

CHAPTER 101
SANITARY DISPOSAL PROJECTS

DIVISION VIII
FINANCIAL ASSURANCE

567—101.700(455B) Purpose. The purpose of this division is to implement Iowa Code subsections 455B.304(8) and 455B.306(9) by providing the criteria for establishing financial assurance for closure, post-closure care, and corrective action at sanitary disposal projects, whichever is applicable.

567—101.701(455B) Applicability.

101.701(1) The requirements of this division apply to all owners and operators of sanitary disposal projects, except owners or operators who are State or Federal government entities, whose debts and liabilities are the debts and liabilities of a State or the United States.

101.701(2) This division does not apply to municipal solid waste landfills regulated pursuant to 567—Chapter 101, division II, which ceased accepting solid waste by August 24, 1994, and industrial landfills and coal combustion residue landfills regulated pursuant to 567—Chapter 101, divisions III and IV respectively, which ceased accepting waste by October 31, 2007.

101.701(3) This division does not apply to sanitary disposal projects that are not sanitary landfills and that have completed proper closure, and to sanitary landfills that have completed post-closure care prior to *[effective date of the rule]*.

567—101.702(455B) Definitions and incorporation by reference. In addition to the definitions in Iowa Code section 455B.301 and in 567—Chapter 100, the following definitions shall apply to division VIII of this chapter:

“Cash plus marketable securities” means all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions.

“Debt service” means the amount of principal and interest due on a loan in a given time period, typically the current year.

“Deficit” means total annual revenues minus total annual expenditures.

“Electric generating facility” means electric utilities and independent power producers that fall within the North American Industry Classification System (NAICS) code 221112.

“Net Worth” means total assets minus total liabilities and is equivalent to owner’s equity.

“Parent Corporation” means a corporation which directly owns at least fifty percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a “subsidiary” of the parent corporation.

“Substantial business relationship” means the extent of a business relationship necessary under applicable State law to make a guarantee contract issued incident to that relationship valid and enforceable. A “substantial business relationship” must arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the department.

“Tangible net worth” means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

“Total expenditures” means all expenditures, excluding capital outlays and debt repayment.

“Total revenues” means revenues from all taxes and fees, excluding revenue from funds managed by a local government on behalf of a specific third party, and does not include the proceeds from borrowing or asset sales.

567—101.703(455B) Financial assurance for closure of sanitary disposal projects that are not sanitary landfills. The owner or operator of a sanitary disposal project must establish financial assurance

for the costs of site closure in accordance with the criteria in this division. The owner or operator must provide continuous coverage for site closure until released from this requirement by demonstrating compliance with the closure criteria expressed within each sanitary disposal project's applicable division. Proof of compliance pursuant to subrules 101.703(1) through 101.703(3) shall be submitted to the department by the owner or operator at the time of application for a permit, and with each renewal thereafter, until released from this requirement by the department.

101.703(1) The owner or operator shall submit, on a form prescribed by the department, the amount of the financial assurance required and the current value of the financial assurance instrument(s) at the time of submittal, as required by Iowa Code subsection 455B.306(9).

101.703(2) The owner or operator shall submit a copy of the documents establishing the financial assurance instrument(s) in an amount equal to or greater than the amount specified in rule 567—101.710(455B). Documentation for the instrument(s) used to demonstrate financial assurance shall contain, at a minimum, the items required to be submitted as specified in rule 567—101.707(455B).

101.703(3) The owner or operator shall submit a detailed written estimate, in current dollars, certified by an Iowa-licensed professional engineer, of the cost of hiring a third party to properly close the sanitary disposal project in accordance with the closure criteria expressed within each sanitary disposal project's applicable division.

a. The cost estimate must equal the cost of closing the sanitary disposal project at any time during its permitted life when the extent and manner of its operation would make closure the most expensive.

b. The costs contained in the estimate for site closure must be accurate and reasonable when compared to the cost estimates used by other similarly situated sanitary disposal projects in Iowa.

c. The owner or operator must, at the time of permit renewal or at the time of application for a permit modification that increases closure costs, whichever occurs first, have an Iowa-licensed professional engineer update the closure cost estimate, and update the amount of financial assurance provided if changes to the closure plan or sanitary disposal project conditions increase the maximum cost of closure at any time during the remaining active life of the site.

d. The owner or operator may reduce the amount of financial assurance for proper closure of the site if the most recent estimate of the maximum cost of closure at any time during the active life of the site is less than the amount of financial assurance currently provided. Prior to the reduction, the owner or operator must submit to the department the justification for the reduction of the closure cost estimate and the updated documentation required by subrules 101.703(1) through 101.703(3), and receive department approval for the reduction.

567—101.704(455B) Financial assurance for closure of sanitary landfills. The owner or operator of a sanitary landfill must establish financial assurance for the costs of site closure in accordance with the criteria in this division. The owner or operator must provide continuous coverage for site closure until released from this requirement by demonstrating compliance with the approved closure plan and the closure permit. Proof of compliance pursuant to subrules 101.704(1) through 101.704(5) shall be submitted to the department by the owner or operator yearly by April 1 and approved by the department.

100.704(1) The owner or operator shall submit, on a form prescribed by the department, the amount of the financial assurance required, the annual financial statement required by Iowa Code paragraph 455B.306(9)(e), the current value of the financial assurance instrument(s), and the balance of the closure account(s), if applicable, at the time of submittal as required by Iowa Code paragraph 455B.306(9)(b).

101.704(2) The owner or operator shall submit a copy of the documents establishing the financial assurance instrument(s) in an amount equal to or greater than the amount specified in rule 567—101.710(455B). Documentation for the instruments(s) used to demonstrate financial assurance shall contain, at a minimum, the items required to be submitted as specified in rule 567—101.707(455B).

101.704(3) The owner or operator shall, except for the allowance granted in paragraph 101.704(3)“c,” submit a detailed written estimate, in current dollars, certified by an Iowa-licensed professional engineer, of the cost of hiring a third party to close the sanitary landfill in accordance with the approved closure plan and the closure permit.

a. The cost estimate must equal the cost of closing the sanitary landfill at the time the cost estimate is prepared.

b. The costs contained in the estimate for closure must be accurate and reasonable when compared to the cost estimates used by other similarly situated sanitary landfills in Iowa.

c. During the active life of the sanitary landfill, the owner or operator may, for the duration of the permit cycle or five years, whichever is less, have an Iowa-licensed professional engineer adjust the certified closure cost estimate for inflation by using an inflation factor derived from the most recent annual Implicit Price Deflator for Gross Domestic Product published by the United States Department of Commerce. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year. After applying the inflation factor for the duration of the permit cycle, or five years, whichever is less, the owner or operator shall again submit a detailed written estimate, in current dollars, certified by an Iowa-licensed professional engineer pursuant to subrule 101.704(3).

d. The owner or operator must, annually or at the time of permit renewal, application for a permit modification, or due to other requirements that increase closure costs, have an Iowa-licensed professional engineer update the detailed written closure cost estimate, and update the amount of financial assurance provided if changes to the closure plan or sanitary landfill conditions increase the cost of closure.

e. The owner or operator may reduce the amount of financial assurance for proper closure of the site if the most recent estimate is less than the amount of financial assurance currently provided. Prior to the reduction, the owner or operator must submit to the department the justification for the reduction of the closure cost estimate and the updated documentation required by subrules 101.704(1) through 101.704(5), and receive department approval for the reduction.

f. The estimate submitted to the department must include the site area subject to closure (in acres) and account for at least the following factors determined by the department to be the minimal necessary costs for closure:

1. Closure and post-closure plan document revisions;
2. Site preparation, earthwork and final grading;
3. Drainage control culverts, piping and structures;
4. Erosion control structures, sediment ponds and terraces;
5. Final cap construction;
6. Cap vegetation soil placement;
7. Cap seeding, mulching and fertilizing;
8. Monitoring well, piezometer and gas control modifications;
9. Leachate system cleanout and extraction well modifications;
10. Monitoring well installations and abandonments;
11. Facility modifications to effect closed status;
12. Engineering and technical services;
13. Legal, financial and administrative services; and
14. Closure compliance certifications and documentation.

101.704(4) For publicly-owned sanitary landfills, the owner or operator shall submit to the department a copy of the owner's or operator's most recent annual audit report in the form prescribed by the office of the Auditor of the State of Iowa. In addition to the annual audit report, the owner or operator of a publicly-owned sanitary landfill may submit financial institution statements to document the current balance of a trust fund or local government dedicated fund established pursuant to subrules 101.707(1) and 101.707(9), or the closure and post-closure care accounts pursuant to 567—101.709(455B).

101.704(5) Privately-owned sanitary landfills shall submit an affidavit from the owner or operator indicating that a yearly review has been performed by an Iowa-licensed certified public accountant to determine whether the privately-owned sanitary landfill is in compliance with this division. The affidavit shall state the name of the Iowa-licensed certified public accountant, the dates and conclusions of the review, and the steps taken to rectify any deficiencies identified by the accountant.

567—101.705(455B) Financial assurance for post-closure care of sanitary landfills. The owner or operator of a sanitary landfill must establish financial assurance for the costs of post-closure care in accordance with the criteria in this division. The owner or operator must provide continuous coverage for post-closure care until released from this requirement by demonstrating compliance with the approved post-closure plan and the closure permit. Proof of compliance pursuant to subrules 101.705(1) through 101.705(5) shall be submitted to the department by the owner or operator yearly by April 1 and approved by the department.

101.705(1) The owner or operator shall submit, on a form prescribed by the department, the amount of the financial assurance required, the annual financial statement required by Iowa Code paragraph 455B.306(9)(e), the current value of the financial assurance instrument(s), and the balance of the post-closure account(s), if applicable, at the time of submittal as required by Iowa Code paragraph 455B.306(9)(b).

101.705(2) The owner or operator shall submit a copy of the documents establishing the financial assurance instrument(s) in an amount equal to or greater than the amount specified in rule 567—101.710(455B). Documentation for the instrument(s) used to demonstrate financial assurance shall contain, at a minimum, the items required to be submitted as specified in rule 567—101.707(455B).

101.705(3) The owner or operator shall, except for the allowance granted in paragraph 101.705(3)“c,” submit a detailed written estimate, in current dollars, certified by an Iowa-licensed professional engineer, of the cost of hiring a third party to conduct post-closure care for the sanitary landfill in accordance with the approved post-closure plan and the closure permit.

a. The cost estimate must account for the total cost of conducting post-closure care, as described in the plan, for the entire post-closure care period.

b. The costs contained in the estimate for post-closure care must be accurate and reasonable when compared to the cost estimates used by other similarly situated sanitary landfills in Iowa.

c. During the active life of the sanitary landfill and during the post-closure care period, the owner or operator may, for the duration of the permit cycle or five years, whichever is less, have an Iowa-licensed professional engineer adjust the certified post-closure cost estimate for inflation by using an inflation factor derived from the most recent annual Implicit Price Deflator for Gross Domestic Product published by the United States Department of Commerce. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year. After applying the inflation factor for the duration of the permit cycle, or five years, whichever is less, the owner or operator shall again submit a detailed written estimate, in current dollars, certified by an Iowa-licensed professional engineer pursuant to subrule 101.705(3).

d. The owner or operator must, annually or at the time of application for a permit modification, or due to other requirements that increase post-closure care costs, have an Iowa-licensed professional engineer increase the detailed written post-closure cost estimate, and update the amount of financial assurance provided if changes in the post-closure plan or sanitary landfill conditions increase the cost of post-closure care.

e. The owner or operator may reduce the amount of financial assurance for post-closure care if the most recent estimate of post-closure care is less than the amount of financial assurance currently provided. Prior to the reduction, the owner or operator must submit to the department the justification for the reduction of the post-closure cost estimate and the updated documentation required by subrules 101.705(1) through 101.705(5), and receive department approval for the reduction.

f. The estimate submitted to the department must include the site area subject to post-closure care and account for at least the following factors determined by the department to be the minimal necessary costs for post-closure care:

1. General site facilities, access roads and fencing maintenance;
2. Cap and vegetative cover maintenance;
3. Drainage and erosion control systems maintenance;
4. Groundwater to waste separation systems maintenance;
5. Gas control systems maintenance, if applicable;

6. Gas control systems monitoring and reports, if applicable;
7. Groundwater and surface water monitoring systems maintenance;
8. Groundwater and surface water quality monitoring and reports;
9. Groundwater monitoring systems performance evaluations and reports;
10. Leachate control systems maintenance;
11. Leachate management, transportation and disposal;
12. Leachate control systems performance evaluations and reports;
13. Facility inspections and technical reports;
14. Engineering and technical services;
15. Legal, financial and administrative services; and
16. Financial assurance, accounting, audits and reports.

101.705(4) For publicly-owned sanitary landfills, the owner or operator shall submit to the department a copy of the owner's or operator's most recent annual audit report in the form prescribed by the office of the Auditor of the State of Iowa. In addition to the annual audit report, the owner or operator of a publicly-owned sanitary landfill may submit financial institution statements to document the current balance of a trust fund or local government dedicated fund established pursuant to subrules 101.707(1) and 101.707(9), or the closure and post-closure care accounts pursuant to 567—101.709(455B).

101.705(5) Privately-owned sanitary landfills shall submit an affidavit from the owner or operator indicating that a yearly review has been performed by an Iowa-licensed certified public accountant to determine whether the privately-owned sanitary landfill is in compliance with this division. The affidavit shall state the name of the Iowa-licensed certified public accountant, the dates and conclusions of the review, and the steps taken to rectify any deficiencies identified by the accountant.

567—101.706(455B) Financial assurance for corrective action at sanitary landfills.

101.706(1) An owner or operator required to undertake corrective action must have a detailed written estimate, in current dollars, certified by an Iowa-licensed professional engineer, of the cost of hiring a third party to perform the required corrective action. The cost estimate must account for the total cost of conducting the activities described in the approved assessment of corrective measures for the entire corrective action period. The owner or operator must submit to the department for approval, the cost estimate and financial assurance documentation prior to implementation of the corrective action remedy. Proof of continued compliance pursuant to subrules 101.706(1) and 101.706(2) shall be submitted to the department by the owner or operator yearly by April 1 and approved by the department.

a. The owner or operator shall submit, on a form prescribed by the department, the amount of the financial assurance required to complete the corrective action remedy and the current value of the financial assurance instrument(s).

b. The owner or operator may, for up to three consecutive years, have an Iowa-licensed professional engineer adjust the certified corrective action cost estimate for inflation by using an inflation factor derived from the most recent annual Implicit Price Deflator for Gross Domestic Product published by the United States Department of Commerce. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year. After three consecutive years of applying the inflation factor, the owner or operator shall again submit a detailed written estimate, in current dollars, certified by an Iowa-licensed professional engineer pursuant to subrule 101.706(1).

c. The owner or operator must increase the detailed written corrective action cost estimate and update the amount of financial assurance provided if changes in the corrective action remedy or sanitary landfill conditions increase the maximum cost of corrective action.

d. The owner or operator may reduce the amount of the cost estimate and the amount of financial assurance provided if the cost estimate exceeds the maximum remaining costs of the remaining corrective action. Prior to the reduction, the owner or operator must submit to the department the justification for the reduction of the corrective action cost estimate and the updated documentation required by subrules 101.706(1) through 101.706(2), and receive department approval for the reduction.

101.706(2) The owner or operator of a sanitary landfill required to undertake corrective action must establish financial assurance for the corrective action remedy by one of the instruments prescribed in rule 567—101.707(455B), or the closure and post-closure care accounts pursuant to rule 567—101.709(455B). The owner or operator must provide continuous coverage for corrective action until released from financial assurance requirements by demonstrating compliance with the following:

a. Upon completion of the corrective action remedy, the owner or operator must submit to the department a certification of compliance with the approved assessment of corrective measures. The certification must be signed by the owner or operator and by an Iowa-licensed professional engineer.

b. Upon department approval of completion of the corrective action remedy, the owner or operator shall be released from the requirement for financial assurance for corrective action pursuant to rule 567—101.706(455B).

567—101.707(455B) Allowable financial assurance instruments. The instruments used to demonstrate financial assurance, as required by Iowa Code subsections 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 subrules 101.707(1) through 101.707(9), as provided for in Iowa Code paragraph 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 which 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 paragraph 101.707(1)“c.” Instead, the trust fund shall be in an amount equal to or greater than the amount specified in subrule 101.703(3).

c. Payments into the trust fund must be made annually by the owner or operator over 10 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 rule 567—101.710(455B) for closure and post-closure care, divided by the number of years in the pay-in period, as defined in paragraph 101.707(1)“c.” The amount of subsequent payments must be determined by the following formula:

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

Where:

“CE” is the amount specified in rule 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 subrule 101.706(1) for corrective action, divided by the number of years in the corrective action pay-in period, as defined in paragraph 101.707(1)“c.” The amount of subsequent payments must be determined by the following formula:

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

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 rules 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 rule 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 paragraph 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 subrule 101.707(1), except the requirements for initial payment and subsequent annual payments specified in paragraphs 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 paragraph 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 rules 567—101.703(455B) through 567—101.706(455B). The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or State agency.

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 subrule 101.707(1), except the requirements for initial payment and subsequent annual payments specified in paragraphs 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 paragraph 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 rule 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 rules 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 rule 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 accounts established pursuant to Iowa Code paragraph 455B.306(9)(b), or a standby trust fund that meets the requirements of subrule 101.707(1), except the requirements for initial payment and subsequent annual payments specified in paragraphs 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 subparagraphs 101.707(5)“a”(1) through (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; or

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 numbered paragraph 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, 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 paragraph 101.707(5)“f.”

b. Record-keeping 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 rules 567—101.703(455B) through 567—101.706(455B); cost estimates required for municipal solid waste landfills pursuant to 40 C.F.R. pt. 258, if applicable; cost estimates required for UIC facilities under 40 C.F.R. pt. 144, if applicable; cost estimates required for petroleum underground storage tank facilities under 40 C.F.R. pt. 280, if applicable; cost estimates required for PCB storage facilities under 40 C.F.R. pt. 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 C.F.R. pts. 264 and 265, if applicable; and

2. Provides evidence demonstrating that the firm meets the conditions of paragraph 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 rule 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 numbered paragraph 101.707(5)“a”(1)“2” or numbered paragraph 101.707(5)“a”(1)“3” that differs from data in the audited financial statements referred to in subparagraph 101.707(5)“b”(2) or any other audited financial statement or data filed with the U.S. Securities and Exchange Commission, then a special report from the owner’s or operator’s Iowa-licensed certified public accountant to the owner or operator is required. The special report shall be based upon 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 the numbered paragraph 101.707(5)"a"(2)"2," then the letter shall include 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 and that documents how these obligations have been measured and reported, and 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. The owner or operator may cease the submission of the information required by subrule 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. 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 rule 567—101.707(455B), and submit the financial assurance documentation to the department for approval.

e. The department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of paragraph 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 paragraph 101.707(5)"b." If the department finds that the owner or operator no longer meets the requirements of paragraph 101.707(5)"a," the owner or operator must provide alternative financial assurance that meets the requirements of rule 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 subrule 101.707(5), the owner or operator must include cost estimates required for rules 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 C.F.R. pt. 258, UIC facilities under 40 C.F.R. pt. 144, petroleum underground storage tank facilities under 40 C.F.R. pt. 280, PCB storage facilities under 40 C.F.R. pt. 761, and hazardous waste treatment, storage, and disposal facilities under 40 C.F.R. pts. 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 subrule 101.707(6) if it:

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

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

3. Operated at a deficit equal to five 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 subparagraph 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 rule 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. Record-keeping 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 paragraph 111.707(6)"d," that provides evidence and certifies that the local government meets the conditions of subparagraphs 101.707(6)"a"(1) through (3), and certifies that the local government meets the conditions of paragraphs 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 numbered paragraph 101.707(6)"a"(1)"2," if applicable, and the requirements of subparagraph 101.707(6)"a"(2) and numbered paragraphs 101.707(6)"a"(3)"3" and "4."

(2) The items required in subparagraph 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 subrule 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 rule 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 paragraph 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 paragraph 101.707(6)“c.” If the department finds that the owner or operator no longer meets the requirements of paragraph 101.707(6)“a,” the owner or operator must provide alternative financial assurance that meets the requirements of rule 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 C.F.R. pt. 258, UIC facilities under 40 C.F.R. pt. 144.62, petroleum underground storage tank facilities under 40 C.F.R. pt. 280, PCB storage facilities under 40 C.F.R. pt. 761, and hazardous waste treatment, storage, and disposal facilities under 40 C.F.R. pts. 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 subparagraphs 101.707(6)“d”(1) and (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 subrule 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 subparagraphs 101.707(7)“b”(2) and (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 subrule 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 subrule 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. Record-keeping 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 paragraph 101.707(5)“b.”

(2) The owner or operator shall no longer be required to submit the items specified in subparagraph 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 subrule 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. The guarantor must meet the requirements of the local government financial test in subrule 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 subparagraphs 101.707(8)“b”(2) and (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 subrule 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 subrule 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. Record-keeping 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 paragraph 101.707(6)“c.”

(2) The owner or operator shall no longer be required to submit the items specified in subparagraph 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 subrule 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 paragraph 101.707(9)“d.” Instead, the local government dedicated fund shall be in an amount equal to or greater than the amount specified in subrule 101.703(3).

d. Payments into the local government dedicated fund must be made annually by the owner or operator over 10 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 rule 567—101.710(455B) for closure and post-closure care, divided by the number of years in the pay-in period, as defined in paragraph 101.707(9)“d.” The amount of subsequent payments must be determined by the following formula:

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

Where:

“CE” is the amount specified in rule 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 subrule 101.706(1) for corrective action, divided by the number of years in the corrective action pay-in period, as defined in paragraph 101.707(9)“d.” The amount of subsequent payments must be determined by the following formula:

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

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.

567—101.708(455B) General requirements.

101.708(1) *Use of multiple financial assurance instruments.* An owner or operator may satisfy the requirements of this division by establishing more than one financial assurance instrument per facility, except that instruments guaranteeing performance rather than payment may not be combined with other instruments. The instruments must be a combination of those instruments outlined in rule 567—101.707(455B) and 101.709(455B), and must provide financial assurance for an amount at least equal to the current cost estimate for closure, post-closure care and corrective action, whichever is applicable. The financial test and a guarantee provided by a corporate parent, sibling or grandparent may not be combined if the financial statements of the two entities are consolidated.

101.708(2) *Use of one financial assurance instrument for multiple facilities.* An owner or operator may satisfy the requirements of this division for multiple sanitary disposal projects by the use of one instrument if the owner or operator ensures that the instrument provides financial assurance for an amount at least equal to the current cost estimates for closure, post-closure care and corrective action, whichever is applicable, for all sanitary disposal projects covered. Evidence of financial assurance submitted to the department shall include, for each sanitary disposal project, the name, address, permit number and the amount of funds for closure, post-closure care and corrective action assured by the instrument.

101.708(3) *Criteria.* The language of the financial assurance instruments listed in rule 567—101.707(455B) must ensure that the instruments satisfy the following criteria:

a. The financial assurance instrument must ensure that the amount of funds assured is sufficient to cover the costs of closure, post-closure care and corrective action for known releases, whichever is applicable;

b. The financial assurance instrument must ensure that funds will be available in a timely fashion when needed;

c. The financial assurance instrument must be obtained by the owner or operator prior to the initial receipt of solid waste, 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, until the owner or operator is released from the financial assurance requirements; and

d. The financial assurance instrument must be legally valid, binding, and enforceable under Iowa law.

101.708(4) *No permit without financial assurance.* The department shall not issue or renew a permit to an owner or operator of a sanitary disposal project pursuant to Iowa Code section 455B.305, until a financial assurance instrument(s) has been submitted to and approved by the department. The department may request that additional information be submitted for review to make a financial assurance compliance decision.

101.708(5) The department may request payment from any financial assurance provider for the purpose of completing site closure, post-closure care and corrective action, whichever is applicable, when the owner

or operator declares an economic inability to comply with this division, either by sending written notification to the department or through an action such as, but not limited to, filing for bankruptcy.

101.708(6) *Financial assurance cancellation and permit suspension.*

a. A financial assurance instrument may be terminated by the owner or operator only if the owner or operator substitutes alternative financial assurance, as specified in rule 567—101.707(455B), prior to cancellation, or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this division.

b. A financial assurance instrument shall be continuous in nature until canceled by the financial assurance provider, or until the department gives written notification to the owner or operator and the financial assurance provider, that the covered site has demonstrated compliance with the sanitary disposal project's applicable closure, post-closure care and corrective action requirements. The financial assurance provider shall give at least 120 days' notice in writing to the owner or operator and to the department in the event of any intent to cancel a financial assurance instrument.

c. Within 90 days of receipt of a written notice of cancellation of a financial assurance instrument, the owner or operator must provide the department with proof of alternative financial assurance, or a notice from the issuing institution of withdrawal of the cancellation. If a means of continued financial assurance is not provided within the 90-day timeframe, the department shall suspend the permit and call upon the financial assurance instrument(s) prior to the expiration of the 120-day notice period.

567—101.709(455B) Closure and post-closure care accounts. Except as provided in subrule 101.709(10), the holder of a permit for a sanitary landfill shall maintain closure and post-closure care accounts as part of financial assurance, pursuant to Iowa Code paragraph 455B.306(9)(b). The accounts shall be specific to a particular facility.

101.709(1) Money in the accounts shall not be assigned for the benefit of creditors except the state of Iowa.

101.709(2) Money in the accounts shall not be used to pay any final judgment against a permit holder arising out of the ownership or operation of the site during its active life or after closure.

101.709(3) *Withdrawal of funds.* Except as provided in subrule 101.709(4), money in the accounts may be withdrawn without departmental approval only for the purpose of funding closure, including partial closure, or post-closure care activities that are in conformance with the sanitary landfill's approved closure and post-closure plans. Withdrawals for activities not in conformance with the approved closure and post-closure plans must receive prior written approval from the department. Permit holders using a trust fund established pursuant to subrule 101.707(1) to satisfy the requirements of this rule must comply with the requirements of paragraph 101.707(1)"g" prior to withdrawal.

101.709(4) *Excess funds.* If the balance of the closure and post-closure care accounts exceeds the current cost estimate for closure or post-closure care at any time, the permit holder may withdraw the excess funds so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

101.709(5) *Proof of establishment of account.* A permit holder shall, on a form prescribed by the department, at the time of permit application and renewal, submit a statement of account signed by the permit holder, which indicates that accounts have been established pursuant to rule 567—101.709(455B). Permit holders for new sanitary landfills permitted after *[effective date of the rule]*, shall submit to the department, prior to the initial receipt of solid waste, a statement of account signed by the permit holder.

101.709(6) An account established pursuant to subrule 101.707(1) for a trust fund or subrule 101.707(9) for a local government dedicated fund also satisfies the requirements of rule 567—101.709(455B), and the permit holder shall not be required to establish closure and post-closure care accounts in addition to said financial assurance accounts. Accounts established pursuant to subrule 101.707(1) or subrule 101.707(9), which are intended to satisfy the requirements of this rule, must comply with Iowa Code paragraph 455B.306(9)(b).

101.709(7) *Yearly deposits.* Unless otherwise authorized by the department or provided for within this division, deposits into the closure and post-closure care accounts shall be made yearly in the amount

specified in this subrule by the close of the permitted facility's fiscal year. The closure and post-closure care accounts shall be fully-funded at the time of site closure. The minimum yearly deposit to the closure and post-closure care accounts shall be determined using the following formula:

$$\frac{\text{CE} - \text{AB}}{\text{RPC}} \times \text{TR} = \text{Yearly Deposit}$$

Where:

“CE” is the current cost estimate of closure and post-closure care costs.

“AB” is the balance of the closure and post-closure care accounts at the close of the previous fiscal year.

“RPC” is the remaining permitted capacity, in tons, of the sanitary landfill as of the start of the permit holder's fiscal year. RPC may include those areas that have yet to be constructed, but have received written design approval from the department. Justification for RPC calculations shall be submitted annually pursuant to 567—101.704(455B) and 567—101.705(455B).

“TR” is the number of tons of solid waste disposed of at the site in the permit holder's prior fiscal year.

101.709(8) The closure and post-closure care accounts may be commingled with other accounts so long as the amounts credited to each account balance are reported separately, pursuant to subrule 101.704(1) and subrule 101.705(1).

101.709(9) The department shall have full rights of access to all funds existing in a permitted facility's closure and post-closure care accounts, at the sole discretion of the department, if the permit holder fails to undertake closure and post-closure care activities after being directed to do so by a final agency action of the department. These funds shall be used only for the purposes of funding closure and post-closure care activities at the site.

101.709(10) Pursuant to Iowa Code subsection 455B.306(12), a sanitary landfill owned by an electric generating facility and used exclusively for the disposal of coal combustion residue shall not be required to maintain closure and post-closure care accounts, but may demonstrate financial assurance in accordance with this division by any of the instruments described in rule 567—101.707(455B), or by an alternative method acceptable to the department.

101.709(11) Pursuant to Iowa Code paragraph 455B.306(9)(b), an industrial sanitary landfill permitted pursuant to 567—Chapter 101, division III, prior to *[effective date of the rule]*, and for which closure and post-closure accounts have not been established pursuant to subrule 101.709(5), shall submit proof of establishment within six months of the *[effective date of the rule]*. The permit holder shall have ten years from *[effective date of the rule]* to demonstrate compliance with the financial assurance requirements of this rule.

567—101.710(455B) Amount of required financial assurance. A financial assurance instrument established pursuant to rule 567—101.707(455B) or 567—101.709(455B), if applicable, shall be in the amount of the third-party cost estimates required by rules 567—101.703(455B) through 567—101.706(455B). With regard to sanitary landfills, the amount of financial assurance may be reduced by the sum of the cash balance in a trust fund or local government dedicated fund established to comply with rule 567—101.709(455B), plus the current value of investments held by said trust fund or local government dedicated fund, if invested in one or more of the investments listed in Iowa Code subsection 12B.10(5).

567—101.711(17A,455A) Waivers. A request for a waiver to this division shall be submitted in writing pursuant to 561—Chapter 10. Some provisions of this division are minimum standards required by federal law (see 40 C.F.R. pt. 258, Subpart G), and waivers to such provisions shall not be granted unless they are as protective as the applicable minimum federal standard.

567—101.712 to 101.799 Reserved.