

WAC 173-360A-1060 Mechanism—Financial test of self-insurance.

(1) **Applicability of mechanism.** An owner or operator, and/or guarantor, may satisfy the requirements of WAC 173-360A-1015 by passing a financial test as specified in this section.

(2) **Financial test requirements.** To pass the financial test of self-insurance, the owner or operator, and/or guarantor must meet the criteria of (a) or (b) of this subsection based on year-end financial statements for the latest completed fiscal year.

(a) **First test.**

(i) The owner or operator, and/or guarantor, must have a tangible net worth of at least ten times:

(A) The total of the applicable aggregate amount required by WAC 173-360A-1015, based on the number of underground storage tanks for which a financial test is used to demonstrate financial responsibility to the department under this section;

(B) The sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage for which a financial test is used to demonstrate financial responsibility to the U.S. Environmental Protection Agency (EPA) under 40 C.F.R. Parts 264.101, 264.143, 264.145, 265.143, 265.145, 264.147, and 265.147 or to a state agency under a state program authorized by EPA under Part 271; and

(C) The sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to the U.S. Environmental Protection Agency (EPA) under 40 C.F.R. Part 144.63 or to a state agency under a state program authorized by EPA under 40 C.F.R. Part 145.

Note: Titles of the above-referenced C.F.R. citations are as follows: Part 264.101 - Corrective action for solid waste management units; Part 264.143 - Financial assurance for closure; Part 264.145 - Financial assurance for post-closure care; Part 265.143 - Financial assurance for closure; Part 265.145 - Financial assurance for post-closure care; Part 264.147 - Liability requirements; Part 265.147 - Liability requirements; Part 144.63 - Financial assurance for plugging and abandonment; and Part 145 - State UIC program requirements.

(ii) The owner or operator, and/or guarantor, must have a tangible net worth of at least ten million dollars.

(iii) The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer as specified in subsection (3) of this section and as set forth in WAC 173-360A-1080.

(iv) The owner or operator, and/or guarantor, must either:

(A) File financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Utilities Service; or

(B) Report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet must have assigned the firm a financial strength rating of 4A or 5A.

(v) The firm's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

(b) **Second test.**

(i) The owner or operator, and/or guarantor must meet the financial test requirements of 40 C.F.R. 264.147(f)(1), substituting the appropriate amounts specified in WAC 173-360A-1015 (2)(b)(i) and (ii) for the "amount of liability coverage" each time specified in that section.

(ii) The fiscal year-end financial statements of the owner or operator, and/or guarantor, must be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.

(iii) The firm's year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

(iv) The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer, worded as specified in subsection (3) of this section and as set forth in WAC 173-360A-1080.

(v) If the financial statements of the owner or operator, and/or guarantor, are not submitted annually to the U.S. Securities and Exchange Commission, the Energy Information Administration or the Rural Utilities Service, the owner or operator, and/or guarantor, must obtain a special report by an independent certified public accountant stating that:

(A) He or she has compared the data that the letter from the chief financial officer specifies as having been derived from the latest year-end financial statements of the owner or operator, and/or guarantor, with the amounts in such financial statements; and

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

(3) **Letter from chief financial officer.** To demonstrate that it meets the financial test under subsection (2)(a) or (b) of this section, the chief financial officer of the owner or operator, and/or guarantor, must sign, within one hundred twenty days of the close of each financial reporting year, as defined by the twelve-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as set forth in WAC 173-360A-1080, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted.

(4) **Obtaining alternate coverage if fail test.** If an owner or operator using the test to provide financial assurance finds that he or she no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator must obtain alternate coverage within one hundred fifty days of the end of the year for which financial statements have been prepared.

(5) **Requests by department and findings of failure.** The department may require reports of financial condition at any time from the owner or operator, and/or guarantor. If the department finds, on the basis of such reports or other information, that the owner or operator, and/or guarantor, no longer meets the financial test requirements of subsections (2)(a) or (b) and (3) of this section, the owner or operator must obtain alternate coverage within thirty days after notification of such a finding.

(6) **Notification of department if fail to obtain alternate coverage.** If the owner or operator fails to obtain alternate coverage within one hundred fifty days of finding that he or she no longer meets the requirements of the financial test based on the year-end financial statements, or within thirty days of notification by the department that he or she no longer meets the requirements of the financial test, then by that date the owner or operator must notify the department of such failure and submit the evidence of financial responsibility specified in WAC 173-360A-1040(2).

[Statutory Authority: Chapter 90.76 RCW. WSR 18-15-083 (Order 16-02), § 173-360A-1060, filed 7/18/18, effective 10/1/18.]