

# Ohio Administrative Code (OAC) Chapter 400

## CONSTRUCTION AND DEMOLITION DEBRIS REGULATIONS

3745-400-08	Construction and final closure certification.	3745-400-18	Financial assurance for post-closure care of construction and demolition debris facilities
3745-400-12	Final closure of facilities.	3745-400-19	Post-closure care certification report.
3745-400-13	Financial assurance for construction and demolition debris facility final closure.	3745-400-20	Leachate sampling and analysis and additional requirements to monitor ground water for leachate parameters.
3745-400-14	Wording of the financial instruments.	3745-400-21	Construction and demolition debris facility - leachate parameter list.
3745-400-16	Post-closure care of a construction and demolition debris facility.	3745-400-25	Five year transition for final closure and post-closure care financial assurance for construction and demolition debris facilities.
3745-400-17	Procedures for issuance of an order extending the post-closure care period.		

### 3745-400-08 Construction and final closure certification.

(A) Upon completion of construction of an [engineering engineered](#) component required by rule 3745-400-07 of the Administrative Code, the owner or operator shall submit to the licensing authority, a construction certification report. The construction certification report shall certify that construction complies with the construction and performance specifications contained in rules 3745-400-07 and 3745-400-10 of the Administrative Code.

[Comment: Certification follows the facility design plan of rule 3745-400-07 of the Administrative Code, in that there are certification reports to certify [the construction of engineered components of the](#) the soil liner, leachate collection system, and final cap system, and a certification report to certify the ground water monitoring well system. In addition, a final certification report is required to certify final closure in accordance with rule 3745-400-12 of the Administrative Code.]

(1) Certification of installation of ground water monitoring wells, as required by paragraph (A) of rule 3745-400-10 of the Administrative Code, shall be submitted to the licensing authority within sixty days of completion of construction. If the hydrogeologic investigation is conducted in phases, the certification of the ground water monitoring wells shall also include the results from the hydrogeologic investigation. The hydrogeologic investigation shall comply with the requirements of paragraph (C) of rule 3745-400-09 of the Administrative Code.

[Comment: The licensing authority is not required to approve the certification report. However for new areas which are to be licensed for disposal, disposal cannot take place until the monitoring wells necessary to monitor the active licensed disposal area are installed and the first ground water sampling has occurred, as indicated in paragraph (D)(4) of rule 3745-400-11 of the Administrative Code.]

(2) Certification of construction of the [engineering](#)

[engineered](#) components shall be submitted to the licensing authority within sixty days of completion of construction. ~~Engineering Engineered~~ components requiring construction certification are those components contained in the facility construction design plan required by paragraph (F) of rule 3745-400-07 of the Administrative Code and any barrier layer designed and shown in the license application for an existing facility in accordance with rule 3745-37-02 of the Administrative Code.

[Comment: The licensing authority is not required to approve the certification report. However for areas which are to be licensed for disposal, disposal cannot take place until the report is received and the licensing authority inspects the area as indicated in paragraph (D)(3) of rule 3745-400-11 of the Administrative Code. The leachate collection system, when constructed in phases ahead of the working face, requires certification and inspection for each construction phase.]

(3) Certification of construction [engineered components](#) of final cap system, which is required by paragraph (G) of rule 3745-400-07 of the Administrative Code and contained in the final cap system design plan, shall be submitted to the licensing authority within sixty days of completion of construction. The owner or operator may construct portions of the final cap system as active licensed disposal areas are brought to final grade. ~~The licensing authority shall review the certification report and either approve or deny the construction. Funds retained as financial assurance shall not be reimbursed to the owner or operator until the licensing authority has concurred that construction of the final cap system meets the specifications contained in paragraphs (D) and (E) of rule 3745-400-07 of the Administrative Code, as applicable.~~

[Comment: [The release of final closure financial assurance by the licensing authority upon construction certification of engineered components of the final cap system is addressed in paragraph \(A\)\(6\) of rule 3745-400-13 of the Administrative Code.](#)]

(B) Except for the construction certification report on the installation of ground water monitoring wells which shall be certified by a qualified ground water scientist, each

# \*\*\*DRAFT - NOT FOR FILING\*\*\*

construction certification report shall be signed and sealed by a professional engineer registered in Ohio and shall include the following:

(1) Identification of the constructed ~~engineering component(s)~~ engineered component for certification. Plan sheets showing the appropriate views and cross-sections from the facility design plan shall be used to prepare record drawings of what and how the ~~engineering engineered~~ component was constructed and shall include the testing locations. Details of the ~~engineering engineered~~ component shall be redrawn. Record drawings of a barrier layer shall consist of a plan drawing and cross sections and shall utilize the drawing formats described in paragraphs (F)(3) and (F)(4) of rule 3745-400-07 of the Administrative Code.

(2) Sampling and testing procedures utilized to verify the construction of the ~~engineering engineered~~ components.

(3) Parameters and testing locations.

(4) Results of all testing required by paragraph (C) of this rule.

(5) Identification of any deviations from the specifications contained in rule 3745-400-07 of the Administrative Code. Any significant differences between the test results shall be justified by the owner or operator.

[Comment: A significant change to a specification of rule 3745-400-07 is a modification as described in paragraph (A) of rule 3745-400-15 of the Administrative Code.]

(6) The management structure and the experience and training of the testing personnel.

(7) The construction certification of the survey marks shall require a certified statement prepared by a professional surveyor that the requirements of paragraph (F)(3)(i) of rule 3745-400-07 of the Administrative Code have been met.

(C) The owner or operator shall verify the following at the frequencies specified below:

(1) Prior to use in construction of the recompacted soil liner or any soil barrier layer or in the addition of geologic material to establish isolation distance, the soil materials shall be tested for recompacted permeability at construction specifications at a frequency of least once for every ten thousand cubic yards of soil to show that the materials are suitable for use.

(2) The permeability of each lift of the recompacted soil liner, soil barrier layer, or added geologic material shall be verified on undisturbed samples at least once per every two acres. Any penetrations shall be repaired using methods acceptable to the licensing authority.

(3) Prior to being used in the leachate collection system, the proposed drainage medium shall be tested for permeability at least once for every five thousand cubic yards of material.

(4) Prior to use in the construction of the standard cap system, the soil materials to be recompacted shall be classified by texture according to paragraph (G)(2)(a)(i) of rule 3745-400-07 of the Administrative Code at least once for every five thousand cubic yards of soil to demonstrate the materials are suitable for use.

(5) After construction, the compacted density of the recompacted soil of the standard cap system and the subbase of any soil barrier layer shall be demonstrated by at least one of the following:

(a) By proof rolling with a pneumatic tire or smooth steel drum roller providing at least sixty-five psi contact pressure.

(b) To be at least ninety five ~~percent~~ per cent of the maximum standard Proctor density at a frequency of at least five times per acre per lift.

(c) To be at least ninety ~~percent~~ per cent of the maximum modified Proctor density at a frequency of at least five times per acre per lift.

(6) If the standard or modified Proctor density is to be used as the standard for recompaction as in paragraph (C)(5)(b) or (C)(5)(c) of this rule, the maximum dry density and optimum moisture content shall be also established by method ASTM ~~D-698~~ D698 or ASTM ~~D-1557~~ D1557 at least once for every five thousand cubic yards of soil prior to use.

[The text of the incorporated materials is not included in this rule and are hereby made a part of this rule. Only the specific version specified in this rule is incorporated. Any amendment or revision to a referenced document is not incorporated until this rule has been amended to specify the new version. The materials incorporated by reference are available as follows:

Specifications of the "American Society for Testing and Materials" (ASTM). Information and copies may be obtained by writing to: "ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, Pennsylvania 19428-2959." These documents are available for purchase at <http://www.astm.org>. As used in this rule:

ASTM D698-07e1, "Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Standard Effort (12,400 ft-lbf/ft<sup>3</sup>(600 kN-m/m<sup>3</sup>));" approved in 2000; amended in 2007.

ASTM D1557-09, "Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Modified Effort (56,000 ft-lbf/ft<sup>3</sup>(2,700 kN-m/m<sup>3</sup>));" approved in 2000; amended in 2002, 2007, and 2009.]

(D) Final closure certification report. The final closure certification report shall verify that the following activities have been completed in accordance with paragraph (E) of rule 3745-400-12 of the Administrative Code:

(1) The facility has been blocked, by locked gates, fencing, or other sturdy obstacles.

# \*\*\*DRAFT - NOT FOR FILING\*\*\*

(2) Signs are posted.

(3) All areas within the limits of debris placement which have been certified for final cap system construction in accordance with paragraphs (D) and (E) of rule 3745-400-07 of the Administrative Code as applicable shall be shown on a copy of the plan sheet specified in paragraph (G)(1)(a) of rule 3745-400-07 of the Administrative Code. Each certified capped area shall include the date of the licensing authority approval required by paragraph (A)(3) of [this rule 3745-400-08 of the Administrative Code](#).

~~(4) Ground water monitoring wells are properly plugged and abandoned.~~

~~(5)~~(4) A copy of the plat filed with the appropriate county recorder.

~~(6)~~(5) A copy of the notation on the deed to the facility property.

## 3745-400-12 Final closure of facilities.

(A) Applicability. The owner or operator shall complete final closure of a construction and demolition debris facility in a manner which minimizes further maintenance at the facility, as well as the formation and release of leachate to the air, soil, surface water, or ground water to the extent necessary to protect human health and the environment, as follows:

(1) The owner or operator of a licensed facility which meets the criteria contained in paragraphs (B)(1) to (B)(3) of this rule shall comply with paragraphs (C) to (H) of this rule. For the purpose of paragraph (A)(1) of this rule, "licensed" facility means any facility which received a license in accordance with [Chapters 3745-400 this chapter](#) and [Chapter 3745-37](#) of the Administrative Code.

(2) The owner or operator of a licensed facility which meets the criteria contained in paragraphs (B)(6) to ~~(B)(8)~~ [\(B\)\(7\)](#) of this rule shall comply with paragraphs (C) to (H) of this rule. For the purpose of paragraph (A)(2) of this rule, "licensed" facility means any facility which received a license in accordance with [Chapters 3745-400 this chapter](#) and [Chapter 3745-37](#) of the Administrative Code.

(3) The owner or operator of an unlicensed facility which meets the criteria of paragraph (B)(4) of this rule shall comply with paragraphs (D), (E)(1) to (4), (E)(6) to (8), (H) and (J) of this rule.

(4) The owner or operator of an unlicensed facility which meets the criteria of paragraph (B)(5) of this rule shall comply with paragraphs (E) to (I) of this rule.

(B) Mandatory closure. Final closure of a facility is mandatory when one or more of the following apply:

(1) The owner or operator declares [in writing to the licensing authority](#) that debris will no longer be accepted for disposal at the facility.

(2) A license issued to a facility has expired and a renewal license has not been applied for in the manner prescribed in Chapter 3745-37 of the Administrative Code.

(3) All approved limits of debris placement and approved final elevations have been reached.

(4) The owner or operator of a facility in operation on September 30, 1996, ~~fails~~ [failed](#) to apply for a license prior to April 1, 1997.

(5) An existing facility has submitted an initial license application and the license application has been denied as a final action of the licensing authority.

(6) A facility license has expired and another license has been applied for and denied as a final action of the licensing authority.

(7) A facility license has been revoked as a final action of the licensing authority.

(C) Notification of anticipated date to cease acceptance of debris.

The owner or operator shall provide to the licensing authority written notice of the intent and anticipated date of ceasing acceptance of debris at a facility not later than ninety days prior to the anticipated date to cease acceptance of debris at a facility if final closure is or will be triggered by any of the following occurrences:

(1) Paragraph (B)(1) of this rule.

(2) Paragraph (B)(2) of this rule.

(3) Paragraph (B)(3) of this rule.

(D) Timing of [final](#) closure. After ceasing to accept debris for disposal or after required mandatory closure in accordance with paragraph (B) of this rule, the owner or operator shall perform final closure activities outlined in paragraph (E) of this rule. ~~The licensing authority may grant a time extension if the licensing authority determines that additional time is needed in order to ensure proper closure of a facility.~~

[\[Comment: The licensing authority may utilize authority under section 3714.04 of the Revised Code should a time extension for completion of final closure be determined appropriate.\]](#)

[Comment: An owner or operator must maintain a license for an inactive facility not intended to be closed.]

[Comment: Pursuant to rule 3745-400-13 of the Administrative Code, financial assurance funds will be released ~~when final closure is completed~~ in accordance with [this rule 3745-400-13 of the Administrative Code](#) ~~and is when construction of an engineered component identified in the final closure cost estimate is~~ certified in accordance with rule 3745-400-08 of the Administrative Code, and is approved by the licensing authority. ~~Vegetation established early within the two year period will result in the owner or operator obtaining an earlier~~

# \*\*\*DRAFT - NOT FOR FILING\*\*\*

~~reimbursement of funds from financial assurance.]~~

(E) ~~Closure~~ Final closure activities. The owner or operator shall complete the final closure activities for licensed facilities as follows:

(1) The owner or operator shall comply with paragraphs (I), (K), and (M) to (S) of rule 3745-400-11 of the Administrative Code during final closure.

(2) The owner or operator shall comply with the compliance disclosure requirements in section 3714.052 of the Revised Code when employing a new key employee.

(3) Prior to or on the date that acceptance of material for disposal ceases, the owner or operator shall permanently cease leachate recirculation if leachate is being recirculated.

~~(4)~~ (4) Within seven days of ceasing to accept debris for disposal, the owner or operator shall provide written notification to the licensing authority of the date the facility ceased to accept debris.

~~(2)~~ (5) Within seven days of ceasing to accept debris for disposal, the owner or operator shall block, by locked gates, fencing, or other sturdy obstacles, all entrances and access roads to the facility to prevent unauthorized access during the final closure period, unless the facility is to be used for other purposes which are indicated in writing to the licensing authority.

~~(3)~~ (6) Within thirty days of ceasing to accept debris for disposal, the owner or operator shall post signs, easily visible from all access roads leading onto the facility, stating in letters at least three inches high that the construction and demolition debris facility is closed and no longer accepts construction and demolition debris. The signs shall be maintained in legible condition ~~for at least two years after the facility ceases to accept debris~~ until final closure of the facility is complete.

~~(4)~~ (7) Within sixty days of ceasing to accept debris for disposal, the owner or operator shall cover all uncapped disposal areas with at least six inches of recompact soil and grade this soil to prevent ponding of water. This soil layer may be considered a part of the cap system required by paragraphs (D) and (E) of rule 3745-400-07 of the Administrative Code.

~~(5)~~ (8) Construction of cap system.

(a) Within one year of ceasing to accept debris for disposal, the owner or operator shall complete construction of a cap system, as required by paragraphs (D) and (E) of rule 3745-400-07 of the Administrative Code, over all areas of debris placement not previously certified in accordance with rule 3745-400-08 of the Administrative Code with the exception of the establishment of dense vegetative cover specified in paragraph (G)(2)(a)(iii) or (G)(2)(b)(ii) of rule 3745-400-07 of the Administrative Code. Establishment of dense vegetation cover specified in paragraph (G)(2)(a)(iii) or

(G)(2)(b)(ii) of rule 3745-400-07 of the Administrative Code, shall be completed within two years after ceasing to accept debris or, in the case of postponement authorized in paragraph ~~(E)(5)(b)-(E)(8)(b)~~ (E)(8)(b) of this rule, one year after completion of construction of the cap.

(b) If the owner or operator of a construction and demolition debris facility appeals the final denial or final revocation of a construction and demolition debris facility license to the environmental review appeals commission in accordance with section 3745.04 of the Revised Code, and the commission grants a de novo hearing with respect to the appeal in accordance with section 3745.05 of the Revised Code, the owner or operator may elect to postpone the construction of a cap system required by paragraphs (D) and (E) of rule 3745-400-07 of the Administrative Code. In order to postpone construction under this rule, all of the following must be the case:

(i) The owner or operator maintains and will continue to maintain compliance with all applicable financial assurance requirements.

(ii) The owner or operator is in compliance with and will continue to comply with all other applicable final closure requirements set forth in this rule.

(iii) The construction and demolition debris facility is not the subject of an emergency order mandating the capping or placement of cover over the facility issued pursuant to division (B) of section 3714.12 of the Revised Code.

(iv) A court of competent jurisdiction has not ordered the construction and demolition debris facility to cease acceptance of waste ~~and/or~~ or to commence final closure activities.

(v) Postponement of construction of the cap system will not create a nuisance, fire hazard, or cause or contribute to air or water pollution.

(vi) The owner or operator has undertaken a continuing program of cap construction or has entered into a binding contractual obligation to complete construction of a cap system within one hundred eighty days after the entry of the commission's decision affirming the final action.

Not later than ten days after the commission grants a de novo hearing the owner or operator shall provide written notice to the licensing authority and the director stating that the construction of the cap system will be postponed in accordance with this rule. The written notice must be accompanied by an affidavit certifying that all of the conditions required for postponement are satisfied.

Postponement under this rule shall automatically terminate upon the failure of the owner or operator to comply with any part of this rule; or the dismissal of the appeal by the commission; or the issuance of an order by the commission affirming the denial or revocation. The owner or operator shall complete construction of a cap system as required by rule 3745-400-07 of the Administrative Code within one hundred eighty days of the termination of the postponement.

# **\*\*\*DRAFT - NOT FOR FILING\*\*\***

~~(6) After completion of construction of the cap system specified in paragraphs (D) and (E) of rule 3745-400-07 of the Administrative Code, the owner or operator shall properly plug and abandon all ground water monitor wells. If any wells are constructed or used as a part of a ground water quality assessment program, and the licensing authority has ordered the owner or operator to monitor any ground water monitor wells, the owner or operator shall continue to conduct ground water monitoring in accordance with those orders.~~

~~(7)~~(9) The owner or operator shall file with the appropriate county recorder a plat of the facility and information describing the acreage, exact location, depth, volume, and nature of the placed debris.

~~(8)~~(10) The owner or operator shall record a notation on the deed to the facility property or on another instrument which is examined during title search, alerting in perpetuity any potential purchaser of the property that the land has been used as a construction and demolition debris facility. The notation shall include information describing the acreage, exact location, depth, volume and nature of the placed debris.

(11) Not later than each anniversary of ceasing to accept debris for disposal, the owner or operator shall annually submit updated final closure and post-closure care financial assurance documentation prepared in accordance with rules 3745-400-13 and 3745-400-18 of the Administrative Code using forms prescribed by the director. The cost estimates shall be revised to account for any changes at the facility and shall be adjusted for inflation. At a minimum, the cost estimates shall be increased for inflation. The adjustment shall be made using an inflation factor derived from the annual implicit price deflator for gross domestic product as published by the United States department of commerce in the February issue of "Survey of Current Business."

[Comment: The "Survey of Current Business" document is available at <http://www.bea.gov> or by writing to the "United States Bureau of Economic Analysis, 1441 L Street NW, Washington, DC 20230."]

(12) The owner or operator shall retain all authorizing documents and completed daily logs of operations at a location acceptable to the licensing authority where the documents are available for inspection by Ohio EPA or the approved board of health during normal business hours.

(13) The owner or operator shall maintain all records and reports generated during final closure at a location acceptable to the licensing authority where the documents are available for inspection by Ohio EPA or the approved board of health during normal business hours.

(F) Monitoring and reporting. All monitoring and reporting activities required during the operating life of the facility shall be continued during the final closure period ~~until the monitoring wells are plugged.~~

(G) Completion. Final closure of the facility shall be deemed complete upon the licensing authority's written

concurrence with the final closure certification report, required by paragraph (D) of rule 3745-400-08 of the Administrative Code. If required by rule 3745-400-16 of the Administrative Code, post-closure care of the facility shall being when final closure has been deemed complete.

The licensing authority shall make a determination on concurrence within ninety days of receipt of the final closure certification report.

(H) Entry for inspection. The licensing authority, upon proper identification, may enter any facility at reasonable times during the final closure period for the purpose of determining compliance with this rule.

(I) Cap requirements for existing facilities for which an initial license application was not submitted. The owner or operator shall construct a cap system meeting the requirements of paragraph (E) of rule 3745-400-07 of the Administrative Code.

## **3745-400-13 Financial assurance for construction and demolition debris facility final closure.**

Financial assurance for construction and demolition debris facilities includes financial assurance for final closure as required by this rule and financial assurance for post-closure care as required by rule 3745-400-18 of the Administrative Code.

(A) The owner or operator of a construction and demolition debris facility shall establish and maintain financial assurance for final closure of the facility as required by ~~paragraph (S) of~~ rule 3745-400-11 of the Administrative Code. Financial assurance may be established and maintained through the use of one of the options specified in paragraphs (B) to ~~(G)~~ (F) of this rule, unless it is demonstrated to the satisfaction of the health commissioner or director of the licensing authority that an alternate option will guarantee funding for final closure. The owner or operator may use the options in combination as specified in paragraph ~~(H)~~ (G) of this rule. Financial assurance documentation shall include the information specified in this paragraph and in rule 3745-400-18 of the Administrative Code and shall be submitted as part of the license application pursuant to paragraph (E)(6) of rule 3745-37-02 of the Administrative Code.

[Comment: Because many local health departments had construction and demolition rules in place prior to ~~the effective date of this rule~~ September 30, 1996, many existing facilities may have financial assurance mechanisms already established. These mechanisms may be acceptable alternatives to the mechanisms outlined in this rule.]

~~(1) Financial assurance documentation shall include the amount, in dollars, for final closure of the construction and demolition debris facility and an original copy of the financial instrument(s), necessary to achieve compliance with the financial assurance provisions of this rule. The wording contained in the instrument shall be in~~

# **\*\*\*DRAFT - NOT FOR FILING\*\*\***

~~accordance with the appropriate paragraph of rule 3745-400-14 of the Administrative Code, unless an option other than those specified in paragraphs (B) to (G) of this rule is proposed. The amount shall be calculated as the total acreage, to the nearest tenth of an acre, of the active licensed disposal area(s) as established in the facility's license application multiplied by thirteen thousand dollars per acre plus two thousand one hundred seventy five dollars per ground water monitoring well.~~

(1) Final closure cost estimate. Financial assurance documentation shall include an itemized written final closure cost estimate that calculates the cost of conducting final closure activities in accordance with rule 3745-400-12 of the Administrative Code. The amount shall be calculated in current dollars and be based upon a third party conducting all of the final closure activities required by rule 3745-400-12 of the Administrative Code including premature final closure activities. The amount of the final closure financial assurance cost estimate shall not be less than thirteen thousand dollars per acre to the nearest tenth of an acre as established in the license application for the construction and demolition debris facility for areas that have been or are being used for disposal.

~~(2) The financial assurance instrument(s) submitted in accordance with paragraph (A)(1) of this rule shall be funded not later than thirty days after the licensing authority issues a construction and demolition debris facility license.~~

(2) Amount and funding of financial assurance. Final closure financial assurance shall be funded in an amount not less than the final closure cost estimate calculated in accordance with paragraph (A)(1) of this rule unless the owner or operator has chosen the five year transition in accordance with rule 3745-400-25 of the Administrative Code.

If the funded financial assurance for the facility is less than the final closure cost estimated authorized in the license, the owner or operator shall fund an amount not less than the final closure cost estimate not later than thirty days after license issuance. If a portion of the increase in the final closure cost estimate is due to the addition of active licensed disposal area for which a construction certification report has not been submitted in accordance with rule 3745-400-05 of the Administrative Code, the owner or operator may delay funding that portion of the final closure cost estimate necessary to close that uncertified active licensed disposal area until the date of submittal of the construction certification report. The owner or operator shall use any single or combination of financial assurance instruments as specified in paragraphs (B) to (H) of rule 3745-400-13 of the Administrative Code.

(3) Review of the final closure financial assurance.

(a) The final closure cost estimate shall be reviewed for each renewal of the annual license application and any application for a facility modification.

(i) The final closure cost estimate shall be recalculated if there is a change in location or an increase in the acreage

of the active licensed disposal area established in the facility's most recent issued license.

(ii) If there is no change in the location or no increase in the acreage of the active licensed disposal area established in the facility's most recent issued license, the owner or operator may as an alternative to recalculating the final closure cost estimate, adjust the final closure cost estimate established in the facility's most recent issued license for inflation as provided in paragraph (A)(3)(b) of this rule.

(b) Adjustment of the final closure cost estimate for inflation. The adjustment shall be made as specified in this paragraph, using an inflation factor derived from the annual implicit price deflator for gross domestic product as published by the United States department of commerce in the February issue of "Survey of Current Business." The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year.

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

(ii) Subsequent adjustments are made by multiplying the most recently adjusted final closure cost estimate by the most recent inflation factor.

[Comment: The "Survey of Current Business" document is available at <http://www.bea.gov> or by writing to the "United States Bureau of Economic Analysis, 1441 L Street NW, Washington, DC 20230."]

(c) The amount of financial assurance shall not be less than the reviewed final closure cost estimate for each renewal of the annual license application and any application for a facility modification. The financial assurance provided in a current unexpired license may be utilized to fulfill the financial assurance requirements of an annual license application or a modification if the dollar amount of the financial assurance is equal to or greater than the license application's calculated amount as specified in paragraph (A)(1) of this rule.

(4) Final closure financial assurance documentation. Final closure financial assurance documentation shall include the original copy of the financial assurance instruments necessary to achieve compliance with the financial assurance provisions of this rule. The wording contained in the instruments shall be in accordance with the appropriate paragraph of rule 3745-400-14 of the Administrative Code, unless an option other than those specified in paragraphs (B) to (F) of this rule is proposed.

(5) Notice of deficiency. The licensing authority shall notify the license applicant of deficiencies with the final closure cost estimate and final closure financial assurance documentation not later than thirty days after licensing authority receipt of the license application. Such notification shall identify any adjustment in the amount of final closure financial assurance being considered by the licensing authority.

# \*\*\*DRAFT - NOT FOR FILING\*\*\*

The licensing authority may adjust the amount of financial assurance in conjunction with the issuance of the annual license. If the licensing authority issues the annual license with adjustment of the amount of financial assurance, the licensing authority shall provide an explanation of the rationale for financial assurance exceeding thirteen thousand dollars per acre, which may include information provided to or obtained by Ohio EPA or a local board of health.

## (6) Release of funds.

(a) Release of funds prior to final closure certification. The owner or operator, or any other person authorized to perform final ~~capping closure~~ on behalf of the owner or operator, ~~shall may request and~~ receive reimbursement from or a reduction of the financial assurance required under this rule where the licensing authority's written concurrence with the construction certification report for engineered components of the cap system certification required in paragraph (A)(3) of rule 3745-400-08 of the Administrative Code has been obtained. ~~Reimbursement Release of financial assurance~~ shall be calculated based upon the total acreage of the certified cap system, to the nearest tenth of an acre, ~~multiplied by twelve thousand four hundred fifty dollars per acre plus two thousand one hundred seventy-five dollars for each properly plugged and abandoned ground water monitoring well. If the licensing authority determines that the cost of remaining final closure activities will be greater than the financial assurance maintained for the facility, the licensing authority may withhold reimbursement of such amounts as the licensing authority deems prudent until final closure is complete in accordance with paragraph (G) of rule 3745-400-12 of the Administrative Code.~~

~~[Comment: The remaining five hundred and fifty dollars per acre financial assurance is for maintenance of the certified cap during the active life of the facility but prior to facility final closure.]~~

~~(b) Release of funds during closure. The owner or operator, or any other person authorized to perform closure on behalf of the owner or operator, shall not receive reimbursement for closure expenditures from the financial assurance required under this rule until the area is deemed closed in accordance with paragraph (A)(3) of rule 3745-400-08 of the Administrative Code.~~

~~(e)(b) Release of funds after final closure certification. The owner or operator, or any other person authorized to perform final closure on behalf of the owner or operator, shall may request and~~ receive reimbursement of all remaining funds or termination from the financial assurance required under this rule only after facility final closure is deemed complete in accordance with paragraph (G) of rule 3745-400-12 of the Administrative Code.

~~(4) Financial assurance under this rule shall be reviewed and adjusted for each annual license application and any application for a facility modification. The financial assurance provided in a current unexpired license may be utilized to fulfill the financial assurance requirements of an annual license application or a modification if the dollar~~

~~amount of the financial assurance is equal to or greater than the license application's calculated amount as specified in paragraph (A)(1) of this rule.~~

## (B) Final closure trust fund.

(1) The owner or operator may satisfy the requirements of this rule by establishing a final closure trust fund which conforms to the requirements of this paragraph and by sending an originally signed duplicate of the trust agreement to the health commissioner or director of the licensing authority with the license application. 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.

(2) The wording of the trust agreement shall be identical to the wording specified in paragraph (A)(1) of rule 3745-400-14 of the Administrative Code and the trust agreement shall be accompanied by a formal certification of acknowledgment except for a trust agreement established prior to the effective date of this rule.

~~(3) All payments to the trust fund shall be made by the owner or operator within thirty days from the date of license issuance; this period is hereafter referred to as the "pay in period". The payments to the final closure trust fund shall be made as follows:~~

~~(a) A receipt from the trustee for each payment shall be submitted by the owner or operator to the health commissioner or director of the licensing authority.~~

~~(b) The total dollar amount of the trust fund shall be fully funded as required in paragraph (A)(1) of this rule within thirty days after the date of license issuance.~~

~~(4) The owner or operator may accelerate payments into the trust fund or he may deposit the full amount for final closure at the time the fund is established. However, he shall maintain the value of the fund at no less than the value the fund would have if payments were made as specified in paragraphs (B)(1) and (B)(3) of this rule.~~

(3) The total dollar amount of the trust fund shall be funded by the owner or operator not later than thirty days after the date of license issuance unless the owner or operator has chosen the five year transition in accordance with rule 3745-400-25 of the Administrative Code or the owner or operator is delaying funding only of that portion of the final closure cost estimate necessary to close that uncertified active licensed disposal area in accordance with paragraph (A)(2) of this rule. The owner or operator shall submit to the licensing authority a receipt from the trustee for the deposit made into the trust fund.

~~(5)(4) If the owner or operator establishes a final closure trust fund after having used to replace one or more alternate alternative mechanisms specified in this rule, the owner or operator's first payment operator shall be at least the amount that the fully fund would contain if the trust fund were established initially and payments made as specified in paragraph (B)(3) in an amount at least equal to the final closure cost estimate determined in~~

# \*\*\*DRAFT - NOT FOR FILING\*\*\*

[accordance with paragraph \(A\)](#) of this rule.

~~(6)(5) When any area with financial assurance is certified closed in accordance with paragraph (B) of rule 3745-400-08 of the Administrative Code, the~~ The owner or operator, or any other person authorized to perform final closure, may request reimbursement for final closure expenditures ~~by submitting a closure certification report to the health commissioner or director of the licensing authority in~~ [accordance with paragraph \(A\)\(6\) of this rule](#). ~~Not later than sixty days after receiving the request, the~~ The health commissioner or director of the licensing authority shall calculate in accordance with paragraph ~~(A)(3)~~ [\(A\)\(6\)](#) of this rule the amount to be reimbursed and shall instruct, ~~in writing,~~ the trustee, [in writing](#), to make such reimbursement.

~~(7)(6)~~ The health commissioner or director of the licensing authority will agree to termination of the trust when either of the following occur:

(a) The owner or operator substitutes ~~alternate~~ [alternative](#) financial assurance for final closure as specified in this rule.

(b) The health commissioner or director of the licensing authority notifies the owner or operator, in accordance with paragraph ~~(+)(A)~~ [\(A\)](#) of this rule, that ~~he~~ [the owner or operator](#) is no longer required by this rule to maintain financial assurance for final closure of the facility.

(C) Surety bond guaranteeing payment into a final closure trust fund.

(1) The licensee may satisfy the requirements of this rule by obtaining a surety bond which conforms to the requirements of this paragraph and by delivering the bond to the health commissioner or director of the licensing authority with the license application. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on federal bonds in "Circular 570" of the U.S. department of the treasury.

[Comment: "Circular 570" is published in the "Federal Register" annually on the first day of July; interim changes in the circular are also published in the "Federal Register." [This United States department of treasury document is available at http://www.fms.treas.gov.](#)]

(2) The wording of the surety bond shall be identical to the wording specified in paragraph (B) of rule 3745-400-14 of the Administrative Code [except for a surety bond obtained prior to the effective date of this rule](#).

(3) The owner or operator who uses a surety bond to satisfy the requirements of this rule shall also establish a standby trust fund not later than ~~when the date~~ the bond is obtained. Under the terms of the surety bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the health commissioner or director of the licensing authority. This standby trust fund shall meet the requirements specified in paragraph (B) of this rule, except as follows:

(a) An originally signed duplicate of the trust agreement and the surety bond shall be submitted with the license application.

(b) Until the standby trust fund is funded, pursuant to the requirements of this rule, payments into the trust fund as specified in paragraph (B) of this rule are not required.

[Comment: When the Ohio environmental protection agency is the licensing authority, the standby trust fund must be established to hold the funds from the bond for final closure. When a health district is the licensing authority, other financial mechanisms may be possible to hold the funds from the bond for final closure.]

(4) The bond shall guarantee that the owner or operator will do one of the following:

(a) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of the facility final closure.

(b) Fund the standby trust fund in an amount equal to the penal sum [of the surety bond](#) not later than fifteen days after a mandatory final closure in compliance with paragraph (B) of rule 3745-400-12 of the Administrative Code.

(c) Provide ~~alternate~~ [alternative](#) financial assurance as specified in this rule, and obtain the health commissioner or director of the licensing authority written approval of the ~~alternate~~ [alternative](#) financial assurance provided, not later than ninety days after both the owner or operator and the health commissioner or director of the licensing authority receive notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(6) ~~The~~ [Except as provided in paragraph \(G\) of this rule,](#) the penal sum of the [surety](#) bond shall be in an amount at least equal to the final closure ~~amount calculated in cost estimate determined in accordance with~~ [paragraph \(A\)\(4\) \(A\)](#) of this rule ~~except as provided in paragraph (H) of this rule~~.

(7) Under the terms of the bond, the bond shall remain in force unless the surety sends written notice of cancellation by certified mail [or other form of mail accompanied by a receipt](#) to the owner or operator and to the health commissioner or director of the licensing authority. Cancellation cannot occur, however, during the ~~one hundred twenty day~~ [one hundred twenty day](#) period beginning on the first day that both the owner or operator and the health commissioner or director of the licensing authority have received the notice of cancellation, as evidenced by the return receipts.

(8) The owner or operator may cancel the bond if the health commissioner or director of the licensing authority has given prior written consent. The health commissioner or director of the licensing authority will provide such written consent when one of the following occurs:

# \*\*\*DRAFT - NOT FOR FILING\*\*\*

(a) The owner or operator substitutes ~~alternate~~-alternative financial assurance for final closure as specified in this rule.

(b) The health commissioner or director of the licensing authority notifies the licensee, in accordance with paragraph ~~(+)(A)~~ of this rule, that ~~he~~-the owner or operator is no longer required to maintain financial assurance for final closure of the facility.

(D) Surety bond guaranteeing performance of final closure.

(1) The owner or operator may satisfy the requirements of this rule by obtaining a surety bond which conforms to the requirements of this paragraph and by delivering the bond to the health commissioner or director of the licensing authority with the license application. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on federal bonds in "Circular 570" of the U.S. department of the treasury.

[Comment: "Circular 570" is published in the "Federal Register" annually on the first day of July; interim changes in the circular are also published in the "Federal Register." [This United States department of treasury document is available at http://www.fms.treas.gov.](http://www.fms.treas.gov)]

(2) The wording of the surety bond shall be identical to the wording specified in paragraph (C) of rule 3745-400-14 of the Administrative Code except for a surety bond obtained prior to the effective date of this rule.

(3) The owner or operator who uses a surety bond to satisfy the requirements of this rule shall also establish a standby trust fund. Under the terms of the surety bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the health commissioner or director of the licensing authority. This standby trust fund shall meet the requirements specified in paragraph (B) of this rule except as follows:

(a) An originally signed duplicate of the trust agreement and the surety bond shall be submitted with the license application.

(b) Until the standby trust fund is funded, pursuant to the requirements of this rule, payments into the trust fund as specified in paragraph (B) of this rule are not required.

(4) The bond shall guarantee that the owner or operator will do one of the following:

(a) Perform final closure in accordance with ~~Chapters 3745-400~~-this chapter and Chapter 3745-37 of the Administrative Code and any other requirements of the license.

(b) Provide ~~alternate~~-alternative financial assurance as specified in this rule, and obtain written approval of the alternative financial assurance provided from the health commissioner or director of the licensing authority ~~written approval of the alternate financial assurance provided~~, not later than ninety days after both the licensee and the

health commissioner or director of the licensing authority receive notice of cancellation of the bond from the surety as evidenced by the return receipts.

(5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a determination, pursuant to rule 3745-400-12 of the Administrative Code, that the owner or operator has failed to perform final closure activities in accordance with the those chapters and license requirements, the surety shall perform final closure in accordance with rule 3745-400-12 of the Administrative Code, and license requirements or will deposit the amount of the penal sum into the standby trust fund.

(6) The penal sum of the surety bond shall be in an amount at least equal to the final closure ~~amount calculated in cost estimate determined in accordance with~~ paragraph ~~(A)(1)~~-(A) of this rule.

(7) Under the terms of the bond, the bond shall remain in force unless the surety sends written notice of cancellation by certified mail or other form of mail accompanied by a receipt to the owner or operator and to the health commissioner or director of the licensing authority. Cancellation cannot occur, however, during the ~~one-hundred-twenty-day~~-one hundred twenty day period beginning on the first day that both the owner or operator and the health commissioner or director of the licensing authority have received the notice of cancellation as evidenced by the return receipts.

(8) The owner or operator may cancel the bond if the health commissioner or director of the licensing authority has given prior written consent. The health commissioner or director of the licensing authority will provide such written consent when one of the following occurs:

(a) The owner or operator substitutes ~~alternate~~-alternative financial assurance for final closure as specified in this rule.

(b) The health commissioner or director of the licensing authority notifies the owner or operator, in accordance with paragraph ~~(+)(A)~~ of this rule, that ~~he~~-the owner or operator is no longer required by this rule to maintain financial assurance for final closure of the facility.

(9) The surety shall not be liable for deficiencies in the completion of final closure activities by the owner or operator after the owner or operator has been notified by the health commissioner or director of the licensing authority, in accordance with this rule, that ~~he~~-the owner or operator is no longer required to maintain financial assurance for final closure of the facility.

(E) Final closure letter of credit.

(1) The owner or operator may satisfy the requirements of this rule by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph and by having it delivered to the health commissioner or director of the licensing authority with the license

# \*\*\*DRAFT - NOT FOR FILING\*\*\*

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

(2) The wording of the letter of credit shall be identical to the wording specified in paragraph (D) of rule 3745-400-14 of the Administrative Code except for a letter of credit obtained prior to the effective date of this rule.

(3) A owner or operator who uses a letter of credit to satisfy the requirements of this rule shall also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the health commissioner or director of the licensing authority shall be deposited promptly and directly by the issuing institution into the standby trust fund in accordance with instructions from the health commissioner or director of the licensing authority. The standby trust fund shall meet the requirements of the trust fund specified in paragraph (B) of this rule, except as follows:

(a) An originally signed duplicate of the trust agreement and the letter of credit shall be submitted with the license application to the health commissioner or director of the licensing authority.

(b) Until the standby trust fund is funded, pursuant to the requirements of this rule, payments into the trust fund as specified in paragraph (B) of this rule are not required.

(4) 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: the names and addresses of the construction and demolition debris facility and the owner or operator and the amount of funds assured for final closure of the facility by the letter of credit.

(5) The letter of credit shall be irrevocable and issued for a period of at least one year. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one year unless, at least one hundred twenty days prior to the current expiration date, the issuing institution notifies both the owner or operator and the health commissioner or director of the licensing authority by certified mail or other form of mail accompanied by a receipt of a decision not to extend the expiration date. Under the terms of the letter of credit, the ~~one hundred twenty day~~ one hundred twenty day period shall begin on the day when both the owner or operator and the health commissioner or director of the licensing authority have received the notice, as evidenced by the return receipts.

(6) ~~The~~ Except as provided in paragraph (G) of this rule, the letter of credit shall be issued in an amount at least equal to the ~~current~~ final closure cost estimate, ~~except as provided in~~ determined in accordance with paragraph ~~(H)~~ (A) of this rule.

(7) Following a determination by the health commissioner or director of the licensing authority that the owner or operator has, when required to do so, failed to perform

final closure activities in accordance with rule 3745-400-12 of the Administrative Code, and license requirements, the health commissioner or director of the licensing authority may draw on the letter of credit.

(8) If the owner or operator does not establish ~~alternate~~ alternative financial assurance as specified in this rule and obtain written approval of such ~~alternate~~ alternative financial assurance from the health commissioner or director of the licensing authority not later than ninety days after both the owner or operator and the health commissioner or director of the licensing authority have received notice from the issuing institution that it will not extend the letter of credit beyond the current expiration date, the health commissioner or director of the licensing authority shall draw on the letter of credit. The health commissioner or director of the licensing authority may delay the drawing if the issuing institution grants an extension of the term of the credit. During the final thirty days of any such extension the health commissioner or director of the licensing authority shall draw on the letter of credit if the owner or operator has failed to provide ~~alternate~~ alternative financial assurance as specified in this rule and has failed to obtain written approval of such ~~alternate~~ alternative financial assurance from the health commissioner or director of the licensing authority.

(9) The health commissioner or director of the licensing authority shall return the original letter of credit to the issuing institution for termination when one of the following occurs:

(a) The owner or operator substitutes ~~alternate~~ alternative financial assurance for final closure care as specified in this rule.

(b) The health commissioner or director of the licensing authority notifies the owner or operator, in accordance with paragraph ~~(H)~~ (A) of this rule, that ~~he~~ the owner or operator is no longer required to maintain financial assurance for final closure of the facility.

(F) Final closure insurance.

(1) The owner or operator may satisfy the requirements of this rule by obtaining final closure insurance ~~which that~~ conforms to the requirements of this ~~paragraph~~ rule and by submitting ~~a~~ an originally signed certificate of such insurance to the health commissioner or director of the licensing authority ~~with the license application. At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.~~

(2) The owner or operator using insurance as a financial assurance mechanism shall submit documentation stating whether the insurer is a subsidiary or has a corporate, legal, or financial affiliation with the owner or operator. If the final closure insurance is issued by a subsidiary or affiliate, the owner or operator shall include a detailed written description of the relationship between the insurer and the owner or operator.

(3) An insurer issuing an insurance policy in satisfaction of

# \*\*\*DRAFT - NOT FOR FILING\*\*\*

this rule 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 owner or operator shall submit to the licensing authority the following information regarding the insurer's qualifications:

(a) The most recent A.M. Best rating of the insurer.

(b) Documentation demonstrating that the insurer is domiciled in the United States.

(c) The most recent report on examination from the insurance department from the insurer's state of domicile.

(d) Documentation demonstrating that the insurer has capital and surplus of at least one hundred million dollars.

(e) Documentation demonstrating that the insurer received an unqualified opinion of the insurer's annual financial statements from an independent certified public accountant.

(4) The licensing authority may disallow use of the insurer by the owner or operator on the basis of one or more of the following:

(a) The A.M. Best rating is less than A-.

(b) The report on examination does not demonstrate that the status of the insurer is satisfactory.

(c) The opinion expressed by the independent certified public accountant in the report on examination of the insurer's financial statements.

(2)(5) The wording of the certificate of insurance shall be identical to the wording specified in paragraph (E) of rule 3745-400-14 of the Administrative Code except for a certificate of insurance obtained prior to the effective date of this rule.

(3)(6) ~~The~~ Except as provided in paragraph (G) of this rule, the final closure insurance policy shall be issued for a face amount at least equal to the final closure amount ~~calculated in cost estimate determined in accordance with paragraph (A)(1)(A) of this rule, except as provided in paragraph (H) of this rule.~~ The "Face ~~face~~" amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer ~~will shall~~ not change the face amount, ~~although but~~ the insurer's future liability ~~will shall~~ be lowered by the amount of the payments.

(4)(7) The final closure insurance policy shall guarantee that funds ~~will shall~~ be available to close the facility and conduct final closure of the facility activities whenever final closure is mandated. The policy shall also guarantee that once final closure of the facility occurs, the insurer ~~will shall~~ be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the health commissioner or director of the licensing authority, to such party or parties as the health commissioner or director of the licensing authority specifies.

~~(5)(8) When any area with financial assurance is certified closed in accordance with paragraph (B) of rule 3745-400-08 of the Administrative Code, the The owner or operator, or any other person authorized to perform final closure, may request reimbursement for final closure expenditures ~~by submitting a closure certification report to the health commissioner or director of the licensing authority in accordance with paragraph (A)(6) of this rule. Not later than sixty days after receiving the request, the The health commissioner or director of the licensing authority shall calculate in accordance with paragraph (A)(3)(A)(6) of this rule the amount to be reimbursed and shall instruct, ~~in writing,~~ the insurer, in writing, to make such reimbursement.~~~~

~~(6)(9) The owner or operator shall maintain the policy in full force and effect until the health commissioner or director of the licensing authority consents to termination of the policy by the owner or operator as specified in paragraph (F)(10)(F)(13) of this rule. Failure to pay the premium, without substitution of ~~alternate~~ alternative financial assurance as specified in this rule, constitutes a violation of these rules, warranting such remedy as the health commissioner or director of the licensing authority deems necessary. Such violation shall be deemed to begin upon receipt by the health commissioner or director of the licensing authority of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.~~

~~(7)(10) Each policy shall contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.~~

~~(8)(11) The policy shall provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail or other form of mail accompanied by a receipt to the owner or operator and to the health commissioner or director of the licensing authority. Cancellation, termination, or failure to renew ~~may shall~~ not occur, however, during the ~~one hundred twenty day~~ one hundred twenty day period beginning on the first day that both the owner or operator and the health commissioner or director of the licensing authority have received the notice, as evidenced by the return receipts. ~~Cancellation, termination, or failure to renew may not occur, and the policy will remain in full force and effect, in the event that on or before the date of expiration one or more of the following occurs:~~~~

~~(a) Activities outlined in paragraph (B) of rule 3745-400-12 of the Administrative Code occur.~~

~~(b) Final closure is ordered by the health commissioner or director of the licensing authority or a court of competent jurisdiction.~~

# \*\*\*DRAFT - NOT FOR FILING\*\*\*

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

~~(d) The premium due is paid.~~

(12) If the licensing authority disallows use of the insurer, the owner or operator shall provide alternative financial assurance as specified in this rule not later than thirty days after notification of the disallowance of the insurer.

~~(9)~~(13) The health commissioner or director of the licensing authority ~~will~~may give written consent to the owner or operator that ~~he~~the owner or operator may terminate the insurance policy when one of the following occurs:

(a) The owner or operator substitutes ~~alternate~~alternative financial assurance for final closure as specified in this rule.

(b) The health commissioner or director of the licensing authority notifies the owner or operator, in accordance with paragraph ~~(1)~~(A) of this rule, that ~~he~~the owner or operator is no longer required to maintain financial assurance for final closure of the facility.

~~(G) Financial test and corporate guarantee for final closure.~~

~~(1) The owner or operator may satisfy the requirements of this rule by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator shall meet the criteria set forth in paragraph (G)(1)(a) and either paragraph (G)(1)(b) or (G)(1)(c) of this rule:~~

~~(a) Less than fifty per cent of the parent corporation's gross revenues are derived from construction and demolition debris disposal operations.~~

~~(b) The owner or operator shall have the following:~~

~~(i) Satisfaction of at least two of the following ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; a ratio of current assets to current liabilities greater than 1.5.~~

~~(ii) Net working capital and tangible net worth each at least six times the sum of the final closure amount calculated in paragraph (A)(1) of this rule.~~

~~(iii) Tangible net worth of at least ten million dollars.~~

~~(iv) Assets in the United States amounting to at least ninety per cent of total assets or at least six times the sum of the final closure amount calculated in paragraph (A)(1) of this rule.~~

~~(c) The owner or operator shall have the following:~~

~~(i) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by "Standard and Poor's" or AAA, AA, A, or BAA as issued by "Moody's."~~

~~(ii) Tangible net worth at least six times the sum of the final closure amount calculated in paragraph (A)(1) of this rule.~~

~~(iii) Tangible net worth of at least ten million dollars.~~

~~(iv) Assets located in the United States amounting to at least ninety per cent of total assets or at least six times the sum of the final closure amount calculated in paragraph (A)(1) of this rule.~~

~~(2) The phrase "final closure amount" as used in paragraph (G)(1) of this rule refers to the amount required to be shown in the letter from the owner's or operator's chief financial officer pursuant to paragraph (F) of rule 3745-400-14 of the Administrative Code.~~

~~(3) To demonstrate that requirements of this test are met, the owner or operator shall submit the following items with the license application to the health commissioner or director of the licensing authority:~~

~~(a) A letter signed by the owner or operator's chief financial officer and worded as specified in paragraph (F) of rule 3745-400-14 of the Administrative Code.~~

~~(b) A copy of a report by an independent certified public accountant examining the owner's or operator's financial statements for the most recently completed fiscal year.~~

~~(c) A special report from the owner or operator's independent certified public accountant to the owner or operator stating the following:~~

~~(i) He 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 most recent fiscal year with the amounts in such financial statements.~~

~~(ii) In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.~~

~~(4) After the initial submission of the items specified in paragraph (G)(3) of this rule, the owner or operator shall send updated information to the health commissioner or director of the licensing authority not later than ninety days after the close of each succeeding fiscal year. This information shall include all three items specified in paragraph (G)(3) of this rule.~~

~~(5) If the owner or operator no longer meets the requirements of paragraph (G)(1) of this rule, notice shall be sent to the health commissioner or director of the licensing authority of the intent to establish alternate financial assurance as specified in this rule. The notice must be sent by certified mail not later than ninety days after the end of the fiscal year for which the year end financial data show that the owner or operator no longer meets the requirements. The owner or operator shall provide the alternate financial assurance not later than one hundred twenty days after the end of such fiscal year.~~

~~(6) The health commissioner or director of the licensing~~

# **\*\*\*DRAFT - NOT FOR FILING\*\*\***

~~authority may, based on a reasonable belief that the owner or operator no longer meets the requirements of paragraph (G)(1) of this rule, require reports of financial condition at any time from the owner or operator in addition to those specified in paragraph (G)(3) of this rule. If the health commissioner or director of the licensing authority finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of paragraph (G)(1) of this rule, the owner or operator shall provide alternate financial assurance as specified in this rule not later than thirty days after notification of such a finding.~~

~~(7) The health commissioner or director of the licensing authority may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner or operator's financial statements submitted pursuant to paragraph (G)(3)(b) of this rule. An adverse opinion or disclaimer of opinion will be cause for disallowance. The health commissioner or director of the licensing authority shall evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in this rule not later than thirty days after notification of the disallowance.~~

~~(8) The owner or operator is no longer required to submit the items specified in paragraph (G)(3) of this rule when one of the following occurs:~~

~~(a) The owner or operator substitutes alternate financial assurance for final closure as specified in this rule.~~

~~(b) The health commissioner or director of the licensing authority notifies the owner or operator, in accordance with paragraph (I) of this rule, that he is no longer required to maintain financial assurance for final closure of the facility.~~

~~(9) The owner or operator may meet the requirements of this rule by obtaining a written guarantee, hereafter referred to as a "corporate guarantee". The guarantor shall be the parent corporation of the owner or operator. The guarantor shall meet the requirements for licensees in paragraphs (G)(1) to (G)(7) of this rule and shall comply with the terms of the corporate guarantee. The wording of the corporate guarantee shall be identical to the wording specified in paragraph (G) of rule 3745-400-14 of the Administrative Code. The corporate guarantee shall accompany the items sent to the health commissioner or director of the licensing authority as specified in paragraph (G)(3) of this rule. The terms of the corporate guarantee shall provide the following:~~

~~(a) If the owner or operator fails to perform final closure of a facility provided for by the corporate guarantee in accordance with the Chapters 3745-400 and 3745-37 of the Administrative Code and license requirements, the guarantor shall do so or shall establish a trust fund, in the name of the owner or operator, as specified in paragraph (B) of this rule.~~

~~(b) The corporate guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the health commissioner~~

~~or director of the licensing authority. Cancellation may not occur, however, during the one hundred twenty day period beginning on the first day that both the owner or operator and the health commissioner or director of the licensing authority have received notice of cancellation, as evidenced by the return receipts.~~

~~(c) If the owner or operator fails to provide alternate financial assurance as specified in this rule, and fails to obtain the written approval of such alternate financial assurance from the director not later than ninety days after both the owner or operator and the health commissioner or director of the licensing authority have received notice of cancellation of the corporate guarantee from the guarantor, the guarantor shall provide such alternate financial assurance in the name of the owner or operator.~~

~~(H)(G) Use of multiple financial mechanisms. The owner or operator may satisfy the requirements of this rule by establishing more than one financial mechanism for each facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a final closure trust fund, letters of credit, and insurance. The mechanisms shall be as specified in paragraphs (A), (B), (D), and (E) (B), (C), (E), and (F) respectively, of this rule, except that it is the combination of mechanisms, rather than each single mechanism, which shall provide financial assurance for an amount at least equal to the current final closure cost estimate. If a owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he the owner or operator may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The health commissioner or director of the licensing authority may invoke use of any or all of the mechanisms, in accordance with paragraphs (A), (B), (D), and (E) (B), (C), (E), and (F) of this rule, to provide for final closure of the facility.~~

~~(I) Release of the owner or operator from the requirements of this rule. Upon the receipt of the written concurrence of the health commissioner or director of the licensing authority that closure is completed for the facility as required in paragraph (G) in rule 3745-400-12 of the Administrative Code, the owner or operator is thereby notified that he is no longer required, by this rule, to maintain financial assurance for final closure of the particular facility.~~

## **3745-400-14 Wording of the financial instruments.**

### **(A) Trust agreement.**

~~(1) A The trust agreement for a the trust fund as specified in paragraph (B) of rule 3745-400-13 of the Administrative Code and the trust fund agreement for the trust fund specified in paragraph (E) of rule 3745-400-18 of the Administrative Code must shall be worded as follows on forms prescribed by the director, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:~~

# \*\*\*DRAFT - NOT FOR FILING\*\*\*

"Trust agreement

Trust agreement. The "agreement", entered into as of [date] by and between [name of the owner or operator], a [state] [corporation, partnership, association, proprietorship], the "grantor", and [name of corporate trustee], ["incorporated in the state of \_\_\_\_\_" or "a national bank"], the "trustee".

Whereas, the Ohio Environmental Protection Agency, ("Ohio EPA"), has established certain rules applicable to the grantor, requiring that the owner or operator of a construction and demolition debris disposal facility provide assurance that funds will be available when needed for final closure of the facility [or post-closure care](#).

Whereas, the grantor has elected to establish a trust to provide all or part of such financial assurance 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.

(c) The term "licensing authority" means a city or general health district as created by or under authority of Chapter 3709. of the Revised Code, which is on the approved list in accordance with section 3714.09 of the Revised Code, or the director where the health district is not on the approved list.

Section 2. Identification of facilities and amount for final closure [or post-closure care](#). This agreement pertains to the facilities and amount for final closure [or post-closure care](#) identified on attached schedule A [on Schedule A, for each facility list the name, address, and the amount for final closure [or post-closure care](#), or portions thereof, for which financial assurance is demonstrated by this agreement].

Section 3. Establishment of fund. The grantor and the trustee hereby establish a trust fund, the "fund", for the benefit of the licensing authority. The grantor and the trustee intend that no third party have access to the fund except as herein provided. The fund is established initially as consisting of the property, which is acceptable to the trustee, described in schedule B attached hereto. Such 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 will 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 licensing authority.

Section 4. Payment for final closure [or post-closure care](#). The trustee will make such payments from the fund as the licensing authority will direct, in writing, to provide for the payment of the costs of final closure [or post-closure care](#) of the facilities covered by this agreement. The trustee will reimburse the grantor or other persons as specified by the licensing authority from the fund for final closure [or post-closure care](#) expenditures in such amounts as the licensing authority will direct, in writing. In addition, the trustee will refund to the grantor such amounts as the licensing authority specifies in writing. Upon refund, such funds will no longer constitute part of the fund as defined herein.

Section 5. Payments comprising the fund. Payments made to the trustee for the fund will consist of cash or securities acceptable to the trustee.

Section 6. Trustee management. The trustee will invest and reinvest the principal and income of the fund and keep the fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the grantor may communicate in writing to the trustee periodically, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the fund, the trustee will 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:

(a) 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 section 80A-2(A)~~ [U.S.C. section 80a-2\(a\)](#), will not be acquired or held, unless they are securities or other obligations of the federal or a state government;

(b) 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

(c) 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 periodically 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

# \*\*\*DRAFT - NOT FOR FILING\*\*\*

therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. sections ~~80A-10a-1~~ et seq., ~~Including 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 will 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 depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository 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 will 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 will 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 will be paid from the fund.

Section 10. Annual valuation. The trustee will annually, not later than thirty days prior to the anniversary date of the establishment of the fund, furnish to the grantor and to the licensing authority a statement confirming the value of the trust. Any securities in the fund will be valued at market value as of no more than sixty days prior to the anniversary date of establishment of the fund. The failure of the grantor to object in writing to the trustee not later than ninety days after the statement has been furnished to the grantor and the licensing authority will 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 periodically 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 will be fully protected, to the extent licensed by law, in acting upon the advice of counsel.

Section 12. Trustee compensation. The trustee will be entitled to reasonable compensation for its service as agreed upon in writing periodically with the grantor.

Section 13. 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 will have the same powers and duties as those conferred upon the trustee hereunder. Upon the successor trustee's acceptance and the licensing authority's written approval of the appointment, the trustee will 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 licensing authority, and the present trustee by certified mail or other form of mail accompanied by a receipt not later than ten days before such change becomes effective. Any expenses incurred by the trustee as a result of any of the acts contemplated by this section will be paid as provided in section 9.

Section 14. Instructions to the trustee. All orders, requests, and instructions by the grantor to the trustee will 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 amendment to exhibit A. The trustee will be fully protected in acting without inquiry in accordance with the grantor's orders, requests, and instructions. All orders, requests, and instructions by the licensing authority to the trustee will be in writing, signed by the licensing authority, and the trustee will act and will be fully protected in acting in accordance with such orders, requests, and instructions. The trustee will 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 licensing authority hereunder has occurred. The

# \*\*\*DRAFT - NOT FOR FILING\*\*\*

trustee will have no duty to act in the absence of such orders, requests, and instructions from the grantor and/or the licensing authority except as provided for herein.

Section 15. Notice of nonpayment. The trustee will notify the grantor and the licensing authority by certified mail or other form of mail accompanied by a receipt not later than ten days after the expiration of the thirty-day period following the anniversary of the establishment of the trust, if no payment is received from the grantor during the period. After the pay-in period is completed the trustee is not required to send a notice of nonpayment.

Section 16. Amendment of agreement. This agreement may be amended by an instrument in writing executed by the grantor, the trustee, and the licensing authority, or by the trustee and the licensing authority 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 will be irrevocable and will continue until termination at the written agreement of the grantor, the trustee, and the licensing authority, or by the trustee and the licensing authority if the grantor ceases to exist. Upon termination of the trust, all remaining trust property, less final trust administration expenses, will be delivered to the grantor, unless the trust is a "standby trust" fund created in accordance with paragraph (C), (D), or (E) of rule 3745-400-13 of the Administrative Code or paragraph (F), (G), or (H) of rule 3745-400-18 of the Administrative Code, in which case all remaining trust property, less final trust administration expenses, will be delivered to the provider of the financial assurance.

Section 18. Immunity and indemnification. The trustee will 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 licensing authority issued in accordance with this agreement. The trustee will 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 19. Choice of law. This agreement will be administered, construed, and enforced according to the laws of the state of Ohio.

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 will 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 paragraph (A)(1) of rule 3745-

400-14 of the Administrative Code as such rule was 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 acknowledgment, which must accompany the trust agreement for a trust fund as specified in paragraph (B) of rule 3745-400-13 of the Administrative Code or paragraph (E) of rule 3745-400-18 of the Administrative Code:

"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], and 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 licensing authority(ies) of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of notary public]"

~~[Comment: As required in paragraph (B)(2) of rule 3745-400-13 of the Administrative Code, the trust agreement must be accompanied by a formal certification of acknowledgment. This is an example only.]~~

(B) ~~A-The~~ surety bond guaranteeing payment into ~~a-the~~ trust fund, ~~as~~ specified in paragraph (C) of rule 3745-400-13 of the Administrative Code and paragraph (F) of rule 3745-400-18 of the Administrative Code, ~~must shall~~ be worded as follows on forms prescribed by the director, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

"Financial guarantee bond

Date bond executed: \_\_\_\_\_

Effective date: \_\_\_\_\_

Principal: [legal name and business address of owner or operator]

# \*\*\*DRAFT - NOT FOR FILING\*\*\*

Type of organization: [insert "individual", "joint venture", "partnership", or "corporation"]

State of incorporation: \_\_\_\_\_

Surety(ies): [name(s) and business address(es)]

Name, address, and final closure [or post-closure care](#) amount(s) for each facility guaranteed by this bond [indicate amount of final closure [or post-closure care](#)]:  
\$ \_\_\_\_\_

Total penal sum of bond: \$ \_\_\_\_\_

Surety's bond number: \_\_\_\_\_

Know all persons by these presents, that we, the principal and surety(ies) hereto are firmly bound to the licensing authority, in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally; provided that, where the surety(ies) are corporations acting as co-sureties, we, the sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each surety binds itself, jointly and severally with the principal, for the payment of such sum only as is set forth opposite the name of such surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas, said principal is required to have a valid license, in order to operate each construction and demolition debris facility(ies) identified above, and

Whereas, said principal is required to provide financial assurance for final closure [or post-closure care](#) of the facility(ies) as a condition of Chapter 3714. of the Revised Code; and

Whereas said principal shall establish a standby trust fund as specified by rule 3745-400-13 [or 3745-400-18](#) of the Administrative Code,

Now, therefore, the conditions of the obligation are such that if the principal shall faithfully, before the beginning of final closure of each facility identified above, fund the standby trust fund in the amount(s) identified above for the facility.

Or, if the principal shall fund the standby trust fund in such an amount(s) not later than fifteen days after an order to begin final closure is issued by the licensing authority, or an Ohio court, or a U.S. district court, or other court of competent jurisdiction, or not later than fifteen days after a notice of revocation of the construction and demolition debris facility license, or, if the principal shall provide ~~alternate~~ [alternative](#) financial assurance as specified in rule 3745-400-13 [or 3745-400-18](#) of the Administrative Code as applicable, and obtain the licensing authority's written approval of such ~~alternate~~ [alternative](#) financial assurance, not later than ninety days after the first day that notice of cancellation has been received by both the principal and the licensing authority from the surety(ies), then this obligation will be null and void; otherwise it is to

remain in full force and effect.

The surety(ies) shall become liable on this bond obligation only when the principal has failed to fulfill the conditions described above. Upon notification by the licensing authority that the principal has failed to perform as guaranteed by this bond, the surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the licensing authority.

The liability of the surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the surety(ies) hereunder exceed the amount of said penal sum.

The surety(ies) may cancel the bond by sending notice of cancellation by certified mail [or other form of mail accompanied by a receipt](#) to the principal and to the licensing authority, provided, however, that cancellation shall not occur during the one hundred twenty day period beginning on the first day of receipt of the notice of cancellation by both the principal and the licensing authority as evidenced by the return receipt(s) or while a compliance procedure is pending, as defined in rule 3745-400-13 [or 3745-400-18](#) of the Administrative Code.

The principal may terminate this bond by sending written notice to the surety(ies), provided, however, that no such notice shall become effective until the surety(ies) ~~receive(s)~~ [receives](#) written authorization for termination of the bond by the licensing authority.

[The following paragraph is an optional rider that may be included but is not required.]

Principal and surety(ies) hereby agree to adjust the penal sum of the bond annually so that it guarantees a new final closure [or post-closure care](#) amount, and no decrease in the penal sum takes place without the written permission of the licensing authority.

In witness whereof, the principal and surety(ies) have executed this financial guarantee 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 paragraph (B) of rule 3745-400-14 of the Administrative Code as such rule was constituted on the date this bond was executed.

Principal

Signature(s): \_\_\_\_\_

Name(s) and title(s) [typed]: \_\_\_\_\_

Corporate seal:

Corporate surety(ies)

# \*\*\*DRAFT - NOT FOR FILING\*\*\*

Name and address: \_\_\_\_\_

State of incorporation: \_\_\_\_\_

Liability limit: \$ \_\_\_\_\_

Signature(s): \_\_\_\_\_

Name(s) and title(s) [typed]: \_\_\_\_\_

Corporate seal:

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

Bond premium: \$ \_\_\_\_\_ "

(C) ~~A-The~~ surety bond guaranteeing performance of final closure, ~~as~~ specified in paragraph (D) of rule 3745-400-13 of the Administrative Code and the surety bond guaranteeing performance of post-closure care specified in paragraph (G) of rule 3745-400-18 of the Administrative Code, ~~must shall~~ be worded as follows on forms prescribed by the director, except that instructions in brackets are to be replaced by the relevant information and the brackets deleted:

"Performance bond

Date bond executed: \_\_\_\_\_

Effective date: \_\_\_\_\_

Principal: [legal name and business address of owner or operator]

Type of organization: [insert "individual", "joint venture", "partnership", or "corporation"]

State of incorporation: \_\_\_\_\_

Surety(ies): [name(s) and business address(es)]

Name, address, and final closure or post-closure care amount for each facility guaranteed by this bond [indicate final closure or post-closure care amount]:

\$ \_\_\_\_\_

Total penal sum of bond: \$ \_\_\_\_\_

Surety's bond number: \_\_\_\_\_

Know all persons by these presents, that we, the principal and surety(ies) hereto are firmly bound to the licensing authority, in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the surety(ies) are corporations acting as co-sureties, we, the sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each surety binds itself, jointly and severally with the principal, for the payment of such sum

only as is set forth opposite the name of such surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas, said principal is required to have an Ohio EPA license or licenses in order to operate each construction and demolition debris facility(ies) identified above, and

Whereas said principal is required to provide financial assurance for final closure or post-closure care, as a condition of the license(s), and

Whereas said principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of this obligation are such that if the principal shall faithfully perform final closure or post-closure care, whenever required to do so, of each facility for which this bond guarantees final closure or post-closure care, in accordance with rule 3745-400-12 or 3745-400-16 of the Administrative Code and other requirements of the license as such license may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended.

Or, if the principal shall provide ~~alternate~~ alternative financial assurance as specified in rule 3745-400-13 or 3745-400-18 of the Administrative Code and obtain the licensing authority's written approval of such ~~alternate~~ alternative financial assurance not later than ninety days after the date notice of cancellation is received by both the principal and the licensing authority from surety(ies), then this obligation will be null and void, otherwise it is to remain in full force and effect.

The surety(ies) shall become liable on this bond obligation only when the principal has failed to fulfill the conditions described above.

Upon notification by the licensing authority that the principal has been found in violation of the final closure requirements of rule 3745-400-12 of the Administrative Code or post-closure care requirements of rule 3745-400-16 of the Administrative Code, for a facility for which this bond guarantees performance of final closure or post-closure care, the surety(ies) shall either perform final closure in accordance with ~~Chapters 3745-400 and 3745-37~~ rule 3745-400-12 of the Administrative Code or post-closure care in accordance with rule 3745-400-16 of the Administrative Code and other license requirements or place the final closure or post-closure care amount guaranteed for the facility into the standby trust fund as directed by the licensing authority.

Upon notification by the licensing authority that the principal has failed to provide ~~alternate~~ alternative financial assurance as specified in rule 3745-400-13 or 3745-400-18 of the Administrative Code and obtain written approval of such ~~alternate~~ alternative financial assurance from the licensing authority not later than ninety days after receipt by both the principal and the licensing authority of a notice of cancellation of the bond, the surety(ies) shall place

**\*\*\*DRAFT - NOT FOR FILING\*\*\***

funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the licensing authority.

The surety(ies) hereby ~~waive(s)~~ waives notification of amendments to licenses, applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the surety(ies) hereunder exceed the amount of said penal sum.

The surety(ies) may cancel the bond by sending notice of cancellation by certified mail or other form of mail accompanied by a receipt to the owner or operator and to the licensing authority, provided, however, that cancellation cannot occur during the ~~one hundred twenty day~~ one hundred twenty day period beginning on the first day of receipt of the notice of cancellation by both the principal and the licensing authority as evidenced by the return receipts.

The principal may terminate this bond by sending written notice to the surety(ies), provided, however, that no such notice shall become effective until the surety(ies) ~~receive(s)~~ receives written approval for termination of the bond by the licensing authority.

[The following paragraph is an optional rider that may be included but is not required.]

Principal and surety(ies) hereby agree to adjust the penal sum of the bond annually so that it guarantees a new final closure or post-closure care amount, and no decrease in the penal sum occurs without the written approval of the licensing authority.

In witness whereof, the principal and surety(ies) have executed this performance 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 paragraph (C) of rule 3745-400-14 of the Administrative Code, as such rule was constituted on the date this bond was executed.

Principal

Signature(s): \_\_\_\_\_

Name(s) and title(s) [typed]: \_\_\_\_\_

Corporate seal: \_\_\_\_\_

Corporate surety(ies)

Name and address: \_\_\_\_\_

State of incorporation: \_\_\_\_\_

Liability limit: \$ \_\_\_\_\_

Signature(s): \_\_\_\_\_

Name(s) and title(s) [typed]: \_\_\_\_\_

Corporate seal:

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

Bond premium: \$ \_\_\_\_\_ "

(D) ~~A-The~~ letter of credit ~~as~~ specified in paragraph (E) of rule 3745-400-13 of the Administrative Code and the letter of credit specified in paragraph (H) of rule 3745-400-18 of the Administrative Code ~~must shall~~ be worded as follows on forms prescribed by the director, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted [note: a letter of credit may also contain provisions used by the issuing institution in its regular course of business, provided that such provisions do not alter the terms and conditions in this paragraph]:

"Irrevocable standby letter of credit

[Licensing authority]

Dear sir or madam: We hereby establish our irrevocable standby letter of credit no. \_\_\_\_\_ ~~in~~ in your favor, at the request and for the account of [owner's or operator's name and address] up to the aggregate amount of [in words] U.S. Dollars (\$ \_\_\_\_\_), available upon presentation of

(1) Your sight draft, bearing reference to this letter of credit no. \_\_\_\_\_, ~~And~~ and

(2) Your signed statement reading as follows: 'I certify that the amount of the draft is payable pursuant to regulations issued under the authority of Chapter 3714. of the Revised Code ~~as amended~~.'

This letter of credit is effective as of [date] and will expire on [date of at least one year later], but such expiration date will be automatically extended for a period of [at least one year] on [date] and on each successive expiration date, unless, at least one hundred twenty days prior to the current expiration date, we notify both you and [owner's or operator's name] by certified mail or other form of mail accompanied by a receipt that we have decided not to extend this letter of credit beyond the current expiration date. In the event that you are so notified, any unused portion of the credit will be available upon presentation of your sight draft for one hundred twenty days after the first day of receipt by both you and [owner's or operator's name] as evidenced by the return receipts.

Whenever this letter of credit is drawn under and in compliance with the terms of this credit, we will duly honor such draft upon presentation to us, and we will deposit the amount of the draft directly into the standby trust fund by [owner's or operator's name] in accordance with your

**\*\*\*DRAFT - NOT FOR FILING\*\*\***

instructions.

We certify that the wording of this letter of credit is identical to the wording specified in paragraph (D) of rule 3745-400-14 of the Administrative Code as such rule was 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"]."

[Comment: In the event that the owner or operator ceases to exist, any unused portion of the credit will be available for the ~~one hundred twenty day~~ one hundred twenty day period after the date of receipt by the licensing authority, as evidenced by the return receipt.]

(E) ~~A The~~ certificate of insurance, ~~as~~ specified in paragraph (F) of rule 3745-400-13 of the Administrative Code and the certificate of insurance specified in paragraph (I) of rule 3745-400-18 of the Administrative Code, must shall be worded as follows on forms prescribed by the director, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

"Certificate of insurance for final closure or post-closure care.

Name and address of insurer

(Herein called the "insurer"): \_\_\_\_\_

Name and address of insured

(Herein called the "insured"): \_\_\_\_\_

Facilities covered: [List for each facility: name, address, county in which the facility is located, and the amount of insurance for final closure or post-closure care provided under the insurance policy (these amounts the aggregate amount for all facilities covered must total the face amount shown below).]

Face Amount: \$ \_\_\_\_\_

Policy Number: \_\_\_\_\_

Effective date: \_\_\_\_\_

The insurer hereby certifies that it has issued to the insured ~~the policy of~~ insurance policy identified above to provide financial assurance for [insert "final closure or post-closure care"] for the facilities identified above. The insurer further warrants that such insurance policy conforms in all respects with the requirements of paragraph (F) of rule 3745-400-13 of the Administrative Code or paragraph (I) of rule 3745-400-18 of the Administrative Code, as applicable as such rules were constituted on the date shown immediately below. It is agreed that any provision of the insurance policy

inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the licensing authority the insurer agrees to furnish to the licensing authority a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in paragraph (E) of rule 3745-400-14 of the Administrative Code as such rule was constituted on the date shown immediately below.

[Authorized signature for insurer]

[Name of person signing]

[Title of person signing]

Signature of witness or notary: \_\_\_\_\_

[Date]"

~~(F) A letter from the chief financial officer, as specified in paragraph (G) of rule 3745-400-13 of the Administrative Code must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:~~

~~"Letter from chief financial officer~~

~~{Address to licensing authority.}~~

~~I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance, as specified in rule 3745-400-13 of the Administrative Code.~~

~~{Fill out the following three paragraphs regarding facilities and associated amounts for final closure. If your firm has no facilities that belong in a particular paragraph, write "none" in the space indicated. For each facility, include its name, address, county, and amount for final closure. Identify each amount as to whether it is for final closure.}~~

~~(1) This firm is the owner or operator of the following facilities for which financial assurance for final closure is demonstrated through the financial test specified in rule 3745-400-13 of the Administrative Code. The amount for final closure provided for by the test are shown for each facility: \$ \_\_\_\_\_.~~

~~(2) This firm guarantees, through the corporate guarantee specified in rule 3745-400-13 of the Administrative Code, the final closure of the following facilities licensed by subsidiaries of this firm. The amount for final closure so guaranteed are shown for each facility: \$ \_\_\_\_\_.~~

~~(3) This firm is the owner or operator of the following facilities for which financial assurance for final closure, is not demonstrated to the licensing authority through the financial test or any other financial assurance mechanism specified in rule 3745-400-13 of the Administrative Code. The amount for final closure not covered by such financial assurance are shown for each facility: \$ \_\_\_\_\_.~~

**\*\*\*DRAFT - NOT FOR FILING\*\*\***

This firm [insert "is required" or "is not required"] to file a form 10K with the Securities and Exchange Commission (SEC) for the most recent fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the most recently completed fiscal year, ended [date].

[Fill in Alternative I if the criteria of paragraph (G)(1)(b) of rule 3745-400-13 of the Administrative Code is used. Fill in alternative II if the criteria of paragraph (G)(1)(c) of rule 3745-400-13 of the Administrative Code is used.

Alternative I	
1.	Sum of amount for final closure (total of all amounts shown in the three paragraphs above): \$ _____
*2.	Total liabilities [if any portion of the amount for final closure is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4]: \$ _____
*3.	Tangible net worth: \$ _____
*4.	Net worth: \$ _____
*5.	Current assets: \$ _____
*6.	Current liabilities: \$ _____
*7.	Net working capital [line 5 minus line 6]: \$ _____
*8.	The sum of net income plus depreciation, depletion, and amortization: \$ _____
*9.	Total assets in U.S. (Required only if less than 90% of firm's assets are located in the U.S.): \$ _____

		Yes	no
10.	Is line 3 at least \$10 million? .....		
11.	Is line 3 at least 6 times line 1? .....		
12.	Is line 7 at least 6 times line 1? .....		

I hereby certify that the wording of this letter is identical to the wording specified in paragraph (F) of rule 3745-400-14 of the Administrative Code as such rule was constituted on the date shown immediately below.

[Signature]

*13.	Are at least 90% of firm's assets located in the U.S.? ..... If not, complete line 14.		
14.	Is line 9 at least 6 times line 1? .....		
15.	Is line 2 divided by line 4 less than 2.0? .....		
16.	Is line 8 divided by line 2 greater than 0.1? .....		
17.	Is line 5 divided by line 6 greater than 1.5? .....		

Alternative II	
1.	Sum of amount for final closure (total of all amounts shown in the three paragraphs above): \$ _____
2.	Current bond rating of most recent issuance of this firm and name of rating service: _____
3.	Date of issuance of bond: _____
4.	Date of maturity of bond: _____
*5.	Tangible net worth [if any portion of the amount for final closure is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line]: \$ _____
*6.	Total assets in U.S. (Required only if less than 90% of firm's 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 firm's assets located in the U.S.? ..... If not, complete line 10		
10.	Is line 6 at least 6 times line 1? .....		

[Name]

[Title]

[Date]"

(G) A corporate guarantee, as specified in paragraph (G) of rule 3745-400-13 of the Administrative Code, must be

# **\*\*\*DRAFT - NOT FOR FILING\*\*\***

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

~~"Corporate guarantee for final closure~~

~~Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the state of [insert name of state], herein referred to as guarantor, to the licensing authority, obligee on behalf of our subsidiary [owner or operator] of [business address].~~

## ~~Recitals~~

~~1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in paragraph (G) of rule 3745-400-13 of the Administrative Code.~~

~~2. [Owner or operator] responsible for the following construction and demolition debris facility(ies) covered by this guarantee: [list for each facility: name and address].~~

~~3. For value received from [owner or operator], guarantor guarantees to the licensing authority that in the event that [owner or operator] fails to perform final closure of the above facility(ies) in accordance with the Chapters 3745-400 and 3745-37 of the Administrative Code and any other license requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in Chapter 3745-400 of the Administrative Code, as applicable, in the name of [owner or operator] in the amount for final closure as specified in Chapter 3745-400 of the Administrative Code.~~

~~4. 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 not later than ninety days after the end of such fiscal year, by certified mail, notice to the licensing authority, and to [owner or operator] that he intends to provide alternate financial assurance as specified in Chapter 3745-400 of the Administrative Code, as applicable, in the name of [owner or operator]. Not later than one hundred twenty days after the end of such fiscal year, the guarantor shall establish such alternate financial assurance unless [owner or operator] has done so.~~

~~5. The guarantor agrees to notify the licensing authority by certified mail of a voluntary or involuntary proceeding under Title 11: Bankruptcy, U.S. Code, naming guarantor as debtor, not later than ten days after commencement of the proceeding.~~

~~6. Guarantor agrees that not later than thirty days after being notified by the licensing authority of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of final closure, he shall establish alternate financial assurance as specified in Chapter 3745-400 of the Administrative Code, as applicable, in the name of [owner or operator] unless [owner or operator] has done so.~~

~~7. Guarantor agrees to remain bound under this guarantee~~

~~notwithstanding any or all of the following: change to the license, modification of the facility, the extension or reduction of the time of performance of final closure, or any other modification or alteration of an obligation of the owner or operator pursuant to Chapter 3745-400 of the Administrative Code.~~

~~8. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] shall comply with the applicable financial assurance requirements of Chapter 3745-400 of the Administrative Code for the above listed facilities, except that guarantor may cancel this guarantee by sending notice by certified mail to the licensing authority and [owner or operator], such cancellation to become effective not earlier than one hundred twenty days after receipt of such notice by both the licensing authority and [owner or operator], as evidenced by the return receipts.~~

~~9. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance as specified in Chapter 3745-400 of the Administrative Code, as applicable, and obtain written approval of such alternate financial assurance from the licensing authority not later than ninety days after a notice of cancellation by the guarantor is received by the licensing authority from guarantor, guarantor shall provide such alternate financial assurance in the name of [owner or operator].~~

~~10. Guarantor expressly waives notice of acceptance of this guarantee by the licensing authority or by [owner or operator]. Guarantor also expressly waives notice of amendments or modifications of the facility license(s).~~

~~I hereby certify that the wording of this guarantee is identical to the wording specified in paragraph (G) of rule 3745-400-14 of the Administrative Code as such rule was constituted on the date first above written.~~

~~Effective date: \_\_\_\_\_~~

~~[Name of guarantor]~~

~~[Authorized signature for guarantor]~~

~~[Name of person signing]~~

~~[Title of person signing]~~

~~Signature of witness or notary: \_\_\_\_\_"~~

## **3745-400-16 Post-closure care of a construction and demolition debris facility.**

(A) Unless the owner or operator of the construction and demolition debris facility has complied with paragraph (B)(1) of this rule, an owner or operator of a facility that has accepted construction and demolition debris in calendar year 2006 or later shall conduct post-closure care activities at the construction and demolition debris facility upon the licensing authority's written concurrence with the final closure certification report for the facility.

# **\*\*\*DRAFT - NOT FOR FILING\*\*\***

(B) Post-closure care activities shall be conducted for five years unless one of the following applies:

(1) With respect to a facility that permanently ceased acceptance of construction and demolition debris in calendar year 2006, the post-closure care and post-closure care financial assurance requirements do not apply, provided that the owner or operator of the facility gave written notice of the date of the cessation to the applicable board of health or the director, the owner or operator of the facility did not submit a subsequent application for a license renewal for the facility after that cessation, and no order was issued by the applicable board of health, the director, or a court of competent jurisdiction governing the post-closure care of and post-closure care financial assurance for that facility prior to the date specified in the written notice.

(2) With respect to a facility that permanently ceased acceptance of construction and demolition debris in calendar year 2007, the required period of time for post-closure care and post-closure care financial assurance shall be one year after the final closure of the facility, provided that the owner or operator of the facility gave written notice of the date of the cessation to the applicable board of health or the director, the owner or operator did not submit a subsequent application for a license renewal for the facility after that cessation, and no order was issued by the applicable board of health, the director, or a court of competent jurisdiction governing the post-closure care of and post-closure care financial assurance for that facility prior to the date specified in the written notice.

(C) The post-closure care period may be extended in accordance with rule 3745-400-17 of the Administrative Code except for facilities where either paragraph (B)(1) or (B)(2) of this rule applies.

(D) An owner or operator shall complete post-closure care of a construction and demolition debris facility in a manner which minimizes further maintenance at the facility, as well as the formation and release of leachate to the air, soil, surface water, or ground water to the extent necessary to protect human health and the environment.

(E) Post-closure care activities. The owner or operator shall conduct post-closure activities as follows:

(1) Complying with any orders and authorizing documents issued in accordance with Chapter 3714. of the Revised Code.

(2) Complying with the following:

(a) Paragraph (E) of rule 3745-400-11 of the Administrative Code regarding maintaining the integrity of the engineered components of the facility and repairing any damage to or failure of the components.

(b) Paragraph (M) of rule 3745-400-11 of the Administrative Code regarding fire control.

(c) Paragraph (O) of rule 3745-400-11 of the Administrative Code regarding leachate outbreaks.

(d) Paragraph (P) of rule 3745-400-11 of the Administrative Code regarding leachate system management.

(e) Paragraph (Q) of rule 3745-400-11 of the Administrative Code regarding surface and ground water management.

(f) Paragraph (R) of rule 3745-400-11 of the Administrative Code regarding ground water monitoring and leachate sampling and analysis.

(g) Paragraph (S) of rule 3745-400-11 of the Administrative Code regarding financial assurance for post-closure care.

(3) Complying with the compliance disclosure requirements in section 3714.052 of the Revised Code when employing a new key employee.

(4) Maintaining vegetative cover in areas where establishment of vegetative cover is required during facility final closure in accordance with rule 3745-400-12 of the Administrative Code including mowing the vegetative cover at least once per year.

(5) Maintaining and complying with all applicable permits and authorizations required by Chapters 3704. and 6111. of the Revised Code.

(6) Limiting access to the facility and maintaining access roads as follows:

(a) Limiting access to authorized personnel only and excluding live domestic and live farm animals from the facility except those used for security or vector control.

(b) Maintaining the signs stating that the facility is closed required by rule 3745-400-12 of the Administrative Code such that the signs remain legible.

(c) Maintaining the gates, fencing, or other sturdy obstacles blocking each entrance to the construction and demolition debris facility required by rule 3745-400-12 of the Administrative Code.

(d) Maintaining access roads to allow for the inspection, maintenance, and repair of engineered components, ground water sampling, and other activities required under this rule.

(7) Annually submitting not later than each anniversary of commencing post-closure care updated post-closure care financial assurance documentation prepared in accordance with rule 3745-400-18 of the Administrative Code.

(8) Retaining all authorizing documents and completed daily logs of operations at a location acceptable to the licensing authority where the documents are available for inspection by Ohio EPA or the approved health department during normal business hours.

(9) Maintaining all records and reports generated during final closure and the post-closure care period at a location

# **\*\*\*DRAFT - NOT FOR FILING\*\*\***

acceptable to the licensing authority where the records and reports are available for inspection by Ohio EPA or the approved health department during normal business hours.

(F) Not earlier than sixty days and not later than thirty days prior to the completion of the post-closure care period, an owner or operator shall do the following:

(1) Decommission the ground water monitoring system in a manner that will be protective of public health and safety and the environment, unless Ohio EPA or the approved board of health requires that the ground water monitoring system not be decommissioned. The owner or operator shall provide written notification to Ohio EPA and the approved board of health at least thirty days prior to commencing decommissioning of the ground water monitoring system.

(2) Decommission the gas management system in a manner that will be protective of public health and safety and the environment.

(3) Submit to Ohio EPA and the approved board of health a post-closure care certification report that conforms to rule 3745-400-19 of the Administrative Code.

## **3745-400-17 Procedures for issuance of an order extending the post-closure care period.**

(A) The post-closure care period may be extended by order of the approved board of health, the director, or a court of competent jurisdiction if conditions at a construction and demolition debris facility are impacting public health or safety or the environment or if ground water assessment and ground water corrective actions are required to be conducted at the facility in accordance with rule 3745-400-10 of the Administrative Code. The requirement to maintain financial assurance for post-closure care may be extended if the post-closure care period is extended pursuant to this rule.

(B) An order of the director or approved board of health extending the post-closure care period shall contain at a minimum the following information:

(1) Identification and location of the facility for which the post-closure care period is extended.

(2) The effective date of the order.

(3) A description of the conditions at the facility that are impacting public health or safety or the environment or whether ground water assessment or ground water corrective actions are required to be conducted at the facility in accordance with rule 3745-400-10 of the Administrative Code.

(4) The length of the extended post-closure care period established by the order.

(5) Any extension of the length of time that financial assurance for post-closure care is required to be

maintained.

(6) Any terms or conditions established by the order.

(7) A termination date or termination provisions.

(C) When issuing an order extending the post-closure care period, the director shall act in accordance with Chapters 119., 3714., 3734., and 3745. of the Revised Code, as applicable.

(D) When issuing an order extending the post-closure care period, an approved board of health shall act in accordance with Chapter 3714. and section 3709.20 of the Revised Code.

(E) Upon issuance of an order extending the post-closure care period, a copy of the order shall be retained by the licensing authority and a copy of the order shall be distributed by certified mail or other form of mail accompanied by a receipt to the entity.

## **3745-400-18 Financial assurance for post-closure care of construction and demolition debris facilities.**

(A) The owner or operator of a construction and demolition debris facility shall establish and maintain financial assurance for post-closure care of the facility as required by this rule. Financial assurance may be established and maintained through the use of one of the options specified in paragraphs (B) to (F) of this rule, unless it is demonstrated to the satisfaction of the health commissioner or director of the licensing authority that an alternate option will guarantee funding for post-closure care. The owner or operator may use the options in combination as specified in paragraph (G) of this rule.

(1) Post-closure care cost estimate. Financial assurance documentation shall include an itemized written post-closure care cost estimate that calculates the cost of conducting the post-closure care activities in accordance with rule 3745-400-16 of the Administrative Code for all active licensed disposal areas and for all inactive licensed disposal areas containing debris. The amount shall be calculated in current dollars and be based upon a third party to conduct all of the post-closure care activities required by rule 3745-400-16 of the Administrative Code.

(2) Amount and funding of financial assurance. Post-closure care financial assurance shall be funded in an amount not less than the post-closure care cost estimate calculated in accordance with paragraph (A)(1) of this rule unless the owner or operator has chosen the five year transition in accordance with rule 3745-400-25 of the Administrative Code. If the funded post-closure financial assurance for the facility is less than the post-closure care cost estimate, the owner or operator shall fund an amount not less than the post-closure care cost estimate not later than thirty days after each of the following:

(a) License issuance.

(b) The updated post-closure care financial assurance

# **\*\*\*DRAFT - NOT FOR FILING\*\*\***

documentation required by paragraph (E)(11) of rule 3745-400-12 of the Administrative Code.

(c) The updated post-closure care financial assurance documentation required by paragraph (E)(7) of rule 3745-400-16 of the Administrative Code.

If a portion of the increase in the post-closure care cost estimate is due to the addition of active licensed disposal area for which a construction certification report has not been submitted in accordance with rule 3745-400-08 of the Administrative Code, the owner or operator may delay funding that portion of the post-closure care cost estimate necessary to conduct post-close activities for that uncertified active licensed disposal area until the date of submittal of the construction certification report. The owner or operator shall use any single or combination of financial assurance instruments as specified in paragraphs (B) to (F) of rule 3745-400-13 of the Administrative Code.

(3) Review of post-closure care financial assurance.

(a) The post-closure cost care estimate shall be reviewed for each of the following:

(i) Renewal of the annual license application.

(ii) Any application for a facility modification

(iii) Prior to submittal of the updated post-closure care financial assurance documentation required by paragraph (E)(11) of rule 3745-400-12 of the Administrative Code

(iv) Prior to submittal of the updated post-closure care financial assurance documentation required by paragraph (E)(7) of rule 3745-400-16 of the Administrative Code.

(b) The post-closure cost care estimate shall be recalculated if there is a change in the acreage of the active licensed disposal area or inactive licensed disposal area containing debris.

(c) If there is no change in the acreage of the active licensed disposal area or inactive licensed disposal area containing debris, the owner or operator may as an alternative to recalculating the post-closure care cost estimate, adjust the post-closure cost estimate established in the facility's most recent issued license for inflation in accordance with paragraph (A)(3)(b) of this rule.

(d) Adjustment of the post-closure cost estimate for inflation. The adjustment shall be made as specified in this paragraph, using an inflation factor derived from the annual implicit price deflator for gross domestic product as published by the U.S. department of commerce in its February issue of "Survey of Current Business." The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year.

(i) The first adjustment is made by multiplying the post-closure care cost estimate by the inflation factor. The result is the adjusted post-closure care cost estimate.

(ii) Subsequent adjustments are made by multiplying the most recently adjusted post-closure care cost estimate by

the most recent inflation factor.

[Comment: The "Survey of Current Business" document is available at <http://www.bea.gov> or by writing to the "United States Bureau of Economic Analysis, 1441 L Street NW, Washington, DC 20230."]

(e) The amount of financial assurance shall not be less than the reviewed post-closure cost estimate for each renewal of the annual license application, application for a facility modification, submittal of the updated post-closure care financial assurance documentation required by paragraph (E)(11) of rule 3745-400-12 of the Administrative Code, and submittal of the updated post-closure care financial assurance documentation required by paragraph (E)(7) of rule 3745-400-16 of the Administrative Code. Established and funded financial assurance may be utilized to fulfill the financial assurance requirements if the dollar amount of the financial assurance is equal to or greater than the amount required in paragraph (A) of this rule.

(4) Post-closure care financial assurance documentation shall also include the original copy of the financial assurance instruments necessary to achieve compliance with the financial assurance provisions of this rule. The wording contained in the instruments shall be in accordance with the appropriate paragraph of rule 3745-400-14 of the Administrative Code, unless an option other than those specified in paragraphs (B) to (F) of this rule is proposed.

(5) Release of funds. Reimbursement shall be made as follows:

(a) Release of funds during post-closure care. The owner or operator or any other person authorized to perform post-closure care activities may request and receive reimbursement from or a reduction of the financial assurance mechanism or a reduction in the amount of financial assurance maintained in accordance with this rule after the licensing authority's written concurrence that the post-closure care activities listed in the request for reimbursement or reduction have been performed in accordance with rule 3745-400-16 of the Administrative Code. If the licensing authority determines that the cost of the remaining post-closure activities will be greater than the financial assurance maintained for the facility, the licensing authority may withhold reimbursement of such amounts as the licensing authority deems prudent until completion of the post-closure care period.

(b) Release of funds after post-closure care period has ended. The owner or operator or any other person authorized to perform post-closure care activities may request and receive reimbursement of all remaining funds or termination of the financial assurance required under this rule after post-closure care has been completed in accordance with rule 3745-400-16 of the Administrative Code.

(B) Post-closure care trust fund.

(1) The owner or operator may satisfy the requirements of

# **\*\*\*DRAFT - NOT FOR FILING\*\*\***

this rule by establishing a post-closure care trust fund that conforms to this rule and by submitting an originally signed duplicate of the trust agreement to the health commissioner or director of the licensing authority. The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(2) The wording of the trust agreement shall be identical to the wording specified in paragraph (A)(1) of rule 3745-400-14 of the Administrative Code and the trust agreement shall be accompanied by a formal certification of acknowledgment.

(3) Unless the owner or operator has chosen the five year transition in accordance with rule 3745-400-25 of the Administrative Code or the owner or operator is delaying funding of a portion of the post-closure cost estimate until submittal of a construction certification report in accordance with (A)(2) of this rule, the owner or operator shall fully fund the total dollar amount of the trust fund not later than thirty days after each of the following:

(a) License issuance.

(b) The updated post-closure care financial assurance documentation required by paragraph (E)(11) of rule 3745-400-12 of the Administrative Code.

(c) The updated post-closure care financial assurance documentation required by paragraph (E)(7) of rule 3745-400-16 of the Administrative Code.

The owner or operator shall submit to the licensing authority a receipt from the trustee for the deposit made into the trust fund.

(4) If the owner or operator establishes a post-closure care trust fund to replace one or more alternative mechanisms specified in this rule, the owner or operator shall fully fund the trust fund in an amount at least equal to the post-closure care cost estimate determined in accordance with paragraph (A) of this rule.

(5) The owner or operator, or any other person authorized to perform post-closure care, may request release of funds in accordance with paragraph (A)(5) of this rule.

(6) The health commissioner or director of the licensing authority may agree to termination of the trust fund when either of the following occurs:

(a) The owner or operator substitutes alternative financial assurance for post-closure care as specified in this rule.

(b) The health commissioner or director of the licensing authority notifies the owner or operator in accordance with paragraph (A) of this rule that the owner or operator is no longer required by this rule to maintain financial assurance for post-closure care of the construction and demolition debris facility.

(C) Surety bond guaranteeing payment into a post-closure care trust fund.

(1) The owner or operator may satisfy the requirements of this rule by obtaining a surety bond that conforms to this rule and by submitting the originally signed surety bond to the health commissioner or director of the licensing authority. At a minimum, the surety bond company issuing the surety bond shall be among those listed as acceptable sureties on federal bonds in "Circular 570" of the U.S. department of the treasury.

[Comment: "Circular 570" is published in the "Federal Register" annually on the first day of July; interim changes in the circular are also published in the "Federal Register." This United States department of treasury document is available at <http://www.fms.treas.gov>.]

(2) The wording of the surety bond shall be identical to the wording specified in paragraph (B) of rule 3745-400-14 of the Administrative Code.

(3) The owner or operator who uses a surety bond to satisfy the requirements of this rule shall also establish a standby trust fund not later than the date the surety bond is obtained. Under the terms of the surety bond, all payments made thereunder shall be deposited by the surety bond company directly into the standby trust fund in accordance with instructions from the health commissioner or director of the licensing authority. This standby trust fund shall meet the requirements specified in paragraph (B) of this rule, except as follows:

(a) An originally signed duplicate of the trust agreement shall be submitted with the surety bond.

(b) Until the standby trust fund is funded, pursuant to the requirements of this rule, a deposit into the standby trust fund as specified in paragraph (B) of this rule is not required.

(4) The surety bond shall guarantee that the owner or operator will do one of the following:

(a) Fund the standby trust fund in an amount equal to the penal sum of the surety bond before the beginning of post-closure care.

(b) Fund the standby trust fund in an amount equal to the penal sum of the surety bond not later than fifteen days after post-closure care is required in compliance with paragraph (B) of rule 3745-400-12 of the Administrative Code.

(c) Provide alternative financial assurance as specified in this rule and obtain written approval of the alternative financial assurance from the health commissioner or director of the licensing authority not later than ninety days after both the owner or operator and the health commissioner or director of the licensing authority receive notice of cancellation of the surety bond from the surety bond company.

(5) Under the terms of the surety bond, the surety bond company shall become liable on the surety bond obligation when the owner or operator fails to perform as guaranteed by the surety bond.

# **\*\*\*DRAFT - NOT FOR FILING\*\*\***

(6) Except as provided in paragraph (G) of this rule, the penal sum of the surety bond shall be in an amount at least equal to the post-closure care cost estimate determined in accordance with paragraph (A) of this rule.

(7) Under the terms of the surety bond, the surety bond shall remain in full force and effect unless the surety bond company sends written notice of cancellation by certified mail or other form of mail accompanied by a receipt to the owner or operator, the approved board of health, and the director. Cancellation shall not occur during the one hundred twenty day period beginning on the first day that both the owner or operator and the health commissioner or director of the licensing authority have received the notice of cancellation, as evidenced by the return receipts.

(8) The owner or operator may cancel the surety bond if the licensing authority has given prior written approval. The health commissioner or director of the licensing authority may provide such written approval when one of the following occurs:

(a) The owner or operator substitutes alternative financial assurance for post-closure care as specified in this rule.

(b) The health commissioner or director of the licensing authority notifies the owner or operator in accordance with paragraph (A) of this rule that the owner or operator is no longer required to maintain financial assurance for post-closure care of the construction and demolition debris facility.

(D) Surety bond guaranteeing performance of post-closure care.

(1) The owner or operator may satisfy the requirements of this rule by obtaining a surety bond that conforms to this rule and by submitting the originally signed surety bond to the health commissioner or director of the licensing authority. The surety bond company issuing the surety bond shall, at a minimum, be among those listed as acceptable sureties on federal bonds in "Circular 570" of the U.S. department of the treasury.

[Comment: "Circular 570 is published in the "Federal Register" annually on the first day of July; interim changes in the circular are also published in the "Federal Register." This United States department of treasury document is available at <http://www.fms.treas.gov>.]

(2) The wording of the surety bond shall be identical to the wording specified in paragraph (C) of rule 3745-400-14 of the Administrative Code.

(3) The owner or operator who uses a surety bond to satisfy the requirements of this rule shall also establish a standby trust fund not later than the date the surety bond is obtained. Under the terms of the surety bond, all payments made thereunder shall be deposited by the surety bond company directly into the standby trust fund in accordance with instructions from the health commissioner or director of the licensing authority. This standby trust fund shall meet the requirements specified in paragraph (B) of this rule except as follows:

(a) An originally signed duplicate of the trust agreement shall be submitted with the surety bond.

(b) Until the standby trust fund is funded, pursuant to the requirements of this rule, a deposit into the standby trust fund as specified in paragraph (B) of this rule is not required.

(4) The surety bond shall guarantee that the owner or operator shall do one of the following:

(a) Perform post-closure care in accordance with rule 3745-400-16 of the Administrative Code and other requirements of any authorizing documents.

(b) Provide alternative financial assurance as specified in this rule, and obtain written approval of the alternative financial assurance from the health commissioner or director of the licensing authority not later than ninety days after both the owner or operator and the health commissioner or director of the licensing authority receive notice of cancellation of the surety bond from the surety bond company as evidenced by the return receipts.

(5) Under the terms of the surety bond, the surety bond company shall become liable on the surety bond obligation when the owner or operator fails to perform as guaranteed by the surety bond. Following a determination by the approved board of health or the director that the owner or operator has failed to perform post-closure care activities in accordance with rule 3745-400-16 of the Administrative Code and requirements of any authorizing documents, the surety bond company shall perform post-closure care activities in accordance with rule 3745-400-16 of the Administrative Code and requirements of any authorizing documents or shall deposit the amount of the penal sum of the surety bond into the trust fund.

(6) The penal sum of the surety bond shall be in an amount at least equal to the post-closure care cost estimate determined in accordance with paragraph (A) of this rule.

(7) Under the terms of the surety bond, the surety bond shall remain in full force and effect unless the surety bond company sends written notice of cancellation by certified mail or other form of mail accompanied by a receipt to the owner or operator, the approved board of health, and the director. Cancellation shall not occur during the one hundred twenty day period beginning on the first day that both the owner or operator and the health commissioner or director of the licensing authority have received the notice of cancellation, as evidenced by the return receipts.

(8) The owner or operator may cancel the surety bond if the health commissioner or director of the licensing authority has given prior written approval. The health commissioner or director of the licensing authority may provide such written approval when one of the following occurs:

(a) The owner or operator substitutes alternative financial assurance for post-closure care as specified in this rule.

# **\*\*\*DRAFT - NOT FOR FILING\*\*\***

(b) The health commissioner or director of the licensing authority notifies the owner or operator in accordance with paragraph (A) of this rule that the owner or operator is no longer required to maintain financial assurance for post-closure care of the construction and demolition debris facility.

(9) The surety bond company shall not be liable for deficiencies in the completion of post-closure care activities by the owner or operator after the owner or operator has been notified by the health commissioner or director of the licensing authority in accordance with this rule that the owner or operator is no longer required to maintain financial assurance for post-closure care of the construction and demolition debris facility.

(E) Post-closure care letter of credit.

(1) The owner or operator may satisfy the requirements of this rule by obtaining an irrevocable standby letter of credit that conforms to the requirements of this rule and by having the originally signed letter of credit delivered to the health commissioner or director of the licensing authority. The issuing institution 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.

(2) The wording of the letter of credit shall be identical to the wording specified in paragraph (D) of rule 3745-400-14 of the Administrative Code.

(3) An owner or operator who uses a letter of credit to satisfy the requirements of this rule shall also establish a standby trust fund not later than the date the letter of credit is obtained. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the health commissioner or director of the licensing authority shall be deposited directly by the issuing institution into the standby trust fund in accordance with instructions from the health commissioner or director of the licensing authority. The standby trust fund shall meet the requirements of the trust fund specified in paragraph (B) of this rule, except as follows:

(a) An originally signed duplicate of the trust agreement shall be submitted with the letter of credit.

(b) Until the standby trust fund is funded, pursuant to the requirements of this rule, a deposit into the standby trust fund as specified in paragraph (B) of this rule is not required.

(4) 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: the names and addresses of the construction and demolition debris facility and the owner or operator and the amount of funds assured for post-closure care of the construction and demolition debris facility by the letter of credit.

(5) The letter of credit shall be irrevocable and issued for a period of at least one year. The letter of credit shall

provide that the expiration date shall be automatically extended for a period of at least one year unless, at least one hundred twenty days prior to the current expiration date, the issuing institution notifies the owner or operator, the approved board of health, and the director by certified mail or any other form of mail accompanied by a receipt of a decision not to extend the expiration date. Under the terms of the letter of credit, the one hundred twenty day period shall begin on the day when the owner or operator, licensing authority, and director have received the notice, as evidenced by the return receipts.

(6) Except as provided in paragraph (G) of this rule, the letter of credit shall be in an amount at least equal to the post-closure care cost estimate determined in accordance with paragraph (A) of this rule.

(7) Following a determination by the approved board of health or the director that the owner or operator has failed to perform post-closure care activities in accordance with rule 3745-400-16 of the Administrative Code and requirements of any authorizing documents, the approved board of health or director may draw on the letter of credit.

(8) If the owner or operator does not establish alternative financial assurance as specified in this rule and obtain written approval of such alternative financial assurance from the health commissioner or director of the licensing authority not later than ninety days after the owner or operator, licensing authority, and director have received notice from the issuing institution that it shall not extend the letter of credit beyond the current expiration date, the approved board of health or director shall draw on the letter of credit. The approved board of health or the director may delay the drawing if the issuing institution grants an extension of the term of the credit. During the final thirty days of any such extension, the approved board of health or the director shall draw on the letter of credit if the owner or operator has failed to provide alternative financial assurance as specified in this rule and has failed to obtain written approval of such alternative financial assurance from the health commissioner or director of the licensing authority.

(9) The health commissioner or director of the licensing authority shall return the original letter of credit to the issuing institution for termination when one of the following occurs:

(a) The owner or operator substitutes alternative financial assurance for post-closure care as specified in this rule.

(b) The health commissioner or director of the licensing authority notifies the owner or operator in accordance with paragraph (A) of this rule, that the owner or operator is no longer required to maintain financial assurance for post-closure care of the construction and demolition debris facility.

(F) Post-closure care insurance.

(1) The owner or operator may satisfy the requirements of this rule by obtaining post-closure care insurance that conforms to this rule and by submitting an originally signed

# **\*\*\*DRAFT - NOT FOR FILING\*\*\***

certificate of such insurance to the health commissioner or director of the licensing authority.

(2) The owner or operator using insurance as a financial assurance mechanism shall submit documentation stating whether the insurer is a subsidiary or has a corporate, legal, or financial affiliation with the owner or operator. If the post-closure care insurance is issued by a subsidiary or affiliate, the owner or operator shall include a detailed written description of the relationship between the insurer and the owner and the operator.

(3) An insurer issuing an insurance policy in satisfaction of this rule 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 owner or operator shall submit to the licensing authority the following information regarding the insurer's qualifications:

(a) The most recent A.M. Best rating of the insurer.

(b) Documentation demonstrating that the insurer is domiciled in the United States.

(c) The most recent report on examination from the insurance department from the insurer's state of domicile.

(d) Documentation demonstrating that the insurer has capital and surplus of at least one hundred million dollars.

(e) Documentation demonstrating that the insurer received an unqualified opinion of the insurer's annual financial statements from an independent certified public accountant.

(4) The licensing authority may disallow use of the insurer by the owner or operator on the basis of one or more of the following:

(a) The A.M. Best rating is less than A-.

(b) The report on examination does not demonstrate that the status of the insurer is satisfactory.

(c) The opinion expressed by the independent certified public accountant in the report on examination of the insurer's financial statements.

(5) The wording of the certificate of insurance shall be identical to the wording specified in paragraph (E) of rule 3745-400-14 of the Administrative Code.

(6) Except as provided in paragraph (G) of this rule, the post-closure care insurance policy shall be issued for a face amount at least equal to the amount of the post-closure care cost estimate determined in accordance with paragraphs (A) of this rule. Face amount shall be the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer shall not change the face amount, but the insurer's future liability will be lowered by the amount of the payments.

(7) The post-closure care insurance policy shall guarantee that funds shall be available to conduct post-closure care of the construction and demolition debris facility whenever

post-closure care begins. The policy shall also guarantee that once post-closure care of the construction and demolition debris facility begins, the insurer shall be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the health commissioner or director of the licensing authority, to such party or parties as the health commissioner or director of the licensing authority specifies.

(8) After beginning post-closure care, the owner or operator, or any other person authorized to perform post-closure care activities, may request reimbursement for post-closure care expenditures. The health commissioner or director of the licensing authority shall calculate in accordance with paragraph (A) of this rule the amount to be reimbursed and shall instruct the insurer, in writing, to make such reimbursement.

(9) The owner or operator shall maintain the policy in full force and effect until the health commissioner or director of the licensing authority consents to termination of the policy by the owner or operator as specified in paragraph (F)(13) of this rule. Failure to pay the premium, without substitution of alternative financial assurance as specified in this rule, constitutes a violation of these rules, warranting such remedy as the health commissioner or director of the licensing authority deems necessary. Such violation shall be deemed to begin upon receipt by the health commissioner or director of the licensing authority of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

(10) Each policy shall contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

(11) The policy shall provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice or other form of mail accompanied by a receipt to the owner or operator and to the health commissioner or director of the licensing authority at least one hundred twenty days prior to the date of cancellation. Cancellation, termination, or failure to renew may not occur during the one hundred twenty day period beginning on the first day that both the owner or operator and the health commissioner or director of the licensing authority have received the notice, as evidenced by the return receipts.

(12) If the health commissioner or director of the licensing authority disallows use of the insurer, the owner or operator shall provide alternative financial assurance as specified in this rule not later than thirty days after notification of the disallowance of the insurer.

(13) The health commissioner or director of the licensing

# \*\*\*DRAFT - NOT FOR FILING\*\*\*

authority may give written approval that the owner or operator may terminate the insurance policy when one of the following occurs:

(a) The owner or operator substitutes alternative financial assurance for post-closure care as specified in this rule.

(b) The health commissioner or director of the licensing authority notifies the owner or operator in accordance with paragraph (A) of this rule, that the owner or operator is no longer required to maintain financial assurance for post-closure care of the construction and demolition debris facility.

(G) Use of multiple financial assurance mechanisms. The owner or operator may satisfy the requirements of this rule by establishing more than one financial assurance mechanism for the construction and demolition debris facility. The mechanisms are limited to trust funds, surety bonds guaranteeing payment into a post-closure care trust fund, letters of credit, and insurance. The mechanisms shall conform to paragraphs (B), (C), (E), and (F) of this rule, except that it is the combination of mechanisms, rather than each single mechanism, that shall provide financial assurance for an amount at least equal to the post-closure care cost estimate calculated in accordance with paragraph (A) of this rule. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, the owner or operator may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The licensing authority may invoke use of any or all of the mechanisms in accordance with paragraphs (B), (C), (E), and (F) of this rule to provide for post-closure care of the construction and demolition debris facility.

## **3745-400-19 Post-closure care certification report.**

(A) The post-closure care certification report shall be signed by a professional skilled in the appropriate discipline and shall certify that the owner or operator has completed post-closure care in accordance with this chapter.

(B) The post-closure care certification report shall contain at a minimum the following:

(1) Documentation that the owner or operator has completed the post-closure care activities required by rule 3745-400-16 of the Administrative Code.

(2) An assessment of the integrity and long term stability of the cap system. The assessment shall consider observations, inspections, maintenance, repairs, and other information relating to the cap system during time of post-closure care. The assessment shall identify needed maintenance and repair at the time of certification.

(3) A summary of changes to leachate quality and quantity during time of post-closure care.

(4) Rate of leachate generation and quantity of leachate at

the facility during the final year of post-closure care, with an explanation of how these figures were derived.

(5) An assessment of hydrogen sulfide gas migration and generation by the facility. The assessment shall consider observations, inspections, maintenance, repairs, and other information relating to hydrogen sulfide gas migration and generation during time of post-closure care. The assessment shall identify needed hydrogen sulfide gas migration and generation controls at the time of certification.

(C) Upon request by the Ohio EPA or the approved board of health for the purpose of verifying that post-closure care of the facility was conducted in accordance with this chapter, the owner or operator shall provide the documentation relied on in the preparation of the post-closure care certification report.

## **3745-400-20 Leachate sampling and analysis and additional requirements to monitor ground water for leachate parameters.**

(A) Leachate sampling and analysis. The owner or operator shall do the following:

(1) Sample and test leachate in accordance with the following unless the facility was licensed and operating on December 22, 2005, and was not required to have a leachate monitoring system on that date. For the purposes of this rule, a "leachate monitoring system" is any leachate collection system that includes sump risers or other access that can be used for collecting samples of leachate.

(a) Sampling frequency.

(i) An owner or operator shall sample leachate at the facility at least annually.

(ii) If an owner or operator has authorization in a current license to recirculate leachate or if the owner or operator recirculates leachate after the effective date of this rule, the owner or operator shall sample leachate at the facility at least quarterly.

(b) Sampling locations. During each sampling event, an owner or operator shall obtain at least one representative leachate sample from each sump located in areas of the facility containing disposed material.

(c) Field analysis. During each leachate sampling event, an owner or operator shall measure the pH, specific conductance, temperature, and turbidity of each leachate sample.

(d) Laboratory analysis.

(i) An owner or operator shall analyze each leachate sample for the parameters listed in rule 3745-400-21 of the Administrative Code.

(ii) The practical quantitation limit (PQL) used for

# \*\*\*DRAFT - NOT FOR FILING\*\*\*

laboratory analysis shall be the following:

(a) Protective of public health and safety and the environment.

(b) The lowest concentration level that can be reliably achieved during routine laboratory operating conditions that are reasonably available for the analytical method chosen by the owner or operator.

(iii) For each sample the PQL shall be lower than the primary drinking water standard for the parameter included in Chapter 3745-81 of the Administrative Code, if one exists, and the secondary drinking water standard for the parameter included in Chapter 3745-82 of the Administrative Code, if one exists.

(iv) If the PQL does not comply with paragraph (A)(1)(d)(iii) of this rule then an owner or operator shall do one of the following:

(a) Choose an alternative analytical method that will result in a PQL that complies with paragraph (A)(1)(d)(iii) of this rule.

(b) Conclude that the parameter has been detected in leachate for the purpose of conducting ground water detection monitoring in accordance with paragraph (B) of this rule.

(e) Submitting the sampling and analysis results. An owner or operator shall submit the following information not later than seventy-five days after each leachate sampling event:

(i) The results of the field analysis required by paragraph (A)(1)(c) of this rule.

(ii) The results of the laboratory analysis of the parameters listed in rule 3745-400-21 of the Administrative Code in the same order as listed in rule 3745-400-21 of the Administrative Code.

(iii) Identification of any other parameters not listed in rule 3745-400-21 of the Administrative Code that are detected in the facility's leachate through the laboratory analysis method.

(iv) Identification of the leachate parameters required by paragraph (B) of this rule to be monitored in ground water.

(v) Quality control data used by the laboratory to determine whether the analysis results are accurate.

(vi) The method detection limits, PQLs, and analysis methods used.

(vii) Forms in the leachate sampling and analysis plan that were completed during leachate sampling and analysis.

The information submitted shall be signed and certified by a professional skilled in the appropriate discipline.

(2) Develop and comply with a leachate sampling and analysis plan that contains the following:

(a) A description of the equipment, procedures, and techniques to be used to sample and analyze leachate in accordance with this rule. Sample collection, preservation, and handling methods described in the plan shall provide for collection of representative samples of leachate.

[Comment: An owner or operator is not required to include references to specific laboratory analysis methods, specific method detection limits, or specific practical quantitation limits in the leachate sampling and analysis plan.]

(b) Blank forms to be used to record the information obtained during leachate sampling and analysis including at a minimum the following types of forms:

(i) Forms for recording field analysis results and conditions encountered at the facility during a sampling event.

(ii) Forms for recording the chain of custody of leachate samples.

(B) Additional requirements to monitor ground water for leachate parameters.

(1) The owner or operator of a facility with a leachate monitoring system that can be used for conducting the leachate sampling required by paragraph (A) of this rule shall monitor ground water for parameters that have been detected in the facility's leachate.

(2) The owner or operator of a facility that does not have a leachate monitoring system that can be used for conducting the leachate sampling required by paragraph (A) of this rule shall monitor ground water for the parameters listed in rule 3745-400-21 of the Administrative Code.

(3) The owner or operator shall monitor ground water for the additional parameters required by this rule in accordance with rule 3745-400-10 of the Administrative Code.

## **3745-400-21 Construction and demolition debris facility - leachate parameter list.**

This rule contains the common names of parameters that are widely used in government regulation, scientific publications, and commerce. However, synonyms may exist for many parameters. The chemical abstract service registry number (CAS RN) for each parameter has been provided.

<u>(A) Metals and cyanide. The metals include all species in leachate that contain the element and laboratory analysis shall be for total metals. Parameter:</u>	<u>CAS RN:</u>
<u>1) Aluminum</u>	<u>7429-90-5</u>
<u>2) Antimony</u>	<u>7440-36-0</u>

**\*\*\*DRAFT - NOT FOR FILING\*\*\***

3) Arsenic	<a href="#">7440-38-2</a>
4) Barium	<a href="#">7440-39-3</a>
5) Beryllium	<a href="#">7440-41-7</a>
6) Cadmium	<a href="#">7440-43-9</a>
7) Chromium	<a href="#">7440-47-3</a>
8) Copper	<a href="#">7440-50-08</a>
9) Cyanide (free)	<a href="#">57-12-5</a>
10) Lead	<a href="#">7439-92-1</a>
11) Mercury	<a href="#">7439-97-6</a>
12) Nickel	<a href="#">7440-02-0</a>
13) Selenium	<a href="#">7782-49-2</a>
14) Strontium	<a href="#">7440-24-6</a>
15) Thallium	<a href="#">7440-28-0</a>
16) Vanadium	<a href="#">7440-62-2</a>
17) Zinc	<a href="#">7440-66-6</a>

(B) Inorganic water quality parameters.

<u>Parameter:</u>	<u>CAS RN:</u>
18) Ammonia	<a href="#">7664-41-7</a>
19) Calcium	<a href="#">7440-70-2</a>
20) Chloride	<a href="#">16887-00-6</a>
21) Magnesium	<a href="#">7439-95-2</a>
22) Potassium	<a href="#">7440-09-7</a>
23) Sodium	<a href="#">7440-23-5</a>
24) Sulfate	<a href="#">14808-79-8</a>

(C) Other inorganic parameters.

<u>Parameter:</u>	<u>CAS RN:</u>

25) Boron	<a href="#">7440-42-8</a>
26) Iron	<a href="#">7439-89-6</a>
27) Manganese	<a href="#">7439-96-5</a>
28) Nitrate/Nitrite	
29) pH	
30) Total alkalinity	
31) Total dissolved solids	

(D) Volatile organic compounds.

<u>Parameter:</u>	<u>CAS RN:</u>
32) Acetone; 2-Propanone	<a href="#">67-64-1</a>
33) Benzene	<a href="#">71-43-2</a>
34) Bromodichloromethane; Dibromochloromethane	<a href="#">75-27-4</a>
35) Carbon disulfide	<a href="#">75-15-0</a>
36) Carbon tetrachloride; Tetrachloromethane	<a href="#">56-23-5</a>
37) Chlorobenzene	<a href="#">108-90-7</a>
38) Chloroethane; Ethyl chloride	<a href="#">75-00-3</a>
39) Chloroform; Trichloromethane	<a href="#">67-66-3</a>
40) 2-Chlorotoluene	<a href="#">95-49-8</a>
41) 4-Chlorotoluene	<a href="#">106-43-4</a>
42) o-Dichlorobenzene; 1,2-Dichlorobenzene	<a href="#">95-50-1</a>
43) p-Dichlorobenzene; 1,4-Dichlorobenzene	<a href="#">106-46-7</a>
44) Dichlorodifluoromethane; CFC-12	<a href="#">75-71-8</a>
45) 1,1-Dichloroethane; Ethylidene chloride	<a href="#">75-34-3</a>
46) 1,2-Dichloroethane; Ethylene dichloride	<a href="#">107-06-2</a>
47) 1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride	<a href="#">75-35-4</a>

**\*\*\*DRAFT - NOT FOR FILING\*\*\***

<a href="#">48) cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene</a>	<a href="#">156-59-2</a>
<a href="#">49) trans-1,2-Dichloroethylene; trans-1,2-Dichloroethene</a>	<a href="#">156-60-5</a>
<a href="#">50) 1,2-Dichloropropane; Propylene dichloride</a>	<a href="#">78-87-5</a>
<a href="#">51) 1,1-Dichloropropene; 1,1-Dichloro-1-propene</a>	<a href="#">563-58-6</a>
<a href="#">52) Ethylbenzene</a>	<a href="#">100-41-4</a>
<a href="#">53) 2-Hexanone; Methyl butyl ketone</a>	<a href="#">591-78-6</a>
<a href="#">54) Isopropylbenzene; Cumene</a>	<a href="#">98-82-8</a>
<a href="#">55) 4-Isopropyltoluene; p-Isopropyltoluene</a>	<a href="#">99-87-6</a>
<a href="#">56) Methyl chloride; Chloromethane</a>	<a href="#">74-87-3</a>
<a href="#">57) Methyl ethyl ketone; MEK; 2-Butanone</a>	<a href="#">78-93-3</a>
<a href="#">58) 4-Methyl-2-pentanone; Methyl isobutyl ketone</a>	<a href="#">108-10-01</a>
<a href="#">59) Methylene chloride; Dichloromethane</a>	<a href="#">75-09-2</a>
<a href="#">60) N-Butylbenzene</a>	<a href="#">104-51-8</a>
<a href="#">61) N-Propylbenzene</a>	<a href="#">103-65-1</a>
<a href="#">62) Naphthalene</a>	<a href="#">91-20-3</a>
<a href="#">63) Sec-Butylbenzene</a>	<a href="#">135-98-8</a>
<a href="#">64) Styrene; Ethenylbenzene</a>	<a href="#">100-42-5</a>
<a href="#">65) Tert-Butylbenzene</a>	<a href="#">98-06-6</a>
<a href="#">66) 1,1,1,2-Tetrachloroethane</a>	<a href="#">630-20-6</a>
<a href="#">67) Tetrachloroethylene; Tetrachloroethene; Perchloroethylene</a>	<a href="#">127-18-4</a>
<a href="#">68) Toluene; Methylbenzene</a>	<a href="#">108-88-3</a>
<a href="#">69) 1,2,3-Trichlorobenzene</a>	<a href="#">87-61-6</a>
<a href="#">70) 1,2,4-Trichlorobenzene</a>	<a href="#">120-82-1</a>
<a href="#">71) 1,1,1-Trichloroethane; Methylchloroform</a>	<a href="#">71-55-6</a>
<a href="#">72) Trichloroethylene; Trichloroethene</a>	<a href="#">79-01-6</a>
<a href="#">73) Trichlorofluoromethane; CFC-11</a>	<a href="#">75-69-4</a>
<a href="#">74) 1,2,4-Trimethylbenzene</a>	<a href="#">95-63-6</a>

<a href="#">75) 1,3,5-Trimethylbenzene</a>	<a href="#">108-67-8</a>
<a href="#">76) Vinyl chloride; Chloroethene</a>	<a href="#">75-01-4</a>
<a href="#">77) Xylene (total); Dimethylbenzene</a>	<a href="#">See note</a>

Note: Xylene (total): Where "total" is entered, all species in leachate that contain this element are included. This entry includes o-xylene (CAS RN 96-47-6), m-xylene (CAS RN 108-38-3), p-xylene (CAS RN 106-42-3), and unspecified xylenes (dimethylbenzenes) (CAS RN 1330-20-7).

**3745-400-25 Five year transition for final closure and post-closure care financial assurance for construction and demolition debris facilities.**

[Comment: This rule provides the owner or operator of a construction and demolition debris facility a choice to be subject to the five year transition for funding final closure and post-closure financial assurance in lieu of full funding required by paragraph (A)(2) of rule 3745-400-13 and paragraph (A)(2) of rule 3745-400-18 of the Administrative Code. This rule establishes the eligibility, notice, and requirements of the five year transition for funding financial assurance.]

(A) An owner or operator that holds a construction and demolition debris facility license for the license year 2012 may utilize the five year transition periods described in paragraphs (C) and (D) of this rule by submitting to the licensing authority and the director a notice in accordance with the following:

(1) The notice shall be submitted not later than the date of submittal of the renewal license application for license year 2013.

(2) The notice shall be signed in accordance with paragraph (F) of this rule.

(3) The notice shall contain the following:

(a) An affirmative statement signed by the owner or operator declaring the owner or operator's intention to utilize the five year transition periods described in paragraphs (C) and (D) of this rule and to adhere with this rule.

(b) A demonstration that there is sufficient licensed disposal area to maintain operation throughout the five year transition.

(c) The calculations and the amount of the annual transition period final closure payment and the annual transition period post-closure payment applicable to the year for which the license is sought.

(B) An owner or operator who is ineligible or fails to

# **\*\*\*DRAFT - NOT FOR FILING\*\*\***

maintain eligibility to utilize the five year transition periods described in paragraphs (C) and (D) of this rule shall comply with paragraph (A)(2) of rule 3745-400-13 and paragraph (A)(2) of rule 3745-400-18 of the Administrative Code upon issuance of the license. To maintain eligibility to utilize the five year transition periods, an owner or operator shall do the following:

(1) Continue to provide notification with each license application in accordance with paragraph (A)(2) this rule.

(2) Maintain a construction and demolition debris facility license for the current license year.

(3) Maintain compliance with this rule. Failure to fund final closure and post-closure financial assurance according to this rule are grounds for license revocation and proposed denial of any pending license application.

(C) Transition period final closure cost estimate and annual transition period final closure payment. As used in this rule:

(1) "Transition period final closure cost estimate" means the final closure cost estimate calculated in accordance with paragraph (A)(1) of rule 3745-400-13 of the Administrative Code for the base ALDA acreage.

(2) "Base ALDA acreage" means the amount of acreage identified as active licensed disposal area in the construction and demolition debris facility license for year 2013.

(3) "Reference final closure financial assurance" is the dollar amount of financial assurance required in the construction and demolition debris facility license for year 2012.

(4) "Annual transition period final closure payment" is calculated by multiplying the difference between the transition period final closure cost estimate and the reference final closure financial assurance which is then by the appropriate transition year percentage as follows:

(a) Twenty per cent for the first year of the transition period.

(b) Forty per cent for the second year of the transition period.

(c) Sixty per cent for the third year of the transition period.

(d) Eighty per cent for the fourth year of the transition period.

(e) One hundred per cent for the fifth year of the transition period.

(D) Transition period post-closure cost estimate and annual transition period post-closure payment. As used in this rule:

(1) "Transition period post-closure cost estimate" is the post-closure cost estimate calculated in accordance with paragraph (A)(1) of rule 3745-400-18 of the Administrative

Code for the amount of acreage identified as active licensed disposal areas plus the acreage identified as inactive licensed disposal areas containing debris in the construction and demolition debris facility license for year 2013.

(2) "Annual transition period post-closure payment" is calculated by multiplying the transition period post-closure cost estimate by the appropriate transition year percentage as follows:

(a) Twenty per cent for the first year of the transition period.

(b) Forty per cent for the second year of the transition period.

(c) Sixty per cent for the third year of the transition period.

(d) Eighty per cent for the fourth year of the transition period.

(e) One hundred per cent for the fifth year of the transition period.

(E) Amount and funding of final closure and post-closure financial assurance. The owner or operator shall annually fund final closure and post-closure financial assurance for each year of the five year transition in accordance with the following:

(1) The owner or operator shall maintain financial assurance in an amount equal to the previous year's financial assurance for the facility, including the amount of the annual transition period final closure payment plus the amount of the annual transition period post-closure payment required for the previous year.

(2) In addition to the financial assurance amount maintained in accordance with paragraph (E)(1) of this rule, upon issuance of the license, the owner or operator shall fund financial assurance in an amount not less than the annual transition period final closure payment plus the annual transition period post-closure payment, less the amount of annual transition period final closure payment and annual transition period post-closure payment funded the previous year and maintained in accordance with paragraph (E)(1) of this rule. The owner or operator shall fund this additional amount not later than the expiration date of the license.

(3) If the license authorizes an increase in active licensed disposal area such that the active licensed disposal area is greater than the base ALDA acreage, the owner or operator shall establish and fund one hundred per cent of the portion of the final closure cost estimate necessary to close the increased acreage. The owner or operator shall establish and fund the amount required by this paragraph not later than the date of submittal of the construction certification report for the portion of the active licensed disposal area that constitutes an increase. The owner or operator shall use any single or combination of financial assurance instruments as specified in paragraphs (B) to (H) of rule 3745-400-13 of the Administrative Code.

**\*\*\*DRAFT - NOT FOR FILING\*\*\***

(4) If the license authorizes an increase in the amount of active licensed disposal area such that the sum of the acreage identified as inactive licensed disposal areas containing debris and the acreage of the active licensed disposal area is greater than the acreage identified in the construction and demolition debris facility license for year 2013, the owner or operator shall establish and fund one hundred per cent of the portion of the post-closure cost estimate necessary to conduct post-closure activities for the increased acreage. The owner or operator shall establish and fund the amount required by this paragraph not later than the date of submittal of the construction certification report for that area. The owner or operator shall use any single or combination of financial assurance instruments as specified in paragraphs (B) to (H) of rule 3745-400-18 of the Administrative Code.

(F) Notification. Notification submitted in accordance with paragraph (A)(2) or (B)(1) of this rule shall be signed by the owner or operator of the construction and demolition debris facility consistent with paragraph (B) of rule 3745-37-02 of the Administrative Code. The signatures on the notification shall constitute personal affirmation that all statements or assertions of fact made in the notification are true and complete, comply fully with the eligibility requirements in paragraph (A) of this rule, and shall subject the signatory to liability under applicable state laws concerning the submittal of false or misleading statements. The signatures shall constitute an agreement that the signatories shall assume responsibility for compliance with this rule, Chapter 3714. of the Revised Code, this chapter, and Chapter 3745-37 of the Administrative Code.