

**15A NCAC 01V .0105 GENERAL REQUIREMENTS FOR FINANCIAL ASSURANCE FOR NEW USSPS**

(a) Project owners of a new USSP shall establish, submit, and update an allowable financial mechanism, or a combination of mechanisms, provided in Rule .0106 of this Section, to ensure sufficient funds are available to cover the cost of decommissioning in accordance with G.S. 130A-309.240(d)(1).

(b) The language of the mechanism shall be identical to the instrument templates provided in Rule .0107 of this Section, and shall ensure that the instruments satisfy the following criteria:

- (1) the financial assurance mechanism shall ensure that the amount of funds assured is sufficient to cover the cost of decommissioning at any time;
- (2) the financial assurance mechanism shall ensure that the funds will be available to the Department at the time of decommissioning; and
- (3) the financial assurance mechanism shall be legally valid, binding, and enforceable in accordance with State and federal law.

The project owner of a new USSP may submit a request in writing to the Department to revise the language of the mechanism if it is necessary to accommodate USSP-specific circumstances. The request shall be submitted to the Department in the draft mechanism for approval by the Department prior to submittal of the executed mechanism.

(c) The project owner of a new USSP may use one financial assurance mechanism to ensure sufficient funds are available for decommissioning of more than one new USSP located in North Carolina and owned by the same project owner.

(d) A project owner of a new USSP may demonstrate financial assurance for decommissioning by establishing more than one mechanism per project. The mechanism shall be as specified in Rule .0106 of this Section, except that financial assurance for an amount no less than the current cost estimate for decommissioning may be provided by a combination of mechanisms rather than a single mechanism. When multiple financial assurance mechanisms are established, no more than one allowable mechanism shall be provided by the same financial institution or its corporate entities. The financial test provided by a corporation, and the corporate guarantee provided by a corporate parent, sibling, grandparent, or a substantial business relationship, shall not be combined if the financial statements of the two firms are consolidated.

(e) The amount of the financial mechanism shall be the amount of the cost estimate calculated in accordance with Rule .0104 of this Section.

(f) In accordance with G.S. 130A-309.240(d)(2), the project owner of a new USSP shall not be released from the requirement to provide continuous financial assurance for decommissioning until the Department has provided the project owner of a new USSP with written notification that the decommissioning and restoration requirements for the USSP, set forth in Part 2J of Article 9 of Chapter 130A of the General Statutes, the requirements of this Section, and the requirements of the decommissioning plan for the USSP, have been met.

(g) If the project owner of a new USSP elects to change the type of financial mechanism selected at any time, the project owner shall submit a proposal for the new mechanism and a draft copy of the new financial assurance mechanism to the Department to determine if the mechanism complies with the rules of this Section. The existing executed mechanism for a new USSP shall not be cancelled until after the Department issues written notice to the project owner that the new mechanism complies with the requirements of the rules of this Section and the project owner has executed the new mechanism.

(h) If there is a change in ownership of a new USSP, the new project owner shall establish financial assurance for the new USSP and submit the executed financial assurance mechanism to the Department no more than 30 days after the change in ownership. The prior project owner shall maintain the financial assurance mechanism until the Department releases them from the requirement in writing, and upon confirmation that the financial assurance established by the new project owner meets the requirements of Part 2J of Article 9 of Chapter 130A of the General Statutes and the rules of this Section.

(i) Maintenance of financial assurance in the amounts required by the rules of this Section does not limit the responsibility of project owners for the full cost of decommissioning of the USSP, the expenses of any on-site or off-site environmental restoration necessitated by activities at the USSP, or liability for all damages to third parties or private or public properties caused by the establishment and operation of the USSP.

(j) A corporate seal shall be required to complete the certification of acknowledgement required in the mechanism language in Rule .0107 of this Section for a corporate project owner using a trust fund, surety bond guaranteeing payment, financial test, and corporate guarantee as set forth in Rule .0106 of this Section. When a corporate seal is required to certify a financial assurance mechanism but the corporation does not have a corporate seal, a member of the corporation's senior management or a representative of the board of directors shall submit to the Department a copy of the corporation's bylaws, a corporate ownership organization chart describing the relationship of the project

owner to the corporation and its parent companies, contact information for the board of directors or senior management for the corporation, and a statement on corporate letterhead stating the signee has the authority to execute correspondence and financial assurance mechanisms on behalf of the corporation, pursuant to G.S. 130A-309.240. The documentation shall be submitted to the Department of Environmental Quality, care of the Division of Waste Management at 1646 Mail Service Center, Raleigh, NC 27699. Senior management for the corporation shall be one of the following positions: the Chief Executive Officer or President, the Chief Operating Officer or Vice President, or the Chief Financial Officer or Treasurer.

(k) The executed mechanism shall be submitted to the Department as original signed hard copies.

(l) Financial assurance established for a USSP shall be an environmental liability for accounting purposes.

(m) If a local government requires financial assurance, the project owner of a new USSP may request that the Department accept evidence of executed financial assurance provided to and approved by the local government, in lieu of making the financial assurance accessible directly to the Department, to satisfy the explanation as to how the funds will be available to the Department in accordance with G.S. 130A-309.240(c)(6). In making such a request, the project owner of a new USSP shall demonstrate that the local government financial assurance mechanism otherwise meets the requirements of G.S. 130A-309.240 and Rules .0101 through .0105 of this Section. The project owner of a new USSP shall submit the request and demonstration with the registration required by Rule .0102 of this Section, and the request shall include a copy of the local government financial assurance mechanism and a written justification for Department approval that the local government financial assurance mechanism meets the requirements of G.S. 130A-309.240 and Rules .0101 through .0105 of this Section.

*History Note:* Authority G.S. 130A-309.240(j);  
Eff. April 1, 2025.