

7035.2751 PROPOSALS FOR NONSTANDARDIZED FINANCIAL ASSURANCE MECHANISMS; FACILITIES INITIALLY PERMITTED AFTER JANUARY 1, 2011.

Subpart 1. Criteria for nonstandardized financial assurance mechanisms.

A. A nonstandardized financial assurance mechanism must meet the criteria in items B to E to be approved for use.

B. The mechanism must ensure that funds sufficient to cover the estimated costs of closure, postclosure care, and corrective action are available at all times.

C. The mechanism must be such that the funds will be available and immediately payable directly into the standby trust fund according to instructions from the commissioner. The standby trust fund must meet the requirements in part 7035.2705 and an originally signed duplicate of the trust agreement must be submitted to the commissioner along with the mechanism.

D. The mechanism must be fully valid, binding, and enforceable under state and federal law.

E. The financial assurance mechanism must be drafted so that the financial assurance funds will not be assets in any bankruptcy proceeding filed by the permittee and will remain accessible by the commissioner throughout the bankruptcy reorganization or discharge.

Subp. 2. Evaluation; approval or disapproval.

A. All terms and conditions of a nonstandardized financial assurance mechanism must be approved by the commissioner. When the commissioner determines that the agency would benefit from an expert opinion on the adequacy of a proposed nonstandardized financial assurance mechanism, the commissioner shall retain an independent expert acceptable to the commissioner to evaluate the mechanism, at the owner's or operator's expense, to determine if the mechanism meets the criteria of subpart 1. The independent expert must have documented experience in the analysis of risk and the use of financial instruments used as guarantees such as bonds, letters of credit, and insurance. Prior to permit reissuance, the commissioner may require reevaluation of the nonstandardized financial assurance mechanism.

B. If a proposed nonstandardized financial assurance mechanism is disapproved by the commissioner, the operator or owner may submit an application for an alternative nonstandardized financial assurance mechanism or provide standard financial assurance under parts 7035.2705 to 7035.2745.

Statutory Authority: *MS s 116.07*

History: *36 SR 1352*

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