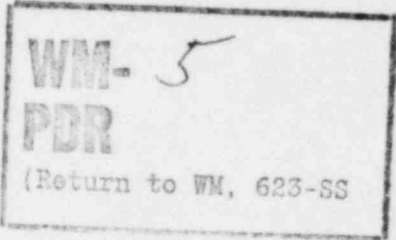


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MEMORANDUM FOR: Ross A. Scarano, Chief
 Low-Level Waste Branch

FROM: Joseph O. Bunting, Jr., Chief
 Licensing Process and Integration Branch

SUBJECT: REVIEW OF PROPOSED POLICY STATEMENT ON FINANCIAL TESTS
 FOR MILL LICENSEES

At your staff's request, we have reviewed the proposed policy statement of Colorado and have the following specific comments.

(Note: Those requirements in quotations are from EPA's RCRA rules - FR, V. 47, No. 67, April 7, 1982.)

- a. Generally, the definitions are identical to those used by EPA in their RCRA regulations and are satisfactory.
- b. The second financial test on pages two and three uses the terms "sureties" to refer to the costs of decommissioning and decontamination. We suggest that "financial responsibility for decommissioning, decontamination, and reclamation" be substituted instead.
- c. On page 3, requirement number 2.c, we suggest that the phrase "ratio was not more than two to one" be changed to "net worth ratio not less than 2.0". Use of a numerical comparison makes this sentence consistent with the rest of the paragraph.
- d. The timing of the submittal of financial information should be added to the proposed rules. If the financial tests are to work, the regulations should clearly state when certain materials are to be submitted to the State. We suggest the following:
 - "1. The licensee of a new facility must submit the items specified in ----- at least 60 days before milling operations commence.
 - 2. After the initial submission of the financial information specified in -----, the licensee must send updated information within 90 days after the close of each succeeding fiscal year.

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- e. Section IV dealing with licensee failure to meet the financial test, should provide more time for the licensee to notify the state that he intends to establish an alternative financial assurance. We suggest the following: "If the licensee can no longer meet the requirements of section ----, he must send notice to the State of intent to establish an alternative form of financial assurance. This notice must be sent by certified mail within 90 days after the end of the fiscal year for which the licensee no longer meets the requirements. The licensee must then provide the alternate financial assurance within 120 days after the end of such fiscal year."
- f. The front of the regulations note that the parent organization of the licensee may enter the agreement in the event the licensee is a subsidiary corporation. The specifics of how the parent company assumes responsibility should be spelled out. We suggest the following:

"An owner or operator may meet the requirements of section ---- by obtaining a written corporate guarantee. The guarantor must be the parent corporation of the licensee.

The terms of the corporate guarantee must provide that:

- (a) if the licensee fails to perform final decommissioning and reclamation covered by the corporate guarantee, the guarantor will do so or establish a trust fund.
- (b) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the licensee and to the State. Cancellation may not occur however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the licensee and the State.
- (c) If the owner or operator fails to provide alternate financial assurance as specified in this section and also to obtain the written approval of such alternate assurance from the State within 90 days after receipt by both the licensee and the state 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 licensee."

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We also suggest that you consider using a standard form for corporate guarantees such as was developed by EPA for their RCRA regulations. (FR, Vol. 47, No. 67, April 7, 1982, pgs. 15063-15064).

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Joseph O. Bunting, Jr., Chief
Licensing Process and
Integration Branch

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*WPI reviewed by
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