

15A NCAC 01V .0106 ALLOWABLE MECHANISMS FOR FINANCIAL ASSURANCE FOR NEW USSPS

Project owners of a new USSP shall use any combination of the following mechanisms to meet the requirements of this Section for financial assurance, unless otherwise approved in accordance with Rule .0105(m) of this Section.

- (1) Trust Fund.
 - (a) A project owner of a new USSP may demonstrate financial assurance for decommissioning by establishing a trust fund that conforms to the requirements of this Item. The trustee shall be an entity or person that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or State agency.
 - (b) The trust fund shall be fully funded for the entire amount of decommissioning established by Rule .0104 of this Section, except as provided in Rule .0105(d) of this Section.
 - (c) The trust agreement shall be effective prior to submittal of the initial executed financial mechanism pursuant to Rule .0102(e) of this Section.
 - (d) The project owner or a third party authorized by the Department to conduct decommissioning may request reimbursement from the trustee for these expenditures. Requests for reimbursement shall be granted only if sufficient funds are remaining in the trust fund to cover the remaining costs of decommissioning, and if justification and documentation of the cost is submitted to the Department and approved by the Department as complying with G.S. 130A-309.240, the rules of this Section, and the decommissioning plan.
 - (e) The trust fund may be terminated by the project owner only if the project owner has substituted alternate financial assurance as specified in this Rule, or if the project owner receives written notice from the Department that they are no longer required to provide continuous financial assurance for decommissioning in accordance with the requirements of Rule .0105(f) of this Section.
 - (f) The trust fund may be elected as a standby trust mechanism to accompany the surety bond mechanism in Item (2) of this Rule, or the letter of credit mechanism in Item (3) of this Rule; or may be elected as a standalone funded trust mechanism.
 - (g) The trust agreement shall be accompanied by a certification of acknowledgement following the language of the trust agreement as specified in Rule .0107(1) of this Section.
 - (h) Schedule A of the trust agreement shall be updated no less than 60 days after any change in the amount of the current cost estimate covered by the agreement.
- (2) Surety Bond Guaranteeing Payment into a Trust Fund.
 - (a) A project owner of a new USSP may demonstrate financial assurance for decommissioning by obtaining a payment surety bond that conforms to the requirements of this Item. The surety bond shall be effective prior to submittal of the initial executed financial mechanism pursuant to Rule .0102(e) of this Section. The surety company issuing the bond shall be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury and shall be licensed to do business in North Carolina.
 - (b) The project owner who uses a surety bond to satisfy the requirements of the rules of this Section shall also establish a standby trust fund prior to submittal of the initial executed financial mechanism, pursuant to Rule .0102(e) of this Section. Under the terms of the bond, all payments shall be deposited by the surety directly into the standby trust fund. An originally signed duplicate of the trust agreement shall be submitted to the Department with the surety bond. This standby trust fund shall meet the requirements specified in Item (1) of this Rule, except that the following are not required until the standby trust fund is funded pursuant to the requirements of this Item:
 - (i) payment into the trust fund as specified in Sub-Item (1)(b) of this Rule;
 - (ii) updating of Schedule A of the trust agreement as specified in Sub-Item (1)(h) of this Rule;
 - (iii) annual valuations as required by the trust agreement outlined in Rule .0107(1) of this Section; and
 - (iv) notices of nonpayment as required by the trust agreement outlined in Rule .0107(1) of this Section.

- (c) The bond shall guarantee that the project owner shall:
 - (i) fund the standby trust fund in an amount equal to the penal sum of the bond prior to initiating final decommissioning of the USSP, and no more than one year after cessation of operations of the USSP;
 - (ii) fund the standby trust fund in an amount equal to the penal sum of the bond within 15 days after an order to decommission the USSP is issued by a U.S. district court or other court of competent jurisdiction; or
 - (iii) provide alternate financial assurance that complies with the rules of this Section within 90 days after receipt by both the project owner and the Department of a notice of cancellation of the bond from the surety.
 - (d) Under the terms of the bond, the surety shall become liable on the bond obligation when the project owner fails to perform as guaranteed by the bond.
 - (e) The penal sum of the bond shall be in an amount equal to the entire amount of decommissioning established by Rule .0104 of this Section, except as provided in Rule .0105(d) of this Section.
 - (f) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the project owner and to the Department. Cancellation shall not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the project owner and the Department, as evidenced by the certified mail return receipts. If the surety cancels the bond, the project owner shall obtain alternate financial assurance that complies with the rules of this Section prior to cancellation.
 - (g) The penal sum of the surety bond shall be adjusted for any increase or decrease in the amount of financial assurance in accordance with Rule .0104 of this Section.
 - (h) The surety bond may be terminated by the project owner only if the project owner has substituted alternate financial assurance that complies with the rules of this Section, or if the project owner receives written notice from the Department that they are no longer required to provide continuous financial assurance for decommissioning in accordance with Rule .0105(f) of this Section.
- (3) Letter of Credit.
- (a) A project owner of a new USSP may demonstrate financial assurance for decommissioning by obtaining an irrevocable standby letter of credit that conforms to the requirements of this Item. The letter of credit shall be effective prior to submittal of the initial executed financial mechanism pursuant to Rule .0102(e) of this Section. The issuing institution shall be an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or State agency.
 - (b) A letter from the project owner referring to the letter of credit by number, issuing institution, and date, and providing the following information: name, project identification number, address of the USSP, and the amount of funds assured, shall be included with the letter of credit submitted to the Department.
 - (c) The letter of credit shall be irrevocable and issued for a period of no less than one year, in an amount no less than the entire amount of decommissioning established by Rule .0104 of this Section, except as provided in Rule .0105(d) of this Section. The letter of credit shall provide that the expiration date will be automatically extended for a period of no less than one year unless the issuing institution has cancelled the letter of credit by sending notice of cancellation by certified mail to the project owner and to the Department 120 days in advance of cancellation. If the letter of credit is cancelled by the issuing institution, the project owner shall obtain alternate financial assurance prior to cancellation.
 - (d) The project owner of a new USSP shall establish a standby trust fund. The standby trust fund shall meet the requirements of Item (1) of this Rule, except for the requirement to fully fund the trust as specified in Sub-Item (1)(b) of this Rule. Payments made under the terms of the letter of credit shall be deposited by the financial institution directly into the standby trust fund.
 - (e) No payments shall be made from the trust fund unless approved by the trustee and the Department.

- (f) The letter of credit shall be adjusted for any increase or decrease in the amount of financial assurance in accordance with Rule .0104 of this Section.
 - (g) The letter of credit and standby trust fund may be terminated by the project owner only if the project owner has substituted alternate financial assurance as specified in this Rule, or if the project owner receives written notice from the Department that they are no longer required to provide continuous financial assurance for decommissioning in accordance with the requirements of Rule .0105(f) of this Section.
- (4) Insurance.
- (a) A project owner of a new USSP may demonstrate financial assurance for decommissioning by obtaining insurance that conforms to the requirements of this Item. The insurance shall be effective prior to submittal of the initial executed financial mechanism pursuant to Rule .0102(e) of this Section. The insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in North Carolina.
 - (b) The decommissioning insurance policy shall guarantee that funds will be available to decommission the USSP by cessation of operations. The policy shall also guarantee that once decommissioning begins, the insurer shall be responsible for the paying out of funds to the project owner or a third party authorized by the Department to conduct decommissioning, up to an amount equal to the face amount of the policy.
 - (c) The insurance policy shall be issued for a face amount no less than the entire amount of decommissioning established by Rule .0104 of this Section, except as provided in Rule .0105(d) of this Section. The term face amount means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer shall not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.
 - (d) A project owner or a third party authorized by the Department to conduct decommissioning may receive reimbursements for decommissioning expenditures. Requests for reimbursement shall be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of decommissioning, and if justification and documentation of the itemized cost is submitted to the Department, and the Department provides written approval that this requirement has been met. The project owner or third party shall notify the Department that reimbursement has been received.
 - (e) Each policy shall contain a provision allowing assignment of the policy to a successor project owner.
 - (f) The insurance policy shall provide that the insurer shall not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel, terminate, or fail to renew the policy by sending notice by certified mail to the project owner and to the Department 120 days in advance of cancellation, termination, or failure to renew the policy. If the insurer cancels the policy, the project owner shall obtain alternate financial assurance as specified in this Rule prior to cancellation.
 - (g) The insurance policy may be terminated by the project owner only if the project owner has substituted alternate financial assurance as specified in this Rule, or if the project owner receives written notice from the Department that they are no longer required to provide continuous financial assurance for decommissioning in accordance with the requirements of Rule .0105(f) of this Section.
- (5) Financial Test. A project owner of a new USSP that satisfies the requirements of this Item may demonstrate financial assurance for decommissioning using a financial test. To pass this test the project owner shall meet the criteria of either Sub-Item (a) or (b) of this Item.
- (a) The project owner of a new USSP shall have:
 - (i) two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5;

- (ii) net working capital and tangible net worth each no less than six times the sum of the decommissioning cost estimate established by Rule .0104 of this Section;
 - (iii) tangible net worth of no less than 10 million dollars (\$10,000,000); and
 - (iv) assets located in the United States amounting to no less than 90 percent of their total assets or no less than six times the sum of the decommissioning cost estimate established by Rule .0104 of this Section.
- (b) The project owner of a new USSP shall have:
 - (i) a current rating for their most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's;
 - (ii) tangible net worth no less than six times the sum of the decommissioning cost estimate established by Rule .0104 of this Section;
 - (iii) tangible net worth of no less than 10 million dollars (\$10,000,000); and
 - (iv) assets located in the United States amounting to no less than 90 percent of their total assets or no less than six times the sum of the decommissioning cost estimate established by Rule .0104 of this Section.
- (c) To pass this test, the project owner shall submit the following items to the Department with the registration and subsequent updates required by Rule .0102 of this Section:
 - (i) a letter signed by the project owner's chief financial officer and as specified in Rule .0107(5) of this Section;
 - (ii) a copy of the independent certified public accountant's report of the project owner's financial statements for the latest completed fiscal year; and
 - (iii) a special report from the project owner's independent certified public accountant to the project owner. The special report shall be based upon agreed upon procedures, in accordance with professional auditing standards, and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.
- (d) The project owner is no longer required to submit the documentation specified in Sub-Item (c) of this Item or comply with the requirements of this Item when:
 - (i) the project owner substitutes alternate financial assurance as specified in the rules of this Section; or
 - (ii) the project owner receives written notice from the Department that they are no longer required to provide continuous financial assurance for decommissioning in accordance with the requirements of Rule .0105(f) of this Section.
- (e) If at any time the project owner of a new USSP no longer meets the requirements of Sub-Item (a) or (b) of this Item, the project owner shall send notice to the Department of intent to establish alternate financial assurance as specified in the rules of this Section. The notice shall be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the project owner no longer meets the requirements. The project owner shall provide the alternate financial assurance that meets the rules of this Section to the Department within 120 days after the end of such fiscal year.
- (f) The Department may, based on a reasonable belief that the project owner may no longer meet the requirements of Sub-Item (a) or (b) of this Item, require reports of financial condition at any time from the project owner in addition to the documentation specified in Sub-Item (c) of this Item. If the Department finds, on the basis of such reports and documentation, that the project owner no longer meets the requirements of Sub-Item (a) or (b) of this Item, the Department shall provide written notice to the project owner of this determination. The project owner shall obtain alternate financial assurance that meets the requirements of this Rule and submit that alternate financial assurance that complies with the rules of this Section to the Department within 90 days of the issuance of the written notice from the Department.
- (g) When calculating the amount of financial assurance, the project owner shall include the cost estimates for all USSPs owned by the project owner and for which they are required

- to obtain financial assurance. The amount of financial assurance for the financial test shall be adjusted in accordance with Rule .0104 of this Section.
- (h) The Department may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in their report on examination of the project owner's financial statements pursuant to Sub-Item (c)(ii) of this Item. An adverse opinion or a disclaimer of opinion shall be cause for disallowance. The Department may evaluate other qualifications on an individual basis. The project owner shall provide alternate financial assurance that complies with the rules of this Section within 90 days of the issuance of the written notice from the Department.
- (6) Corporate Guarantee:
- (a) A project owner of a new USSP may also meet the requirements of the financial test in Item (5) of this Rule by obtaining a written guarantee. The guarantor shall be the direct or higher-tier parent corporation of the project owner, a firm whose parent corporation is also the parent corporation of the project owner, or a firm with a substantial business relationship with the project owner. The guarantor shall meet the requirements for project owners in Item (5) of this Rule and shall comply with the terms of the guarantee. A certified copy of the guarantee shall be submitted to the Department with the copies of the letter from the guarantor's chief financial officer and the independent certified public accountant's opinion for the guarantor as required by Item (5) of this Rule. If the guarantor's parent corporation is also the parent corporation of the project owner, the letter from the guarantor's chief financial officer shall describe the value received in consideration of the guarantee. If the guarantor is a firm with a substantial business relationship with the project owner, this letter shall describe this substantial business relationship and the value received in consideration of the guarantee. The project owner shall submit a corporate ownership organization chart describing the relationship of the project owner to the guarantor with the submittal of the initial executed financial mechanism, and during periodic registration updates thereafter.
 - (b) The guarantee shall be effective prior to submittal of the initial executed financial mechanism and all submissions required pursuant to this Item and Rule .0102(e) of this Section.
 - (c) The terms of the guarantee shall provide that:
 - (i) If the project owner fails to perform decommissioning of a USSP covered by the corporate guarantee, in accordance with the requirements and timelines of G.S. 130A-309.240, the rules of this Section, and the decommissioning plan, the guarantor shall either perform, or pay a third party to perform, decommissioning; or establish a fully funded trust fund as specified in Item (1) of this Rule in the name of the project owner.
 - (ii) The corporate guarantee shall remain in force for as long as the project owner is required to comply with the applicable financial assurance requirements in the rules of this Section unless the guarantor sends prior notice of cancellation by certified mail to the project owner and to the Department. Cancellation shall not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the project owner and the Department, as evidenced by the return receipts.
 - (iii) If notice of cancellation is given, the project owner shall, within 90 days following receipt of the cancellation notice by the project owner and the Department, obtain alternate financial assurance that complies with the rules of this Section and obtain written approval from the Department that the alternate financial assurance complies with the rules of this Section. If the project owner fails to provide alternate financial assurance within the 90-day period, the guarantor shall obtain alternate financial assurance in the name of the project owner that complies with the rules of this Section within 120 days of the cancellation notice and obtain written approval from the Department that the alternate financial assurance complies with the rules of this Section.

Eff. April 1, 2025.