# Brief description of DTSC Financial Assurance Mechanisms for Operators and Owners of Hazardous Waste Facilities

### *Trust Fund*
A trust fund is an account created by a hazardous waste facility with a trustee for the benefit of DTSC. The Trust Fund allows DTSC to control the fund if the owner or operator fails to meet its financial assurance obligations. A trust fund is created with money placed into an account. For closure and postclosure care, the hazardous waste facility may make annual payments into the fund up to 10 years. This time period is called the "pay-in period." Trust funds established for third party liability must be fully funded. A trust fund is managed by a trustee (usually a bank) licensed or chartered by a state or federal agency. A trust fund may be used for closure, postclosure, corrective action, and third party liability.

### *Surety Bond*
Surety bonds are guarantees by a third party that closure, postclosure and corrective action obligations will be fulfilled. Surety bonds may also be used for liability coverage. There are three types of surety bonds:
1. Financial Guarantee Bond - in the event an owner or operator fails to fulfill closure and postclosure requirements, a financial guarantee bond funds a standby trust in the amount equal to the face value (also known as the "penal sum") of the bond.
2. Performance Bond - Guarantees that the owner or operator will perform final closure (or post closure care, or corrective action) in accordance with the closure plan (or postclosure plan) and other requirements of the permit for the facility. The surety shall become liable on the bond obligation only when the owner or operator fails to perform as guaranteed by the bond. A performance bond may not be used for third party liability.
3. Payment Bond - is a form of surety bond used for third party liability coverage.

Surety bonds are issued by surety companies (usually subsidiaries of insurance companies). To be acceptable, a surety company must be on a list that shows they are authorized by the US Treasury Department to issue Treasury Bonds. This list is known as Circular 570.

### *Letter of Credit*
A letter of credit is guarantee by a financial institution (a bank) that covers the owner's or operator's financial assurance requirements. A letter of credit is similar to a "line of credit" that is, it is meant to provide assurance that the applicant will meet its financial obligation. A standby trust fund is required with the letter of credit to provide an account into which the funds drawn from the letter of credit may be deposited. A standby trust with a letter of credit for third party liability is optional. There are severe financial penalties for the owner or operator if the letter of credit is drawn upon (e.g., reduced or ruined credit rating): so it is always preferable for an owner or operator to meet its obligations without requiring DTSC to draw upon this mechanism. A letter of credit may be used to provide financial assurance for closure, postclosure, corrective action, and third party liability.

### *Insurance Policy*
An insurance policy is a guarantee that funds shall be available in an amount equal to the face value of the policy to meet financial assurance requirements. An insurance policy may provide funds for closure, postclosure, corrective action, and third party liability.

### *Financial Test/Corporate Guarantee*
An owner or operator (a corporation) presents their financial statements as demonstration that they have adequate financial resources to meet their financial assurance obligations. That is, an owner or operator provides a certification that their assets meet or exceed the costs of their obligations (financial assurance requirements plus current liabilities). An independent certified public accountant's statement must accompany this certification.

A "corporate guarantee" is a financial test that is a written guarantee from a direct or higher-tier parent corporation, a firm whose parent corporations is also the parent corporation of the owner operator, or a firm with a "substantial business relationship" with the owner or operator to perform closure, postclosure, corrective action, or pay liability claims if the owner or operator fails to do so. The corporate guarantor must meet or exceed the financial test.

### *Alternative Financial Mechanisms*
An alternative mechanism is a financial assurance mechanism other than those specifically mentioned in regulation. The alternative mechanism must be at least equivalent to the other financial mechanisms listed in regulation. Typical alternative mechanisms DTSC has accepted are certificates of deposit, secured savings accounts, time deposit agreements, etc.

## Summary Table

| Type of Mechanism | Pros | Cons |
|---|---|---|
| Trust Fund | • actual funds<br>• administered by third party<br>• payments from trust may be made to another party | • trustee only responsible for management of trust (not the actual amount)<br>• can be funded over a period of time (may allow a gap if operator becomes insolvent before fully funded)<br>• depends on reliability of trustee |
| Financial Guarantee Bond | • actual funds<br>administered by a third party<br>• payments from bond may be made to another party | • depends on financial stability of surety company<br>• bonds may be cancelled or invalidated |
| Performance Bond | • administered by a third party | • obligates "performance" of operator.<br>• does not guarantee payment to beneficiary for "non- performance"<br>• difficult to "collect" |
| Payment Bond (third party liability) | • actual funds<br>administered by a third party<br>• payments from bond may be made to another party | • depends on financial stability of surety company<br>• bonds may be cancelled or invalidated |
| Letter of Credit | • guarantee of payment upon demand<br>• guarantee from third party | • relies on solvency of bank issuing letter of credit<br>• requires bank specific procedures for payment from letter of credit<br>• requires that the full amount of the letter of credit be drawn upon |
| Insurance Policy | • administered by third party | • relies on solvency of insurance company issuing policy<br>• current regulation allows the use of captive insurance<br>• insurance company may seek to cancel policy if operator fails to make (complete) premium payments. |
| Financial Test / Corporate Guarantee | • allows corporations flexibility in providing financial assurance | • relies upon the reliability of the CFO statements<br>• relies upon the adequacy of the independent CPA's "review" and report<br>• provides little protection for DTSC if the corporation becomes insolvent<br>• requires quicker response from DTSC if corporation appears to be falling (less time to react)<br>• existing regulations provide little to no "warning" for DTSC, if corporation is failing |
| Alternative Mechanisms | • provides DTSC with discretion to allow owner/operator to design alternative financial mechanisms<br>• not as burdensome on lower closure cost estimates<br>• may be best FA for non-corporate Standardized Permit, PBR and e-waste recycling facilities | • only available to non-RCRA permit activities<br>• requires careful DTSC review prior to approval |