. If the cabinet finds, on the basis of these reports or other information, that the owner or operator no longer meets the requirements of subsection (1) of this section, the owner or operator shall provide alternate financial assurance as

specified in this administrative regulation no later than thirty (30) days after notification of this a finding.

(7) The cabinet may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner or operator's financial statements. An adverse opinion or disclaimer of opinion shall be cause for disallowance. The cabinet shall evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in this administrative regulation no later than thirty (30) days after notification of the disallowance.

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

(a) The owner or operator substitutes alternative financial assurance for closure or closure care specified in this administrative regulation; or

(b) The cabinet notifies the owner or operator, in accordance with Section 14 of this administrative regulation, that it is no longer required to maintain financial assurance for closure or closure care of the solid waste disposal site or facility.

(9) The owner or operator may meet the requirements of this section by obtaining a written guarantee, hereafter referred to as a "corporate guarantee". The guarantor shall be the parent corporation of the captive facility as defined in Section 16 of this administrative regulation. The guarantor shall meet the requirements for owners or operators in subsections (1) to (7) of this section and shall comply with the terms of DEP Form 6053-E. The corporate guarantee shall accompany the items sent to the director as specified in subsection (3) of this section. The terms of the corporate guarantee shall provide that:

(a) If the owner or operator fails to perform closure or closure care of a facility provided for by the corporate guarantee in accordance with the closure or closure care plan and permit requirements, the guarantor shall do so or shall establish a trust fund, in the name of the owner or operator, as specified in Section 12 of this administrative regulation;

(b) The corporate guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the cabinet. Cancellation may not occur, however, during the 120-day period beginning on the first day that both the owner or operator and the cabinet have received notice of cancellation, as evidenced by the certified mail return receipts; and

(c) If the owner or operator fails to provide alternate financial assurance as specified in this administrative regulation, and fails to obtain the written approval of this alternate financial assurance from the cabinet not later than ninety (90) days after both the owner or operator and the cabinet have received notice of cancellation of the corporate guarantee from the guarantor, the guarantor shall provide the alternate financial assurance in the name of the owner or operator.

Section 18. Financial Assurance for Corrective Action.

(1) The owner or operator of a facility required to prepare and submit a groundwater corrective action plan under 401 KAR 48:300 shall prepare a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct the corrective action activities in accordance with the corrective action plan developed under 401 KAR 48:300. The corrective action cost estimate shall account for the total cost estimate of corrective action activities as described in the corrective action plan for the entire corrective action period. The cabinet shall annually adjust this estimate for inflation and other factors, until the corrective action program is completed in accordance with 401 KAR 48:300 and the approved plan.

(2) The owner or operator shall increase the corrective action cost estimate in the amount of financial assurance provided under subsection (1) of this section if changes in the corrective action plan or conditions at the solid waste disposal site or facility increased the maximum cost of corrective action.

(3) The owner or operator may request from the cabinet a reduction in the amount of corrective action cost estimate and the amount of financial assurance provided under subsection (1) of this section if the cost estimate exceeds the maximum remaining cost of corrective action.

(4) The owner or operator shall provide continuous coverage for corrective action until released from the financial requirements for corrective action under subsection (7) of this section.

(5) Within 120 days of approval of the corrective action plan, the owner or operator shall post a performance bond executed on DEP Form 6053-G, entitled "Performance Bond for Corrective Action" (November 2016), which is hereby incorporated by reference. This document may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, from 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, excluding state holidays, or from the Web site at eec.ky.gov/environmental-protection/waste. The owner or operator shall also post one (1) or a combination of the following financial assurance mechanisms in the amount set forth in the corrective action cost estimate:

(a) A surety bond executed on DEP Form 6053-M, entitled "Surety Bond for Corrective Action" (November 2016), which is hereby incorporated by reference. This document may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, from 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, excluding state holidays, or from the Web site at eec.ky.gov/environmental-protection/waste;

(b) A trust fund executed on DEP Form 6053-J, entitled "Trust Agreement for Corrective Action" (November 2016), which is hereby incorporated by reference. This document may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, from 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, excluding state holidays, or from the Web site at eec.ky.gov/environmental-protection/waste;

(c) A letter of credit executed on DEP Form 6053-H, entitled "Irrevocable Letter of Credit for Corrective Action" (November 2016), which is hereby incorporated by reference. This document may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, from 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, excluding state holidays, or from the Web site at eec.ky.gov/environmental-protection/waste;

(d) An escrow agreement executed on DEP Form 6053-I, entitled "Escrow Agreement for Corrective Action" (November 2016), which is hereby incorporated by reference. This document may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, from 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, excluding state holidays, or from the Web site at eec.ky.gov/environmental-protection/waste;

(e) Any other financial assurance mechanism that complies with subsections (1) to (4) of this section and is approved by the cabinet.

(6) The owner or operator may satisfy the requirements of this section by establishing one (1) or more of the financial mechanisms listed in subsection (5) of this section.

(7) The financial insurance mechanisms posted to assure performance of the corrective action required under 401 KAR 48:300 shall be released when the owner or operator demonstrates to the cabinet's satisfaction that the groundwater corrective action plan's

remedial measures have been completed and that the facility is in compliance with 401 KAR 48:300 and KRS Chapter 224.

Section 19. Use of Multiple Financial Mechanisms at Single Facilities and Single Mechanisms at Multiple Facilities.

(1) The owner or operator may satisfy the requirements of this administrative regulation by establishing more than one (1) financial mechanism for each facility. These mechanisms are limited to trust funds, escrow agreements, surety bonds, letter of credit, and insurance. The mechanisms shall be as specified in Sections 8 to 12 of this administrative regulation respectively, except that it is the combination of mechanisms, rather than each single mechanisms, that shall provide financial assurance for an amount at least equal to the current closure or closure care cost estimates.

(2) The owner or operator may use a financial assurance mechanism specified in this administrative regulation to meet the requirements of this administrative regulation for more than one (1) facility. Evidence of financial assurance submitted to the cabinet shall include a list showing, for each facility, the name, address, and amount of funds for closure and closure care assurance by the financial mechanism. The amount of funds available through the financial mechanism shall be no less than the sum of the funds that would be available if a separate financial mechanism had been established and maintained for each facility. In directing funds available through the financial mechanism for closure or closure care of any of the facilities provided for by the financial mechanism, the cabinet may direct only the amount of funds designated for the facility, unless the owner or operator agrees to the use of additional funds available under the financial mechanism.

(401 KAR 048:310. 16 Ky.R. 1807; 2236; 2398; eff. 5-8-1990; 21 Ky.R. 515; 1112; eff. 11-7-1994; TAm eff. 7-8-2016; TAm eff. 12-21-2016; Crt eff. 8-13-2018; TAm eff. 10-15-2018; TAm eff. 5-7-2019; TAm eff. 10-3-2019; Crt eff. 7-22-2025.)