NOTICE OF INTENT

Department of Environmental Quality
Office of Solid and Hazardous Waste
Solid Waste Division

Under the authority of the Louisiana Environmental Quality Act, La. R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, La. R.S. 49:950, et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Solid Waste Division regulations, LAC 33:VII.315 and 727 (Log # SW024).

The existing regulations specify several mechanisms by which owners and operators of municipal solid waste landfills may provide financial assurance for closure and post-closure of these facilities. These proposed regulations increase the flexibility available to local governments to make the required demonstration of financial assurance. This action is necessary to make the state regulations consistent with the federal Subtitle D Regulations.

This proposed rule meets the exceptions listed in R.S. 30:2019 (D) (3) and R.S.49:953 (G) (3), therefore, no report regarding environmental/health benefits and social/economic costs is required.

A public hearing will be held on May 29, 1997, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate please contact Patsy Deaville at the address given below or at (504) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by the Log # SW024. Such comments should be submitted no later than June 5, 1997, at 4:30 p.m., to Patsy Deaville, Investigations and Regulation Development Division, Post Office Box 82282, Baton Rouge, LA, 70810 or to fax number (504) 765-0486. Copies of this proposed regulation can be purchased at the above referenced address. You may contact the Investigations and Regulation Development Division at (504) 765-0399 for pricing information. Check or money order is required in advance for each copy of SW024.

This proposed regulation is available for inspection at the following DEQ office locations from 8:00 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, 4th floor, Baton Rouge, LA 70810; 804 31st Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508.

H. M. Strong
Assistant Secretary

Title 33
ENVIRONMENTAL QUALITY
Part VII. Solid Waste
Subpart 1. Solid Waste

Chapter 3. Scope and Mandatory Provisions of the Program

§315. Mandatory Provisions

All persons conducting activities regulated under these regulations shall comply with the following provisions:

* * *

[See Prior Text in A-G.3.b]

4. Financial Assurance. ~~Existing Type I facilities that are owned or operated by local governments must comply with the financial assurance requirements in LAC 33:VII.727 no later than August 1, 1996.~~ Existing Type s I, II, ~~only~~ or ~~Type~~ III facilities that are owned or operated by local governments must comply with the financial assurance requirements in LAC 33:VII.727 no later than April 9, 1997. The administrative authority may waive the requirements of this Section for up to one year until April 9, 1998, for good cause if an owner or operator demonstrates that the April 9, 1997, effective date for the requirements of this Section does not provide sufficient time to comply with these requirements and that such a waiver will not adversely affect human health and the environment. All other facilities must comply by February 20, 1995.

* * *

[See Prior Text in G.5-R.2]

AUTHORITY NOTE: Promulgated in accordance with R.S.30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 19:1143 (September 1993), LR 19:1315 (October 1993), repromulgated LR 19:1421 (November 1993), amended LR 22:279(April 1996),LR 23.

Title 33
ENVIRONMENTAL QUALITY
Part VII. Solid Waste
Subpart 1. Solid Waste

Chapter 7. Solid Waste Standards

Subchapter E. Financial Assurance for All Processors and Disposers of Solid Waste

§727. Financial Assurance

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[See Prior Text in A-A.2.i.ix.(l)]

SOLID WASTE FACILITY CORPORATE GUARANTEE FOR LIABILITY COVERAGE, CLOSURE, AND/OR POST-CLOSURE CARE

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the state of [insert name of state], hereinafter referred to as guarantor, to the Louisiana Department of Environmental Quality, obligee, on behalf of our subsidiary [insert the name of the permit holder or applicant] of [business address].

Recitals

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[See Prior Text in 1-12]

I hereby certify that the wording of this guarantee is identical to the wording specified in LAC 3:VII.727.A.2.i.ix.(l), effective on the date first above written.

Effective date:_____
[Name of Guarantor]
[Authorized signature for guarantor]

[Typed name and title of person signing]
Thus sworn and signed before me this [date].

j. Local Government Financial Test. An owner or operator that satisfies the requirements of Subsection A.2.j.i-iii of this Section may demonstrate financial assurance up to the amount specified in Subsection A.2.j.iv of this Section.

i. Financial Component

(a). The owner or operator must satisfy the following conditions, as applicable:

(i). if the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, it must have a current rating of Aaa, Aa, A, or Baa, as issued by *Moody's*, or AAA, AA, A, or BBB, as issued by *Standard and Poor's,* on all such general obligation bonds; or

(ii). the owner or operator must satisfy the ratio of cash plus marketable securities to total expenditures being greater than or equal to 0.05 and the ratio of annual debt service to total expenditures less than or equal to 0.20 based on the owner or operator's most recent audited annual financial statement.

(b). The owner or operator must prepare its financial statements in conformity with *Generally Accepted Accounting Principles* for governments and have its financial statements audited by an independent certified public accountant (or appropriate state agency).

(c). A local government is not eligible to assure its obligations under Subsection A.2.j of this Section if it:

(i). is currently in default on any outstanding general obligation bonds;

(ii). has any outstanding general obligation bonds rated lower than Baa as issued by *Moody's* or BBB as issued by *Standard and Poor's*;

(iii). operated at a deficit equal to five percent or more of total annual revenue in each of the past two fiscal years; or

(iv). receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant (or appropriate state agency) auditing its financial statement as required under Subsection A.2.j.i.(b)of this Section. The administrative authority may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the administrative authority deems the qualification insufficient to warrant disallowance of use of the test.

(d). The following terms used in this Subsection are defined as follows:

(i). *Deficit*—total annual revenues minus total annual expenditures.

(ii). *Total Revenues*—revenues from all taxes and fees, but does not include the proceeds from borrowing or asset sales, excluding revenue from funds managed by local government on behalf of a specific third party.

(iii). *Total Expenditures*—all expenditures, excluding capital outlays and debt repayment.

(iv). *Cash Plus Marketable Securities*—all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions.

(v). *Debt Service*—the amount of principal and interest due on a loan in a given time period, typically the current year.

ii. Public Notice Component. The local government owner or operator must place a reference to the closure and post-closure care costs assured through the financial test into its next comprehensive annual financial report (CAFR) after the effective date of this Section or prior to the initial receipt of waste at the facility, whichever is later. Disclosure must include the nature and source of closure and post-closure care requirements, the reported liability at the balance sheet date, the estimated total closure and post-closure care cost remaining to be recognized, the percentage of landfill capacity used to date, and the estimated landfill life in years. A reference to corrective action costs must be placed in the CAFR not later than 120 days after the corrective action remedy has been selected in accordance with the requirements of LAC 33:VII.709.E.6. For the first year the financial test is used to assure costs at a particular facility, the reference may be placed in the operating record until issuance of the next available CAFR if timing does not permit the reference to be incorporated into the most recently issued CAFR or budget. For closure and post-closure costs, conformance with *Government Accounting Standards Board Statement 18* assures compliance with this public notice component.

iii. Recordkeeping and Reporting Requirements

(a). The local government owner or operator must place the following items in the facility's operating record:

(i). a letter signed by the local government's chief financial officer that lists all the current cost estimates covered by a financial test, as described in Subsection A.2.j.iv of this Section. It must provide evidence that the local government meets the conditions of Subsection A.2.j.i.(a), (b), and (c) of this Section, and certify that the

local government meets the conditions of Subsection A.2.j.i.(a), (b),(c), ii, and iv of this Section;

(ii). the local government's independently audited year-end financial statements for the latest fiscal year (except for local governments where audits are required every two years and unaudited statements may be used in years when audits are not required), including the unqualified opinion of the auditor who must be an independent certified public accountant or an appropriate state agency that conducts equivalent comprehensive audits;

(iii). a report to the local government from the local government's independent certified public accountant or the appropriate state agency based on performing an agreed upon procedures engagement relative to the financial ratios required by Subsection A.2.j.i.(a).(ii) of this Section, if applicable, and the requirements of Subsection A.2.j.i.(b) and (c).(iii) and (iv) of this Section. The certified public accountant or state agency's report should state the procedures performed and the certified public accountant or state agency's findings; and

(iv). a copy of the comprehensive annual financial report (CAFR) used to comply with Subsection A.2.j.ii of this Section (certification that the requirements of *General Accounting Standards Board Statement 18* have been met).

(b). The items required in Subsection A.2.j.iii.(a) of this Section must be placed in the facility operating record as follows:

(i). in the case of closure and post-closure care, either before the effective date of this Section, which is April 9, 1997, or prior to the initial receipt of waste at the facility, whichever is later; or

(ii). in the case of corrective action, not later than 120 days after the corrective action remedy is

selected in accordance with the requirements of LAC 33:VII.709.E.6.

(c). After the initial placement of the items in the facility's operating record, the local government owner or operator must update the information and place the updated information in the operating record within 180 days following the close of the owner or operator's fiscal year.

(d). The local government owner or operator is no longer required to meet the requirements of Subsection A.2.j.iii of this Section when:

(i). the owner or operator substitutes alternate financial assurance, as specified in this Section; or

(ii). the owner or operator is released from the requirements of this Section in accordance with Subsection A.1 or 2 of this Section.

(e). A local government must satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test, it must, within 210 days following the close of the owner or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this Section, place the required submissions for that assurance in the operating record, and notify the administrative authority that the owner or operator no longer meets the criteria of the financial test and that alternate assurance has been obtained.

(f). The administrative authority, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the administrative authority finds, on the basis of such reports or other information, that the owner or operator no longer meets

the local government financial test, the local government must provide alternate financial assurance in accordance with this Section.

iv. Calculation of Costs to be Assured. The portion of the closure, post-closure, and corrective action costs for which an owner or operator can assure under Subsection A.2.j of this Section is determined as follows:

(a). if the local government owner or operator does not assure other environmental obligations through a financial test, it may assure closure, post-closure, and corrective action costs that equal up to 43 percent of the local government's total annual revenue;

(b). if the local government assures other environmental obligations through a financial test, including those associated with UIC facilities under 40 CFR 144.62, petroleum underground storage tank facilities under 40 CFR part 280, PCB storage facilities under 40 CFR part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR parts 264 and 265, or corresponding state programs, it must add those costs to the closure, post-closure, and corrective action costs it seeks to assure under Subsection A.2.j of this Section. The total that may be assured must not exceed 43 percent of the local government's total annual revenue;

(c). the owner or operator must obtain an alternate financial assurance instrument for those costs that exceed the limits set in Subsection A.2.j.iv.(a) and (b) of this Section.

k. Local Government Guarantee. An owner or operator may demonstrate financial assurance for closure, post-closure, and corrective action, as required by Subsection A.1-2 of this Section, by obtaining a written guarantee provided by a local government. The guarantor must meet the requirements of the local government financial test in Subsection A.2.j of this Section, and must comply with the terms of a written guarantee.

i. Terms of the Written Guarantee. The guarantee must be effective before the initial receipt of waste or before the effective date of this Section, whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of LAC 33:VII.709.E.6. The guarantee must provide that:

(a). if the owner or operator fails to perform closure, post-closure care, and/or corrective action of a facility covered by the guarantee, the guarantor will:

(i). perform, or pay a third party to perform closure, post-closure care, and/or corrective action as required; or

(ii). establish a fully funded trust fund as specified in Subsection A.2.d of this Section in the name of the owner or operator;

(b). the guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the administrative authority. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the administrative authority, as evidenced by the return receipts; and

(c). if a guarantee is canceled, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the administrative authority, obtain alternate financial assurance, place evidence of that alternate financial assurance in the facility operating record, and notify the administrative authority. If the owner or operator fails to provide alternate financial assurance within the 90-day period, then the owner or operator must provide that alternate assurance within 120 days following the guarantor's notice of cancellation, place evidence of the alternate assurance in the facility operating record, and notify the administrative authority.

ii. Recordkeeping and Reporting

(a). The owner or operator must place a certified copy of the guarantee, along with the items required under Subsection A.2.j.iii of this Section, into the facility's operating record before the initial receipt of waste or before the effective date of this Section, whichever is later, in the case of closure or post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of LAC 33:VII.709.E.6.

(b). The owner or operator is no longer required to maintain the items specified in Subsection A.2.k.ii of this Section when:

(i). the owner or operator substitutes alternate financial assurance as specified in this Section; or

(ii). the owner or operator is released from the requirements of this Section in accordance with Subsection A.1-2 of this Section.

(c). If a local government guarantor no longer meets the requirements of Subsection A.2.j of this Section, the owner or operator must, within 90 days, obtain alternate assurance, place evidence of the alternate assurance in the facility operating record, and notify the administrative authority. If the owner or operator fails to obtain alternate financial assurance within that 90-day period, the guarantor must provide that alternate assurance within the next 30 days.

l. Use of Multiple Mechanisms. An owner or operator may demonstrate financial assurance for closure, post-closure, and corrective action, as required by Subsection A.1-2 of this Section, by establishing more than one financial mechanism per facility, except that mechanisms guaranteeing performance, rather than payment may not be combined with other instruments. The mechanisms must be as specified in Subsection A.2.d-i of this Section, except that financial assurance for an amount at least equal to the current cost estimate for closure, post-closure

care, and/or corrective action may be provided by a combination of mechanisms, rather than a single mechanism.

m. Discounting. The administrative authority may allow discounting of closure and post-closure cost estimates in Subsection A.2 of this Section, and/or corrective action costs in Subsection A.1 of this Section up to the rate of return for essentially risk-free investments, net of inflation, under the following conditions:

i. the administrative authority determines that cost estimates are complete and accurate and the owner or operator has submitted a statement from a registered professional engineer so stating;

ii. the state finds the facility in compliance with applicable and appropriate permit conditions;

iii. the administrative authority determines that the closure date is certain and the owner or operator certifies that there are no foreseeable factors that will change the estimate of site life; and

iv. discounted cost estimates must be adjusted annually to reflect inflation and years of remaining life.

[See Prior Text in B-B.2]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001, et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 19:1143 (September 1993), LR 19:1316 (October 1993),LR 23.