§ 27-1325. Financial responsibility provisions.

1. The department shall promulgate regulations regarding financial responsibility for the implementation of an inactive hazardous waste disposal site remedial program.

2. Financial responsibility required by subdivision one of this section may be established in accordance with regulations promulgated by the commissioner by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. In promulgating requirements under this section, the commissioner is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this article.

3. In any case where the responsible person is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or where, with reasonable diligence, jurisdiction in any state or federal court within the state cannot be obtained over a responsible person likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility shall be provided under this section may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this subdivision, such guarantor shall be entitled to invoke all rights and defenses which would have been available to the responsible person if any action had been brought against the responsible person by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the responsible person.

4. The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the responsible person under this chapter. Nothing in this subdivision shall be construed to limit any other state or federal statutory, contractual or common law liability of a guarantor to its responsible person including, but not limited to, the liability

of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subdivision shall be construed to diminish the liability of any person under section 27-1313 of this article or other applicable law.

5. For the purpose of this section, the term "guarantor" means any person, other than the responsible person, who provides evidence of financial responsibility for a responsible person under this section.