

## §267.149

§§267.143(g) and 267.147 (g) must make such a notification if he is named as debtor, as required under the terms of the corporate guarantee (§264.151(h)).

(b) An owner or operator who fulfills the requirements of §267.143 or §267.147 by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The owner or operator must establish other financial assurance or liability coverage within 60 days after such an event.

## §267.149 [Reserved]

### §267.150 State assumption of responsibility.

(a) If a State either assumes legal responsibility for an owner's or operator's compliance with the closure care or liability requirements of this part or assures that funds will be available from State sources to cover those requirements, the owner or operator will be in compliance with the requirements of §267.143 or §267.147 if the Regional Administrator determines that the State's assumption of responsibility is at least equivalent to the financial mechanisms specified in this subpart. The Regional Administrator will evaluate the equivalency of State guarantees principally in terms of: Certainty of the availability of funds for the required closure care activities or liability coverage; and the amount of funds that will be made available. The Regional Administrator may also consider other factors as he deems appropriate. The owner or operator must submit to the Regional Administrator a letter from the State describing the nature of the State's assumption of responsibility together with a letter from the owner or operator requesting that the State's assumption of responsibility be considered acceptable for meeting the requirements of this subpart. The letter from the State must include, or have attached to it, the fol-

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lowing information: The facility's EPA Identification Number, name, and address, and the amount of funds for closure care or liability coverage that are guaranteed by the State. The Regional Administrator will notify the owner or operator of his determination regarding the acceptability of the State's guarantee in lieu of financial mechanisms specified in this subpart. The Regional Administrator may require the owner or operator to submit additional information as is deemed necessary to make this determination. Pending this determination, the owner or operator will be deemed to be in compliance with the requirements of §267.143 or §267.147, as applicable.

(b) If a State's assumption of responsibility is found acceptable as specified in paragraph (a) of this section except for the amount of funds available, the owner or operator may satisfy the requirements of this subpart by use of both the State's assurance and additional financial mechanisms as specified in this subpart. The amount of funds available through the State and Federal mechanisms must at least equal the amount required by this subpart.

### §267.151 Wording of the instruments.

(a) The chief financial officer of an owner or operator of a facility with a standardized permit who uses a financial test to demonstrate financial assurance for that facility must complete a letter as specified in §267.143(f) of this chapter. The letter must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance for closure costs, as specified in [insert "subpart H of 40 CFR part 267" or the citation to the corresponding state regulation]. This firm qualifies for the financial test on the basis of having [insert "a current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's" or "a ratio of less than 1.50 comparing total liabilities to net worth" or "a ratio of greater than 0.10

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comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities.”]

This firm [insert “is required” or “is not required”] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm’s independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[If this firm qualifies on the basis of its bond rating fill in the requested information: “This firm has a rating of its senior unsecured debt of” [insert the bond rating] “from” [insert “Standard and Poor’s” or “Moody’s”]. Complete Line 1, Total Liabilities below and then skip the remaining questions in the next section and resume completing the form at the section entitled *Obligations Covered by a Financial Test or Corporate Guarantee.*]

[If this firm qualifies for the financial test on the basis of its ratio of liabilities to net worth, or sum of income, depreciation, depletion, and amortization to net worth, please complete the following section.]

- \*1. Total Liabilities .... \$ \_\_\_\_\_
- \*2. Net Worth ..... \$ \_\_\_\_\_
- \*3. Net Income ..... \$ \_\_\_\_\_
- \*4. Depreciation ..... \$ \_\_\_\_\_
- \*5. Depletion (if applicable) ..... \$ \_\_\_\_\_
- \*6. Amortization ..... \$ \_\_\_\_\_
- \*7. Sum of Lines 3., 4., 5. & 6 ..... \$ \_\_\_\_\_

[If the above figures are taken directly from the most recent audited financial statements

for this firm insert “The above figures are taken directly from the most recent audited financial statements for this firm.” If they are not, insert “The following items are not taken directly from the firms most recent audited financial statements” [insert the numbers of the items and attach an explanation of how they were derived.]

[Complete the following calculations]

- 8. Line 1. + Line 2. = .... \_\_\_\_\_
- 9. Line 7. + Line 1. = .... \_\_\_\_\_
- Is Line 8. less than 1.5? \_\_\_\_\_ Yes  
\_\_\_\_\_ No
- Is Line 9 greater than 0.10? ..... \_\_\_\_\_ Yes  
\_\_\_\_\_ No

[If you did not answer Yes to either of these two questions, you cannot use the financial test and need not complete this letter. Instead, you must notify the permitting authority for the facility that you intend to establish alternate financial assurance as specified in 40 CFR 267.143. The owner or operator must send this notice by certified mail within 90 days following the close of the owner or operator’s fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements of this section. The owner or operator must also provide alternative financial assurance within 120 days after the end of such fiscal year.]

*Obligations Covered by a Financial Test or Corporate Guarantee*

[On the following lines list all obligations that are covered by a financial test or a corporate guarantee extended by your firm. You may add additional lines and leave blank entries that do not apply to your situation.]

Hazardous Waste Facility Name and ID	State	Closure	Post-Closure	Corrective Action
_____	_____	\$ _____	\$ _____	\$ _____
_____	_____	_____	_____	_____
Hazardous Waste Third Party Liability				\$ _____
Municipal Waste Facilities	State	Closure	Post-Closure	Corrective Action
_____	_____	\$ _____	\$ _____	\$ _____
_____	_____	_____	_____	_____
Underground Injection Control	State			Plugging action
_____	_____			\$ _____
Petroleum Underground Storage Tanks				_____

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Underground Injection Control	State	Plugging action
PCB Storage Facility Name and ID	State	Closure
	_____	\$ _____

Any financial assurance required under, or as part of an action undertaken under, the	Comprehensive Environmental Response, Compensation, and Liability Act.
Site name	State Amount
_____	_____ \$ _____

Any other environmental obligations that are assured through a financial test.

Name	Amount
_____	\$ _____
*10. Total of all amounts	\$ _____
*11. Line 10 + \$10,000,000 =	\$ _____
*12. Total Assets	\$ _____
*13. Intangible Assets	\$ _____
*14. Tangible Assets (Line 12. – Line 13)	\$ _____
*15. Tangible Net Worth (Line 14. – Line 1.)	\$ _____
*16. Assets in the United States	\$ _____

In addition, a signed copy must be sent to every authority who (1) requires a demonstration through a financial test for each of the other obligations in the letter that are assured through a financial test, or (2) accepts a guarantee for an obligation listed in this letter.]

(b) The chief financial officer of an owner or operator of a facility with a standardized permit who use a financial test to demonstrate financial assurance only for third party liability for that (or other standardized permit) facility(ies) must complete a letter as specified in Section 267.147(f) of this chapter. The letter must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Is Line 15 greater than Line 11?  Yes  No

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance for third party liability, as specified in [insert "subpart H of 40 CFR part 267" or the citation to the corresponding state regulation]. This firm qualifies for the financial test on the basis of having tangible net worth of at least \$10 million more than the amount of liability coverage and assets in the United States of at least the amount of liability coverage.

Is Line 16 no less than Line 10?  Yes  No

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

[You must be able to answer Yes to both these questions to use the financial test for this facility.]

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

I hereby certify that the wording of this letter is identical to the wording specified in 40 CFR 267.151 as such regulations were constituted on the date shown immediately below.

[Signature] \_\_\_\_\_  
 [Name] \_\_\_\_\_  
 [Title] \_\_\_\_\_  
 [Date] \_\_\_\_\_

[Please complete the following section.]

[After completion, a signed copy of the form must be sent to the permitting authority of the state or territory where the facility is lo-

*1. Total Assets .....	\$ _____
*2. Intangible Assets ...	\$ _____

