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**STATE OF VERMONT
AGENCY OF NATURAL RESOURCES
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
WASTE MANAGEMENT DIVISION
SOLID WASTE MANAGEMENT PROGRAM**

**PROCEDURE ADDRESSING CORRECTIVE ACTION
&
FINANCIAL RESPONSIBILITY FOR CORRECTIVE ACTION
AT SOLID WASTE LANDFILLS**

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PROCEDURE ADDRESSING
CORRECTIVE ACTION
AND
FINANCIAL RESPONSIBILITY FOR CORRECTIVE ACTION

I. Introduction

This procedure defines the process for initiating corrective action at a solid waste discrete disposal facility ("facility"). The procedure also contains the requirements to demonstrate financial responsibility in order to perform the corrective action.

On October 9, 1993, the RCRA Subtitle D regulations, 40 CFR Part 258 went into effect. The effective date was delayed until April 9, 1994, for any existing municipal solid waste landfill ("MSWLF") units that disposed of 100 tons or less of waste per day. Section 258.73 requires owners and operators of MSWLFs who are required to perform corrective action for groundwater impacts to develop a estimate of costs to perform the approved corrective action. Further, the owner or operator must establish financial assurance for the corrective action.

Current Vermont law requires a solid waste management facility permittee to provide evidence of financial responsibility as determined by the Secretary to insure that, "upon abandonment, cessation, or interruption of the operation of the facility, adequate funds are available to undertake all appropriate measures to prevent present and future damage to the public health and safety and to the environment." (See, 10 V.S.A. §6611). A situation requiring corrective action or the performance of a corrective action itself is considered, minimally, to be an interruption of facility operations.

Section 6-311 of the Solid Waste Management Rules allows the Secretary to require the operator of a solid waste management facility to perform corrective action, including removal or other remedial actions if the operation poses a threat to public health or safety, or the environment.

Corrective action for ground water impacts shall be considered a "response" under the Procedure Addressing Ground Water Quality Monitoring and Responses When a Ground Water Standard is Reached or Exceeded at Solid Waste Landfills ("Ground Water Procedure"). Permittees required to propose a response under Section (F) of the Ground Water Procedure shall also be required to show evidence of financial responsibility in accordance with this procedure.

This revised procedure supersedes the, January 11, 1995, Procedure Addressing Corrective Action and Financial Responsibility for Corrective Action at Solid Waste Landfills. The revised procedure incorporates only minor, administrative revisions.

II. Definitions

The following definition is hereby adopted as part of this procedure and should be referred to as necessary.

Corrective Action means any measures of a facility permittee, above and beyond normal facility operation and maintenance, necessary to prevent significant damage to the public health and safety and to the environment.

III. Corrective Action

- A. The Secretary shall notify the facility permittee in writing that corrective action is required.
- B. Within a timeframe established by the Secretary of not more than one-hundred and twenty (120) days, all permittees required to perform corrective action shall:
 - (1) Submit a corrective action plan to include, but not be limited to:
 - (a) a description of the actions necessary to prevent present and future damage to public health and safety and the environment;
 - (b) an estimate of the quantities of labor, materials, and testing necessary to perform the corrective action;
 - (c) a timeframe for commencement and conclusion of the action;
 - (d) a plan for public notification of the proposed corrective action; and
 - (e) a plan for periodic reporting to the Secretary the effectiveness of the ongoing action.
 - (2) Submit a cost estimate based on the work required for a third party contractor to effect the corrective action.
 - (3) Provide evidence of financial responsibility for corrective action in accordance with Section (IV)(A) below for private facilities or Section (IV)(B) below for public facilities.

The corrective action plan, cost estimate, and financial responsibility instruments shall be conditioned in the facility certification or other operating authority.

The corrective action plan may be amended, subject to the approval of the Secretary, at any time during the ongoing action to reflect changes in the method or schedule of remediation. Any modification to the plan shall be accompanied by a revised cost estimate.

- C. Within thirty (30) days of completing the required corrective action plan, the permittee shall;
- (1) certify to the Secretary that the action was successful in achieving the objectives of the plan. Or, in the event the corrective action was inadequate;
 - (2) submit a report to the Secretary addressing the cause of the significance of the inadequacy, and propose an alternative corrective action plan as outlined in Section (III)(B)(1) above.

Certification that the corrective action is complete shall be acknowledged by the Secretary in writing.

IV. Financial Responsibility for Corrective Action

- A. **Private Facilities** -- The following financial responsibility requirements apply to the permittees of private facilities required by the Secretary to perform corrective action in accordance with this procedure, or to implement a response in accordance with the Ground Water Procedure.
- (1) Evidence of financial responsibility for private facilities shall be established within the timeframe specified under Section (III)(B), and shall be in one or a combination of the following forms:
 - (a) a surety bond guaranteeing performance of the corrective action;
 - (b) an irrevocable stand-by letter of credit;
 - (c) a financial test and corporate guarantee, as determined appropriate by the Secretary;
 - (d) other financial responsibility instruments that the Secretary may deem appropriate.

- (2) The content of any financial responsibility instrument must meet the standards and requirements specified in Appendix A of this Procedure.
- (3) Financial responsibility instruments shall be in the amount of the cost estimate for corrective action as specified in (III)(B)(2) of this procedure or Section (F)(3) of the Ground Water Procedure, as applicable.
- (4) The permittee must maintain financial responsibility equal to or greater than the required cost estimates at all times except as provided in this subsection. The permittee has ninety (90) days to increase the total amount of financial responsibility so as to equal the required cost estimates after any of the following:
 - (a) an increase in the required cost estimates;
 - (b) a determination by the Secretary that the permittee no longer meets the gross revenue or financial test; or
 - (c) notification by the permittee that he or she intends to substitute alternative financial responsibility for self-insurance.
- (5) An permittee may satisfy the requirements of this section by establishing more than one financial responsibility instrument per facility. These instruments are limited to performance bonds, letters of credit, and deposits of acceptable collateral. The instruments must be as specified in Appendix A, except that it is the combination of instruments, rather than the single instrument, that must provide financial responsibility for an amount at least equal to the corrective action cost estimate.
- (6) A permittee may satisfy the requirements of this section by using a single financial responsibility instrument for more than one facility. Evidence of financial responsibility submitted to the Agency must include a list showing, for each facility, the name, address, and the amount of funds assured by the instrument. The amount assured must be no less than the sum of funds that would be available if a separate instrument had been established and maintained for each facility.

In directing funds available through the instrument for corrective action for any of the facilities covered by the instrument, the Secretary may direct only the amount of funds designated for that facility, unless the applicant agrees to the use of additional funds available under the instrument.
- (7) The Secretary may draw on any or all of the instruments to provide for corrective action care at the facility.
- (8) Upon certification by the permittee to the Secretary that the requirements of

corrective action have been satisfied, the Secretary will notify the certification holder in writing, within sixty (60) days, that he or she is no longer required to maintain financial responsibility for corrective action.

- B. **Public Facilities** -- The following requirements for financial capability apply to facilities operated by the State of Vermont, or by municipal entities created under 24 V.S.A., including facilities operated by Union Municipal Districts formed under 24 V.S.A Chapter 121, or by other public entities.

The permittee may satisfy the requirements of this section by effecting a demonstration of financial capability for corrective action that meets the following criteria:

- (1) The financial capability demonstration must ensure that the amount of funds assured is sufficient to cover the costs of corrective action when needed;
- (2) The financial capability demonstration must ensure that funds will be available in a timely fashion when needed;
- (3) Financial capability shall be demonstrated within the timeframe established under Section (III)(B) of this procedure;
- (4) The financial capability demonstration shall be in a form acceptable to the Secretary, legally valid, binding, and enforceable.

Appendix A

Specific Requirements for Financial Responsibility Instruments

A-1 Surety Bonds

- (a) A permittee may satisfy the financial responsibility requirements of this procedure by obtaining a surety bond according to the requirements of this section and by submitting the original copy of the bond with the corrective action plan. Only bonds issued by surety companies licensed to operate as sureties in the State of Vermont and approved by the Secretary will satisfy the requirements of this section.
- (b) A surety bond form supplied by the secretary shall be used by the permittee and the surety.
- (c) The surety bond must name the permittee as the principal and name the State of Vermont as the obligee.

- (d) The term of the bond shall be for the term of the corrective action period.
- (e) The bond must guarantee that the permittee will:
 - (1) Perform corrective action in accordance with the corrective action plan or other requirements in the certification for the facility; or
 - (2) Perform corrective action following an order to begin corrective action issued by the secretary or by a court, or following issuance of a notice of revocation of the certification; or
 - (3) Provide alternate financial assurance as specified in this section within 90 days after receipt by the Secretary of a notice of cancellation of the bond from the surety.
- (f) The surety will become liable on the bond obligation when the permittee fails to perform as guaranteed by the bond.
- (g) The penal sum of the bond must be in an amount at least equal to the amount of the corrective action cost estimate.
- (h) Whenever the cost estimate increases to an amount greater than the amount of the penal sum of the bond, the permittee shall, within 90 days after the increase, cause the penal sum of the bond to be increased to an amount at least equal to the new estimate or obtain other financial assurance, as specified in this procedure, to cover the increase. Whenever the cost estimate decreases, the penal sum may be reduced to the amount of the cost estimate following written approval by the secretary. Notice of an increase or decrease in the penal sum must be sent to the Secretary by certified mail within 90 days after the change.
- (I) The bond shall remain in force for its term unless the surety sends written notice of cancellation by certified mail to the permittee and to the Secretary. Cancellation can not occur, however:
 - (1) During the 120 days beginning on the date of receipt of the notice of cancellation by the secretary as shown on the signed return receipt; or
 - (2) While a compliance or enforcement action is pending.
- (j) Following a determination that the permittee has failed to perform corrective action in accordance with the approved plan and other certification requirements when required to do so, the surety shall perform corrective action in accordance with the terms of the bond, approved plan and other certification requirements or order. As

an alternative to performing corrective action the surety may forfeit the full amount of the penal sum to the State.

- (k) The permittee may cancel the bond if the Secretary has given prior written consent based on receipt of evidence of alternative financial assurance as specified in this procedure.
- (l) The Secretary will notify the surety if the permittee provides alternate financial assurance.
- (m) The surety will not be liable for deficiencies in the performance of corrective action by the permittee after the permittee has been notified by the Secretary that the permittee is no longer required by to maintain financial assurance for corrective action at the facility.
- (n) As performed either by the permittee or the surety, corrective action shall be deemed to have occurred only when the secretary so determines according to the rules and procedures.

A-3 Letters of Credit

- (a) A permittee may satisfy the requirements of this procedure by obtaining an irrevocable standby letter of credit according to the requirements of this section and by submitting the original copy of the letter of credit attached to the corrective action plan. The letter of credit must be effective before the commencement of corrective action at the facility for which it is issued. The issuing institution must be a bank or other financial institution which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by the State of Vermont.
- (b) The wording of the letter of credit must be approved by the Secretary.

- (c) The letter of credit must be irrevocable and 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. If the issuing institution decides not to extend the letter of credit beyond the current expiration date it must, at least 120 days before the date, notify both the permittee and the Secretary by certified mail of that decision. The 120 day period will begin on the date of receipt by the Secretary as shown on the signed return receipt. Expiration can not occur, however, while a compliance or enforcement action is pending.
- (d) The letter of credit must be issued for at least the amount of the corrective action cost estimate.
- (e) Whenever the cost estimate increases to an amount greater than the amount of credit, the permittee shall, within 90 days of the increase, cause the amount of credit to be increased to an amount at least equal to the new estimate or obtain other financial responsibility as specified in this procedure to cover the increase. Whenever the cost estimate decreases, the letter of credit may be reduced to the amount of new estimate following written approval by the secretary. Notice of an increase or decrease in the amount of the credit shall be sent to the Secretary by certified mail within 90 days of the change.
- (f) Following a determination that the permittee has failed to perform corrective action in accordance with the approved plan or other certification requirement, the Secretary will draw on the letter of credit.
- (g) The permittee must establish alternate financial responsibility as specified in this procedure and obtain written approval from the Secretary within 90 days after receipt by both the permittee and the Secretary of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date. If the permittee does not establish such alternative financial responsibility within the 90 days, the secretary will draw on the letter of credit. If the issuing institution grants an extension of the term of credit, the secretary may do the drawing during the last 30 days of credit if the operator has failed to provide alternative financial responsibility as specified in this procedure or obtain written approval of such responsibility from the secretary .
- (l) The Secretary shall return the original letter of credit to the issuing institution for termination when:
 - (1) the permittee substitutes alternate financial responsibility for corrective action; or

- (2) The Secretary notifies the permittee, in accordance with Section (IV)(A)(8) of this procedure, that he or she is no longer required to maintain financial responsibility for corrective action for the facility.

A-5 Financial Test and Corporate Guarantee

- (a) A permittee may satisfy the requirements for financial responsibility by demonstrating that he passes a financial test as specified in this section. To pass this test the permittee must meet the criteria of either subsection (a)(1) or (a)(2).
 - (1) The permittee must have:
 - (A) two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and
 - (B) new working capital and tangible net worth each at least six times the corrective action cost estimates; and
 - (C) tangible net worth of at least \$10 million; and
 - (D) assets in the United States amounting to at least 90% of the total assets or at least six times the sum of the corrective action cost estimates.
 - (2) The permittee must have:
 - (A) a current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and
 - (B) tangible net worth at least six times the sum of the corrective action estimates; and
 - (C) net worth of at least \$10 million; and
 - (D) assets located in the United States amounting to at least 90% of his total assets or at least six times the sum of the corrective action cost estimate.

- (b) To demonstrate that he or she meets this test, the permittee shall submit the following items to the Secretary.
 - (1) A letter signed by the permittee's chief financial officer and worded as specified by the Secretary.
 - (2) A copy of the independent certified public accountant's report on examination of the permittee's financial statement for the latest completed fiscal year; and
 - (3) a special report from the permittee's independent certified accountant to the permittee stating that:
 - (A) He or she has compared the data which the letter from the chief financial officer specifies as having been derived from an independently audited, year-end financial statement for the latest fiscal year with the amounts in such financial statements; and
 - (B) In connection with that procedure, no matters come to his attention which caused him to believe that the specified data should be adjusted.
- (c) The permittee shall submit the items specified to the Secretary at least 60 days before the date on which corrective action is to commence.
- (d) After the initial submission of items specified in subsection (b), the permittee shall send updated information to the Secretary within 90 days after the close of each succeeding fiscal year. This information shall consist of all three items specified in subsection (b).
- (e) If the permittee no longer meets the requirements of subsection (a), he or she shall send notice to the Secretary of intent to establish alternate financial responsibility. The notice shall be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the permittee no longer meets the requirements. The permittee shall provide the alternate financial responsibility within 120 days after the end of such fiscal year.
- (f) The Secretary may, based on a reasonable belief that the permittee may no longer meet the requirements of subsection (a), require reports of financial condition at any time from the permittee in addition to those specified in subsection (b). If the Secretary finds, on the basis of such reports or other information, that the permittee no longer meets the requirements of subsection (a), the permittee shall provide alternate financial responsibility within 30 days after notification of such a finding.

- (g) The Secretary may disallow use of this test on the basis of qualification in the opinion expressed by the independent certified public accountant in his or her report on examination of the permittee's financial statements (see subsection (b)(2)). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The secretary will evaluate other qualifications on an individual basis. The permittee shall provide alternate financial responsibility within 30 days after notification of the disallowance.
- (h) During the period of corrective action, the Secretary may approve a decrease in the current corrective action cost estimate for which this test demonstrated financial responsibility if the permittee demonstrates to the Secretary that the amount of the cost estimate exceeds the remaining costs of the corrective action.
- (I) the permittee is no longer required to submit the items specified in subsection (b) when:
 - (1) a permittee substitutes financial responsibility; or
 - (2) the secretary releases the permittee from the requirements of this section in accordance with Section (IV)(A)(8) of this procedure.
- (j) A permittee may meet the requirements of this subsection by obtaining a written guarantee, hereafter referred to as "corporate guarantee." The guarantor shall be the parent corporation of the permittee. The guarantor shall meet the requirements for the permittee in subsections (a) through (g) and shall comply with the terms of the corporate guarantee. The wording of the corporate guarantee shall be specified by the Secretary. The corporate guarantee shall accompany the items sent to the Secretary as specified in subsection (b). The terms of the corporate guarantee shall provide that:
 - (1) If the permittee fails to perform corrective action at a facility covered by the corporate guarantee in accordance with the corrective action plan, the guarantor will do so or establish a trust fund in the name of the permittee as specified in this procedure.
 - (2) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the permittee and to the Secretary. The cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the permittee and the Secretary as evidenced by the return receipts.

- (3) If the permittee fails to provide alternate financial responsibility and obtain the written approval of such alternate responsibility from the Secretary within 90 days after the receipt by both the permittee and the Secretary of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternate financial responsibility in the name of the permittee.

Effective date

This Procedure is effective upon date of Signature.

Signature

Signature
Canute Dalmasse, Commissioner
Department of Environmental Conservation

2/8/99
Date