

at the point in the facility's operating life when the extent and manner of its operation would make plugging and abandonment the most expensive, as indicated by its plugging and abandonment plan.

(b) The owner or operator must adjust the plugging and abandonment cost estimate for inflation within 30 days after each anniversary of the date on which the first plugging and abandonment cost estimate was prepared. The adjustment must be made as specified in paragraphs (b) (1) and (2) of this section, using an inflation factor derived from the annual Oil and Gas Field Equipment Cost Index. The inflation factor is the result of dividing the latest published annual Index by the Index for the previous year.

(1) The first adjustment is made by multiplying the plugging and abandonment cost estimate by the inflation factor. The result is the adjusted plugging and abandonment cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted plugging and abandonment cost estimate by the latest inflation factor.

(c) The owner or operator must revise the plugging and abandonment cost estimate whenever a change in the plugging and abandonment plan increases the cost of plugging and abandonment. The revised plugging and abandonment cost estimate must be adjusted for inflation as specified in §144.62(b).

(d) The owner or operator must keep the following at the facility during the operating life of the facility: the latest plugging and abandonment cost estimate prepared in accordance with §144.62 (a) and (c) and, when this estimate has been adjusted in accordance with §144.62(b), the latest adjusted plugging and abandonment cost estimate.

**§144.63 Financial assurance for plugging and abandonment.**

An owner or operator of each facility must establish financial assurance for the plugging and abandonment of each existing and new Class I hazardous waste injection well. He must choose from the options as specified in paragraphs (a) through (f) of this section.

(a) *Plugging and abandonment trust fund.* (1) An owner or operator may sat-

isfy the requirements of this section by establishing a plugging and abandonment trust fund which conforms to the requirements of this paragraph and submitting an originally signed duplicate of the trust agreement to the Regional Administrator. An owner or operator of a Class I well injecting hazardous waste must submit the originally signed duplicate of the trust agreement to the Regional Administrator with the permit application or for approval to operate under rule. 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.

(2) The wording of the trust agreement must be identical to the wording specified in §144.70(a)(1), and the trust agreement must be accompanied by a formal certification of acknowledgment (for example, see §144.70(a)(2)). Schedule A of the trust agreement must be updated within 60 days after a change in the amount of the current plugging and abandonment cost estimate covered by the agreement.

(3) Payments into the trust fund must be made annually by the owner or operator over the term of the initial permit or over the remaining operating life of the injection well as estimated in the plugging and abandonment plan, whichever period is shorter; this period is hereafter referred to as the "pay-in period." The payments into the plugging and abandonment trust fund must be made as follows:

(i) For a new well, the first payment must be made before the initial injection of hazardous waste. A receipt from the trustee for this payment must be submitted by the owner or operator to the Regional Administrator before this initial injection of hazardous waste. The first payment must be at least equal to the current plugging and abandonment cost estimate, except as provided in §144.70(g), divided by the number of years in the pay-in period. Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by this formula:

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$$\text{Next payment} = \frac{\text{PE} - \text{CV}}{\text{Y}}$$

where PE is the current plugging and abandonment cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(ii) If an owner or operator establishes a trust fund as specified in §144.63(a) of this chapter, and the value of that trust fund is less than the current plugging and abandonment cost estimate when a permit is awarded for the injection well, the amount of the current plugging and abandonment cost estimate still to be paid into the trust fund must be paid in over the pay-in period as defined in paragraph (a)(3) of this section. Payments must continue to be made no later than 30 days after each anniversary date of the first payment made pursuant to part 144 of this chapter. The amount of each payment must be determined by this formula:

$$\text{Next payment} = \frac{\text{PE} - \text{CV}}{\text{Y}}$$

where PE is the current plugging and abandonment cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(4) The owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the current plugging and abandonment cost estimate at the time the fund is established. However, he must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in paragraph (a)(3) of this section.

(5) If the owner or operator establishes a plugging and abandonment trust fund after having used one or more alternate mechanisms specified in this section or in §144.63 of this chapter, his first payment must be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to specifications of this paragraph.

(6) After the pay-in period is completed, whenever the current plugging

and abandonment cost estimate changes, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current plugging and abandonment cost estimate, or obtain other financial assurance as specified in this section to cover the difference.

(7) If the value of the trust fund is greater than the total amount of the current plugging and abandonment cost estimate, the owner or operator may submit a written request to the Regional Administrator for release of the amount in excess of the current plugging and abandonment cost estimate.

(8) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund, he may submit a written request to the Regional Administrator for release of the amount in excess of the current plugging and abandonment cost estimate covered by the trust fund.

(9) Within 60 days after receiving a request from the owner or operator for release of funds as specified in paragraph (a) (7) or (8) of this section, the Regional Administrator will instruct the trustee to release to the owner or operator such funds as the Regional Administrator specifies in writing.

(10) After beginning final plugging and abandonment, an owner or operator or any other person authorized to perform plugging and abandonment may request reimbursement for plugging and abandonment expenditures by submitting itemized bills to the Regional Administrator. Within 60 days after receiving bills for plugging and abandonment activities, the Regional Administrator will determine whether the plugging and abandonment expenditures are in accordance with the plugging and abandonment plan or otherwise justified, and if so, he will instruct the trustee to make reimbursement in such amounts as the Regional Administrator specifies in writing. If

the Regional Administrator has reason to believe that the cost of plugging and abandonment will be significantly greater than the value of the trust fund, he may withhold reimbursement of such amounts as he deems prudent until he determines, in accordance with §144.63(i), that the owner or operator is no longer required to maintain financial assurance for plugging and abandonment.

(11) The Regional Administrator will agree to termination of the trust when:

(i) An owner or operator substitutes alternate financial assurance as specified in this section; or

(ii) The Regional Administrator releases the owner or operator from the requirements of this section in accordance with §144.63(i).

(b) *Surety bond guaranteeing payment into a plugging and abandonment trust fund.* (1) An owner or operator must satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this paragraph and submitting the bond to the Regional Administrator with the application for a permit or for approval to operate under rule. The bond must be effective before the initial injection of hazardous waste. The surety company issuing the trust 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.

(2) The wording of the surety bond must be identical to the wording in §144.70(b).

(3) The owner or operator who uses a surety bond to satisfy the requirements of this section must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Regional Administrator. This standby trust fund must meet the requirements specified in §144.63(a), except that:

(i) An originally signed duplicate of the trust agreement must be submitted to the Regional Administrator with the surety bond; and

(ii) Until the standby trust fund is funded pursuant to the requirements of

this section, the following are not required by these requirements:

(A) Payments into the trust fund as specified in §144.63(a);

(B) Updating of Schedule A of the trust agreement [see §144.70(a)] to show current plugging and abandonment cost estimates;

(C) Annual valuations as required by the trust agreement; and

(D) Notices of nonpayment as required by the trust agreement.

(4) The bond must guarantee that the owner or operator will:

(i) Fund the standby trust fund in an amount equal to the penal sum of the bond before beginning of plugging and abandonment of the injection well; or

(ii) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin plugging and abandonment is issued by the Regional Administrator or a U.S. district court or other court of competent jurisdiction; or

(iii) Provide alternate financial assurance as specified in this section, and obtain the Regional Administrator's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Regional Administrator of a notice of cancellation of the bond from the surety.

(5) 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.

(6) The penal sum of the bond must be in amount at least equal to the current plugging and abandonment cost estimate, except as provided in §144.63(g).

(7) Whenever the current plugging and abandonment cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current plugging and abandonment cost estimate and submit evidence of such increase to the Regional Administrator, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current plugging and abandonment cost estimate decreases, the penal sum may

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be reduced to the amount of the current plugging and abandonment cost estimate following written approval by the Regional Administrator.

(8) 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 Regional Administrator. Cancellation may not occur, however, during 120 days beginning on the date of the receipt of the notice of cancellation by both owner or operator and the Regional Administrator as evidenced by the returned receipts.

(9) The owner or operator may cancel the bond if the Regional Administrator has given prior written consent based on his receipt of evidence of alternate financial assurance as specified in this section.

(c) *Surety bond guaranteeing performance of plugging and abandonment.* (1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this paragraph and submitting the bond to the Regional Administrator. An owner or operator of a new facility must submit the bond to the Regional Administrator with the permit application or for approval to operate under rule. The bond must be effective before injection of hazardous waste is started. 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.

(2) The wording of the surety bond must be identical to the wording specified in §144.70(c).

(3) The owner or operator who uses a surety bond to satisfy the requirements of this section must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Regional Administrator. The standby trust must meet the requirements specified in §144.63(a), except that:

(i) An original signed duplicate of the trust agreement must be submitted to the Regional Administrator with the surety bond; and

(ii) Unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

(A) Payments into the trust fund as specified in §144.63(a);

(B) Updating of Schedule A of the trust agreement [see §144.70(a)] to show current plugging and abandonment cost estimates;

(C) Annual valuations as required by the trust agreement; and

(D) Notices of nonpayment as required by the trust agreement.

(4) The bond must guarantee that the owner or operator will:

(i) Perform plugging and abandonment in accordance with the plugging and abandonment plan and other requirements of the permit for the injection well whenever required to do so; or

(ii) Provide alternate financial assurance as specified in this section, and obtain the Regional Administrator's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Regional Administrator of a notice of cancellation of the bond from the surety.

(5) 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. Following a determination that the owner or operator has failed to perform plugging and abandonment in accordance with the plugging and abandonment plan and other permit requirements when required to do so, under terms of the bond the surety will perform plugging and abandonment as guaranteed by the bond or will deposit the amount of the penal sum into the standby trust fund.

(6) The penal sum of the bond must be in an amount at least equal to the current plugging and abandonment cost estimate.

(7) Whenever the current plugging and abandonment cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current plugging and abandonment cost estimate and submit evidence of

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such increase to the Regional Administrator, or obtain other financial assurance as specified in this section. Whenever the plugging and abandonment cost estimate decreases, the penal sum may be reduced to the amount of the current plugging and abandonment cost estimate following written approval by the Regional Administrator.

(8) 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 Regional Administrator. 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 Regional Administrator, as evidenced by the return receipts.

(9) The owner or operator may cancel the bond if the Regional Administrator has given prior written consent. The Regional Administrator will provide such written consent when:

(i) An owner or operator substitute alternate financial assurance as specified in this section; or

(ii) The Regional Administrator releases the owner or operator from the requirements of this section in accordance with §144.63(i).

(10) The surety will not be liable for deficiencies in the performance of plugging and abandonment by the owner or operator after the Regional Administrator releases the owner or operator from the requirements of this section in accordance with §144.63(i).

(d) *Plugging and abandonment letter of credit.* (1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph and submitting the letter to the Regional Administrator. An owner or operator of an injection well must submit the letter of credit to the Regional Administrator during submission of the permit application or for approval to operate under rule. The letter of credit must be effective before initial injection of hazardous waste. 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.

(2) The wording of the letter of credit must be identical to the wording specified in §144.70(d).

(3) An owner or operator who uses a letter of credit to satisfy the requirements of this section must also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Regional Administrator will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Regional Administrator. This standby trust fund must meet the requirements of the trust fund specified in §144.63(a), except that:

(i) An originally signed duplicate of the trust agreement must be submitted to the Regional Administrator with the letter of credit; and

(ii) Unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

(A) Payments into the trust fund as specified in §144.63(a);

(B) Updating of Schedule A of the trust agreement (see §144.70(a)) to show current plugging and abandonment cost estimates;

(C) Annual valuations as required by the trust agreement; and

(D) Notices of nonpayment as required by the trust agreement.

(4) The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: the EPA Identification Number, name, and address of the facility, and the amount of funds assured for plugging and abandonment of the well by the letter of credit.

(5) The letter of credit must be irrevocable and issued for a period of at least 1 year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least 1 year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Regional Administrator by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and

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the Regional Administrator have received the notice, as evidenced by the return receipts.

(6) The letter of credit must be issued in an amount at least equal to the current plugging and abandonment cost estimate, except as provided in §144.63(g).

(7) Whenever the current plugging and abandonment cost estimate increases to an amount greater than the amount of the credit, the owner or operator, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current plugging and abandonment cost estimate and submit evidence of such increase to the Regional Administrator, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current plugging and abandonment cost estimate decreases, the amount of the credit may be reduced to the amount of the current plugging and abandonment cost estimate following written approval by the Regional Administrator.

(8) Following a determination that the owner or operator has failed to perform final plugging and abandonment in accordance with the plugging and abandonment plan and other permit requirements when required to do so, the Regional Administrator may draw on the letter of credit.

(9) If the owner or operator does not establish alternate financial assurance as specified in this section and obtain written approval of such alternate assurance from the Regional Administrator within 90 days after receipt by both the owner or operator and the Regional Administrator of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Regional Administrator will draw on the letter of credit. The Regional Administrator may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the Regional Administrator will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this section and obtain written approval of

such assurance from the Regional Administrator.

(10) The Regional Administrator will return the letter of credit to the issuing institution for termination when:

(i) An owner or operator substitutes alternate financial assurance as specified in this section; or

(ii) The Regional Administrator releases the owner or operator from the requirements of this section in accordance with §144.63(i).

(e) *Plugging and abandonment insurance.* (1) An owner or operator may satisfy the requirements of this section by obtaining plugging and abandonment insurance which conforms to the requirements of this paragraph and submitting a certificate of such insurance to the Regional Administrator. An owner or operator of a new injection well must submit the certificate of insurance to the Regional Administrator with the permit application or for approval operate under rule. The insurance must be effective before injection starts. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

(2) The wording of the certificate of insurance must be identical to the wording specified in §144.70(e).

(3) The plugging and abandonment insurance policy must be issued for a face amount at least equal to the current plugging and abandonment estimate, except as provided in §144.63(g). 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 insurers future liability will be lowered by the amount of the payments.

(4) The plugging and abandonment insurance policy must guarantee that funds will be available whenever final plugging and abandonment occurs. The policy must also guarantee that once plugging and abandonment begins, the issuer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Regional Administrator, to such party or parties as the Regional Administrator specifies.

(5) After beginning plugging and abandonment, an owner or operator or any other person authorized to perform plugging and abandonment may request reimbursement for plugging and abandonment expenditures by submitting itemized bills to the Regional Administrator. Within 60 days after receiving bills for plugging and abandonment activities, the Regional Administrator will determine whether the plugging and abandonment expenditures are in accordance with the plugging and abandonment plan or otherwise justified, and if so, he will instruct the insurer to make reimbursement in such amounts as the Regional Administrator specifies in writing. If the Regional Administrator has reason to believe that the cost of plugging and abandonment will be significantly greater than the face amount of the policy, he may withhold reimbursement of such amounts as he deems prudent until he determines, in accordance with § 144.63(i), that the owner or operator is no longer required to maintain financial assurance for plugging and abandonment of the injection well.

(6) The owner or operator must maintain the policy in full force and effect until the Regional Administrator consents to termination of the policy by the owner or operator as specified in paragraph (e)(10) of this section. Failure to pay the premium, without substitution of alternate financial assurance as specified in this section, will constitute a significant violation of these regulations, warranting such remedy as the Regional Administrator deems necessary. Such violation will be deemed to begin upon receipt by the Regional Administrator of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

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

(8) The 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 elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the Regional Administrator. Cancellation, termination, or failure to renew may not occur, however, during 120 days beginning with the date of receipt of the notice by both the Regional Administrator and the owner or operator, as evidenced by the return of receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:

(i) The Regional Administrator deems the injection well abandoned; or

(ii) The permit is terminated or revoked or a new permit is denied; or

(iii) Plugging and abandonment is ordered by the Regional Administrator or a U.S. district court or other court of competent jurisdiction; or

(iv) The owner or operator is named as debtor in a voluntary or involuntary proceeding under title 11 (Bankruptcy), U.S. Code; or

(v) The premium due is paid.

(9) Whenever the current plugging and abandonment cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current plugging and abandonment estimate and submit evidence of such increase to the Regional Administrator, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current plugging and abandonment cost estimate decreases, the face amount may be reduced to the amount of the current plugging and abandonment cost estimate following written approval by the Regional Administrator.

(10) The Regional Administrator will give written consent to the owner or operator that he may terminate the insurance policy when:

(i) An owner or operator substitutes alternate financial assurance as specified in this section; or

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(ii) The Regional Administrator releases the owner or operator from the requirements of this section in accordance with §144.63(i).

(f) *Financial test and corporate guarantee for plugging and abandonment.* (1) An owner or operator may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria of either paragraph (f)(1)(i) or (f)(1)(ii) of this section:

(i) The owner or operator must have:

(A) Two of the following three ratios: A ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

(B) Net working capital and tangible net worth each at least six times the sum of the current plugging and abandonment cost estimate; and

(C) Tangible net worth of at least \$10 million; and

(D) Assets in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current plugging and abandonment cost estimate.

(ii) The owner or operator must have:

(A) A current rating for his most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

(B) Tangible net worth at least six times the sum of the current plugging and abandonment cost estimate; and

(C) Tangible net worth of at least \$10 million; and

(D) Assets located in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current plugging and abandonment cost estimates.

(2) The phrase "current plugging and abandonment cost estimate" as used in paragraph (f)(1) of this section refers to the cost estimate required to be shown in paragraphs 1 through 4 of the letter from the owner's or operator's chief financial officer §144.70(f).

(3) To demonstrate that he meets this test, the owner or operator must

submit the following items to the Regional Administrator:

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in §144.70(f); and

(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(iii) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(A) He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(B) In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(4) An owner or operator of a new injection well must submit the items specified in paragraph (f)(3) of this section to the Regional Administrator within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in paragraph (f)(3) of this section.

(5) After the initial submission of items specified in paragraph (f)(3) of this section, the owner or operator must send updated information to the Regional Administrator within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in paragraph (f)(3) of this section.

(6) If the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, he must send notice to the Regional Administrator of intent to establish alternate financial assurance as specified in this section. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide the alternate financial assurance within 120 days after the end of such fiscal year.

(7) The Regional Administrator may, based on a reasonable belief that the owner or operator may no longer meet the requirements of paragraph (f)(1) of this section, require reports of financial condition at any time from the owner or operator in addition to those specified in paragraph (f)(3) of this section. If the Regional Administrator finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, the owner or operator must provide alternate financial assurance as specified in this section within 30 days after notification of such a finding.

(8) The Regional Administrator may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements [see paragraph (f)(3)(ii) of this section]. An adverse opinion or disclaimer of opinion will be cause for disallowance. The Regional Administrator will evaluate other qualifications on an individual basis. The owner or operator must provide alternate financial assurance as specified in this section within 30 days after notification of the disallowance.

(9) The owner or operator is no longer required to submit the items specified in paragraph (f)(3) of this section when:

(i) An owner or operator substitutes alternate financial assurance as specified in this section; or

(ii) The Regional Administrator releases the owner or operator from the requirements of this section in accordance with §144.63(i).

(10) An owner or operator may meet the requirements of this section by obtaining a written guarantee, hereafter referred to as "corporate guarantee." The guarantee must be the parent corporation of the owner or operator. The guarantee must meet the requirements for owners or operators in paragraphs (f)(1) through (f)(8) of this section and must comply with the terms of the corporate guarantee. The wording of the corporate guarantee must be identical to the wording specified in §144.70(h). The corporate guarantee must accompany the items sent to the Regional Administrator as specified in para-

graph (f)(3) of this section. The terms of the corporate guarantee must provide that:

(i) If the owner or operator fails to perform plugging and abandonment of the injection well covered by the corporate guarantee in accordance with the plugging and abandonment plan and other permit requirements whenever required to do so, the guarantee will do so or establish a trust fund as specified in §144.63(a) in the name of the owner or operator.

(ii) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and the Regional Administrator, as evidenced by the return receipts. 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 Regional Administrator, as evidenced by the return receipts.

(iii) If the owner or operator fails to provide alternate financial assurance as specified in this section and obtain the written approval of such alternate assurance from the Regional Administrator within 90 days after receipt by both the owner or operator and the Regional Administrator of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the owner or operator.

(g) *Use of multiple financial mechanisms.* An owner or operator may satisfy the requirements of this section by establishing more than one financial mechanism per injection well. These mechanisms are limited to trust funds, surety bonds, guaranteeing payment into a trust fund, letters of credit, and insurance. The mechanisms must be as specified in paragraphs (a), (b), (d), and (e), respectively, of this section, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the adjusted plugging and abandonment cost. If an owner or operator uses a trust fund in combination with a surety bond or letter of credit, he may use that trust fund as the standby trust

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fund for the other mechanisms. A single standby trust may be established for two or more mechanisms. The Regional Administrator may invoke any or all of the mechanisms to provide for plugging and abandonment of the injection well.

(h) *Use of a financial mechanism for multiple facilities.* An owner or operator may use a financial assurance mechanism specified in this section to meet the requirements of this section for more than one injection well. Evidence of financial assurance submitted to the Regional Administrator must include a list showing, for each injection well, the EPA Identification Number, name, address, and the amount of funds for plugging and abandonment assured by the mechanism. If the injection wells covered by the mechanism are in more than one Region, identical evidence of financial assurance must be submitted to and maintained with the Regional Administrators of all such Regions. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each injection well. In directing funds available through the mechanism for plugging and abandonment of any of the injection wells covered by the mechanism, the Regional Administrator may direct only the amount of funds designated for that injection well, unless the owner or operator agrees to use additional funds available under the mechanism.

(i) *Release of the owner or operator from the requirements of this section.* Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that plugging and abandonment has been accomplished in accordance with the plugging and abandonment plan, the Regional Administrator will notify the owner or operator in writing that he is no longer required by this section to maintain financial assurance for plugging and abandonment of the injection well, unless the Regional Administrator has reason to believe that plugging and abandonment has not been in accordance with the plugging and abandonment plan.

### § 144.64 Incapacity of owners or operators, guarantors, or financial institutions.

(a) An owner or operator must notify the Regional Administrator by certified mail of the commencement of a voluntary or involuntary proceeding under title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within 10 business days after the commencement of the proceeding. A guarantor of a corporate guarantee as specified in § 144.63(f) must make such a notification if he is named as debtor, as required under the terms of the guarantee (§ 144.70(f)).

(b) An owner or operator who fulfills the requirements of § 144.63 by obtaining a letter of credit, surety bond, or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy, insolvency, or a suspension or revocation of the license or charter of the issuing institution. The owner or operator must establish other financial assurance or liability coverage within 60 days after such an event.

### § 144.65 Use of State-required mechanisms.

(a) For a facility located in a State where EPA is administering the requirements of this subpart but where the State has plugging and abandonment regulations that include requirements for financial assurance of plugging and abandonment, an owner or operator may use State-required financial mechanisms to meet the requirements of this subpart if the Regional Administrator determines that the State mechanisms are at least equivalent to the mechanisms specified in this subpart. The Regional Administrator will evaluate the equivalency of the mechanisms mainly in terms of (1) certainty of the availability of funds for the required plugging and abandonment activities and (2) the amount of funds that will be made available. The Regional Administrator may also consider other factors. The owner or operator must submit to the Regional Administrator evidence of the establishment of the mechanism together with a