

FINANCIAL ASSURANCE REGULATORY SUMMARY FOR RCRA HAZARDOUS WASTE FACILITIES

The Code of Federal Regulations (CFR), Subpart H of Title 40 Part 264 as referenced by Nebraska Administrative Code Title 128- Nebraska Hazardous Waste Regulations, Chapter 21, require operators/owners of hazardous waste Treatment, Storage, and Disposal (TSD) facilities to demonstrate financial responsibility for closure/post-closure care and for liability coverage for accidents during the active life of the facility. The concept of financial assurance is to ensure there are sufficient funds for closure and/or post-closure care that are available when needed to carry out these activities. In the past, some entities involved in environmentally hazardous activities have ceased operating without making sufficient effort to prevent potentially adverse impacts on human health and the environment. The result of public or private entities being unable to pay for environmental protection activities and damages following closure of hazardous waste TSD facilities stems from two basic problems.

First, operators may encounter problems generating funds to cover liabilities, including the costs of environmental protection and remediation. This occurs because the facility no longer has income once it stops accepting waste or has entered bankruptcy. Second, unless entities are required by law to set aside funds planning for the costs of environmental protection, their governing bodies or board of directors may be unwilling to sacrifice other budgetary priorities to pay for the cost of future or uncertain events. The most common and practical approach to resolving these problems is to require entities, involved in activities that could result in environmental degradation (potentially environmentally harmful activities) to commit funds in advance for the costs of closure and/or post-closure care.

Subpart H of Title 40 CFR Part 264 requires TSD facility owners and operators to establish a financial mechanism as evidence of financial ability to pay for the costs of closure and post-closure care of their respective facilities. A financial assurance mechanism is an arrangement whereby a party facing a potential or certain liability pledges or deposits funds so that 1) all anticipated costs will be covered; 2) all funds will be secure over time; and 3) all funds will be available when needed.

The allowable financial mechanisms are: a Letter of Credit; Surety Bonds (two types: a Payment Bond or a Performance Bond); a Trust Fund; a Corporate Financial Test; a Corporate Guarantee; or Insurance.

The amount of financial assurance required is based on cost estimates prepared to estimate the costs of a third-party contractor performing closure activities in accordance with the closure plan approved by the Nebraska Department of Environmental Quality (NDEQ). Closure cost estimates are based on the point in the facility's operating life when closure would be the most expensive. Cost estimates must be adjusted annually for inflation so they are kept current.

TSD facilities must also provide liability coverage for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility and in some cases if the TSD is a disposal facility they are also required to provide liability

coverage for bodily injury and property damage to third parties caused by non-sudden accidental occurrences arising from operations of the facility.

The liability coverage may be demonstrated by an insurance policy that provides liability coverage of at least \$1 million per occurrence with an annual aggregate of least \$2 million annual aggregate for sudden accidental occurrences and at least \$3 million per occurrence with an aggregate of at least \$6 million for non-sudden accidental occurrences. An owner or operator who must meet the requirements of both sudden and non-sudden accidental liability coverage may combine liability coverage into a single per occurrence level of at least \$4 million per occurrence and at least \$8 million annual aggregate.