

US EPA ARCHIVE DOCUMENT

## EQUIVALENCY CRITERIA FOR SURETY BONDS PENNSYLVANIA RESPONSE

EPA will consider the following factors in determining whether a state-required surety bond is "equivalent" or "substantially equivalent" to the financial mechanisms prescribed in the federal regulations. As a general rule, most, if not all of the following questions must be answered "yes" for the state-required surety bond to be considered "equivalent" or "substantially equivalent."

1. Is the surety company required to be listed in Circular 570 or licensed to do business as a surety in the state? Yes - **25 Pa. Code §§264a.155(b) and 265a.155(b).**
2. Does the underwriting limitation in Circular 570 apply? Yes, the company must be listed in Circular 570.
3. Must the surety company be licensed in the state where the surety bond is signed? Yes, must be licensed in PA - **25 Pa. Code §§264a.155(b) and 265a.155(b).**
4. Are the terms of a required standby trust fund (if any) at least equivalent to a standby trust fund under the federal RCRA regulations? (see, e.g., 40 CFR 264.143(b)(3) and the equivalency criteria for standby trust funds, below.) Standby trust fund is not used in PA.
5. Must the penal sum of the bond, together with any amount being assured by other mechanisms be at least equal to the current closure and/or post-closure cost estimates? Yes - **25 Pa. Code §§264a.160 and 265a.160.**
6. Must any surety bond that is used at an interim status facility be a financial guarantee bond? (performance bonds may not be used under 40 CFR 265 regulations.) Yes. Hazardous waste bonds are penal bonds - **35 P.S. §6018.505(d).**
7. For new facilities to be permitted, must the surety bond be submitted to the Regional Administrator or State Director before hazardous waste is first received for treatment, storage or disposal? Yes - **25 Pa. Code §§264a.153(b) and 265a.153(b).**
8. For new permitted facilities, must the surety bond be effective before hazardous waste is first received for treatment; storage or disposal? Yes - **25 Pa. Code §§264a.153(b)&(c) and 265a.153(b)&(c).**
9. When cost estimates increase, must the penal sum of the bond be increased (and evidence of the increase submitted to the Regional Administrator or State Director) or alternate financial assurance obtained within a defined period of time? (federal regulations allow 60 days). Yes - **25 Pa. Code §§264a.162 & 265a.162 and 25 Pa. Code §§264a.163 & 265a.163.**
10. Can the penal sum be reduced only if cost estimates decrease and following written approval of the Regional Administrator or State Director? Yes - **25 Pa. Code §§264a.165 and 265a.165.**

11. Must the owner or operator obtain alternative financial assurance within a defined time period after bankruptcy of the surety or removal of the surety's name from Circular 570? Yes - **40 CFR 264.148 as incorporated by reference at 25 Pa. Code §264a.1, §264a.148, 40 CFR 265.148 as incorporated by reference at 25 Pa. Code §265a.1, and §265a.148.**
12. Must the surety give both the owner or operator and the Regional Administrator or State Director ample notice before cancellation of the surety bond will be allowed? (federal regulations require at least 120 days) Yes - **25 Pa. Code §§264a.155(c) and 265a.155(c).**
13. Will the owner or operator have sufficient time after receipt of notice of cancellation to provide alternative financial assurance and obtain written approval of the new assurance from the Regional Administrator or State Director? (federal regulations require at least 90 days) Yes - **25 Pa. Code §§264a.155(c) and 265a.155(c).**
14. Is the surety required to pay the penal sum of a financial guarantee bond in at least these circumstances: Financial guarantee is not permitted in PA.
- a. The owner or operator has failed to provide funds in the amount of the cost estimate for closure and/or post-closure care before the beginning of final closure of the facility; N/A-no standby trust fund in PA.
  - b. The Regional Administrator, State Director, or a court has ordered closure to begin and the owner or operator has not provided funds within 15 days; or N/A - no standby trust fund in PA.
  - c. The surety has sent notice of cancellation of the bond and the owner or operator has not obtained alternate financial assurance within a defined time period? (federal regulations allow 90 days) Yes - **25 Pa. Code §§264a.155(c) and 265a.155(c) (60 days).**
15. Must the surety perform closure and/or post-closure care or pay the penal sum of a performance bond in at least the following circumstances:
- a. The owner or operator fails to fulfill its closure and/or post-closure obligations, even though closure may occur sooner than expected or the requirements in the plans, regulations, and/or permit have changed; or Yes - **25 Pa. Code §§264a.168(a)(1)-(4) and 265a.168(a)(1)-(4).**
  - b. The surety has sent notice of cancellation of the bond and the owner or operator has not obtained alternate financial assurance within 90 days? Yes - **25 Pa. Code §§264a.155(c) and 265a.155(c) (60 days).**
16. May a surety bond only be terminated with the written consent of the Regional Administrator or State Director? Yes, but authority may be delegated in writing.
17. Must itemized bills for closure and/or post-closure care be submitted to the Regional

Administrator or State Director before payment will be authorized? Yes. Documentation must be received under **25 Pa. Code §§264a.165 and 265a.165** before payment will be authorized.

18. Where the cost of closure appears to be significantly greater than the amount of available funds, is the Regional Administrator or State Director empowered to withhold reimbursement until satisfactory certification of completion of closure is received? Yes. No reimbursement will be made unless funds are sufficient to cover full cost of closure and post-closure. **25 Pa. Code §§264a.168(a)(3), 265a.168(a)(3), 264a.165(d), 265a.165(d), 264a.166(g), and 265a.166(g).**

## EQUIVALENCY CRITERIA FOR LETTERS OF CREDIT PENNSYLVANIA RESPONSE

EPA will consider the following factors in determining whether a state-required letter of credit is "equivalent" or substantially equivalent" to the financial mechanisms prescribed in the federal regulations. As a general rule, most, if not all of the following questions must be answered "yes" for the state-required letter of credit to be considered "equivalent" or "substantially equivalent."

1. Is the issuer required to be authorized to issue letters of credit, and must its letter of credit operations be regulated by a state or federal agency? Yes - **25 Pa. Code §§264a.156(d)(1) and 265a.156(d)(1).**
2. Are the terms of a required standby trust fund (if any) at least equivalent to the required standby trust fund under the federal RCRA regulations? (see, e.g., 40 CFR 264.143(d)(3) and the equivalency criteria for standby trust funds, below.) Standby trust fund not used in PA.
3. Must the letter of credit be irrevocable for at least a year and provide for automatic extensions? Yes - **25 Pa. Code §§264a.156(d)(4) and 265a.156(d)(4).**
4. Does the letter of credit have to be accompanied by a letter or schedule detailing the coverage for each facility? Yes, a breakdown is required if more than one facility.
5. Must the owner or operator submit evidence within a reasonable period that any cost increases are covered by alternate mechanisms or increases in the face amount of the letter of credit? (federal regulations allow up to 60 days.) Yes - **25 Pa. Code §§264a.163 and 265a.163.**
6. Must owners or operators obtain alternate financial assurance within a specified time if the issuing institution ceases operations, files for bankruptcy, or otherwise ceases to qualify? (federal regulations allow up to 60 days.) Yes - **40 CFR 264.148 as incorporated at 25 Pa. Code §§264a.1(a) and 40 CFR 265.148 as incorporated at 25 Pa. Code § 265a.1(a).**
7. Must alternate assurance be obtained within a specified time if the issuer gives notice of non-renewal of the letter? (federal regulations allow up to 90 days.) Yes - **25 Pa. Code §§264a.156(d)(4)(ii) and 265a.156(d)(4)(ii).**
8. Must the face amount of the letter of credit, together with any amount being assured by other mechanisms be at least equal to the current closure and post-closure cost estimates? Yes - **25 Pa. Code §§264a.160 and 265a.160.**
9. Must the letter of credit be submitted to the Regional Administrator or State Director by a specified time before hazardous waste is first received for new permitted facilities? (federal regulations require at least 60 days.) Yes. Bond must be submitted and approved prior to waste acceptance - **25 Pa. Code §264a.153(b)&(c).**
10. For new facilities to be permitted, must the, letter of credit be effective before hazardous

waste is first received for treatment, storage or disposal? Yes - **25 Pa. Code §264a.153(b)&(c).**

11. Can the amount be reduced only if cost estimates decrease and following written approval of the Regional Administrator or State Director? Yes - **25 Pa. Code §§264a.165 & 265a.165.**

12. Must itemized bills for closure and/or post-closure care be submitted to the Regional Administrator or State Director before reimbursement will be authorized? Yes. Documentation must be received under **25 Pa. Code §§264a.165 and 265a.165** before payment will be authorized.

13. Where the cost of closure appears to be significantly greater than the amount of funds available under the letter of credit, is the Regional Administrator or State Director empowered to withhold reimbursement until satisfactory certification of completion of closure is received? Yes. No reimbursement will be made unless funds are sufficient to cover full cost of closure and post-closure. **25 Pa. Code §§264a.168(a)(3), 265a.168(a)(3), 264a.165(d), 265a.165(d), 264a.166(g), and 265a.166(g).**

14. Is termination of the letter of credit only allowed if (1) alternate assurance is provided, or (2) the owner or operator has been released from closure or post-closure financial requirements? Yes - **25 Pa. Code §§264a.158(b) and 265a.158(b).**



**EQUIVALENCY CRITERIA FOR CASH DEPOSITS  
AND CERTIFICATES OF DEPOSIT  
PENNSYLVANIA RESPONSE**

EPA will consider the following factors in determining whether a state-required cash deposit or certificate of deposit is "equivalent" or "substantially equivalent" to the financial mechanisms prescribed in the federal regulations. As a general rule, most, if not all of the following questions must be answered "yes" for the State-required cash deposit or certificate of deposit to be considered "equivalent" or "substantially equivalent."

1. Must the bank or financial institution holding the cash deposit or certificate of deposit be regulated and examined by a federal or state agency? Yes - **25 Pa. Code §§264a.156(c)(6) and 265a.156(c)(6).**
2. Must the Regional Administrator or State Director be the beneficiary and be empowered to draw upon or direct payment from the funds if the owner or operator fails to perform closure or post-closure care? Yes - **25 Pa. Code §§264a.168(a)(2)-(4)&(b)(3)-(5), 265a.168(a)(2)-(4)&(b)(3)-(5).**
3. For new facilities to be permitted, must the cash deposit or certificate of deposit be established before hazardous waste is first received for treatment, storage or disposal? Yes - **25 Pa. Code §§264a.153(b)&(c) and 265a.153(b)&(c).**
4. Must payments be made pursuant to a pay-in period and formula at least equivalent to federal RCRA trust fund requirements? Yes - **25 Pa. Code §§264a.157 and 265a.157.**
5. Must advance notice be provided to the Regional Administrator or State Director in a defined time period prior to termination by the owner or operator? Yes - **25 Pa. Code §§264a.158 and 265a.158.**
6. Must at least one of the following conditions be met for the cash deposit or certificate of deposit to be terminated: (1) the owner or operator has performed closure/post-closure to the State Director's or Regional Administrator's satisfaction, or (2) alternate assurance has been established in accordance with state regulations or (b) that would be acceptable under 40 CFR 264/265.149? Yes - **25 Pa. Code §§264a.157(b) and 265a.157(b), 264a.165 and 265a.165.**
7. Can funds be released only upon written instruction of the Regional Administrator or State Director? Yes - **25 Pa. Code §§264a.165 and 265a.165.**
8. Must itemized bills for closure and/or post-closure care be submitted to the Regional Administrator or State Director before payment will be authorized? Yes. Documentation is required for release of any amount under **25 Pa. Code §§264a.165 and 265a.165.**
9. Where the cost of closure appears significantly greater than the amount of available funds, is the Regional Administrator or State Director empowered to withhold reimbursement until satisfactory certification of closure is received? Yes. No reimbursement will be made unless

funds are sufficient to cover full cost of closure and post-closure. **25 Pa. Code §§264a.168(a)(3), 265a.168(a)(3), 264a.165(d), 265a.165(d), 264a.166(g), and 265a.166(g).**