

**3701:1-40-17****Appendix C**Criteria relating to use of financial tests and self guarantees for providing reasonable assurance of funds for decommissioning by companies that issue bonds.

## I. Introduction

An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on furnishing its own guarantee that funds will be available for decommissioning costs and on a demonstration that the company passes the financial test of Section II of this appendix. The terms of the self-guarantee are in Section III of this appendix. This appendix establishes criteria for passing the financial test for the self guarantee and establishes the terms for a self-guarantee.

## II. Financial test

- (A) To pass the financial test, a company must meet all of the following criteria:
- (1) Tangible net worth of at least ten times the total current decommissioning cost estimate for the total of all facilities or parts thereof (or the current amount required if certification is used).
  - (2) Assets located in the United States amounting to at least ninety per cent of total assets or at least ten times the total current decommissioning cost estimate for the total of all facilities or parts thereof (or the current amount required if certification is used).
  - (3) A current rating for its most recent bond issuance of AAA, AA, or ~~a~~A as issued by Standard and Poor's (S&P), or Aaa, Aa, or A as issued by Moody's.
- (B) To pass the financial test, a company must meet all of the following criteria:
- (1) The company must have at least one class of equity securities registered under the Securities Exchange Act of 1934, ~~as amended (2012)~~ Pub. L. 73-291, 48 Stat. 881, 42 U.S.C. 78a et seq., as amended in 2012.
  - (2) The parent company's independent certified public accountant must have compared the data used by the parent company in the financial test, which is derived from the independently audited, year end financial statements for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure the licensee shall inform the director within ninety days of any matters coming to the auditor's attention which cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test.

- (3) After the initial financial test, the parent company must repeat the passage of the test within ninety days after the close of each succeeding fiscal year.
- (C) If the licensee no longer meets the requirements of section II paragraph (A) of this appendix, the licensee must send immediate notice to the director of its intent to establish alternate financial assurance as specified in the rules within one hundred twenty days of such notice.

### III. Parent company guarantee

The terms of a parent company guarantee which an applicant or licensee obtains must provide that:

- (A) The guarantee will remain in force unless the licensee sends notice of cancellation by certified mail to the director. Cancellation may not occur, however, during the one hundred twenty days beginning on the date of receipt of cancellation by the director, as evidenced by the return receipt.
- (B) The licensee shall provide alternate financial assurance as specified in the rules within ninety days following receipt by the director of a notice of cancellation of the guarantee.
- (C) The guarantee and financial test provisions must remain in effect until the director has terminated the license or until another financial assurance method acceptable to the director has been put in effect by the licensee.
- (D) The licensee will promptly forward to the director and the licensee's independent auditor all reports covering the latest fiscal year filed by the licensee with the securities and exchange commission pursuant to the requirements of section 13 of the federal Securities and Exchange Act of 1934, ~~as amended (2012)~~ [Pub. L. 73-291, 48 Stat. 881, 42 U.S.C. 78a et seq., as amended in 2012.](#)
- (E) If, at any time, the licensee's most recent bond issuance ceases to be rated in any category of "A" or above by either Standard and Poors or Moodys, the licensee will provide notice in writing of such fact to the director within twenty days after publication of the change by the rating service. If the licensee's most recent bond issuance ceases to be rated in any category of A or above by both Standard and Poors and Moodys, the licensee no longer meets the requirements of section II paragraph (A) of this appendix.
- (F) The applicant or licensee must provide to the director a written guarantee (a written commitment by a corporate officer) which states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the director, the licensee will set up and fund a trust in the amount of the current cost estimates for decommissioning.

