

10A NCAC 15 .1236 FUNDING OF CLOSURE: STABILIZATION: INSTITUTIONAL CONTROLS

(a) The applicant shall provide assurances prior to the commencement of operations that sufficient funds will be available to carry out disposal site closure, stabilization and institutional controls, including:

- (1) decontamination or dismantlement of land disposal facility structures; and
- (2) closure and stabilization of the disposal site so that following transfer of the disposal site to the custodial agency, the need for ongoing active maintenance is eliminated to the extent practicable and only minor custodial care, surveillance, and monitoring are required.

(b) The amount of the assurances in Paragraph (a) of this Rule shall be established by the Commission and shall be based on agency-approved cost estimates reflecting the agency-approved plan for disposal site closure and stabilization and agency estimates of the costs which may be associated with the period of institutional controls. In estimating such costs, the agency shall consider applicant-prepared cost estimates which shall take into account total costs that would be incurred if an independent contractor were hired to perform the closure and stabilization work.

(c) The licensee shall submit the financial or surety arrangements annually for review by the agency to assure that sufficient funds will be available for completion of the closure plan and for anticipated institutional care.

(d) The amount of the licensee's financial or surety arrangement shall change in accordance with changes in the predicted costs of closure, stabilization and institutional care. Factors affecting closure, stabilization and institutional care cost estimates include inflation, increases in the amount of disturbed land, changes in engineering plans, closure and stabilization that has already been accomplished, and any other conditions affecting costs. The financial or surety arrangements shall be sufficient at all times to cover the costs of closure, stabilization and institutional care of the disposal units that are expected to be used before the next license renewal.

(e) The amount of the licensee's financial and surety arrangements as determined in Paragraph (d) of this Rule may be reduced annually by the actual amount of funds deposited by the licensee in the Long-Term Care Fund pursuant to such fees as may be established by the North Carolina Low-Level Radioactive Waste Management Authority under the provisions of G.S. 104G-15.

(f) The financial or surety arrangement shall be written for a specified period of time, shall run in favor of the Long-Term Care Fund, and shall be automatically renewed unless the person who issues the surety notifies the agency, the site owner, and the principal (the licensee) not less than 90 days prior to the renewal date of its intention not to renew. In such a situation, the licensee must submit a replacement surety within 30 days after notification of cancellation. If the licensee fails to provide a replacement surety acceptable to the agency within 30 days after notification of cancellation, the agency may require the North Carolina Low-Level Radioactive Waste Management Authority to collect on the original surety for deposit in the Long-Term Care Fund.

(g) Proof of forfeiture shall not be necessary to collect the surety so that, in the event that the licensee does not provide an acceptable replacement surety within the required time, the surety shall be automatically collected prior to its expiration. The conditions described in this Paragraph and in Paragraph (f) of this Rule shall be clearly stated on any surety instrument.

(h) Financial or surety arrangements generally acceptable to the Commission and agency include: surety bonds, cash deposits, certificates of deposit, deposits of government securities, escrow accounts, irrevocable letters or lines of credit, trust funds, and combinations of the above or such other types of arrangements as may be approved by the agency, consistent with provisions of G.S. 104E-18. Self-insurance, or any arrangement which essentially constitutes self-insurance, will not satisfy the surety requirement for private sector applicants.

(i) The licensee's financial or surety arrangement shall remain in effect until the closure and stabilization program has been completed and approved by the agency, custody of the site and disposed waste has been accepted by the custodial agency, and the license has been terminated by the agency.

(j) In order to avoid unnecessary duplication of expense, the agency will accept sureties that have been consolidated with earmarked financial or surety arrangements established to meet requirements of federal or other state agencies for such decontamination, closure, and stabilization. The agency will accept these arrangements only if they are considered adequate to satisfy the requirements of Paragraphs (a) to (i) of this Rule and that portion of the surety which covers the closure of the disposal site is clearly identified and committed for use in accomplishing these activities.

History Note: Authority G.S. 104E-7; 104E-16; 104E-17; 104E-18; 104E-19(b); 104E-25; 104E-26; Eff. December 1, 1987; Transferred and Recodified from 15A NCAC 11 .1236 Eff. February 1, 2015.