567—101.707(455B) Allowable financial assurance instruments. The instruments used to demonstrate financial assurance, as required by Iowa Code sections 455B.304(8) and 455B.306(9), must ensure that the funds necessary to meet the costs of closure, post-closure care, and corrective action for known releases will be available whenever the funds are needed. The instruments used shall not be canceled, revoked, disbursed, released, or allowed to terminate without the approval of the department. Owners or operators must choose from options in 101.707(1) through 101.707(9), as provided for in Iowa Code section 455B.301(9)*"c."*

101.707(1) *Trust fund.*

a. An owner or operator may demonstrate financial assurance for closure, post-closure care and corrective action, whichever is applicable, by establishing a trust fund that conforms to the requirements of this subrule. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. The owner or operator must submit to the department a copy of the executed trust agreement.

b. For a trust fund used to demonstrate financial assurance for proper closure at a sanitary disposal project that is not sanitary landfill, there is no pay-in period as defined in 101.707(1)*"c."* Instead, the trust fund shall be in an amount equal to or greater than the amount specified in 101.703(3).

c. Payments into the trust fund must be made annually by the owner or operator over ten years or over the remaining permitted life of the sanitary landfill, whichever is shorter, in the case of a trust fund for closure and post-closure care, or over one-half of the estimated length of the corrective action remedy in the case of response to a known release. This period is referred to as the pay-in period.

d. For a trust fund used to demonstrate financial assurance for closure and post-closure care at a sanitary landfill, the first payment into the fund must be at least equal to the amount specified in 567—101.710(455B) for closure and post-closure care, divided by the number of years in the pay-in period, as defined in 101.707(1)*"c."* The amount of subsequent payments must be determined by the following formula.

$$\text{Next Payment} = \frac{CE - B}{Y}$$

Where:

"CE" is the amount specified in 567—101.710(455B) for closure and post-closure care (updated for inflation or other changes).

"B" is the balance of the trust fund at the close of the previous fiscal year.

"Y" is the number of years remaining in the pay-in period.

e. Unless otherwise authorized by the department, for a trust fund used to demonstrate financial assurance for corrective action at a sanitary landfill, the first payment into the trust fund must be at least equal to one-half of the amount specified in 101.706(1) for corrective action, divided by the number of years in the corrective action pay-in period, as defined in 101.707(1)*"c."* The amount of subsequent payments must be determined by the following formula.

$$\text{Next Payment} = \frac{RB - V}{Y}$$

Where:

"RB" is the most recent estimate of the required trust fund balance for corrective action.

"V" is the current value of the trust fund at the close of the previous fiscal year.

"Y" is the number of years remaining in the pay-in period.

f. The initial payment into the trust fund must be made prior to the initial receipt of solid waste at the sanitary landfill or before the cancellation of an alternative financial assurance instrument, in the case of closure and post-closure care; or no later than 120 days after the selection of the corrective action remedy.

g. The owner or operator, or other person authorized to conduct closure, post-closure care, and corrective action activities, may request reimbursement from the trustee for these expenditures, including partial closure, as they are incurred. The owner or operator must submit to the department documentation of the justification for reimbursement and verification that reimbursement has been received.

h. After the pay-in period has been completed for a sanitary landfill, the trust fund shall be adjusted annually to correct any deficiency of the fund with respect to the updated cost estimates and may be adjusted annually should the balance in the fund exceed the updated cost estimates.

i. The trust fund may be terminated by the owner or operator only if the owner or operator substitutes alternative financial assurance as specified in this rule or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this division.

101.707(2) *Surety bond guaranteeing payment or performance.*

a. An owner or operator may demonstrate financial assurance for closure and post-closure care by obtaining a payment or performance surety bond, which conforms to the requirements of this subrule. An owner or operator may demonstrate financial assurance for corrective action by obtaining a performance bond, which conforms to the requirements of this subrule. The bond must be effective and all required submissions made to the department prior to the initial receipt of solid waste or before the cancellation of an alternative financial assurance instrument, in the case of closure and post-closure care, or, in the case of corrective action, no later than 120 days after the selection of the corrective action remedy. The owner or operator must submit to the department a copy of the executed surety bond and subsequent proof of continuance in accordance with 567—101.703(455B) through 567—101.706(455B). The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

b. The penal sum of the bond must be in an amount at least equal to the amount specified in 567—101.710(455B) for closure, post-closure care, and corrective action, whichever is applicable.

c. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond and also upon notice from the department pursuant to 101.707(2)*"f."*

d. The owner or operator must also establish a standby trust fund. The standby trust fund must meet the requirements of 101.707(1), except the requirements for initial payment and subsequent annual payments specified in 101.707(1)*"c"* through *"f."*

e. Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund. Payments from the trust fund must be authorized by the trustee pursuant to 101.707(1) *"g."*

f. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 90 days, provide to the department adequate proof of alternative financial assurance, notice from the surety of withdrawal of the cancellation, or proof of a deposit into the standby trust fund of a sum equal to the amount of the bond. If the owner or operator has not complied with this paragraph within the 90-day time period, this shall constitute a failure to perform and the department shall notify the surety, prior to the expiration of the 120-day notice period, that such a failure has occurred. The provision of funds by the issuer of the surety bond shall be considered an issuance of a loan to the owner or operator, and the terms of that loan shall be governed by the surety bond or subsequent agreement between those parties.

g. The owner or operator may cancel the bond only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this division.

101.707(3) *Letter of credit.*

a. An owner or operator may demonstrate financial assurance for closure, post-closure care, and corrective action, whichever is applicable, by obtaining an irrevocable standby letter of credit, which conforms to the requirements of this subrule. The letter of credit must be effective and all required submissions made to the department prior to the initial receipt of solid waste or before the cancellation of an alternative financial assurance instrument, in the case of closure and post-closure care, or, in the case of corrective action, no later than 120 days after the selection of the corrective action remedy. The owner or operator must submit to the department a copy of the executed letter of credit, and subsequent proof of continuance in accordance with 567—101.703(455B) through 567—101.706(455B). The issuing institution must be an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

b. A letter from the 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.

c. The owner or operator must also establish a standby trust fund. The standby trust fund must meet the requirements of 101.707(1), except the requirements for initial payment and subsequent annual payments specified in 101.707(1)*"c"* through *"f."*

d. Payments made under the terms of the letter of credit will be deposited by the issuing institution directly into the standby trust fund. Payments from the trust fund must be authorized by the trustee pursuant to 101.707(1)*"g."*

e. The letter of credit must be irrevocable and issued for a period of at least one year in an amount at least equal to the amount specified in 567—101.710(455B) for closure, post-closure care, and corrective action, whichever is applicable. 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 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 90 days, provide to the department adequate proof of alternative financial assurance, notice from the issuing institution of withdrawal of the cancellation, or proof of a deposit into the standby trust fund of a sum equal to the amount of the letter of credit. If the owner or operator has not complied with this paragraph within the 90-day time period, this shall constitute a failure to perform and the department shall notify the issuer of the letter of credit, prior to the expiration of the 120-day notice period, that such a failure has occurred. 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.

f. The owner or operator may cancel the letter of credit only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this division.

101.707(4) *Insurance.*

a. An owner or operator may demonstrate financial assurance for closure and post-closure care, whichever is applicable, by obtaining insurance that conforms to the requirements of this subrule. The insurance must be effective and all required submissions made to the department prior to the initial receipt of solid waste or before the cancellation of an alternative financial assurance instrument, in the case of closure and post-closure care. At a minimum, the insurer must be licensed to transact the business of insurance or be eligible to provide insurance as an excess or surplus lines insurer in Iowa. The owner or operator must submit to the department a copy of the executed insurance policy and subsequent proof of continuance in accordance with 567—101.703(455B) through 567—101.706(455B).

b. The closure or post-closure care insurance policy must guarantee that funds will be available to close the sanitary disposal project whenever final closure occurs or to provide post-closure care for a sanitary landfill whenever the post-closure care period begins, whichever is applicable. The policy must also guarantee that once closure or post-closure care begins, the insurer will be responsible for the paying out of funds to the owner or operator or other person authorized to conduct closure or post-closure care, up to an amount equal to the face amount of the policy.

c. The insurance policy must be issued for a face amount at least equal to the amount specified in 567—101.710(455B) for closure and post-closure care, whichever is applicable. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

d. An owner or operator, or any other person authorized to conduct closure or post-closure care, may receive reimbursements for closure or post-closure care expenditures, including partial closure, whichever is applicable. Requests for reimbursement will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure or post-closure care. The owner or operator must submit to the department documentation of the justification for reimbursement and verification that the reimbursement has been received.

e. Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused.

f. The insurance policy must provide that the insurer may not cancel, terminate, or fail to renew the policy, except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner or operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 90 days, provide to the department adequate proof of alternative financial assurance, notice from the insurer of withdrawal of the cancellation, or proof of a deposit of a sum equal to the amount of the insurance coverage into either the closure and post-closure care account(s) established pursuant to Iowa Code section 455B.306(9)*"b"* or a standby trust fund that meets the requirements of 101.707(1), except the requirements for initial payment and subsequent annual payments specified in 101.707(1)*"c"* through *"f."* If the owner or operator has not complied with this paragraph within the 90-day time period, this shall constitute a failure to perform and shall be a covered event pursuant to the terms of the insurance policy. A failure by the owner or operator to comply with this paragraph within the 90-day time period shall make the insurer liable for the closure and post-closure care of the covered facility up to the amount of the policy limits, which shall be equal to the most recently submitted cost estimates.

g. For insurance policies providing coverage for post-closure care, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week Treasury securities.

h. The owner or operator may cancel the insurance policy only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this division.

101.707(5) *Corporate financial test.* An owner or operator that satisfies the requirements of this subrule may demonstrate financial assurance for closure, post-closure care, and corrective action, whichever is applicable, up to the amount specified below.

a. *Financial component.* The owner or operator must satisfy the requirements of 101.707(5)*"a"*(1) through *"a"*(3) to meet the financial component of the corporate financial test.

(1) The owner or operator 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;

2. A ratio of less than 1.5 comparing total liabilities to net worth (net worth calculations may not include future permitted capacity of a subject landfill as an asset); 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.

(2) The tangible net worth (excluding future permitted capacity of a subject sanitary landfill) of the owner or operator must be greater than:

1. The sum of the current closure, post-closure care, and corrective action cost estimates, whichever is applicable, and any other environmental obligations, including guarantees covered by a financial test, except as provided in 101.707(5)*"a"*(2)"2." For sanitary landfill owners or operators, this sum shall include an additional $10 million.

2. For sanitary landfill owners or operators, a net worth of $10 million plus the amount of any guarantees that have not been recognized as liabilities on the financial statements, provided that all of the current closure, post-closure care, and corrective action costs and any other environmental obligations covered by a financial test are recognized as liabilities on the owner's or operator's audited financial statements and subject to the approval of the department.

(3) The owner or operator must have located in the United States assets (excluding future permitted capacity of a subject sanitary landfill) amounting to at least the sum of current closure, post-closure care, and corrective action cost estimates, whichever is applicable, and any other environmental obligations covered by a financial test as described in 101.707(5)*"f."*

b. Recordkeeping and reporting requirements. The owner or operator must submit the following records to the department prior to the initial receipt of solid waste or before cancellation of an alternative financial assurance instrument, in the case of closure and post-closure care, or no later than 120 days after the selection of the corrective action remedy.

(1) A letter signed by the owner's or operator's chief financial officer that:

1. Lists all the current cost estimates covered by a financial test, including but not limited to cost estimates required by 567—101.703(455B) through 567—101.706(455B); cost estimates required for municipal solid waste landfills pursuant to 40 CFR Part 258, if applicable; 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

2. Provides evidence demonstrating that the firm meets the conditions of 101.707(5)*"a."*

(2) A copy of the Iowa-licensed certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the Iowa-licensed 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 financial test, the owner or operator must provide alternative financial assurance that meets the requirements of 567—101.707(455B).

(3) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies 101.707(5)*"a"*(1)"2" or "3" that differs from data in the audited financial statements referred to in 101.707(5)*"b"*(2) or any other audited financial statement or data filed with the U.S. Securities and Exchange Commission, a special report from the owner's or operator's Iowa-licensed certified public accountant to the owner or operator. The special report shall be based on an agreed-upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

(4) If the chief financial officer's letter provides a demonstration that the owner or operator has assured for environmental obligations as provided in 101.707(5)*"a"*(2)"2," a report from the Iowa-licensed certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements, that documents how these obligations have been measured and reported, and that verifies that the tangible net worth of the owner or operator is at least the amount of any guarantees provided. For sanitary landfill owners or operators, this sum shall include an additional $10 million.

c. Cease submission of information. The owner or operator may cease the submission of the information required by 101.707(5) only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this division.

d. Financial test. The owner or operator must satisfy the requirements of the financial test at the close of each fiscal year. If the owner or operator no longer meets the requirements of the corporate financial test, the owner or operator must immediately notify the department in writing and, within 90 days following the close of the owner's or operator's fiscal year, obtain alternative financial assurance that meets the requirements of 567—101.707(455B) and submit the financial assurance documentation to the department for approval.

e. Financial condition. The department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of 101.707(5)*"a,"* require at any time the owner or operator to provide reports of its financial condition in addition to, or including, current financial test documentation as specified in 101.707(5)*"b."* If the department finds that the owner or operator no longer meets the requirements of 101.707(5)*"a,"* the owner or operator must provide alternative financial assurance that meets the requirements of 567—101.707(455B) within 90 days of written notification by the department.

f. Calculation of costs to be assured. When calculating the current cost estimates for closure, post-closure care, corrective action, or the sum of the combination of such costs to be covered, and any other environmental obligations assured by a financial test referred to in 101.707(5), the owner or operator must include cost estimates required for 567—101.703(455B) through 567—101.706(455B) and cost estimates required for the following environmental obligations, if the owner or operator assures them through a financial test: municipal solid waste landfills pursuant to 40 CFR Part 258; UIC facilities under 40 CFR Part 144; petroleum underground storage tank facilities under 40 CFR Part 280; PCB storage facilities under 40 CFR Part 761; and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265.

101.707(6) *Local government financial test.* An owner or operator that satisfies the requirements of this subrule may demonstrate financial assurance for closure, post-closure care, and corrective action, whichever is applicable, up to the amount specified below.

a. Financial component.

(1) The local government owner or operator must satisfy one of the following conditions.

1. If the owner or operator has outstanding, rated general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, the owner or operator 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 owner or operator must satisfy both of the following financial ratios based on the owner's or operator'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.

(2) The owner or operator must prepare its financial statements in conformity with Generally Accepted Accounting Principles or Other Comprehensive Bases of Accounting for governments and have its financial statements audited by an Iowa-licensed 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.

(3) A local government is not eligible to assure its obligations under 101.707(6) if it:

1. Is currently in default on any outstanding general obligation bonds;

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

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

4. Receives an adverse opinion or disclaimer of opinion from the Iowa-licensed certified public accountant or office of the auditor of the state of Iowa auditing its financial statement as required under 101.707(6)*"a"*(2). 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 local government financial test, the owner or operator must provide alternative financial assurance that meets the requirements of 567—101.707(455B).

b. Public notice component. The local government owner or operator must include disclosure of the closure and post-closure care costs assured through the financial test in its next comprehensive annual financial report, prior to the initial receipt of solid waste or prior to cancellation of an alternative financial assurance instrument, whichever is later. Disclosure must include the nature and source of closure and post-closure care requirements, the reported liability at the balance sheet date, the estimated total closure and post-closure care cost remaining to be recognized, the percentage of landfill capacity used to date, and the estimated landfill life in years, if applicable. A reference to corrective action costs must be placed in the next comprehensive annual financial report after the selection of the corrective action remedy. For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the facility's operating record until issuance of the next available comprehensive annual financial report if timing does not permit the reference to be incorporated into the most recently issued comprehensive annual financial report or budget. For closure and post-closure care costs at municipal solid waste sanitary landfills, conformance with Governmental Accounting Standards Board Statement 18 assures compliance with this public notice component.

c. Recordkeeping and reporting requirements.

(1) The local government owner or operator must submit to the department the following items.

1. A letter signed by the local government's chief financial officer that lists all the current cost estimates covered by a financial test, as described in 111.707(6)*"d,"* that provides evidence and certifies that the local government meets the conditions of 101.707(6)*"a"*(1) through *"a"*(3) and certifies that the local government meets the conditions of 101.707(6)*"b"* and *"d"*; and

2. The local government's independently audited year-end financial statements for the latest fiscal year, including the unqualified opinion of the auditor who must be an Iowa-licensed certified public accountant or the office of the auditor of the state of Iowa. The comprehensive annual financial report shall indicate compliance with the financial ratios required by 101.707(6)*"a"*(1)"2," if applicable, and the requirements of 101.707(6)*"a"*(2) and 101.707(6)*"a"*(3)"3" and "4."

(2) The items required in 101.707(6)*"c"*(1) must be submitted to the department prior to the initial receipt of solid waste or prior to the cancellation of an alternative financial assurance instrument, in the case of closure and post-closure care, or, in the case of corrective action, not later than 120 days after the selection of the corrective action remedy.

(3) The local government owner or operator may cease the submission of the information required by 101.707(6) only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this division.

(4) The local government owner or operator must satisfy the requirements of the financial test at the close of each fiscal year. If the owner or operator no longer meets the requirements of the local government financial test, the owner or operator must immediately notify the department in writing and, within 90 days following the close of the owner's or operator's fiscal year, obtain alternative financial assurance that meets the requirements of 567—101.707(455B) and submit the financial assurance documentation to the department for approval.

(5) The department may, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of 101.707(6)*"a,"* require at any time the owner or operator to provide reports of its financial condition in addition to, or including, current financial test documentation as specified in 101.707(6)*"c."* If the department finds that the owner or operator no longer meets the requirements of 101.707(6)*"a,"* the owner or operator must provide alternative financial assurance that meets the requirements of 567—101.707(455B) within 90 days of written notification by the department.

d. Calculation of costs to be assured. The portion of the closure, post-closure care, and corrective action costs for which an owner or operator may assure under this subrule is determined as follows.

(1) If the local government owner or operator does not assure other environmental obligations through a financial test, the owner or operator may assure closure, post-closure care, and corrective action costs that equal up to 43 percent of the local government's total annual revenue.

(2) If the local government owner or operator assures other environmental obligations through a financial test, including those associated with municipal solid waste landfills pursuant to 40 CFR Part 258; UIC facilities under 40 CFR Part 144.62; petroleum underground storage tank facilities under 40 CFR Part 280; PCB storage facilities under 40 CFR Part 761; and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, the owner or operator must add those costs to the closure, post-closure care, and corrective action costs it seeks to assure under this subrule. The total that may be assured must not exceed 43 percent of the local government's total annual revenue.

(3) The owner or operator must obtain an alternative financial assurance instrument for those costs that exceed the limits set in 101.707(6)*"d"*(1) and *"d"*(2).

101.707(7) *Corporate guarantee.* An owner or operator that satisfies the requirements of this subrule may demonstrate financial assurance for closure, post-closure care, and corrective action, whichever is applicable, by obtaining a written guarantee.

a. *Affiliation.* The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a substantial business relationship with the owner or operator. The guarantor must meet the requirements of the corporate financial test in 101.707(5) and must comply with the terms of the written guarantee. A certified copy of the executed guarantee must be placed in the facility's operating record along with copies of the letter from the guarantor's chief financial officer and the independent certified public accountant's opinion(s). If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter from the guarantor's chief financial officer must describe the value received in consideration of the guarantee. If the guarantor is a firm with a substantial business relationship with the owner or operator, this letter must describe this substantial business relationship and the value received in consideration of the guarantee.

b. *Terms of the written guarantee.* The guarantee must be effective and all required submissions made to the department prior to the initial receipt of solid waste or before the cancellation of an alternative financial assurance instrument, in the case of closure and post-closure care, or, in the case of corrective action, no later than 120 days after the selection of the corrective action remedy. The guarantee must provide that:

(1) If the owner or operator fails to perform closure, post-closure care, and corrective action of a facility covered by the guarantee, or fails to obtain alternative financial assurance within 90 days of notice of intent to cancel pursuant to 101.707(7)*"b"*(2) and *"b"*(3), the guarantor will:

1. Perform, or pay a third party to perform, closure, post-closure care, and corrective action as required (performance guarantee); or

2. Establish a fully funded trust fund as specified in 101.707(1) in the name of the owner or operator (payment guarantee).

(2) The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements of this division unless the guarantor sends prior notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the department, as evidenced by the return receipts.

(3) If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the department, provide to the department adequate proof of alternative financial assurance, notice from the guarantor of withdrawal of the cancellation, or proof of a deposit into a trust fund pursuant to 101.707(1) of a sum equal to the amount of the corporate guarantee. If the owner or operator fails to comply with the requirements of this subparagraph within the 90-day period, the guarantor must provide that alternative financial assurance prior to cancellation of the corporate guarantee.

c. *Recordkeeping and reporting requirements.*

(1) The owner or operator must submit to the department a certified copy of the executed guarantee along with the items required under 101.707(5)*"b."*

(2) The owner or operator shall no longer be required to submit the items specified in 101.707(7)*"c"*(1) when proof of alternative financial assurance has been submitted to the department or the owner or operator is no longer required to demonstrate financial responsibility in accordance with this division.

(3) If a corporate guarantor no longer meets the requirements of 101.707(5), the owner or operator must immediately notify the department in writing and, within 90 days of notification, submit to the department proof of alternative financial assurance. If the owner or operator fails to obtain alternative financial assurance within the 90-day time period, the guarantor must provide that alternative financial assurance within the next 30 days.

101.707(8) *Local government guarantee.* An owner or operator that satisfies the requirements of this subrule may demonstrate financial assurance for closure, post-closure care, and corrective action, whichever is applicable, 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.

a. Financial component. The guarantor must meet the requirements of the local government financial test in 101.707(6) and must comply with the terms of the written guarantee.

b. Terms of the written guarantee. The guarantee must be effective and all required submissions made to the department prior to the initial receipt of solid waste or before the cancellation of an alternative financial assurance instrument, in the case of closure and post-closure care, or, in the case of corrective action, no later than 120 days after the selection of the corrective action remedy. The guarantee must provide that:

(1) If the owner or operator fails to perform closure, post-closure care, and corrective action of a facility covered by the guarantee, or fails to obtain alternative financial assurance within 90 days of notice of intent to cancel pursuant to 101.707(8)*"b"*(2) and *"b"*(3), the guarantor will:

1. Perform, or pay a third party to perform, closure, post-closure care, and corrective action as required (performance guarantee); or

2. Establish a fully funded trust fund as specified in 101.707(1) in the name of the owner or operator (payment guarantee).

(2) The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements of this division unless the guarantor sends prior notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the department, as evidenced by the return receipts.

(3) If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the department, provide to the department adequate proof of alternative financial assurance, notice from the guarantor of withdrawal of the cancellation, or proof of a deposit into a trust fund pursuant to 101.707(1) of a sum equal to the amount of the local government guarantee. If the owner or operator fails to comply with the requirements of this subparagraph within the 90-day period, the guarantor must provide that alternative financial assurance prior to cancellation of the local government guarantee.

c. Recordkeeping and reporting requirements.

(1) The owner or operator must submit to the department a certified copy of the executed guarantee along with the items required under 101.707(6)*"c."*

(2) The owner or operator shall no longer be required to submit the items specified in 101.707(8)*"c"*(1) when proof of alternative financial assurance has been submitted to the department or the owner or operator is no longer required to demonstrate financial responsibility in accordance with this division.

(3) If a local government guarantor no longer meets the requirements of 101.707(6), the owner or operator must immediately notify the department in writing and, within 90 days of notification, submit to the department proof of alternative financial assurance. If the owner or operator fails to obtain alternative financial assurance within the 90-day period, the guarantor must provide that alternative financial assurance within the next 30 days.

101.707(9) *Local government dedicated fund.*

a. The owner or operator of a publicly owned sanitary disposal project, or local government serving as a guarantor, may demonstrate financial assurance for closure, post-closure care, and corrective action, whichever is applicable, by establishing a dedicated fund that conforms to the requirements of this subrule. The owner or operator must submit to the department a copy of the executed local government dedicated fund agreement.

b. The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, resolution, or order to pay for closure, post-closure care and corrective action, whichever is applicable, arising from the operation of the sanitary disposal project, and shall be funded for the full amount of coverage or funded for part of the required amount of coverage and used in combination with another instrument(s) that provides the remaining coverage.

c. For a local government dedicated fund used to demonstrate financial assurance for proper closure at a sanitary disposal project that is not sanitary landfill, there is no pay-in period as defined in 101.707(9) *"d."* Instead, the local government dedicated fund shall be in an amount equal to or greater than the amount specified in 101.703(3).

d. Payments into the local government dedicated fund must be made annually by the owner or operator over ten years or over the remaining permitted life of the sanitary landfill, whichever is shorter, in the case of a dedicated fund for closure and post-closure care or over one-half of the estimated length of the corrective action remedy in the case of a response to a known release. This period is referred to as the "pay-in period."

e. For a local government dedicated fund used to demonstrate financial assurance for closure and post-closure care at a sanitary landfill, the first payment into the dedicated fund must be at least equal to the amount specified in 567—101.710(455B) for closure and post-closure care, divided by the number of years in the pay-in period, as defined in 101.707(9)*"d."* The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = \frac{CE - B}{Y}$$

Where:

"CE" is the amount specified in 567—101.710(455B) for closure and post-closure care (updated for inflation or other changes).

"B" is the balance of the dedicated fund at the close of the previous fiscal year.

"Y" is the number of years remaining in the pay-in period.

f. Unless otherwise authorized by the department, for a local government dedicated fund used to demonstrate financial assurance for corrective action at a sanitary landfill, the first payment into the dedicated fund must be at least equal to one-half of the amount specified in 101.706(1) for corrective action, divided by the number of years in the corrective action pay-in period, as defined in 101.707(9)*"d."* The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = \frac{RB - V}{Y}$$

Where:

"RB" is the most recent estimate of the required dedicated fund balance for corrective action.

"V" is the value of the dedicated fund at the close of the previous fiscal year.

"Y" is the number of years remaining in the pay-in period.

g. The initial payment into the local government dedicated fund must be made prior to the initial receipt of solid waste at a sanitary landfill or before the cancellation of an alternative financial assurance instrument, in the case of closure and post-closure care, or no later than 120 days after the selection of the corrective action remedy.

h. After the pay-in period has been completed for a sanitary landfill, the dedicated fund shall be adjusted annually to correct any deficiency of the dedicated fund with respect to the updated cost estimates and may be adjusted annually should the balance in the dedicated fund exceed the updated cost estimates.

i. The local government dedicated fund may be terminated by the owner or operator only if the owner or operator substitutes alternative financial assurance as specified in this rule or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this division.

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