

CHAPTER 104
SANITARY DISPOSAL PROJECTS WITH PROCESSING FACILITIES

[Prior to 7/1/83, DEQ Ch 29]

[Prior to 12/3/86, Water, Air and Waste Management[900]]

[Prior to 6/12/02, see also 567—Ch 106]

567—104.1(455B) Scope and applicability. Any sanitary disposal project utilizing any of the equipment described in this chapter shall comply with the requirements for that equipment set out in this chapter, in addition to the requirements of 567—Chapter 102. If a composting process is to be used, the contents of 567—Chapter 105 are applicable.

104.1(1) Detailed engineering drawings of the sanitary disposal project shall be submitted showing all conveyor lines, holding areas, loading and unloading areas, transfer points, and initial and permanent roads, buildings and equipment to be installed, unloading and holding areas, fences and gates, landscaping and screening devices, personnel and maintenance facilities, sewer and water lines, lines of flow for all waste and salvaged materials.

104.1(2) Design specifications for all equipment shall be as follows:

a. All equipment which may be cleaned by washing shall be installed on reasonably smooth impermeable floors so designed as to be easily cleaned and having drainage to a sanitary sewer unless other acceptable provisions are made to control process water or washwater.

b. All equipment shall be so designed as to prevent spilling of waste and to be easily cleaned and shall be adequately enclosed so as to prevent blowing of dust or litter or wetting of the waste from precipitation or runoff.

567—104.2(455B) Dumping or holding floors or pits.

104.2(1) All unloading area surfaces shall be constructed of impervious, reasonably smooth material so designed as to be easily cleaned, with drainage to a sanitary sewer.

104.2(2) All unloading areas shall have a storage capacity of at least one day's processing capacity.

104.2(3) All unloading areas shall be adequately enclosed and roofed so as to prevent blowing of dust or litter and to prevent precipitation or drainage onto any accumulated waste.

567—104.3(455B) Compaction equipment. All compactors shall be located on reasonably smooth impermeable aprons so designed as to control wash water and area runoff, be easily cleaned, and avoid creation of fly or rodent habitats.

567—104.4(455B) Hammermills.

104.4(1) All hammermills shall be equipped with adjustable water spray or other dust suppression equipment.

104.4(2) All hammermills shall be provided with fire and explosion control or suppression devices or equipment.

104.4(3) Solid waste which cannot be processed by the hammermill or is rejected by it shall be stored in enclosed leakproof containers.

567—104.5(455B) Hydropulping or slurring equipment. All solid waste which cannot be processed by such equipment or is rejected by it shall be stored in enclosed leakproof containers.

567—104.6(455B) Air classifiers. All air classifiers shall be equipped with dust suppression equipment unless air is recirculated.

567—104.7(455B) Metals separation equipment.

104.7(1) Metals separation equipment shall be installed at that point in the process which minimizes possible organic contamination of the metal.

104.7(2) Provisions shall be made for storage of separated materials in enclosed leakproof containers.

567—104.8(455B) Sludge processing.

104.8(1) If introduced to solid waste, sludges shall be introduced after any resource recovery operation.

104.8(2) Sludge addition equipment and storage facilities shall be sanitary and odor free.

567—104.9(455B) Storage containers and facilities.

104.9(1) *Storage of solid waste.*

a. Containers used for the storage of all solid wastes except salvaged materials but including refuse-derived fuels shall be covered, leakproof, durable and of easily cleanable construction.

b. Facilities used for the storage of all solid wastes except municipal sewage sludge and salvaged materials but including refuse-derived fuels shall be constructed as follows:

(1) Storage facilities shall have a smooth, impervious, easily cleaned base.

(2) Storage facilities shall provide leachate collection.

(3) Storage facilities shall prevent runoff entering the facility from adjacent areas.

(4) Storage facilities shall be enclosed to prevent blowing litter and roofed to prevent precipitation into any solid waste.

c. Facilities used for the storage of municipal sewage sludge shall be constructed as follows:

(1) Storage facilities shall have a smooth, impervious, easily cleaned base.

(2) Storage facilities shall provide leachate monitoring and collection. The executive director may accept contingency plans in lieu of an installed collection system.

(3) Storage facilities shall prevent runoff entering the facility from adjacent areas.

(4) Storage facilities shall be designed and constructed to prevent odor, litter, leaching and vector problems. The acceptability of any such facility shall be based on the materials being stored, duration of storage and conditions to be experienced.

104.9(2) *Storage of salvaged materials.* Containers and facilities used for the storage of salvaged materials shall be designed and constructed to prevent odor, litter, leaching and vector problems. The acceptability of any such container shall be based on the materials being stored, duration of storage and conditions to be experienced.

567—104.10(455B) Operating requirements for all processing facilities. All sanitary disposal projects with processing facilities shall be operated in conformance with 567—Chapter 102 and this rule. The plan submitted shall detail how the facility will comply with these requirements.

104.10(1) All equipment shall be cleaned daily unless the department approves less frequent cleaning on a specific schedule stipulating component part, cleaning method, and schedule.

104.10(2) Sewage sludge shall not be handled in such a manner as to present a health hazard or potential source of pollution.

104.10(3) All solid waste processed or rejected by the facility shall be disposed in conformance with these rules.

104.10(4) Emergency access shall be provided to the material in solid waste storage facilities.

104.10(5) Storage time.

a. Solid waste. Solid waste, except for composted materials, but including refuse-derived fuels shall not be stored on the site for more than 72 hours.

b. Rescinded IAB 10/17/90, effective 11/21/90.

104.10(6) Solid waste shall be unloaded at the operating areas only when an operator is on duty at that area. Solid waste may be deposited in storage containers inside the site under the supervision of an attendant or operator.

104.10(7) The operating area for solid waste shall be as small as practicable and shall be surrounded with appropriate barriers to prevent litter from blowing beyond the operating area.

104.10(8) The site shall be fenced to control access and a gate shall be provided at the entrance to the site and kept locked when an attendant or operator is not on duty.

104.10(9) A copy of the permit, engineering plans and reports shall be kept at the site at all times.

104.10(10) Sites not open to the public shall have a permanent sign posted at the site entrance specifying:

- a. Name of operation.
- b. The site permit number.
- c. That the site is not open to the public.
- d. The name and telephone number of the responsible official.

567—104.11(455B) Closure requirements. All sanitary disposal projects with processing facilities shall close in conformance with their approved closure plan, this rule, and the requirements of 567—Chapter 102.

104.11(1) All equipment, storage facilities, holding areas, and drainage collection systems shall be cleaned and decontaminated.

104.11(2) All processed waste, stored waste and waste from cleaning and decontaminating the facility shall be removed and disposed of in a permitted disposal facility.

104.11(3) Disposal projects with processing facilities may be required to obtain a closure permit, described in 567—subrule 102.2(4), dependent upon the potential of the closed facility for environmental impact.

567—104.12 to 104.20 Reserved.

RECYCLING OPERATIONS

[Prior to 7/1/83, DEQ Ch 31]

[Prior to 12/3/86, Water, Air and Waste Management[900]]

[Prior to 6/12/02, 567—Ch 106]

567—104.21(455B) Specific design requirements. The plans required in 567—102.12(455B) shall include a complete description of initial and permanent roads, buildings and equipment to be installed; unloading and holding areas; fences and gates; landscaping and screening devices; personnel and maintenance facilities; sewer and water lines; the method of processing reclaimed salvageable materials, the disposition of such materials, the transfer points to which they will be moved, capacities of such points, and frequency of interchange shall be shown.

567—104.22(455B) Specific operating requirements for all recycling operations. The plans required in 567—102.12(455B) shall detail the means by which the following requirements will be complied with.

104.22(1) Material which cannot be recycled or removed during processing shall be handled in a manner which will not create pollution or a nuisance and shall be disposed of by another method provided in these rules.

104.22(2) Solid waste shall be unloaded at the operating areas only when an operator is on duty at that area. Solid waste may be deposited in storage containers inside the site under the supervision of an attendant or operator.

104.22(3) The operating area for solid waste shall be as small as practicable and shall be surrounded with appropriate barriers to prevent litter from blowing beyond the operating area.

104.22(4) The site shall be fenced to control access and a gate shall be provided at the entrance to the site and kept locked when an attendant or operator is not on duty.

104.22(5) A copy of the permit, engineering plans and reports shall be kept at the site at all times.

104.22(6) Sites not open to the public shall have a permanent sign posted at the site entrance specifying:

- a. Name of operation.
- b. The site permit number.
- c. That the site is not open to the public.
- d. The name and telephone number of the responsible official.

These rules are intended to implement Iowa Code section 455B.304.

567—104.23(455B) Recycling operations processing paper, cans, and bottles. Recycling operations which handle only paper, cans, and bottles are exempt from 104.21(455B) and 104.22(455B), and 567—Chapters 102 and 104 if the operation has no mechanical processing facilities or if the operation receives on average less than two tons of paper, cans, and bottles per day. Such operations shall submit the following information to the department for distribution to the public: address or legal description of site, organization operating the facility, name and telephone number of the responsible official of the facility, type of waste to be handled, operating days and hours.

567—104.24(455B) Closure requirements. All recycling operations shall be closed in conformance with their approved closure plan, this rule, rule 567—104.11(455B), and the requirements of 567—Chapter 102.

567—104.25(455B) Operator certification. Solid waste incinerator operators shall be trained, tested, and certified by a department-approved certification program.

104.25(1) A solid waste incinerator operator shall be on duty during all hours of operation of a solid waste incinerator, consistent with the respective certification.

104.25(2) To become a certified operator, an individual shall complete a basic operator training course that has been approved by the department or alternative, equivalent training approved by the department and shall pass a departmental examination as specified by this rule. An operator certified by another state may have reciprocity subject to approval by the department.

104.25(3) A solid waste incinerator operator certification is valid from the date of issuance until June 30 of the following even-numbered year.

104.25(4) Basic operator training course. The required basic operator training course for a certified solid waste incinerator operator shall have at least 12 contact hours and shall address the following areas, at a minimum:

- a. Description of types of wastes;
- b. Incinerator design;
- c. Interpreting and using engineering plans;
- d. Incinerator operations;
- e. Environmental monitoring;
- f. Applicable laws and regulations;
- g. Permitting processes;
- h. Incinerator maintenance;
- i. Ash and residue disposal.

104.25(5) Alternative basic operator training must be approved by the department. It shall be the applicant's responsibility to submit any documentation the department may require to evaluate the equivalency of alternative training.

104.25(6) Fees.

- a. The examination fee for each examination is \$20.
- b. The initial certification fee is \$8 for each one-half year of a two-year period from the date of issuance to June 30 of the next even-numbered year.
- c. The certification renewal is \$24.
- d. The penalty fee is \$12.

104.25(7) Examinations.

a. The operator certification examinations will be based on the basic operator training course curriculum.

b. All persons wishing to take the examination required to become a certified operator of a solid waste incinerator shall complete the Operator Certification Examination Application, Form 542-1354. A listing of dates and locations of examinations is available from the department upon request. The application form requires the applicant to indicate the basic operator training course taken. Evidence of training course completion must be submitted with the application for certification. The completed application and the application fee shall be sent to the department addressed to 502 East 9th Street, Des

Moines, Iowa 50319. Application for examination must be received by the department at least 30 days prior to the date of examination.

c. A properly completed application for examination shall be valid for one year from the date the application is approved by the department.

d. Upon failure of the first examination, the applicant may be reexamined at the next scheduled examination. Upon failure of the second examination, the applicant shall be required to wait a period of 180 days before taking a subsequent examination.

e. Upon each reexamination when a valid application is on file, the applicant shall submit to the department the examination fee at least ten days prior to the date of examination.

f. Failure to successfully complete the examination within one year from the date of approval of the application shall invalidate the application.

g. Completed examinations will be retained by the department for a period of one year after which they will be destroyed.

h. Oral examinations may be given at the discretion of the department.

104.25(8) Certification.

a. All operators who passed the operator certification examination by July 1, 1991, are exempt from taking the required operator training course. Beginning July 1, 1991, all operators will be required to take the basic operator training course and pass the examination in order to become certified.

b. Application for certification must be received by the department within 30 days of the date the applicant receives notification of successful completion of the examination. All applications for certification shall be made on a form provided by the department and shall be accompanied by the certification fee.

c. Applications for certification by examination which are received more than 30 days but less than 60 days after notification of successful completion of the examination shall be accompanied by the certification fee and the penalty fee. Applicants who do not apply for certification within 60 days of notice of successful completion of the examination will not be certified on the basis of that examination.

d. For applicants who have been certified under other state mandatory certification programs, the equivalency of which has been previously reviewed and accepted by the department, certification without examination will be recommended.

e. For applicants who have been certified under voluntary certification programs in other states, certification will be considered. The applicant must have successfully completed a basic operator training course and an examination generally equivalent to the Iowa examination. The department may require the applicant to successfully complete the Iowa examination.

f. Applicants who seek Iowa certification pursuant to paragraph 104.25(8) "d" or 104.25(8) "e" shall submit an application for examination accompanied by a letter requesting certification pursuant to this subrule. Application for certification pursuant to this subrule shall be received by the department in accordance with paragraphs 104.25(8) "b" and 104.25(8) "c."

104.25(9) Renewals. All certificates shall expire every two years, on even-numbered years, and must be renewed every two years to maintain certification. Application and fee are due prior to expiration of certification.

a. Late application for renewal of a certificate may be made provided that such late application shall be received by the department or postmarked within 30 days of the expiration of the certificate. Such late application shall be on forms provided by the department and accompanied by the penalty fee and the certification renewal fee.

b. If a certificate holder fails to apply for renewal within 30 days following expiration of the certificate, the right to renew the certificate automatically terminates. Certification may be allowed at any time following such termination, provided that the applicant successfully completes an examination. The applicant must then apply for certification in accordance with subrule 104.25(8).

c. An operator may not continue to operate a solid waste incinerator after expiration of a certificate without renewal thereof.

d. Continuing education must be earned during the two-year certification period. All certified operators must earn ten contact hours per certificate during each two-year period. The two-year period will begin upon certification.

e. Only those operators fulfilling the continuing education requirements before the end of each two-year period will be allowed to renew their certificates. The certificates of operators not fulfilling the continuing education requirements shall be void upon expiration, unless an extension is granted.

f. All activities for which continuing education credit will be granted must be related to the subject matter of the particular certificate to which the credit is being applied.

g. The department may, in individual cases involving hardship or extenuating circumstances, grant an extension of time of up to three months within which the applicant may fulfill the minimum continuing education requirements. Hardship or extenuating circumstances include documented health-related confinement or other circumstances beyond the control of the certified operator which prevent attendance at the required activities. All requests for extensions must be made 60 days prior to expiration of certification.

h. The certified operator is responsible for notifying the department of the continuing education credits earned during the period. The continuing education credits earned during the period shall be shown on the application for renewal.

i. A certified operator shall be deemed to have complied with the continuing education requirements of this rule during periods that the operator serves honorably on active duty in the military service; or for periods that the operator is a resident of another state or district having a continuing education requirement for operators and meets all the requirements of that state or district for practice there; or for periods that the person is a government employee working as an operator and is assigned to duty outside of the United States; or for other periods of active practice and absence from the state approved by the department.

104.25(10) Discipline of certified operators.

a. Disciplinary action may be taken on any of the following grounds:

(1) Failure to use reasonable care or judgment or to apply knowledge or ability in performing the duties of a certified operator. Duties of certified operators include compliance with rules and permit conditions applicable to incinerator operation.

(2) Failure to submit required records of operation or other reports required under applicable permits or rules of the department, including failure to submit complete records or reports.

(3) Knowingly making any false statement, representation, or certification on any application, record, report or document required to be maintained or submitted under any applicable permit or rule of the department.

b. Disciplinary sanctions allowable are:

(1) Revocation of a certificate.

(2) Probation under specified conditions relevant to the specific grounds for disciplinary action. Additional education or training or reexamination may be required as a condition of probation.

c. The procedure for discipline is as follows:

(1) The department shall initiate disciplinary action. The commission may direct that the department investigate any alleged factual situation that may be grounds for disciplinary action under paragraph 104.25(10)“*a*” and report the results of the investigation to the commission.

(2) A disciplinary action may be prosecuted by the department.

(3) Written notice shall be given to an operator against whom disciplinary action is being considered. The notice shall state the informal and formal procedures available for determining the matter. The operator shall be given 20 days to present any relevant facts and indicate the operator’s position in the matter and to indicate whether informal resolution of the matter may be reached.

(4) An operator who receives notice shall communicate verbally, in writing, or in person with the department, and efforts shall be made to clarify the respective positions of the operator and department.

(5) The applicant’s failure to communicate facts and positions relevant to the matter by the required date may be considered when appropriate disciplinary action is determined.

(6) If agreement as to appropriate disciplinary sanction, if any, can be reached with the operator and the commission concurs, a written stipulation and settlement between the department and the operator shall be entered into. The stipulation and settlement shall recite the basic facts and violations alleged, any facts brought forth by the operator, and the reasons for the particular sanctions imposed.

(7) If an agreement as to appropriate disciplinary action, if any, cannot be reached, the department may initiate formal hearing procedures. Notice and formal hearing shall be in accordance with 561—Chapter 7 related to contested and certain other cases pertaining to licensee discipline.

104.25(11) Revocation of certificates. Upon revocation of a certificate, application for certification may be allowed after two years from the date of revocation. Any such applicant must successfully complete an examination and be certified in the same manner as a new applicant.

104.25(12) A temporary operator of a solid waste incinerator may be designated for a period of six months when an existing certified operator is no longer available to the facility. The facility must make application to the department, explain why a temporary certification is needed, identify the temporary operator, and identify the efforts which will be made to obtain a certified operator. A temporary operator designation shall not be approved for greater than a six-month period except for extenuating circumstances. In any event, not more than one six-month extension to the temporary operator designation may be granted. Approval of a temporary operator designation may be rescinded for cause as set forth in subrule 104.25(10).

¹ October 1, 2007, effective date of rule 567—104.25(455B) was delayed 70 days by the Administrative Rules Review Committee at its meeting held September 11, 2007.

567—104.26(455D) Financial assurance for solid waste processing facilities. Permitted solid waste processing facilities must obtain and submit a financial assurance instrument to the department for preprocessed and postprocessed waste storage in accordance with this rule. The financial assurance instrument shall provide monetary funds to properly dispose of any materials that may remain at a facility due to the owner's or operator's failure to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

104.26(1) *No permit without financial assurance.* The department shall not issue or renew a permit to an owner or operator of a solid waste processing facility until a financial assurance instrument has been submitted to and approved by the department.

104.26(2) *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 solid waste processing facility or application for a permit renewal, whichever occurs first. 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.

104.26(3) *Use of one financial assurance instrument for multiple permitted activities.* Solid waste processing facilities 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.

104.26(4) *Financial assurance amounts required.* The estimate submitted to the department must be certified by an Iowa-licensed professional engineer and must account for at least the following factors determined by the department to be minimal necessary costs for closure:

a. The cost of hiring a third party to properly clean and decontaminate all equipment, storage facilities, holding areas and drainage collection systems pursuant to subrule 104.11(1). This estimate shall include the cost of properly disposing of a one-week volume of washwater from the processing facility. If the facility utilizes washwater storage tanks, then this estimate shall assume that the storage tanks are full and add that volume to the one-week volume.

b. Third-party labor and transportation costs and total tip fees to properly dispose of all preprocessed and postprocessed waste equal to the maximum storage capacity of the processing facility

pursuant to subrule 104.11(2). If materials are temporarily stored on site in transportation vehicles or waste receptacles, then this estimate shall include disposal costs for the maximum number of transportation vehicles and waste receptacles that can be on site at any one time.

c. The costs for maintaining financial assurance pursuant to any other provisions of 567—Chapters 100 to 123, if any, in accordance with subrule 104.26(3).

104.26(5) *Acceptable financial assurance instruments.* The financial assurance instrument shall be established in an amount equal to the cost estimate prepared in accordance with subrule 104.26(4) 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 a solid waste processing facility or 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 the provision of 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 solid waste processing facility 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 solid waste processing 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 preprocessed and postprocessed waste 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 104.26(5) "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 104.26(5) "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 104.26(4); 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 104.26(5)“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 104.26(5)“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 waste 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 104.26(5) "f"(2) "2," if applicable, and the requirements of subparagraphs 104.26(5) "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 104.26(4); and that provides evidence and certifies that the local government meets the conditions of subparagraphs 104.26(5) "f"(2), (3), (4) and (5).

104.26(6) *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 rule 104.11(455B) and subrule 104.26(4).

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 section 455B.304.

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- ¹ Subrules 104.10(10) and 104.10(11) rescinded, subrules 104.10(12) to 104.10(14) renumbered as 104.10(10) to 104.10(12), IAB 9/12/84.
- ² Effective date of 567—104.25(455B) delayed 70 days by the Administrative Rules Review Committee at its meeting held September 11, 2007.