

WAC 173-303-64620 Requirements. (1) The owner or operator of a facility must institute corrective action as necessary to protect human health and the environment for all releases of dangerous wastes and dangerous constituents, including releases from all solid waste management units at the facility. Corrective action is required regardless of the time at which waste was managed at the facility or placed in such units and regardless of whether such facilities or units were intended for the management of solid or dangerous waste. Assurances of financial responsibility for such corrective action must be provided.

(2) The owner/operator must implement corrective actions beyond the facility property boundary, where necessary to protect human health and the environment. Additionally, as necessary to protect human health and the environment, the department may require the owner/operator to implement on site measures to address releases which have migrated beyond the facility boundary. Assurances of financial responsibility for such corrective action must be provided.

(3) In the case of a facility seeking or required to have a permit under the provisions of chapter 173-303 WAC, corrective action must be specified in the permit. The permit will contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completion of such corrective action.

(4) At a minimum, corrective actions must be consistent with the following requirements of chapter 173-340 WAC.

(a) As necessary to select a cleanup action consistent with WAC 173-340-360, 173-340-350, state remedial investigation and feasibility study. Information that is adequate to support selection of a cleanup action consistent with WAC 173-340-360 but was developed under a different authority (for example, as part of closure under WAC 173-303-610 or as part of a federally overseen cleanup) may be used.

(b) WAC 173-340-360, selection of cleanup actions.

(c) WAC 173-340-400, implementation of the cleanup action.

(d) WAC 173-340-410, compliance monitoring requirements.

(e) WAC 173-340-420, periodic review.

(f) WAC 173-340-440, institutional controls.

(g) WAC 173-340-700 through 173-340-760, cleanup standards.

(5) At a minimum, financial assurance for corrective actions as required in subsections (1) and (2) of this section must be consistent with the following requirements:

(a) States and the federal government are exempt from the requirements of this section.

(i) Operators of state or federally owned facilities are exempt from the requirements of this section, except (c), (f), and (g) of this subsection.

(ii) Operators of facilities that are not state or federally owned must meet all of the requirements of this section, even if the facility is leased by or otherwise under contract with the state or federal government.

(b) Unless otherwise specified, the definitions and requirements for allowable financial assurance mechanisms as set forth in the current financial assurance rules covering closure and post-closure in this section and as incorporated by reference in 40 C.F.R. 264.141, 264.143, 264.145, and 264.151 will be the definitions and requirements for allowable financial assurance for corrective action purposes. The words "corrective action" are to be substituted for the words "clo-

sure," "post closure," "post-closure," or "postclosure" in the above listed regulations as needed to produce this result.

(c) Within thirty days from the effective date of a permit, agreed order or consent decree, the owner or operator shall submit to the department for review and approval a written cost estimate to cover the activities listed in the applicable Scope of Work and Schedule document(s). If the department rejects the cost estimate as submitted, the department shall provide to the owner or operator a revised cost estimate amount that will be the approved cost estimate.

(d) Within thirty days after the department's final approval of the owner or operator's cost estimate amount or the owner or operator's receipt of the department's approved cost estimate amount, the owner or operator shall establish and maintain continuous coverage of financial assurance in the amount of the approved cost estimate and submit the applicable financial assurance documentation. If the department does not accept, reject, or revise the owner or operator's cost estimate within sixty days after submittal, the cost estimate will be deemed approved for purposes of this section.

(e) Adjustments by the department. If the department determines that the timing or content of submission of cost estimates and financial assurance documents are not consistent with the degree and duration of risk associated with the corrective action activities, the department may adjust the level of financial assurance or timing of document submission required under this section as may be necessary to protect human health and the environment. This adjusted level or timing will be based on the department's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the department determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from corrective action activities, it may require that the owner or operator of the facility comply with this section. An owner or operator must furnish to the department within a reasonable time, any information which the department requests to determine whether cause exists for such adjustments of level or type of coverage. Any adjustments of level or type of coverage for a facility that has a permit will be treated as a permit modification under WAC 173-303-830.

(f) If during the course of the corrective action activities the owner or operator is required to submit an additional work plan(s) under the applicable permit, agreed order or consent decree, or to conduct activities related to corrective action not previously part of the original cost estimate, the process outlined in (b) of this subsection shall apply in the submission process of an additional work plan(s) and the resulting additional cost estimate(s).

(g) All cost estimates must be based on the costs to the owner or operator of hiring a third party to complete the work and shall be in accordance with the requirements of WAC 173-303-620.

(h) The owner or operator shall annually adjust all cost estimates for inflation using the procedure outlined in WAC 173-303-620 (3)(c). However, the department may also allow a reduction in the owner or operator's cost estimate for corrective action work actually performed during the previous year.

(i) Acceptable financial assurance mechanisms are trust funds, surety bonds, letters of credit, insurance, the financial test, and the corporate guarantee, consistent with WAC 173-303-620. The department may allow other financial assurance mechanisms if they are consistent with the laws of Washington and if the owner or operator dem-

onstrates to the satisfaction of the department that those mechanisms provide adequate financial assurance.

(j) If the owner or operator is using the financial test or corporate guarantee to meet its financial assurance obligation, the annual inflationary adjustment shall occur within ninety days after the close of the owner's or operator's fiscal year. If the owner or operator is using any mechanism other than the financial test or corporate guarantee, this adjustment shall occur each year within thirty days after the anniversary of the effective date of the permit, agreed order, consent decree, or alternative effective date pursuant to (d) of this subsection.

(k) If the owner or operator seeks to establish financial assurance by using a letter of credit or a surety bond, the owner or operator shall at the same time establish and thereafter maintain a standby trust fund acceptable to the department into which funds from the other financial assurance instrument can be deposited, if the financial assurance provider is directed to do so by the department pursuant to regulation.

(l) The owner or operator shall notify the department's site manager or project coordinator and the financial assurance officer by certified mail of the commencement of a voluntary or involuntary bankruptcy proceeding, naming the owner or operator as debtor, within ten days after commencement of the proceeding. A guarantor of a corporate guarantee must make such a notification if it is named as debtor as required under the terms of the corporate guarantee.

(m) Once the owner or operator has established financial assurance with an acceptable mechanism as described above, the facility will be deemed to be without the required financial assurance:

(i) In the event of bankruptcy of the trustee or issuing institution; or

(ii) If the authority of the trustee institution to act as trustee has been suspended or revoked; or

(iii) If the authority of the institution issuing the surety bond, letter of credit, or insurance policy has been suspended or revoked.

In the event of bankruptcy of the trustee or a suspension or revocation of the authority of the trustee institution to act as a trustee, the owner or operator must establish a replacement financial assurance mechanism by any means specified in WAC 173-303-620 or other financial instrument as approved by the department within sixty days after such an event.

[Statutory Authority: Chapters 70.105, 70.105D RCW and RCRA. WSR 19-04-038 (Order 16-03), § 173-303-64620, filed 1/28/19, effective 4/28/19. Statutory Authority: Chapter 70.105 RCW. WSR 15-01-123 (Order 13-07), § 173-303-64620, filed 12/18/14, effective 1/18/15. Statutory Authority: Chapters 70.105, 70.105D, and 15.54 RCW and RCW 70.105.007. WSR 04-24-065 (Order 03-10), § 173-303-64620, filed 11/30/04, effective 1/1/05.]