§ 27-0917. Financial requirements for hazardous waste facilities.

1. Within eighteen months after the effective date of this section, the commissioner shall promulgate regulations for hazardous waste facilities identifying financial requirements to be included as conditions in hazardous waste facility permits for the remediation of failures during operation and after facility closure, for facility closure, and for pre-closure and post-closure facility monitoring and maintenance. In promulgating regulations pursuant to this subdivision, the department shall identify those regulations which vary from applicable federal rules and regulations. Such regulations shall:

(a) Reflect due consideration of relevant federal requirements and except where necessary to serve the public interest or where inconsistent with the purposes of this section, conform to regulations promulgated under the Resource Conservation and Recovery Act of 1976 and the Comprehensive Environmental Response Compensation and Liability Act of 1980 but shall in no case be less stringent than such federal requirements and regulations.

(b) Reflect due consideration of the sizes and locations of affected facilities, the natures and volumes of hazardous waste involved, the types of facilities (treatment, storage or disposal) and the degrees and durations of risk to human health or the environment.

(c) Provide for the establishment, administration, terms and conditions of the following methods or instruments to be used as alternatives or in combinations, in order to achieve non-duplicative coverage of the financial assurance requirements mandated by this section:

(i) Trust funds.

(ii) Surety or performance bonds.

(iii) Letters of credit.

(iv) Liability insurance or annuities.

(v) Guarantees provided by corporate or other legal or financial affiliates of the facility owner or operator.

(d) Establish:

(i) Exemptions for identified classes of facilities engaged in treatment or storage of hazardous waste for which financial assurance requirements for closure and post-closure monitoring and maintenance are

unnecessary or inappropriate.

(ii) Financial criteria for the purpose of determining the financial condition of permit applicants and permit holders. Such financial criteria shall be established for the purpose of determining the relative financial viability of permit holders and applicants. The department shall establish standards of minimum financial viability based on the criteria. Any permit holder or applicant meeting the minimum financial viability standard may select at its own discretion which of the methods or instruments described in paragraph (c) of this subdivision will be used to meet the requirements of subdivision five of this section. With respect to permit holders or applicants which do not meet the minimum financial viability standards, the commissioner may in his discretion determine which method or instrument or combination thereof shall be used to meet the requirements of subdivision five of this section. Any decision by the commissioner with respect to determining which methods or instruments are to be used shall be accompanied by a finding regarding the public interest and shall set forth the reasons therefor.

(iii) Requirements for the initial and periodic submission by permit holders and applicants to the department of up to date financial data based on the test criteria established pursuant to subparagraph (ii) of this paragraph.

(iv) The duration of such financial requirements.

(v) The method for phasing-in financial requirements for existing facilities.

2. The commissioner shall undertake an analysis of the use of a financial test as an alternative to the requirements for use of the financial assurances methods or instruments provided for in paragraph (c) of subdivision one of this section. In his analysis the commissioner shall consider relevant federal rules and regulations and their rationale, the use of such a test by other states, and the impact on affected business and industry as well as the public health and safety and any other factors he may consider relevant.

In undertaking such analysis, the commissioner shall conduct at least one public hearing and shall make a finding as to whether or not the

public interest warrants the use of a financial test for the purposes stated herein and shall report such finding to the legislature within twelve months of the effective date of this section.

In the event the commissioner finds that the public interest warrants use of a financial test, the commissioner shall within eighteen months after the effective date of this section, promulgate regulations making provisions for use of a financial test. Any such regulations shall give due consideration to relevant federal requirements and, except where necessary to serve the public interest or where inconsistent with the purposes of this section, shall conform to relevant federal regulations but shall in no case be less stringent.

3. Any owner or operator of an existing or proposed hazardous waste facility may request a modification from the department of any of the financial requirements established pursuant to subdivision one of this section. A modification may be granted in the discretion of the department if such financial requirements are found to be unnecessary or inappropriate, consistent with public interest and the purposes of this section and supported by written findings setting forth the reasons for the modification. Such modification request shall be considered a request for modification of the permit for the facility pursuant to article seventy of this chapter. In no case shall a modification granted pursuant to this subdivision eliminate or reduce the minimum requirements established in subdivision five of this section.

4. In addition to the financial requirements established pursuant to subdivision one of this section, permits for the construction and operation of certain categories of hazardous waste facilities, as those categories are defined in regulations, may, if the commissioner determines that adequate protection of the public so requires, include conditions related to any or all of the following, including responsibility for the costs thereof:

(a) On-site environmental monitors whose function shall be to monitor compliance with permit conditions. The commissioner may promulgate regulations regarding the use of such monitors.

(b) Site safety plans whereby the permittee shall establish, with the

cooperation of local government officials, a community and project safety plan, including but not limited to an accident response based on a worst-case condition, on-site and off-site, a personnel training program, provisions for coordination with local emergency services and regular training exercises. Any such plan shall be subject to the approval of the department.

(c) Long term management plans, the purpose of which shall be to insure that the permittee devotes adequate resources to the examination and implementation of technologies for hazardous waste management which provide the maximum degree of environmental and public health protection practicable. The department shall, to the extent reasonably possible, make available any information or data appropriate and consistent with the purposes of this paragraph. Such a plan shall include but not be limited to the following:

(i) An overview of existing technologies being employed at the facility.

(ii) An analysis of alternate technologies available for the treatment or disposal of waste streams currently being managed or those which the applicant/permittee anticipates managing.

(iii) An assessment of marketing considerations related to the employment of alternate technologies.

(iv) An evaluation of the feasibility of financing modifications to the existing facility in order to employ the alternate technologies.

(v) A statement from the applicant/permittee regarding its intent to implement the alternate technologies, where appropriate, and a detailed discussion of the measures the applicant/permittee will take to implement the same.

5. Any permit issued by the department to construct or operate a hazardous waste facility shall, except pursuant to regulations promulgated pursuant to subdivision two of this section, require the owner or operator, or an affiliate thereof, to secure, at a minimum, one of the instruments of financial assurance provided for in paragraph (c) of subdivision one of this section. Such instruments shall be designed to insure proper facility closure, based on the estimates approved pursuant to section 27-0918 of this chapter, and coverage of personal injury and property damage to third parties caused by the operation of

such facility. Such instruments shall from time to time be reviewed and updated, pursuant to regulations promulgated by the department, to insure their continued adequacy for the purposes of this section. The requirements of this subdivision shall not apply to permits granted to the state or to any facilities exempted pursuant to subparagraph (i) of paragraph (d) of subdivision one of this section.

6. If a permit holder or applicant relies upon the financial condition of a corporate parent or affiliate to meet any financial test or criteria established pursuant to this title or regulations promulgated thereunder, the parent or affiliate shall guarantee the performance of all financial assurance requirements imposed pursuant to this title, including the costs of any closure and post-closure plan.

7. Within six months after the effective date of regulations promulgated pursuant to subdivision one of this section, owners or operators of all affected existing facilities shall make application for a permit or permit modification to achieve compliance with such regulations, and immediately upon such effective date no application for a permit for any proposed affected facility shall be complete for the purposes of article seventy of this chapter without complying with such regulations. Receipt of such applications by the department shall be published in the next issue of the environmental notice bulletin following receipt.

8. In the case of permits for the construction and operation of commercial hazardous waste facilities which utilize secure landburial facilities as a primary disposal technique, such permits shall include the conditions enumerated in subdivision four of this section. In addition, the department shall establish qualifications for on-site environmental monitors to be stationed at such facilities. In order to enhance the ability of the department to monitor all aspects of a secure landfill operator the qualifications shall include a requirement that such monitors be expert in at least one of the areas of geology, chemistry or engineering. The department shall ensure that the monitors assigned to a particular facility at any one time shall, to the extent possible, have different areas of expertise as among themselves. In

addition the department shall establish a rotation of monitors, when more than one such facility exists, to ensure no individual monitor is assigned to a particular facility for more than six months in any single year.

9. The commissioner shall promulgate regulations establishing requirements of financial responsibility to assure the completion of corrective action required pursuant to subdivision two of section 27-0911 or subdivision one of section 27-0913 of this title.