

## Chapter NR 667

# STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE FACILITIES OPERATING UNDER A STANDARDIZED LICENSE

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## Subchapter A — General

### NR 667.0001 Purpose, scope, and applicability.

(1) The purpose of this chapter is to establish minimum standards which define the acceptable management of hazardous waste under a subch. J of ch. NR 670 standardized license.

(2) This chapter applies to owners and operators of facilities who treat or store hazardous waste under a subch. J of ch. NR 670

standardized license, except as provided otherwise in subch. A of ch. NR 661, or s. NR 664.0001 (7).

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17; correction in (1), (2) made under s. 35.17, Stats., and correction in (2) made under s. 13.92 (4) (b) 7., Stats., Register July 2017 No. 739.

**NR 667.0002 What is the relationship to interim license standards?** If you are a facility owner or operator who has fully complied with the requirements for an interim license,

as defined in s. NR 670.002 (13) and rules under s. NR 670.070, comply with the rules specified in ch. NR 665 instead of the rules in this chapter, until final administrative disposition of the standardized license application is made, except as provided under subch. S of ch. NR 664.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17; correction made under s. 35.17, Stats., Register July 2017 No. 739.

**NR 667.0003 How does this chapter affect an imminent hazard action?** Notwithstanding any other provisions of this chapter, enforcement actions may be brought pursuant to section 7003 of RCRA, and chs. 289 and 291, Stats., and other applicable law.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

## Subchapter B — General Facility Standards

### NR 667.0010 Does this subchapter apply to me?

This subchapter applies to owner or operators of a facility that treats or stores hazardous waste under a subch. J of ch. NR 670 standardized license, except as provided in s. NR 667.0001 (2).

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17; corrections made under ss. 13.92 (4) (b) 7. and 35.17, Stats., Register July 2017 No. 739.

**NR 667.0011 What shall I do to comply with this subchapter?** To comply with this subchapter, obtain an identification number, and follow the requirements below for waste analysis, security, inspections, training, special waste handling, and location standards.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

**NR 667.0012 How do I obtain an identification number?** Apply to the department for an EPA identification number using the EPA form 8700–12. You may obtain information from the department by phone (608) 266–2111. The form is available at: <https://www.epa.gov/hwgenerators/instructions-and-form-hazardous-waste-generators-transporters-and-treatment-storage-and>

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

**NR 667.0013 What are the waste analysis requirements?** (1) Before treating or storing any hazardous wastes, obtain a detailed chemical and physical analysis of a representative sample of the wastes. At a minimum, the analysis shall contain all the information needed to treat or store the waste to comply with this chapter and ch. NR 668.

(a) You may include data in the analysis that was developed under ch. NR 661, and published or documented data on the hazardous waste or on hazardous waste generated from similar processes.

(b) Repeat the analysis as necessary to ensure that it is accurate and up to date. At a minimum, repeat the analysis if the process or operation generating the hazardous wastes has changed.

(2) Develop and follow a written waste analysis plan that describes the procedures you will follow to comply with sub. (1). Keep the waste analysis plan at the facility. If you receive wastes generated from off-site and are eligible for a standardized license, you also shall have submitted the waste analysis plan with the notice of intent. At a minimum, the plan shall specify all of the following:

(a) The hazardous waste parameters that you will analyze and the rationale for selecting these parameters (that is, how analysis for these parameters will provide sufficient information on the waste's properties to comply with sub. (1)).

(b) The test methods you will use to test for these parameters.

(c) The sampling method you will use to obtain a representative sample of the waste to be analyzed. You may obtain a representative sample using either:

1. One of the sampling methods described in ch. NR 661 Appendix I.

2. An equivalent sampling method.

(d) How frequently you will review or repeat the initial analysis of the waste to ensure that the analysis is accurate and up to date.

(e) Where applicable, the methods you will use to meet the additional waste analysis requirements for specific waste management methods as specified in ss. NR 664.0017, 664.1034 (4), 664.1063 (4), and 664.1083.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17; correction in (2) (c) 1. made under s. 35.17, Stats., Register July 2017 No. 739.

### NR 667.0014 What are the security requirements?

(1) Prevent, and minimize the possibility for, livestock and unauthorized people from entering the active portion of your facility.

(2) Your facility shall have the security requirements in either (a) or (b), and the controlled entry requirement in (c):

(a) A 24-hour surveillance system (for example, television monitoring or surveillance by guards or facility personnel) that continuously monitors and controls entry onto the active portion of the facility.

(b) An artificial or natural barrier (for example, a fence in good repair or a fence combined with a cliff) that completely surrounds the active portion of the facility.

(c) A means to control entry, at all times, through the gates or other entrances to the active portion of the facility (for example, an attendant, television monitors, locked entrance or controlled roadway access to the facility).

(3) Post a sign at each entrance to the active portion of a facility, and at other prominent locations, in sufficient numbers to be seen from any approach to this active portion. The sign shall bear the legend “Danger—Unauthorized Personnel Keep Out.” The legend shall be in English and in any other language predominant in the area surrounding the facility, and shall be legible from a distance of at least 25 feet. You may use existing signs with a legend other than “Danger—Unauthorized Personnel Keep Out” if the legend on the sign indicates that only authorized personnel are allowed to enter the active portion and that entry onto the active portion can be dangerous.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

**NR 667.0015 What are the general inspection requirements?** (1) Inspect your facility for malfunctions and deterioration, operator errors, and discharges that may be causing, or may lead to either:

(a) Release of hazardous waste constituents to the environment.

(b) A threat to human health. Conduct the inspections often enough to identify problems in time to correct them before they result in harm to human health or the environment.

(2) Develop and follow a written schedule for inspecting, monitoring equipment, safety and emergency equipment, and security devices (such as dikes and sump pumps) that are important to preventing, detecting, or responding to environmental or human health hazards.

(a) Keep the written schedule at the facility.

(b) The schedule shall identify the equipment and devices you will inspect and what problems you look for, such as malfunctions or deterioration of equipment (for example, inoperative sump pump or leaking fitting).

(c) The frequency of your inspections may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, shall be inspected daily when in use. At a minimum, the inspection schedule shall include the items and frequencies required in ss. NR 667.0174, 667.0193, 667.0195, 667.1103 and 664.1033,

664.1052, 664.1053, 664.1058, and 664.1083 to 664.1089, where applicable.

(3) Remedy any deterioration or malfunction of equipment or structures that the inspection reveals in time to prevent any environmental or human health hazard. Where a hazard is imminent or has already occurred, take remedial action immediately.

(4) Record all inspections and keep the records for at least 3 years from the date of inspection. At a minimum, include the date and time of the inspection, the name of the inspector, a notation of the observations made and the date and nature of any repairs or other remedial actions.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

**NR 667.0016 What training shall my employees have?** (1) Your facility personnel shall successfully complete a program of classroom instruction or on–the–job training that teaches them to perform their duties in a way that ensures the facility’s compliance with the requirements of this chapter. Ensure that this program includes all the elements described in the documents that are required under sub. (4) (c).

(a) A person trained in hazardous waste management procedures shall direct this program, and shall teach facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to their employment positions.

(b) At a minimum, the training program shall be designed to ensure that facility personnel are able to respond effectively to emergencies by including instruction on emergency procedures, emergency equipment and emergency systems, including all of the following, where applicable:

1. Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment.
2. Key parameters for automatic waste feed cut–off systems.
3. Communications or alarm systems.
4. Response to fires or explosions.
5. Response to ground water contamination incidents.
6. Shutdown of operations.

(2) Facility personnel shall complete the program required in sub. (1) within six months after the date of their employment or assignment to a facility, or to a new position at a facility, whichever is later. Employees hired after the effective date of your standardized license may not work in unsupervised positions until they have completed the training requirements of sub. (1).

(3) Facility personnel shall take part in an annual review of the initial training required in sub. (1).

(4) Maintain the following documents and records at your facility:

(a) The job title for each position at the facility related to hazardous waste management and the name of the employee filling each job.

(b) A written job description for each position listed under par. (a). The description shall include the requisite skill, education, or other qualifications and duties of employees assigned to each position.

(c) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under par. (a).

(d) Records documenting that facility personnel have received and completed the training or job experience required under subs. (1) to (3).

(5) Keep training records on current personnel until your facility closes. Keep training records on former employees for at least 3 years from the date the employee last worked at your facility. Personnel training records may accompany personnel transferred within your company.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

**NR 667.0017 What are the requirements for managing ignitable, reactive or incompatible wastes?** (1) Take precautions to prevent accidental ignition or reaction of ignitable or reactive waste by following these requirements:

(a) Separate these wastes and protect them from sources of ignition or reaction, such as open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (for example, from heat–producing chemical reactions), and radiant heat.

(b) While ignitable or reactive waste is being handled, confine smoking and open flames to specially designated locations.

(c) “No Smoking” signs shall be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

(2) If you treat or store ignitable or reactive waste or mix incompatible waste or incompatible wastes and other materials, take precautions to prevent reactions that:

(a) Generate extreme heat or pressure, fire or explosions, or violent reactions.

(b) Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health or the environment.

(c) Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions.

(e) Damage the structural integrity of the device or facility.

(f) Threaten human health or the environment in any similar way.

(3) Document compliance with subs. (1) and (2). You may base this documentation on references to published scientific or engineering literature, data from trial tests (for example bench scale or pilot scale tests), waste analyses (as specified in s. NR 667.0013), or the results of the treatment of similar wastes by similar treatment processes and under similar operating conditions.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

**NR 667.0018 What are the standards for selecting the location of my facility?**

**Note:** There is no location standard for seismic considerations in Wisconsin. See Appendix VI of 40 CFR part 264 for more information.

(2) If your facility is located in a 100–year flood plain, it shall be designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100–year flood.

(a) “100–year flood plain” means any land area that is subject to a one percent or greater chance of flooding in any given year from any source.

(b) “Washout” means the movement of hazardous waste from the active portion of the facility as a result of flooding.

(c) “100–year flood” means a flood that has a one percent chance of being equaled or exceeded in any given year.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

## Subchapter C — Preparedness and Prevention

**NR 667.0030 Does this subchapter apply to me?**

This subchapter applies to you if you own or operate a facility that treats or stores hazardous waste under a subch. J of ch. NR 670 standardized license, except as provided in s. NR 667.0001 (2).

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17; correction made under s. 35.17, Stats., Register July 2017 No. 739.

**NR 667.0031 What are the general design and operation standards?** Design, construct, maintain, and operate your facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non–sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

**NR 667.0032 What equipment am I required to have?** Equip your facility with all of the following, unless none

of the hazards posed by waste handled at the facility could require a particular kind of equipment specified below:

(1) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel.

(2) A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or local or state emergency response teams.

(3) Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment, and decontamination equipment.

(4) Water at adequate volume and pressure to supply water hose streams, or foam-producing equipment, or automatic sprinklers, or water spray systems.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

**NR 667.0033 What are the testing and maintenance requirements for the equipment?** Test and maintain all required facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, as necessary, to assure its proper operation in time of emergency.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

**NR 667.0034 When shall personnel have access to communication equipment or an alarm system?**

(1) Whenever hazardous waste is being poured, mixed, spread or otherwise handled, all personnel involved in the operation shall have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless the device is not required under s. NR 667.0032.

(2) If just one employee is on the premises while the facility is operating, that person shall have immediate access to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, unless not required under s. NR 667.0032.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

**NR 667.0035 How do I ensure access for personnel and equipment during emergencies?** Maintain enough aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, as appropriate, considering the type of waste being stored or treated.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

**NR 667.0036 What arrangements shall I make with local authorities for emergencies?** (1) Attempt to make the following arrangements, as appropriate, for the type of waste handled at your facility and the potential need for the services of these organizations:

(a) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to and roads inside the facility, and possible evacuation routes.

(b) Agreements designating primary emergency authority to a specific police and a specific fire department where more than one police and fire department might respond to an emergency and agreements with any others to provide support to the primary emergency authority

(c) Agreements with state emergency response teams, emergency response contractors and equipment suppliers.

(d) Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses that could result from fires, explosions, or releases at the facility.

(2) If state or local authorities decline to enter into such arrangements, document the refusal in the operating record.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

## Subchapter D — Contingency Plan and Emergency Procedures

### NR 667.0050 Does this subchapter apply to me?

This subchapter applies to you if you own or operate a facility that treats or stores hazardous waste under a subch. J of ch. NR 670 standardized license, except as provided in s. NR 667.0001 (2).

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17; correction made under s. 35.17, Stats., Register July 2017 No. 739.

### NR 667.0051 What is the purpose of the contingency plan and how do I use it? (1)

You shall have a contingency plan for your facility. Design the plan to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

(2) Implement the provisions of the plan immediately whenever there is a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

### NR 667.0052 What must be in the contingency plan? (1)

Your contingency plan shall:

(a) Describe the actions facility personnel will take to comply with ss. NR 667.0051 and 667.0056 in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.

(b) Describe all arrangements agreed upon under s. NR 667.0036 by local police departments, fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services.

(c) List names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see s. NR 667.0055), and keep the list up to date. Where more than one person is listed, name one as primary emergency coordinator and list the others in the order in which they will assume responsibility as alternates.

(d) Include a current list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. In addition, include the location and a physical description of each item on the list and a brief outline of its capabilities.

(e) Include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. Describe signals to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).

(2) If you have already prepared a Spill Prevention, Control and Countermeasures (SPCC) Plan under 40 CFR part 112, or some other emergency or contingency plan, amend that plan to incorporate hazardous waste management provisions that will comply with the requirements of this subchapter.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

**NR 667.0053 Who is required to have copies of the contingency plan? (1)** Maintain a copy of the plan with all revisions at the facility.

(2) Submit a copy with all revisions to all local police departments, fire departments, hospitals, and state and local emergency

response teams that may be called upon to provide emergency services.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

**NR 667.0054 When shall I amend the contingency plan?** Review, and immediately amend the contingency plan, if necessary, whenever:

- (1) The facility operating license is revised.
- (2) The plan fails in an emergency.
- (3) You change the facility (in its design, construction, operation, maintenance, or other circumstances) in a way that materially increases the potential for fires, explosions, or releases of hazardous waste or hazardous waste constituents, or changes the response necessary in an emergency.
- (4) You change the list of emergency coordinators.
- (5) You change the list of emergency equipment.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

**NR 667.0055 What is the role of the emergency coordinator?** At least one employee shall be either on the facility premises or on call at all times (that is, available to respond to an emergency by reaching the facility within a short period of time) who has the responsibility for coordinating all emergency response measures. This emergency coordinator shall be thoroughly familiar with all aspects of the facility’s contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person shall have the authority to commit the resources needed to carry out the contingency plan.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

**NR 667.0056 What are the required emergency procedures for the emergency coordinator?** (1) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or a designee when the emergency coordinator is on call) shall immediately:

- (a) Activate internal facility alarm or communication systems, where applicable, to notify all facility personnel.
- (b) Notify appropriate state or local agencies with designated response roles if their help is needed.

(2) Whenever there is a release, fire, or explosion, the emergency coordinator shall:

(a) Immediately identify the character, exact source, amount, and areal extent of any released materials. This may be done this by observation or review of facility records or manifests, and, if necessary, by chemical analysis.

(b) Assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment shall consider both direct and indirect effects of the release, fire, or explosion. For example, the assessment would consider the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-off from water or chemical agents used to control fire and heat-induced explosions.

(3) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health or the environment outside the facility, the emergency coordinator shall report the findings as follows:

(a) If the assessment indicates that evacuation of local areas may be advisable, immediately notify appropriate local authorities and be available to help appropriate officials decide whether local areas should be evacuated.

(b) Immediately notify either the government official designated as the on-scene coordinator for that geographical area, or the National Response Center (using its 24-hour toll free number (800) 424–8802) or Wisconsin Emergency Management (using

its 24-hour toll free number (800) 943–0003). The report shall include:

1. Name and telephone number of the reporter.
  2. Name and address of facility.
  3. Time and type of incident (for example, a release or a fire).
  4. Name and quantity of materials involved, to the extent known.
  5. The extent of injuries, if any.
  6. The possible hazards to human health or the environment outside the facility.
- (4) During an emergency, the emergency coordinator shall take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous waste at the facility. These measures shall include, where applicable, stopping processes and operations, collecting and containing release waste, and removing or isolating containers.
- (5) If the facility stops operations in response to a fire, explosion or release, the emergency coordinator shall monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, when appropriate.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

**NR 667.0057 What shall the emergency coordinator do after an emergency?** (1) Immediately after an emergency, the emergency coordinator shall provide for treating, storing, or disposing of recovered waste, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility.

(2) The emergency coordinator shall ensure that, in the affected area or areas of the facility:

(a) No waste that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed.

(b) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

**NR 667.0058 What notification and recordkeeping shall I do after an emergency?** (1) Notify the department and appropriate state and local authorities that the facility is in compliance with s. NR 667.0057 (2) before operations are resumed in the affected area or areas of the facility.

(2) Note the time, date, and details of any incident that requires implementing the contingency plan in the operating record. Within 15 days after the incident, submit a written report on the incident to the department. Include all of the following in the report:

(a) The name, address, and telephone number of the owner or operator

(b) The name, address, and telephone number of the facility.

(c) The date, time, and type of incident (for example, fire, explosion).

(d) The name and quantity of material or materials involved.

(e) The extent of injuries, if any.

(f) An assessment of actual or potential hazards to human health or the environment, where this is applicable.

(g) The estimated quantity and disposition of recovered material that resulted from the incident.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

## Subchapter E — Recordkeeping, Reporting, and Notifying

### NR 667.0070 Does this subchapter apply to me?

This subchapter applies to you if you own or operate a facility that stores or non-thermally treats a hazardous waste under a subch. J of ch. NR 670 standardized license, except as provided in s. NR

667.0001 (2). In addition, comply with the manifest requirements of ch. NR 662 whenever you initiate a shipment of hazardous waste from your facility.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17; correction made under s. 35.17, Stats., Register July 2017 No. 739.

**NR 667.0071 Use of the manifest system.** (1) If a facility receives hazardous waste accompanied by a manifest, the owner or operator or an agent, shall:

(a) Sign and date each copy of the manifest to certify that the hazardous waste covered by the manifest was received.

(b) Note any significant discrepancies in the manifest (as defined in s. NR 667.0072 (1)) on each copy of the manifest.

(c) Immediately give the transporter at least one copy of the signed manifest;

(d) Within 30 days after the delivery, send a copy of the manifest to the generator.

(e) Retain at the facility a copy of each manifest for at least 3 years from the date of delivery.

(2) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator's certification, and signatures), the owner or operator or an agent, shall:

(a) Sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste covered by the manifest or shipping paper was received.

(b) Note any significant discrepancies (as defined in s. NR 667.0072 (1)) in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper. Note that the department does not intend that the owner or operator of a facility whose procedures under s. NR 667.0013 include waste analysis must perform that analysis before signing the shipping paper and giving it to the transporter. Section NR 667.0072 (2), however, requires reporting an unreconciled discrepancy discovered during later analysis.

(c) Immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received).

(d) Within 30 days after the delivery, send a copy of the signed and dated manifest to the generator; however, if the manifest has not been received within 30 days after delivery, the owner or operator or an agent, shall send a copy of the shipping paper signed and dated to the generator. Note that ss. NR 662.023 (4) and (5) require the generator to send 3 copies of the manifest to the facility when hazardous waste is sent by rail or water (bulk shipment).

(e) Retain at the facility a copy of the manifest and shipping paper (if signed in lieu of the manifest at the time of delivery) for at least 3 years from the date of delivery.

(3) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility shall comply with the requirements of ch. NR 662. The department notes that the provisions of s. NR 662.034 are applicable to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of s. NR 662.034 only apply to owners or operators who are shipping hazardous waste which they generated at that facility.

(4) Within 3 working days of the receipt of a shipment subject to 40 CFR part 262, subchapter H, the owner or operator of the facility shall provide a copy of the tracking document bearing all required signatures to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460 and to competent authorities of all other concerned countries. The original copy of the tracking document shall be maintained at the facility for at least 3 years from the date of signature.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

**NR 667.0072 Manifest discrepancies.** (1) Manifest discrepancies are differences between the quantity or type of hazardous waste designated on the manifest or shipping paper and the quantity or type of hazardous waste a facility actually receives. Significant discrepancies in quantity are:

(a) For bulk waste, variations greater than 10 percent in weight.

(b) For batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload. Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid or toxic constituents not reported on the manifest or shipping paper.

(2) Upon discovering a significant discrepancy, the owner or operator shall attempt to reconcile the discrepancy with the waste generator or transporter (for example, with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator shall immediately submit a letter to the department describing the discrepancy and attempts to reconcile it and a copy of the manifest or shipping paper at issue.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

**NR 667.0073 What information shall I keep?**

(1) Keep a written operating record at your facility.

(2) Record the following information, as it becomes available and maintain the operating record until you close the facility:

(a) A description and the quantity of each type of hazardous waste generated and the methods and dates of its storage or treatment at the facility as required by ch. NR 664 Appendix I.

(b) The location of each hazardous waste within the facility and the quantity at each location.

(c) Records and results of waste analyses and waste determinations you perform as specified in ss. NR 667.0013, 667.0017, 664.1034, 664.1063, 664.1083, and 668.07.

(d) Summary reports and details of all incidents that require implementing the contingency plan as specified in s. NR 667.0058 (2)

(e) Records and results of inspections as required by s. NR 667.0015 (4) (keep these data for a minimum of 3 years).

(f) Monitoring, testing or analytical data and corrective action when required by subch. F and ss. NR 667.0191, 667.0193, 667.0195, 664.1034 (3) to 664.1034 (6), 664.1035, 664.1063 (4) to 664.1063 (9), 664.1064, 664.1088, 664.1089, and 664.1090.

(g) All closure cost estimates under s. NR 667.0142.

(h) A certification, at least annually, that you have a program in place to reduce the volume and toxicity of hazardous waste generated, to the degree that you determine to be economically practicable, and that the proposed method of treatment or storage is that practicable method currently available to minimize the present and future threat to human health and the environment.

(i) For an on-site treatment facility, the information contained in the notice (except the manifest number) and the certification and demonstration, if applicable, required under s. NR 668.07.

(j) For an on-site storage facility, the information in the notice (except the manifest number) and the certification and demonstration, if applicable, required under s. NR 668.07.

(k) For an off-site treatment facility, a copy of the notice and the certification and demonstration, if applicable, required by the generator or the owner or operator under s. NR 668.07.

(L) For an off-site storage facility, a copy of the notice and the certification and demonstration, if applicable, required by the generator or the owner or operator under ss. NR 668.07.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17; correction in (2) (a) made under s. 35.17, Stats., and correction in (2) (k), (L) made under s. 13.92 (4) (b) 7., Stats., Register July 2017 No. 739.

**NR 667.0074 Who sees the records? (1)** You shall furnish all records, including plans, required under this chapter upon the request of any officer, employee, or representative of the department and make them available at all reasonable times for inspection.

**(2)** The retention period for all records required under this chapter is extended automatically during the course of any unresolved enforcement action involving the facility or as requested by the department.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

**NR 667.0075 What reports shall I prepare and to whom do I send them?** The owner or operator shall prepare an annual report and other reports listed in sub. (2).

**(1) ANNUAL REPORT.** Prepare and submit a single copy of an annual report to the department by March 1 of each year. The annual report shall be submitted on forms specified by the department. The report shall cover facility activities during the previous calendar year and shall include:

(a) The EPA identification number, name, and address of the facility.

(b) The calendar year covered by the report.

(c) The method of treatment or storage for each hazardous waste.

(d) The most recent closure cost estimate under s. NR 667.0142.

(e) A description of the efforts undertaken during the year to reduce the volume and toxicity of generated waste.

(f) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984.

(g) The certification signed by you.

**Note:** Information on annual reporting is available at: <http://dnr.wi.gov/topic/waste/annualreport.html>

**(2) ADDITIONAL REPORTS.** In addition to submitting the annual reports, you shall also report to the department:

(a) Releases, fires, and explosions as specified in s. NR 667.0058 (2).

(b) Facility closures specified in s. NR 667.0117.

(c) As otherwise required by subchs. I, J, and DD and subchs. AA, BB, and CC of ch. NR 664.

**(3)** For off–site facilities, the EPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the year; for imported shipments, the report shall give the name and address of the foreign generator.

**(4)** A description and the quantity of each hazardous waste the facility received during the year. For off–site facilities, this information shall be listed by EPA identification number of each generator.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17; correction in (2) (c) made under s. 35.17, Stats., Register July 2017 No. 739.

**NR 667.0076 What notifications shall I make?** Before transferring ownership or operation of a facility during its operating life, the owner or operator shall notify the new owner or operator in writing of the requirements of this chapter and subch. J of ch. NR 670.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17; correction made under s. 35.17, Stats., Register July 2017 No. 739.

## Subchapter F — Releases from Solid Waste Management Units

**NR 667.0090 Who shall comply with this section?**

This subchapter applies to you if you own or operate a facility that treats or stores hazardous waste under a subch. J of ch. NR 670 standardized license, except as provided in s. NR 667.0001 (2), or

unless your facility already has a license that imposes requirements for corrective action under s. NR 664.0101.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17; correction made under s. 35.17, Stats., Register July 2017 No. 739.

**NR 667.0101 What shall I do to address corrective action for solid waste management units? (1)** You shall institute corrective action as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time at which waste was placed in such unit.

**(2)** The department shall specify corrective action in the supplemental portion of your standardized license in accordance with this section and subch. S of ch. NR 664. The department shall include in the supplemental portion of your standardized license schedules of compliance for corrective action (where corrective action cannot be completed prior to issuance of the license) and assurances of financial responsibility for completing corrective action.

**(3)** You shall implement corrective action beyond the facility property boundary, where necessary to protect human health and the environment, unless you demonstrate to the satisfaction of the department that, despite your best efforts, you were unable to obtain the necessary permission to undertake such actions. You are not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where off–site access is denied. On–site measures to address such releases will be determined on a case–by–case basis. You shall provide assurances of financial responsibility for corrective action.

**(4)** You are not required to comply with this section if you are the owner or operator of a remediation waste site unless your site is part of a facility that is subject to a license for treating, storing, or disposing of hazardous wastes that are not remediation wastes.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17; correction in (2) made under s. 35.17, Stats., Register July 2017 No. 739.

## Subchapter G — Closure

**NR 667.0110 Does this subchapter apply to me?**

This subchapter applies to you if you own or operate a facility that treats or stores hazardous waste under a subch. J of ch. NR 670 standardized license, except as provided in s. NR 667.0001 (2).

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17; correction made under s. 35.17, Stats., Register July 2017 No. 739.

**NR 667.0111 What general standards shall I meet when I stop operating the unit? (1)** Minimizes the need for further maintenance.

**(2)** Controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, postclosure escape of hazardous waste, hazardous constituents, leachate, contaminated run–off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere.

**(3)** Meets the closure requirements of this subchapter and the requirements of ss. NR 667.0176, 667.0201, and 667.1108. If you determine that, when applicable, the closure requirements of ss. NR 667.0201 (tanks), or 667.1108 (containment buildings) cannot be met, then you shall close the unit according to the requirements that apply to landfills (s. NR 664.0310). In addition, for the purposes of postclosure care and financial responsibility, the tank system or containment building is then considered to be a landfill and you shall apply for a long–term care license according to ch. NR 670.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

**NR 667.0112 What procedures shall I follow? (1)** To close a facility, follow your department–approved closure plan and follow notification requirements.

(a) Submit your closure plan at the time you submit your notice of intent to operate under a standardized license. Final issuance

of the standardized license constitutes approval of the closure plan and the plan becomes a condition of the standardized license.

(b) The department's approval of the plan shall ensure that the approved plan is consistent with ss. NR 667.0111 to 667.0115, 667.0176, 667.0201, and 667.1108.

**(2)** Satisfy the requirements for content of closure plan. The closure plan shall identify steps necessary to perform partial and final closure of the facility. The closure plan shall include, at least:

(a) A description of how each hazardous waste management unit at the facility subject to this subchapter will be closed according to s. NR 667.0111.

(b) A description of how final closure of the facility will be conducted according to s. NR 667.0111. The description shall identify the maximum extent of the operations which will be unclosed during the active life of the facility.

(c) An estimate of the maximum inventory of hazardous wastes ever on site during the active life of the facility and a detailed description of the methods you shall use during partial and final closure, such as methods for removing, transporting, treating, storing, or disposing of all hazardous wastes and identification of the types of off-site hazardous waste management units to be used, if applicable.

(d) A detailed description of the steps necessary to remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures, and soils during partial or final closure. These steps may include procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy the closure performance standards.

(e) A detailed description of other activities necessary during the closure period to ensure that partial or final closure satisfies the closure performance standards.

(f) A schedule for closure of each hazardous waste management unit and for final closure of the facility. The schedule shall include, at a minimum, the total time required to close each hazardous waste management unit and the time required for intervening closure activities that allow tracking of progress of partial or final closure.

(g) For facilities that use trust funds to establish financial assurance under s. NR 667.0143 and that are expected to close prior to the expiration of the license, an estimate of the expected year of final closure.

**(3)** You may submit a written notification to the department for a license modification to amend the closure plan at any time prior to the notification of partial or final closure of the facility, following the applicable procedures in s. NR 670.320.

(a) Events leading to a change in the closure plan, and therefore requiring a modification, may include:

1. A change in the operating plan or facility design.
2. A change in the expected year of closure, if applicable.
3. In conducting partial or final closure activities, an unexpected event requiring a modification of the approved closure plan.

(b) The written notification or request shall include a copy of the amended closure plan for review or approval by the department. The department shall approve, disapprove, or modify the amended plan according to the procedures in s. NR 670.320.

**(4)** Notification before final closure.

(a) Notify the department in writing at least 45 days before the date that you expect to begin final closure of a treatment or storage tank, container storage area, or containment building.

(b) The date when you expect to begin closure shall be no later than 30 days after the date that any hazardous waste management unit receives the known final volume of hazardous wastes.

(c) If your facility's license is terminated, or if you are otherwise ordered, by the department, or required by judicial decree or final order under 42 USC 6928 to cease receiving hazardous wastes or to close then the requirements of this subsection do not apply. However, you shall close the facility following the deadlines established in s. NR 667.0115 unless earlier deadlines are set in a department order, judicial decree, or final order under 42 USC 6928.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

**NR 667.0113 Will the public have the opportunity to comment on the plan?**

The department shall provide the owner or operator and the public, when the draft standardized license is public noticed, the opportunity to submit written comments on the plan and to the draft license as allowed by s. NR 670.508. The department shall also, in response to a request or at the owner or operator's own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the closure plan and the license.

**(2)** The department shall give public notice of the hearing 30 days before it occurs. Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments and the two notices may be combined.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

**NR 667.0115 After I stop operating, how long until I shall close?** **(1)** Within 90 days after the final volume of hazardous waste is sent to a unit, treat or remove from the unit all hazardous wastes following the approved closure plan.

**(2)** You shall complete final closure activities according to the approved closure plan within 180 days after the final volume of hazardous wastes is sent to the unit. The department may approve an extension of 180 days to the closure period if you comply with all applicable requirements for requesting a modification to the license and demonstrate that:

(a) The final closure activities will take longer than 180 days to complete due to circumstances beyond your control, excluding ground water contamination.

(b) You have taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed, but not operating hazardous waste management unit or facility, including compliance with all applicable license requirements.

(c) The demonstration shall be made at least 30 days prior to the expiration of the initial 180–day period.

**(3)** Nothing in this subsection precludes you from removing hazardous wastes and decontaminating or dismantling equipment according to the approved final closure plan at any time before or after notification of final closure.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

**NR 667.0116 What shall I do with contaminated equipment, structure and soils?**

You shall properly dispose of or decontaminate all contaminated equipment, structures, and soils during the partial and final closure periods. By removing any hazardous wastes or hazardous constituents during partial and final closure, you may become a generator of hazardous waste and shall handle that waste following all applicable requirements of ch. NR 662.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

**NR 667.0117 How do I certify closure?** Within 60 days of the completion of final closure of each unit under a subch. J of ch. NR 670 standardized license, you shall submit to the department, by registered mail, a certification that each hazardous waste management unit or facility, as applicable, has been closed following the specifications in the closure plan. Both you and a qualified professional engineer shall sign the certification. You shall furnish documentation supporting the independent registered professional engineer's certification to the department upon request



until the department releases you from the financial assurance requirements for closure under s. NR 667.0143 (9).

**History:** CR 16–007; cr. Register July 2017 No. 739, eff. 8–1–17; correction made under s. 35.17, Stats., Register July 2017 No. 739.

### Subchapter H — Financial Requirements

**NR 667.0140 Who must comply with this subchapter, and briefly, what do they have to do?** (1) The requirements in this subchapter apply to owners and operators who treat or store hazardous waste under a subch. J of ch. NR 670 standardized license, except as provided in s. NR 667.0001 (2) or sub. (4).

(2) The owner or operator shall:

(a) Prepare a closure cost estimate as required in s. NR 667.0142.

(b) Demonstrate financial assurance for closure as required in s. NR 667.0143.

(c) Demonstrate financial assurance for liability as required in s. NR 667.0147.

(3) The owner or operator shall notify the department if the owner or operator is named as a debtor in a bankruptcy proceeding under Title 11 of the United States Code (See also s. NR 667.0148).

(4) States and the federal government are exempt from the requirements of this subchapter.

**History:** CR 16–007; cr. Register July 2017 No. 739, eff. 8–1–17; correction in (1) made under s. 35.17, Stats., Register July 2017 No. 739.

**NR 667.0141 Definitions of terms used in this subchapter.** When used in this subchapter, the following terms have the following meanings:

(1) “Closure plan” means the plan for closure prepared according to the requirements of s. NR 667.0112.

(2) “Current closure cost estimate” means the most recent of the estimates prepared according to s. NR 667.0142 (1), (2), and (3).

(4) “Parent corporation” means a corporation that directly owns at least 50 percent of the voting stock of the corporation which is the facility owner or operator. The latter corporation is deemed a subsidiary of the parent corporation.

(6) The following terms are used in the specifications for the financial tests for closure and liability coverage. The definitions are intended to assist in the understanding of these regulations and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices:

(a) “Assets” means all existing and all probable future economic benefits obtained or controlled by a particular entity.

(b) “Current plugging and abandonment cost estimate” means the most recent of the estimates prepared according to ch. NR 815.

(c) “Independently audited” refers to an audit performed by an independent certified public accountant according to generally accepted auditing standards.

(d) “Liabilities” means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(e) “Tangible net worth” means the tangible assets that remain after deducting liabilities. Tangible assets would not include intangibles such as goodwill and rights to patents or royalties.

(7) In the liability insurance requirements, the terms “bodily injury” and “property damage” shall have the meanings given these terms under state law. However, these terms do not include those liabilities which, consistent with standard industry practices, are excluded from coverage in liability policies for bodily injury and property damage. The department intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance

industry. The following definitions of several of the terms are intended to assist in the understanding of these rules and are not intended to limit their meanings in a way that conflicts with general insurance industry usage:

(a) “Accidental occurrence” means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

(b) “Legal defense costs” means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

(c) “Sudden accidental occurrence” means an occurrence which is not continuous or repeated in nature.

(8) “Substantial business relationship” means the extent of a business relationship necessary under applicable state statute to make a guarantee contract issued incident to that relationship valid and enforceable. A substantial business relationship shall arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the department.

**History:** CR 16–007; cr. Register July 2017 No. 739, eff. 8–1–17; correction

**NR 667.0142 Cost estimate for closure.** (1) The owner or operator shall have at the facility a detailed written estimate, in current dollars, of the cost of closing the facility according to the requirements in ss. NR 667.0111 to 667.0115 and applicable closure requirements in ss. NR 667.0176, 667.0201, and 667.1108.

(a) The estimate shall equal the cost of final closure at the point in the facility’s active life when the extent and manner of its operation would make closure the most expensive, as indicated by the closure plan (see s. NR 667.0112 (2)).

(b) The closure cost estimate shall be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in s. NR 667.0141 (4).)

(c) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes or non-hazardous wastes, facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

(d) The owner or operator may not incorporate a zero cost for hazardous wastes or non-hazardous wastes that might have economic value.

(2) During the active life of the facility, the owner or operator shall adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instruments used to comply with s. NR 667.0143. For owners and operators using the financial test or corporate guarantee, the closure cost estimate shall be updated for inflation within 30 days after the close of the firm’s fiscal year and before submission of updated information to the department as specified in s. NR 667.0143 (6) (b) 3. The adjustment may be made by recalculating the maximum costs of closure in current dollars or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross Domestic Product published by the U.S. department of commerce in its Survey of Current Business, as specified in pars. (a) and (b). The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

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

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

(3) During the active life of the facility, the owner or operator shall revise the closure cost estimate no later than 30 days after the department has approved the request to modify the closure plan, if the change in the closure plan increases the cost of closure. The revised closure cost estimate shall be adjusted for inflation as specified in sub. (2).

(4) The owner or operator shall keep the following at the facility during the operating life of the facility: The latest closure cost estimate prepared according to subs. (1) and (3) and, when this estimate has been adjusted according to sub. (2), the latest adjusted closure cost estimate.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

**NR 667.0143 Financial assurance for closure.** The owner or operator shall establish financial assurance for closure of each storage or treatment unit owned or operated. In establishing financial assurance for closure, the owner or operator shall choose from the financial assurance mechanisms in subs. (1) to (7). The owner or operator may also use a combination of mechanisms for a single facility if they meet the requirement in sub. (8), or may use a single mechanism for multiple facilities as in sub. (9). The department shall release the owner or operator from the requirements of this section after the owner or operator meets the criteria under sub. (10).

(1) CLOSURE TRUST FUND. Owners and operators can use the closure trust fund that is specified in s. NR 664.0143 (1) (a) and (b) and (f) to (k). The following provisions also apply:

(a) Payments into the trust fund for a new facility shall be made annually by the owner or operator over the remaining operating life of the facility as estimated in the closure plan, or over 3 years, whichever period is shorter. This period of time is hereafter referred to as the pay–in period.

(b) For a new facility, the first payment into the closure trust fund shall be made before the facility may accept the initial storage. A receipt from the trustee shall be submitted by the owner or operator to the department before this initial storage of waste. The first payment shall be at least equal to the current closure cost estimate, divided by the number of years in the pay–in period, except as provided in sub. (8) for multiple mechanisms. Subsequent payments shall be made no later than 30 days after each anniversary date of the first payment. The owner or operator determines the amount of each subsequent payment by subtracting the current value of the trust fund from the current closure cost estimate and dividing this difference by the number of years remaining in the pay–in period. Mathematically, the formula is  $\text{Next Payment} = (\text{Current Closure Estimate} - \text{Current Value of the Trust Fund}) \text{ Divided by Years Remaining in the Pay–in Period}$ .

(c) The owner or operator of a facility existing on August 1, 2017, may establish a trust fund to meet the financial assurance requirements in this section. If the value of the trust fund is less than the current closure cost estimate when a final approval of the license is granted for the facility, the owner or operator shall pay the difference into the trust fund within 60 days.

(d) The owner or operator may accelerate payments into the trust fund or deposit the full amount of the closure cost estimate when establishing the trust fund. However, the owner or operator shall maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in par. (b) or (c).

(e) The owner or operator shall submit a trust agreement with the wording specified in s. NR 664.0151 (1) (a).

(2) SURETY BOND GUARANTEEING PAYMENT INTO A CLOSURE TRUST FUND. Owners and operators can use the surety bond guaranteeing payment into a closure trust fund, as specified in s. NR 664.0143 (2), including the use of the surety bond instrument specified in s. NR 664.0151 (2) and the standby trust specified in s. NR 664.0143 (2) (c).

(3) SURETY BOND GUARANTEEING PERFORMANCE OF CLOSURE. Owners and operators can use the surety bond guaranteeing performance of closure, as specified in s. NR 664.0143 (3), the submission and use of the surety bond instrument specified in s. NR 664.0151 (3).

(4) CLOSURE LETTER OF CREDIT. Owners and operators can use the closure letter of credit specified in s. NR 664.0143 (4) and the submission and use of the irrevocable letter of credit instrument specified in s. NR 664.0151 (4).

(5) CLOSURE INSURANCE. Owners and operators can use closure insurance, as specified in s. NR 664.0143 (5), utilizing the certificate of insurance for closure specified s. NR 664.0151 (5).

(6) CORPORATE FINANCIAL TEST. An owner or operator that satisfies the requirements of this section may demonstrate financial assurance up to the amount specified in this subsection:

(a) *Financial component.* 1. The owner or operator shall satisfy one of the following three conditions:

a. A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's Investors Services.

b. A ratio of less than 1.5 comparing total liabilities to net worth.

c. A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities.

2. The tangible net worth of the owner or operator shall be greater than:

a. The sum of the current environmental obligations (see par. (b) 1. a.), including guarantees, covered by a financial test plus \$10 million, except as provided in subd. 2.

b. \$10 million in tangible net worth plus the amount of any guarantees that have not been recognized as liabilities on the financial statements provided all of the environmental obligations (see par. (b) 1. a.) covered by a financial test are recognized as liabilities on the owner's or operator's audited financial statements and subject to the approval of the department.

3. The owner or operator shall have assets located in the United States amounting to at least the sum of environmental obligations covered by a financial test as described in par. (b) 1. a.

(b) *Recordkeeping and reporting requirements.* 1. The owner or operator shall submit the following items to the department:

a. A letter signed by the owner's or operator's chief financial officer that lists all the applicable current types, amounts and sums of environmental obligations covered by a financial test. These obligations include liability, closure, post–closure, and corrective action cost estimates required for hazardous waste treatment, storage and disposal facilities under ss. NR 664.0101, 664.0142, 664.0144, 664.0147, 665.0142, 665.0144, and 665.0147. The letter shall also provide evidence demonstrating that the firm meets the conditions of either par. (a) 1. a. or b. or (a) 1. c. and 2. and 3.

b. A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements shall receive an unqualified opinion from the independent certified public accountant. An adverse opinion, disclaimer of opinion or other qualified opinion will be cause for disallowance, with the potential exception for qualified opinions provided in the next sentence. The department may evaluate qualified opinions on a case–by–case basis and allow use of the financial test in cases where the department deems that the matters which form the basis for the qualification are insufficient to warrant disallowing the test. If the department does not allow use of the test, the owner or operator shall provide alternate financial assurance that meets the requirements of this section within 30 days after the notification of disallowance.

c. If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies par. (a) 1. b. or c. that are different from data in the audited financial statements referred to in subd. 1. b. or any other audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison and the reasons for any differences.

d. If the chief financial officer's letter provides a demonstration that the firm has assured for environmental obligations as provided in par. (a) 2. b., then the letter shall include a report from the independent certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements, how these obligations have been measured and reported and that the tangible net worth of the firm is at least \$10 million plus the amount of any guarantees provided.

2. The owner or operator of a new facility shall submit the items specified in subd. 1. to the department at least 60 days before placing waste in the facility.

3. After the initial submission of items specified in subd. 1., the owner or operator shall send updated information to the department within 90 days following the close of the owner or operator's fiscal year. The department may provide up to an additional 45 days for an owner or operator who can demonstrate that 90 days is insufficient time to acquire audited financial statements. The updated information shall consist of all items specified in subd. 1.

4. The owner or operator is no longer required to submit the items specified in this paragraph or comply with the requirements of this section if either:

a. The owner or operator substitutes alternate financial assurance as specified in this section that is not subject to these record-keeping and reporting requirements.

b. The department releases the owner or operator from the requirements of this section, according to sub. (10).

5. An owner or operator who no longer meets the requirements of par. (a) may not use the financial test to demonstrate financial assurance. Instead an owner or operator who no longer meets the requirements of par. (a), shall:

a. Send notice to the department of intent to establish alternate financial assurance as specified in this section. The owner or operator shall send this notice by certified mail within 90 days following the close the owner or operator's fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements of this section.

b. Provide alternative financial assurance within 120 days after the end of such fiscal year.

6. The department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of par. (a), require at any time the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in this paragraph. If the department finds that the owner or operator no longer meets the requirements of par. (a), the owner or operator shall provide alternate financial assurance that meets the requirements of this section.

**(7) CORPORATE GUARANTEE.** (a) An owner or operator may meet the requirements of this section by obtaining a written guarantee. The guarantor shall be the direct or higher tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator or a firm with a substantial business relationship with the owner or opera-

tor. The guarantor shall meet the requirements for owners or operators in sub. (6) and shall comply with the terms of the guarantee. The wording of the guarantee shall be identical to the wording in s. NR 664.0151 (8). The certified copy of the guarantee shall accompany the letter from the guarantor's chief financial officer and accountants' opinions. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter from the guarantor's chief financial officer shall describe the value received in consideration of the guarantee. If the guarantor is a firm with a substantial business relationship with the owner or operator, this letter shall describe this substantial business relationship and the value received in consideration of the guarantee.

(b) For a new facility, the guarantee shall be effective and the guarantor shall submit the items in par. (a) and the items specified in sub. (6) (b) 1. to the department at least 60 days before the owner or operator places waste in the facility.

(c) The terms of the guarantee shall provide that:

1. If the owner or operator fails to perform closure at a facility covered by the guarantee, the guarantor shall either:

a. Perform or pay a third party to perform closure (performance guarantee).

b. Establish a fully funded trust fund as specified in sub. (1) (a) in the name of the owner or operator (payment guarantee)

2. The guarantee shall remain in force for as long as the owner or operator is required to comply with the applicable financial assurance requirements of this subchapter unless the guarantor sends prior notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the department as evidenced by the return receipts.

3. If notice of cancellation is given, the owner or operator shall, within 90 days following receipt of the cancellation notice by the owner or operator and the department, obtain alternate financial assurance and submit documentation for that alternate financial assurance to the department. If the owner or operator fails to provide alternate financial assurance and obtain the written approval of such alternative assurance from the department within the 90-day period, the guarantor shall provide that alternate assurance in the name of the owner or operator and submit the necessary documentation for the alternative assurance to the department within 120 days of the cancellation notice.

4. If a corporate guarantor no longer meets the requirements of sub. (6) (a), the owner or operator shall, within 90 days, obtain alternative assurance and submit the assurance to the department for approval. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor shall provide that alternate assurance within the next 30 days and submit it to the department for approval.

5. The guarantor is no longer required to meet the requirements of this section when either:

a. The owner or operator substitutes alternate financial assurance as specified in this section.

b. The owner or operator is released from the requirements of this section according to sub. (10).

**(8) USE OF MULTIPLE FINANCIAL MECHANISMS.** An owner or operator may use more than one mechanism at a particular facility to satisfy the requirements of this section. The acceptable mechanisms are trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, insurance, the financial test, and the guarantee, except owners or operators cannot combine the financial test with the guarantee. The mechanisms shall be as specified in subs. (1), (2), (4), (5), (6), and (7) respectively, except it is the combination of mechanisms rather than a single mechanism that shall provide assurance for an amount at least equal to the cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or letter of credit, the owner or operator may use the trust fund as the standby trust for the other mechanisms.

A single trust fund may be established for 2 or more mechanisms. The department may use any or all of the mechanisms to provide for closure of the facility.

**(9) USE OF A FINANCIAL MECHANISM FOR MULTIPLE FACILITIES.** An owner or operator may use a financial mechanism for multiple facilities, as specified in s. NR 664.0143 (8).

**(10) RELEASE OF THE OWNER OR OPERATOR FROM THE REQUIREMENTS OF THIS SECTION.** Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the department shall notify the owner or operator in writing that the owner or operator is no longer required by this section to maintain financial assurance for final closure of the facility, unless the department has reason to believe that final closure has not been completed in accordance with the approved closure plan. The department shall provide the owner or operator with a detailed written statement of any such reasons to believe that closure has not been conducted in accordance with the approved closure plan.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17; correction in (7) (c) 5. b. made under s. 35.17, Stats., Register July 2017 No. 739.

**NR 667.0147 Liability requirements. (1) COVERAGE FOR SUDDEN ACCIDENTAL OCCURRENCES.** An owner or operator of a hazardous waste treatment or storage facility, or a group of such facilities, shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for sudden accidental occurrences in the amount of at least one million dollars per occurrence with an annual aggregate of at least \$2,000,000, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in pars. (a) to (g):

(a) *Trust fund for liability coverage.* An owner or operator may meet the requirements of this section by obtaining a trust fund for liability coverage as specified in s. NR 664.0147 (10).

(b) *Surety bond for liability coverage.* An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in s. NR 664.0147 (9).

(c) *Letter of credit for liability coverage.* An owner or operator may meet the requirements of this section by obtaining a letter of credit for liability coverage as specified in s. NR 664.0147 (8).

(d) *Insurance for liability coverage.* An owner or operator may meet the requirements of this section by obtaining liability insurance as specified in s. NR 664.0147 (1) (a).

(e) *Financial test for liability coverage.* An owner or operator may meet the requirements of this section by passing a financial test as specified in sub. (6).

(f) *Guarantee for liability coverage.* An owner or operator may meet the requirements of this section by obtaining a guarantee as specified in sub. (7).

(g) *Combination of mechanisms.* An owner or operator may demonstrate the required liability coverage through the use of combinations of mechanisms as allowed by s. NR 664.0147 (1) (f).

(h) An owner or operator shall notify the department in writing within 30 days whenever any of the following occurs:

1. A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in pars. (a) to (g).

2. A certification of valid claim for bodily injury or property damages caused by a sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under pars. (a) to (g).

3. A final court order establishing a judgment for bodily injury or property damage caused by a sudden accidental occur-

rence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance.

**(5) PERIOD OF COVERAGE.** Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed according to the approved closure plan, the department shall notify the owner or operator in writing that the owner or operator is no longer required by this section to maintain liability coverage from that facility, unless the department has reason to believe that closure has not been in accordance with the approved closure plan.

**(6) FINANCIAL TEST FOR LIABILITY COVERAGE.** An owner or operator that satisfies the requirements of this subsection may demonstrate financial assurance for liability up to the amount specified in this subsection.

(a) *Financial component.* 1. If using the financial test for only liability coverage, the owner or operator shall have tangible net worth greater than the sum of the liability coverage to be demonstrated by this test plus \$10,000,000.

2. The owner or operator shall have assets located in the United States amounting to at least the amount of liability covered by this financial test.

3. An owner or operator who is demonstrating coverage for liability and any other environmental obligations, including closure under s. NR 667.0143 (6), through a financial test shall meet the requirements of s. NR 667.0143 (6).

(b) *Recordkeeping and reporting requirements.* 1. The owner or operator shall submit the following items to the department:

a. A letter signed by the owner's or operator's chief financial officer that provides evidence demonstrating that the firm meets the conditions of par. (a) 1. and 2. If the firm is providing only liability coverage through a financial test for a facility or facilities with a license under this chapter, the letter should use the wording in s. NR 667.0151 (2). If the firm is providing only liability coverage through a financial test for facilities regulated under this chapter and also ch. NR 664 or 665, it shall use the letter in s. NR 664.0151 (7). If the firm is providing liability coverage through a financial test for a facility or facilities with a license under this chapter, and it assures closure costs or any other environmental obligations through a financial test, it shall use the letter in s. NR 667.0151 (1) for the facilities issued a license under this chapter.

b. A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements shall receive an unqualified opinion from the independent certified public accountant. An adverse opinion, disclaimer of opinion or other qualified opinion will be cause for disallowance, with the potential exception for qualified opinions provided in the next sentence. The department may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the department deems that the matters which form the basis for the qualification are insufficient to warrant disallowance of the test. If the department does not allow use of the test, the owner or operator shall provide alternate financial assurance that meets the requirements of this section within 30 days after the notification of disallowance.

c. If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies pars. (a) 1. and 2. that are different from data in the audited financial statements referred to in subd. 1. b. or any other audited financial statement or data filed with the Securities and Exchange Commission, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures engagement according to professional auditing standards and shall describe the procedures per-

formed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences

2. The owner or operator of a new facility shall submit the items specified in subd. 1. to the department at least 60 days before placing waste in the facility.

3. After the initial submission of items specified in subd. 1., the owner or operator shall send updated information to the department within 90 days following the close of the owner or operator's fiscal year. The department may provide up to an additional 45 days for an owner or operator who can demonstrate that 90 days is insufficient time to acquire audited financial statements. The updated information shall consist of all items specified in subd. 1.

4. The owner or operator is no longer required to submit the items specified in this paragraph or comply with the requirements of this paragraph when either:

a. The owner or operator substitutes alternate financial assurance as specified in this section that is not subject to these record-keeping and reporting requirements.

b. The department releases the owner or operator from the requirements of this section in accordance with s. NR 667.0143 (10).

5. An owner or operator who no longer meets the requirements of par. (a) may not use the financial test to demonstrate financial assurance. An owner or operator who no longer meets the requirements of par. (a) shall:

a. Send notice to the department of intent to establish alternate financial assurance as specified in this section. The owner or operator shall send this notice by certified mail within 90 days following the close of the owner or operator's fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements of this section.

b. Provide alternative financial assurance within 120 days after the end of such fiscal year.

6. The department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of par. (a), require at any time the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in this paragraph. If the department finds that the owner or operator no longer meets the requirements of par. (a), the owner or operator shall provide alternate financial assurance that meets the requirements of this section.

**(7) GUARANTEE FOR LIABILITY COVERAGE.** (a) Subject to par. (b) of this section, an owner or operator may meet the requirements of this section by obtaining a written guarantee, hereinafter referred to as guarantee. The guarantor shall be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator or a firm with a substantial business relationship with the owner or operator. The guarantor shall meet the requirements for owners or operators in sub. (6) (a) and (b). The wording of the guarantee shall be identical to the wording specified in s. NR 664.0151 (8) (b). A certified copy of the guarantee shall accompany the items sent to the department as specified in sub. (6) (b). One of these items shall be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter shall describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter shall describe this "substan-

tial business relationship" and the value received in consideration of the guarantee. If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden accidental occurrences arising from the operation guarantee or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor shall do so up to the limits of coverage.

(b) 1. In the case of corporations incorporated in the United States, a guarantee may be used to satisfy the requirements of this section only if the Attorneys General or Insurance Commissioners of the state in which the guarantor is incorporated, and each state in which a facility covered by the guarantee is located, have submitted a written statement to the department that a guarantee executed as described in this section and s. NR 664.0151 (8) (b) is a legally valid and enforceable obligation in that state.

2. In the case of corporations incorporated outside the United States, a guarantee may be used to satisfy the requirements of this section only if:

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

b. The Attorney General or Insurance Commissioner of each state in which a facility covered by the guarantee is located and the state in which the guarantor corporation has its principal place of business, has submitted a written statement to the department that a guarantee executed as described in this section and s. NR 664.0151 (8) (b) is a legally valid and enforceable obligation in that state.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17; correction in (6) (b) 1. a., c. made under s. 35.17, Stats., and correction in (6) (b) 4. b., (7) made under s. 13.92 (4) (b) 7, Stats., Register July 2017 No. 739; **correction in (6) (b) 4. b. made under s. 13.92 (4) (b) 7., Stats., Register December 2018 No. 756.**

**NR 667.0148 Incapacity of owners or operators, guarantors or financial institutions.** (1) An owner or operator shall notify the department by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 of the United States Code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding. A guarantor of a corporate guarantee as specified in ss. NR 667.0143 (7) and 667.0147 (7) shall make such a notification if the guarantor is named as debtor, as required under the terms of the corporate guarantee (s. NR 664.0151 (8)).

(2) An owner or operator who fulfills the requirements of s. NR 667.0143 or 667.0147 by obtaining a trust fund, surety bond, letter of credit or insurance policy shall be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, letter of credit or insurance policy to issue the instruments. The owner or operator shall establish other financial assurance or liability coverage within 60 days after such an event.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

**NR 667.0151 Wording of the Instruments.** (1) The chief financial officer of an owner or operator of a facility with a standardized license who uses a financial test to demonstrate financial assurance for that facility shall complete a letter as specified in s. NR 667.0143 (6). The letter shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance for closure costs, as specified in subch. H of ch. NR 667, Wis. Adm. Code. This firm qualifies for the financial test on the basis of having [insert "a current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's Investors Services" or "a ratio of less than 1.50 comparing total liabilities to net worth" or "a ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities."] This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year. The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date]. [If this firm qualifies on the basis of its bond rating, fill in the requested information: "This firm has a rating of its senior unsecured debt of" [insert the bond rating] "from" [insert "Standard and Poor's" or "Moody's"]. Complete Line 1. Total Liabilities below and then skip the remaining questions in the next section and resume completing the form at the section entitled *Obligations Covered by a Financial Test or Corporate Guarantee*.] [If this firm qualifies for the financial test on the basis of its ratio of liabilities to net worth, or sum of income, depreciation, depletion and amortization to net worth, please complete the following section.]

- \*1. Total Liabilities \$ \_\_\_\_\_
- \*2. Net Worth \$ \_\_\_\_\_
- \*3. Net Income \$ \_\_\_\_\_
- \*4. Depreciation \$ \_\_\_\_\_
- 5. Depletion (if applicable) \$ \_\_\_\_\_
- \*6. Amortization \$ \_\_\_\_\_
- \*7. Sum of Lines 3, 4, 5 & 6 \$ \_\_\_\_\_

[If the above figures are taken directly from the most recent audited financial statements for this firm insert "The above figures are taken directly from the most recent audited financial statements for this firm." If they are not, insert "The following items are not taken directly from the firms most recent audited financial statements" [insert the numbers of the items and attach an explanation of how they were derived.]

[Complete the following calculations]

- 8. Line 1 ÷ Line 2 = \_\_\_\_\_
- 9. Line 7 ÷ Line 1 = \_\_\_\_\_
- Is Line 8 less than 1.5?      \_\_\_ Yes      \_\_\_ No
- Is Line 9 greater than 0.10?      \_\_\_ Yes      \_\_\_ No

[If you did not answer Yes to either of these two questions, you cannot use the financial test and need not complete this letter. Instead, you shall notify the department for the facility that you intend to establish alternate financial assurance as specified in s. NR 667.0143. The owner or operator shall send this notice by certified mail within 90 days following the close of the owner or operator's fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements of this section. The owner or operator shall also provide alternative financial assurance within 120 days after the end of such fiscal year.]

*Obligations Covered by a Financial Test or Corporate Guarantee*

[On the following lines list all obligations that are covered by a financial test or a corporate guarantee extended by your firm. You may add additional lines and leave blank entries that do not apply to your situation.]

Hazardous Waste Facility Name and ID	State	Closure	Long-Term Care	Corrective Action
_____	_____	\$ _____	\$ _____	\$ _____
_____				

	State	Closure	Long- Term Care	Corrective Action
Hazardous Waste Third Party Liability Municipal Waste Facilities	_____	\$ _____	\$ _____	\$ _____
_____	_____			
Petroleum Underground Storage Tanks	_____	\$ _____		
PCB Storage Facility Name	_____	\$ _____		

Any financial assurance required under, or as part of an action undertaken under, the Comprehensive Environmental Response, Compensation and Liability Act.

Site name

\_\_\_\_\_

Any other environmental obligations that are assured through a financial test.

Name	Amount
_____	\$ _____
*10. Total of all amounts	\$ _____
*11. Line 10 + \$10,000,000 =	\$ _____
*12. Total Assets	\$ _____
*13. Intangible Assets	\$ _____
*14. Tangible Assets (Line 12-Line 13)	\$ _____
*15. Tangible Net Worth (Line 14-Line 1)	\$ _____
*16. Assets in the United States	\$ _____
Is Line 15 greater than Line 11?	___Yes ___No
Is Line 16 no less than Line 10?	___Yes ___No

[You must be able to answer Yes to both of these questions to use the financial test for this facility.]

I hereby certify that the wording of this letter is identical to the wording specified in s. NR 667.0151 as such rules were constituted on the date shown immediately below.

[Signature] \_\_\_\_\_  
 [Name] \_\_\_\_\_  
 [Title] \_\_\_\_\_  
 [Date] \_\_\_\_\_

[After completion, send a signed copy of the form to the department. In addition, send a signed copy to every authority who (1) requires a demonstration through a financial test for each of the other obligations in the letter that are assured through a financial test, or (2) accepts a guarantee for an obligation listed in this letter.]

**(2)** The chief financial officer of an owner or operator of a facility with a standardized license who uses a financial test to demonstrate financial assurance only for third party liability for that (or other standardized license) facility or facilities shall complete a letter as specified in s. NR 667.0147 (6). The letter shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance for third party liability, as specified in [insert "subchapter H of 40 CFR part 267" or the citation to the corresponding state regulation]. This firm qualifies for the financial test on the basis of having tangible net worth of at least \$10 million more than the amount of liability coverage and assets in the United States of at least the amount of liability coverage. This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year. The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Please complete the following section.]

\*1. Total assets \$ \_\_\_\_\_

\*2. Intangible Assets \$ \_\_\_\_\_

\*3. Tangible Assets  
(Line 1-Line 2) \$ \_\_\_\_\_

4. Total Liabilities \$ \_\_\_\_\_

5. Tangible Net Worth  
(Line 3-Line 4) \$ \_\_\_\_\_

\*6. Assets in the United States \$ \_\_\_\_\_

7. Amount of liability coverage \$ \_\_\_\_\_

Is Line 5 At least \$10,000,000 greater than Line 7? \_\_\_Yes \_\_\_No

Is Line 6 at least equal to Line 7? \_\_\_Yes \_\_\_No

[You must be able to answer Yes to both of these questions to use the financial test for this facility.]

I hereby certify that the wording of this letter is identical to the wording specified in s. NR 667.0151 as such rules were constituted on the date shown immediately below.

[Signature] \_\_\_\_\_

[Name] \_\_\_\_\_

[Title] \_\_\_\_\_

[Date] \_\_\_\_\_

[After completion, send a signed copy of the form to the department.]

**History:** CR 16-007: cr. Register July 2017 No. 739, eff. 8-1-17; correction in (2) made under s. 35.17, Stats., Register July 2017 No. 739.

**Subchapter I — Use and Management of Containers**

**NR 667.0170 Does this subchapter apply to me?**

This subchapter applies to you if you own or operate a facility that treats or stores hazardous waste in containers under a subch. J of ch. NR 667 standardized license, except as provided in s. NR 667.0001 (2).

**History:** CR 16-007: cr. Register July 2017 No. 739, eff. 8-1-17; correction made under s. 35.17, Stats., Register July 2017 No. 739.

**NR 667.0171 What standards apply to the containers?** Standards apply to the condition of the containers, to the compatibility of waste with the containers and to the management of the containers.

**(1) CONDITION OF CONTAINERS.** If a container holding hazardous waste is not in good condition (for example, it exhibits severe rusting or apparent structural defects) or if it begins to leak, you shall either:

(a) Transfer the hazardous waste from this container to a container that is in good condition.

(b) Manage the waste in some other way that complies with the requirements of this section.

**(2) COMPATIBILITY OF WASTE WITH CONTAINERS.** To ensure that the ability of the container to contain the waste is not impaired, use a container made of or lined with materials that are compatible and will not react with the hazardous waste to be stored.

**(3) MANAGEMENT OF CONTAINERS.** (a) Always keep a container holding hazardous waste closed during storage, except when you add or remove waste.

(b) Do not open, handle or store a container holding hazardous waste in a manner that may rupture the container or cause it to leak.

**History:** CR 16-007: cr. Register July 2017 No. 739, eff. 8-1-17.

**NR 667.0172 What are the inspection requirements?** At least weekly, inspect areas where you store containers, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.

**History:** CR 16-007: cr. Register July 2017 No. 739, eff. 8-1-17.

**NR 667.0173 What standards apply to the container storage areas?** (1) Design and operate a containment system for your container storage areas according to the requirements in sub. (2), except as otherwise provided by sub. (3)

**(2)** The design and operating requirements for a containment system are:

(a) A base shall underlie the containers that is free of cracks or gaps and is sufficiently impervious to contain leaks, spills and accumulated precipitation until the collected material is detected and removed.

(b) The base shall be sloped, or the containment system shall be otherwise designed and operated to drain and remove liquids



resulting from leaks spills, or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids.

(c) The containment system shall have sufficient capacity to contain 10% of the volume of containers, or the volume of the largest container, whichever is greater. This requirement does not apply to containers that do not contain free liquids.

(d) Prevent run–on into the containment system unless the collection system has sufficient excess capacity, in addition to that required in par. (c), to contain the liquid.

(e) Remove any spilled or leaked waste and accumulated precipitation from the sump or collection area as promptly as is necessary to prevent overflow of the collection system.

(3) Except as provided in sub. (4), you do not need a containment system as defined in sub. (2) for storage areas that store containers holding only wastes with no free liquids, if either:

(a) The storage area is sloped or is otherwise designed and operated to drain and remove liquid resulting from precipitation.

(b) The containers are elevated or are otherwise protected from contact with accumulated liquid.

(4) You shall have a containment system defined by sub. (2) for storage areas that store containers holding FO20, FO21, FO22, FO23, FO26, and FO27 wastes, even if the wastes do not contain free liquids.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

**NR 667.0174 What special requirements shall I meet for ignitable or reactive waste?** Locate containers holding ignitable or reactive waste at least 15 meters (50 feet) from your facility property line. Follow the general requirements for ignitable or reactive wastes that are specified in s. NR 667.0017 (1).

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

**NR 667.0175 What special requirements shall I meet for incompatible wastes?** (1) You may not place incompatible wastes, or incompatible wastes and materials (see ch. NR 664 Appendix V for examples), in the same container, unless you comply with s. NR 667.0017 (2).

(2) You may not place hazardous waste in an unwashed container that previously held an incompatible waste or material.

(3) Separate a storage container holding a hazardous waste that is incompatible with any waste or with other materials stored nearby in other containers, piles, open tanks or surface impoundments from the other materials, or protect the containers by means of a dike, berm, wall or other device.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17; correction in (1) made under s. 35.17, Stats., Register July 2017 No. 739.

**NR 667.0176 What shall I do when I want to stop using the containers?** Remove all hazardous waste and hazardous waste residues from the containment system. Decontaminate or remove remaining containers, liners, bases, and soil containing, or contaminated with, hazardous waste, or hazardous waste residues.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

**NR 667.0177 What air emission standards apply?** Manage all hazardous waste placed in a container according to the requirements of subchs. AA, BB, and CC of ch. NR 664. Under a standardized license, the following control devices are permissible: Thermal vapor incinerator, catalytic vapor incinerator, flame, boiler, process heater, condenser and carbon absorption unit.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

## Subchapter J — Tank Systems

**NR 667.0190 Does this subchapter apply to me?** This subchapter applies to you if you own or operate a facility that treats or stores hazardous waste in above–ground or on–ground

tanks under a subch. J of ch. NR 667 standardized license, except as provided in s. NR 667.0001 (2).

(1) You do not have to meet the secondary containment requirements in s. NR 667.0195 if your tank systems do not contain free liquids and are situated inside a building with an impermeable floor. You shall demonstrate the absence or presence of free liquids in the stored or treated waste, using Method 9095B (Paint Filter Liquids Test) as described in “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” EPA Publication SW–846, as incorporated by reference in s. NR 660.11.

(2) You do not have to meet the secondary containment requirements of s. NR 667.0195 (1) if your tank system, including sumps, as defined in s. NR 660.10, is part of a secondary containment system to collect or contain releases of hazardous wastes.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17; corrections in (intro.) made under ss. 13.92 (4) (b) 7., and 35.17, Stats., Register July 2017 No. 739.

**NR 667.0191 What are the required design and construction standards for new tank systems or components?** Ensure that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste or wastes to be stored or treated and corrosion protection to ensure that it will not collapse, rupture, or fail. Obtain a written assessment, reviewed and certified by a qualified professional engineer, following s. NR 670.011 (4), attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. This assessment shall include, at a minimum, the following information:

(1) Design standards for the construction of tank or tanks and any ancillary equipment.

(2) Hazardous characteristics of the waste or wastes to be handled.

(3) For new tank systems or components in which the external shell of a metal tank or any external metal component of the tank system will be in contact with the soil or with water, a determination by a corrosion expert of:

(a) Factors affecting the potential for corrosion, such as:

1. Soil moisture content.

2. Soil pH.

3. Soil sulfides level.

4. Soil resistivity.

5. Structure to soil potential.

6. Existence of stray electric current.

7. Existing corrosion–protection measures (for example, coating, cathodic protection).

(b) The type and degree of external corrosion protection needed to ensure the integrity of the tank system during the use of the tank system or component, consisting of one or more of the following:

1. Corrosion–resistant materials of construction such as special alloys and fiberglass reinforced plastic.

2. Corrosion–resistant coating (such as epoxy and fiberglass) with cathodic protection (for example, impressed current or sacrificial anodes).

3. Electrical isolation devices such as insulating joints and flanges.

(4) Design considerations to ensure that:

(a) Tank foundations will maintain the load of a full tank.

(b) Tank systems will be anchored to prevent flotation or dislodgement where the tank system is placed in a saturated zone, or is located within a seismic fault zone subject to the standards of s. NR 667.0018.

(c) Tank systems will withstand the effects of frost heave.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17; correction in (4) (b) made under ss. 13.92 (4) (b) 7. and 35.17, Stats., Register July 2017 No. 739.

**NR 667.0192 What handling and inspection procedures shall I follow during installation of new tank systems?**

**(1)** Ensure that you follow proper handling procedures to prevent damage to a new tank system during installation. Before placing a new tank system or component in use, an independent, qualified installation inspector or an independent, qualified, registered professional engineer, either of whom is trained and experienced in the proper installation of tank systems or components shall inspect the system for the presence of any of the following items:

- (a) Weld breaks.
- (b) Punctures.
- (c) Scrapes of protective coatings.
- (d) Cracks.
- (e) Corrosion.
- (f) Other structural damage or inadequate construction or installation.

**(2)** Remedy all discrepancies before the tank system is placed in use.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

**NR 667.0193 What testing shall I do?** Test all new tanks and ancillary equipment for tightness before you place them in use. If you find a tank system that is not tight, perform all repairs necessary to remedy the leak or leaks in the system before you cover, enclose or place the tank system into use.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

**NR 667.0194 What installation requirements shall I follow?** **(1)** Support and protect ancillary equipment against physical damage and excessive stress due to settlement, vibration, expansion or contraction.

**(2)** Provide the type and degree of corrosion protection recommended by an independent corrosion expert, based on the information provided under s. NR 667.0191 (3), to ensure the integrity of the tank system during use of the tank system. An independent corrosion expert shall supervise the installation of a corrosion protection system that is field fabricated to ensure proper installation.

**(3)** Obtain and keep at the facility written statements by those persons required to certify the design of the tank system and to supervise the installation of the tank system as required in subs. (1) and (2) and ss. NR 667.0192 and 667.0193. The written statement shall attest that the tank system was properly designed and installed and that you made repairs under ss. NR 667.0192 and 667.0193. These written statements shall also include the certification statement as required in s. NR 670.011 (4).

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17; correction in (3) made under s. 35.17, Stats., Register July 2017 No. 739.

**NR 667.0195 What are the secondary containment requirements?** To prevent the release of hazardous waste or hazardous constituents to the environment, provide secondary containment that meets the requirements of this section for all new and existing tank systems.

**(1)** Secondary containment systems shall be:

(a) Designed, installed and operated to prevent any migration of wastes or accumulated liquid out of the system to the soil, groundwater, or surface water at any time during the use of the tank system.

(b) Capable of detecting and collecting releases and accumulated liquids until the collected material is removed.

**(2)** To meet the requirements of sub. (1), secondary containment systems shall be, at a minimum:

(a) Constructed of or lined with materials that are compatible with the waste or wastes to be placed in the tank system and shall have sufficient strength and thickness to prevent failure owing to pressure gradients (including static head and external hydrologi-

cal forces), physical contact with the waste to which it is exposed, climatic conditions and the stress of daily operation (including stresses from nearby vehicular traffic).

(b) Placed on a foundation or base capable of providing support to the secondary containment system, resistance to pressure gradients above and below the system and capable of preventing failure due to settlement, compression, or uplift.

(c) Provided with a leak–detection system that is designed and operated so that it will detect the failure of either the primary or secondary containment structure or the presence of any release of hazardous waste or accumulated liquid in the secondary containment system within 24 hours.

(d) Sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. Remove spilled or leaked waste and accumulated precipitation from the secondary containment system within 24 hours, or as promptly as possible, to prevent harm to human health and the environment.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

**NR 667.0196 What are the required devices for secondary containment and what are their design, operating and installation requirements?** **(1)** Secondary containment for tanks shall include one or more of the following:

(a) A liner (external to the tank).

(b) A double–walled tank.

(c) An equivalent device. Maintain documentation of equivalency at the facility.

**(2)** External liner systems shall be:

(a) Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary.

(b) Designed or operated to prevent run–on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run–on or infiltration. The additional capacity shall be sufficient to contain precipitation from a 25–year, 24–hour rainfall event.

(c) Free of cracks or gaps.

(d) Designed and installed to surround the tank completely and to cover all surrounding earth likely to come into contact with the waste if the waste is released from the tank or tanks (that is, capable of preventing lateral as well as vertical migration of the waste).

**(3)** Double–walled tanks shall be:

(a) Designed as an integral structure (that is, an inner tank completely enveloped within an outer shell) so that any release from the inner tank is contained by the outer shell.

(b) Protected, if constructed of metal, from both corrosion of the primary tank interior and of the external surface of the outer shell.

(c) Provided with a built–in continuous leak detection system capable of detecting a release within 24 hours.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

**NR 667.0197 What are the requirements for ancillary equipment?** Provide ancillary equipment with secondary containment (for example, trench, jacketing double–walled piping) that meets the requirements of s. NR 667.0195, except for:

**(1)** Above ground piping (exclusive of flanges, joints, valves, and other connections) that are visually inspected for leaks on a daily basis.

**(2)** Welded flanges, welded joints, and welded connections that are visually inspected for leaks on a daily basis.

**(3)** Seal less or magnetic coupling pumps and seal less valves, that are visually inspected for leaks on a daily basis.

**(4)** Pressurized above ground piping systems with automatic shut–off devices (for example, excess flow check valves, flow

metering shutdown devices, loss of pressure actuated shut-off devices) that are visually inspected for leaks on a daily basis.

**History:** CR 16-007: cr. Register July 2017 No. 739, eff. 8-1-17.

**NR 667.0198 What are the general operating requirements for my tank systems?** (1) You may not place hazardous wastes or treatment reagents in a tank system if they could cause the tank, its ancillary equipment or the containment system to rupture, leak, corrode, or otherwise fail.

(2) Use appropriate controls and practices to prevent spills and overflows from tank or containment systems. These include, at a minimum:

(a) Spill prevention controls (for example, check valves, dry disconnect couplings).

(b) Overfill prevention controls (for example, level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standby tank).

(c) Sufficient freeboard in uncovered tanks to prevent overtopping by wave or wind action or by precipitation.

(3) Comply with the requirements of s. NR 667.0200 if a leak or spill occurs in the tank system.

**History:** CR 16-007: cr. Register July 2017 No. 739, eff. 8-1-17.

**NR 667.0199 What inspection requirements shall I meet?** Comply with the following requirements for scheduling, conducting, and documenting inspections.

(1) Develop and follow a schedule and procedure for inspecting overfill controls.

(2) Inspect at least once each operating day:

(a) Aboveground portions of the tank system to detect corrosion or releases of waste.

(b) Data gathered from monitoring and leak detection equipment (for example, pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design.

(c) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (for example, dikes) to detect erosion or signs of releases of hazardous waste (for example, wet spots, dead vegetation).

(3) Inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:

(a) Confirm that the cathodic protection system is operating properly within six months after initial installation and annually thereafter.

(b) Inspect or test all sources of impressed current, as appropriate, at least every other month.

(4) Document, in the operating record of the facility, an inspection of those items in subs. (1) to (3).

**History:** CR 16-007: cr. Register July 2017 No. 739, eff. 8-1-17.

**NR 667.0200 What shall I do in case of a leak or a spill?** If there has been a leak or a spill from a tank system or secondary containment system, or if either system is unfit for use, remove the system from service immediately and satisfy the following requirements:

(1) Immediately stop the flow of hazardous waste into the tank system or secondary containment system and inspect the system to determine the cause of the release.

(2) Remove the waste from the tank system or secondary containment system.

(a) If the release was from the tank system, within 24 hours after detecting the leak, remove as much of the waste as is necessary to prevent further release of hazardous waste to the environment and to allow inspection and repair of the tank system to be performed.

(b) If the material released was to a secondary containment system, remove all released materials within 24 hours or as quickly as possible to prevent harm to human health and the environment.

(3) Immediately conduct a visual inspection of the release and, based upon that inspection:

(a) Prevent further migration of the leak or spill to soils or surface water.

(b) Remove, and properly dispose of, any visible contamination of the soil or surface water.

(4) Report any release to the environment, except as provided in par. (a) to the department within 24 hours of its detection. If you have reported the release pursuant to ch. NR 706, that report will satisfy this requirement.

(a) You need not report on a leak or spill of hazardous waste if it is:

1. Less than or equal to a quantity of one pound; and

2. Immediately contained and cleaned up.

(b) Within 30 days of detection of a release to the environment, submit a report to the department containing the following information:

1. The likely route of migration of the release.

2. The characteristics of the surrounding soil (soil composition, geology, hydrogeology, climate).

3. The results of any monitoring or sampling conducted in connection with the release (if available). If sampling or monitoring data relating to the release are not available within 30 days, submit these data to the department as soon as they become available.

4. The proximity to down gradient drinking water, surface water, and populated areas.

5. A description of response actions taken or planned.

(5) Either close the system or make necessary repairs.

(a) Unless you satisfy the requirements of pars. (b) and (c), close the tank system according to s. NR 667.0201.

(b) If the cause of the release was a spill that has not damaged the integrity of the system, you may return the system to service as soon as you remove the released waste and make any necessary repairs.

(c) If the cause of the release was a leak from the primary tank system into the secondary the secondary containment system, you shall repair the system before returning the tank system to service.

(6) If you have made extensive repairs to a tank system in accordance with sub. (5) (for example, installation of an internal liner or repair of a ruptured primary containment or secondary containment vessel), you may not return the tank system to service unless the repair is certified by a qualified professional engineer in accordance with s. NR 670.011 (4).

(a) The engineer shall certify that the repaired system is capable of handling hazardous wastes without release for the intended life of the system.

(b) You shall submit this certification to the department within seven days after returning the tank system to use.

**History:** CR 16-007: cr. Register July 2017 No. 739, eff. 8-1-17.

**NR 667.0201 What shall I do when I stop operating the tank system?** When you close a tank system, remove or decontaminate all waste residues, contaminated containment system components (for example, liners), contaminated soils and structures and equipment contaminated with waste, and manage them as hazardous waste, unless s. NR 661.03 (4) applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for tank systems shall meet all of the requirements specified in subchs. G and H.

**History:** CR 16-007: cr. Register July 2017 No. 739, eff. 8-1-17.

**NR 667.0202 What special requirements shall I meet for ignitable or reactive wastes? (1)** You may not place ignitable or reactive waste in tank systems, unless:

(a) You treat, render, or mix the waste before or immediately after placement in the tank system so that:

1. You comply with s. NR 667.0017 (2).
2. The resulting waste, mixture or dissolved material no longer meets the definition of ignitable or reactive waste under s. NR 661.21 or 661.23.

(b) You store or treat the waste in such a way that it is protected from any material or conditions that may cause the waste to ignite or react.

(c) You use the tank system solely for emergencies.

**(2)** If you store or treat ignitable or reactive waste in a tank, comply with the requirements for the maintenance of protective distances between the waste management area and any public ways, streets, alleys or an adjoining property line that can be built upon as required in Tables 2–1 to 2–6 of the National Fire Protection Association’s “Flammable and Combustible Liquids Code,” (1977 or 1981), as incorporated by reference in s. NR 660.11.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

**NR 667.0203 What special requirements shall I meet for incompatible wastes? (1)** You may not place incompatible wastes, or incompatible wastes and materials, in the same tank system, unless you comply with s. NR 667.0017 (2).

**(2)** You may not place hazardous waste in a tank system that has not been decontaminated and that previously held an incompatible waste or material, unless you comply with s. NR 667.0017 (2).

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

**NR 667.0204 What air emission standards apply?** Manage all hazardous waste placed in a tank following the requirements of subchs. AA, BB, and CC of ch. NR 664. Under a standardized license, the following control devices are permissible: Thermal vapor incinerator, catalytic vapor incinerator, flame, boiler, process heater, condenser, and carbon absorption unit.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

## Subchapter DD — Containment Buildings

**NR 667.1100 Does this subchapter apply to me?** This subchapter applies to you if you own or operate a facility that treats or stores hazardous waste in containment buildings under a subch. J of ch. NR 667 standardized license, except as provided in s. NR 667.0001 (2). Storage or treatment in your containment building is not land disposal as defined in s. NR 668.02 if your unit meets the requirements of ss. NR 667.1101, 667.1102, and 667.1103.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17; correction made under s. 35.17, Stats., Register July 2017 No. 739.

**NR 667.1101 What design and operating standards shall my containment building meet?** Comply with the design and operating standards in this section. The department shall consider standards established by professional organizations generally recognized by the industry such as the American Concrete Institute (ACI) and the American Society of Testing Materials (ASTM) in judging the structural integrity requirements of this section.

**(1)** The containment building shall be completely enclosed with a floor, walls, and a roof to prevent exposure to the elements, (for example, precipitation, wind, run-on), and to assure containment of managed wastes.

**(2)** The floor and containment walls of the unit, including the secondary containment system, if required under s. NR 667.1103, shall be designed and constructed of manmade materials of sufficient strength and thickness to:

(a) Support themselves, the waste contents, and any personnel and heavy equipment that operates within the unit.

(b) Prevent failure due to:

1. Pressure gradients, settlement, compression, or uplift.
2. Physical contact with the hazardous wastes to which they are exposed.
3. Climatic conditions.
4. Stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls.
5. Collapse or other failure.

**(3)** All surfaces to be in contact with hazardous wastes shall be chemically compatible with those wastes.

**(4)** You may not place incompatible hazardous wastes or treatment reagents in the unit or its secondary containment system if they could cause the unit or secondary containment system to leak, corrode, or otherwise fail.

**(5)** A containment building shall have a primary barrier designed to withstand the movement of personnel, waste, and handling equipment in the unit during the operating life of the unit and appropriate for the physical and chemical characteristics of the waste to be managed.

**(6)** If appropriate to the nature of the waste management operation to take place in the unit, an exception to the structural strength requirement may be made for light-weight doors and windows that meet these criteria:

(a) They provide an effective barrier against fugitive dust emissions under s. NR 667.1102 (4).

(b) The unit is designed and operated in a fashion that assures that wastes will not actually come in contact with these openings.

**(7)** Inspect and record in the facility’s operating record, at least once every 7 days, data gathered from monitoring equipment and leak detection equipment, as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste.

**(8)** Obtain certification by a qualified professional engineer that the containment building design meets the requirements of subs. (1) to (6) and ss. NR 667.1102 and 667.1103.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

**NR 667.1102 What other requirements shall I meet to prevent releases?** Use controls and practices to ensure containment of the hazardous waste within the unit, and at a minimum:

**(1)** Maintain the primary barrier to be free of significant cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the primary barrier.

**(2)** Maintain the level of the stored or treated hazardous waste within the containment walls of the unit so that the height of any containment wall is not exceeded.

**(3)** Take measures to prevent personnel or by equipment used in handling the waste from tracking hazardous waste out of the unit. Designate an area to decontaminate equipment and collect and properly manage any rinseate.

**(4)** Take measures to control fugitive dust emissions such that any openings (such as doors, windows, vents, and cracks) exhibit no visible emissions (see 40 CFR part 60, Appendix A, Method 22—Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares). In addition, operate and maintain all associated particulate collection devices (for example, fabric filter, electrostatic precipitator) with sound air pollution control practices. Effectively maintain this state of no visible emissions at all times during routine operating and maintenance conditions, including when vehicles and personnel are entering and exiting the unit.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

**NR 667.1103 What additional design and operating standards apply if liquids will be in my containment building?** If your containment building will be used to manage hazardous wastes containing free liquids or treated with free liquids, as determined by the paint filter test, by a visual examination or by other appropriate means, you shall include:

(1) A primary barrier designed and constructed of materials to prevent the migration of hazardous constituents into the barrier (for example, a geomembrane covered by a concrete wear surface).

(2) A liquid collection and removal system to minimize the accumulation of liquid on the primary barrier of the containment building.

(a) The primary barrier shall be sloped to drain liquids to the associated collection system.

(b) Collect and remove liquids and waste to minimize hydraulic head on the containment system at the earliest practicable time.

(3) A secondary containment system, including a secondary barrier designed and constructed to prevent migration of hazardous constituents into the barrier and a leak detection system capable of detecting failure of the primary barrier and collecting accumulated hazardous wastes and liquids at the earliest practical time.

(a) You may meet the requirements of the leak detection component of the secondary containment system by installing a system that is, at a minimum:

1. Constructed with a bottom slope of one percent or more.

2. Constructed of a granular drainage material with a hydraulic conductivity of  $1 \times 10^{-2}$  cm/sec or more and a thickness of 12 inches (30.5 cm) or more, or constructed of synthetic or geonet drainage materials with a transmissivity of  $3 \times 10^{-5}$  m<sup>2</sup>/sec or more.

(b) If you will be conducting treatment in the building, design the area in which the treatment will be conducted to prevent the release of liquids, wet materials or liquid aerosols to other portions of the building.

(c) Construct the secondary containment system using materials that are chemically resistant to the waste and liquids managed in the containment building and of sufficient strength and thickness to prevent collapse under the pressure exerted by overlaying materials and by any equipment used in the containment building.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

**NR 667.1104 How may I obtain a waiver from secondary containment requirements?** Notwithstanding any other provision of this subchapter, the department may waive requirements for secondary containment for a licensed containment building where:

(1) You demonstrate that the only free liquids in the unit are limited amounts of dust suppression liquids required to meet occupational health and safety requirements.

(2) Containment of managed wastes and dust suppression liquids can be assured without a secondary containment system.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

**NR 667.1105 What shall I do if my containment building contains areas both with and without secondary containment?** For these containment buildings, you shall:

(1) Design and operate each area in accordance with the requirements specified in ss. NR 667.1101 to 667.1103.

(2) Take measures to prevent the release of liquids or wet materials into areas without secondary containment.

(3) Maintain in the facility's operating log a written description of the operating procedures used to maintain the integrity of areas without secondary containment.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

**NR 667.1106 What shall I do if I detect a release?**

Throughout the active life of the containment building, if you detect a condition that could lead to or has caused a release of hazardous waste, repair the condition promptly, according to the following procedures:

(1) Upon detection of a condition that has led to a release of hazardous waste (for example, upon detection of leakage from the primary barrier), you shall:

(a) Enter a record of the discovery in the facility operating record.

(b) Immediately remove the portion of the containment building affected by the condition from service.

(c) Determine what steps you are required to take to repair the containment building, to remove any leakage from the secondary collection system and to establish a schedule for accomplishing the cleanup and repairs.

(d) Within 7 days after the discovery of the condition, notify the department of the condition and within 14 working days, provide a written notice to the department with a description of the steps taken to repair the containment building and the schedule for accomplishing the work.

(2) The department shall review the information submitted, make a determination regarding whether the containment building shall be removed from service completely or partially until repairs and cleanup are complete and notify you of the determination and the underlying rationale in writing.

(3) Upon completing all repairs and cleanup, notify the department in writing and provide verification, signed by a qualified, registered professional engineer, that the repairs and cleanup have been completed according to the written plan submitted in accordance with sub. (1) (d).

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

**NR 667.1107 Can a containment building itself be considered secondary containment?** Containment buildings may serve as secondary containment systems for tanks placed within the building under certain conditions.

(1) A containment building may serve as an external liner system for a tank, provided it meets the requirements of s. NR 667.0196 (1).

(2) The containment building shall also meet the requirements of ss. NR 667.0195 (1) and 667.0195 (2) (a) and (b) to be considered an acceptable secondary containment system for a tank.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.

**NR 667.1108 What shall I do when I stop operating the containment building?** When you close a containment building, remove or decontaminate all waste residues, contaminated containment system components (such as liners), contaminated subsoils and structures, and equipment contaminated with waste and leachate, and manage them as hazardous waste unless s. NR 661.03 (4) applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for containment buildings shall meet all of the requirements specified in subchs. G and H.

**History:** CR 16–007: cr. Register July 2017 No. 739, eff. 8–1–17.