

US EPA ARCHIVE DOCUMENT

**RULES AND REGULATIONS**

agreement in a sum certain, payable to the Department, executed by the permittee and which is supported by the deposit with the Department of cash, negotiable bonds of the United States, the Commonwealth, the Pennsylvania Turnpike Commission, the General State Authority, the State Public School Building Authority, or a Commonwealth municipality, Pennsylvania bank certificates of deposit, or irrevocable letters of credit of a bank organized or authorized to transact business in the United States.

*Department* — The Department of Environmental Resources of the Commonwealth.

*Final closure* — Successful completion of all requirements for closure and post-closure care as required by § 75.264(o) (relating to new and existing hazardous waste management facilities applying for a permit).

*Financial institutions* — Banks organized or authorized to transact business in this Commonwealth or the United States, and insurance companies or associations licensed and authorized to transact business in this Commonwealth or designated by the Insurance Commissioner as an eligible surplus lines insurer.

*Legal defense costs* — Expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

*Surety bond* — A penal bond agreement in a sum certain payable to the Department, executed by the permittee, and which is supported by the guarantee of payment on the bond by a corporation licensed to do business as a surety in this Commonwealth.

**§ 75.302. Scope.**

This subchapter sets forth the minimum requirements for demonstrating sufficient financial responsibility to operate a hazardous waste storage, treatment or disposal facility by providing bond guarantees for the operation, closure and post-closure requirements of a hazardous waste storage, treatment or disposal facility, and providing insurance protection for personal injury and property damage arising out of operation of a hazardous waste storage, treatment or disposal facility.

**BONDING REQUIREMENTS**

**§ 75.311. Requirement to file a bond.**

(a) All hazardous waste storage, treatment and disposal facilities which have been permitted under the Pennsylvania Solid Waste Management Act (35 P. S. §§ 6001 — 6017).

(Repealed 1980), or which are being treated as having been issued a permit under the act, shall file a bond in accordance with this part, payable to the Department, on a form prepared and provided by the Department, before September 9, 1985.

(b) The Department will not issue a new, revised, amended, modified or renewed permit for the storage, treatment or disposal of hazardous waste after March 9, 1985 unless the applicant has filed with the Department a bond under this part, payable to the Department, on a form prepared and provided by the Department, and the bond has been approved by the Department.

(c) An applicant for a new, revised, amended, modified or renewed permit shall not disturb surface acreage, start construction of facilities for the storage, treatment or disposal of hazardous waste, or accept hazardous waste prior to receipt from the Department of approval of bond and issuance of a permit to conduct a hazardous waste storage, treatment or disposal operation.

(d) After September 9, 1985, a hazardous waste storage, treatment or disposal facility which was permitted before March 9, 1985, or is being treated as having been issued a permit, shall cease accepting hazardous waste unless the permittee has submitted a bond under this part. The Department will review and determine whether or not to approve the bond within 1 year after submittal. If, on review, the Department determines the permittee has submitted an insufficient bond amount, the Department will require the permittee to deposit additional bond amounts under § 75.321 (relating to bond amount adjustments).

**§ 75.312. Form, terms and conditions of bond.**

(a) The Department will accept one of the following types of bond:

- (1) A surety bond.
- (2) A collateral bond.
- (3) A phased deposit collateral bond as provided in § 75.315 (relating to phased deposits of collateral).

(b) The Department will prescribe and furnish the forms for bond instruments.

(c) Bonds shall be payable to the Department and conditioned upon the faithful performance of the requirements of the act, the Clean Streams Law (35 P. S. §§ 691.1 — 691.1001), the Surface Mining Conservation and Reclamation Act (52 P. S.

**Annex A**

**TITLE 25. ENVIRONMENTAL RESOURCES**

**PART I. DEPARTMENT OF ENVIRONMENTAL RESOURCES**

**Subpart C. PROTECTION OF NATURAL RESOURCES**

**ARTICLE I. LAND RESOURCES**

**CHAPTER 75. SOLID WASTE MANAGEMENT**

**Subchapter E. FINANCIAL RESPONSIBILITY REQUIREMENTS FOR HAZARDOUS WASTE STORAGE, TREATMENT, AND DISPOSAL FACILITIES**

**GENERAL PROVISIONS**

**§ 75.301. Definitions.**

The definitions set forth in section 103 of the act (35 P. S. § 6018.103) and § 75.260 (relating to definitions and requests for determinations) shall apply to this subchapter. In addition, the following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

*Act* — the Solid Waste Management Act (35 P. S. §§ 6018.101 — 6018.1003).

*Collateral bond* — A penal bond

§§ 1396.1 — 1396.4c, 1396.4e, and 1396.15c — 1396.25), the Air Pollution Control Act (35 P. S. §§ 4001 — 4015), the Dam Safety and Encroachments Act (32 P. S. §§ 693.1 — 693.27), the regulations adopted thereunder, the terms and conditions of any permit issued thereunder, orders of the Department, and amendments, revisions and changes to the acts, the regulations and the terms and conditions of the hazardous waste storage, treatment and disposal facility permit as may be lawfully made in the future.

(d) The bond shall cover the hazardous waste storage, treatment or disposal operations from the initiation of the operations until the bond is released as provided in this subchapter. The bond shall cover all operations and activities conducted within the permitted area and all effects caused by the hazardous waste activities within or without the permit area.

(e) Bonds will be reviewed for legality and form according to established Commonwealth procedures.

**§ 75.313. Special terms and conditions for surety bonds.**

(a) The Department will not accept the bond of a surety company which has failed or unduly delayed in making payment on a forfeited surety bond.

(b) The Department will accept only the bond of a surety authorized to do business in this Commonwealth and which is listed on Circular 570 of the United States Department of the Treasury.

(c) The surety may cancel the bond by sending written notice of cancellation by certified mail to the permittee and the Department. Cancellation shall not take effect until 120 days after receipt of the notice of cancellation by the principal and the Department, as evidenced by the return receipts. Within 60 days after receipt of the notice of cancellation the permittee shall provide the Department with a replacement bond under § 75.316 (relating to replacement of bond). Failure of the permittee to provide a replacement bond within the 60 day period shall constitute grounds for forfeiture of the existing bond under § 75.328 (relating to bond forfeiture).

(d) The Department will not accept surety bonds from a surety company for a permittee, on all permits held by the permittee, in excess of the company's single risk limit as provided by The Insurance Company Law of 1921 (40 P. S. §§ 341 — 991).

(e) The bond shall provide that full payment will be made on the bond

within 30 days of receipt of a notice of forfeiture by the surety notwithstanding judicial or administrative appeal of the forfeiture and that the amount shall be confessed to judgment upon forfeiture.

(f) The bond shall provide that the surety and the permittee shall be jointly and severally liable for payment of the bond amount.

**§ 75.314. Special terms and conditions for collateral bonds.**

(a) The Department will obtain possession of and keep in custody collateral deposited by the permittee until authorized for release or replacement as provided in this subchapter.

(b) The Department will value governmental securities for both current market value and face value. For the purpose of establishing the value of the securities for bond deposit, the Department will use the lesser of current market value or face value. The Department will revalue the securities every year and will require additional amounts of bond if the current market value is insufficient to satisfy the bond amount requirement for the facility. Government securities must be rated at least BBB by Standard and Poor's or Baa by Moody's. If the value of the securities and accrued income exceeds the closure or postclosure cost estimate, or both, as adjusted under § 75.321 (relating to bond amount adjustments), the permittee may request and receive the interest and income accruing on negotiable bonds deposited with the Department as the same becomes due and payable. If the current market value of the securities alone exceeds the current closure or postclosure cost estimate, or both, the permittee may request release of the amount in excess of the current cost estimate. The Department will initiate release of the funds within 60 days after receipt of the written request from the permittee.

(c) Collateral bonds pledging Pennsylvania bank certificates of deposit shall be subject to the following conditions:

(1) The Department will require that certificates of deposit be assigned to the Department, in writing, and the assignment recorded upon the books of the issuing institution.

(2) The Department will not accept an individual certificate of deposit for a denomination in excess of \$100,000, or maximum insurable amount as determined by the Federal Deposit Insurance Corporation (FDIC) and Federal Savings and Loan Insurance Corporation (FSLIC).

(3) The Department will require the issuing institution to waive all rights of setoff or liens which it has or might have against the certificates.

(4) The Department will only accept automatically-renewable certificates of deposit.

(5) The Department will require the permittee to deposit sufficient amounts of certificates of deposit to assure that the Department will be able to liquidate the certificates prior to maturity, upon forfeiture, for the amount of the bond determined under this subchapter.

(6) The Department will accept certificates of deposit only from banks or banking institutions licensed, chartered or otherwise authorized to do business in this Commonwealth.

(7) The Department will not accept certificates of deposit from banks which have failed or unduly delayed in making payment on defaulted certificates of deposit.

(d) Collateral bonds pledging a bank letter of credit shall be subject to the following conditions:

(1) The letter of credit may be issued only by a bank organized or authorized to do business in the United States and examined by a State or Federal agency.

(2) Letters of credit shall be irrevocable. The Department may accept a letter of credit which is irrevocable for a term of years if both of the following occur:

(i) The letter of credit is automatically renewable for additional terms unless the bank gives at least 90 days prior written notice to the Department of its intent to terminate the credit at the end of the current term.

(ii) The Department has the right to draw upon the credit before the end of its term, if the permittee fails to replace the letter of credit with other acceptable bond within 30 days of the bank's notice to terminate the credit.

(3) The letter shall be payable to the Department in part or in full upon demand and receipt from the Department of a notice of forfeiture issued under this subchapter, or demand for payment under subparagraph (ii).

(4) The Department will not accept letters of credit from a bank for a permittee, on all permits held by the permittee, in excess of 10% of the bank's capital surplus account.

(5) Letters of credit shall be subject to the Uniform Commercial Code (13 Pa.C.S. §§ 1101 — 9507) or the Uni-

form Customs and Practices for Documentary Credits, International Chamber of Commerce Publication No. 290, including amendments and successor publications.

(6) The Department will not accept letters of credit from a bank which has failed or unduly delayed in making payment on a letter of credit.

**§ 75.315. Phased deposits of collateral.**

(a) A permit applicant, or a permittee which obtained a permit prior to March 9, 1985, may post a collateral bond for a hazardous waste storage, treatment or disposal facility which will be continuously operated or used for at least 10 years from the date of issuance of the permit or permit amendment, according to all of the following requirements:

(1) The permittee shall submit a collateral bond to the Department.

(2) The permittee shall deposit \$10,000 or 25%, whichever is greater, of the total amount of bond determined in this subchapter in approved collateral with the Department.

(3) The permittee shall submit a schedule agreeing to deposit 10% of the remaining amount of bond, in approved collateral in each of the next 10 years.

(b) The permit applicant or permittee shall deposit the full amount of bond required for the hazardous waste storage, treatment, or disposal facility within 30 days of receipt of a written demand by the Department to accelerate deposit of the bond. The Department will make the demand when one of the following occurs:

(1) The permittee has failed to make a deposit of bond amount when required for the schedule for the deposits.

(2) The permittee has violated the requirements of the act, this chapter, the terms and conditions of the permit, or orders of the Department and has failed to correct the violations within the time required for the correction.

(c) The Department will not accept phased deposit of collateral as bonded for a hazardous waste storage, treatment, or disposal facility from a permit applicant or permittee which obtained a permit prior to March 9, 1985, if one of the following occurs:

(1) The permit applicant, or permittee, has failed to pay to the Department, when due, permit fees, fines, penalties or other payments, or to deposit bond amounts with the Department when due.

(2) The permit applicant, or permittee, has established a pattern of violations of applicable statutes, this chapter, the terms and conditions of the permit, or orders of the Department, even if later corrected, which demonstrates a lack of ability or intention to comply with the requirements applicable to hazardous waste storage, treatment or disposal facilities.

(d) All interest earned by collateral on deposit shall be accumulated and become part of the bond amount until the operator completes deposit of the requisite bond amount in accordance with the schedule of deposit.

**§ 75.316. Replacement of bond.**

(a) The Department may allow permittees to replace existing surety or collateral bonds with other surety or collateral bonds if the liability which has accrued against the permittee of the hazardous waste storage, treatment or disposal facility is transferred to the replacement bonds. The bond amount for the replacement bond will be determined under this subchapter, but in no case shall it be less than the amount on deposit with the Department.

(b) The Department will not release existing bonds until the permittee has submitted and the Department has approved acceptable replacement bonds. A replacement of bonds under this section shall not constitute a release of bond under this subchapter.

(c) Within 60 days after approval of acceptable replacement bonds, the Department will take appropriate action to initiate the release of existing surety or collateral bonds being replaced by the permittee.

**§ 75.317. Reissuance of permits.**

Before a permit is reissued to a new permittee, the new permittee shall post a new bond in an appropriate amount determined by the Department under this subchapter but in no case less than the amount of bond on deposit with the Department, in the new permittee's name, assuming all accrued liability for the hazardous waste storage, treatment or disposal facility. The new permittee may use negotiable securities of the former permittee as the bond guarantee if the new permittee obtains an assignment from the former permittee and provides the Department with proof of the assignment.

**§ 75.318. Bond amount determination.**

(a) The Department will determine bond amount requirements for each hazardous waste storage, treatment

and disposal facility based upon the total estimated cost to the Commonwealth to complete final closure of the facility in accordance with the requirements of applicable statutes, this chapter, the terms and conditions of the permit and orders issued thereunder by the Department and to take measures that are necessary to prevent adverse effects upon the environment during the life of the facility and after closure until released as provided by this subchapter.

(b) This amount shall be based on factors which include, but are not limited to, the following:

(1) The costs to the Commonwealth to conduct closure and postclosure care activities as required by § 75.264(o) (relating to new and existing hazardous waste management facilities applying for a permit); monitoring, sampling and soil and leachate analysis; facility security measures; remedial abatement measures; and postclosure restoration and maintenance measures.

(2) The costs related to the differences in kinds of waste stored, treated or disposed of at the facility.

(3) The costs related to size of the surface area, the topography and geology of the area, and the land uses around the facility.

(4) The estimated costs submitted by the permit applicant or permittee in accordance with this section.

(5) The additional estimated costs to the Department which may arise from applicable public contracting requirements or the need to bring personnel and equipment to the permit area after its abandonment by the permittee to perform restoration and abatement work.

(6) The additional estimated costs necessary, expedient, and incident to the satisfactory completion of the requirements of applicable statutes, this chapter, and the conditions of the permit.

(7) The additional estimated cost for at least the next 3 years which is anticipated to be caused by inflation determined by averaging the annual Implicit Price Deflator for Gross National Product published by the United States Commerce Department, or any superseding standard, for at least the prior 3 years.

(8) Other cost information as may be required from the permittee or otherwise available to the Department.

(c) The Department will establish

bonding amount guidelines for hazardous waste storage, treatment and disposal facilities based on the criteria of this section. The guidelines will be used by the Department as an aid in determining the amount of bond for each facility. The guidelines will be reviewed annually and, if necessary, revised to reflect the current costs to the Department. The guidelines and each revision of the guidelines will be published in the *Pennsylvania Bulletin* for information purposes.

**§ 75.319. Cost estimate for closure and postclosure care.**

(a) The permittee or permit applicant shall prepare a written estimate of the cost of closing the facility and providing postclosure care under § 75.264(o) (relating to new and existing hazardous waste management facilities applying for a permit) and taking necessary measures before, during and after closure to prevent adverse effects upon the environment. The cost estimate shall quantify the cost of closure and postclosure care at the point of the facility's life when the extent and manner of its operation or condition would make closure and postclosure care most costly.

(b) The permittee or applicant shall adjust the cost estimate for inflation within 30 days after each anniversary of the date on which the first cost estimate was made. The adjustment shall be made as provided in this section using an inflation factor derived from the annual Implicit Price Deflator for Gross National Product as published by the United States Department of Commerce in its Survey of Current Business. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

(1) The first adjustment is made by multiplying the cost estimate by the inflation factor.

(2) Subsequent adjustments are made by multiplying the latest adjusted cost estimate by the latest inflation factor.

(c) The permittee shall revise the cost estimate whenever a change in the closure plan or in the measures necessary to prevent adverse effects upon the environment increases the cost. The revised cost estimate must be adjusted for inflation as specified in § 75.318(b) (relating to bond amount determination).

**§ 75.320. Minimum bond amount.**

The minimum amounts of bond for a hazardous waste storage, treatment or disposal facility shall be \$10,000.

**§ 75.321. Bond amount adjustments.**

(a) The permittee shall deposit additional amounts of bond, at any time, upon demand of the Department. The Department will require a permittee to deposit additional amounts of bond if one of the following occurs:

(1) The permit is amended to increase acreage, to change the kind of waste handled or for another reason which requires an additional amount of bond determined under § 75.318 (relating to bond amount determination).

(2) Inflationary cost factors have exceeded the estimate used for the original bond amount determination under § 75.318(b)(7).

(3) The permit is to be renewed, reissued or the bond on deposit is to be replaced which requires an additional amount of bond determined under § 75.318.

(4) The Department determines that an additional amount of bond is required as determined by § 75.318 to meet the requirements of applicable statutes, this chapter, and the terms and conditions of the permit or orders of the Department.

(b) A permit applicant or permittee may request reduction of the required bond amount upon submission of satisfactory evidence proving that the method of operation or other circumstances will significantly reduce the maximum estimated cost to the Department of completing final closure and taking necessary measures to prevent adverse effects on the environment. If the request is made after permit issuance, it will be considered a request for bond release.

(c) At least every 5 years after the deadline for submitting a bond under § 75.311 (relating to requirement to file a bond) or after permit issuance, the Department will determine on a case-by-case basis the adequacy of bond amount requirements for all hazardous waste storage, treatment and disposal facilities and, if necessary, require additional bond amounts.

**§ 75.322. Failure to maintain adequate bond.**

If a permittee fails to post additional bond within 60 days after receipt of a request by the Department for additional bond amounts under § 75.321 (relating to bond amount adjustments), or fails to make timely deposits of bond in accordance with the schedule submitted under § 75.315 (relating to phased deposits of collateral), the Department will issue a notice of violation to the permittee, and if the permittee fails to deposit the required

bond amount within 15 days of the notice, the Department will issue a cessation order for all of the hazardous waste storage, treatment and disposal facilities operated by the permittee and take additional actions that may be appropriate, including suspending or revoking permits.

**§ 75.323. Period of liability.**

Liability under bonds posted for a hazardous waste storage, treatment or disposal facility shall extend for the duration of the operation and closure of storage, treatment or disposal activities, and for the duration of postclosure care activities for disposal facilities as specified in § 75.264(o) (relating to reward existing hazardous waste management facilities applying for a permit), and for 1 year thereafter, except that water pollution liability shall continue for 10 full years after final closure.

**§ 75.324. Separate bonding for a portion of a facility.**

(a) The Department may require a separate bond to be posted for a part of a hazardous waste storage, treatment or disposal facility if that part of the facility can be separated and identified from the remainder of the facility and the bond liability for that part will continue beyond the time provided for the remainder of the facility, or the Department has determined that separate bonding of the facility is necessary to administer and apply applicable statutes, this chapter, the terms and conditions of the permit, or orders of the Department.

(b) If the Department requires a separate bond for part of a facility, the original bond amount for the facility may be adjusted under § 75.321 (relating to bond amount adjustments).

**§ 75.325. Bond release.**

(a) The permittee may file a written application with the Department requesting release of all or part of the bond amount posted for a hazardous waste storage, treatment or disposal facility during the operation of the facility as part of a request for bond adjustment under § 75.321 (relating to bond amount adjustments), upon completion of closure of the facility and upon expiration of the postclosure care period of liability as specified in § 75.264(o) (relating to new and existing hazardous waste management facilities applying for a permit).

(b) The application for bond release shall contain all of the following:

(1) State the name of the permittee and identify the hazardous waste stor-

age, treatment or disposal facility for which bond release is sought.

(2) State the total amount of bond in effect or the facility and the amount for which release is sought.

(3) State in specific detail the reasons why bond release is requested including, but not limited to, the closure, postclosure care, and abatement measures taken, the permit amendments authorized or the change in facts or assumptions made during the bond amount determination which demonstrate and would authorize a release of part or all of the bond deposited for the facility.

(4) Provide a revised cost estimate for closure and post-closure care in accordance with § 75.319 (relating to cost estimate for closure and postclosure care).

(5) Provide other information as may be required by the Department.

(c) The Department will evaluate the bond release request as if it were a request for a new bond amount determination under § 75.318 (relating to bond amount determination). If the new bond amount determination would require less bond for the facility than the amount already on deposit, the Department will release the portion of the bond amount which is not required for the facility. If the new bond amount determination would require an additional amount of bond for the facility, the Department will require the additional amount to be deposited for the facility.

(d) The Department will not release a bond amount deposited for a facility if the release would reduce the total remaining amount of bond to an amount which would be insufficient for the Department to complete closure and postclosure care and to take measures that may be necessary to prevent adverse effects upon the environment or public health, safety or welfare in accordance with applicable statutes, this chapter, the terms and conditions of the permits, and orders of the Department.

(e) The Department will make a decision on a bond release application within 6 months after receipt unless additional time is authorized by the permittee.

(f) The Department will not release a bond amount for a facility which is causing adverse effects on the public health, safety or welfare or the environment, creating a public nuisance, or in violation of this chapter, the act, or the statutes set forth in section 505(a) of the act (35 P. S. § 6018.505).

#### § 75.326. Closure certification.

(a) The permittee shall submit a request for closure certification upon completion of closure of the facility.

(b) Within 60 days after receipt of a written request for closure certification, the Department will initiate an inspection of the facility to verify that closure has been effected in accordance with the approved facility closure and postclosure care plan and this chapter.

(c) If the Department determines that the facility has been closed in accordance with this chapter, and that there is no reasonable expectation of adverse effects upon the environment or the public health, safety, and welfare, the Department will certify in writing to the permittee that closure has been effected in accordance with this subchapter. Closure certification shall not take effect until 1 year after receipt of the Department's determination.

(d) The closure certification shall not constitute a waiver or release of bond liability or other liability existing in law for adverse environmental conditions or conditions of noncompliance existing at the time of the notice or which might occur at a future time, for which the permittee shall remain liable.

(e) The Department will not issue a closure certification for a facility which is causing adverse effects on the public health, safety or welfare or the environment, creating a public nuisance, or in violation of this chapter, the act, or the statutes set forth in section 505(a) of the act (35 P. S. § 6018.505(a)).

(f) At any time after issuance of a certification of closure, if inspection by the Department indicates that additional postclosure care measures are required to abate or prevent any adverse effects upon the environment or the public health, safety and welfare, the Department will issue a written notice to the permittee setting forth the schedule of measures which the permittee shall take in order to bring the facility into compliance.

(g) At least 6 months prior to expiration of the 1 year liability period following closure and postclosure care, the Department will conduct an inspection of the facility. If the Department determines that the facility will continue to cause adverse effects upon the environment or the public health, safety and welfare after expiration of the 1 year liability period, the Department will require the permittee to deposit a separate bond under § 75.324

(relating to separate bonding for a portion of a facility), or forfeit the bond on deposit with the Department.

#### § 75.327. Public notice and comment.

The original bond amount determination, a decision by the Department to release bond, a request to reduce bond amount after permit issuance and a request for closure certification shall be, for the purpose of providing public notice and comment, considered a major permit modification and shall satisfy the public notice and comment requirements for major permit modifications.

#### § 75.328. Bond forfeiture.

(a) The Department may forfeit the bond for a hazardous waste storage, treatment or disposal facility where it determines that any of the following occur:

(1) The permittee has failed and continues to fail to conduct the hazardous waste storage, treatment or disposal activities in accordance with the requirements of this chapter, the act, the statutes set forth in section 505(a) of the act (35 P. S. § 6018.505), the terms and conditions of the permit, or orders of the Department.

(2) The permittee has abandoned the facility without providing closure or postclosure care, or has otherwise failed to properly close the facility in accordance with the requirements of this chapter, the act, the statutes set forth in section 505(a) of the act, the terms and conditions of the permit, or orders of the Department.

(3) The permittee has failed, and continues to fail to take those measures determined necessary by the Department to prevent effects upon the environment before, during, and after closure and post-closure care.

(4) The permittee or financial institution has become insolvent, failed in business, been adjudicated a bankrupt, had a delinquency proceeding initiated under Article V of The Insurance Department Act of one thousand nine hundred and twenty-one (40 P. S. §§ 221.1 - 221.63), filed a petition in bankruptcy, in liquidation, for dissolution or for a receiver, or had a receiver appointed by the court, or had action initiated to suspend, revoke or refuse to renew the license or certificate of authority of the financial institution, or a creditor of the permittee has attached or executed a judgment against the permittee's equipment, materials, or facilities at the permit area or on the collateral pledged to the Department; and the permittee or financial institution cannot demonstrate or prove the

ability to continue to operate in compliance with this chapter, the act, the statutes set forth in section 505(a) of the act, the terms and conditions of the permit and orders of the Department.

(b) In the event the Department determines that bond forfeiture is appropriate, the Department will do the following:

(1) Send written notification by mail to the permittee, the host municipality and the surety on the bond, if any, of the Department's determination to forfeit the bond and the reasons for the forfeiture.

(2) Advise the permittee and surety, if any, of their right to appeal to the Environmental Hearing Board under section 1921-A of The Administrative Code of 1929 (71 P. S. § 510-21).

(3) Proceed to collect on the bond as provided by applicable statutes for the collection of defaulted bonds or other debts.

(4) Deposit all money collected from defaulted bonds into the Solid Waste Abatement Fund.

(5) Forfeit all bond deposited for the facility, including all additional amounts of bond posted for the facility.

**§ 75.329. Incapacity of permittees or financial institutions.**

(a) A permittee shall notify the Department by certified mail within 10 days after commencement of a voluntary or involuntary proceeding under the Bankruptcy Code, 11 U.S.C.A. §§ 101 - 151104) naming the owner or operator as debtor.

(b) A financial institution which issues a surety bond, letter of credit or certificate of deposit in accordance with the requirements of this part shall notify the Department by certified mail within 10 days after commencement of a voluntary or involuntary proceeding under the Bankruptcy Code (11 U.S.C.A. §§ 101 - 151104) naming the financial institution as debtor or an action alleging violation of regulatory requirements which could result in a suspension or revocation of the authority of the issuing institution to issue the instruments.

(c) A permittee which fulfills the requirements of § 75.311 (relating to the requirement to file a bond) by obtaining a surety bond, letter of credit or certificate of deposit shall be deemed to be without the required financial assurance in the event of bankruptcy of the issuing institution, or a suspension or revocation of the authority of the is-

suing institution to issue the instruments. The permittee shall establish other financial assurance within 60 days after the event.

(d) A permittee which fulfills the requirements of § 75.331 (relating to the requirement for insurance coverage) by obtaining an insurance policy shall be deemed to be without the required liability coverage in the event of bankruptcy of the issuing institution, or a suspension or revocation of the authority of the issuing institution to issue the instruments. The permittee shall establish other liability coverage within 60 days after the event.

**§ 75.330. Preservation of remedies.**

Remedies provided or authorized by law for violation of statutes, including but not limited to, the act, the Clean Streams Law (35 P. S. §§ 691.1 - 691.1001), the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1 - 1396.4c, 1396.4e, and 1396.15c - 1396.25), the Air Pollution Control Act (35 P. S. §§ 4001 - 4015), the Dam Safety and Encroachments Act (32 P. S. §§ 693.1 - 693.27), this chapter, the terms and conditions of permits and orders of the Department, are expressly preserved. Nothing in this subchapter shall be construed as an exclusive penalty or remedy for the violations. No action taken under this subchapter shall waive or impair another remedy or penalty provided in law.

**INSURANCE REQUIREMENTS FOR HAZARDOUS WASTE STORAGE, TREATMENT, AND DISPOSAL FACILITIES**

**§ 75.331. Requirement for insurance coverage.**

(a) Except for departments and agencies of the United States or of the Commonwealth, all hazardous waste storage, treatment and disposal facilities which have been permitted under the Pennsylvania Solid Waste Management Act (35 P. S. §§ 6001 - 6017) (Repealed 1980), or which are being treated as having been issued a permit under the act, shall file proof of insurance coverage for the facility under this part before September 9, 1985.

(b) Except for departments and agencies of the United States or of the Commonwealth, the Department will not issue new, revised, amended, modified, or renewed permits for the storage, treatment or disposal of hazardous waste after March 9, 1985 unless the applicant has filed proof of insurance coverage for the facility under this part.

(c) Except for departments and agencies of the United States or of the Commonwealth, an applicant for a new, revised, amended, modified, or renewed permit shall not disturb land, start construction of facilities for the storage, treatment or disposal of hazardous waste or accept hazardous waste prior to receipt from the Department of approval of insurance coverage and issuance of a permit to operate a hazardous waste storage, treatment or disposal facility. After September 9, 1985, a hazardous waste storage, treatment or disposal facility which was permitted before March 9, 1985, or is being treated as having been issued a permit, shall cease accepting hazardous waste unless the permittee has submitted proof of insurance coverage under this part. The Department will review and determine whether or not to approve the proof of insurance within 1 year after submittal. If on review the Department determines the permittee has submitted an insufficient amount of insurance, the Department will require the permittee to provide proof for additional amounts of insurance under § 75.334 (relating to proof of insurance coverage).

**§ 75.332. Insurance coverage.**

(a) Each permit applicant, or permittee of a hazardous waste storage, treatment or disposal facility shall submit proof that the owner or operator has in force a liability insurance policy for personal injury and property damage to third parties caused by sudden accidental occurrences arising out of operation of the facility. The minimum amount of coverage for sudden accidental occurrences shall be \$2 million per occurrence with an annual aggregate of at least \$4 million, exclusive of legal defense costs. The insurer shall be liable for and make payment of amounts within any deductible applicable to the policy, if the insurer has a right of reimbursement by the insured for any payments made by the insurer.

(b) Each permit applicant, or permittee of a hazardous waste surface impoundment, land treatment or disposal facility shall submit proof that the owner or operator has in force a liability insurance policy for bodily injury or property damage to third parties caused by nonsudden accidental occurrences arising out of operation of the facility. The minimum amount of coverage for nonsudden accidental occurrences shall be \$4 million per occurrence with an annual aggregate of at least \$8 million, exclusive of legal defense costs. The insurer shall be liable for and make payment of amounts within any deductible applicable to the

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policy, if the insurer has a right of reimbursement by the insured for any payments made by the insurer.

(c) The insurance requirements of this section shall be construed together to provide comprehensive coverage for personal injury and property damage to third parties from the risks associated with operation of a hazardous waste storage, treatment or disposal facility.

(d) If the Department determines that operation of a hazardous waste facility other than a hazardous waste surface impoundment, land treatment or disposal facility may present a significant risk to the public health, safety and welfare or the environment, the Department may require the permittee to comply with subsection (b).

(e) At least every 5 years after the deadline for submitting proof of insurance coverage under § 75.331, or after permit issuance, the Department will determine on a case-by-case basis whether the levels of financial responsibility required by this section are consistent with the degree and duration of risk associated with operation of the facility. If the Department determines the required levels of financial responsibility are not consistent with the degree and duration of risk associated with operation of the facility, the Department will require additional amounts of insurance coverage under § 75.335 (relating to additional amounts of insurance coverage).

(f) A permittee may request that the Department determine whether the levels of financial responsibility required by this section are consistent with the degree and duration of risk associated with operation of the facility. If the permittee demonstrates that the required levels of financial responsibility substantially exceed the degree and duration of risk associated with operation of the facility, then the Department may adjust the level of financial responsibility as may be necessary to protect the public health, safety and welfare and the environment, but in no case shall the level be adjusted below the minimum required by this section.

#### § 75.333. Period of coverage.

(a) Except as provided in subsection (b), the owner or operator shall continuously provide insurance coverage under § 75.332 (relating to insurance coverage) from the initiation of hazardous waste storage, treatment or disposal activities until the effective date of closure certification, as provided by § 75.326 (relating to closure certification).

(b) Upon certification of closure, if

the Department determines that the facility may continue to present a significant risk to the public health, safety and welfare or the environment, the Department may require the owner or operator to comply with the requirements of § 75.332 (relating to insurance coverage) for a period beyond the effective date of closure certification as may be determined by the Department.

#### § 75.334. Proof of insurance coverage.

(a) Each liability insurance policy for personal injury or property damage to third parties caused by sudden or non-sudden accidental occurrences shall be issued by an insurer licensed and authorized by the Insurance Commissioner to transact business in this Commonwealth, or designated by the Insurance Commissioner as an eligible surplus lines insurer under the act of January 24, 1966 (1965) (P. L. 1509, No. 531) (40 P. S. §§ 1006.1 — 1006.18). More than one insurance company may provide the required coverage for a facility. The insurer shall not be a parent, subsidiary, official, director or affiliate of the permittee.

(b) Each liability insurance policy shall be evidenced by a certificate of liability insurance. Each certificate shall:

(1) State the name of the insurance company, the insured and the facility covered by the policy.

(2) Identify the kinds of coverage provided by the policy and the amounts of coverage exclusive of legal defense costs.

(3) Identify the beginning and ending dates for the policy and the policy number.

(4) Specify that 120 days prior written notice shall be given by the insurer to the Department before cancellation or another termination of the insurance policy is effective.

(5) State that the insurance coverage provided by the policy is for the purpose of satisfying the requirements of this subchapter.

(6) State that the insurer is liable for payment on the policy without regard for the bankruptcy or insolvency of the insured.

(c) The Department will review the certificates of insurance submitted by the permit applicant, or permittee, to determine if the coverage provided satisfies the insurance coverage requirements of the Department under this part for the facility. The Department may require additional proof, such as a copy of the policy, additional endorse-

ments to the certificate or statements of intent from the insurer on the scope of coverage, to establish to the Department's satisfaction that the coverage provided is that which is required under this part.

(d) The permittee shall submit a new certificate of liability insurance 60 days prior to the expiration of the current certificate. If the permittee fails to submit a new certificate before the expiration of the current certificate, the permittee shall cease accepting hazardous waste material for storage, treatment or disposal at the facility.

(e) The Department will not accept proof of insurance coverage from an insurer which engages in a trade practice constituting an unfair method of competition or an unfair or deceptive act or practice, including an act constituting an unfair claim settlement or compromise practice, within the meaning of the Unfair Insurance Practices Act (40 P. S. §§ 1171.1 — 1171.15).

#### § 75.335. Additional amounts of insurance coverage.

The Department will require the permittee to provide proof of additional amounts of insurance coverage if one of the following occurs:

(1) The permit is amended to increase acreage or to change the kind of hazardous waste handled.

(2) The Department determines that additional amounts of insurance coverage are required to protect the public health, safety and welfare and the environment from the risk of injury or damage arising from operation of the facility.

#### § 75.336. Termination of insurance.

The insurer may cancel or otherwise terminate an insurance policy by sending written notice of cancellation by certified mail to the insured and the Department. Termination shall not take effect until 120 days after receipt of the notice of cancellation by the insured and the Department, as evidenced by the return receipts. Within 60 days after receipt of the notice of termination, the permittee shall provide the Department with proof of a replacement insurance policy sufficient to meet the requirements of § 75.331 (relating to requirement for insurance coverage). Failure of the permittee to provide a replacement insurance policy within the 60 day period shall constitute grounds for forfeiture of the existing bond under § 75.328 (relating to bond forfeiture).