

RCW 80.82.020 Guarantee of funds to perform activities specified in a decommissioning plan—Letter of credit. (1) A facility subject to closure under either RCW 80.80.040(3)(c) or a memorandum of agreement under RCW 80.80.100, or both, must guarantee funds are available to perform all activities specified in the decommissioning plan developed under RCW 80.82.010. The amount must equal the cost estimates specified in the decommissioning plan and must be updated annually for inflation. All guarantees under this section must be assumed by any successor owner, parent company, or holding company.

(2) The guarantee required under subsection (1) of this section may be accomplished by letter of credit, surety bond, or other means acceptable to the department of ecology.

(3) The issuing institution of the letter of credit must be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated by a federal or state agency. The surety company issuing a surety bond must, at a minimum, be an entity listed as an acceptable surety on federal bonds in circular 570, published by the United States department of the treasury.

(4) A qualifying facility that uses a letter of credit or a surety bond to satisfy the requirements of chapter 180, Laws of 2011 must also establish a standby trust fund as a means to hold any funds issued from the letter of credit or a surety bond. Under the terms of the letter of credit or a surety bond, all amounts paid pursuant to a draft from the department of ecology must be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the department of ecology. This standby trust fund must be approved by the department of ecology.

(5) The letter of credit or a surety bond must be irrevocable and issued for a period of at least one year. The letter of credit or a surety bond must provide that the expiration date will be automatically extended for a period of at least one year unless, at least one hundred twenty days before the current expiration date, the issuing institution notifies both the qualifying facility and the department of ecology of a decision not to extend the expiration date. Under the terms of the letter of credit, the one hundred twenty days will begin on the date when both the qualifying plant and the department of ecology have received the notice, as evidenced by certified mail return receipts or by overnight courier delivery receipts.

(6) If the qualifying facility does not establish an alternative method of guaranteeing decommissioning funds are available within ninety days after receipt by both the qualifying facility plant and the department of ecology of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the department of ecology must draw on the letter of credit or a surety bond. The department of ecology must approve any replacement or substitute guarantee method before the expiration of the ninety-day period.

(7) If a qualifying facility elects to use a letter of credit as the sole method for guaranteeing decommissioning funds are available, the face value of the letter of credit must meet or exceed the current inflation-adjusted cost estimate. If a qualifying facility elects to use a surety bond as the sole method for guaranteeing decommissioning funds are available, the penal sum of the surety bond must meet or exceed the current inflation-adjusted cost estimate.

(8) A qualifying facility must adjust the decommissioning costs and financial guarantees annually for inflation and may use an amendment to increase the face value of a letter of credit or a surety bond each year to account for this inflation. A qualifying facility is not required to obtain a new letter of credit or a surety bond to cover annual inflation adjustments. [2011 c 180 § 202.]

Findings—Purpose—2011 c 180: See note following RCW 80.80.010.