

Guidance for Provision 11 – Insurance, closure plan, and financial responsibility

This addendum replaces all previous guidance for Provision 11, including that in the full R2-2013 Guidance document that predates this new information. Guidance is intended to offer further explanation of complex requirements in the R2 Standard along with examples and audit recommendations. However, this document itself is not auditable and cannot be cited in relation to any nonconformances. The explanations within are intended to prevent misinterpretation of the R2 Standard, not to add to, subtract from, or modify the R2 Standard. The examples cited may not be the only way to fulfill a requirement of the standard.

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Provision 11 - General Guidance		
Comment No.	Area of the Standard	Guidance
11.1	Assessing and Documenting Risk	The purpose of Provision 11 is to mitigate the consequences of on-site accidents or unforeseen closure of the facility. To determine how to adequately provide for these situations, a thorough risk assessment should be conducted to determine sufficient insurance coverage or reserves and assets required to perform actions in the closure plan. This evaluation should be clearly documented. The closure plan should contain a clearly written timeline of tasks and the persons responsible for each action in the event of a closure/abandonment. Based on the risk assessment, it may be determined that pollution liability insurance is not necessary for some very small facilities depending on their types of operations (refer to Comment 11.3)

Provision 11 – Clarifications		
Comment No.	Area of the Standard	Guidance
11.2	(a) adequate insurance coverage	<p>Insurance levels should be adequate to cover injury claims that might result from activities that take place on or off-site. Commercial General Liability Coverage covers bodily injury, property damage, accidents, and other emergencies. The “adequate” level of Commercial Liability Insurance in the United States for a small low-risk operation, for example, is typically \$1,000,000 per occurrence. This may vary in other countries or regions.</p> <p>Pollution liability insurance is expected to be in effect for each R2 electronics recycler unless a risk assessment by a qualified environmental professional determines it is not necessary (see 11.3 Pollution Liability Insurance below).</p> <p>R2 electronics recyclers are expected to have valid and current certificates of insurance, with explanation of coverage, for all applicable coverages. It is also recommended that the R2 recycler be named on downstream vendors’ policies as “additional insured” entities.</p> <p>Auditing of insurance coverage will vary by policy. Commercial General Liability coverage in the U.S. is regulated by states and therefore standardized in language and coverage between policies within the state. Typical amounts are \$1 million U.S. dollars per occurrence and \$2 million per aggregate. Auditors should verify coverage is current. Pollution liability policies should be further scrutinized to ensure the language in the policy follows the below guidance on pollution liability insurance in comment 11.3, and covers the pollution risks appropriate to the organization as identified in the Risk Assessment.</p>
11.3	(a) Pollution Liability Insurance	<p>General liability or umbrella policies normally have a “total pollution exclusion” clause that excludes coverage for “items to be or that have been recycled, reclaimed, or refurbished.” Therefore, general liability policies are not usually effective for covering a pollution incident involving used electronics. All R2 electronics recyclers are presumed to have environmental pollution risks and should carry pollution liability insurance unless they demonstrate through a qualified environmental risk assessment that they have a minimal level of risk that does not warrant pollution liability insurance coverage. The burden of proof that pollution insurance is not needed is solely on the R2 electronics recycler.</p>

Provision 11 – Clarifications

Comment No.	Area of the Standard	Guidance
		<p>Relying on indemnification language in contracts with customers or downstream vendors, or being listed as “Additional insured” on another company’s insurance policy does not meet the intent of the R2 Provision 11 insurance requirements, and it may still leave the recycler vulnerable to pollution liability. To assure coverage from improper practices. The R2 recycler carries the appropriate pollution liability coverage.</p> <p>Examples of risk from electronic recycling/refurbishing activities can include but are not limited to: risk of fire from lithium batteries found in cell phones, laptops, and servers; acid spills from lead acid batteries in Uninterruptible Power Supplies; mercury spills from broken lamps removed from LCD monitors, televisions, copiers, multi-function printers, and laptop displays; and broken CRT glass from CRT televisions and monitors. Volume, types of accepted material, methods of material storage and processing technologies are all factors in determining sufficient pollution liability insurance coverage. For an R2 electronics recycler to successfully demonstrate it does not require pollution liability insurance, the recycler should have an independent assessment by a qualified environmental professional. A self-assessment is not acceptable. Nor would a "phase 1" environmental site assessment of the site qualify as an acceptable environmental risk assessment of an R2 electronics recycler's current activities.</p> <p>An environmental risk assessment is credible when conducted by a qualified environmental professional. Most insurance agents are not experienced in the recycling industry, nor in pollution liability. Qualifications to look for include but are not limited to:</p> <ul style="list-style-type: none"> • CHMM - Certified Hazardous Materials Manager • PE - Professional Engineer (Environmental) • PG - Professional Geologist • RG - Registered Geologist • Commercial Insurance Underwriter or Risk Manager with qualifications in pollution liability insurance and quantification of environmental impacts. <p>Unlike other insurance policies, in the United States, for example, pollution liability insurance is not “admitted” and not subject to state regulation. Consequently, pollution liability policies vary greatly in coverage and exclusions. The following practices should be included in coverage:</p>

Provision 11 – Clarifications		
Comment No.	Area of the Standard	Guidance
		<ol style="list-style-type: none"> 1. NODS – Non-owned disposal site liability coverage. This covers liability for waste improperly disposed by the recycler or other vendors at other locations not owned by the recycler. Policy language typically includes blanket coverage of all recycling/disposal outlets which are properly licensed, not bankrupt, and not currently known to be polluted (In the U.S. this would include sites not on the EPA’s National Priorities List – NPL). Note that the policy would typically exclude sites that do not meet these criteria. Consequently, it is important to continue to conduct due diligence even with pollution liability coverage. 2. Additional Insured (refer to comment 11.4) – this can be blanket coverage which states that all customers are “additional insured” on the policy where specified by customer contracts. Customers may also be specifically named as “additional insured” on the policy. This will insure that the recycler’s pollution liability policy is exhausted before the customer may be financially responsible. 3. Endorsement for coverage during transportation of material by recycler or third party. 4. Includes coverage for on-site cleanup costs with the definition including “restoration”. 5. Includes coverage for both “sudden and accidental” and “gradual” pollution conditions. 6. Includes Contractor’s Pollution Liability (CPL) coverage that extends pollution insurance to operations outside of your physical site. This would cover liabilities arising from products. It would also cover work that is performed at a remote site, like a collection event, pickup/drop-off at a vendor, etc. that is typical of many R2 electronics recyclers.
11.4	(a) Additional Insured	<p>Although not specifically mentioned in the R2:2013 Standard, the customary practice in the insurance industry utilizes the term “Additional insured” with most insurance policies. This section explains how the concept applies to recyclers.</p> <p>“Additional insured” is the correct wording, and should never be “named insured”, “additional named insured” or “additionally insured” or anything other than “additional insured”. The customer of a recycling vendor may ask to be named as an “additional insured” on the recycler’s insurance policy. This could add the customer’s site to the recycler’s policy, but only to the extent of any indemnification obligations the recycler already has to the customer.</p> <p>Example: If a recycler is hired by Company A to pick up product at Company B, and somehow hurts a Company B employee or causes damage to the property, Company B will hold Company A liable. Company A will in turn hold the recycler liable since the recycler is 1) the cause of the damage; and 2) contractually</p>

Provision 11 – Clarifications		
Comment No.	Area of the Standard	Guidance
		<p>obligated to Company A to indemnify them for the damage they caused. Company A will then look to the recycler’s insurance to protect Company A and to pay damages to Company B.</p> <p>Additional insured status does <u>not</u> provide Company A any additional coverage. It does not add Company A to the recycler’s policy for things that do not relate to the contract. In other words, if a customer slips and falls on Company A’s site, and that accident has nothing to do with the recycler, there is no coverage for Company A under the recycler’s policy.</p>
11.5	(b)(3) elements of a closure plan	<p>In addition to the overall plan for ceasing operations and the removal of all equipment and materials that are awaiting recycling, or that have already been processed, the closure plan should include the following:</p> <ul style="list-style-type: none"> • Contact information for those responsible for performing duties outlined in the closure plan. • Description and evidence of assets and resources to cover all financial obligations resulting from closure activities. <p>In the United States, reference 40 CFR 264.111 for closure performance standards. Other countries may have closure performance standards.</p>
11.6	Independent Administrator	<p>An independent administrator is someone who is not employed by the R2 electronics recycler nor an individual owner of the business. In the event of an unforeseen closure, a person outside of the organization would take on the responsibility for administering the closure plan. This includes hiring contractors to complete each part of the plan. The independent administrator needs to be the sole beneficiary of the financial instrument, and the cost of their labor needs to be accounted for in closure plan cost calculations. In some regions, regulations require a government agency to be the beneficiary of the financial instrument, and thus the agency becomes the independent administrator. However, unless required by law, most government agencies are unwilling to be the independent administrator.</p> <p>In cases where the R2 electronics recycler is leasing a building or property, it is recommended that the property owner be the independent administrator since they will ultimately be responsible for any cleanup should the site be abandoned. Other common independent administrators include the R2 electronics recycler’s outside attorney or independent accountant. R2 electronics recyclers should have evidence that the independent administrator understands and accepts the responsibility for closure.</p>

Provision 11 – Clarifications		
Comment No.	Area of the Standard	Guidance
11.7	Foreseeable costs (b)(2)	<p>Closure cost calculations below should be based on the maximum inventory levels specified in the closure plan and demonstrated by current and potential operations, and tracking throughput records. The following items should be part of the closure cost calculations, at a minimum:</p> <ol style="list-style-type: none"> 1. Cost of recycling remaining inventory 2. Cost of preparing remaining inventory for recycling (packing and loading) 3. Cost of transportation 4. Cost to sample the site for possible contamination 5. Cost of remediation 6. Cost to clean-up the site (housekeeping for indoor and outdoor areas) 7. Cost to perform any additional activities to return the facility to state that can be leased or used again. 8. Cost of the Independent Administrator
11.8	(b) considerations for a sufficient financial instrument	<p>The closure plan contains an estimate of what it would cost to close the facility, and shows a mechanism for covering that cost. The amount of the financial instrument is sufficient if it covers the calculated costs to close the facility and return the building and site to a sellable or leasable state. This includes providing for the removal, and appropriate management (satisfying the requirements of R2:2013) of all end-of-life equipment and materials resulting from recycling activities, using an assumption that any onsite inventory of electronic devices/material has zero value.</p> <p>If there is known on-site environmental contamination which has not been addressed, the financial instrument should be appropriately funded to cover the cost of this clean up. Examples of financial instruments include: a trust fund, surety bond, letter of credit, corporate guarantee, or pollution liability insurance with the required parameters discussed in comment 11.10. Someone other than the owners or employees (those employees affected by a closure when part of a larger organization) should have guaranteed access to this financial instrument as abandonment assumes the owners and employees are not part of the closure process.</p>

Provision 11 – Clarifications		
Comment No.	Area of the Standard	Guidance
11.9	(b)Assets as a financial instrument	Assets are equipment, buildings, etc. that are purchased in whole or on a depreciated schedule. Examples include processing equipment like shredders, automated sorters, and degaussers. Other equipment might include forklifts, commercial vehicles, etc. If assets are wholly owned by the R2 electronics recycler, the assets may be used as collateral to secure a financial instrument. For example, a surety bond or irrevocable letter of credit may be secured with assets pledged to that financial instrument. This conceivably lowers the out-of-pocket cost to the R2 electronics recycler to establish the bond or letter of credit. It is expected that assets used as collateral would be legally bound by a lien or similar instrument to ensure other creditors could not contest the equipment in bankruptcy proceedings. (Previously, assets could be listed on their own as a financial instrument – not just as a form of collateral.)
11.10	(b)Pollution Liability insurance as a financial instrument	<p>A separate pollution liability insurance policy may meet the R2 requirements for a sufficient financial instrument if the following terms are incorporated and effective in the policy.</p> <ol style="list-style-type: none"> 1. Always paid in full: the policy is continuously paid at a minimum 12 months in advance throughout the year to ensure coverage is always in effect for the next twelve months. This is not the same as saying the policy is paid annually, as coverage would erode over the 12 month period. The policy could be paid initially for 2 years, and then annually thereafter to ensure more than 1 year of extended coverage. Or the policy could be paid monthly to ensure 1 year of extended coverage beyond the last payment. 2. Insurance agreements list an independent administrator from the closure plan to be notified of canceled, past due, or significant changes (options) by the insurance carrier (similar to the lender on a commercial property). 3. Includes coverage for on-site cleanup costs with the definition including “restoration”. 4. Includes coverage for both “sudden and accidental” and “gradual” pollution conditions. 5. Includes illicit abandonment coverage. 6. Does NOT require a government mandate to trigger a closure claim. 7. Includes a fixed closure amount set aside specifically for closure/post-closure activities and not erodible by liability claims other than closure. This amount cannot be used for other liability claims.

Provision 11 – Clarifications		
Comment No.	Area of the Standard	Guidance
11.11	(b)Corporate Guarantee as a financial instrument	<p>A written corporate guarantee from another company (Guarantor) is allowable by the R2 electronics recycler as a sufficient financial instrument if it meets the following criteria. This is modeled from the United States RCRA financial assurance requirements for hazardous waste facilities. https://www.epa.gov/hwpermitting/financial-assurance-requirements-hazardous-waste-treatment-storage-and-disposal)</p> <p>The Guarantor is a:</p> <ul style="list-style-type: none"> • Direct corporate parent company - a corporation that directly owns at least 50 percent of the voting stock of another corporation or subsidiary. • Corporate grandparent - a corporation that indirectly owns over 50 percent of a company through a subsidiary. • Sibling Corporation - a corporation that shares the same parent corporation. • Firm – has a “substantial business relationship” with the owner/operator. <p>The Guarantor continues to meet a financial test certified by an external Certified Public Accountant (CPA) to guarantee sufficient funds for closure. Certification of the guarantee is required by the CPA on a quarterly basis to remain conforming to the R2 requirements for a sufficient financial instrument.</p> <p>The CPA uses one of the below demonstrations of financial strength to verify the Guarantor’s suitability as a Corporate Guarantee for a sufficient financial instrument.</p> <p><u>Financial Demonstration #1</u> - The Guarantor meets each of the following criteria:</p> <ol style="list-style-type: none"> 1. Net working capital equals six times current closure, post-closure, plugging and abandonment cost estimates. 2. Tangible net worth is greater than \$10 million (USD). 3. Ninety percent of total assets are located in the country of operation. 4. The Guarantor satisfies <u>two</u> of the following three ratios: <ul style="list-style-type: none"> • Liabilities to net worth ratio less than 2. • Current assets to current liabilities ratio greater than 1.5. • Net income (plus depreciation, depletion and amortization) to liabilities ratio greater than 0.1. <p><or></p>

Provision 11 – Clarifications		
Comment No.	Area of the Standard	Guidance
		<p><u>Financial Demonstration #2</u> - The Guarantor meets each of the following criteria:</p> <ol style="list-style-type: none"> 1. Tangible net worth at least six times current closure, post-closure, plugging and abandonment cost estimates. 2. Tangible net worth is greater than \$10 million. 3. Ninety percent of total assets are located in the United States, or at least six times the current closure, post-closure and plugging and abandonment cost estimates. 4. The current bond rating for the most recent bond issuance is AAA, AA, A, or BBB as issued by Standard & Poor's, or Aaa, Aa, A, or Baa as issued by Moody's.
11.12	Inventory as part of the financial instrument	Inventory that is processed and sold as part of the recycler's activities cannot be used as a financial instrument, nor can it be used to reduce the amount needed for closure.