

§267.116

40 CFR Ch. I (7–1–10 Edition)

(c) Nothing in this section precludes you from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved final closure plan at any time before or after notification of final closure.

§267.116 What must I do with contaminated equipment, structure, and soils?

You must properly dispose of or decontaminate all contaminated equipment, structures, and soils during the partial and final closure periods. By removing any hazardous wastes or hazardous constituents during partial and final closure, you may become a generator of hazardous waste and must handle that waste following all applicable requirements of 40 CFR part 262.

§267.117 How do I certify closure?

Within 60 days of the completion of final closure of each unit under a part 270 subpart J standardized permit, you must submit to the Director, by registered mail, a certification that each hazardous waste management unit or facility, as applicable, has been closed following the specifications in the closure plan. Both you and an independent registered professional engineer must sign the certification. You must furnish documentation supporting the independent registered professional engineer's certification to the Director upon request until he releases you from the financial assurance requirements for closure under §267.143(i).

Subpart H—Financial Requirements

§267.140 Who must comply with this subpart, and briefly, what do they have to do?

(a) The regulations in this subpart apply to owners and operators who treat or store hazardous waste under a standardized permit, except as provided in §267.1(b), or §267.140(d) below.

(b) The owner or operator must:

- (1) Prepare a closure cost estimate as required in §267.142;
- (2) Demonstrate financial assurance for closure as required in §267.143; and
- (3) Demonstrate financial assurance for liability as required in §267.147.

(c) The owner or operator must notify the Regional Administrator if the owner or operator is named as a debtor in a bankruptcy proceeding under Title 11 (Bankruptcy), U.S. Code (See also §267.148).

(d) States and the Federal government are exempt from the requirements of this subpart.

§267.141 Definitions of terms as used in this subpart.

(a) *Closure plan* means the plan for closure prepared in accordance with the requirements of §267.112.

(b) *Current closure cost estimate* means the most recent of the estimates prepared in accordance with §267.142 (a), (b), and (c).

(c) [Reserved]

(d) *Parent corporation* means a corporation which directly owns at least 50 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.

(e) [Reserved]

(f) The following terms are used in the specifications for the financial tests for closure and liability coverage. The definitions are intended to assist in the understanding of these regulations and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices:

Assets means all existing and all probable future economic benefits obtained or controlled by a particular entity.

Current plugging and abandonment cost estimate means the most recent of the estimates prepared in accordance with §144.62(a), (b), and (c) of this chapter.

Independently audited refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

Liabilities means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

Tangible net worth means the tangible assets that remain after deducting liabilities; such assets would not include

Environmental Protection Agency

§ 267.142

intangibles such as goodwill and rights to patents or royalties.

(g) In the liability insurance requirements, the terms *bodily injury and property damage* shall have the meanings given these terms by applicable State law. However, these terms do not include those liabilities which, consistent with standard industry practices, are excluded from coverage in liability policies for bodily injury and property damage. The Agency intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry. The definitions given below of several of the terms are intended to assist in the understanding of these regulations and are not intended to limit their meanings in a way that conflicts with general insurance industry usage.

Accidental occurrence means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

Legal defense costs means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

Sudden accidental occurrence means an occurrence which is not continuous or repeated in nature.

(h) *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 applicable EPA Regional Administrator.

§ 267.142 Cost estimate for closure.

(a) The owner or operator must have at the facility a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in §§ 267.111 through

267.115 and applicable closure requirements in §§ 267.176, 267.201, 267.1108.

(1) The estimate must equal the cost of final closure at the point in the facility’s active life when the extent and manner of its operation would make closure the most expensive, as indicated by the closure plan (see § 267.112(b)); and

(2) The closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in § 267.141(d).) The owner or operator may use costs for on-site disposal if he can demonstrate that on-site disposal capacity will exist at all times over the life of the facility.

(3) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, or non-hazardous wastes, facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

(4) The owner or operator may not incorporate a zero cost for hazardous wastes, or non-hazardous wastes that might have economic value.

(b) During the active life of the facility, the owner or operator must adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with § 267.143. For owners and operators using the financial test or corporate guarantee, the closure cost estimate must be updated for inflation within 30 days after the close of the firm’s fiscal year and before submission of updated information to the Regional Administrator as specified in § 267.143(f)(2)(iii). The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross Domestic Product published by the U.S. Department of Commerce in its Survey of Current Business, as specified in paragraphs (b)(1) and (2) of this