Chapter NR 685

CLOSURE, LONG–TERM CARE AND FINANCIAL RESPONSIBILITY

History: Cr. Register, February, 1991, No. 422, eff. 3–1–91.

NR 685.01 Purpose. The purpose of this chapter is to specify the requirements for closure, long–term care and financial responsibility for hazardous waste facilities.

History: Cr. Register, February, 1991, No. 422, eff. 3–1–91.

NR 685.02 Applicability. Except as otherwise provided, this chapter applies to owners and operators of hazardous waste storage, treatment or disposal facilities. This chapter does not apply to solid waste facilities that store, treat or dispose of only:

(1) Non–hazardous solid waste,

(2) Metallic mining wastes resulting from a mining operation as defined in s. 293.01 (9), Stats., or

(3) A combination of wastes described in subs. (1) and (2).

History: Cr. Register, February, 1991, No. 422, eff. 3–1–91; correction made under s. 13.93 (2m) (b) 1., Stats., Register, August, 1992, No. 440; am. (2), r. (3), renum. (4) to be (3) and am., Register, May, 1995, No. 473, eff. 6–1–95; correction in (2) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1998, No. 509.

NR 685.03 Definitions. The definitions in s. NR 600.03 apply to this chapter.

History: Cr. Register, February, 1991, No. 422, eff. 3–1–91.

NR 685.04 Termination of regulated activity. Any person who owns or operates a hazardous waste facility and who wishes or is required to terminate the regulated activity shall submit a closure plan for department approval and implement an approved closure plan that meets the requirements specified in s. NR 685.05, as well as the requirements of ss. NR 640.16, 645.17, 655.11 and 670.10 for storage facilities, s. NR 660.20 or, if applicable s. NR 660.21, for landfills and surface impoundments, s. NR 665.10 for incinerators, ss. NR 640.16, 645.17, 655.11, 665.10 and 670.10 for treatment facilities, or s. NR 660.24 (14) for surface impoundments. Any person who owns or operates a disposal facility and who wishes or is required to terminate the regulated activity shall submit a long–term care plan for approval and implement an approved long–term care plan that meets the requirements specified in s. NR 685.06, as well as the requirements of s. NR 660.22. In accordance with ss. NR 655.11 (2), 660.20 (2) and 660.21 (4), long–term care plans may be required for certain waste piles or surface impoundments where the department approves of in–place disposal of wastes.

History: Cr. Register, February, 1991, No. 422, eff. 3–1–91; am. Register, May, 1998, No. 509, eff. 6–1–98.

NR 685.05 Closure. (1) This subsection specifies the closure performance standard for all hazardous waste facilities. The owner or operator of a facility shall close the facility in a manner that:

(a) Minimizes the need for further maintenance;

(b) Controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, post closure escape of wastes, hazardous leachate, contaminated runoff or waste decomposition products to ground or surface waters, or to the atmosphere;

(c) Meets the additional closure requirements for landfills and surface impoundments as specified in s. NR 660.20, where required for all disposal facilities, or other facilities where required under s. NR 640.16, 645.17, 655.11, 665.10 or 670.10, where the facilities have not obtained an operating license under ch. NR 680;

(d) Meets the additional closure requirements for landfills and surface impoundments as specified in s. NR 660.21, where required for all disposal facilities or other facilities where required under s. NR 640.16, 645.17, 655.11, 665.10 or 670.10, where the facilities have obtained an operating license under ch. NR 680;

(e) Complies with the requirements of this chapter and the requirements of ss. NR 640.16, 645.17, 655.11, 660.24 (14), 665.10 and 670.10;

(f) Meets, in the case of a landfill or surface impoundment as specified in s. NR 660.20 or 660.21, applicable requirements in ch. NR 140 and applicable soil cleanup standards in ch. NR 720 or meets the applicable closure requirements of par. (c) or (d), whichever are more stringent.

(2) The owner or operator of a facility shall have a written closure plan demonstrating compliance with this subsection. The closure plan shall be submitted to the department for approval as part of the reports or plans required under chs. NR 635 to 680. Closure plans may be required by the department for a facility which is no longer in operation, if the facility was in existence on August 1, 1981 and has not been properly closed. A copy of the approved closure plan and all revisions to the closure plan shall be provided to the department upon request, including a written request by mail, and kept at the facility until final closure is completed and certified in accordance with sub. (10). The closure plan shall identify the steps necessary to finally or partially close the facility at any point during its active life and to finally close the facility at the end of its active life. The department's approval of the closure plan shall require that the approved closure plan is consistent with this section and the applicable requirements of ss. NR 640.16, 645.17, 655.11, 660.20, 660.21, 665.10, and 670.10. The closure plan shall identify steps necessary to perform partial or final closure of the facility at any point during its active life. The closure plan shall include, but not be limited to:

(a) A description of how each hazardous waste management unit at the facility will be closed in accordance with sub. (1);

(b) A description of how final closure of the facility will be conducted in accordance with sub. (1). 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 over the active life of the facility and a detailed description of the methods to be used during partial closures and final closure, including, but not limited to, methods for removing, transporting, treating, storing or disposing of all hazardous wastes, and identification of the types of the off–site hazardous waste management units to be used, if applicable;

(d) A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures and soils during partial and final closure, including, but not limited to, pro-

cedures 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 standard;

(e) A detailed description of other activities necessary during the closure period to ensure that all partial closures and final closure satisfy the closure performance standards, including, but not limited to, groundwater monitoring, leachate collection and run–on and run–off control;

(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 which will allow tracking of the progress of partial and final closure;

Note: For example, in the case of a landfill unit, estimates of the time required to treat or dispose of all hazardous waste inventory and of the time required to place a final cover shall be included.

(g) For facilities subject to sub. (1) (c) or (d) and required to provide long–term care in accordance with s. NR 685.06, the anticipated time until final closure and any anticipated partial closures and the time required for any intervening closure activities which will allow tracking of the progress of closure;

(h) The most recent closure cost estimates required under s. NR 685.07 (2) and (3) (b);

(i) A description of how the requirements of subs. (5), (6), (7) and (8) will be met;

(j) A description of how the applicable closure requirements in ss. NR 640.16, 645.17, 655.11, 660.20, 660.21, 665.10, 660.24 (14) and 670.10 will be met; and

(k) For facilities that use trust funds to establish proof of financial responsibility under s. NR 685.07 (5) and that are expected to close prior to the expiration of the license, or in the case of interim licensed facilities whose remaining operating life is less than 20 years, an estimate of the expected year of final closure.

(3) (a) The owner or operator shall submit any request for modifications of a closure plan approval to the department in accordance with ss. NR 620.15 (5) (e), 680.07 and 680.42 (5). The written request shall include a copy of the amended closure plan required by s. NR 680.07 for approval by the department. Requests shall be submitted at least 60 days prior to any proposed change in facility design or operation that affects the closure plan, or no later than 60 days after an unexpected event has occurred that affects the closure plan. If an unexpected event that affects the closure plan occurs during the time a partial or final closure is being conducted, the owner or operator shall submit the request no later than 30 days after the unexpected event. Owners or operators of a surface impoundment or waste pile that do not have an approved closure plan allowing for any hazardous waste or waste contaminated materials to be disposed of in–place in accordance with s. NR 655.11 (2) (b), 660.20 (1) (d) or 660.21 (4) who may leave hazardous waste or waste contaminated materials in–place at closure shall request department approval for such action by submitting, to the department, an amendment to the closure plan no later than 60 days after the owner or operator determines the hazardous waste or hazardous waste contaminated materials will remain in–place at closure. If the determination that hazardous waste or hazardous waste contaminated materials will remain in–place at closure is made during the time a partial or final closure is being conducted, the owner or operator shall submit an amendment to the closure plan no later than 30 days from the date the determination is made.

Note: Sections NR 655.11 (2) (b), 660.15 (1) (d), 660.16 (4) and 685.06 (6) require additional submittals, including a long–term care plan, in addition to an amended closure plan, when a request for approval for in–place disposal is made.

(b) The owner or operator shall submit a request for modification of a closure plan approval in accordance with par. (a) whenever:

1. Changes in operating plans or facility design affect the closure plan;

2. There is a change in the expected year of closure;

3. In conducting partial or final closure activities, unexpected events require an amendment of the closure plan; or

4. The department requests an amendment to the closure plan to meet any of the closure requirements of this chapter, any plan approval requirements or license conditions. The owner or operator shall submit the modified plan within 60 days of the department's request or within 30 days if the change in facility conditions occurs during partial or final closure. Any modifications requested by the department will be approved in accordance with this subdivision.

(c) The owner or operator may submit a request for modification of a closure plan approval in accordance with par. (a) at any time prior to the notification to the department of partial or final closure under sub. (4). After notification, a request may be submitted by the owner or operator only for the reasons specified in par. (b) 3. or 4.

(4) (a) At least 180 days prior to beginning the final closure or any partial closure of a facility, the owner or operator shall notify the department in writing of the intent to close the facility. No later than this date, for final closures, the owner or operator shall notify current users of the facility of the intent to close the facility. When, after July 1, 1985, notice is received by the department for a facility which has applied for or received an interim license under ss. NR 680.20, 680.21, 680.22, 680.23 and 680.24, but which has not obtained an operating license under ch. NR 680, the department shall provide the public, through a newspaper notice, the opportunity to submit written comments on, and request modifications of, the closure plan within 30 days of the date of the notice. The department may also, in response to a request, or at its own discretion, hold an informational hearing pursuant to s. 289.07 (1), Stats., whenever a hearing might clarify one or more issues concerning a closure plan. The department shall give public notice of the hearing at least 30 days before it occurs. Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the 2 notices may be combined. The department shall approve, deny or modify the closure plan within 65 business days after the close of the comment period or 65 business days after the public hearing, whichever is later, regardless of any prior approval under s. NR 680.24. If the department denies the closure plan, the owner or operator shall submit a modified or new plan for approval within 30 days. A new or modified plan, if required, shall be approved or modified by the department within 65 business days of receipt. If the department modifies the plan, this modified plan becomes the approved closure plan.

Note: Closure should begin within 30 days of receiving the final volume of waste.

(b) If the facility's license is terminated or if the facility is otherwise ordered, by judicial decree or final order under 42 USC 6928, to cease receiving hazardous waste or to close, then the requirements of this subsection do not apply. The owner or operator shall, however, close the facility in accordance with the deadlines established in s. NR 685.05 (6) and (7).

Note: The publication containing title 42 of the United States Code may be obtained from:

The Superintendent of Documents
U. S. Government Printing Office
Washington, D. C. 20402

(5) Nothing in subs. (2) to (4) shall preclude the owner or operator from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved partial or final closure plan at any time before or after notification of final or partial closure.

(6) Within 90 days after receiving the final volume of hazardous wastes at the facility or any unit, or 90 days after approval of the closure plan under sub. (4), if that is later, the owner or operator

shall remove from the facility or unit, or manage on site, all hazardous wastes in accordance with requirements of chs. NR 600 to 685 and an approved closure plan as specified in sub. (2). Prior to the end of the 90 day period, the owner or operator may obtain department approval for a longer period, in accordance with sub. (3), if the owner or operator demonstrates at least 30 days prior to the expiration of the 90 day period that:

(a) All steps necessary to prevent threats to human health and the environment have been taken and shall continue to be taken including compliance with all applicable license requirements; and

(b) The activities required to comply with this subsection shall, of necessity, take longer than 90 days to complete; or

(c) The facility or unit has the capacity to receive additional wastes, there is a reasonable likelihood that a person other than the owner or operator will recommence operation of the facility or unit, and closure of the facility or unit would be incompatible with continued operation of the site.

(7) The owner or operator shall complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of wastes at the facility or unit. Prior to the end of the 180 day period, the owner or operator may obtain department approval for a longer period, in accordance with sub. (3), if the owner or operator demonstrates at least 30 days prior to the expiration of the 180 day period that:

(a) All steps necessary to prevent threats to human health and the environment from the unclosed but inactive facility have been taken and will continue to be taken; and

(b) The closure activities shall, of necessity, take longer than 180 days to complete; or

(c) The facility or unit has the capacity to receive additional wastes, there is reasonable likelihood that a person other than the owner or operator will recommence operation of the facility or unit, and closure of the facility or unit would be incompatible with continued operation of the site.

(8) During the partial and final closure periods, all contaminated soil, equipment and structures shall be properly disposed of or decontaminated except for landfills and miscellaneous units as provided in ss. NR 660.20, 660.21 and 670.10 and tank systems, waste piles and surface impoundments as provided in ss. NR 655.11 (2) (b), 660.20 (1) (d) and 660.21 (4). By removing any hazardous wastes or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and shall handle that waste in accordance with all applicable requirements of chs. NR 610 and 615.

(9) At completion of closure of the facility or any unit, all required equipment shall be provided and arrangements shall be made to implement the long–term care provisions contained in the approved long–term care plan.

(10) (a) Except as provided in par. (b), at completion of closure, the owner or operator shall submit to the department a certification statement by the owner or operator that the facility or unit has been closed in accordance with the requirements of this chapter, the approved closure plan, any plan approval, any plan of operation and all applicable license conditions. The department may require submittal of a certification statement by an independent registered professional engineer for facilities or units that have the potential to impact public health, safety or welfare or the environment at the time of final or partial closure.

(b) Within 60 days after completion of partial closure of each hazardous waste surface impoundment, waste pile or landfill unit, or the completion of final closure of each hazardous waste surface impoundment, waste pile or landfill facility, the owner or operator shall submit to the department:

1. A certification statement, signed by both the owner or operator and an independent registered professional engineer, that the facility has been closed in accordance with the requirements of chs. NR 600 to 685, the approved closure plan, any plan approval, any plan of operation and all applicable license conditions; and

2. A construction documentation report that meets the applicable requirements of s. NR 660.11, documenting all the aspects of closure work, including the placement of any covers over disposal facilities or units.

(c) At the time the certification of closure under par. (b) is submitted to the department, or as provided in s. NR 680.06 (3) (k), whichever is earlier, the owner of a disposal facility shall file with the office of the register of deeds in each county in which a portion of the facility was located, and with the department, a survey plat, indicating the location and dimensions of landfill cells or other disposal units with respect to permanently surveyed benchmarks. This plat shall be prepared and certified by a professional land surveyor. The plat filed with each office of the register of deeds shall contain a note, prominently displayed, which states the owner's obligation to restrict disturbance of the site as specified in s. NR 685.06 (3). In addition, at the time the certification under par. (b) is submitted to the department, the owner shall submit to the office of the register of deeds in each county in which a portion of the facility was located, and to the department, a record of the type, location and quantity of hazardous wastes disposed of within each cell or unit of the facility. For wastes disposed of before these regulations were promulgated, the owner shall identify the type, location and quantity of the wastes to the best of the owner's knowledge and in accordance with any records the owner has kept. Any changes in the type, location or quantity of hazardous wastes disposed of within each cell or area of the facility that occur after the survey plat and record of wastes have been filed shall be reported to the office of the register of deeds in each county in which a portion of the facility was located and to the department.

(d) The owner of the property on which a disposal facility is located shall, at the time the certification of closure under par. (b) is submitted to the department, record, in accordance with applicable requirements for the recording of documents in the office of the register of deeds under ss. 59.51 to 59.575, Stats., a notation on the deed to the facility property, or on some other instrument which is normally examined during a title search, that will in perpetuity notify any potential purchaser of the property that:

1. The land has been used to manage hazardous wastes;

2. Its use is restricted under s. NR 685.06 (3);

3. The survey plat and record of the type, location and quantity of hazardous waste disposed of within each cell or disposal unit of the facility required in par. (c) have been filed with the office of the register of deeds in each county in which a portion of the facility was located and with the department; and

(e) The owner of the property shall sign a certification that the notation specified in par. (d) has been recorded. The owner shall submit the certification and a copy of the document in which the notation has been placed.

History: Cr. Register, February, 1991, No. 422, eff. 3–1–91; am. (2) (j), Register, August, 1992, No. 440, eff. 9–1–92; correction in (2) (intro.) made under s. 13.93 (2m) (b) 1., Stats., Register, March, 1993, No. 447; am. (1) (d), cr. (1) (f), Register, April, 1994, No. 460, eff. 5–1–94; am. (1) (f), Register, March, 1995, No. 471, eff. 4–1–95; am. (1) (e) and (2) (intro.), cr. (10) (c) to (e), Register, May, 1995, No. 473, eff. 6–1–95; correction in (8) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1995, No. 473; am. (1) (c), (d), (f), (2) (j) and (3) (a), Register, May, 1998, No. 509, eff. 6–1–98; correction in (4) (a) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1998, No. 509.

NR 685.06 Long–term care. (1) The requirements of this section apply to the owners and operators of facilities identified in pars. (a) to (d). In accordance with s. 289.41 (1m) (c), Stats., the owner's responsibility for long– term care does not terminate. The owner shall provide long–term care for the following:

(a) All hazardous waste disposal facilities;

(b) Waste piles and surface impoundments for which the owner or operator intends to remove the wastes at closure to the extent that this section is made applicable to the facilities in s. NR 655.11 (2) (b), 660.20 (1) (d) or 660.21 (4);

(c) Tank systems that are required under s. NR 645.17 (1) (a) 2. to meet requirements for landfills; and

(d) Other facilities where required under ss. NR 600.07 or 640.16, 665.10 and 670.10.

(2) Long–term care shall consist of at least the following:

(a) Monitoring and reporting in accordance with the requirements of chs. NR 635 to 670.

(b) Maintenance and monitoring of waste containment systems and maintenance of drainage control features, slopes, vegetative cover, monitoring equipment and continuation of security requirements necessary to prevent hazards to human health, in accordance with the requirements of chs. NR 635 to 670.

(c) Control of erosion, settlement, surface water drainage and land usage.

(d) Measures needed to correct contamination caused by leachate or gases generated within the landfill and any other maintenance or security features necessary to protect the environment and prevent hazards to human health.

(3) Subsequent use of a site on or in which hazardous waste remains after closure may not disturb the integrity of the final cover, liner or any other component of any containment system, or the facility's monitoring system, unless the owner or operator can demonstrate to the department that the disturbance:

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

(b) Is necessary to reduce a threat to human health or the environment.

(4) All long–term care activities shall be in accordance with the provisions of the approved long–term care plan as specified in sub. (5).

(5) The owner or operator of a hazardous waste disposal facility shall have a written long–term care plan demonstrating compliance with this subsection. In addition, certain other facilities are required, under ss. NR 600.07, 640.16, 645.17, 655.11, 660.22, 665.10 and 670.10, to have a long–term care plan demonstrating compliance with this subsection. The long–term care plan shall be submitted to the department for approval as part of the application for an interim license under ch. NR 680. The long–term care plan shall also be submitted to the department for approval as part of the reports or plans required for an initial operating license, where specifically required under chs. NR 600 to 685. A copy of the approved long–term care plan and all revisions to the long–term care plan shall be provided to the department upon request, including a written request by mail, and be kept at the facility until final closure is completed and certified in accordance with s. NR 685.05 (10) and the long–term care period begins. After final closure has been certified, the long–term care plan shall be kept at the office or location specified in par. (b) 3. This long–term care plan shall identify the activities that will be carried out after any partial or final closure of each disposal unit and the frequency of these activities and include, but not be limited to:

(a) A description of the planned monitoring activities and frequencies at which they will be performed to comply with the requirements of chs. NR 635 to 670 during the long–term care period;

(b) A description of the planned maintenance activities and frequencies at which they will be performed to ensure:

1. The integrity of the cap and final cover or other containment system in accordance with the requirements of chs. NR 635 to 670;

2. The function of the facility monitoring equipment in accordance with the requirements of chs. NR 635 to 670;

3. The name, address and phone number of the person or office to contact during the long–term care period. This person or office shall keep an updated long–term care plan during the long–term care period; and

(c) The most recent long–term care cost estimates required under s. NR 685.07 (2), (3) (a), (b) 1. a. and b., and 2., (4) (a), (b) 1. a. and b., 2., 3. and 4. and (7) (a) 1. and 2.

(6) (a) The owner or operator shall submit any request for modification of a long–term care plan approval to the department in accordance with ss. NR 680.07, 680.45 (1) to (3), 680.42 and 620.14 (5). The written request shall include a copy of the amended long–term care plan for approval by the department.

(b) The owner or operator shall submit a request for modification of a long–term care plan approval in accordance with par. (a) whenever:

1. Changes in the operating plans or facility design affect the long–term care plan;

2. There is a change in the expected year of final closure;

3. Events occurring during the active life of the facility, including partial and final closures, affect the long–term care plan; or

4. The department requests an amendment to the long–term care plan to meet any of the long–term care requirements of chs. NR 600 to 685, any plan approval requirements or license conditions. The owner or operator shall submit the modified long–term care plan no later than 60 days after the department's request or no later than 90 days if the unit is a surface impoundment or waste pile not previously required to prepare a contingent long–term care plan. Any modifications requested by the department will be approved, disapproved or modified in accordance with the procedures in s. NR 680.07.

(c) The owner or operator may submit a request for modification of a long–term care plan approval in accordance with par. (a) at any time during the active life of the facility.

(7) The department shall, upon receipt, after July 1, 1985, of notification of closure under s. NR 685.05 (4) for a disposal facility which has applied for or has obtained an interim license under ss. NR 680.20, 680.21, 680.22, 680.23 and 680.24 but which has not obtained an operating license under ch. NR 680, provide the public, through a newspaper notice, the opportunity to submit written comments on, and request modifications of, the long–term care plan within 30 days after the date of the notice. The department may also, in response to a request or at its own discretion, hold an informational hearing pursuant to s. 289.07 (1), Stats., whenever a hearing might clarify one or more issues concerning a long–term care plan. The department shall give public notice of the hearing at least 30 days before it occurs. Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the 2 notices may be combined. The department shall approve, deny or modify the long–term care plan within 65 business days after the close of the comment period or 65 business days after the public hearing, whichever is later, regardless of any prior approval under s. NR 680.24. If the department denies the long–term care plan, the owner or operator shall submit a modified or new plan for approval within 30 days. A new or modified plan, if required, shall be approved, denied or modified by the department within 65 business days of receipt. If the department modifies the plan, this modified plan becomes the approved long–term care plan.

(8) If at any time the owner or operator or any subsequent owner or operator of the land upon which a hazardous waste disposal facility or unit is located proposes to remove the waste and waste residues, the liner, if any, and all contaminated underlying and surrounding soil, the owner or operator shall submit a request to modify the long–term care plan to the department for prior approval in accordance with ss. NR 680.07, 680.42 (5) and 680.45 (1) to (3). The owner or operator shall demonstrate that the removal of the hazardous waste will satisfy the criteria specified in sub. (3). By removing the hazardous waste, the owner or operator may become a generator of hazardous waste, and shall manage the hazardous waste in accordance with chs. NR 600 to 685. If a proposal is approved by the department, the owner or operator may then request that the department approve either the removal

of the notation on the deed to the facility property or other instrument normally examined during a title search, or the addition of a notation to the deed or instrument indicating the removal of the waste.

(9) Within 60 days after the completion of the long–term care period for the disposal facility or any disposal unit, the owner shall submit to the department, by registered mail, a certification that the long–term care period for the facility or unit was performed in accordance with the specifications in the approved long–term care plan. The certification shall be signed by the owner and an independent registered professional engineer. Documentation supporting the independent engineer's certification shall be furnished to the department upon request until the department releases the owner from the financial assurance requirements for long–term care under s. NR 685.07.

History: Cr. Register, February, 1991, No. 422, eff. 3–1–91; am. (1) (intro.), (5) (intro.), r. (8), (9), renum. (10) and (11) to (8) and (9), Register, May, 1995, No. 473, eff. 6–1–95; correction in (1) (6), made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1995, No. 473; am. (5), Register, May, 1998, No. 509, eff. 6–1–98; correction in (1) and (7) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1998, No. 509.

NR 685.07 Financial responsibility. (1) APPLICABILITY. (a) *Closure.* The owner of every hazardous waste storage, treatment or disposal facility shall provide, as part of an interim license submittal or an initial operating license application and annually thereafter for the period of active facility life, proof of financial responsibility to ensure compliance with the closure requirements of the approved plan of operation for the facility, or if no approved plan of operation exists for the facility, with the requirements in s. NR 685.05.

(b) *Long–term care.* 1. The owner of every hazardous waste disposal facility shall provide, as part of an initial license submittal or an initial operating license application and annually thereafter for the period of active facility life, proof of financial responsibility to ensure compliance with the long–term care requirements of the approved plan of operation for the facility, or if no approved plan of operation exists for the facility, with the requirements in s. NR 685.06. An owner responsible for long–term care shall provide financial responsibility for a period of time in accordance with s. 289.41 (1m) (b), Stats.

2. The owner of every hazardous waste facility required under s. NR 600.07, 640.16, 645.17, 655.11, 660.22 or 665.10 to submit a long–term care plan, shall provide proof of financial responsibility to ensure compliance with the long–term care requirements of s. NR 685.06. An owner responsible for long–term care shall provide financial responsibility for a period of time in accordance with s. 289.41 (1m) (b), Stats.

(c) *Successors in interest.* Any person acquiring rights of ownership, possession or operation of a licensed hazardous waste storage, treatment or disposal facility shall be subject to all requirements of the license for the facility and shall provide any required proof of financial responsibility to the department in accordance with sub. (5). The previous owner is responsible for closure and long–term care, and shall maintain any required proof of financial responsibility, until the person acquiring ownership, possession or operation of the facility establishes any required proof of financial responsibility in accordance with s. NR 680.44.

Note: See s. NR 680.44 for transference of responsibility procedures.

(2) COST ESTIMATES. For the purpose of determining the amount of proof of financial responsibility that is required in sub. (1), the owner shall estimate the total cost of closure in accordance with sub. (3), estimate the annual cost of long–term care of the facility for the period of owner responsibility in accordance with sub. (4), and submit the estimated closure and long–term costs, together with all necessary justification to the department for approval. The costs shall be reported in current dollars and on a per unit basis. The source of the estimates shall be indicated. The owner of the facility shall submit the cost estimates required under this subsection to the department:

(a) As part of an interim license application under s. NR 680.21;

(b) As part of a plan of operation submittal or feasibility and plan of operation submittal;

(c) As part of the initial license application under s. NR 680.31;

(d) As part of the annual report required under s. NR 630.40;

(e) When required under sub. (3) (b);

(f) As part of a closure plan under s. NR 685.05; or

(g) As part of a long–term care plan under s. NR 685.06.

(3) COST ESTIMATES FOR CLOSURE. (a) *General requirements.* At a minimum, closure costs shall include the cost of closing the facility in accordance with s. NR 685.05 and chs. NR 600 to 685, any necessary cover material, topsoil, seeding, fertilizing, mulching, labor and disposal or decontamination of hazardous waste and residues on equipment and structures; the cost of preparing an engineering report documenting the work performed and a 10% contingency. Closure cost estimates:

1. 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 under s. NR 685.05;

2. 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 corporation nor a subsidiary of the owner or operator. The owner or operator of a disposal facility may use costs for on–site disposal if the owner or operator can demonstrate that on–site disposal capacity will exist at all times over the life of the facility;

3. May not incorporate any salvage value that may be realized with the sale of hazardous wastes, facility structures or equipment, land or other assets associated with the facility at the time of partial or final closure; and

4. May not incorporate a zero cost for hazardous wastes that may have economic value.

(b) *Adjustments.* The owner or operator of a hazardous waste facility shall prepare and submit to the department a new closure cost estimate during the active life of the facility:

1. To adjust for inflation, submitted within 60 days before the anniversary date of the establishment of proof of financial responsibility for closure under this section. For owners or operators of disposal facilities using the net worth test under sub. (5) (f), the closure cost estimate shall be updated for inflation within 30 days after the close of the company's fiscal year and before the submittal of the annual reapplication under s. 289.41 (5) (d), Stats. 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 subpars. 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 shall be made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.

b. Subsequent adjustments shall be made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

2. When required by the department to meet the requirements of s. NR 685.05 and chs. NR 600 to 685. The department may require an adjustment in the cost estimate and the amount of required proof of financial responsibility for closure based on prevailing or projected interest and inflation rates.

3. When the requirements of s. NR 685.05 (3) apply. The new cost estimates shall be contained in the submitted closure plan;

4. Within 30 days after the department approves a request for modification of the closure plan approval, if the modification increases the cost of closure above the cost estimate amount

included in the closure plan. The revised closure cost estimate shall be adjusted for inflation as specified in sub. (3) (b).

(c) *Maintaining copies of the cost estimate.* During the operating life of the facility the owner or operator shall keep at the facility the latest closure cost estimate prepared in accordance with sub. (3) (a) and, when this estimate has been adjusted, the latest adjusted closure cost estimate prepared in accordance with sub. (3) (b).

(4) COST ESTIMATES FOR LONG–TERM CARE. (a) *General requirements.* At a minimum, long–term care costs shall include the costs to provide long–term care in accordance with s. NR 685.06 and chs. NR 600 to 685, land surface care; gas monitoring; leachate pumping, transportation, monitoring and treatment; groundwater monitoring, collection and analysis; maintenance of facility monitoring and waste containment devices; security requirements necessary to prevent hazards to human health and a 10% contingency. Long–term care cost estimates:

1. Shall be based on the costs to the owner of hiring a third party to conduct long–term care activities. A third party is a party who is neither a parent corporation nor a subsidiary of the owner; and

2. Shall be calculated by multiplying the annual long–term care cost estimate by the number of years of long–term care required under s. NR 685.06 and chs. NR 600 to 685.

(b) *Adjustments.* The owner or operator of a hazardous waste facility shall prepare and submit to the department a new long–term care cost estimate during the active life of the facility:

1. To adjust for inflation, submitted within 60 days before the anniversary date of the establishment of proof of financial responsibility for long–term care under this section. For owners or operators of disposal facilities using the net worth test under sub. (5) (f), the long–term care cost estimate shall be updated for inflation within 30 days after the close of company's fiscal year and before the submittal of the annual reapplication under s. 289.41 (5) (d), Stats. The adjustment may be made by recalculating the long–term care cost estimate 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 subd. 1.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 shall be made by multiplying the long–term care cost estimate by the inflation factor. The result is the adjusted long–term care cost estimate.

b. Subsequent adjustments shall be made by multiplying the latest adjusted long–term care cost estimate by the latest inflation factor.

2. When required by the department to meet the requirements of s. NR 685.06 and chs. NR 600 to 685. The department may require an adjustment in the cost estimate and the amount of required proof of financial responsibility for long–term care based on prevailing or projected interest and inflation rates.

3. When the requirements of s. NR 685.06 (6) apply. The new cost estimate shall be contained in the submitted long–term care plan.

4. Within 30 days after the department approves a request for modification of the long–term care plan approval, if the modification increases the cost of long–term care above the cost estimate amount included in the long–term care plan. The revised long–term care cost estimate shall be adjusted for inflation as specified in sub. (4) (b).

(c) *Maintaining copies of the cost estimate.* During the operating life of the facility, the owner or operator shall keep at the facility the latest long–term care cost estimate prepared in accordance with par. (a) and, when this estimate has been adjusted, the latest adjusted long–term care cost estimate in accordance with par. (b).

(5) PROOF OF FINANCIAL RESPONSIBILITY – METHODS. Financial assurances for closure and long–term care shall be established separately. The owner shall specify, as part of the plan of operation submittal or interim license submittal, which method of providing proof of financial responsibility shall be used for closure and for long–term care. To provide proof of financial responsibility, the applicant shall use one of the following methods for each account:

(a) *Performance or forfeiture bond.* 1. If the owner chooses to submit a bond, it shall be in the amount determined according to sub. (7) (b) 2. or (c) 2. conditioned upon faithful performance by the owner, and any successor in interest, of all closure or long–term care requirements of the approved plan of operation, or if no approved plan of operation exists for the facility, all applicable requirements in s. NR 685.05 or 685.06. The bond shall be delivered to the department as part of an interim license submittal or an initial operating license application. A bond submitted for a new facility shall be effective before the initial receipt of hazardous waste. The bond forms shall be obtained from the department.

2. Bonds shall be issued by a surety company among those listed as acceptable sureties in Circular 570 of the U.S. department of treasury. At the option of the facility owner, a performance bond or a forfeiture bond may be filed. The department shall be the obligee of the bond. Surety companies may have the opportunity to complete the closure or long–term care of the facility in lieu of cash payment to the department if the owner or any successor in interest fails to carry out the closure or long–term care requirements of the approved plan of operation, or the applicable requirements in s. NR 685.05 or 685.06. The department shall mail notification of its intent to use the funds for that purpose to the last known address of the owner. If the owner submits a written request for a hearing to the secretary of the department within 20 days after the mailing of the notification, the department shall, prior to using the funds, hold a hearing for the purpose of determining whether or not the closure or long–term care requirements of the approved plan of operation or the applicable requirements in s. NR 685.05 or 685.06 have been carried out.

3. Each bond shall provide that as long as any obligation of the owner for closure or long–term care remains, the bond may not be cancelled by the surety, unless a replacement bond or other proof of financial responsibility under this section is provided to the department by the owner. If the surety proposes to cancel the bond, the surety shall provide notice to the department in writing by registered or certified mail not less than 120 days prior to the proposed cancellation date. Not less than 30 days prior to the expiration of the 120 day notice period, the owner shall deliver to the department a replacement bond or other proof of financial responsibility under this section, in the absence of which all storage, treatment or disposal operations shall immediately cease and the bond shall remain in effect as long as any obligation of the owner remains for closure or long–term care.

4. The surety will not be liable for deficiencies in the performance of closure by the owner or operator after the department releases the owner or operator from the requirements of this section in accordance with sub. (9).

(b) *Deposit with the department.* An owner may deposit cash, certificates of deposit or U.S. government securities with the department, the amount of the deposit shall be determined according to sub. (7) (b) 1. or (c) 1. and shall be submitted as part of an interim license submittal or an initial operating license application. Cash deposits placed with the department shall be segregated and invested in an interest bearing account. All interest payments shall be accumulated in the account. The department shall have the right to use part or all of the funds to carry out the closure or long–term care requirements of the approved plan of operation or the applicable requirements in s. NR 685.05 or 685.06 if the owner fails to do so. The department shall mail notification of its intent to use funds for that purpose to the last known address of the owner. If the owner submits a written request for a hearing to the

secretary of the department within 20 days after the mailing of the notification, the department shall, prior to using the funds, hold a hearing for the purpose of determining whether or not the closure or long–term care requirements of the approved plan of operation or the applicable requirements in s. NR 685.05 or 685.06 have been carried out.

(c) *Escrow account.* If the owner establishes an escrow account, it shall be with a bank or financial institution located within the state of Wisconsin which is examined and regulated by the state or a federal agency in the amount determined according to sub. (7) (b) 1. or (c) 1. The assets in the escrow account shall consist of cash, certificates of deposit or U.S. government securities. A total of no more than $100,000 in cash and certificates of deposit may be placed into escrow accounts or trust accounts established by the owner in the same bank or financial institution for the purposes of providing financial assurance to the department. U.S. government securities shall be used in these escrow or trust accounts for amounts in excess of $100,000. All interest or coupon payments shall be accumulated in the account. A duplicate original of the escrow agreement with original signatures shall be submitted to the department as part of an interim license submittal or an initial operating license application. The escrow account forms may be obtained from the department. The department shall be a party to the escrow agreement, which shall provide that there may be no withdrawals from the escrow account except as authorized in writing by the department. The escrow agreement shall further provide that the department shall have the right to withdraw and use part or all of the funds in the escrow account to carry out the closure or long–term care requirements of the approved plan of operation or the applicable requirements in s. NR 685.05 or 685.06 if the owner fails to do so. The department shall mail notification of its intent to use funds for that purpose to the last known address of the owner. If the owner submits a written request for a hearing to the secretary of the department within 20 days after the mailing of the notification, the department shall, prior to using the funds, hold a hearing for the purpose of determining whether or not the closure or long–term care requirements of the approved plan of operation or the applicable requirements in s. NR 685.05 or 685.06 have been carried out.

(d) *Irrevocable trust.* If the owner creates an irrevocable trust, it shall be exclusively for the purpose of ensuring that the owner or any successor in interest shall comply with the closure or long–term care requirements of the approved plan of operation, or if no approved plan of operation exists for the facility, the applicable requirements in s. NR 685.05 or 685.06. The trust agreement shall designate the department as sole beneficiary. The trustee shall be a bank or other financial institution located within the state of Wisconsin, which has the authority to act as a trustee and whose trust operations are regulated and examined by the state or by a federal agency. The trust corpus shall consist of cash, certificates of deposit or U.S. government securities in the amount determined according to sub. (7) (b) 1. or (c) 1. A total of no more than $100,000 in cash and certificates of deposit may be placed into escrow accounts or trust accounts established by the owner in the same bank or financial institution for the purposes of providing financial assurance to the department. U.S. government securities shall be used in these escrow or trust accounts for amounts in excess of $100,000. All interest or coupon payments shall be accumulated in the account. A duplicate original of the trust agreement with original signatures shall be submitted to the department for approval as part of an interim license submittal or an initial operating license application. The trust forms may be obtained from the department. The trust agreement shall provide that there may be no withdrawals from the trust fund except as authorized by the department. The trust agreement shall further provide that sufficient monies shall be paid from the trust fund to the beneficiary in the event that the owner or any successor in interest fails to complete the closure or long–term care requirements of the approved plan of operation, or if no approved plan of operation exists for the facility, the applicable requirements in s. NR 685.05 or 685.06. The department shall mail notification of its intent to use funds for that purpose to the last known address of the owner. If the owner submits a written request for a hearing to the secretary of the department within 20 days after the mailing of the notification, the department shall, prior to using the funds, hold a hearing for the purpose of determining whether or not the closure or long–term care requirements of the approved plan of operation or the applicable requirements in s. NR 685.05 or 685.06 have been carried out.

(e) *Letter of credit.* 1. If the owner chooses to submit a letter of credit, it shall be in the amount determined according to sub. (7) (b) 2. or (c) 2. conditioned upon faithful performance by the owner and any successor in interest, of all closure or long–term care requirements of the approved plan of operation, or if no approved plan of operation exists for the facility, the applicable requirements in s. NR 685.05 or 685.06. The letter of credit shall be irrevocable and issued for a period of at least 1 year. The original letter of credit shall be delivered to the department as part of an interim license submittal or an initial operating license application. A letter of credit submitted for a new facility shall be effective before the initial receipt of hazardous waste. The letter of credit forms shall be obtained from the department.

2. Letters of credit shall be issued by a bank or financial institution which is examined and regulated by a federal agency, or in the case of a bank or financial institution located within the state of Wisconsin, which is examined and regulated by the state or a federal agency. The department shall be the beneficiary of the letter of credit.

3. Each letter of credit shall provide that as long as any obligation of the owner for closure or long–term care remains, the letter of credit may not be cancelled by the bank or financial institution, unless a replacement letter of credit or other proof of financial responsibility under this section is provided to the department by the owner. If the bank or financial institution proposes to cancel the letter of credit, the bank or financial institution shall provide notice to the department in writing by registered or certified mail not less than 120 days prior to the proposed cancellation date. Not less than 30 days prior to the expiration date of the 120 day notice period, the owner shall deliver to the department a replacement letter of credit or other proof of financial responsibility under this section, in the absence of which all storage, treatment or disposal operations shall immediately cease and the letter of credit shall remain in effect as long as any obligation of the owner remains for closure or long–term care, or the unused portion of the letter of credit shall be payable in full to the department.

4. If the bank or financial institution becomes bankrupt or insolvent or if its authorization to do business is revoked or suspended, the owner shall, within 30 days after receiving written notice thereof, deliver to the department a replacement letter of credit or other proof of financial responsibility under this section, in the absence of which all storage, treatment or disposal operations shall immediately cease and the letter of credit shall remain in effect as long as any obligation of the owner remains for closure or long–term care, or be payable in full to the department.

5. The letter of credit shall further provide that the department shall have the right to withdraw and use part or all of the funds to carry out the closure or long–term care requirements of the plan of operation or the applicable requirements in s. NR 685.05 or 685.06 if the owner fails to do so. The department shall mail notification of its intent to use the funds for that purpose to the last known address of the owner. If the owner submits a written request for a hearing to the secretary of the department within 20 days after the mailing of the notification, the department shall, prior to using the funds, hold a hearing for the purpose of determining whether or not the closure or long–term care requirements

of the approved plan of operation or the applicable requirements in s. NR 685.05 or 685.06 have been carried out.

6. The letter of credit shall be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution and date and providing the following information:

a. EPA identification number,

b. Name and address of the facility, and

c. Amount of funds assured for closure of the facility by the letter of credit.

(f) *Net worth test.* 1. Only a company that meets the definition in s. 289.41 (1) (b), Stats., may use the net worth method of providing proof of financial responsibility.

2. The owner shall comply with the net worth test requirements of s. 289.41 (4) and (6) or (7), Stats., and the minimum security requirements of s. 289.41 (9), Stats., whichever is applicable.

3. Companies using the net worth test to provide proof of financial responsibility for more than one facility shall use the total cost of compliance for all facilities in determining the net worth to closure and long–term care cost ratio.

4. The department determinations under the net worth test shall be done in accordance with s. 289.41 (5), Stats.

(g) *Insurance.* 1. If the owner chooses to submit an insurance policy for closure or long–term care, it shall be issued for the maximum risk limit determined according to sub. (7) (b) 3. or (c) 3. A certificate of insurance shall be delivered to the department as part of an interim license submittal or an initial operating license application. An insurance policy submitted for a new facility shall be effective before the initial receipt of hazardous waste. Certificates of insurance shall be obtained from the department.

2. Except for captive insurance companies, the insurer shall be licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states. The department, after conferring with the Wisconsin insurance commissioner, shall determine the acceptability of a surplus lines or captive insurance company to provide coverage for proof of financial responsibility. The department shall ask the insurance commissioner to provide a financial analysis of the insurer including a recommendation as to the insurer's ability to provide the required coverage. The department shall be the beneficiary of the insurance policy. The department may require a periodic review of the acceptability of a surplus lines or captive insurance company.

3. The insurance policy shall provide that, as long as any obligation of the owner for closure or long–term care remains, the insurance policy may not be cancelled by the insurer, unless a replacement insurance policy or other proof of financial responsibility under this section is provided to the department by the owner. If the insurer proposes to cancel the insurance policy, the insurer shall provide notice to the department in writing by registered or certified mail not less than 120 days prior to the proposed cancellation date. Not less than 30 days prior to the expiration of the 120–day notice period, the owner shall deliver to the department a replacement insurance policy or other proof of financial responsibility under this section, in the absence of which all storage, treatment or disposal operations shall immediately cease and the policy shall remain in effect as long as any obligation of the owner remains for closure or long–term care.

4. If the insurance company becomes bankrupt or insolvent or if the company receives an unfavorable evaluation under s. 618.41 (6) (d), Stats., the owner shall, within 30 days after receiving written notice thereof, deliver to the department a replacement insurance policy or other proof of financial responsibility under this section, in the absence of which all disposal operations shall immediately cease and the policy shall remain in effect as long as any obligation of the owner remains for closure or long–term care.

5. The insurance policy shall further provide that funds, up to an amount equal to the maximum risk limit of the policy, shall be available to the department to carry out the closure and long–term care requirements of the approved plan of operation, or if no approved plan of operation exists, all applicable requirements in s. NR 685.05 or 685.06, if the owner fails to do so. The department shall mail notification of its intent to use the funds for that purpose to the last known address of the owner. If the insurer or owner submits a written request for a hearing to the secretary of the department within 20 days after the mailing of the notification, the department shall, prior to using the funds, hold a hearing for the purpose of determining whether or not the closure or long–term care requirements of the approved plan of operation or the applicable requirements in s. NR 685.05 or 685.06 have been carried out.

6. Each insurance policy shall contain a provision allowing assignment of the policy to a successor owner or operator. Assignment may be conditioned upon the consent of the insurer, if the consent is not unreasonably refused.

Note: These forms may be obtained from the Department of Natural Resources, Bureau of Waste Management, P.O. Box 7921, Madison, Wisconsin, 53707 or any region office.

(h) *Use of multiple financial mechanisms.* An owner or operator may satisfy the requirements of this section by establishing more than one proof of financial responsibility mechanism per facility. These mechanisms are limited to performance or forfeiture bonds, deposits with the department, escrow accounts, irrevocable trust funds, letters of credit and insurance. The mechanisms shall be as specified in pars. (a) through (e), and (g), respectively, except that it is the combination of mechanisms, rather than the single mechanism, which shall provide proof of financial responsibility for an amount at least equal to the current closure or long–term care cost estimate. The department may use any or all of the mechanisms to provide for closure or long–term care of the facility.

(i) *Use of a financial mechanism for multiple facilities.* An owner or operator may use a proof of financial responsibility mechanism specified in this section to meet the requirements of this chapter for more than one facility. Evidence of a proof of financial responsibility for multiple facilities submitted to the department shall include a list for each facility showing the EPA identification number, name, address and the amount of funds for closure or long–term care assured by the mechanism. The amount of funds available through the mechanism shall be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for closure or long–term care of any of the facilities covered by the mechanism, the department may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

(j) *Other methods.* The department shall consider other financial commitments made payable to or established for the benefit of the department to ensure the owner or operator shall comply with the closure or long–term care requirements of the approved plan of operation, or if no approved plan of operation exists for the facility, the applicable requirements in s. NR 685.05 or 685.06. The department shall review the request of any owner or operator to establish proof of financial responsibility under this section. The owner shall submit the request and all supporting information as part of the plan of operation.

(6) CHANGING METHODS OF PROOF OF FINANCIAL RESPONSIBILITY. The owner of a hazardous responsibility under sub. (5) to another, but not more than once per year. A change may only be made on the anniversary of the submittal of the original method of providing proof of financial responsibility.

(7) CALCULATING THE AMOUNT OF THE PROOF OF FINANCIAL RESPONSIBILITY. (a) *General.* The owner shall, as part of the interim license submittal or an initial operating license application, calculate the necessary amounts of proof of financial responsibility for both closure and long–term care based on the chosen

methods of providing proof of financial responsibility. The inflation factor used in the formulas shall be the result of dividing the latest published annual gross domestic product implicit price deflator published in the Survey of Current Business by the bureau of economic analysis, U.S. department of commerce, by the deflator for the previous year.

(b) *Closure.* 1. For escrow, trust or department accounts, proof of financial responsibility for closure shall be equal to the estimated cost of closure in current dollars multiplied by the inflation factor, and divided by the quantity of one plus the weighted average annual rate of return of the investments in the account expressed as a decimal.

2. For bonds, letters of credit and insurance, proof of financial responsibility for closure shall be equal to the estimated cost of closure in current dollars multiplied by the inflation factor.

(c) *Long–term care.* 1. For escrow, trust or department accounts, proof of financial responsibility for long–term care shall be provided in accordance with the following:

a. Annual payments shall be made into the account at the beginning of each year of site life. All estimated annual expenditures during the long–term care period shall be assumed to occur at the end of each year of the proof period.

b. Annual payments shall be made in equal dollar amounts or in dollar amounts that increase each year by no more than the projected rate of inflation. However, payments in excess of these minimum amounts may be made in any year, thereby reducing the amounts of subsequent annual payments for the remainder of the site life.

c. The amount of the annual payments shall be calculated and made such that, at the end of the projected facility life, the minimum dollar value of the account is equal to the sum of all estimated long–term care expenditures for the entire long–term care proof of financial responsibility period where the expenditure for each year has first been expressed in future dollars and then brought to present value using a discount rate equal to the projected rate of inflation plus 2%.

d. In estimating future earnings on these accounts, the weighted average rate of return of the investments held in the account may be used for a period of time not to exceed the weighted average maturity of the investments held in the account rounded to the nearest whole year. Earnings for years beyond the weighted average maturity of the investments in the account shall be calculated based on a projected rate of return equal to the projected rate of inflation plus 2%.

e. If an annual payment is missed or made late, the subsequent annual payment shall be increased so that the end of year balances calculated based on beginning of year payments are maintained.

2. For bonds, letters of credit or insurance, proof of financial responsibility for long–term care shall be equal to the sum of the costs in current dollars of performing each of the years of long–term care for the required long–term care proof of financial responsibility period.

(d) *Adjustments.* The owner shall submit to the department proof of the increase in the amount of all bonds, letters of credit, escrow accounts, trust accounts and insurance established under this section:

1. Annually, to account for increases in cost estimates based on adjustments for inflation; or

2. Within 60 days after a new cost estimate submitted in accordance with sub. (3) (b) or (4) (b) is approved by the department.

(8) ACCESS AND DEFAULT. Whenever on the basis of any reliable information, and after opportunity for hearing, the department determines that an owner or operator of a hazardous waste facility is in violation of any of the requirements for closure or long–term care specified in the approved plan of operation, or if no approved plan of operation exists, in s. NR 685.05 or 685.06, the department and its designees shall have the right to enter upon the facility and carry out the closure or long–term care requirements. The department may use part or all of the money deposited with it, or the money deposited in escrow or trust accounts, or performance or forfeiture bonds, or letters of credit, or funds accumulated under other approved methods to carry out the closure or long–term care requirements.

(9) AUTHORIZATION TO RELEASE FUNDS. (a) *Closure.* When an owner or operator has completed final or partial closure, the owner may apply to the department for release of a bond or letter of credit or return of money held on deposit, in escrow, or in trust for closure of the facility. The application shall consist of the certification and other submittals required under s. NR 685.05 (10) and an itemized list of costs incurred. Upon determination by the department that complete closure has been accomplished, the department shall in writing authorize release and return of all funds accumulated in the accounts or give written permission for cancellation of a bond, letter of credit or insurance. Determinations shall be made within 60 days of the application.

(b) *Long–term care.* One year after final or partial closure, and annually thereafter for the period of owner responsibility, the owner, who has carried out all necessary long–term care during the preceding year, may make application to the department for reimbursement from an escrow account, trust account, deposit with the department, or other approved methods, or for reduction of the bond, insurance or letter of credit equal to the estimated costs for long–term care for that year. The application shall be accompanied by an itemized list of costs incurred. Upon determination that the expenditures incurred are in accordance with the long–term care requirements anticipated in the approved plan of operation or, if no approved plan of operation exists, are in accordance with the requirements in s. NR 685.06, the department may authorize in writing the release of the funds or approve a reduction in the bond or letter of credit. Prior to authorizing a release of the funds or a reduction of the bond or letter of credit, the department shall determine that adequate funds exist to complete required long–term care work for the remaining period of owner responsibility. The department may authorize the release of any funds remaining in an escrow account, trust account, or on deposit with the department at the termination of the period of owner responsibility to the owner based on a determination made on a final application for reimbursement. The final application shall consist of the certification required under s. NR 685.06 (9) and an itemized list of costs incurred. Determinations shall be made within 60 days of any application for reimbursement under this paragraph.

(10) INCAPACITY OF OWNERS OR OPERATORS, OR FINANCIAL INSTITUTIONS. (a) *Owner or operator bankruptcy.* The owner or operator of a hazardous waste facility shall notify the department by certified mail of the commencement of a voluntary or involuntary proceeding under the bankruptcy code, 11 USC 101, et seq., naming the owner or operator as debtor, within 10 days after commencement of the proceeding.

(b) *Financial institution or trustee bankruptcy.* An owner or operator who fulfills the requirements for financial responsibility by obtaining an irrevocable trust, surety bond, letter of credit, escrow account, or insurance policy shall be deemed to be without the required proof of financial responsibility in the event of bankruptcy of the trustee or issuing institution, or a suspension or a 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 proof of financial responsibility within 30 days after the event.

History: Cr. Register, February, 1991, No. 422, eff. 3–1–91; am. (5) (a) 1., (e) 1. and (g) 1., Register, August, 1992, No. 440, eff. 9–1–92; am. (1) (b) 1., 2., Register, May, 1995, No. 473, eff. 6–1–95; am. (3) (a), (b) 1., (4) (a), (b) 1., (5) (a) 2., (c), (d), (5) (g) 3. and (9), r. and recr. (5) (g) 2., renum. (5) (h) to (l) to be (i) and (j), Register, May, 1998, No. 509, eff. 6–1–98; correction in (1) (b) and (4) (f), made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1998, No. 509.

NR 685.08 Liability requirements. (1) COVERAGE FOR SUDDEN ACCIDENTAL OCCURRENCES. The owner or operator of every hazardous waste facility, or group of hazardous waste facilities, located in Wisconsin, except facilities owned and operated by a state agency or a federal agency, department or instrumentality, 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 in–state facilities. The owner or operator shall have and maintain liability coverage for sudden accidental occurrences in the amount of at least $1 million per occurrence with an annual aggregate of at least $2 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in sub. (3).

(2) COVERAGE FOR NONSUDDEN ACCIDENTAL OCCURRENCES. The owner or operator of every hazardous waste surface impoundment, landfill, miscellaneous unit used for disposal or surface impoundment with discharges regulated under ch. 283, Stats., or group of the facilities, located in Wisconsin, except facilities owned and operated by a state agency, or a federal agency, department or instrumentality, shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of the facilities. The owner or operator shall have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least $3 million per occurrence with an annual aggregate of at least $6 million, exclusive of legal defense costs. An owner or operator subject to the requirements of this section may combine the required per occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per–occurrence level and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences shall maintain liability coverage in the amount of at least $4 million per occurrence and $8 million annual aggregate. This liability coverage may be demonstrated as specified in sub. (3).

(3) DEMONSTRATION OF COVERAGE. The owner or operator shall demonstrate the financial responsibility required under subs. (1) and (2) in one of the following ways:

(a) The owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this paragraph. Each insurance policy shall be amended by attachment of a hazardous waste facility liability endorsement or evidenced by a certificate of liability insurance. The wording of an endorsement shall be identical to the wording specified in sub. (7). The wording of a certificate of insurance shall be identical to the wording specified in sub. (7). Except for captive insurance companies, the insurer shall be licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states. The department, after conferring with the Wisconsin insurance commissioner, shall determine the acceptability of a surplus lines or captive insurance company to provide coverage for both sudden and non-sudden accidental occurrences. The department shall ask the insurance commissioner to provide a financial analysis of the insurer including a recommendation as to the insurer's ability to provide the required coverage. The department may require a periodic review of the acceptability of a surplus lines or captive insurance company.

(b) An owner or operator may demonstrate the required liability coverage by passing a financial test or using the guarantee for liability coverage as specified in subs. (8) and (9).

(c) An owner or operator may demonstrate the required liability coverage by obtaining a letter of credit for liability coverage as specified in sub. (10).

(d) An owner or operator may demonstrate the required liability coverage by obtaining a surety bond for liability coverage as specified in sub. (11).

(e) An owner or operator may demonstrate the required liability coverage by obtaining a trust fund for liability coverage as specified in sub. (12).

(f) An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated shall total at least the minimum amounts required by this section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this subsection, the owner or operator shall specify at least one assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

(g) An owner or operator shall notify the department in writing within 30 days whenever:

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 (f); or

2. A certification of valid claim for bodily injury or property damages caused by a sudden or non–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 (f); or

3. A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non–sudden accidental occurrence 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 for liability coverage under pars. (a) to (f).

(4) PERIOD OF COVERAGE. Paragraph (a) applies to owners or operators who obtain liability insurance in accordance with sub. (7). Paragraph (b) applies to owners and operators who use the financial test or guarantee to demonstrate liability coverage, and obtain department approval of the financial test or guarantee, in accordance with subs. (8) and (9). Paragraph (c) applies to owners and operators who use a letter of credit, surety bond or trust fund to demonstrate liability coverage, in accordance with subs. (10) to (12).

(a) The owner or operator shall continuously provide liability insurance as required by this section until the department authorizes cancellation of the policy or policies as provided herein. If the insurance company becomes bankrupt or insolvent or if the company receives an unfavorable evaluation under s. 618.41 (6) (d), Stats., the owner or operator shall, within 30 days after receiving written notice thereof, deliver to the department demonstration of liability coverage as required by sub. (3). When an owner or operator has completed closure in accordance with s. NR 680.60, the owner or operator may apply to the department for authorization to cancel the liability insurance required by this section. This application may be made jointly with the application necessary for the release of proof of financial responsibility for closure under s. NR 685.07. Upon determination by the department that closure has been completed in accordance with s. NR 680.60, the department shall authorize the owner to cancel any liability insurance required under this section. The department shall approve or deny the application within 60 days of receipt of the application.

(b) The owner or operator shall continuously provide liability coverage as required by this section until the owner or operator has completed closure in accordance with s. NR 680.60, and the department approves of the closure certification required to be submitted under s. NR 685.05. The department shall approve or

deny the certification within 60 days of receipt of the closure certification.

(c) The owner or operator shall continuously provide liability coverage as required by this section until the department authorizes the owner or operator to request the release of the letter of credit, or surety bond, or return of money held in trust, for liability coverage. When an owner or operator has completed closure in accordance with s. NR 680.60, the owner or operator may apply to the department for authorization to request the release of the letter of credit or surety bond or return of money held in trust for liability coverage. This application may be made jointly with the application necessary for the release of proof of financial responsibility for closure under s. NR 685.07 (9). Upon determination by the department that closure has been completed in accordance with s. NR 680.60, the department shall authorize the owner or operator to request the release of the letter of credit or surety bond or return of money held in trust for liability coverage required under this section. The department shall approve or deny the application within 60 days of the receipt of the application.

(5) REQUIRED SUBMITTALS. (a) The owner or operator of a facility that has obtained a variance under s. NR 680.50 or obtained or applied for an interim license shall submit to the department:

1. The signed duplicate original of the hazardous waste facility liability endorsement or the certificate of liability insurance in accordance with sub. (7). If requested by the department, the owner or operator shall provide a signed duplicate original of all insurance policies; or

2. The items specified under sub. (8); or

3. The items specified under sub. (9); or

4. The signed duplicate original of a letter of credit as specified in sub. (10); or

5. The signed duplicate original of a surety bond as specified in sub. (11); or

6. The signed duplicate original of the trust agreement as specified in sub. (12).

(b) The owner or operator of a proposed facility shall submit to the department as part of the initial operating license submittal:

1. The signed duplicate original of the hazardous waste facility liability endorsement or the certificate of liability insurance in accordance with sub. (7). If requested by the department, the owner or operator shall provide a signed duplicate original of all insurance policies; or

2. The items specified under sub. (8); or

3. The items specified under sub. (9); or

4. The signed duplicate original of the letter of credit as specified in sub. (10); or

5. The signed duplicate original of the surety bond as specified in sub. (11), or

6. The signed duplicate original of the trust agreement as specified in sub. (12).

(c) The owner or operator of an existing facility which has not obtained an interim license due to the withdrawal or denial of the interim license application or which no longer has an interim license or a variance, and has not received a written determination from the department that closure was completed in accordance with s. NR 680.60, shall either:

1. Submit to the department:

a. The signed duplicate original of the hazardous waste facility liability endorsement or the certificate of liability insurance in accordance with sub. (7). If requested by the department, the owner or operator shall provide a signed duplicate original of all insurance policies; or

b. The items specified under sub. (8); or

c. The items specified under sub. (9); or

d. The signed duplicate original of the letter of credit as specified in sub. (10); or

e. The signed duplicate original of the surety bond as specified in sub. (11); or

f. The signed duplicate original of the trust agreement as specified in sub. (12); or shall

2. Apply for department authorization to cancel the liability requirement in accordance with sub. (4) provided that closure has been completed in accordance s. NR 680.60.

(6) ADJUSTMENTS BY THE DEPARTMENT. If the department determines that the levels of coverage required by subs. (1) and (2) are not consistent with the degree and duration of risk associated with treatment, storage or disposal at the facility or group of in–state facilities, the department may adjust the level of coverage required under subs. (1) and (2) as may be necessary to protect human health and the environment. This adjusted level will be based on the department's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of in–state facilities. In addition, if the department determines that there is a significant risk to human health or the environment from nonsudden accidental occurrences resulting from the operations of a facility that is not a surface impoundment or landfill, the owner or operator may be required to comply with sub. (2). An owner or operator shall furnish to the department, within a reasonable time, any information which the department requests to determine whether cause exists for the adjustments of level or type of coverage.

(7) ENDORSEMENTS AND CERTIFICATE WORDING. (a) A hazardous waste facility liability endorsement as required in sub. (3) shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Hazardous Waste Facility Liability Endorsement

This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with the insured's obligation to demonstrate financial responsibility under s. NR 685.08, Wis. Adm. Code. The coverage applies at [list EPA Identification Number, name and address for each facility] for [insert "sudden accidental occurrences", "nonsudden accidental occurrences" or "sudden and nonsudden accidental occurrences", if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the insurer's liability], exclusive of legal defense costs.

The insurance afforded with respect to the occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with the provisions of this endorsement stated below are hereby amended to conform with this endorsement.

Bankruptcy or insolvency of the insured may not relieve the Insurer of its obligations under the policy to which this endorsement is attached.

The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in s. NR 685.08 (8), Wis. Adm. Code.

Whenever requested by the Department of Natural Resources (DNR) the Insurer agrees to furnish to the DNR a signed duplicate original of the policy and all endorsements.

Cancellation of this endorsement, whether by the Insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility, shall be effective only upon written notice and only after the expiration of 60 days after a copy of the written notice is received by the DNR.

Any other termination of this endorsement shall be effective only upon written notice and only after the expiration of thirty (30) days after a copy of the written notice is received by the DNR.

Attached to and forming part of policy No._____ issued by [name of Insurer], herein called the Insurer, of [address of Insurer] to [name of insured] of [address] this _____ day of_____, 19____. The effective date of said policy is _____ day of_____, 19____.

I hereby certify that the wording of this endorsement is identical to the wording specified in s. NR 685.08 (7), Wis. Adm. Code, as was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance in Wisconsin, or eligible to provide insurance as an excess or surplus lines insurer in Wisconsin.

[Signature of Authorized Representative of Insurer]

[Type name]

[Title], Authorized Representative of [name of Insurer]

[Address of Representative]

(b) A certificate of liability insurance as required in sub. (3) shall be worded as follows, except that the instruction in brackets are to be replaced with the relevant information and the brackets deleted:

Hazardous Waste Facility Certificate of Liability Insurance

[Name of Insurer], (the "Insurer"), of [address of Insurer] hereby certifies that it has issued liability insurance covering bodily injury and property damage to [name of insured], (the "insured"), of [address of insured] in connection with the insured's obligation to demonstrate financial responsibility under s. NR 685.08, Wis. Adm. Code. The coverage applies at [list EPA Identification Number, name, and address for each facility] for [insert "sudden accidental occurrences", "nonsudden accidental occurrences" or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs. The coverage is provided under policy number _____, issued on [date]. The effective date of the policy is [date].

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

Bankruptcy or insolvency of the insured may not relieve the Insurer of its obligations under the policy.

The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in s. NR 685.08 (8), Wis. Adm. Code.

Whenever requested by the Department of Natural Resources (DNR) the Insurer agrees to furnish to the DNR a signed duplicate original of the policy and all endorsements.

Cancellation of the insurance, whether by the insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility, shall be effective only upon written notice and only after the expiration of 60 days after a copy of the written notice is received by the DNR.

Any other termination of the insurance shall be effective only upon written notice and only after the expiration of thirty (30) days after a copy of the written notice is received by the DNR.

I hereby certify that the wording of this instrument is identical to the wording specified in s. NR 685.08 (7), Wis. Adm. Code, as the regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance in Wisconsin, or eligible to provide insurance as an excess or surplus lines insurer in Wisconsin..

[Signature of Authorized Representative of Insurer]

[Type name]

[Title], Authorized Representative of [name of Insurer]

[Address of Representative]

(8) FINANCIAL TEST FOR LIABILITY COVERAGE. The owner or operator may satisfy the requirements of this section by demonstrating that the owner or operator passes a financial test as specified in this subsection. To pass this test the owner or operator shall meet the criteria of par. (a) or (b).

(a) The owner or operator has:

1. Net working capital and tangible net worth each at least 6 times the amount of liability coverage to be demonstrated by this test;

2. Tangible net worth of at least $10 million; and

3. Assets in the United States amounting to either at least 90% of the owner's or operator's total assets or at least 6 times the amount of liability coverage to be demonstrated by this test.

(b) The owner or operator has:

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

2. Tangible net worth of at least $10 million;

3. Tangible net worth at least 6 times the amount of liability coverage to be demonstrated by this test; and

4. Assets in the United States amounting to either at least 90% of the owner's or operator's total assets or at least 6 times the amount of liability coverage to be demonstrated by this test.

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

(d) The owner or operator shall submit the following 3 items to the department to demonstrate that this test is met:

1. A letter signed by the owner or operator's chief financial officer as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

[Address to the department]

I am the chief financial officer of [owner or operator's name and address]. This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage as specified in s. NR 685.08 (8), Wis. Adm. Code.

[Fill out the following paragraphs regarding facilities and liability coverage. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name and address.]

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified in s. NR 685.08, Wis. Adm. Code: _____

The firm identified above guarantees, through the guarantee specified in s. NR 685.08, liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the following: _____. The firm identified above is [insert one or more: (1) The direct or higher–tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee:_____ ; or (3) engaged in the following substantial business relationship with the owner or operator:_____ , and receiving the following value in consideration of this guarantee: _____.] [Attach a written description of the business relationship or a copy of the contract establishing the relationship to this letter.]

This owner or operator [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 owner or operator ends on [month, day]. The figures for the following items marked with an asterisk are derived from this owner or operator's independently audited, year–end financial statements for the latest completed fiscal year ended [date].

Liability Coverage for Accidental Occurrences

[Fill in Alternative I if the criteria of s. NR 685.08 (8) (a), Wis. Adm. Code are used. Fill in Alternative II if the criteria of s. NR 685.08 (8) (b), Wis. Adm. Code are used].

ALTERNATIVE I

1.	Amount of annual aggregate liability coverage to be demonstrated	$	
*2.	Current assets	$	
*3.	Current liabilities	$	
4.	Net working capital (line 2 minus line 3)	$	
*5.	Tangible net worth	$	
*6.	If less than 90% of assets are located in the U.S., give total U.S. assets	$	
		YES	NO
7.	Is line 5 at least $10 million?		
8.	Is line 4 at least 6 times line 1?		
9.	Is line 5 at least 6 times line 1?		
*10.	Are at least 90% of assets located in the U.S.? If not, complete line 11.		
11.	Is line 6 at least 6 times line 1?		

ALTERNATIVE II

1.	Amount of annual aggregate liability coverage to be demonstrated	$	
2.	Current bond rating of most recent issuance and name of rating service		
3.	Date of issuance of bond		
4.	Date of maturity of bond		
*5.	Tangible net worth	$	
*6.	Total assets in U.S. (required only if less than 90% of assets are located in the U.S.)	$	
		YES	NO
7.	Is line 5 at least $10 million?		
8.	Is line 5 at least 6 times line 1?		
*9.	Are at least 90% of assets located in the U.S.? If not, complete line 10.		
10.	Is line 6 at least 6 times line 1?		

I hereby certify that the wording of this letter is identical to the wording specified in s. NR 685.08 (8) (d) 1., Wis. Adm. Code, as the regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

2. A copy of the independent certified public accountant's report on examination of the owner or operator's financial statements for the latest completed fiscal year.

3. A special report from the owner or operator's independent certified public accountant to the owner or operator stating that the accountant has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year–end financial statements for the latest fiscal year with the amounts in the financial statements; and in connection with that procedure, no matter came to the accountant's attention which caused the accountant to believe that the specified data should be adjusted.

(e) The owner or operator of a proposed facility shall submit the items specified in par. (d) in accordance with sub. (5).

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

(g) If the owner or operator no longer meets the requirements of par. (a) or (b), the owner or operator shall obtain alternate liability coverage in one of the ways specified in s. NR 685.08 (3) for the entire amount of required coverage as specified in this section. Evidence of alternate liability coverage shall be submitted to the department 90 days after the end of the fiscal year for which the year–end financial data show that the owner or operator no longer meets the requirements of par. (a) or (b).

(h) The department may allow or disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the accountant's report on examination of the owner or operator's financial statements. An adverse opinion or a disclaimer of opinion shall be cause for disallowance. The department shall evaluate other qualifications on an individual basis. The owner or operator shall provide evidence of

insurance for the entire amount of required liability coverage as specified in this section within 30 days after notification of disallowance.

(i) If the department has reason to believe that a facility no longer meets the financial test requirements, the department may require the facility to submit information and materials to show compliance at any time.

(9) GUARANTEE FOR LIABILITY COVERAGE. (a) Subject to par. (b), 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. (8) (a) to (f). The wording of the guarantee shall be identical to the wording specified in par. (c). A certified copy of the guarantee shall accompany the items sent to the department as specified in sub. (8) (d). 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 "substantial business relationship" and the value received in consideration of the guarantee.

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

2. The guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the department. This guarantee may not be terminated unless and until the department approves alternate liability coverage complying with s. NR 685.08.

(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:

a. The state in which the guarantor is incorporated, and

b. Wisconsin have submitted a written statement to the department that a guarantee executed as described in this section is a legally valid and enforceable obligation in that state.

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 Wisconsin and in the state in which it has its principal place of business, and

b. The attorney general or insurance commissioner of Wisconsin and the state in which the guarantor corporation has its principal place of business, has submitted a written statement to the department that a guarantee executed as described in this section is a legally valid and enforceable obligation in that state.

(c) A guarantee, as specified in this subsection, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Guarantee for Liability Coverage

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of [if incorporated within the United States insert "the State of —" and insert name of state; if incorporated outside the United States insert the name of the country in which incorporated, the principal place of business within the United States, and the name and address of the registered agent in the state of the principal place of business], herein referred to as guarantor. This guarantee is made on behalf of our subsidiary [owner or operator] of [business address], to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in s. NR 685.08 (9).

2. [Owner or operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee: [List for each facility: EPA Identification Number, name, and address; and if guarantor is incorporated outside the United States list the name and address of the guarantor's registered agent in each state.] This guarantee satisfies third–party liability requirements for [insert "sudden" or"nonsudden" or "both sudden and nonsudden"] accidental occurrences as specified in s. NR 685.08, Wis. Adm. Code in above–named owner or operator facilities for coverage in the amount of [insert dollar amount] for each occurrence and [insert dollar amount] annual aggregate.

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

4. The obligation does not apply to any of the following:

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

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

c. Bodily injury to:

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

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

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

b) To any obligation to share damages with or repay another person who shall pay damages because of the injury to persons identified in paragraphs 1) and 2).

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

e. Property damage to:

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

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

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

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

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

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the department and to [owner or operator] that he intends to provide alternate liability coverage as specified in s. NR 685.08, Wis. Adm. Code, as applicable, in the name of [owner or operator]. Within 120 days after the end of the fiscal year, the guarantor shall establish the liability coverage unless [owner or operator] has done so.

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

7. Guarantor agrees that within 30 days after being notified by the department of a determination that guarantor no longer meets the financial test criteria or that the guarantor is disallowed from continuing as a guarantor, the guarantor shall establish alternate liability coverage as specified in s. NR 685.08, Wis. Adm. Code in the name of [owner or operator], unless [owner or operator] has done so.

8. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability requirements set by s. NR 685.08, Wis. Adm. Code, if the modification shall become effective only if the department does not disapprove the modification within 30 days of receipt of notification of the modification.

9. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] shall comply with the applicable requirements of s. NR 685.08, Wis. Adm. Code for the above–listed facility(ies), except as provided in paragraph 10 of this agreement.

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

Guarantor may terminate this guarantee by sending notice by certified mail to the Department and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the Department approves, alternate liability coverage complying with s. NR 685.08 Wis. Adm. Code.

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

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

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

12. Guarantor agrees that this guarantee is in addition to and does not affect any other responsibility or liability of the guarantor with respect to the covered facilities.

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

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

Certification of Valid Claim

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

[Signatures]

Principal

(Notary) Date

[Signatures]

Claimant(s)

(Notary) Date

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

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

I hereby certify that the wording of the guarantee is identical to the wording specified in s. NR 685.08 (9) (c), Wis. Adm. Code, as the regulations were constituted on the date shown immediately below.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness of notary:

(10) LETTER OF CREDIT FOR LIABILITY COVERAGE. (a) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit that conforms to the requirements of this subsection and submitting a copy of the letter of credit to the department.

(b) The financial institution issuing the letter of credit shall be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency.

(c) The wording of the letter of credit shall be identical to the wording specified in par. (f).

(d) An owner or operator who uses a letter of credit to satisfy the requirements of this section may also establish a standby trust fund. Under the terms of such a letter of credit, all amounts paid pursuant to a draft by the trustee of the standy trust will be deposited by the issuing institution into the standby trust in accordance with instructions from the trustee. The trustee of the standby trust fund shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(e) The wording of the standby trust fund shall be identical to the wording specified in par. (g).

(f) A letter of credit, as specified in this subsection, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Irrevocable Standby Letter of Credit

Name and Address of Issuing Institution

Secretary

Wisconsin Department of Natural Resources

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. _____in the favor of ["any and all third–party liability claimants" or insert name of trustee of the standby trust fund], at the request and for the account of [owner's or operator's name and address] for third–party liability awards or settlements up to [in words] U.S. dollars $_____ per occurrence and the annual aggregate amount of [in words] U.S. dollars $ _____, for sudden accidental occurrences and/or for third–party liability awards or settlements up to the amount of [in words] U.S. dollars $ _____ per occurrence, and the annual aggregate amount of [in words] U.S. dollars $_____, for nonsudden accidental occurrences available upon presentation of a sight draft, bearing reference to this letter of credit No. _____, and [insert the following language if the letter of credit is being used without a standby trust fund]

(A) a signed certificate reading as follows:

Certification of Valid Claim

The undersigned, as parties [insert principal] and [insert name and address of third–party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operations of [principal's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $[ ]. We hereby certify that the claim does not apply to any of the following:

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

(2) Any obligation of [insert principal] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(3) Bodily injury to:

(a) An employee of [insert principal] arising from, and in the course of, employment by [insert principal]; or

(b) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal].

This exclusion applies:

1. Whether [insert principal] may be liable as an employer or in any other capacity; and

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

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

(5) Property damage to:

(a) Any property owned, rented or occupied by [insert principal];

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

(c) Property loaned to [insert principal];

(d) Personal property in the care, custody or control of [insert principal];

(e) That particular part of real property on which [insert principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert principal] are performing operations, if the property damage arises out of these operations.

[Signatures]

Principal

[Signatures]

Claimant(s)

or

(B) a valid final court order establishing a judgment against the principal for bodily injury or property damage caused by a sudden or nonsudden accidental occurrence arising from the operation of the principal's facility or group of facilities.

This letter of credit is effective as of [date] and shall expire on [date at least one year later], but the expiration date shall be automatically extended for a period of [at least one year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you, the Wisconsin Department of Natural Resources, and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor the draft upon presentation to us.

[Insert the following language if a standby trust fund is not being used.] In the event that this letter of credit is used in combination with another mechanism for liability coverage, this letter of credit shall be considered [insert "primary" or "excess"] coverage.

We certify that the wording of this letter of credit is identical to the wording specified in s. NR 685.08 (10) (d), Wis. Adm. Code, as the regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce" or "the Uniform Commercial Code"].

(g) 1. A standby trust agreement, as specified in par. (d), shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Standby Trust Agreement

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator] a [name of a State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert,"incorporated in the State of" or " national bank"], the "trustee."Whereas the Department of Natural Resources, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility or group of facilities shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental or nonsudden accidental occurrences, or both, arising from operations of the facility or group of facilities.

Whereas, the Grantor has elected to establish a standby trust into which the proceeds from a letter of credit may be deposited to assure all or part of such financial responsibility for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities. This agreement pertains to the facilities identified on attached schedule A [on schedule A, for each facility list the EPA Identification Number, name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a standby trust fund, hereafter the "Fund," for the benefit of any and all third parties injured or damaged by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of [up to $1 million] per occurrence and [up to $2 million] annual aggregate for sudden accidental occurrences and [up to $3 million] per occurrence and [up to $6 million] annual aggregate for nonsudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

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

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

(c) Bodily injury to:

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

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Grantor].

This exclusion applies:

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

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

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

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert Grantor];

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

(3) Property loaned [insert Grantor];

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

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

In the event of combination with another mechanism for liability coverage, the fund shall be considered [insert "primary" or "excess"] coverage.

The Fund is established initially as consisting of the proceeds of the letter of credit deposited into the Fund. Such proceeds and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Department of Natural Resources.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by drawing on the letter of credit described in Schedule B and by making payments from the Fund only upon receipt of one of the following documents:

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

Certification of Valid Claim

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

[Signature]

Grantor

[Signatures]

Claimant(s)

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

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of the proceeds from the letter of credit drawn upon by the Trustee in accordance with the requirements of s. NR 685.08 (10) (f), Wis. Adm. Code and Section 4 of this Agreement.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates

as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a–2 (a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or a State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a–1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest–bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements to the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Department and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee. All orders, requests, certifications of valid claims, and instructions to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Department, except as provided for herein.

Section 14. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Department, or by the Trustee and the Department if the Grantor ceases to exist.

Section 15. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Department, or by the Trustee and the Department, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be paid to the Grantor.

The Department will agree to termination of the Trust when the owner or operator substitutes alternative financial assurance as specified in s. NR 685.08.

Section 16. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor and the Department issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Wisconsin.

Section 18. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation of the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in s. NR 685.08 (10), Wis. Adm. Code, as such regulations were constituted on the date first above written.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

2. The following is an example of the certification of acknowledgement which must accompany the trust agreement for a standby trust fund as specified in this subsection.

State of

County of

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

Title:

My Commission expires [DATE].

We certify that the wording of this letter of credit is identical to the wording specified in s. NR 685.08 (10) (d), Wis. Adm. Code, as the regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce" or "the Uniform Commercial Code"].

(11) SURETY BOND FOR LIABILITY COVERAGE. (a) An owner or operator may satisfy the requirements of this section by obtaining a surety bond that conforms to the requirements of this subsection and submitting a copy of the bond to the department.

(b) The surety company issuing the bond shall be authorized to do business in Wisconsin.

(c) The wording of the surety bond shall be identical to the wording specified in par. (e).

(d) A surety bond may be used to satisfy the requirements of this section only if the attorneys general or insurance commissioners of;

1. The state in which the surety is incorporated, and

2. Wisconsin, have submitted a written statement to the department that a surety bond executed as described in this section is a legally valid and enforceable obligation in that state.

(e) A surety bond, as specified in this subsection, shall be worded as follows: except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Payment Bond

Surety Bond No. [Insert number]

Parties [Insert name and address of owner or operator], Principal, incorporated in [Insert state of incorporation] of [Insert city and state of principal place of business] and [Insert name and address of surety company(ies)], Surety Company(ies), of [Insert surety(ies) place of business].

EPA Identification Number, name, and address for each facility guaranteed by this bond:

	Sudden accidental occurrences	Nonsudden accidental occurrences
Penal Sum Per Occurrence	[insert amount]	[insert amount]
Annual Aggregate	[insert amount]	[insert amount]

Purpose: This is an agreement between the Surety(ies) and the Principal under which the Surety(ies), its (their) successors and assignees, agree to be responsible for the payment of claims against the Principal for bodily injury and/or property damage to third parties caused by ["sudden" and/or "nonsudden] accidental occurrences arising from operations of the facility or group of facilities in the sums prescribed herein; subject to the governing provisions and the following conditions.

Governing Provisions:

(1) Rules and Regulations of the Wisconsin Department of Natural Resources, particularly s. NR 685.08, Wis. Adm. Code.

(2) Title 42 of the United States Code, section 6924.

Conditions:

(1) The Principal is subject to the applicable governing provisions that require the Principal to have and maintain liability coverage for bodily injury and property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental occurrences arising from operations of the facility or group of facilities. The obligation does not apply to any of the following:

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

(b) Any obligation of [insert principal] under a workers' compensation, disability benefits, or unemployment compensation law or similar law.

(c) Bodily injury to:

1. An employee of [insert principal] arising from, and in the course of, employment by [insert principal]; or

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

a. Whether [insert principal] may be liable as an employer or in any other capacity; and

b. To any obligation to share damages with or repay another person who shall pay damages because of the injury to persons identified in paragraph (c) 1. and 2.

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

(e) Property damage to:

1. Any property owned, rented or occupied by [insert principal];

2. Premises that are sold, given away or abandoned by [insert principal] if the property damage arises out of any part of those premises;

3. Property loaned to [insert principal];

4. Personal property in the care, custody or control of [insert principal];

5. That particular part of real property on which [insert principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert principal] are performing operations, if the property damage arises out of these operations.

(2) This bond assures that the Principal shall satisfy valid third party liability claims, as described in condition 1.

(3) If the Principal fails to satisfy a valid third party liability claim, as described above, the Surety(ies) becomes liable on this bond obligation.

(4)The Surety(ies) shall satisfy a third party liability claim only upon the receipt of one of the following documents:

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

Certification of Valid Claim

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

[Signature]

Principal

[Notary] Date

[Signature(s)]

Claimant(s)

[Notary] Date

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

(5) In the event of combination of this bond with another mechanism for liability coverage, this bond shall be considered [insert "primary" or "excess"] coverage.

(6) The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until the payment or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum, provided that the Surety(ies) furnish(es) notice to the Department forthwith of all claims filed and payments made by the Surety(ies) under this bond.

(7) The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and the Department, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal and the Department, as evidenced by the return receipt.

(8) The Principal may terminate this bond by sending written notice to the Surety(ies) and to the Department.

(9) The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules and regulations and agree(s) that no amendment shall in any way alleviate its (their) obligation on this bond.

(10) This bond is effective from [insert date] (12:01 a.m., standard time, at the address of the Principal as stated herein) and shall continue in force until terminated as described above.

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in s. NR 685.08 (11), Wis. Adm. Code, as the regulations were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate Seal]

CORPORATE SURETY[IES]

[Name and address]

State of incorporation:

Liability Limit: $

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every co–surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: $

(12) TRUST FUND FOR LIABILITY COVERAGE. (a) An owner or operator may satisfy the requirements of this section by establishing a trust fund that conforms to the requirements of this subsection and submitting an originally signed duplicate of the trust agreement to the department.

(b) The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(c) The trust fund for liability coverage shall be funded for the full amount of the liability coverage to be provided by the trust fund before it may be relied upon to satisfy the requirements of this section. If at any time after the trust fund is created the amount

of funds in the trust fund is reduced below the full amount of the liability coverage to be provided, the owner or operator, by the anniversary date of the establishment of the fund, shall either add sufficient funds to the trust fund to cause its value to equal the full amount of liability coverage to be provided, or obtain other financial assurance as specified in this section to cover the difference. For purposes of this subsection, "the full amount of the liability coverage to be provided" means the amount of coverage for sudden or nonsudden occurrences or both required to be provided by the owner or operator by this subsection, less the amount of proof of financial responsibility for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate proof of financial responsibility by the owner or operator.

(d) The wording of the trust fund shall be identical to the wording specified in par. (e).

(e) 1. A trust agreement, as specified in this subsection, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Trust Agreement

Trust Agreement, the "Agreement", entered into as of [date] by and between [name of the owner or operator] a [name of State] [insert "corporation", "partnership", "association", or "proprietorship"], the "Grantor" and [name of corporate trustee], [insert, "incorporated in the State of_____" or "a national bank"], the "trustee".

Whereas, the Wisconsin Department of Natural Resources has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility or group of facilities shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the Grantor has elected to establish a trust to assure all or part of the financial responsibility for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities. This agreement pertains to the facilities identified on attached schedule A [on schedule A, for each facility list the EPA Identification Number, name and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, hereinafter the "Fund", for the benefit of any and all third parties injured or damaged by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of [up to $1 million] per occurrence and [up to $2 million] annual aggregate for sudden accidental occurrences and [up to $3 million] per occurrence and [up to $6 million] annual aggregate for nonsudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

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

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

(c) Bodily injury to:

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

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Grantor].

This exclusion applies:

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

(B) To any obligation to share damages with or repay another person who shall pay damages because of the injury to persons identified in paragraphs (1) and (2).

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

(e) Property damage to:

(1) Any property owned, rented or occupied by [insert Grantor];

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

(3) Property loaned to [insert Grantor];

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

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

In the event of combination with another mechanism for liability coverage, the fund shall be considered [insert "primary" or "excess"] coverage.

The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. The property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Department.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by making payments from the Fund only upon receipt of one of the following documents;

(a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid. The certification

shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

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

[Signatures]

Grantor

[Signatures]

Claimant(s)

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

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence and diligence under the circumstance then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 USC 80a–2.(a), shall not be acquired or held unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common commingled, or collective trust fund created by the Trustee in which the fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 USC 81a–1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote the shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any sale or other disposition;

(b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing the securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of the securities in a qualified central depositary even though, when so deposited, the securities may be merged and held in bulk in the name of the nominee of the depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a federal reserve bank, but the books and records of the Trustee shall at all times show that all the securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuations. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the Department, a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the Department shall constitute a conclusively binding assent by the Grantor barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but the resignation or replace-

ment shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Department and the present Trustee by certified mail 10 days before the change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests and instructions by the Grantor to the Trustee shall be in writing, signed by the persons that are designated in the attached Exhibit A or other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests and instructions by the Department to the Trustee shall be in writing, signed by the Secretary of the Department, or the designee, and the Trustee shall act and shall be fully protected in acting in accordance with orders, requests and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Department hereunder has occurred. The Trustee shall have no duty to act in the absence of orders, requests and instructions from the Grantor and/or the Department, except as provided for herein.

Section 15. Notice of Nonpayment. If a payment for bodily injury or property damage is made under Section 4 of this trust, the Trustee shall notify the Grantor of payment and the amount(s) thereof within five (5) working days. The Grantor shall, on or before the anniversary date of the establishment of the Fund following the notice, either make payments to the Trustee in amounts sufficient to cause the trust to return to its value immediately prior to the payment of claims under Section 4, or shall provide written proof to the Trustee that other financial assurance for liability coverage has been obtained equalling the amount necessary to return the trust to its value prior to the payment of claims. If the Grantor does not either make payments to the Trustee or provide the Trustee with proof, the Trustee shall, within 10 working days after the anniversary date of the establishment of the Fund, provide a written notice of nonpayment to the Department.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Department, or by the Trustee and the appropriate Department, if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Department, or by the Trustee and the Department, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

The Department shall agree to termination of the Trust when the owner or operator substitutes alternate financial assurance as specified in this section.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Department issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide a defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Wisconsin.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in s. NR 685.08 (12), Wis. Adm. Code, as the regulations were constituted on the date first above written.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

2. The following is an example of the certification of acknowledgement which shall accompany the trust agreement for a trust fund as specified in this subsection.

State of

County of

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to the instrument is the corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

(13) INCAPACITY OF OWNERS OR OPERATORS, GUARANTORS OR FINANCIAL INSTITUTIONS.

(a) An owner or operator shall notify the department by certified mail of the commencement of a voluntary or involuntary proceeding under title 11 (bankruptcy), U.S. code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding. A guarantor of a guarantee as specified in sub. (9) shall make a notification if the guarantor is named as debtor, as required under the terms of the guarantee sub. (9) (c).

(b) An owner or operator who fulfills the requirements of this section by obtaining a trust fund, surety bond, letter of credit or insurance policy shall be deemed to be without the required 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 liability coverage within 30 days after an event.

History: Cr. Register, February, 1991, No. 422, eff. 3–1–91; am. (7) (a), Register, August, 1992, No. 440, eff. 9–1–92; am. (2), (10) (c), r. and recr. (3) (g) 1., 2., cr. (3) (g) 3., (10) (d), (e), (g), renum. (10) (d) to (10) (f) and am., Register, May, 1995, No. 473, eff. 6–1–95; am. (3) (a), (7) (a), (b), (8) (d) 1., (9) (c) and (10) (f), Register, May, 1998, No. 509, eff. 6–1–98.

NR 685.09 Environmental fees. **(1)** IMPOSITION OF TONNAGE FEE. (a) All owners or operators of nonapproved licensed hazardous waste land disposal facilities shall pay to the department a tonnage fee for each ton of hazardous waste or solid waste received and disposed of at the facility, until the facility no longer receives waste and begins closure activities, except as otherwise provided in s. 289.62 (1) (b), Stats. The department shall deposit all tonnage fees paid by a nonapproved facility into the environmental fund for environmental repair. The monies in the waste management fund shall be expended exclusively as set forth in s. 289.68, Stats.

(b) For all nonapproved hazardous waste land disposal facilities, the total annual tonnage fees for all solid waste received by the facility shall be reduced by the amount of the environmental repair base fee. If the environmental repair base fee for a nonapproved facility is greater than the annual tonnage fee imposed under s. 289.62 (2), Stats., the waste received by the facility is exempt from the tonnage fee for that year.

(2) ENVIRONMENTAL REPAIR FEE. (a) All owners or operators of licensed hazardous waste land disposal facilities shall pay to the department an environmental repair fee for each ton of hazardous waste or solid waste received and disposed of at the facility, until the facility no longer receives waste and begins closure activities. The environmental repair fee shall be as specified in s. 289.67 (1) (cm) and (cp), Stats.

(b) All generators of hazardous waste who are required to report annually on hazardous waste activities in accordance with s. NR 610.08 (1) (e) or 615.11 (1), shall pay to the department an environmental repair fee for each ton of hazardous waste generated during the reporting year. The environmental repair fee for generators shall be as specified in s. 289.67 (2) (b), Stats.

(c) All owners or operators of licensed nonapproved facilities shall pay to the department an environmental repair base fee for each calendar year until the facility no longer receives waste and begins closure activities. The environmental repair base fees are specified in s. 289.67 (3) (b), Stats. The environmental repair base fees may be reduced in accordance with s. 289.67 (3) (d), Stats. The environmental repair surcharge is specified in s. 289.67 (4), Stats.

(d) The department shall deposit all environmental repair fees, environmental repair base fees and environmental repair surcharge fees into the environmental repair fund provided for in s. 25.46, Stats. The monies in the environmental repair fund shall be expended exclusively as set forth in s. 292.31 (3) and (4), Stats.

(3) GROUNDWATER, SOLID WASTE CAPACITY AND WELL COMPENSATION FEES. All owners or operators of licensed hazardous waste land disposal facilities shall pay to the department a groundwater, solid waste capacity and well compensation fee for each ton of hazardous waste or solid waste received and disposed of at the facility, until the facility no longer receives wastes and begins closure activities. The groundwater, solid waste capacity and well compensation fees shall be as specified in s. 289.63 (3), Stats. The department shall deposit all groundwater fees into the environmental fund for groundwater management as provided for in s. 25.46, Stats. The department shall deposit all well compensation and solid waste capacity fees into the environmental fund for environmental repair as provided for in s. 25.46, Stats.

(4) CERTIFICATION. The owner or operator of a licensed hazardous waste land disposal facility shall certify, on a form provided by the department, the amount of hazardous waste received and disposed of during the preceding reporting period. The department shall specify the term of the reporting period on the certification form. The department shall mail the certification form to the owner or operator every January. The certification form shall be completed and returned to the department if the tonnage or categories of hazardous waste or solid waste disposed of during the preceding reporting period are different from the year immediately proceeding the reporting period. The certification form shall be returned to the department within 45 days after mailing of the form by the department to the owner or operator. The department shall mail the fees notice in May and the owner or operator has 30 days after mailing of the fees notice to remit the appropriate fees to the department. An owner or operator failing to remit the appropriate fees within 30 days after mailing of the fees notice to the owner or operator shall pay a late processing fee of $50.

(5) DETERMINATION OF WASTE TONNAGES. (a) *Determination by owner or operator.* The owner or operator shall use one of the following methods for determining the number of tons of waste received and disposed of at the land disposal facility.

1. The owner or operator may use actual weight or volume records, or

2. The owner or operator may use manifest records.

(b) *Conversion factors.* The conversion factors in table IX shall be used. All conversion factors are based on wet densities.

Table IX

CONVERSION FACTORS

Liquid wastes	Actual weighing of the waste material is required.
Pulp and papermill sludge In–field – compacted	2,200 pounds/cubic yard
Municipal wastewater sludge	1,684 pounds/cubic yard
Utility ash – fly and bottom As delivered – uncompacted	2,200 pounds/cubic yard
In–field – compacted	2,400 pounds/cubic yard
Foundry wastes As delivered – uncompacted	2,600 pounds/cubic yard
In–field – compacted	3,000 pounds/cubic yard

(c) *Department estimates.* The department may estimate by waste category the number of tons received at a hazardous waste disposal facility. The department's estimate shall appear on the certification form and shall be the number of tons received and reported for the previous reporting period.

(6) WASTE MANAGEMENT FUND EXPENDITURES. (a) *Payments for long–term care after termination of proof of financial responsibility.* The department shall determine the necessary maintenance requirements for the long–term care of an approved hazardous waste disposal facility after the termination of the proof of financial responsibility. The department shall comply with s. 16.75, Stats., when applicable, for contracting services for the required long–term care and maintenance of hazardous waste disposal facilities.

(b) *Payments of related costs.* The department may expend monies from the waste management fund in accordance with s. 289.68, Stats.

History: Cr. Register, February, 1991, No. 422, eff. 3–1–91; am. (1) (intro.), (2) (a), (3) (intro.), (6) (a), (b), r. (1) (a), (b), (6) (c), renum. (1) (intro.) to (1) (a), (1) (c) to (1) (b) and am., (2) (b) and (c) to (2) (c) and (d) and am. (c), cr. (2) (b), Register, May, 1995, No. 473, eff. 6–1–95; correction in (1) (a) to (b), (2) (a) to (d), (3) and (6) (b) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1998, No. 509.