

335-6-13-.02 Applicability.

(1) The requirements of ~~335-6-13-.06~~this chapter apply to owners or operators of centralized waste treatment facilities, as defined by federal effluent guidelines set forth at 40 CFR Part 437, when applying for issuances, ~~or~~ reissuances, or modifications of a permit for a facility that processes or treats industrial wastes, industrial wastewater, or used material. The following facilities are exempt from the requirements of this ~~C~~chapter:

(a) ~~w~~Waste treatment facilities which treat waste only from sources owned or operated by the owner of the waste treatment facilities, or

(b) ~~w~~Waste treatment facilities which treat waste pursuant to a contract at a waste treatment facility which also treat waste from sources owned or operated by the owner.

Author: Chris Sasser; Daphne ~~Smart~~Lutz

Statutory Authority: Code of Alabama 1975, §§ 22-25C-1 and §§ 22-25C-2.

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Amended: ~~XXXX XX~~, 2018.

335-6-13-.03 Definitions. Wherever used in this ~~rulechapter~~, unless a different meaning clearly appears from the context or unless a different meaning is stated in a definition applicable to only a portion of this ~~rulechapter~~, the following shall mean:

(a) “Active life” means the period of operation beginning with the initial receipt of wastes, wastewater, or other used material and ending at completion of closure of the facility.

(b) “Annual” shall mean a calendar year.

(c) “Application” means ~~forms and additional~~the information ~~that are~~ required by ~~rule chapter~~ 335-6-6 or 335-6-5 to be submitted when applying for an NPDES permit or SID Ppermit, respectively.

(d) “Centralized wWaste tTreatment fFacility” (also referred to as “waste treatment facility”) means a facility as defined by federal effluent guidelines set forth at 40 CFR Part 437.

(e) “Certification” means a statement of professional opinion based upon knowledge and belief.

(f) “CFR” means Code of Federal Regulations.

(g) “Closure” for the purpose of this ~~regulation chapter~~ only means removal and proper disposal, processing, or handling of industrial wastes, wastewaters, used materials, sludge, and any other materials, including but not limited to raw materials, byproducts, additives, and products at a waste treatment facility.

(h) "Current closure cost estimate" as used in rule 335-6-13-.067 means the most recent of the estimates prepared in accordance with rule 335-6-13-.06.

(i) “Department” means the Alabama Department of Environmental Management as established by Code of Alabama 1975, § 22-22A-4.

(j) “Director” means the Director of the Alabama Department of Environmental Management, designated~~appointed~~ pursuant to Code of Alabama 1975, § 22-22A-4, or his or her designee.

(k) “Discharge” means the addition, introduction, leaking, spilling, or emitting of any sewage, industrial wastes, pollutant or other wastes into waters of the state.

(l) “Engineer” means a person currently licensed~~registered~~ as a professional engineer with the State of Alabama Board of Licensure~~Registration~~ for Professional Engineers and Land Surveyors.

(m) "Final closure" means the completion of closure of a waste treatment facility.

(n) “Financial Assurance” means a financial arrangement by the owner or operator of a centralized waste treatment facility which guarantees the availability of funds ~~that~~which may be used for closure of the facility if determined necessary by the Department should the owner or operator cease proper operation of the facility, abandon the facility, or fail to properly maintain the facility to ensure compliance with state environmental regulations.

(o) “NPDES permit” ~~or means a~~ National Pollutant Discharge Elimination System ~~means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits for the discharge of pollutants into waters of the state~~permit issued pursuant to chapter 335-6-6.

(p) “Operator” means the person(s) having direct supervision over and responsibility for the daily operation of ~~a~~the centralized waste treatment facility.

(q) “Owner” means the person(s) who owns a centralized waste treatment facility or part of a facility.

(r) “Permit” means an issued NPDES permit or SID ~~P~~permit.

(s) “SID ~~P~~permit” ~~or means a~~ State Indirect Discharge ~~P~~permit ~~means a permit~~ issued pursuant to an industrial user chapter 335-6-5.

(t) “State” means the State of Alabama.

Author: Chris Sasser; Daphne ~~Smart~~Lutz

Statutory Authority: Code of Alabama 1975, §§ 22-25C-1 and §§ 22-25C-2.

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335-6-13-.04 Other Closure Requirements. These rules and regulations do not supersede any other Departmental regulations regarding closure of any type of facility. Owners or operators of affected waste treatment facilities shall comply with the conditions of these rules this chapter and any other applicable rules and regulations.

Author: Chris Sasser; Daphne ~~Smart~~Lutz

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335-6-13-.06 Financial Assurance Criteria.

(1) Prior to the issuance ~~or reissuance of~~ a permit or prior to the reissuance or modification of an existing permit for a centralized waste treatment facility subject to the requirements of this chapter, the owner or operator ~~of a facility subject to the requirements of this rule~~, shall post a performance bond or other financial assurance as described in this ~~rule~~ chapter in an amount sufficient for closure of the facility.

(2) The owner or operator shall ~~have obtain~~ a minimum of two detailed, written estimates, in current dollars, of the cost of hiring a third party to perform closure of the centralized waste treatment facility ~~prior to issuance, or reissuance, of a permit or modification of a permit~~. The owner or operator shall submit the closure cost estimates with the permit application ~~and submit a copy of the estimates with the permit application~~.

(3) The owner or operator shall re-evaluate the closure cost estimate and the amount of financial assurance required if:

(a) Changes to the closure plan or waste treatment facility conditions significantly increase the maximum cost of closure at any time during the active life of the facility. The owner or operator shall submit any updated closure cost estimates and documentation of the increase in required financial assurance to the Department at least 30 days prior to initiating changes at the facility which would significantly increase the maximum cost of closure at any time during the active life of the facility.

(b) ~~Required by~~ The Department requests such in order to verify there is adequate funding for closure to close a facility. This re-evaluation shall be due as ~~required~~ requested by the Department.

(4) ~~The owner or operator shall establish financial assurance for closure of the facility in compliance with Division 6 rules.~~ The owner or operator ~~(or previous owner/operator)~~ demonstrating financial assurance shall provide continuous coverage for closure until:

(a) The owner or operator is released from financial assurance requirements by the Department or.

(b) If ownership or operation of the waste treatment facility is transferred to another person, a the new owner/ or operator ~~establishes the~~ has demonstrated financial assurance to the Department ~~mechanism in accordance with as required by~~ this chapter ~~rule, if ownership/operation is transferred to another entity~~.

(5) The bond or other financial assurance may be declared forfeited if required by the Department when the owner or operator abandons the centralized waste treatment facility, ceases operation of the facility, or fails to properly maintain the facility to ensure compliance with state environmental regulations.

Author: Chris Sasser; Daphne ~~Smart~~Lutz

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335-6-13-.07 Allowable Mechanisms for Financial Assurance. ~~Allowable mechanisms~~ used to demonstrate financial assurance under rule 335-6-13-.07 shall ensure that the funds necessary ~~for to meet the costs of~~ closure will be available when they are needed. ~~Owners and/or operators shall choose from~~ Only the ~~mechanism options~~ specified in ~~335-6-13-.07 paragraphs (1) through (6) of this rule are allowable.~~

(1) Reserved Trust Fund.

~~(a) — An owner or operator may satisfy the requirements of this section by establishing a trust fund that conforms to the requirements below. The trustee shall 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. A copy of the trust agreement shall be placed in the facility's record and a copy submitted to the Department.~~

~~(b) — Payments into the trust fund shall be made annually by the owner or operator over the life of the permit or over the remaining expected life of the facility, whichever is shorter, in the case of a trust fund for closure. This period is referred to as the pay-in period.~~

~~(c) — For a trust fund used to demonstrate financial assurance for closure, the first payment into the fund shall be at least equal to the current cost estimate for closure, except as provided in 335-6-13-.07(6) divided by the number of years in the pay-in period as defined in 335-6-13-.07(1)(b). The amount of subsequent payments shall be determined by the following formula:~~

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

~~where CE is the current cost estimate for closure or post closure care (updated for inflation or other changes), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.~~

~~(d) — The initial payment into the trust fund shall be made before the initial start up of operations for new facilities or before the reissuance or modification of a permit for existing facilities.~~

~~(e) — If the owner or operator establishes a trust fund after having used one or more alternate mechanisms specified in 335-6-13-.07, the initial payment into the trust fund shall be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of 335-6-13-.07(1).~~

~~(f) — The owner or operator, or other person authorized to conduct closure activities may request reimbursement from the trustee for these expenditures. Requests for reimbursement will be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure and if justification and documentation of the cost is placed in the facility's record, submitted to and approved by the Department. The owner or operator shall place the documentation of the justification for reimbursement in the~~

~~facility's record and notify the Department that reimbursement has been received.~~

~~(g) The trust fund may be terminated by the owner or operator only if the owner or operator substitutes alternate financial assurance as specified in 335-6-13-.07 or if he is no longer required to demonstrate financial responsibility in accordance with the requirements of 335-6-13-.08.~~

(2) Surety Bond Guaranteeing Payment or Performance.

(a) An owner or operator may demonstrate financial assurance ~~for closure~~ by obtaining a payment or performance surety bond ~~that~~which conforms to the requirements of ~~335-6-13-.07(2)subparagraphs (2)(a)1. through (2)(a)5. of this rule.-~~

1. The bond shall be effective before the initial start-up of operations for new centralized waste treatment facilities, or before the reissuance or modification of a permit for existing facilities. ~~The owner or operator shall place a copy of the bond in the facility record and submit a copy of the bond to the Department for approval.-~~

2. The surety ~~company~~ issuing the bond shall, 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)3.~~ 3. The penal sum of the bond shall be in an amount at least equal to the current closure cost estimate, except as provided in ~~335-6-13-.07paragraph (6) of this rule.~~

~~(e)4.~~ 4. Under the terms of the bond, the surety will become liable on the bond obligation when the principal (i.e., the owner or operator) fails to perform as guaranteed by the bond.

5. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the principal and to the Department 120 days in advance of cancellation.

(b) The owner or operator shall retain a duplicate copy of the bond in the waste treatment facility's record and shall submit the original copy of the bond to the Department, as specified in rule 335-6-13-.06(1).

~~(d)c~~ (c) The owner or operator shall establish a standby trust fund. ~~The standby trust fund shall meet the requirements of 335-6-13-.07(1) except the requirements for initial payment and subsequent annual payments specified in 335-6-13-.07(1) b through e.~~ The trustee shall 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. If the bond is forfeited, the surety shall deposit the payments made under the terms of the bond directly into the standby trust fund in accordance with instructions from the Department. Payments from the trust fund shall be approved by the Department.

(d) The owner or operator shall retain a duplicate copy of the trust agreement in the waste treatment facility's record and shall submit the original copy to the Department, as specified in rule 335-6-13-.06(1).

~~(e) Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Department. Payments from the trust fund shall be approved by the Department.~~

~~(f) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner and operator and to the Department 120 days in advance of cancellation. If the surety cancels the bond, the owner or operator shall obtain alternate financial assurance as specified in 335-6-13-.07 within 90 days of the notice of cancellation.~~

(e) If the surety cancels the bond, the owner or operator shall obtain an alternate allowable financial assurance mechanism within 90 days of the notice of cancellation.

~~(g) The owner or operator may cancel the bond only if an alternate allowable financial assurance mechanism is demonstrated substituted as specified in 335-6-13-.07 or if the owner or operator is released from the financial assurance requirements no longer required to demonstrate financial responsibility in accordance with rule 335-6-13-.08.~~

(3) Letter of Credit.

(a) An owner or operator may ~~satisfy the requirements of 335-6-13-.07~~ demonstrate financial assurance by obtaining an irrevocable standby letter of credit ~~that~~ which conforms to the requirements of ~~335-6-13-.07(1)~~ subparagraphs (3)(a)1. through (3)(a)3. of this rule.

1. The letter of credit shall be effective before the initial start-up of operations for new centralized waste treatment facilities or before the reissuance or modification of a permit for existing facilities. ~~The owner or operator shall place a copy of the letter of credit in the facility's record and submit a copy of the letter of credit to the Department for approval.~~

2. The issuing institution shall 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 shall be included with the letter of credit in the facility record and a copy shall be submitted to the Department. The letter shall provide the name and address of the facility, name and address of the owner/operator, and the amount of funds assured.~~

~~(c)3.~~ 3. The letter of credit shall be irrevocable and issued for a period of at least one year in an amount at least equal to the current closure cost estimate

~~for closure~~ except as provided in ~~335-6-13-.07~~ paragraph (6) of this rule. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has cancelled the letter of credit by sending notice of cancellation by certified mail to the letter of credit applicant (i.e., the owner ~~and~~ operator) and to the Department 120 days in advance of cancellation. ~~If the letter of credit is cancelled by the issuing institution, the owner or operator shall obtain alternate financial assurance within 90 days of the notice of cancellation.~~

(b) The owner or operator shall submit the original copy of the letter of credit to the Department, as specified in rule 335-6-13-.06(1). The submittal shall be accompanied by a transmittal letter that refers to the letter of credit by number, issuing institution, and date and that provides the name and address of the centralized waste treatment facility, name and address of the owner/operator, and the amount of funds assured.

(c) The owner or operator shall retain a duplicate copy of the letter of credit and a copy of the transmittal letter required by subparagraph (3)(b) of this rule in the centralized waste treatment facility's record.

(d) If the issuing institution cancels the letter of credit, the owner or operator shall obtain an alternate allowable financial assurance mechanism within 90 days of the notice of cancellation.

~~(de)~~ The owner or operator may cancel the letter of credit only if an alternate allowable financial assurance mechanism is substituted-demonstrated as specified in 335-6-13-.07 or if the owner or operator is released from the financial assurance requirements in accordance with rule 335-6-13-.08.

(4) Insurance.

(a) An owner or operator may demonstrate financial assurance ~~for closure~~ by obtaining insurance that which conforms to the requirements of ~~335-6-13-.07~~ subparagraphs (4)(a)1. through (4)(a)6. of this rule.-

1. The insurance shall be effective before the initial start-up of operations for new centralized waste treatment facilities or before the reissuance or modification of a permit for existing facilities.-

2. At a minimum, the insurer shall be licensed to transact the business of insurance, or shall be eligible to provide insurance as an excess or surplus lines insurer, in one or more Sstates. ~~The owner or operator shall place a copy of the insurance policy in the facility's record and submit a copy of the insurance policy to the Department for approval.~~

~~(b)3.~~ The ~~closure~~ insurance policy shall guarantee that funds will be available for closure of the waste treatment facility when final closure occurs. The policy shall also guarantee that once closure begins, the insurer will be responsible for the paying out of funds to the insured (i.e., the owner or operator) or to other person(s) authorized to conduct closure up to an amount equal to the

face amount of the policy upon the direction of the Department.

~~(e)4.~~ The insurance policy shall be issued for a face amount at least equal to the current closure cost estimate ~~for closure~~ except as provided in ~~335-6-13-.07 paragraph (6) of this rule~~. The term “face amount” means the total amount the insurer is obligated to pay under the policy. 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 other person authorized to conduct closure may receive reimbursements for closure. 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 and if justification and documentation of the cost is placed in the facility's record and approved by the Department. The owner or operator shall place the documentation of the justification for reimbursement in the facility's record and notify the Department that reimbursement has been received.~~

~~(e)5.~~ The insurance policy shall 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.

~~(#)6.~~ The insurance policy shall 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 shall, 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 insured owner and operator and to the Department 120 days in advance of cancellation. ~~If the insurer cancels the policy, the owner or operator shall obtain alternate financial assurance as specified in 335-6-13-.07 within 90 days of the notice of cancellation.~~

~~(b) — The owner or operator shall retain a duplicate copy of the insurance policy in the facility's record and shall submit the original copy of the insurance policy to the Department, as specified in rule 335-6-13-.06(1).~~

~~(c) — An owner or operator, or other person(s) authorized to conduct closure, may receive reimbursements for closure. 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. Any person seeking reimbursement for closure costs shall provide justification and documentation of the closure costs to the Department for approval prior to requesting reimbursement from the insurer. Persons receiving reimbursement shall notify the Department of the reimbursement within 30 days of receipt. Persons receiving reimbursement shall retain the documentation of the justification for reimbursement and confirmation of receipt of reimbursement in the waste treatment facility's record or other record, as applicable.~~

~~(d) — If the insurer cancels the policy, the owner or operator shall obtain~~

an alternate allowable financial assurance mechanism within 90 days of the notice of cancellation.

(ge) The owner or operator may cancel the insurance policy only if an alternate allowable financial assurance mechanism is demonstrated~~substituted as specified in 335-6-13-.07~~ or if the owner or operator is ~~no longer required to demonstrate financial responsibility released from the financial assurance requirements~~ in accordance with ~~the requirements of rule~~ 335-6-13-.08.

(5) State-Approved Mechanism. An owner or operator may ~~satisfy the requirements of 335-6-13-.07~~demonstrate financial assurance by obtaining other mechanisms that meet the criteria ~~specified in 335-6-13-.07, of this rule~~ and that are approved by the Department.

(6) Use of Multiple Mechanisms. An owner or operator may demonstrate financial assurance ~~for closure as required by 335-6-13-.06(4) and (5),~~ by establishing-obtaining more than one financial mechanism per centralized waste treatment facility. The mechanisms used must be as specified in 335-6-13-.07(1) to (5)~~shall meet the applicable criteria specified in paragraphs (2) through (5) of this rule,~~ except that financial assurance for an amount at least equal to the current closure cost estimate ~~for closure~~ may be provided by multiple a combination of mechanisms, rather than a single mechanism.

(7) General Criteria for Financial Assurance Mechanisms.

(1) The language of the financial assurance mechanisms listed in ~~335-6-13-.07 paragraphs (1) to (5)~~ of this rule shall, ~~must~~ ensure that the instruments satisfy the following criteria:

(a) The ~~financial assurance mechanisms must ensure that the~~ amount of funds assured is sufficient to cover the costs of closure.

(b) ~~The financial assurance mechanisms must ensure that f~~unds will be available in a timely fashion if needed.

(c) The ~~financial assurance mechanisms must be obtained by the~~ owner or operator is obtaining the mechanism by the required dates as indicated in ~~these requirements~~this rule and is maintaining the mechanism until ~~the owner or operator is~~ released from the financial assurance requirements under rule 335-6-13-.08.

(d) The financial assurance mechanism ~~is~~ must be legally valid, binding, and enforceable under ~~s~~State and federal law.

(8) Discounting. The Department may allow discounting of closure cost estimates ~~is obtained in accordance with paragraphs~~ 335-6-13-.06 (2) and (3) up to the rate of return for essentially risk free investments, net of inflation, under the following conditions:

(a) The Department determines that cost estimates are complete and

accurate and the owner or operator has submitted a statement from an engineer so stating;

(b) The Department finds the waste treatment facility in significant compliance with applicable and appropriate permit conditions; and

(c) The owner or operator adjusts the ~~D~~discounted closure cost estimates ~~must be adjusted~~ annually to reflect inflation and years of remaining life.

(9) The owner or operator subject to the requirements of this chapter shall certify in writing to the Department that each mechanism used to demonstrate financial assurance as required by rule 335-6-13-.06 remains current and valid and that changes to the closure plan or waste treatment facility conditions have not occurred that would significantly increase the maximum cost of closure. If one or both conditions cannot be certified as true, the owner or operator shall so indicate and provide an explanation. The certification shall be submitted annually no later than the anniversary of the date the mechanism initially became effective.

Author: Chris Sasser; Daphne ~~Smart~~Lutz

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335-6-13-.08 Release from Financial Assurance Requirements by the Department. Upon the submission of a certification by the owner or operator and a determination by the Department that the [centralized waste treatment facility](#) has been properly closed, the [owner and operator facility](#) shall be released from the financial assurance requirements of this chapter. This certification ~~must shall~~ be submitted to the Director, by registered mail, ~~and shall be~~ signed by the owner or operator and by an ~~e-qualified Professional Engineer~~. Documentation supporting the ~~Professional Engineer's~~ certification ~~must shall~~ be furnished to the Director upon request.

Author: Chris Sasser; Daphne ~~Smart~~Lutz

Statutory Authority: Code of Alabama 1975, §§ 22-25C-1 and §§ 22-25C-2.

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