

Title 194 - Department of Environmental Quality

Chapter 6 - FINANCIAL ASSURANCE AND INSURANCE

001 Applicant qualifications and assurances for operational period.

Each applicant shall show that it either possesses the necessary funds or has written assurance of obtaining the necessary funds, or by a combination of the two, to cover the estimated costs of conducting all licensed activities over the planned operating life of the facility, including costs of construction and disposal, and estimated costs for corrective action or cleanup on real or personal property on and off-site if a release occurs. Financial or surety arrangements include those specified in 002.08 below and shall be submitted annually to the department for review to assure that sufficient funds will be available for the activities described in this section.

002 Funding for disposal site closure and stabilization.

002.01 The applicant shall provide written assurance that sufficient funds will be available to carry out disposal site closure and stabilization in the event the licensee abandons the facility or defaults for any reason in performing its licensure or regulatory requirements, including funds for:

002.01A All final operational activities at a facility to dismantle site structures, to decontaminate site surfaces and remaining structures, to stabilize and contain residual radioactive material, and to carry out any other activities to prepare the site for post-operational care;

002.01B Corrective action or cleanup on real or personal property on and off-site if a release of radioactive material occurs; and

002.01C Closure and stabilization of the disposal site so that following transfer of the license to the site owner, the need for ongoing active maintenance is eliminated to the extent practicable and only custodial care is required.

002.02 These assurances shall be based on department approved cost estimates reflecting the department-approved plan for the activities described in 002.01 above. The applicant's cost estimates shall include total costs that would be incurred if an independent contractor were hired to perform such activities.

002.03 In order to avoid unnecessary duplication and expense, the department will accept financial sureties that have been consolidated with earmarked financial or surety arrangements established to meet requirements of Federal or other State agencies, and/or local governing bodies, for the activities described in 002.01 above. The department will accept this arrangement only if they are considered adequate to satisfy these requirements and that the portion of the surety which covers the activities described in 002.01 above is clearly identified and committed for use in accomplishing these activities.

002.04 The licensee's financial or surety arrangement shall be submitted annually for review by the department to assure that sufficient funds will be available for completion of the activities described in 002.01 above.

002.05 The amount of the licensee's financial or surety arrangement shall change in accordance with changes in the predicted costs of conducting the activities described in 002.01 above. Factors affecting closure and stabilization cost estimates include inflation, increases in the amount of disturbed land, changes in engineering plans, closure and stabilization that has already been accomplished and any other conditions affecting costs.

The financial or surety arrangement shall be sufficient at all times to cover the costs of closure and stabilization of the disposal units.

002.06 The financial or surety arrangement shall be written for a specified period of time and shall be automatically renewed unless the person who issues the surety or other financial arrangement notifies the department, the beneficiary (the site owner) and the principal (the licensee) not less than 90 days prior to the renewal date of its intention not to renew. In such a situation the licensee must submit a replacement surety or other financial arrangement within 30 days after notification of cancellation. If the licensee fails to provide a replacement surety or other financial arrangement acceptable to the department, the site owner may collect on the original surety or other financial arrangement.

002.07 Proof of forfeiture shall not be necessary to collect the surety so that, in the event that the licensee could not provide an acceptable replacement surety or other financial arrangement within the required time, the surety or other financial arrangement shall be automatically collected prior to its expiration. The conditions described above would have to be clearly stated on any surety instrument or other financial arrangement which is not open-ended, and must be agreed to by all parties. Liability under the surety/or other financial arrangement remains in effect until the closure and stabilization program has been completed and approved by the department and the license has been transferred to the disposal site owner.

002.08 Financial or surety arrangements generally acceptable to the department include surety bonds, cash deposits, certificates of deposits, deposits of government securities, escrow accounts, irrevocable letters or lines of credit, trust funds, and combinations of the above or such other types of arrangements as may be approved by the department. Self-insurance, or any arrangement which essentially constitutes pledging the assets of the licensee or any corporate, legal, or financial affiliate of the licensee is not allowed. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or State Agency.

002.09 All sureties required pursuant to 001 and 002 above which are forfeited shall be paid to the department for deposit into the Radiation Site Closure and Reclamation Fund.

002.09A Any money in the fund may be expended by the department as necessary to complete the requirements on which the licensee has defaulted.

002.09B Money in this fund shall not be used for normal operating expenses of the department.

### 003 Financial assurances for institutional control period.

003.01 Prior to the issuance of the license, the applicant shall provide for department review and approval, a copy of a binding arrangement between the applicant and the disposal site owner that ensures that sufficient funds will be available for deposit into the Radiation Custodial Care Fund to cover the costs of custodial care activities, and corrective action or cleanup on real or personal property on and off-site if a release of radioactive material occurs, during the institutional control period. The binding arrangement will be reviewed annually by the department to ensure that changes in inflation, technology and facility operations are reflected in the arrangements.

003.02 Subsequent changes to the binding arrangement specified in 003.01 above relevant to institutional control shall be submitted to the department for approval.

003.03 Before transfer of the license to the disposal site owner. The licensee shall make available such funding arrangements as may be necessary to provide for the activities described in 003.01 above.

003.04 All funds collected from the licensee pursuant to 003.03 above shall be paid to the department for deposit into the Radiation Custodial Care Fund.

003.04A All interest accrued on money deposited in the fund may be expended by the department for the continuing custodial care, maintenance and other care of the facility from which such funds are collected, as necessary for protection of the public health, safety and environment.

003.04B The department may, by contract, agreement, lease or license with the Department of Health, provide for the decontamination, closure, reclamation, surveillance, or other care of a facility subject to this section as needed to carry out the purposes of this section.

003.05 Remedial cleanup costs which become necessary during the period of custodial care shall be assessed first to the facility operator, then if the operator's funds are inadequate, against the generators of radioactive waste proportionately by volume, radioactivity, and waste classification and concentration of the low-level radioactive waste disposed of in the facility.

#### 004 Insurance.

A licensee shall purchase property and third-party liability insurance during the operational life of a facility and during the site closure and stabilization period in amounts set by the Council prior to license issuance, and shall pay the premiums at all times. If insurance is not commercially available, the burden is on the applicant to make such demonstration.

Enabling Legislation: Neb. Rev. Stat. §§81-15,100; 81-15.102 and 81-15,103

Legal Citation: Title 194, Ch. 6, Nebraska Department of Environmental Quality

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