

CHAPTER 123  
REGIONAL COLLECTION CENTERS AND  
MOBILE UNIT COLLECTION AND CONSOLIDATION CENTERS

**567—123.1(455B,455D,455F) Purpose.** The purpose of this chapter is to implement permitting requirements for two systems which provide for the collection of household hazardous materials (HHM) and hazardous waste from conditionally exempt small quantity generators (CESQGs). Two types of permits are established:

1. Regional collection center (RCC) permits for operations that collect hazardous materials at a facility; and
2. Mobile unit collection and consolidation center (MUCCC) permits for facilities that collect hazardous materials at various temporary locations.

**567—123.2(455B,455D,455F) Definitions.** The definitions set out in Iowa Code section 455B.301 shall be considered to be incorporated verbatim in these rules. For the purposes of this chapter, these terms shall have the following meanings:

*“Conditionally exempt small quantity generator”* or *“CESQG”* means a generator that in a calendar month generates no more than 100 kilograms of hazardous waste in that month and is further defined by 40 CFR 261.5.

*“Consolidation center for CESQG and HHM”* means a building for the sorting, packaging, and temporary storage of materials collected from mobile events. Household hazardous materials (HHM) are not collected from the public at the consolidation center.

*“Hazardous waste contractor”* means a private company that provides proper management (e.g., disposal, recycling) of hazardous waste. *“Hazardous waste contractor”* does not include regional collection centers.

*“Household hazardous materials”* or *“HHM”* means the same as defined in Iowa Code subsection 455F.1(4).

*“Mobile unit collection and consolidation center”* or *“MUCCC”* means a government agency or private agency under contract with a government agency as part of a solid waste comprehensive plan that provides HHM collection events at temporary sites. Collection events are held a minimum of 16 hours per month in each county served by the MUCCC. MUCCCs do not provide public access to a fixed facility. Materials collected are consolidated and stored for removal by a hazardous waste contractor. MUCCCs do not include RCCs that utilize a mobile collection unit along with access to a permanent facility.

*“Mobile unit for CESQG and HHM”* means a unit that can be moved to different sites within a service area. The mobile unit is used to perform collection events and to transport collected materials to a fixed RCC or consolidation center.

*“Public access”* means the public has regularly scheduled right of access during the facility’s hours of operation as specified in the facility’s permit.

*“Regional collection center”* or *“RCC”* means a secured facility at which collection, sorting, and packaging of household hazardous materials and hazardous materials from CESQGs are accomplished prior to transportation of these wastes to the final disposal site. RCCs have regular hours during which the public may drop off hazardous materials. An RCC may be a government agency or a private agency under contract with a government agency as part of a solid waste comprehensive plan. RCCs are referred to as temporary collection sites in Iowa Code subsection 455F.8A(1).

*“Secondary containment”* means providing an impervious surface that is curbed, sloped, or sumped to retain spilled materials with storage volume equal to the largest container or 10 percent of all containers, whichever is larger.

**567—123.3(455B,455D,455F) Regional collection center and mobile unit collection and consolidation center permits.**

**123.3(1) *Permit required.*** An RCC or MUCCC shall not be constructed or operated without a permit from the department.

**123.3(2) *RCC and MUCCC permit exemption.*** If an RCC or MUCCC is located at a permitted recycling or composting facility or sanitary disposal project, the RCC or MUCCC shall not be required to have its own permit; instead, the RCC or MUCCC activities may be amended into the host facility's permit.

**123.3(3) *Compliance.*** Every RCC and MUCCC must be in compliance with all state and federal statutes and regulations regarding the management, storage, transportation and disposition of household hazardous materials and hazardous materials from conditionally exempt small quantity generators.

**123.3(4) *Construction and operation.*** An RCC or MUCCC shall be constructed and operated according to the plans and specifications approved by the department and the conditions of the permit. The approved plans and specifications shall constitute a condition of the permit.

**123.3(5) *Transfer of title and permit.*** If title to an RCC or MUCCC is transferred, then the department shall transfer the permit within 60 days if the department has found that the following requirements have been met:

*a.* The title transferee has applied in writing to the department to request a transfer of the permit within 30 days of the transfer of title.

*b.* The permitted facility is in compliance with Iowa Code chapters 455B, 455D and 455F, this chapter and the conditions of the permit.

**123.3(6) *Permit conditions.*** Any permit may be issued subject to conditions that are specified in writing by the department and that are necessary to ensure that the facility is constructed and operated in compliance with Iowa Code chapters 455B, 455D and 455F, this chapter and local fire codes.

**123.3(7) *Effect of revocation.*** If a permit held by any public or private agency is revoked by the director, then no new permit for an RCC or MUCCC shall be issued to that agency for a period of one year from the date of revocation. Such revocation shall not prohibit the issuance of a permit for the facility to another public or private agency.

**123.3(8) *Inspection prior to commencing new operation.*** The department shall be notified before a facility begins operations. No household hazardous materials or hazardous waste from conditionally exempt small quantity generators shall be accepted by the facility until it has been inspected and approved by the department.

**123.3(9) *Duration and renewal of permits.*** A permit shall be issued and may be renewed for a period of three years, unless otherwise authorized by the department. If the permit applicant is a private agency under contract with a local government, the permit shall not extend past the end date of the contract.

**123.3(10) *Request and approval of permit renewal.*** A facility shall file a request for permit renewal by submitting Form 50H (542-1542) to the department at least 90 days before the expiration of the current permit. The department may request that additional information be submitted for review to make a permit renewal decision. The department shall renew the permit if, after a review and inspection of the facility and its compliance history, the department finds that the facility is in compliance with Iowa Code chapters 455B, 455D and 455F, this chapter, and the conditions of the permit, and is making a good-faith effort to maintain compliance. If the facility is found not to be in compliance with Iowa Code chapters 455B, 455D and 455F, this chapter, and the conditions of the permit, or if a good-faith effort to maintain compliance is not being made, the facility shall be brought into compliance or placed on a compliance schedule approved by the department before the permit is renewed.

**123.3(11) *Request for permit modification.*** A facility shall submit a request for permit modification in writing to the department with supporting documentation and materials. The department may request that additional information be submitted for review to make a permit modification decision.

**567—123.4(455B,455D,455F) Permit application requirements for regional collection centers.**

**123.4(1)** An applicant for a regional collection center permit must submit the following information to the department:

- a. The name, address, and telephone number of:
  - (1) The owner of the site where the regional collection center will be located.
  - (2) The permit applicant.
  - (3) The site where the regional collection center will be located.
  - (4) The individual responsible for the operation of the RCC.
- b. A legal description of the RCC site.
- c. A map or aerial photograph locating the boundaries of the site and identifying:
  - (1) North or other principal compass points.
  - (2) Zoning and land use within one-half mile.
  - (3) Homes and other buildings within one-half mile.
  - (4) Section lines or other legal boundaries.
- d. Days and hours of operation.
- e. Area to be served.
- f. Type, source, and expected volume or weight of waste to be handled per day, week or year.
- g. An organizational chart.
- h. Site plans detailing how the facility will comply with rule 123.6(455B,455D,455F).
- i. Schematic plans of facilities detailing how the facility will comply with rule 123.7(455B,455D,455F).
- j. For mobile operations, schematic plans or a description and photographs of mobile unit.
- k. Documentation of staff qualifications pursuant to rule 123.8(455B,455D,455F).
- l. A plan of operations detailing how the facility will comply with subrule 123.9(1).
- m. An education plan detailing how the facility will comply with subrule 123.9(2).
- n. Proof of the applicant's ownership of the RCC site or legal entitlement to use the site for the disposal of solid waste for the term of the permit for which application is made.
- o. A closure plan detailing how the facility will comply with subrule 123.9(3).
- p. An emergency response and remedial action plan (ERRAP) detailing how the facility will comply with rule 123.10(455B,455D,455F).

**123.4(2)** Incomplete applications. If the department finds the permit application to be incomplete, the department shall notify the applicant of that fact and of the specific deficiencies. If the applicant fails to correct the noted deficiencies within 30 days, the department may reject the application and return the application materials to the applicant. The applicant may reapply without prejudice.

**567—123.5(455B,455D,455F) Permit application requirements for mobile unit collection and consolidation centers.**

**123.5(1)** An applicant for a mobile unit collection and consolidation center permit must submit the following information to the department:

- a. The name, address, and telephone number of:
  - (1) The owner of the site where the consolidation center will be located.
  - (2) The permit applicant.
  - (3) The site where the consolidation center will be located.
  - (4) The individual responsible for the operation of the MUCCC.
- b. A legal description of the consolidation center site.
- c. A map or aerial photograph locating the boundaries of the consolidation center for CESQG and HHM site and identifying:
  - (1) North or other principal compass points.
  - (2) Zoning and land use within one-half mile.
  - (3) Homes and other buildings within one-half mile.
  - (4) Section lines or other legal boundaries.
- d. Days, hours and locations of mobile collection events for HHM and CESQG.
- e. Area to be served.
- f. Type, source, and expected volume or weight of waste to be handled per day, week or year.
- g. An organizational chart.

- h.* Site plans detailing how the facility will comply with rule 123.6(455B,455D,455F).
- i.* Schematic plans of facilities detailing how the facility will comply with rule 123.7(455B,455D,455F).
- j.* Schematic plans or a description and photographs of mobile unit.
- k.* Documentation of staff qualifications pursuant to rule 123.8(455B,455D,455F).
- l.* A plan of operations detailing how the facility will comply with subrule 123.9(1).
- m.* An education plan detailing how the facility will comply with subrule 123.9(2).
- n.* Proof of the applicant's ownership of the consolidation center for CESQG and HHM site or legal entitlement to use the site for the term of the permit for which application is made.
- o.* Agreements from the owners of the sites where the mobile collections for CESQG and HHM will take place.
- p.* A closure plan detailing how the facility will comply with subrule 123.9(3).
- q.* An emergency response and remedial action plan (ERRAP) detailing how the facility will comply with rule 123.10(455B,455D,455F).

**123.5(2)** Incomplete applications. If the department finds the permit application to be incomplete, the department shall notify the applicant of that fact and of the specific deficiencies. If the applicant fails to correct the noted deficiencies within 30 days, the department may reject the application and return the application materials to the applicant. The applicant may reapply without prejudice.

**567—123.6(455B,455D,455F) Site selection.** A site selected for an RCC or MUCCC shall meet the following criteria:

**123.6(1)** An RCC site or a mobile unit collection for CESQG and HHM site shall be sited on public property, or on private property if an agreement exists that guarantees public access. Documentation of the private property agreement shall be provided to the department. A consolidation center for CESQG and HHM does not need to be sited on public property.

**123.6(2)** The site of an RCC or a consolidation center shall be designed to provide adequate secondary containment in case of a spill or other possible onsite contamination.

**123.6(3)** The site shall meet all applicable zoning requirements.

**123.6(4)** The site shall be adequately sized to accommodate all structures, units and activities that will take place on the site.

**123.6(5)** An RCC site or a consolidation center for CESQG and HHM site shall be fenced to control access, and a gate shall be provided at the entrance to the site and be locked when personnel are not on duty.

**567—123.7(455B,455D,455F) Structures.** The structures for regional collection centers and consolidation centers for CESQG and HHM shall meet the following criteria:

**123.7(1)** All structures shall be sized to adequately accommodate the sorting, bulk and lab packing, and temporary storage of household hazardous materials and hazardous materials from conditionally exempt small quantity generators brought to the RCC or collected at mobile events.

**123.7(2)** All permanent structures shall meet the requirements of applicable building codes.

**123.7(3)** The structures and mobile units shall be so designed to prevent run-on from entering from adjacent areas.

**123.7(4)** All mobile units and the containers used to package collected materials shall comply with applicable Iowa department of transportation (DOT) rules and guidelines. At each mobile unit site, the unit shall rest on a pad of an impervious, smooth material that provides secondary containment in case of a spill, and a canopy or roof shall be provided as protection from inclement weather.

**123.7(5)** All receiving areas shall have a storage capacity of at least one day's processing capacity.

**123.7(6)** All receiving, sorting, bulking, transfer and storage area surfaces shall be constructed of an impervious, smooth material so designed to be easily cleaned, nonreactive with the waste, and with proper drainage, in the form of plastic-lined pits or concrete sumps, according to applicable codes. Areas used for the receiving, bulking, transferring, lab packing and storing of exempt hazardous materials shall be provided with secondary containment and shall be protected from exposure to the weather.

**123.7(7)** The construction plans and specifications for the RCC shall include a receiving area, sorting area, separate storage areas for incompatible materials, roads, structures, fences and gates, landscaping and screening devices, personnel and maintenance facilities, and utility lines. The construction plans and specifications for the consolidation center shall include a sorting area, separate storage areas for incompatible materials, roads, structures, fences and gates, landscaping and screening devices, personnel and maintenance facilities, and utility lines.

**567—123.8(455B,455D,455F) Staff qualifications.** All RCC and MUCCC staff handling hazardous materials shall have received applicable training including but not limited to the following:

1. OSHA 24-hour health and safety training as described by 29 CFR 1910.120.
2. Hazardous materials chemistry.
3. Personnel and site safety.
4. Proper lab packing techniques.
5. Proper transporting of hazardous materials.
6. U.S. Department of Transportation 8-hour hazardous materials training for the operation of a mobile unit for hazardous materials collection.

**567—123.9(455B,455D,455F) Plans and procedures.** The applicant must prepare and maintain a plan of operations, an education plan and a closure plan.

**123.9(1) Operations plan.** The operations plan shall include, at a minimum, the following information.

- a. Schedule of operations including hours of operations for RCCs and a schedule of collection events including dates, hours, and locations for MUCCCs. MUCCC collections shall total, at a minimum, 16 hours per month in each county in the service area. At least 4 of the 16 hours shall be on a Saturday.
- b. Site selection procedures for mobile unit collections.
- c. Standard receiving procedures for household and CESQG wastes.
- d. Procedures for managing unknown materials.
- e. Procedures for handling open or leaking containers.
- f. Procedures for managing large quantities of wastes.
- g. Recycling procedures for usable materials.
- h. Disposal of nonhazardous waste.
- i. Personal protection equipment (PPE).
- j. Initial training requirements and continuing education of staff.

**123.9(2) Education plan.** The education plan shall demonstrate a commitment to educate the local population through a program that addresses alternatives to the purchase of toxic materials and the proper disposal for toxic materials. Education shall be directed to both the general population and CESQGs.

**123.9(3) Closure plan.** The permit holder shall notify the department at least 30 days prior to ceasing operations. The closure plan shall include, at a minimum, the following information.

- a. A description of how the RCC will notify the public within its service area that the facility is closing and how household hazardous materials should be managed after closure of the facility.
- b. A description of how all household hazardous materials and hazardous waste from CESQGs will be removed from the facility and properly managed within 45 days of the RCC's or MUCCC's ceasing operations.

**567—123.10(455B,455D,455F) Emergency response and remedial action plans.**

**123.10(1) Purpose.** The purpose of this rule is to implement Iowa Code section 455B.306(6) "d" by providing the criteria for developing a detailed emergency response and remedial action plan (ERRAP) for permitted sanitary disposal projects.

**123.10(2) Update.** An updated ERRAP shall be included with any request for permit modification to incorporate a facility expansion or significant changes in facility operation that require modification of the currently approved ERRAP.

**123.10(3) Content.** The content of ERRAP documents shall be concise and readily usable as a reference manual by facility managers and operators under emergency conditions. The ERRAP document content shall address at least the following primary issues in detail, unless project conditions render the specific issue not applicable. The rationale for exclusion of any issue areas that are determined not to be applicable must be provided in either the body of the plan or as a supplement to facilitate department review. Additional emergency response and remedial action plan requirements unique to the facility shall be addressed, as applicable.

*a. Facility information.*

- (1) Permitted agency.
- (2) DNR permit number.
- (3) Facility description.
- (4) Responsible official and contact information.
- (5) Project location.
- (6) Site and environs map.

*b. Regulatory requirements.*

- (1) Iowa Code section 455B.306(6) "d" criteria citation.
- (2) Reference to provisions of the permit.

*c. Emergency conditions—response activities—remedial action.*

- (1) Failure of utilities.
  1. Short-term (48 hours or less).
  2. Long-term (over 48 hours).
- (2) Weather-related events.
  1. Tornado.
  2. Windstorms.
  3. Intense rainstorms and erosion.
  4. Lightning strikes.
  5. Flooding.
  6. Event and postevent conditions.
- (3) Fire and explosions.
  1. Waste materials.
  2. Buildings and site.
  3. Equipment.
  4. Fuels.
  5. Utilities.
  6. Facilities.
  7. Working area.
  8. Hot loads.
  9. Waste gases.
  10. Evacuation.
- (4) Regulated waste spills and releases.
  1. Waste materials.
  2. Leachate.
  3. Waste gases.
  4. Waste stockpiles and storage facilities.
  5. Waste transport systems.
  6. Litter and airborne particulate.
  7. Site drainage systems.
  8. Off-site releases.
- (5) Hazardous material spills and releases.
  1. Load check control points.
  2. Mixed waste deliveries.
  3. Fuels.

4. Waste gases.
5. Site drainage systems.
6. Off-site releases.
- (6) Mass movement of land and waste.
  1. Earthquakes.
  2. Slope failure.
  3. Waste shifts.
  4. Waste subsidence.
- (7) Emergency and release notifications and reporting.
  1. Federal agencies.
  2. State agencies.
  3. County and city agencies.
  4. News media.
  5. Public and private facilities with special populations within five miles.
  6. Emergency response agencies and contact information.
  7. Reporting requirements and forms.
- (8) Emergency waste management procedures.
  1. Communications.
  2. Temporary discontinuation of services, short-term and long-term.
  3. Facilities access and rerouting.
  4. Waste acceptance.
  5. Wastes in process.
- (9) Primary emergency equipment inventory.
  1. Major equipment.
  2. Fire hydrants and water sources.
  3. Off-site equipment resources.
- (10) Emergency aid.
  1. Responder contacts.
  2. Medical services.
  3. Contracts and agreements.
- (11) ERRAP training requirements.
  1. Training providers.
  2. Employee orientation.
  3. Annual training updates.
  4. Training completion and record keeping.
- (12) Reference tables, figures and maps.

**567—123.11(455B,455D,455F) Reporting requirements.** On a form supplied by the department, each RCC and MUCCC shall submit to the department a completed hazardous material collection semiannual report. The report shall include, but is not limited to, the pounds of materials managed through a reuse program, by hazardous waste contractors, and by nonhazardous waste contractors. All hazardous waste contractor invoices shall be attached. Such invoices shall depict hazardous material types, net weight of hazardous materials, and associated disposal costs charged by the hazardous waste contractor to the RCC or MUCCC. Hazardous material collection semiannual reports shall be submitted by September 1 for the portion of the fiscal year January 1 through June 30, and by March 1 for the portion of the fiscal year July 1 through December 31.

**567—123.12(455B,455D,455F) Financial assurance requirements for regional collection centers and mobile unit collection and consolidation centers.** Unless a facility is exempt from this rule pursuant to subrule 123.12(1), permitted RCCs and MUCCCs must obtain and submit a financial assurance instrument to the department for the storage of household hazardous materials in accordance with this rule. The financial assurance instrument shall provide monetary funds to properly dispose

of household hazardous wastes, universal wastes, hazardous waste from conditionally exempt small quantity generators, and any other solid wastes that may remain at a site due to the owner's or operator's failure to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

**123.12(1)** Exemptions. RCC and MUCCC facilities owned and operated in conjunction with a sanitary landfill already required to have financial assurance shall not be required to obtain additional financial assurance in compliance with this chapter.

**123.12(2)** No permit without financial assurance. The department shall not issue or renew a permit to an owner or operator of an RCC or MUCCC until a financial assurance instrument has been submitted to and approved by the department.

**123.12(3)** Proof of compliance. Proof of the establishment of the financial assurance instrument and compliance with this rule, including a current closure cost estimate, shall be submitted to the department by July 1, 2008, or at the time of application for a permit for a new RCC or MUCCC. The owner or operator must provide continuous coverage for closure and submit proof of compliance, including an updated closure cost estimate, with each permit renewal thereafter until released from this requirement by the department.

**123.12(4)** Use of one financial assurance instrument for multiple permitted activities. RCCs and MUCCCs required to maintain financial assurance pursuant to any other provisions of 567—Chapters 100 to 123 may satisfy the requirements of this rule by the use of one financial assurance instrument if the permit holder ensures that the instrument provides financial assurance for an amount at least equal to the current cost estimates for closure of all sanitary disposal project activities covered.

**123.12(5)** The estimate submitted to the department must account for at least the following factors determined by the department to be minimal necessary costs for closure pursuant to subrule 123.9(3):

*a.* The cost estimate submitted to the department shall be an average of the disposal costs charged by the hazardous waste contractor to the RCC or MUCCC as reported on the semiannual reports submitted in accordance with rule 123.11(455B,455D,455F) for the most recent three-year period.

*b.* For new facilities or existing facilities that do not have sufficient data to determine an average disposal cost, the initial cost estimate shall be equal to \$15,000. The estimate shall be adjusted once sufficient data is available for a three-year period.

**123.12(6)** Acceptable financial assurance instruments. The financial assurance instrument shall be established in an amount equal to the cost estimate prepared in accordance with subrule 123.12(5) and shall not be canceled, revoked, disbursed, released, or allowed to terminate without the approval of the department. Financial assurance may be provided by cash in the form of a secured trust fund or local government dedicated fund, surety bond, letter of credit, or corporate or local government guarantee as follows:

*a. Secured trust fund.* The owner or operator of an RCC or MUCCC or an entity serving as a guarantor may demonstrate financial assurance for closure by establishing a secured trust fund that conforms to the requirements of this paragraph.

(1) The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. The fund shall be restricted for the sole purpose of funding closure activities at the facility, and a copy of the trust agreement must be submitted to the department and placed in the facility's official files.

(2) A secured trust fund shall name the department of natural resources as the entity authorized to draw funds from the trust, subject to proper notification to the trust officer of failure by the permittee to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

(3) Moneys in the fund shall not be assigned for the benefit of creditors with the exception of the state.

(4) Moneys in the fund shall not be used to pay any final judgment against a permit holder arising out of the ownership or operation of the site during its active life or after closure.

(5) The owner or operator or another person authorized to conduct closure activities may request reimbursement from the trustee for closure expenditures as they are incurred. Requests for reimbursement shall be granted by the trustee only if sufficient funds are remaining in the trust fund to

cover the remaining costs of closure and if documentation of the justification for reimbursement has been submitted to the department for prior approval.

(6) If the balance of the trust fund exceeds the current cost estimate for closure at any time, the owner or operator may request withdrawal of the excess funds from the trustee so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

*b. Local government dedicated fund.* The owner or operator of a publicly owned RCC or MUCCC or a local government serving as a guarantor may demonstrate financial assurance for closure by establishing a dedicated fund that conforms to the requirements of this paragraph.

(1) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, resolution or order as a restricted fund to pay for closure costs arising from the operation of the facility.

(2) A copy of the document establishing the dedicated fund must be submitted to the department and placed in the facility's official files.

(3) If the balance of the dedicated fund exceeds the current cost estimate for closure at any time, the owner or operator may withdraw excess funds so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

*c. Surety bond.* A surety bond must be written by a company authorized by the commissioner of insurance to do business in the state. The surety bond shall comply with the following:

(1) The bond shall be in a form approved by the commissioner of insurance and shall be payable to the department of natural resources.

(2) The bond shall be specific to a particular facility for the purpose of properly disposing of any household hazardous wastes that may remain on site due to the owner's or operator's failure to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

(3) The owner or operator shall provide the department with a statement from the surety with each permit application renewal, noting that the bond is paid and current for the permit period for which the owner or operator has applied for renewal.

*d. Letter of credit.* The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(1) The owner or operator must submit to the department a copy of the letter of credit and place a copy in the facility's official files.

(2) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the name and address of the facility and the amount of funds assured, must be included with the letter of credit submitted to the department and placed in the facility's files.

(3) The letter of credit must be irrevocable and must be issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the department 90 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the letter of credit into a secured trust fund that meets the requirements of paragraph 123.12(6) "a." If the owner or operator has not complied with this subrule within the 60-day time period, the issuer of the letter of credit shall deposit a sum equal to the amount of the letter of credit into the secured trust fund established by the owner or operator. The provision of funds by the issuer of the letter of credit shall be considered an issuance of a loan to the owner or operator, and the terms of that loan shall be governed by the letter of credit or subsequent agreement between those parties. The state shall not be considered a party to this credit transaction.

*e. Corporate guarantee.* An owner or operator may meet the requirements of this rule by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, an owner or operator whose parent corporation is also the parent corporation of the owner or operator, or an owner or operator with a "substantial business relationship" with the owner or operator.

(1) The terms of the written guarantee must provide that within 30 days of the owner's or operator's failure to perform closure of a facility covered by the guarantee, the guarantor will:

1. Perform closure or pay a third party to perform closure as required (performance guarantee);
2. Establish a fully funded secured trust fund as specified in paragraph 123.12(6) "a" in the name of the owner or operator (payment guarantee); or
3. Establish an alternative financial assurance instrument in the name of the owner or operator as required by this rule.

(2) The guarantor must satisfy one of the following three conditions:

1. A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard & Poor's or Aaa, Aa, A, or Baa as issued by Moody's; or
2. A ratio of less than 1.5 comparing total liabilities to net worth; or
3. A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities.

(3) The tangible net worth of the guarantor must be greater than the sum of the current closure cost estimate and any other environmental obligations, including other financial assurance guarantees.

(4) The guarantor must have assets amounting to at least the sum of the current closure cost estimate and any other environmental obligations, including other financial assurance guarantees.

(5) Record-keeping and reporting requirements. The guarantor must submit the following records to the department and place a copy in the facility's official files:

1. A copy of the written guarantee between the owner or operator and the guarantor.
2. A letter signed by a certified public accountant and based upon a certified audit that:
  - Lists all the current cost estimates covered by a guarantee including, but not limited to, cost estimates required by subrule 123.12(5); cost estimates required for municipal solid waste management facilities pursuant to 40 CFR Part 258; cost estimates required for UIC facilities under 40 CFR Part 144, if applicable; cost estimates required for petroleum underground storage tank facilities under 40 CFR Part 280, if applicable; cost estimates required for PCB storage facilities under 40 CFR Part 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, if applicable; and
  - Provides evidence demonstrating that the guarantor meets the conditions of subparagraphs 123.12(6) "e"(2), (3) and (4).

3. A copy of the independent certified public accountant's unqualified opinion of the guarantor's financial statements for the latest completed fiscal year. In order for the guarantor to be eligible to use the guarantee, the guarantor's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion or disclaimer of opinion shall be cause for disallowance of this instrument. A qualified opinion related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance. If the department does not allow use of the corporate guarantee, the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

*f. Local government guarantee.* An owner or operator may demonstrate financial assurance for closure by obtaining a written guarantee provided by a local government or jointly provided by the members of an agency established pursuant to Iowa Code chapter 28E.

(1) The terms of the written guarantee must provide that within 30 days of the owner's or operator's failure to perform closure of a facility covered by the guarantee, the guarantor will:

1. Perform closure or pay a third party to perform closure as required (performance guarantee);
2. Establish a fully funded secured trust fund as specified in paragraph 123.12(6) "a" in the name of the owner or operator (payment guarantee); or
3. Establish an alternative financial assurance instrument in the name of the owner or operator as required by this rule.

(2) The guarantor must satisfy one of the following requirements:

1. If the guarantor has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, the guarantor must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard & Poor's, on all such general obligation bonds; or

2. The guarantor must satisfy each of the following financial ratios based on the guarantor's most recent audited annual financial statement: a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05, and a ratio of annual debt service to total expenditures less than or equal to 0.20.

(3) The guarantor must prepare its financial statements in conformity with generally accepted accounting principles or other comprehensive basis of accounting and have its financial statements audited by an independent certified public accountant or the office of the auditor of the state of Iowa. The financial statement shall be in the form prescribed by the office of the auditor of the state of Iowa.

(4) A guarantor is not eligible to assure its obligations if:

1. The guarantor is currently in default on any outstanding general obligation bonds; or

2. The guarantor has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard & Poor's; or

3. The guarantor operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or

4. The guarantor receives an adverse opinion or disclaimer of opinion from the independent certified public accountant or office of the auditor of the state of Iowa auditing its financial statement. A qualified opinion that is related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance of this mechanism; or

5. The closure costs to be assured are greater than 43 percent of the guarantor's total annual revenue.

(5) The local government guarantor must include disclosure of the closure costs assured through the guarantee in its next annual audit report prior to the initial receipt of household hazardous wastes at the facility or prior to cancellation of an alternative financial assurance instrument, whichever is later. For the first year the guarantee is used to assure costs at a particular facility, the reference may instead be placed in the guarantor's official files until issuance of the next available annual audit report if timing does not permit the reference to be incorporated into the most recently issued annual audit report or budget. For closure costs, conformance with Governmental Accounting Standards Board Statement 18 ensures compliance with this public notice component.

(6) The local government owner or operator must submit to the department the following items:

1. A copy of the written guarantee between the owner or operator and the local government serving as guarantor for the closure costs at the facility.

2. A copy of the guarantor's most recent annual financial audit report indicating compliance with the financial ratios required by numbered paragraph 123.12(6) "f"(2) "2," if applicable, and the requirements of subparagraphs 123.12(6) "f"(3) and (4).

3. A letter signed by the local government's chief financial officer that lists all the current cost estimates covered by the guarantor, as described in subrule 123.12(5); and that provides evidence and certifies that the local government meets the conditions of subparagraphs 123.12(6) "f"(2), (3), (4) and (5).

**123.12(7) Financial assurance cancellation and permit suspension.**

a. A financial assurance instrument may be terminated by the owner or operator only if the owner or operator substitutes alternate financial assurance prior to cancellation, as specified in this rule, or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

b. A financial assurance instrument shall be continuous in nature until canceled by the financial assurance provider or until the department gives written notification to the owner, operator, and financial assurance provider that the covered site has been properly closed. The financial assurance provider shall give at least 90 days' notice in writing to the owner or operator and the department in the event of any intent to cancel the instrument.

c. Within 60 days of receipt of a written notice of cancellation of financial assurance by the financial assurance provider, the owner or operator must provide the department an alternative financial assurance instrument. If a means of continued financial assurance is not provided within that 60 days, the department shall suspend the permit.

*d.* The owner or operator shall perform proper closure within 30 days of the permit suspension. For the purpose of this rule, “proper closure” means completion of all items pursuant to subrule 123.9(3).

*e.* If the owner or operator does not properly close the site within the 30-day period allowed, the department shall file a claim with the financial assurance instrument provider to collect the amount of funds necessary to properly close the site.

*f.* An owner or operator who elects to terminate a permitted activity, whose renewal application has been denied, or whose permit has been suspended or revoked for cause must submit within 30 days of the termination of the permit a schedule for completing proper closure of the terminated activity. Closure completion cannot exceed 60 days from the date of termination of the permit.

*g.* The director may also request payment from any financial assurance provider for the purpose of completing closure when the following circumstances exist:

(1) The owner or operator is more than 15 days late in providing a schedule for closure or for meeting any date in the schedule for closure.

(2) The owner or operator declares an economic inability to comply with this rule, either by sending written notification to the director or through an action such as, but not limited to, filing for bankruptcy.

These rules are intended to implement Iowa Code sections 455B.304, 455D.7 and 455F.8B and Iowa Code Supplement section 455F.8A.

[Filed 1/27/06, Notice 11/9/05—published 2/15/06, effective 3/22/06]

[Filed 9/6/07, Notice 1/3/07—published 9/26/07, effective 10/31/07]