

**TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION**

Control 335 Department or Agency Environmental Management
 Rule No. 335-14-5-.08
 Rule Title: Financial Requirements

New Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? YES

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? YES

Is there another, less restrictive method of regulation available that could adequately protect the public? NO

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? NO

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? NO

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? YES

 Does the proposed rule have an economic impact? NO

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of section 41-22-23, Code of Alabama 1975.

 Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer *Mandy Elliott*

Date October 22, 2012

APA-2
11/96

**DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
LAND DIVISION**

NOTICE OF INTENDED ACTION

AGENCY NAME: DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

RULE NO. & TITLE: 335-14-5-.08 Financial Requirements (Amend)


INTENDED ACTION: Revise Division 14 of the ADEM Administrative Code.

SUBSTANCE OR PROPOSED ACTION: Revise portions of Division 14 Regulations to incorporate changes to ensure consistency with State and Federal Statutes; to adopt certain State specific requirements; and to provide clarification of State requirements for the management of hazardous waste.

TIME, PLACE, MANNER OF PRESENTING VIEWS: Comments may be submitted in writing or orally at a public hearing to be held Thursday, December 13, 2012 at 10:00 a.m. in the Main Hearing Room at the ADEM Central Office located at 1400 Coliseum Boulevard, Montgomery, Alabama 36110.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: Thursday, December 13, 2012 at 5:00 p.m.

CONTACT PERSON AT AGENCY: James L. Bryant, Chief of the Environmental Services Branch, ADEM Land Division (334/271-7771)



Lance R. LeFleur
Director

335-14-5-.08 Financial Requirements.

(1) Applicability.

(a) The requirements of 335-14-5-.08(3), (4), and (8) through (12) apply to owners and operators of all hazardous waste facilities and CAMUs, except as provided otherwise in 335-14-5-.08(1) or 335-14-5-.01(1).

(b) The requirements of 335-14-5-.08(5), (6), and (7) apply only to owners and operators of:

1. Disposal facilities;

2. Piles and surface impoundments from which the owner or operator intends to remove the wastes at closure, to the extent that these paragraphs are made applicable to such facilities in 335-14-5-.11(9) and 335-14-5-.12(9);

3. Tank systems that are required under 335-14-5-.10(8) to meet the requirements for landfills;

4. Containment buildings that are required under 335-14-5-.30(3) to meet the requirements for landfills;

5. Corrective action management units in which wastes remain after closure; and

6. Other hazardous waste management units which are unable to demonstrate closure by removal.

(c) The requirements of 335-14-5-.08(10) and (11) apply to owners and operators of all facilities required to perform corrective actions pursuant to 335-14-5-.06(11) or (12), section 3008(h) of RCRA, as applicable.

(d) Except for the requirements to provide and update cost estimates, as described in 335-14-5-.08(3), 335-14-5-.08(5), and 335-14-5-.08(10), the State of Alabama and the Federal government are exempt from the requirements of 335-14-5-.08.

(e) The Department may replace all or part of the requirements of 335-14-5-.08 applying to a regulated unit with alternative requirements for financial assurance set out in the permit or in an enforceable document [as defined in 335-14-8-.01(1)(c)7.], where the Department:

1. Prescribes alternative requirements for the regulated unit under 335-14-5-.06(1)(f) and/or 335-14-5-.07(1)(c); and

2. Determines that it is not necessary to apply the requirements of 335-14-5-.08 because the alternative financial assurance requirements will protect human health and the environment.

(2) [Reserved]

(3) Cost estimate for closure.

(a) The owner or operator must have a detailed written estimate in a format specified by the Department, in current dollars, of the cost of closing the facility in accordance with the requirements in 335-14-5-.07(2) through (6) and applicable closure requirements in 335-14-5-.09(9), 335-14-5-.10(8), 335-14-5-.11(9), 335-14-5-.12(9), 335-14-5-.13(11), 335-14-5-.14(11), 335-14-5-.15(12), 335-14-5-.19(1) through (3), 335-14-5-.23(6), 335-14-5-.24(2) through (4), and 335-14-5-.30(3).

1. The estimate must equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan; and

2. The closure-cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in 335-14-1-.02.) The owner or operator may use costs for on-site disposal if he can demonstrate that on-site disposal capacity will exist at all times over the life of the facility.

3. The closure-cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, or non-hazardous wastes if applicable under 335-14-5-.07(4)(d), facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

4. The owner or operator may not incorporate a zero cost for hazardous wastes, or non-hazardous wastes if applicable under 335-14-5-.07(4)(d), that might have economic value.

(b) During the active life of the facility, the owner or operator must adjust the closure-cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with 335-14-5-.08(4). For owners and operators using the financial test or corporate guarantee, the closure-cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Department as specified in 335-14-5-.08(4)(f)5. The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business, as specified in 335-14-5-.08(3)(b)1. and 2. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

1. The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.

2. Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

(c) During the active life of the facility, the owner or operator must revise the closure-cost estimate no later than 30 days after the Department has approved the request to modify the closure plan, if the change in the closure plan increases the cost of closure. The revised closure cost estimate must be adjusted for inflation as specified in 335-14-5-.08(3).

(d) The owner or operator must keep the following at the facility during the operating life of the facility: the latest closure cost estimate prepared in accordance with 335-14-5-.08(3)(a) and (3)(c) and, when this estimate has been adjusted in accordance with 335-14-5-.08(3)(b), the latest adjusted closure cost estimate.

(4) Financial assurance for closure. An owner or operator of each facility must establish financial assurance for closure of the facility. He must choose from the options as specified in 335-14-5-.08(4)(a) through (f).

(a) Closure trust fund.

1. An owner or operator may satisfy the requirements of 335-14-5-.08(4) by establishing a closure trust fund which conforms to the requirements of 335-14-5-.08(4)(a) and submitting an originally signed duplicate of the trust agreement to the Department. An owner or operator of a new facility must submit the originally signed duplicate of the trust agreement to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

2. The wording of the trust agreement must be identical to the wording specified in 335-14-5-.08(12)(a)1. and the trust agreement must be accompanied by a formal certification of acknowledgment [for example, see 335-14-5-.08(12)(a)2.]. Schedule A of the trust agreement must be updated and an originally signed duplicate must be submitted to the Department, within 60 days after a change in the amount of the current closure cost estimate covered by the agreement.

3. Payments into the trust fund must be made annually by the owner or operator over the term of the initial Hazardous Waste Facility Permit, over the remaining operating life of the facility as estimated in the closure plan, or eight years, whichever period is shorter. The payments into the closure trust fund must be made as follows:

(i) For a new facility, the first payment must be made before the initial receipt of hazardous waste for treatment, storage, or disposal. A receipt

from the trustee for this payment must be submitted by the owner or operator to the Department before the initial receipt of hazardous waste. Subsequent payments must be made no later than 30 days after the anniversary date of the first payment. Payments must be made according to the following schedule:

(I) If the initial permit is for a term of one year, 100% of the current closure cost estimate must be paid initially;

(II) If the initial permit is for a term of two years, 50% of the current closure cost estimate must be paid each of the two years;

(III) If the initial permit is for a term of three years, 34% of the current closure cost estimate must be paid initially and 33% of the current closure cost estimate must be paid each of the two subsequent years;

(IV) If the initial permit is for a term of four years, 25% of the current closure cost estimate must be paid each of the four years;

(V) If the initial permit is for a term of five years, 20% of the current closure cost estimate must be paid each of the five years;

(VI) If the initial permit is for a term of six years, 20% of the current closure cost estimate must be paid each of the first four years and 10% of the current closure cost estimate must be paid each of the two subsequent years;

(VII) If the initial permit is for a term of seven years, 20% of the current closure cost estimate must be paid each of the first three years and 10% of the current closure cost estimate must be paid each of the four subsequent years; and

(VIII) If the initial permit is for a term of eight years or longer, 20% of the current closure cost estimate must be paid each of the first two years and 10% of the current closure cost estimate must be paid each of the six subsequent years;

(ii) Following the initial payment, all subsequent annual payments must reconcile any difference between the actual value of the trust fund and the required value of the trust fund. The required value of the trust fund accounts for adjustments to the closure-cost estimate made in accordance with 335-14-5-.08(3), and may be calculated by determining the value of the trust fund if the current payment and all previous payments were made using the current closure-cost estimate.

(iii) If an owner or operator of an existing facility establishes a trust fund as specified in 335-14-6-.08(4)(a), and the value of the trust fund is less than the current closure cost estimate when a permit is issued for the facility, the amount of the current closure cost estimate still to be paid into the trust fund must be paid according to the schedule set out in 335-14-5-.08(4)(a)3.(i).

4. The owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the current closure cost estimate at

the time the fund is established. However, he must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in 335-14-5-.08(4)(a)3.

5. If the owner or operator establishes a closure trust fund after having used one or more alternate mechanisms specified in 335-14-5-.08(4) or 335-14-6-.08(4), his first payment must be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to specifications of 335-14-5-.08(4)(a) and 335-14-6-.08(4)(a), as applicable.

6. After the pay-in period is completed, whenever the current closure cost estimate changes, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance as specified in 335-14-5-.08(4) to cover the difference.

7. If the value of the trust fund is greater than the total amount of the current closure cost estimate, the owner or operator may submit a written request to the Department for release of the amount in excess of the current closure cost estimate.

8. If an owner or operator substitutes other financial assurance as specified in 335-14-5-.08(4) for all or part of the trust fund, he may submit a written request to the Department for release of the amount in excess of the current closure cost estimate covered by the trust fund.

9. Within 60 days after receiving a request from the owner or operator for release of funds as specified in 335-14-5-.08(4)(a)7. or (a)8., the Department will instruct the trustee to release to the owner or operator such funds as the Department specifies in writing.

10. After beginning partial or final closure, an owner or operator or another person authorized to conduct partial or final closure may request reimbursements for partial or final closure expenditures by submitting itemized bills to the Department. The owner or operator may request reimbursements for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for partial or final closure activities, the Department will instruct the trustee to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the Department has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, he may withhold reimbursements of such amounts as he deems prudent until he determines, in accordance with 335-14-5-.08(4)(i), that the owner or operator is no longer

required to maintain financial assurance for final closure of the facility. If the Department does not instruct the trustee to make such reimbursements, he will provide the owner or operator with a detailed written statement of reasons.

11. The Department will agree to termination of the trust when:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-5-.08(4); or

(ii) The Department releases the owner or operator from the requirements of 335-14-5-.08(4) in accordance with 335-14-5-.08(4)(i).

(b) Surety bond guaranteeing payment into a closure trust fund.

1. An owner or operator may satisfy the requirements of 335-14-5-.08(4) by obtaining a surety bond which conforms to the requirements of 335-14-5-.08(4)(b) and submitting the bond to the Department. An owner or operator of a new facility must submit the bond to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

2. The wording of the surety bond must be identical to the wording specified in 335-14-5-.08(12)(b).

3. The owner or operator who uses a surety bond to satisfy the requirements of this section must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund must meet the requirements specified in 335-14-5-.08(4)(a), except that:

(i) An originally signed duplicate of the trust agreement must be submitted to the Department with the surety bond; and

(ii) Until the standby trust fund is funded pursuant to the requirements of 335-14-5-.08(4), the following are not required by these regulations:

(I) Payments into the trust fund as specified in 335-14-5-.08(4)(a);

(II) Updating of Schedule A of the trust agreement [see 335-14-5-.08(12)(a)] to show current closure cost estimates;

(III) Annual valuations as required by the trust agreement; and

(IV) Notices of nonpayment as required by the trust agreement.

4. The bond must guarantee that the owner or operator will:

(i) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility; or

(ii) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin final closure issued by the Department becomes final, or within 15 days after an order to begin final closure is issued by a U.S. district court or other court of competent jurisdiction; or

(iii) Provide alternate financial assurance as specified in 335-14-5-.08(4) and obtain the Department's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the bond from the surety.

5. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

6. The penal sum of the bond must be in an amount at least equal to the current closure cost estimate, except as provided in 335-14-5-.08(4)(g).

7. Whenever the current closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in 335-14-5-.08(4) to cover the increase. Whenever the current closure cost estimate decreases the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the Department.

8. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts.

9. The owner or operator may cancel the bond if the Department has given prior written consent. The Department will provide such written consent when:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-5-.08(4); or

(ii) The Department releases the owner or operator from the requirements of 335-14-5-.08(4) in accordance with 335-14-5-.08(4)(i).

(c) Surety bond guaranteeing performance of closure.

1. An owner or operator may satisfy the requirements of 335-14-5-.08(4) by obtaining a surety bond which conforms to the

requirements of 335-14-5-.08(4)(c) and submitting the bond to the Department. An owner or operator of a new facility must submit the bond to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

2. The wording of the surety bond must be identical to the wording specified in 335-14-5-.08(12)(c).

3. The owner or operator who uses a surety bond to satisfy the requirements of 335-14-5-.08(4) must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Department. This standby trust must meet the requirements specified in 335-14-5-.08(4)(a), except that:

(i) An originally signed duplicate of the trust agreement must be submitted to the Department with the surety bond; and

(ii) Unless the standby trust fund is funded pursuant to the requirements of 335-14-5-.08, the following are not required by these regulations:

(I) Payments into the trust fund as specified in 335-14-5-.08(4)(a);

(II) Updating of Schedule A of the trust agreement [see 335-14-5-.08(12)(a)] to show current closure cost estimates;

(III) Annual valuations as required by the trust agreement; and

(IV) Notices of nonpayment as required by the trust agreement.

4. The bond must guarantee that the owner or operator will:

(i) Perform final closure in accordance with the closure plan and other requirements of the permit for the facility whenever required to do so; or

(ii) Provide alternate financial assurance as specified in 335-14-5-.08, and obtain the Department's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the bond from the surety.

5. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final administrative determination pursuant to Sections 22-30-19 and 22-22A-7, Code of Alabama 1975, that the owner or operator has failed to perform final closure in accordance with the approved closure plan and other permit requirements when required to do so, under the terms of the

bond the surety will perform final closure as guaranteed by the bond or will deposit the amount of the penal sum into the standby trust fund.

6. The penal sum of the bond must be in an amount at least equal to the current closure cost estimate.

7. Whenever the current closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in 335-14-5-.08(4). Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the Department.

8. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts.

9. The owner or operator may cancel the bond if the Department has given prior written consent. The Department will provide such written consent when:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-5-.08(4); or

(ii) The Department releases the owner or operator from the requirements of 335-14-5-.08(4) in accordance with 335-14-5-.08(4)(i).

10. The surety will not be liable for deficiencies in the performance of closure by the owner or operator after the Department releases the owner or operator from the requirements of 335-14-5-.08(4) in accordance with 335-14-5-.08(4)(i).

(d) Closure letter of credit.

1. An owner or operator may satisfy the requirements of 335-14-5-.08(4) by obtaining an irrevocable standby letter of credit which conforms to the requirements of 335-14-5-.08(4)(d) and submitting the letter to the Department. An owner or operator of a new facility must submit the letter of credit to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The letter of credit must be effective before this initial receipt of hazardous waste. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or State agency.

2. The wording of the letter of credit must be identical to the wording specified in 335-14-5-.08(12)(d).

3. An owner or operator who uses a letter of credit to satisfy the requirements of 335-14-5-.08(4) must also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Department will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund must meet the requirements of the trust fund specified in 335-14-5-.08(4)(a), except that:

(i) An originally signed duplicate of the trust agreement must be submitted to the Department with the letter of credit; and

(ii) Unless the standby trust fund is funded pursuant to the requirements of 335-14-5-.08(4), the following are not required by these regulations:

(I) Payments into the trust fund as specified in 335-14-5-.08(4)(a);

(II) Updating of Schedule A of the trust agreement [see 335-14-5-.08(12)(a)] to show current closure cost estimates;

(III) Annual valuations as required by the trust agreement; and

(IV) Notices of nonpayment as required by the trust agreement.

4. The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: the EPA Identification Number, name, and address of the facility, and the amount of funds assured for closure of the facility by the letter of credit.

5. The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Department by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the Department have received the notice, as evidenced by the return receipts.

6. The letter of credit must be issued in an amount at least equal to the current closure cost estimate, except as provided in 335-14-5-.08(4)(g).

7. Whenever the current closure cost estimate increases to an amount greater than the amount of the credit, the owner or operator, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in 335-14-5-.08(4) to cover the increase. Whenever the current closure cost estimate decreases, the amount of the credit may be reduced to the amount of the current closure cost estimate following written approval by the Department.

8. Following a final administrative determination pursuant to Sections 22-30-19 and 22-22A-7, Code of Alabama 1975, that the owner or operator has failed to perform final closure in accordance with the closure plan and other permit requirements when required to do so, the Department may draw on the letter of credit.

9. If the owner or operator does not establish alternate financial assurance as specified in 335-14-5-.08(4) and obtain written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice from issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Department will draw on the letter of credit. The Department may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the Department will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in 335-14-5-.08(4) and obtain written approval of such assurance from the Department.

10. The Department will return the letter of credit to the issuing institution for termination when:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-5-.08(4); or

(ii) The Department releases the owner or operator from the requirements of 335-14-5-.08(4) in accordance with 335-14-5-.08(4)(i).

(e) Closure insurance.

1. An owner or operator may satisfy the requirements of 335-14-5-.08(4) by obtaining closure insurance which conforms to the requirements of 335-14-5-.08(4)(e) and submitting an originally signed certificate of such insurance to the Department. An owner or operator of a new facility must submit the certificate of insurance to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The insurance must be effective before this initial receipt of hazardous waste. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in the State of Alabama, and must not be captive insurance as defined in 335-14-1-.02 unless the requirements of 335-14-5-.08(4)(e)1.(ii) are met.

(i) The use of insurance to demonstrate financial assurance for closure and post-closure care pertains exclusively to those insurance policies underwritten by commercial property and casualty insurers (primary or excess and surplus lines), through which, in the insurance contract, the financial burden for closure and post-closure care is transferred to the third-party insurer. Except as provided in 335-14-5-.08(4)(e)1.(ii), the third-party insurer must assume financial responsibility for this accepted risk, using its own pool

of resources that is independent, separate, and unrelated to that of the insured (owner or operator). The use of insurance policies underwritten by captive insurers therefore is prohibited unless the owner/operator can demonstrate compliance with condition 335-14-5-.08(4)(e)1.(ii) for each year captive insurance is used.

(ii) Captive insurance may be used for closure insurance only when the facility provides annual documentation to the Department that the owner or operator is in compliance with the requirements of rule 335-14-5-.08(4)(f).

2. The wording of the certificate of insurance must be identical to the wording specified in 335-14-5-.08(12)(e).

3. The closure insurance policy must be issued for a face amount at least equal to the current closure cost estimate, except as provided in 335-14-5-.08(4)(g). The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

4. The closure insurance policy must guarantee that funds will be available to close the facility whenever final closure occurs. The policy must also guarantee that once final closure begins, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Department, to such party or parties as the Department specifies.

5. After beginning partial or final closure, an owner or operator or any other person authorized to conduct closure may request reimbursements for closure expenditures by submitting itemized bills to the Department. The owner or operator may request reimbursements for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for closure activities, the Department will instruct the insurer to make reimbursements in such amounts as the Department specifies, in writing, if the Department determines that the partial or final closure expenditures are in accordance with the approved closure plan or otherwise justified. If the Department has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the face amount of the policy, he may withhold reimbursements of such amounts as he deems prudent until he determines, in accordance with 335-14-5-.08(4)(i), that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Department does not instruct the insurer to make such reimbursements, he will provide the owner or operator with a detailed written statement of reasons.

6. The owner or operator must maintain the policy in full force and effect until the Department consents to termination of the policy by the owner or operator as specified in 335-14-5-.08(4)(e)10. Failure to pay the premium, without substitution of alternate financial assurance as specified in

335-14-5-.08(4), will constitute a significant violation of these regulations, warranting such remedy as the Department deems necessary. Such violation will be deemed to begin upon receipt by the Department of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

7. Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

8. The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the Department. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Department and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:

- (i) The Department deems the facility abandoned; or
- (ii) The permit is terminated or revoked or a new permit is denied; or
- (iii) Closure is ordered by the Department or a court of competent jurisdiction; or
- (iv) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or
- (v) The premium due is paid.

9. Whenever the current closure cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in 335-14-5-.08(4) to cover the increase. Whenever the current closure cost estimate decreases, the face amount may be reduced to the amount of the current closure cost estimate following written approval by the Department.

10. The Department will give written consent to the owner or operator that it may terminate the insurance policy when:

- (i) An owner or operator substitutes alternate financial assurance as specified in 335-14-5-.08(4); or

(ii) The Department releases the owner or operator from the requirements of 335-14-5-.08(4) in accordance with 335-14-5-.08(4)(i).

(f) Financial test and corporate guarantee for closure.

1. An owner or operator may satisfy the requirements of 335-14-5-.08(4) by demonstrating that he passes a financial test as specified in 335-14-5-.08(4). To pass this test the owner or operator must meet the criteria of either 335-14-5-.08(4)(f)1.(i) or (f)1.(ii):

(i) The owner or operator must have:

(I) Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

(II) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates; and

(III) Tangible net worth of at least \$10 million; and

(IV) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates.

(ii) The owner or operator must have:

(I) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

(II) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates; and

(III) Tangible net worth of at least \$10 million; and

(IV) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates.

2. The phrase "current closure and post-closure cost estimates" as used in 335-14-5-.08(4)(f)1. refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer [335-14-5-.08(12)].

3. To demonstrate that he meets this test, the owner or operator must submit the following items to the Department:

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in 335-14-5-.08(12)(f);

(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(iii) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(I) He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(II) In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

4. An owner or operator of a new facility must submit the items specified in 335-14-5-.08(4)(f)3. to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal.

5. After the initial submission of items specified in 335-14-5-.08(4)(f)3., the owner or operator must send updated information to the Department within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in 335-14-5-.08(4)(f)3.

6. If the owner or operator no longer meets the requirements of 335-14-5-.08(4)(f)1., he must send notice to the Department of intent to establish alternate financial assurance as specified in 335-14-5-.08(4). The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide the alternate financial assurance within 120 days after the end of such fiscal year.

7. The Department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of 335-14-5-.08(4)(f)1., require reports of financial condition at any time from the owner or operator in addition to those specified in 335-14-5-.08(4)(f)3. If the Department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of 335-14-5-.08(4)(f)1., the owner or operator must provide alternate financial assurance as specified in 335-14-5-.08(4) within 30 days after notification of such a finding.

8. The Department may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements [see 335-14-5-.08(4)(f)3.(ii)]. An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Department will evaluate other qualifications on an individual basis. The owner or operator must provide

alternate financial assurance as specified in 335-14-5-.08(4) within 30 days after notification of the disallowance.

9. The owner or operator is no longer required to submit the items specified in 335-14-5-.08(4)(f)3. when:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-5-.08(4); or

(ii) The Department releases the owner or operator from the requirements of 335-14-5-.08(4) in accordance with 335-14-5-.08(4)(i).

10. An owner or operator may meet the requirements of 335-14-5-.08(4) by obtaining a written guarantee, hereinafter referred to as "corporate guarantee". The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in 335-14-5-.08(4)(f)1. through 8. and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in 335-14-5-.08(12)(h). The certified copy of the guarantee must accompany the items sent to the Department as specified in 335-14-5-.08(4)(f)3. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee must provide that:

(i) If the owner or operator fails to perform final closure of a facility covered by the corporate guarantee in accordance with the closure plan and other permit requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in 335-14-5-.08(4)(a) in the name of the owner or operator.

(ii) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts.

(iii) If the owner or operator fails to provide alternate financial assurance as specified in 335-14-5-.08(4) and obtain the written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the owner or operator.

(g) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of 335-14-5-.08(4) by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, and insurance. The mechanisms must be as specified in 335-14-5-.08(4)(a), (b), (d), and (e), respectively, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The Department may use any or all of the mechanisms to provide for closure of the facility.

(h) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in 335-14-5-.08(4) to meet the requirements of 335-14-5-.08(4) for more than one facility. Evidence of financial assurance submitted to the Department must include a list showing, for each facility, the EPA or Alabama Identification Number, name, address, and the amount of funds for closure assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for closure of any of the facilities covered by the mechanism, the Department may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

(i) Release of the owner or operator from the requirements of 335-14-5-.08(4). Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that final closure has been completed in accordance with the approved closure plan, the Department will notify the owner or operator in writing that he is no longer required by 335-14-5-.08(4) to maintain financial assurance for final closure of the facility, unless the Department has reason to believe that final closure has not been in accordance with the approved closure plan. The Department shall provide the owner or operator a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan.

(5) Cost estimate for post-closure care.

(a) The owner or operator of a disposal surface impoundment, disposal miscellaneous unit, land treatment unit, landfill unit, other hazardous waste management unit or CAMU which cannot demonstrate closure by removal, or surface impoundment or waste pile required under rules 335-14-5-.11(9) and 335-14-5-.12(9) to prepare a contingent closure and post-closure plan must have a detailed written estimate in a format specified by the Department, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable

post-closure requirements in 335-14-5-.07(8) through (11), 335-14-5-.11(9), 335-14-5-.12(9), 335-14-5-.13(11), 335-14-5-.14(11), and 335-14-5-.24(4).

1. The post-closure cost estimate must be based on the costs to the owner or operator of hiring a third party to conduct post-closure care activities. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in 335-14-1-.02).

2. The post-closure cost estimate is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required under 335-14-5-.07(8). Unless expressly extended or shortened by the Department in writing, the post-closure care period shall be assumed to be thirty years for the purposes of calculating the post-closure cost estimate.

(b) During the active life of the facility, the owner or operator must adjust the post-closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with 335-14-5-.08(6). For owners or operators using the financial test or corporate guarantee, the post-closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before the submission of updated information to the Department as specified in 335-14-5-.08(6)(f)5. The adjustment may be made by recalculating the post-closure cost estimate in current dollars or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business as specified in 335-14-5-.08(5)(b)1. and 2. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

1. The first adjustment is made by multiplying the post-closure cost estimate by the inflation factor. The result is the adjusted post-closure cost estimate.

2. Subsequent adjustments are made by multiplying the latest adjusted post-closure cost estimate by the latest inflation factor.

(c) During the active life of the facility, the owner or operator must revise the post-closure cost estimate within 30 days after the Department has approved the request to modify the post-closure plan, if the change in the post-closure plan increases the cost of the post-closure care. The revised post-closure cost estimate must be adjusted for inflation as specified in 335-14-5-.08(5)(b).

(d) The owner or operator must keep the following at the facility during the operating life of the facility and throughout the post-closure care period: the latest post-closure cost estimate prepared in accordance with 335-14-5-.08(5)(a) and (5)(c) and, when this estimate has been adjusted in accordance with 335-14-5-.08(5)(b), the latest adjusted post-closure cost estimate.

(6) Financial assurance for post-closure care. The owner or operator of a hazardous waste management unit subject to the requirements of 335-14-5-.08(5) must establish financial assurance for post-closure care in accordance with the approved post-closure plan for the facility 60 days prior to the initial receipt of hazardous waste or the effective date of the requirement, whichever is later. He must choose from the following options:

(a) Post-closure trust fund.

1. An owner or operator may satisfy the requirements of 335-14-5-.08(6) by establishing a post-closure trust fund which conforms to the requirements of 335-14-5-.08(6)(a) and submitting an originally signed duplicate of the trust agreement to the Department. An owner or operator of a new facility must submit the originally signed duplicate of the trust agreement to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

2. The wording of the trust agreement must be identical to the wording specified in 335-14-5-.08(12)(a)1. and the trust agreement must be accompanied by a formal certification of acknowledgment (for example, see 335-14-5-.08(12)(a)2.). Schedule A of the trust agreement must be updated, and an originally signed duplicate must be submitted to the Department, within 60 days after a change in the amount of the current post-closure cost estimate covered by the agreement.

3. The owner or operator of an operating facility must make annual payments into the fund over the term of the initial Hazardous Waste Facility Permit, over the remaining operating life of the facility as estimated in the closure plan, or eight years, whichever period is shorter. The owner or operator of a post-closure or SWMU corrective action facility must make payments into the fund over a term of eight years beginning on the effective date of the initial post-closure permit or enforceable document [as defined in 335-14-8-.01(1)(c)7.]. The payments into the post-closure trust fund must be made as follows:

(i) For a new or existing operating facility, the first payment must be made before the initial receipt of hazardous waste for treatment, storage or disposal. A receipt from the trustee for this payment must be submitted by the owner or operator to the Department before the initial receipt of hazardous waste. For a post-closure facility or SWMU CA facility, the first payment must be made no later than 60 days following the effective date of the initial post-closure permit. A receipt from the trustee for this payment must be submitted by the owner or operator to the Department no later than 30 days following the payment date. Subsequent payments must be made no later than 30 days after the anniversary date of the first payment. Payments must be made according to the following schedule:

(I) If the initial permit is for a term of one year, 100% of the current post-closure cost estimate must be paid initially;

(II) If the initial permit is for a term of two years, 50% of the current post-closure cost estimate must be paid each of the two years;

(III) If the initial permit is for a term of three years, 34% of the current post-closure cost estimate must be paid initially and 33% of the current post-closure cost estimate must be paid each of the two subsequent years;

(IV) If the initial permit is for a term of four years, 25% of the current post-closure cost estimate must be paid each of the four years;

(V) If the initial permit is for a term of five years, 20% of the current post-closure cost estimate must be paid each of the five years;

(VI) If the initial permit is for a term of six years, 20% of the current post-closure cost estimate must be paid each of the first four years and 10% of the current cost estimate must be paid each of the two subsequent years;

(VII) If the initial permit is for a term of seven years, 20% of the current post-closure cost estimate must be paid each of the first three years and 10% of the current post-closure cost estimate must be paid each of the four subsequent years; and

(VIII) If the initial permit is for a term of eight years or longer, 20% of the current post-closure cost estimate must be paid each of the first two years and 10% of the current post-closure cost estimate must be paid each of the six subsequent years;

(ii) Following the initial payment, all subsequent annual payments must reconcile any difference between the actual value of the trust fund and the required value of the trust fund. The required value of the trust fund accounts for adjustments to the post-closure cost estimate made in accordance with 335-14-5-.08(5), and may be calculated by determining the value of the trust fund if the current payment and all previous payments were made using the current post-closure cost estimate.

(iii) If an owner or operator of an existing facility establishes a trust fund as specified in 335-14-6-.08(6)(a), and the value of the trust fund is less than the current post-closure cost estimate when a permit is issued for the facility, the amount of the current post-closure cost estimate still to be paid into the trust fund must be paid according to the schedule set out in 335-14-5-.08(6)(a)3.(i).

4. The owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the current post-closure cost estimate at the time the fund is established. However he must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in 335-14-5-.08(6)(a)3.

5. If the owner or operator establishes a post-closure trust fund after having used one or more alternate mechanisms specified in 335-14-5-.08(6) or in 335-14-6-.08(6), his first payment must be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to specifications of 335-14-5-.08(6)(a) and 335-14-6-.08(6)(a), as applicable.

6. After the pay-in period is completed, whenever the current post-closure cost estimate changes during the operating life of the facility, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current post-closure cost estimate, or obtain other financial assurance as specified in 335-14-5-.08(6) to cover the difference.

7. During the operating life of the facility and throughout the post-closure care period, if the value of the trust fund is greater than the total amount of the current post-closure cost estimate, the owner or operator may submit a written request to the Department for release of the amount in excess of the current post-closure cost estimate.

8. If an owner or operator substitutes other financial assurance as specified in 335-14-5-.08(6) for all or part of the trust fund, the owner or operator may submit a written request to the Department for release of the amount in excess of the current post-closure cost estimate covered by the trust fund.

9. Within 60 days after receiving a request from the owner or operator for release of funds as specified in 335-14-5-.08(6)(a)7. or (a)8., the Department will approve or disapprove the request for release. If the Department approves the owner or operator's request for release, the Department will instruct the trustee to release to the owner or operator such funds as the Department specifies in writing.

10. Following the completion of the pay-in-period, the Department may approve a release of funds if the owner or operator demonstrates to the Department that the value of the trust fund exceeds the remaining cost of post-closure care.

11. Following the completion of the pay-in-period, an owner or operator or any other person authorized to conduct post-closure care may request reimbursements for post-closure care expenditures by submitting itemized bills to the Department. Within 60 days after receiving bills for post-closure care activities, the Department will instruct the trustee to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the post-closure care expenditures are in accordance with the approved post-closure plan or otherwise justified. If the

Department does not instruct the trustee to make such reimbursements, it will provide the owner or operator with a detailed written statement of reasons.

12. The Department will agree to termination of the trust when:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-5-.08(6) and approved by the Department; or

(ii) The Department releases the owner or operator from the requirements of 335-14-5-.08(6) in accordance with 335-14-5-.08(6)(i).

(b) Surety bond guaranteeing payment into a post-closure trust fund.

1. An owner or operator may satisfy the requirements of 335-14-5-.08(6) by obtaining a surety bond which conforms to the requirements of 335-14-5-.08(6)(b) and submitting the bond to the Department. An owner or operator of a new facility must submit the bond to the Department at least 60 days before the date on which hazardous waste is first received for disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

2. The wording of the surety bond must be identical to the wording specified in 335-14-5-.08(12)(b).

3. The owner or operator who uses a surety bond to satisfy the requirements of 335-14-5-.08(6) must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund must meet the requirements specified in 335-14-5-.08(6)(a), except that:

(i) An originally signed duplicate of the trust agreement must be submitted to the Department with the surety bond; and

(ii) Until the standby trust fund is funded pursuant to the requirements of 335-14-5-.08(6), the following are not required by these regulations:

(I) Payments into the trust fund as specified in 335-14-5-.08(6)(a);

(II) Updating of Schedule A of the trust agreement [see 335-14-5-.08(12)(a)] to show current post-closure cost estimates;

(III) Annual valuations as required by the trust agreement; and

(IV) Notices of nonpayment as required by the trust agreement.

4. The bond must guarantee that the owner or operator will:

(i) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility; or

(ii) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin final closure issued by the Department becomes final, or within 15 days after an order to begin final closure is issued by a U.S. district court or other court of competent jurisdiction; or

(iii) Provide alternate financial assurance as specified in this section, and obtain the Department's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Department of notice of cancellation of the bond from the surety.

5. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

6. The penal sum of the bond must be in an amount at least equal to the current post-closure cost estimate except as provided in 335-14-5-.08(6)(g).

7. Whenever the current post-closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in 335-14-5-.08(6) to cover the increase. Whenever the current post-closure cost estimate decreases, the penal sum may be reduced to the amount of the current post-closure cost estimate following written approval by the Department.

8. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts.

9. The owner or operator may cancel the bond if the Department has given prior written consent. The Department will provide such written consent when:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-5-.08(6); or

(ii) The Department releases the owner or operator from the requirements of 335-14-5-.08(6) in accordance with 335-14-5-.08(6)(i).

(c) Surety bond guaranteeing performance of post-closure care and/or corrective action.

1. An owner or operator may satisfy the requirements of 335-14-5-.08(6) and 335-14-5-.08(11) by obtaining a surety bond which conforms to the requirements of 335-14-5-.08(6)(c) and submitting the bond to the Department. An owner or operator of a new or existing operating facility must submit the bond to the Department at least 60 days before the date on which hazardous waste is first received for disposal. The owner or operator of a post-closure or SWMU corrective action facility must submit the bond to the Department at least 60 days following the issuance to the initial post-closure permit or enforceable document [as defined in 335-14-8-.01(1)(c)7.]. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

2. The wording of the surety bond must be identical to the wording specified in 335-14-5-.08(12)(c).

3. The owner or operator who uses a surety bond to satisfy the requirements of 335-14-5-.08(6) must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund must meet the requirements specified in 335-14-5-.08(6)(a), except that:

(i) An originally signed duplicate of the trust agreement must be submitted to the Department with the surety bond; and

(ii) Unless the standby trust fund is funded pursuant to the requirements of 335-14-5-.08(6), the following are not required by these regulations:

(I) Payments into the trust fund as specified in 335-14-5-.08(6)(a);

(II) Updating of Schedule A of the trust agreement [see 335-14-5-.08(12)(a)] to show current post-closure cost estimates;

(III) Annual valuations as required by the trust agreement; and

(IV) Notices of nonpayment as required by the trust agreement.

4. The bond must guarantee that the owner or operator will:

(i) Perform post-closure care and/or corrective action in accordance with the post-closure plan, corrective action plan, and other requirements of the permit for the facility; or

(ii) Provide alternate financial assurance as specified in 335-14-5-.08(6), and obtain the Department's written approval of the assurance provided, within 90 days of receipt by both the owner or operator and the Department of a notice of cancellation of the bond from the surety.

5. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final administrative determination pursuant to Sections 22-30-19 and 22-22A-7, Code of Alabama 1975, that the owner or operator has failed to perform post-closure care and/or corrective action in accordance with the approved post-closure plan, corrective action plan, and other permit or enforceable document [as defined in 335-14-8-.01(1)(c)7.] requirements under the terms of the bond the surety will perform post-closure care and/or corrective action in accordance with the post-closure plan, corrective action plan, and other permit or enforceable document [as defined in 335-14-8-.01(1)(c)7.] requirements or will deposit the amount of the penal sum into the standby trust fund.

6. The penal sum of the bond must be in an amount at least equal to the current post-closure and/or corrective action cost estimate.

7. Whenever the current post-closure and/or corrective action cost estimate increases to an amount greater than the penal sum during the operating life of the facility or the post-closure care period, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current post-closure and/or corrective action cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in 335-14-5-.08(6). Whenever the current post-closure and/or corrective action cost estimate decreases during the operating life of the facility, the penal sum may be reduced to the amount of the current post-closure and/or corrective action cost estimate following written approval by the Department.

8. During the period of post-closure care and/or corrective action, the Department may approve a decrease in the penal sum if the owner or operator demonstrates to the Department that the amount exceeds the remaining cost of post-closure care and/or corrective action.

9. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts.

10. The owner or operator may cancel the bond if the Department has given prior written consent. The Department will provide such written consent when:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-5-.08(6) and approved by the Department; or

(ii) The Department releases the owner or operator from the requirements of 335-14-5-.08(6) in accordance with 335-14-5-.08(6)(i) or 335-14-5-.08(11)(f).

11. The surety will not be liable for deficiencies in the performance of post-closure care by the owner or operator after the Department releases the owner or operator from the requirements of 335-14-5-.08(6) in accordance with 335-14-5-.08(6)(i) or 335-14-5-.08(11)(f).

(d) Post-closure and/or corrective action letter of credit.

1. An owner or operator may satisfy the requirements of 335-14-5-.08(6) and 335-14-5-.08(11) by obtaining an irrevocable standby letter of credit which conforms to the requirements of 335-14-5-.08(6)(d) and submitting the letter to the Department. An owner or operator of a new facility must submit the letter of credit to the Department at least 60 days before the date on which hazardous waste is first received for disposal. The owner or operator of a post-closure or SWMU corrective action facility must submit the letter of credit to the Department at least 60 days following the issuance to the initial post-closure permit or enforceable document [as defined in 335-14-8-.01(1)(c)7.]. The letter of credit must be effective before this initial receipt of hazardous waste. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency.

2. The wording of the letter of credit must be identical to the wording specified in 335-14-5-.08(12)(d).

3. An owner or operator who uses a letter of credit to satisfy the requirements of 335-14-5-.08(6) must also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Department will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund must meet the requirements of the trust fund specified in 335-14-5-.08(6)(a), except that:

(i) An originally signed duplicate of the trust agreement must be submitted to the Department with the letter of credit; and

(ii) Unless the standby trust fund is funded pursuant to the requirements of 335-14-5-.08(6), the following are not required by these regulations:

(I) Payments into the trust fund as required in 335-14-5-.08(6)(a);

(II) Updating of Schedule A of the trust agreement [see 335-14-5-.08(12)(a)] to show current post-closure and/or corrective action cost estimates;

(III) Annual valuations as required by the trust agreement; and

(IV) Notices of nonpayment as required by the trust agreement.

4. The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing

institution, and date, and providing the following information: the EPA Identification Number, name, and address of the facility, and the amount of funds assured for post-closure care and/or corrective action of the facility by the letter of credit.

5. The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Department by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the Department have received the notice, as evidenced by the return receipts.

6. The letter of credit must be issued in an amount at least equal to the current post-closure and/or corrective action cost estimate, except as provided in 335-14-5-.08(6)(g).

7. Whenever the current post-closure and/or corrective action cost estimate increases to an amount greater than the amount of the credit during the operating life of the facility or the post-closure care period, the owner or operator, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current post-closure and/or corrective action cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in 335-14-5-.08(6) or 335-14-5-.08(11) to cover the increase. Whenever the current post-closure and/or corrective action cost estimate decreases during the operating life of the facility or the post-closure care period, the amount of the credit may be reduced to the amount of the current post-closure and/or corrective action cost estimate following written approval by the Department.

8. During the period of post-closure care and/or corrective action, the Department may approve a decrease in the amount of the letter of credit if the owner or operator demonstrates to the Department that the amount exceeds the remaining cost of post-closure care and/or corrective action.

9. Following a final administrative determination pursuant to Sections 22-30-19 and 22-22A-7, Code of Alabama 1975, that the owner or operator has failed to perform post-closure care and/or corrective action in accordance with the approved post-closure plan and other permit or correction action order requirements, the Department may draw on the letter of credit.

10. If the owner or operator does not establish alternate financial assurance as specified in 335-14-5-.08(6) and obtain written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Department will draw on the letter of credit. The Department may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such

extension the Department will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in 335-14-5-.08(6) and obtain written approval of such assurance from the Department.

11. The Department will return the letter of credit to the issuing institution for termination when:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-5-.08(6) and approved by the Department; or

(ii) The Department releases the owner or operator from the requirements of 335-14-5-.08(6) in accordance with 335-14-5-.08(6)(i) or 335-14-5-.08(11)(f).

(e) Post-closure insurance.

1. An owner or operator may satisfy the requirements of 335-14-5-.08(6) by obtaining post-closure insurance which conforms to the requirements of 335-14-5-.08(6)(e) and submitting an originally signed certificate of such insurance to the Department. An owner or operator of a new facility must submit the certificate of insurance to the Department at least 60 days before the date on which hazardous waste is first received for disposal. The insurance must be effective before this initial receipt of hazardous waste. The insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess of surplus lines insurer in the State of Alabama, and must not be captive insurance as defined in 335-14-1-.02 unless the requirements of 335-14-5-.08(6)(e)1.(ii) are met.

(i) The use of insurance to demonstrate financial assurance for closure and post-closure care pertains exclusively to those insurance policies underwritten by commercial property and casualty insurers (primary or excess and surplus lines), through which, in the insurance contract, the financial burden for closure and post-closure care is transferred to the third-party insurer. Except as provided in 335-14-5-.08(6)(e)1.(ii), the third-party insurer must assume financial responsibility for this accepted risk, using its own pool of resources that is independent, separate, and unrelated to that of the insured (owner or operator). The use of insurance policies underwritten by captive insurers therefore is prohibited unless the owner/operator can demonstrate compliance with condition 335-14-5-.08(6)(e)1.(ii) for each year captive insurance is used.

(ii) Captive insurance may be used for post-closure insurance only when the facility provides annual documentation to the Department that the owner or operator is in compliance with the requirements of rule 335-14-5-.08(6)(f).

2. The wording of the certificate of insurance must be identical to the wording specified in 335-14-5-.08(12)(e).

3. The post-closure insurance policy must be issued for a face amount at least equal to the current post-closure cost estimate, except as provided in 335-14-5-.08(6)(g). The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

4. The post-closure insurance policy must guarantee that funds will be available to provide post-closure care of the facility whenever the post-closure period begins. The policy must also guarantee that once post-closure care begins, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Department, to such party or parties as the Department specifies.

5. An owner or operator or any other person authorized to conduct post-closure care may request reimbursements for post-closure care expenditures by submitting itemized bills to the Department. Within 60 days after receiving bills for post-closure care activities, the Department will instruct the insurer to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the post-closure care expenditures are in accordance with the approved post-closure plan or otherwise justified. If the Department does not instruct the insurer to make such reimbursements, he will provide the owner or operator with a detailed written statement of reasons.

6. The owner or operator must maintain the policy in full force and effect until the Department consents to termination of the policy by the owner or operator as specified in 335-14-5-.08(6)(e)11. Failure to pay the premium, without substitution of alternate financial assurance as specified in 335-14-5-.08(6), will constitute a significant violation of these regulations, warranting such remedy as the Department deems necessary. Such violation will be deemed to begin upon receipt by the Department of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

7. Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

8. The policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the Department. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Department and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur

and the policy will remain in full force and effect in the event that on or before the date of expiration:

- (i) The Department deems the facility abandoned; or
- (ii) The permit is terminated or revoked or a new permit is denied; or
- (iii) Closure is ordered by the Department or a court of competent jurisdiction; or
- (iv) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or
- (v) The premium due is paid.

9. Whenever the current post-closure cost estimate increases to an amount greater than the face amount of the policy during the operating life of the facility, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in 335-14-5-.08(6) to cover the increase. Whenever the current post-closure cost estimate decreases during the operating life of the facility, the face amount may be reduced to the amount of the current post-closure cost estimate following written approval by the Department.

10. Commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week Treasury securities.

11. The Department will give written consent to the owner or operator that he may terminate the insurance policy when:

- (i) An owner or operator substitutes alternate financial assurance as specified in 335-14-5-.08(6); or
 - (ii) The Department releases the owner or operator from the requirements of 335-14-5-.08(6) in accordance with 335-14-5-.08(6)(i).
- (f) Financial test and corporate guarantee for post-closure care.

1. An owner or operator may satisfy the requirements of 335-14-5-.08(6) by demonstrating that he passes a financial test as specified in 335-14-5-.08(6)(f). To pass this test the owner or operator must meet the criteria of either 335-14-5-.08(6)(f)1.(i) or (f)1.(ii):

- (i) The owner or operator must have:

(I) Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

(II) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates; and

(III) Tangible net worth of at least \$10 million; and

(IV) Assets in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates.

(ii) The owner or operator must have:

(I) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

(II) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates; and

(III) Tangible net worth of at least \$10 million; and

(IV) Assets in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates.

2. The phrase "current closure and post-closure cost estimates" as used in 335-14-5-.08(6)(f)1. refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer [335-14-5-.08(12)(f)].

3. To demonstrate that he meets this test, the owner or operator must submit the following items to the Department:

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in 335-14-5-.08(12)(f); and

(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(iii) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(I) He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(II) In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

4. An owner or operator of a new facility must submit the items specified in 335-14-5-.08(6)(f)3. at least 60 days before the date on which hazardous waste is first received for disposal.

5. After the initial submission of items specified in 335-14-5-.08(6)(f)3., the owner or operator must send updated information to the Department within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in 335-14-5-.08(6)(f)3.

6. If the owner or operator no longer meets the requirements of 335-14-5-.08(6)(f)1., he must send notice to the Department of intent to establish alternate financial assurance as specified in 335-14-5-.08(6). The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide the alternate financial assurance within 120 days after the end of such fiscal year.

7. The Department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of 335-14-5-.08(6)(f)1., require reports of financial condition at any time from the owner or operator in addition to those specified in 335-14-5-.08(6)(f)3. If the Department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of 335-14-5-.08(6)(f)1., the owner or operator must provide alternate financial assurance as specified in 335-14-5-.08(6) within 30 days after notification of such a finding.

8. The Department may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements [see 335-14-5-.08(6)(f)3.(ii)]. An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Department will evaluate other qualifications on an individual basis. The owner or operator must provide alternate financial assurance as specified in 335-14-5-.08(6) within 30 days after notification of the disallowance.

9. During the period of post-closure care, the Department may approve a decrease in the current post-closure cost estimate for which this test demonstrates financial assurance if the owner or operator demonstrates to the Department that the amount of the cost estimate exceeds the remaining cost of post-closure care.

10. The owner or operator is no longer required to submit the items specified in 335-14-5-.08(6)(f)3. when:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-5-.08(6); or

(ii) The Department releases the owner or operator from the requirements of 335-14-5-.08(6) in accordance with 335-14-5-.08(6)(i).

11. An owner or operator may meet the requirements of 335-14-5-.08(6) by obtaining a written guarantee, hereinafter referred to as "corporate guarantee". The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in 335-14-5-.08(6)(f)1. through 9. and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in 335-14-5-.08(12)(h). A certified copy of the guarantee must accompany the items sent to the Department as specified in 335-14-5-.08(6)(f)3. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee must provide that:

(i) If the owner or operator fails to perform post-closure care of a facility covered by the corporate guarantee in accordance with the post-closure plan and other permit requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in 335-14-5-.08(6)(a) in the name of the owner or operator.

(ii) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts.

(iii) If the owner or operator fails to provide alternate financial assurance as specified in 335-14-5-.08(6) and obtain the written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternate financial assurance in the name of the owner or operator.

(g) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of 335-14-5-.08(6) by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, and insurance. The mechanisms must be as specified in 335-14-5-.08(6)(a), (b), (d), and (e), respectively, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current post-closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of

credit, he may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The Department may use any or all of the mechanisms to provide for post-closure care of the facility.

(h) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in 335-14-5-.08(6) to meet the requirements of 335-14-5-.08(6) for more than one facility. Evidence of financial assurance submitted to the Department must include a list showing, for each facility, the EPA or Alabama Identification Number, name, address, and the amount of funds for post-closure care assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for post-closure care of any of the facilities covered by the mechanism, the Department may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

(i) Release of the owner or operator from the requirements of 335-14-5-.08(6). Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that the post-closure care period has been completed for a hazardous waste disposal unit in accordance with the approved plan, the Department will notify the owner or operator that he is no longer required to maintain financial assurance for post-closure of that unit, unless the Department has reason to believe that post-closure care has not been in accordance with the approved post-closure plan. The Department shall provide the owner or operator a detailed written statement of any such reason to believe that post-closure care has not been in accordance with the approved post-closure plan.

(7) Use of a mechanism for multiple financial responsibilities. An owner or operator may satisfy the requirements for financial assurance for both closure and post-closure care for one or more facilities by using a trust fund, surety bond, letter of credit, insurance, financial test, or corporate guarantee that meets the specifications for the mechanism in both 335-14-5-.08(4) and (6). For corrective action at one or more facilities, an owner or operator may satisfy the requirements for financial assurance by using a trust fund, surety bond, or letter of credit that meets the specifications for the mechanism in 335-14-5-.08(11). The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for financial assurance of closure, post-closure care, and corrective action.

(8) Liability requirements.

(a) Coverage for sudden accidental occurrences. An owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental

occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least \$1 million per occurrence with an annual aggregate of at least \$2 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in 335-14-5-.08(8)(a)1., 2., 3., 4., 5., or 6.:

1. An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in 335-14-5-.08(8)(a).

(i) Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidence by a Certificate of Liability Insurance. The wording of the endorsement must be identical to the wording specified in 335-14-5-.08(12)(i). The wording of the certificate of insurance must be identical to the wording specified in 335-14-5-.08(12)(j). The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Department. If requested by the Department, the owner or operator must provide a signed duplicate original of the insurance policy. An owner or operator of a new facility must submit the signed duplicate original of the Hazardous Waste Facility Liability Endorsement or the Certificate of Liability Insurance to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage or disposal. The insurance must be effective before this initial receipt of hazardous waste.

(ii) Each insurance policy must be issued by an insurer which is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer in the State of Alabama.

2. An owner or operator may meet the requirements of 335-14-5-.08(8) by passing a financial test or using the guarantee for liability coverage as specified in 335-14-5-.08(8)(f) and (g).

3. An owner or operator may meet the requirements of 335-14-5-.08(8) by obtaining a letter of credit for liability coverage as specified in 335-14-5-.08(8)(h).

4. An owner or operator may meet the requirements of 335-14-5-.08(8) by obtaining a surety bond for liability coverage as specified in 335-14-5-.08(8)(i).

5. An owner or operator may meet the requirements of 335-14-5-.08(8) by obtaining a trust fund for liability coverage as specified in 335-14-5-.08(8)(j).

6. An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the

owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amounts required by 335-14-5-.08(8). If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under 335-14-5-.08(8)(a), the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

7. An owner or operator shall notify the Department in writing within 30 days whenever:

(i) A Claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in 335-14-5-.08(8)(a)1. through (a)6.; or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under 335-14-5-.08(8)(a)1. through (a)6.; or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under 335-14-5-.08(8)(a)1. through (a)6.

(b) Coverage for nonsudden accidental occurrences. An owner or operator of a surface impoundment, landfill, land treatment facility, or disposal miscellaneous unit that is used to manage hazardous waste, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least \$3 million per occurrence with an annual aggregate of at least \$6 million, exclusive of legal defense costs. An owner or operator who must meet the requirements of 335-14-5-.08(8) may combine the required per-occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences must maintain liability coverage in the amount of at least \$4 million per occurrence and \$8 million annual aggregate. This liability coverage may be demonstrated as specified in 335-14-5-.08(8)(b)1., 2., 3., 4., 5., or 6.:

1. An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in 335-14-5-.08(8)(b).

(i) Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement must be identical to the wording specified in 335-14-5-.08(12)(i). The wording of the certificate of insurance must be identical to the wording specified in 335-14-5-.08(12)(j). The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Department. If requested by the Department, the owner or operator must provide a signed duplicate original of the insurance policy. An owner or operator of a new facility must submit the signed duplicate original of the Hazardous Waste Facility Liability Endorsement or the Certificate of Liability Insurance to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The insurance must be effective before this initial receipt of hazardous waste.

(ii) Each insurance policy must be issued by an insurer which is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer in the State of Alabama.

2. An owner or operator may meet the requirements of 335-14-5-.08(8) by passing a financial test or using the guarantee for liability coverage as specified in 335-14-5-.08(8)(f) and (g).

3. An owner or operator may meet the requirements of 335-14-5-.08(8) by obtaining a letter of credit for liability coverage as specified in 335-14-5-.08(8)(h).

4. An owner or operator may meet the requirements of 335-14-5-.08(8) by obtaining a surety bond for liability coverage as specified in 335-14-5-.08(8)(i).

5. An owner or operator may meet the requirements of 335-14-5-.08(8) by obtaining a trust fund for liability coverage as specified in 335-14-5-.08(8)(j).

6. An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amount required by 335-14-5-.08(8). If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under 335-14-5-.08(8)(b), the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

7. An owner or operator shall notify the Department in writing within 30 days whenever:

(i) A Claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in 335-14-5-.08(8)(b)1. through (b)6.; or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under 335-14-5-.08(8)(b)1. through (b)6.; or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under 335-14-5-.08(8)(b)1. through (b)6.

(c) Request for variance. If an owner or operator can demonstrate to the satisfaction of the Department that the levels of financial responsibility required by 335-14-5-.08(8)(a) or (b) are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the owner or operator may obtain a variance from the Department. The request for a variance must be submitted to the Department as part of the application under 335-14-8-.02(5) for a facility that does not have a permit, or pursuant to the procedures for permit modification under 335-14-8-.08(3) for a facility that has a permit. If granted, the variance will take the form of an adjusted level of required liability coverage, such level to be based on the Department's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. The Department may require an owner or operator who requests a variance to provide such technical and engineering information as is deemed necessary by the Department to determine a level of financial responsibility other than that required by 335-14-5-.08(8)(a) or (b). Any request for a variance for a permitted facility will be treated as a request for a permit modification under 335-14-8-.04(2)(a)5. and 335-14-8-.08(3).

(d) Adjustments by the Department. If the Department determines that the levels of financial responsibility required by 335-14-5-.08(8)(a) or (b) are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the Department may adjust the level of financial responsibility required under 335-14-5-.08(8)(a) or (b) as may be necessary to protect human health and the environment. This adjusted level will be based on the Department's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the Department determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operations of a facility that is not a surface impoundment, landfill, or land treatment facility, he may require that an owner or operator of the facility comply with 335-14-5-.08(8)(b). An owner or operator must furnish to the

Department within a reasonable time, any information which the Department requests to determine whether cause exists for such adjustments of level or type of coverage. Any adjustment of the level or type of coverage for a facility that has a permit will be treated as a permit modification under 335-14-8-.04(2)(a)5. and 335-14-8-.08(3).

(e) Period of coverage. Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that final closure has been completed in accordance with the approved closure plan, the Department will notify the owner or operator in writing that he is no longer required by 335-14-5-.08(8) to maintain liability coverage for that facility, unless the Department has reason to believe that closure has not been in accordance with the approved closure plan.

(f) Financial test for liability coverage.

1. An owner or operator may satisfy the requirements of 335-14-5-.08(8) by demonstrating that he passes a financial test as specified in 335-14-5-.08(8)(f). To pass this test the owner or operator must meet the criteria of 335-14-5-.08(8)(f)1.(i) or (ii):

(i) The owner or operator must have:

(I) Net working capital and tangible net worth each at least six times the amount of liability coverage to be demonstrated by this test; and

(II) Tangible net worth of at least \$10 million; and

(III) Assets in the United States amounting to either:

I. at least 90 percent of his total assets; or

II. at least six times the amount of liability coverage to be demonstrated by this test.

(ii) The owner or operator must have:

(I) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's, or Aaa, Aa, A, or Baa as issued by Moody's; and

(II) Tangible net worth at least \$10 million; and

(III) Tangible net worth at least six times the amount of liability coverage to be demonstrated by this test; and

(IV) Assets in the United States amounting to either:

I. at least 90 percent of his total assets; or

II. at least six times the amount of liability coverage to be demonstrated by this test.

2. The phrase "amount of liability coverage" as used in 335-14-5-.08(8)(f)1. refers to the annual aggregate amounts for which coverage is required under 335-14-5-.08(8)(a) and (b).

3. To demonstrate that he meets this test, the owner or operator must submit the following three items to the Department:

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in 335-14-5-.08(12)(g). If an owner or operator is using the financial test to demonstrate both assurance for closure or post-closure care, as specified by 335-14-5-.08(4)(f) and 335-14-5-.08(6)(f), and liability coverage, he must submit the letter specified in 335-14-5-.08(12)(g) to cover both forms of financial responsibility; a separate letter as specified in 335-14-5-.08(12)(f) is not required.

(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year.

(iii) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(I) He has compared the data which the letter from the chief financial officer specified as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(II) In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

4. An owner or operator of a new facility must submit the items specified in 335-14-5-.08(8)(f)3. to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal.

5. After the initial submission of items specified in 335-14-5-.08(8)(f)3., the owner or operator must send updated information to the Department within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in 335-14-5-.08(8)(f)3.

6. The Department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of 335-14-5-.08(8)(f)1., require from the owner or operator at any time current updates of reports of financial condition specified in 335-14-5-.08(8)(f)3.

7. If the owner or operator no longer meets the requirements of 335-14-5-.08(8)(f)1., he must obtain insurance, a letter of credit, a surety bond,

a trust fund, or a guarantee for the entire amount of required liability coverage as specified in 335-14-5-.08(8). Evidence of liability coverage must be submitted to the Department within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.

8. The Department may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements [see 335-14-5-.08(8)(f)3.(ii)]. An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Department will evaluate other qualifications on an individual basis. The owner or operator must provide evidence of insurance for the entire amount of required liability coverage as specified in this section within 30 days after notification of disallowance.

(g) Guarantee for liability coverage.

1. Subject to 335-14-5-.08(8)(g)2., an owner or operator may meet the requirements of 335-14-5-.08(8) by obtaining a written guarantee, hereinafter referred to as "guarantee". The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in 335-14-5-.08(8)(f)1. through (f)7. The wording of the guarantee must be identical to the wording specified in 335-14-5-.08(12)(h)2. A certified copy of the guarantee must accompany the items sent to the Department as specified in 335-14-5-.08(8)(f)3. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee.

(i) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden or nonsudden accidental occurrences (or both as the case may be), arising from the operation of facilities covered by this guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor will do so up to the limits of coverage.

(ii) [Reserved]

2. (i) In the case of corporations incorporated in the United States, a guarantee may be used to satisfy the requirements of 335-14-5-.08(8) only if the Attorneys General or Insurance Commissioners of

(I) the State in which the guarantor is incorporated, and

(II) each State in which a facility covered by the guarantee is located have submitted a written statement to the Department that a guarantee executed as described in 335-14-5-.08(8) and 335-14-5-.08(12)(h)2. is a legally valid and enforceable obligation in that State.

(ii) In the case of corporations incorporated outside the United States, a guarantee may be used to satisfy the requirements of 335-14-5-.08(8) only if

(I) the non-U.S. corporation has identified a registered agent for service of process in each State in which a facility covered by the guarantee is located and in the State in which it has its principal place of business, and

(II) the Attorney General or Insurance Commissioner of each State in which a facility covered by the guarantee is located and the State in which the guarantor corporation has its principal place of business has submitted a written statement to the Department that a guarantee executed as described in 335-14-5-.08(8), and 335-14-5-.08(12)(h)2. is a legally valid and enforceable obligation in that State.

(h) Letter of credit for liability coverage.

1. An owner or operator may satisfy the requirements of 335-14-5-.08(8) by obtaining an irrevocable standby letter of credit that conforms to the requirements of 335-14-5-.08(8)(h) and submitting a copy of the letter of credit to the Department.

2. The financial institution issuing the letter of credit must be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency.

3. The wording of the letter of credit must be identical to the wording specified in 335-14-5-.08(12)(k).

4. An owner or operator who uses a letter of credit to satisfy the requirements of 335-14-5-.08(8) may also establish a standby trust fund. Under the terms of such a letter of credit, all amounts paid pursuant to a draft by the trustee of the standby trust will be deposited by the issuing institution into the standby trust in accordance with instructions from the trustee. The trustee of the standby trust fund must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

5. The wording of the standby trust fund must be identical to the wording specified in 335-14-5-.08(12)(n).

(i) Surety bond for liability coverage

1. An owner or operator may satisfy the requirements of 335-14-5-.08(8) by obtaining a surety bond that conforms to the requirements of 335-14-5-.08(8)(i) and submitting a copy of the bond to the Department.

2. The surety company issuing the bond must be among those listed as acceptable sureties on Federal bonds in the most recent Circular 570 of the U.S. Department of the Treasury.

3. The wording of the surety bond must be identical to the wording specified in 335-14-5-.08(12)(l).

4. A surety bond may be used to satisfy the requirements of 335-14-5-.08(8) only if the Attorneys General or Insurance Commissioners of

(i) the State in which the surety is incorporated, and

(ii) each State in which a facility covered by the surety bond is located have submitted a written statement to the Department that a surety bond executed as described in 335-14-5-.08(8)(i) and 335-14-5-.08(12)(l) is a legally valid and enforceable obligation in that State.

(j) Trust fund for liability coverage.

1. An owner or operator may satisfy the requirements of 335-14-5-.08(8) by establishing a trust fund that conforms to the requirements of 335-14-5-.08(8)(j) and submitting an originally signed duplicate of the trust agreement to the Department.

2. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

3. The trust fund for liability coverage must be funded for the full amount of the liability coverage to be provided by the trust fund before it may be relied upon to satisfy the requirements of 335-14-5-.08(8). If at any time after the trust fund is created the amount of funds in the trust fund is reduced below the full amount of the liability coverage to be provided, the owner or operator, by the anniversary date of the establishment of the fund, must either add sufficient funds to the trust fund to cause its value to equal the full amount of liability coverage to be provided, or obtain other financial assurance as specified in 335-14-5-.08(8) to cover the difference. For purposes of 335-14-5-.08(8)(j), "the full amount of the liability coverage to be provided" means the amount of coverage for sudden and/or nonsudden occurrences required to be provided by the owner or operator by 335-14-5-.08(8), less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

4. The wording of the trust fund must be identical to the wording specified in 335-14-5-.08(12)(m).

(k) [Reserved]

(9) Incapacity of owners or operators, guarantors, or financial institutions.

(a) An owner or operator must notify the Department by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding. A guarantor of a corporate guarantee as specified in 335-14-5-.08(4)(f) and 335-14-5-.08(6)(f) must make such a notification if he is named as debtor, as required under the terms of the corporate guarantee [335-14-5-.08(12)(h)].

(b) An owner or operator who fulfills the requirements of 335-14-5-.08(4), (6), and (8) by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee or of the institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The owner or operator must establish other financial assurance or liability coverage within 60 days after such an event.

(10) Cost estimate for corrective action.

(a) The owner or operator of a facility at which corrective action is required pursuant to 335-14-5-.06(11) or (12) must have a detailed written estimate in a format specified by the Department, in current dollars, of the annual cost of corrective action.

1. The corrective action cost estimate must be based on the cost to the owner or operator of hiring a third party to conduct all corrective actions required by the facility permit or enforceable document [as defined in 335-14-8-.01(1)(c)7.], the corrective action plan, the corrective action order, and the applicable requirements of 335-14-5-.06(11) and (12). A third party is a party who is neither a parent nor a subsidiary of the owner or operator. [See definition of parent corporation in 335-14-1-.02.]

2. The corrective action cost estimate is calculated by multiplying the annual corrective action cost estimate by the total number of years in the corrective action period. Estimation of the required corrective action period shall be made on a case-by-case basis, shall be based on the corrective action methods specified in the corrective action plan, and shall be certified by an independent registered professional engineer and/or independent licensed professional geologist.

3. The corrective action cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, non-hazardous wastes, facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

4. The owner or operator may not incorporate a zero cost for hazardous wastes, or non-hazardous wastes, that might have economic value.

(b) During the corrective action period, the owner or operator must adjust the corrective action cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with 335-14-5-.08(11). The adjustment may be made by recalculating the corrective action cost estimate in current dollars or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business as specified in 335-14-5-.08(10)(b)1. and 2. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

1. The first adjustment is made by multiplying the corrective action cost estimate by the inflation factor. The result is the adjusted corrective action cost estimate.

2. Subsequent adjustments are made by multiplying the latest adjusted corrective action cost estimate by the latest inflation factor.

(c) During the corrective action period, the owner or operator must revise the corrective action cost estimate within 30 days after the Department has approved a request to modify the corrective action plan, if the change in the corrective action plan increases the cost of the corrective action. The revised corrective action cost estimate must be adjusted for inflation as specified in 335-14-5-.08(10)(b).

(d) The owner or operator must keep the following at the facility during the operating life of the facility and throughout the post-closure care period: The latest corrective action cost estimate prepared in accordance with 335-14-5-.08(10)(a) and (10)(c) and, when this estimate has been adjusted in accordance with 335-14-5-.08(10)(b), the latest adjusted corrective action cost estimate.

(11) Financial assurance for corrective action. The owner or operator of a facility at which corrective action is required pursuant to 335-14-5-.06(11) or (12) must establish financial assurance for corrective action in accordance with the approved corrective action plan for the facility 60 days following the specification of the corrective actions in the facility permit or enforceable document [as defined in 335-14-8-.01(1)(c)7.]. He must choose from the following options:

(a) Corrective action trust fund.

1. An owner or operator may satisfy the requirements of 335-14-5-.08(11) by establishing a corrective action trust fund which conforms to the requirements of 335-14-5-.08(11)(a) and submitting an originally signed duplicate of the trust agreement to the Department. An owner or operator of a new facility must submit the originally signed duplicate of the trust agreement to the Department no later than 30 days following establishment of the trust fund. The trustee must be an entity which has the authority to act as a trustee

and whose trust operations are regulated and examined by a Federal or State agency.

2. The wording of the trust agreement must be identical to the wording specified in 335-14-5-.08(12)(a)1. and the trust agreement must be accompanied by a formal certification of acknowledgment [for example, see 335-14-5-.08(12)(a)2.]. Schedule A of the trust agreement must be updated, and an originally signed duplicate must be submitted to the Department, within 60 days after a change in the amount of the current corrective action cost estimate covered by the agreement.

3. Payments into the fund must be made annually by the owner or operator over the pay-in-period, which is the term equal to one-half of the estimated corrective action period. The first payment must be made at the time the trust fund is established. A receipt from the trustee for this payment must be submitted by the owner or operator to the Department no later than 30 days following the payment date. Subsequent payments must be made no later than 30 days after the anniversary date of the first payment. The amount of each payment shall be determined by the following formula:

$$\text{Payment amount} = \frac{\text{CE} - \text{CV}}{Y}$$

where CE is the most recent corrective action cost estimate in accordance with 335-14-5-.08(10), at the time of the payment; CV is the current value of the trust fund, at the time of the payment; and Y is the number of remaining years in the pay-in-period, at the time of the payment.

4. The owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the current corrective action cost estimate at the time the fund is established. However he must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in 335-14-5-.08(11)(a)3.

5. If the owner or operator establishes a corrective action trust fund after having used one or more alternate mechanisms specified in 335-14-5-.08(11), his first payment must be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to specifications of 335-14-5-.08(11)(a), as applicable.

6. After the pay-in period is completed, whenever the current corrective action cost estimate changes during the operating life of the facility, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current

corrective action cost estimate, or obtain other financial assurance as specified in 335-14-5-.08(11) to cover the difference.

7. During the corrective action period, if the value of the trust fund is greater than the total amount of the current corrective action cost estimate, the owner or operator may submit a written request to the Department for release of the amount in excess of the current corrective action cost estimate.

8. If an owner or operator substitutes other financial assurance as specified in 335-14-5-.08(11) for all or part of the trust fund, he may submit a written request to the Department for release of the amount in excess of the current corrective action cost estimate covered by the trust fund.

9. Within 60 days after receiving a request from the owner or operator for release of funds as specified in 335-14-5-.08(11)(a)7. or (a)8., the Department shall approve or disapprove the request for release. If the Department approves the owner or operator's request for release, the Department will instruct the trustee to release to the owner or operator such funds as the Department specifies in writing.

10. After the pay-in-period is completed, the Department may approve a release of funds during the corrective action period, if the owner or operator demonstrates to the Department that the value of the trust fund exceeds the remaining cost of corrective action.

11. After the pay-in-period is completed, an owner or operator or any other person authorized to conduct corrective action may request reimbursements for corrective action expenditures by submitting itemized bills to the Department. Within 60 days after receiving bills for corrective action care activities, the Department will instruct the trustee to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the corrective action expenditures are in accordance with the approved corrective action plan or otherwise justified. If the Department does not instruct the trustee to make such reimbursements, he will provide the owner or operator with a detailed written statement of reasons.

12. The Department will agree to termination of the trust when:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-5-.08(11) and approved by the Department; or

(ii) The Department releases the owner or operator from the requirements of 335-14-5-.08(11) in accordance with 335-14-5-.08(11)(f).

(b) Surety bond guaranteeing performance of corrective action.

An owner or operator may satisfy the requirements of 335-14-5-.08(11) by obtaining a surety bond which conforms to the requirements of 335-14-5-.08(6)(c) and submitting the bond to the Department.

(c) Corrective action letter of credit.

An owner or operator may satisfy the requirements of 335-14-5-.08(11) by obtaining an irrevocable standby letter of credit which conforms to the requirements of 335-14-5-.08(6)(d) and submitting the letter to the Department.

(d) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of 335-14-5-.08(11) by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing performance of corrective action, and letters of credit. The mechanisms must be as specified in 335-14-5-.08(11)(a), (b), and (c), respectively, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current corrective action cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The Department may use any or all of the mechanisms to provide for corrective action of the facility.

(e) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in 335-14-5-.08(11) to meet the requirements of 335-14-5-.08(11) for more than one facility. Evidence of financial assurance submitted to the Department must include a list showing, for each facility, the EPA or Alabama Identification Number, name, address, and the amount of funds for corrective action assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for corrective action of any of the facilities covered by the mechanism, the Department may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

(f) Release of the owner or operator from the requirements of 335-14-5-.08(11). Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that corrective action has been completed for a hazardous waste disposal unit or solid waste management units in accordance with the approved plan, the Department will notify the owner or operator that he is no longer required to maintain financial assurance for corrective action of that unit, unless the Department has reason to believe that corrective action has not been in accordance with the approved plan, permit, or corrective action order requirements. The Department shall provide the owner or operator with a detailed written statement of any such reason to believe that corrective action has not been in accordance with the approved plan, permit, or order.

(12) Wording of the instruments.

(a) 1. A trust agreement for a trust fund, as specified in 335-14-5-.08(4)(a), 335-14-5-.08(6)(a), or 335-14-5-.08(11)(a), or 335-14-6-.08(4)(a) or 335-14-6-.08(6)(a), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the State of _____" or "a national bank"], the "Trustee."

Whereas, the Alabama Department of Environmental Management (the "Department") an agency of the State of Alabama, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility shall provide assurance that funds will be available when needed for closure, post-closure care, and/or corrective action of the facility,

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, Therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and cost estimates identified on attached Schedule A [on Schedule A, for each facility list the EPA Identification Number, name, address, and the current closure, post-closure, and/or corrective action cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Department. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the

Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Department.

Section 4. Payment for Closure and Post-Closure Care. The Trustee shall make payments from the Fund as the Department shall direct, in writing, to provide for the payment of the costs of closure, post-closure, and/or corrective action care of the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the Department from the Fund for closure and post-closure expenditures in such amounts as the Department shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Department specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 *et seq.*, including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage

commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees or legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the Department a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the Department shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with the counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor, the Department, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by

the Department to the Trustee shall be in writing, signed by the Department or his designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Department, except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor and the Department by certified mail within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Department or designee, or by the Trustee and the Department or designee, if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Department, or by the Trustee and the Department, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Department, issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Alabama.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals

to be hereunto affixed and attested as of the date first above written: The parties below certify that the wording of this Agreement is identical to the wording specified in ADEM Administrative Code subparagraph 335-14-5-.08(12)(a)1. as such rules were constituted on the date first above written.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

2. The following is an example of the certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in 335-14-5-.08(4)(a) and (6)(a) or 335-14-6-.08(4)(a) and (6)(a).

State of _____

County of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

(b) A surety bond guaranteeing payment into a trust fund, as specified in 335-14-5-.08(4)(b) or 335-14-5-.08(6)(b) or 335-14-6-.08(4)(b) or 335-14-6-.08(6)(b), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

FINANCIAL GUARANTEE BOND

Date bond executed: _____
Effective date: _____
Principal: [legal name and business address of owner or operator] _____
Type or organization: [insert "individual," "joint venture," "partnership," or "corporation"] _____
State of incorporation: _____
Surety(ies): [name(s) and business address(es)] _____
EPA Identification Number, name, address and closure, post-closure, and/or corrective action amounts(s) for each facility guaranteed by this bond [indicate closure and post-closure amounts separately]: _____
Total penal sum of bond: \$ _____
Surety's bond number: _____

Know All Persons By These Presents, That we the Principal and Surety(ies) hereto are firmly bound to the Alabama Department of Environmental Management (the Department), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal for the payment of such sum only as is set forth opposite the name of such Surety but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the Alabama Hazardous Wastes Management and Minimization Act of 1978 (AHWMMMA), as amended, to have a permit or interim status in order to own or operate each hazardous waste management facility identified above, and

Whereas said Principal is required to provide financial assurance for closure, or closure and post-closure care, as a condition of the permit or interim status, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of each facility

identified above, fund the standby trust fund in the amount(s) identified above for the facility,

Or, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after a final order to begin closure is issued by the Department or a U.S. district court or other court of competent jurisdiction,

Or, if the Principal shall provide alternate financial assurance, as specified in ADEM Administrative Code rule 335-14-5-.08 or 335-14-6-.08, as applicable, and obtain the Department's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the Department from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the Department that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the Department.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the Department, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the Department, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the Department.

[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure, post-closure, and/or corrective action amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the Department.

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in ADEM Administrative Code subparagraph 335-14-5-.08(12)(b) as such rules were constituted on the date this bond was executed.

Principal

[Signature(s)]_____

[Name(s)]_____

(Title(s))_____

[Corporate seal]_____

Corporate Surety(ies)

[Name and address]

State of incorporation:

Liability limit: \$ _____

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$ _____

(c) A surety bond guaranteeing performance of closure, post-closure, and/or corrective action, as specified in 335-14-5-.08(4)(c), 335-14-5-.08(6)(c), or 335-14-5-.08(11)(b) must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

PERFORMANCE BOND

Date bond executed: _____

Effective date: _____

Principal: [legal name and business address of owner or operator]

Type of organization: [insert "individual," "joint venture,"
partnership," or "corporation"]

State of incorporation: _____

Surety(ies): [name(s) and
business address(es)] _____

EPA Identification Number, name, address and closure, post-closure, and/or
corrective action amounts(s) for each facility guaranteed by this bond
[indicate closure and post-closure amounts
separately]: _____

Total penal sum of bond: \$ _____

Surety's bond number: _____

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the Alabama Department of Environmental Management (the "Department"), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joining action or actions against any or all of us, and for all other purposes each Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the Alabama Hazardous Wastes Management and Minimization Act of 1978 (AHWMMMA), as amended, to have a permit in order to own or operate each hazardous waste management facility identified above, and

Whereas said Principal is required to provide financial assurance for closure, or closure and post-closure care, as a condition of the permit, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of each facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

And, if the Principal shall faithfully perform post-closure care of each facility for which this bond guarantees post-closure care, in accordance with the post-closure plan and other requirements of the permit, as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

And, if the Principal shall faithfully perform corrective action at each facility for which this bond guarantees corrective action, in accordance with the corrective action plan and other requirements of the permit or correction action order, as such plan, permit, and/or order may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

Or, if the Principal shall provide alternate financial assurance as specified in ADEM Administrative Code rule 335-14-5-.08, and obtain the Department's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the Department from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the Department that the Principal has been found in violation of the closure requirements of ADEM Administrative Code 335-14-5, for a facility for which this bond guarantees performance of closure, the Surety(ies) shall either perform closure in accordance with the closure plan and other permit requirements or place the closure amount guaranteed for the facility into the standby trust fund as directed by the Department.

Upon notification by the Department that the Principal has been found in violation of the post-closure requirements of ADEM Administrative Code 335-14-5, for a facility for which this bond guarantees performance of post-closure care, the Surety(ies) shall either perform post-closure care in accordance with the post-closure plan and other permit requirements or place the post-closure amount guaranteed for the facility into the standby trust fund as directed by the Department.

Upon notification by the Department that the Principal has failed to provide alternate financial assurance as specified in ADEM Administrative Code rule 335-14-5-.08, and obtain written approval of such assurance from the Department during the 90 days following receipt by both the Principal and the Department of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the Department.

Upon notification by the Department that the Principal has been found in violation of the corrective action requirements of ADEM Administrative Code 335-14-5, for a facility for which this bond guarantees performance of corrective action, the Surety(ies) shall either perform corrective action in

accordance with the corrective action plan and other permit or corrective action order requirements or place the corrective action amount guaranteed for the facility into the standby trust fund as directed by the Department.

The surety(ies) hereby waive(s) notification of amendments to closure, post-closure, and/or corrective action plans, permits, orders, applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Department, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the Department, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond from the Department.

[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure, post-closure, and/or corrective action amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the Department.

In Witness Whereof, the Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in ADEM Administrative Code subparagraph 335-14-5-.08(12)(c) as such rule was constituted on the date this bond was executed.

Principal

[Signature(s)]

[Name(s)]

(Title(s)]

[Corporate seal]

Corporate Surety(ies)

[Name and address]

State of incorporation:

Liability limit:

\$

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium:

\$

(d) A letter of credit, as specified in 335-14-5-.08(4)(d), 335-14-5-.08(6)(d), or 335-14-5-.08(11)(c) or 335-14-6-.08(4)(c) or 335-14-6-.08(6)(c), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

IRREVOCABLE STANDBY LETTER OF CREDIT

Director

Alabama Department of Environmental Management

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. _____ in your favor, at the request and for the account of [owner's or operator's name and address] up to the aggregate amount of [in words] U.S. dollars \$ _____, available upon presentation of

(1) your sight draft, bearing reference to this letter of credit No. _____, and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the Alabama Hazardous Wastes Management Act of 1978, as amended."

This letter of credit is effective as of [date] and shall expire on [date at least one year later], but such expiration date shall be automatically extended for a period of [at least one year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and [owner's or operator's name], as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner's or operator's name] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in ADEM Administrative Code subparagraph 335-14-5-.08(12)(d) as such rules were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution] [Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code"].

(e) A certificate of insurance as specified in 335-14-5-.08(4)(e), 335-14-5-.08(6)(e) or 335-14-6-.08(4)(d) or 335-14-6-.08(6)(d), must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATE OF INSURANCE FOR CLOSURE OR POST-CLOSURE CARE

Name and Address of Insurer (herein called the "Insurer"): _____

Name and Address of Insured (herein called the "Insured"): _____

Facilities Covered: [List for each facility: The EPA Identification Number, name, address, and the amount of insurance for closure and/or the amount for post-closure care (these amounts for all facilities covered must total the face amount shown below).]

Face Amount: _____
Policy Number: _____
Effective Date: _____

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for [insert "closure" or "closure and post-closure care" or "post-closure care"] for the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of ADEM Admin. Code subparagraphs 335-14-5-.08(4)(e), 335-14-5-.08(6)(e), 335-14-6-.08(4)(d), and 335-14-6-.08(6)(d), as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the Department, the Insurer agrees to furnish to the Department a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in ADEM Admin. Code subparagraphs 335-14-5-.08(12)(e) as such rules were constituted on the date shown immediately below.

[Authorized signature for Insurer]

[Name of person signing]

[Title of person signing]

Signature of witness or notary: _____

[Date]

(f) A letter from the chief financial officer, as specified in 335-14-5-.08(4)(f) or 335-14-5-.08(6)(f) or 335-14-6-.08(4)(e) or 335-14-6-.08(6)(e), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

LETTER FROM THE CHIEF FINANCIAL OFFICER

[Address to the Director, Alabama Department of Environmental Management, P.O. Box 301463, Montgomery, Alabama 36130-1463.]

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance, as specified in ADEM Admin. Code r. 335-14-5-.08 and 335-14-6-.08.

[Fill out the following five paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, address, and current cost estimates. Identify each cost estimate as to whether it is for one or more of the following: closure, post-closure, and plugging and abandonment, ~~and corrective action.~~]

1. This firm is the owner or operator of the following facilities for which financial assurance for [identify one or more of the following: closure, and post-closure, ~~and corrective action~~] care is demonstrated through the financial test specified in ADEM Admin. Code r. 335-14-5-.08 and 335-14-6-.08. The current closure, and ~~post-closure, and/or corrective action~~ cost estimates covered by the test are shown for each facility: _____.

2. This firm guarantees, through the corporate guarantee specified in ADEM Admin. Code r. 335-14-5-.08 and 335-14-6-.08, the [identify one or more of the following: closure, and ~~post-closure, and corrective action~~] cost(s) at the following facilities owned or operated by subsidiaries of this firm. The current cost estimates for the care so guaranteed are shown for each facility: _____.

The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee _____; or (3) engaged in the following substantial business relationship with the owner or operator _____, and receiving the following value in consideration of this guarantee _____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

3. In states outside of Alabama, where U.S. EPA or some designated authority is administering financial responsibility requirements, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the [identify one or more of the following: closure, post-closure, and plugging and abandonment, ~~and corrective action~~] cost(s) at the following facilities through a financial test and/or corporate guarantee substantially equivalent to the ones specified in ADEM Admin. Code r. 335-14-5-.08 and 335-14-6-.08. The current cost estimates covered by such a test or guarantee are shown for each facility: _____.

4. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for [identify one or more of the following: closure, post-closure, and plugging and abandonment, ~~and corrective action~~] cost(s) is not demonstrated to the state through the financial test or any other financial assurance mechanism specified in ADEM Admin. Code r. 335-14-5-.08 and 335-14-6-.08 or equivalent or substantially equivalent Federal or State mechanism. The current cost estimates not covered by such financial assurance are shown for each facility:
_____.

5. This firm is the owner or operator of the following UIC facilities for which financial assurance for plugging and abandonment is required under Part 144. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility: _____.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Alternative I if the criteria of 335-14-5-.08(4)(f)1.(i) or (6)(f)1.(i) or 335-14-6-.08(4)(e)1.(i) or (6)(e)1.(i) are used. Fill in Alternative II if the criteria of 335-14-5-.08(4)(f)1.(ii) or (6)(f)1.(ii) or 335-14-6-.08(4)(e)1.(ii) or (6)(e)1.(ii) are used.]

ALTERNATIVE I

1. Sum of current cost estimates [total of all cost estimates shown in the five paragraphs above]	\$ _____
*2. Total liabilities [if any portion of the cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4]	\$ _____
*3. Tangible net worth	\$ _____
*4. Net worth	\$ _____
*5. Current assets	\$ _____
*6. Current liabilities	\$ _____
7. Net working capital [line 5 minus line 6]	\$ _____
*8. The sum of net income plus depreciation, depletion, and amortization	\$ _____

*9. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) \$ _____

10. Is line 3 at least \$10 million? _____
Yes No

11. Is line 3 at least 6 times line 1? _____
Yes No

12. Is line 7 at least 6 times line 1? _____
Yes No

*13. Are at least 90% of firm's assets located in the U.S.? If not, complete line 14
_____ Yes No

14. Is line 9 at least 6 times line 1? _____
Yes No

15. Is line 2 divided by line 4 less than 2.0? _____
Yes No

16. Is line 8 divided by line 2 greater than 0.1? _____
Yes No

17. Is line 5 divided by line 6 greater than 1.5? _____
Yes No

ALTERNATIVE II

1. Sum of current cost estimates [total of all cost estimates shown in the five paragraphs above] \$ _____

*2. Current bond rating of most recent issuance of this firm and name of rating service \$ _____

3. Date of issuance of bond _____

4. Date of maturity of bond _____

*5. Tangible net worth [if any portion of the cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line] \$ _____

*6. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) \$ _____

- | | | |
|-----------------------------------------------------------------------------------------|--------------|-------------|
| 7. Is line 5 at least \$10 million? | _____
Yes | _____
No |
| 8. Is line 5 at least 6 times line 1? | _____
Yes | _____
No |
| *9. Are at least 90% of the firm's assets located in the U.S? If not, complete line 10. | _____
Yes | _____
No |
| 10. Is line 6 at least 6 time line 1? | _____
Yes | _____
No |

I hereby certify that the wording of this letter is identical to the wording specified in ADEM Admin. Code subparagraph 335-14-5-.08(12)(f) as such rules were constituted on the date shown immediately below.

[Signature] _____
 [Name] _____
 (Title) _____
 [Date] _____

(g) A letter from the chief financial officer, as specified in 335-14-5-.08(8)(f) or 335-14-6-.08(8)(f), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

LETTER FROM THE CHIEF FINANCIAL OFFICER

[Address to the Director, Alabama Department of Environmental Management, P.O. Box 301463, Montgomery, Alabama 36130-1463, Department]

I am the chief financial officer of [firm's name and address]. This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage [insert "and closure, and/ or post-closure, and/or corrective action care" if applicable] as specified in ADEM Admin. Code r. 335-14-5-.08 and 335-14-6-.08.

[Fill out the following paragraphs regarding facilities and liability coverage. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, and address.]

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden" or "nonsudden" or

"both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified in ADEM Admin. Code r. 335-14-5-.08 and 335-14-6-.08: _____

The firm identified above guarantees, through the guarantee specified in ADEM Admin. Code r. 335-14-5-.08 and 335-14-6-.08, liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the following:

_____.

The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee _____; or (3) engaged in the following substantial business relationship with the owner or operator _____, and receiving the following value in consideration of this guarantee _____.] [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.]

[If you are using the financial test to demonstrate coverage of both liability and closure and post-closure care, fill in the following five paragraphs regarding facilities and associated closure and post-closure cost estimates. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, address, and current closure, and/or post-closure, ~~and/or corrective action~~ cost estimates. Identify each cost estimate as to whether it is for closure or post-closure care.]

1. The firm identified above owns or operates the following facilities for which financial assurance for closure or post-closure care or liability coverage is demonstrated through the financial test specified in ADEM Admin. Code r. 335-14-5-.08 and 335-14-6-.08. The current closure, and/or post-closure, ~~and/or corrective action~~ cost estimate covered by the test are shown for each facility: _____.

2. The firm identified above guarantees, through the guarantee specified in ADEM Admin. Code r. 335-14-5-.08 and 335-14-6-.08, the closure and post-closure care or liability coverage of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: _____.

3. In States outside of Alabama, where the U.S. EPA or some designated authority is administering the financial requirements, this firm is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in ADEM Admin. Code r. 335-14-5-.08 and 335-14-6-.08. The current closure or post-closure cost estimates covered by such a test are shown for each facility: _____.

4. The firm identified above owns or operates the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated to the state through the financial test or any other financial assurance mechanisms specified in ADEM Admin. Code r. 335-14-5-.08 and 335-14-6-.08 or equivalent or substantially equivalent Federal or State mechanisms. The current closure, ~~and/or post-closure, and/or corrective action~~ cost estimates not covered by such financial assurance are shown for each facility:

5. This firm is the owner or operator or guarantor of the following UIC facilities for which financial assurance for plugging and abandonment is required under Part 144 and is assured through a financial test. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility:

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Part A if you are using the financial test to demonstrate coverage only for the liability requirements.]

Part A. Liability Coverage for Accidental Occurrences

[Fill in Alternative I if the criteria of 335-14-5-.08(8)(f)1.(i) 335-14-6-.08(8)(f)1.(i) of the Department Administrative Code are used. Fill in Alternative II if the criteria of 335-14-5-.08(8)(f)1.(ii) or 335-14-6-.08(8)(f)1.(ii) of the Department Administrative Code are used.]

ALTERNATIVE I

1. Amount of annual aggregate liability coverage to be demonstrated]	\$ _____
*2. Current assets	\$ _____
*3. Current liabilities	\$ _____
4. Net working capital [line 2 minus line 3]	\$ _____
*5. Tangible net worth	\$ _____
*6. If less than 90% of assets are located in the U.S., give total U.S. assets	\$ _____

7. Is line 5 at least \$10 million?	_____	_____
	Yes	No
8. Is line 4 at least 6 times line 1?	_____	_____
	Yes	No
9. Is line 5 at least 6 times line 1?	_____	_____
	Yes	No
*10. Are at least 90% of firm's assets located in the U.S.? If not, complete line 11?	_____	_____
	Yes	No
11. Is line 6 at least 6 times line 1?	_____	_____
	Yes	No

ALTERNATIVE II

1. Amount of annual aggregate liability coverage to be demonstrated	\$ _____
2. Current bond rating of most recent issuance of this firm and name of rating service	\$ _____
3. Date of issuance of bond	_____
4. Date of maturity of bond	_____
*5. Tangible net worth	\$ _____
*6. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.)	\$ _____

7. Is line 5 at least \$10 million?	_____	_____
	Yes	No
8. Is line 5 at least 6 times line 1?	_____	_____
	Yes	No
*9. Are at least 90% of the firm's assets located in the U.S?. If not, complete line 10.	_____	_____
	Yes	No
10. Is line 6 at least 6 time line 1?	_____	_____
	Yes	No

[Fill in Part B if you are using the financial test to demonstrate assurance of both liability coverage and closure or post-closure care.]

Part B. Closure or Post-Closure Care and Liability Coverage

[Fill in Alternative I if the criteria of 335-14-5-.08(4)(f)1.(i) or 335-14-5-.08(6)(f)1.(i) and 335-14-5-.08(8)(f)1.(i) are used or if the criteria of 335-14-6-.08(4)(e)1.(i) or 335-14-6-.08(6)(e)1.(i) and 335-14-6-.08(8)(f)1.(i) are used. Fill in Alternative II if the criteria of 335-14-5-.08(4)(f)1.(ii) or 335-14-5-.08(6)(f)1.(ii) and 335-14-5-.08(8)(f)1.(ii) are used or if the criteria of 335-14-6-.08(4)(e)1.(ii) or 335-14-6-.08(6)(e)1.(ii) and 335-14-6-.08(8)(f)1.(ii) are used.]

ALTERNATIVE I

1. Sum of current closure and post-closure cost estimates (total of all cost estimates listed above)	\$	
2. Amount of annual aggregate liability coverage to be demonstrated	\$	
3. Sum of lines 1 and 2	\$	
*4. Total liabilities (if any portion of your closure or post-closure cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6)	\$	
*5. Tangible net worth	\$	
*6. Net worth	\$	
*7. Current assets	\$	
*8. Current liabilities	\$	
9. Net working capital [line 7 minus line 8]	\$	
*10. The sum of net income plus depreciation, depletion, and amortization	\$	
*11. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.)	\$	
<hr/>		
12. Is line 5 at least \$10 million?	Yes	No
13. Is line 5 at least 6 times line 3?	Yes	No

14. Is line 9 at least 6 times line 3?	_____	_____
	Yes	No
*15. Are at least 90% of firm's assets located in the U.S.? If not, complete line 16.	_____	_____
	Yes	No
16. Is line 11 at least 6 times line 3?	_____	_____
	Yes	No
17. Is line 4 divided by line 6 less than 2.0?	_____	_____
	Yes	No
18. Is line 10 divided by line 4 greater than 0.1?	_____	_____
	Yes	No
19. Is line 7 divided by line 8 greater than 1.5?	_____	_____
	Yes	No

ALTERNATIVE II

1. Sum of current closure and post-closure cost estimates (total of all cost estimates listed above)	\$ _____
2. Amount of annual aggregate liability coverage to be demonstrated	\$ _____
3. Sum of lines 1 and 2	\$ _____
4. Current bond rating of most recent issuance and name of rating service	_____
5. Date of issuance of bond	_____
6. Date of maturity of bond	_____
*7. Tangible net worth (if any portion of the closure or post-closure cost estimates is included in "total liabilities" on your financial statements you may add that portion to this line)	\$ _____
*8. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.)	\$ _____

9. Is line 7 at least \$10 million?	_____	_____
	Yes	No
10. Is line 7 at least 6 times line 3?	_____	_____
	Yes	No

*11. Are at least 90% of the firm's assets located in the U.S?. If not, complete line 12.

Yes

No

12. Is line 8 at least 6 time line 2?

Yes

No

I hereby certify that the wording of this letter is identical to the wording specified in ADEM Admin. Code subparagraph 335-14-5-.08(12)(g) as such rules were constituted on the date shown immediately below.

[Signature] _____

[Name] _____

[Title] _____

[Date] _____

(h) 1. A corporate guarantee, as specified in 335-14-5-.08(4)(f) or 335-14-5-.08(6)(f) or 335-14-6-.08(4)(e) or 335-14-6-.08(6)(e), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CORPORATE GUARANTEE FOR CLOSURE OR POST-CLOSURE CARE

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the State of [insert name of State], herein referred to as guarantor. This guarantee is made on behalf of the [owner or operator] of [business address], which is [one of the following: "our subsidiary"; "a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary"; or "an entity with which guarantor has a substantial business relationship, as defined in 335-14-1-.02" to the Alabama Department of Environmental Management (the "Department").

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in ADEM Admin. Code subparagraphs 335-14-5-.08(4)(f), 335-14-5-.08(6)(f), 335-14-6-.08(4)(e) and 335-14-6-.08(6)(e).

2. [Owner or operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee: [List for each facility: EPA Identification Number, name, and address. Indicate for each whether guarantee is for closure, post-closure care, or both.]

3. "Closure plans" and "post-closure plans" as used below refer to the plans maintained as required by ADEM Admin. Code r. 335-14-5-.08 and 335-14-6-.08 for the closure and post-closure care of facilities as identified above.

4. For value received from [owner or operator], guarantor guarantees to the Department that in the event that [owner or operator] fails to perform [insert "closure," "post-closure" or "closure and post-closure care"] of the above facility(ies) in accordance with the closure or post-closure plans and other permit requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in ADEM Admin. Code r. 335-14-5-.08 or 335-14-6-.08, as applicable, in the name of the [owner or operator] in the amount of the current closure or post-closure cost estimates as specified in ADEM Admin. Code r. 335-14-5-.08 or 335-14-6-.08.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the Department and to [owner or operator] that he intends to provide alternate financial assurance as specified in ADEM Admin. Code r. 335-14-5-.08 or 335-14-6-.08, as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [owner or operator] has done so.

6. The guarantor agrees to notify the Department by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the Department of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure or post-closure care, he shall establish alternate financial assurance as specified in ADEM Admin. Code r. 335-14-5-.08 or 335-14-6-.08, as applicable, in the name of [owner or operator] unless [owner or operator] has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure or post-closure plan, amendment or modification of the permit, the extension or reduction of the time of performance of closure or post-closure, or any other modification or alteration of an obligation of the owner or operator pursuant to ADEM Admin. Code 335-14-5 or 335-14-6.

9. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial assurance requirements of ADEM Admin. Code r. 335-14-5-.08 and 335-14-6-.08 for the above-listed facilities, except as provided in paragraph 10. of this agreement.

10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:

Guarantor may terminate this guarantee by sending notice by certified mail to the Department and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the Department approves, alternate closure, and/or post-closure, ~~and/or corrective action~~ care coverage complying with ADEM Admin. Code paragraphs 335-14-5-.08 and/or 335-14-6-.08.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with its owner or operator]:

Guarantor may terminate this guarantee 120 days following the receipt of notification, through certified mail, by the Department and by [the owner or operator].

11. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance as specified in ADEM Admin. Code r. 335-14-5-.08 or 335-14-6-.08, as applicable, and obtain written approval of such assurance from the Department within 90 days after a notice of cancellation by the guarantor is received by the Department from guarantor, guarantor shall provide such alternate financial assurance in the name of [owner or operator].

12. Guarantor expressly waives notice of acceptance of this guarantee by the Department or by [owner or operator]. Guarantor also expressly waives notice of amendments or modifications of the closure, and/or post-closure, ~~and/or corrective action~~ plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in ADEM Admin. Code subparagraph 335-14-5-.08(12)(h) as such rules were constituted on the date first above written.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

2. A guarantee, as specified in 335-14-5-.08(8)(g) or 335-14-6-.08(8)(g), must be worded as follows, except that instructions in

brackets are to be replaced with the relevant information and the brackets deleted:

Guarantee for Liability Coverage

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of [if incorporated within the United States insert "the State of _____" and insert name of State; if incorporated outside the United States, insert the name of the country in which incorporated, the principal place of business within the United States, and the name and address of the registered agent in the State of the principal place of business], herein referred to as guarantor. This guarantee is made on behalf of [owner or operator] of [business address], which is one of the following: "our subsidiary", "a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary"; or "an entity with which guarantor has a substantial business relationship, as defined in 335-14-1-.02", to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

Recitals.

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in ADEM Admin. Code r. 335-14-5-.08(8)(g) and 335-14-6-.08(8)(g).

2. [Owner or operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee: [List for each facility: EPA Identification Number, name and address; and if guarantor is incorporated outside the United States, list the name and address of the guarantor's registered agent in each State.] This corporate guarantee satisfies the ADEM Administrative Code third-party liability requirements for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences in above-named owner or operator facilities for coverage in the amount of [insert dollar amount] for each occurrence and [insert dollar amount] annual aggregate.

3. For value received from [owner or operator], guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operations of the facility(ies) covered by this guarantee that in the event that [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [sudden and/or nonsudden] accidental occurrences, arising from the operation of the above-named facilities, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage identified above.

4. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert owner or operator] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator]; or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert owner or operator]. This exclusion applies:

(A) Whether [insert owner or operator] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert owner or operator];

(2) Premises that are sold, given away or abandoned by [insert owner or operator] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert owner or operator];

(4) Personal property in the care, custody or control of [insert owner or operator];

(5) That particular part of real property on which [insert owner or operator] or any contractors or subcontractors working directly or indirectly on behalf of [insert owner or operator] are performing operations, if the property damage arises out of these operations.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the Alabama Department of Environmental Management ("the Department") and to [owner or operator] that he intends to provide alternate liability coverage as specified in ADEM Admin. Code paragraphs 335-14-5-.08(8) and 335-14-6-.08(8), as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless [owner or operator] has done so.

6. The guarantor agrees to notify the Department, by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the Department of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate liability coverage, as specified in ADEM Admin. Code paragraph 335-14-5-.08(8) or 335-14-6-.08(8), in the name of [owner or operator], unless [owner or operator] has done so.

8. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability requirements set by ADEM Admin. Code paragraphs 335-14-5-.08(8) and 335-14-6-.08(8), provided that such modification shall become effective only if the Department does not disapprove the modification within 30 days of receipt of notification of the modification.

9. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable requirements of ADEM Admin. Code paragraphs 335-14-5-.08(8) and 335-14-6-.08(8) for the above-listed facility(ies), except as provided in paragraph 10. of this agreement.

10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:

Guarantor may terminate this guarantee by sending notice by certified mail to the Department and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the Department approves alternate liability coverage complying with ADEM Admin. Code paragraphs 335-14-5-.08(8) and/or 335-14-6-.08(8).

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator]:

Guarantor may terminate this guarantee 120 days following receipt of notification, through certified mail, by the Department and by [the owner or operator].

11. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.

12. Guarantor agrees that this guarantee is in addition to and does not affect any other responsibility or liability of the guarantor with respect to the covered facilities.

13. The Guarantor shall satisfy a third-party liability claim only on receipt of one of the following documents:

(a) Certification from the Principal and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Principal] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Principal's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of \$[_____].

[Signatures]_____

Principal_____

[Notary]_____

Date_____

[Signatures]_____

Claimant(s)_____

[Notary]_____

Date_____

(b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

14. In the event of combination of this guarantee with another mechanism to meet liability requirements, this guarantee will be considered [insert "primary" or "excess"] coverage.

I hereby certify that the wording of the guarantee is identical to the wording specified in 335-14-5-.08(12)(h)2. as such rules were constituted on the date shown immediately below.

Effective date: _____
[Name of guarantor] _____
[Authorized signature for guarantor] _____
[Name of person signing] _____
[Title of person signing] _____
Signature of witness or notary: _____

(i) A hazardous waste facility liability endorsement as required in 335-14-5-.08(8) or 335-14-6-.08(8) must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

HAZARDOUS WASTE FACILITY LIABILITY ENDORSEMENT

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with the insured's obligation to demonstrate financial responsibility under ADEM Admin. Code paragraph 335-14-5-.08(8) or 335-14-6-.08(8). The coverage applies at [list EPA Identification Number, name, and address for each facility] for [insert "sudden accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs.

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy to which this endorsement is attached.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in ADEM Admin. Code subparagraph 335-14-5-.08(8)(f) or 335-14-6-.08(8)(f).

(c) Whenever requested by the Alabama Department of Environmental Management (the Department), the Insurer agrees to furnish to the Department a signed duplicate original of the policy and all endorsements.

(d) Cancellation of this endorsement, whether by the Insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the Department.

(e) Any other termination of this endorsement will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the Department.

Attached to and forming part of policy No. _____ issued by [name of Insurer], herein called the Insurer, of [address of Insurer] to [name of insured] of [address] this _____ day of _____ 20____. The effective date of said policy is _____ day of _____ 20____.

I hereby certify that the wording of this endorsement is identical to the wording specified in ADEM Admin. Code subparagraph 335-14-5-.08(12)(i) as such rule was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in the State of Alabama.

Signature of Authorized Representative of Insurer]

[Type name]

[Title], Authorized Representative of [name of Insurer]

[Address of Representative]

(j) A certificate of liability insurance as required in 335-14-5-.08(8) or 335-14-6-.08(8) must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

HAZARDOUS WASTE FACILITY CERTIFICATE OF LIABILITY INSURANCE

1. [Name of Insurer], (the "Insurer"), of [address of Insurer] hereby certifies that it has issued liability insurance covering bodily injury and property damage to [name of insured], (the "insured"), of [address of insured] in connection with the insured's obligation to demonstrate financial responsibility under ADEM Admin. Code paragraph 335-14-5-.08(8) or 335-14-6-.08(8). The coverage applies at [list EPA Identification Number, name, and address for each facility] for [insert "sudden accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities,

indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs. The coverage is provided under policy number _____, issued on [date]. The effective date of said policy is [date].

2. The Insurer further certifies the following with respect to the insurance described in Paragraph 1.:

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in ADEM Admin. Code subparagraph 335-14-5-.08(8)(f) or 335-14-6-.08(8)(f).

(c) Whenever requested by the Alabama Department of Environmental Management ("the Department"), the Insurer agrees to furnish to the Department a signed duplicate original of the policy and all endorsements.

(d) Cancellation of the insurance, whether by the Insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the Department.

(e) Any other termination of the insurance will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the Department.

I hereby certify that the wording of this instrument is identical to the wording specified in ADEM Admin. Code subparagraph 335-14-5-.08(12)(j) as such rule was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in the State of Alabama.

Signature of Authorized Representative of Insurer]

[Type name]

[Title], Authorized Representative of [name of Insurer]

[Address of Representative]

(k) A letter of credit, as specified in 335-14-5-.08(8)(h), or 335-14-6-.08(8)(h), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Irrevocable Standby Letter of Credit

Name and address of Issuing Institution

Department

Alabama Department of Environmental Management

Dear Sir or Madam: We hereby establish our Irrevocable Letter of Credit No. _____ in the favor of ["any and all third-party liability claimants" or insert name of trustee of the standby trust fund"], at the request and for the account of [owner's or operator's name and address] for third-party liability awards or settlements up to [in words] U.S. dollars \$ _____ per occurrences and the annual aggregate amount of [in words] U.S. dollars \$ _____, for sudden accidental occurrences and/or for third-party liability awards or settlements up to the amount of [in words] U.S. dollars \$ _____ per occurrence, and the annual aggregate amounts of [in words] U.S. dollars \$ _____, for nonsudden accidental occurrences available upon presentation of a sight draft, bearing reference to this letter of credit No. _____, and (1) a signed certificate reading as follows:

Certification of Valid Claim

The undersigned, as parties [insert grantor] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operations of [grantor's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of \$ _____. We hereby certify that the claim does not apply to any of the following:

(a) Bodily injury or property damage for which [insert grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that

[insert principal] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert grantor] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert grantor] arising from, and in the course of, employment by [insert grantor]; or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert grantor]. This exclusion applies:

(A) Whether [insert grantor] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert grantor];

(2) Premises that are sold, given away or abandoned by [insert grantor] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert grantor];

(4) Personal property in the care, custody or control of [insert grantor];

(5) That particular part of real property on which [insert principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert grantor] are performing operations, if the property damage arises out of these operations.

[Signatures]

Grantor

[Signatures]

Claimant(s)

or (2) a valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from operation of the Grantor's facility or group of facilities.

This letter of credit is effective as of [date] and shall expire on [date at least one year later], but such expiration date shall be automatically extended for a period of [at least one year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you, the Department, and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us.

[Insert the following language if a standby trust fund is not being used: "In the event that this letter of credit is used in combination with another mechanism for liability coverage, this letter of credit shall be considered [insert "primary" or "excess" coverage]."

We certify that the wording of this letter of credit is identical to the wording specified in 335-14-5-.08(12)(k) as such rules were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce" or "the Uniform Commercial Code"].

(l) A surety bond, as specified in 335-14-5-.08(8)(i) or 335-14-6-.08(8)(i) must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Payment Bond

Surety Bond No. [Insert number]

Parties [insert name and address of owner or operator], Principal, incorporated in [insert State of Incorporation] of [insert city and State of principal place of business] and [insert name and address of surety company(ies), Surety Company(ies), of [insert surety(ies) place of business].

EPA Identification Number, name, and address for each facility guaranteed by this bond: _____

	Sudden accidental occurrences	Nonsudden accidental occurrences
Penal Sum Per Occurrence	(insert amount)	(insert amount)
Annual Aggregate	[insert amount]	[insert amount]

Purpose: This is an agreement between the Surety(ies) and the Principal under which the Surety(ies), its (their) successors and assignees, agree to be responsible for the payment of claims against the Principal for bodily injury and/or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental occurrences arising from operations of the facility or group of facilities in the sums prescribed herein; subject to the governing provisions and the following conditions.

Governing Provisions:

(1) Section 22-30-16 of the Alabama Hazardous Wastes Management and Minimization Act of 1978, as amended.

(2) Rules of the Alabama Department of Environmental Management Administrative Code, Division 335-14, particularly rules 335-14-5-.08(8) and 335-14-6-.08(8), if applicable.

Conditions:

(1) The Principal is subject to the applicable governing provisions that require the Principal to have and maintain liability coverage for bodily injury and property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental occurrences arising from operations of the facility or group of facilities. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which [insert principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert principal] under a workers' compensation, disability benefits, or unemployment compensation law or similar law.

(c) Bodily injury to:

(1) An employee of [insert principal] arising from, and in the course of, employment by [insert principal]; or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal]. This exclusion applies:

(A) Whether [insert principal] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert principal];

(2) Premises that are sold, given away or abandoned by [insert principal] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert principal];

(4) Personal property in the care, custody or control of [insert principal];

(5) That particular part of real property on which [insert principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert principal] are performing operations, if the property damage arises out of these operations.

(2) This bond assures that the Principal will satisfy valid third party liability claims, as described in condition 1.

(3) If the Principal fails to satisfy a valid third party liability claim, as described above, the Surety(ies) becomes liable on this bond obligation.

(4) The Surety(ies) shall satisfy a third party liability claim only upon the receipt of one of the following documents:

(a) Certification from the Principal and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert name of Principal] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental

occurrence arising from operating [Principal's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of \$[_____].

[Signature]

Principal

[Notary]

Date

[Signature(s)]

Claimant(s)

[Notary]

Date

or (b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

(5) In the event of combination of this bond with another mechanism for liability coverage, this bond will be considered [insert "primary" or "excess"] coverage.

(6) The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum, provided that the Surety(ies) furnish(es) notice to the Department forthwith of all claims filed and payments made by the Surety(ies) under this bond.

(7) The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and the Department, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal and the Department as evidenced by the return receipt.

(8) The Principal may terminate this bond by sending written notice to the Surety(ies) and to the Department.

(9) The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules and regulations and agree(s) that no such amendment shall in any way alleviate its [their] obligation on this bond.

(10) This bond is effective from [insert date] [12:01 a.m., standard time, at the address of the Principal as stated herein] and shall continue in force until terminated as described above.

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 335-14-5-.08(12)(l), as such rules were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate Seal]

CORPORATE SURETY(IES)

[Name and address]

State of incorporation: _____

Liability Limit: \$ _____

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$ _____

(m) 1. A trust agreement, as specified in 335-14-5-.08(8)(j) or 335-14-6-.08(8)(j) must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator] a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert, "incorporated in the State of _____" or "a national bank"], the "trustee".

Whereas the Alabama Department of Environmental Management (the "Department") has established certain rules applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility or group of facilities must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas the Grantor has elected to establish a trust to assure all or part of such financial responsibility for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities. This agreement pertains to the facilities identified on attached schedule A (on schedule A, for each facility list the EPA Identification Number, name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, hereinafter the "Fund," for the benefit of any and all third parties injured or damaged by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of _____ [up to \$1 million] per occurrence and _____ [up to \$2 million] annual aggregate for sudden accidental occurrences and _____ (up to \$3 million] per occurrence and _____ [up to \$6 million] annual aggregate for nonsudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert Grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Grantor] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert Grantor] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert Grantor] arising from, and in the course of, employment by [insert Grantor]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Grantor].

This exclusion applies:

(A) Whether [insert Grantor] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert Grantor];

(2) Premises that are sold, given away, or abandoned by [insert Grantor] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert Grantor];

(4) Personal property in the care, custody, or control of [insert Grantor];

(5) That particular part of real property on which [insert Grantor] or any contractors or subcontractors working directly or indirectly on behalf of [insert Grantor] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the fund shall be considered [insert "primary" or "excess"] coverage.

The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any

payments necessary to discharge any liabilities of the Grantor established by the Department.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by making payments from the Fund only upon receipt of one of the following documents:

(a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Grantor] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Grantor's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of \$[_____].

[Signatures]

Grantor

[Signature(s)]

Claimant(s)

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstance then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(a) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the

Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held unless they are securities or other obligations of the Federal or a State government;

(b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common commingled, or collective trust fund created by the Trustee in which the fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trust participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 81a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuations. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the Department a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the Department shall constitute a conclusively binding assent by the Grantor barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes

administration of the trust in a writing sent to the Grantor, the Department and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Department to the Trustee shall be in writing, signed by the Department, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Department except as provided for herein.

Section 15. Notice of Nonpayment. If a payment for bodily injury or property damage is made under Section 4 of this trust, the Trustee shall notify the Grantor of such payment and the amount(s) thereof within five (5) working days. The Grantor shall, on or before the anniversary date of the establishment of the Fund following such notice, either make payments to the Trustee in amounts sufficient to cause the trust to return to its value immediately prior to the payment of claims under Section 4, or shall provide written proof to the Trustee that other financial assurance for liability coverage has been obtained equaling the amount necessary to return the trust to its value prior to the payment of claims. If the Grantor does not either make payments to the Trustee or provide the Trustee with such proof, the Trustee shall within 10 working days after the anniversary date of the establishment of the fund provide a written notice of nonpayment to the Department.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Department, or by the Trustee and the Department if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Department, or by the Trustee and the Department if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

The Department will agree to termination of the Trust when the owner or operator substitutes alternate financial assurance as specified in this section.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Department issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of [enter name of State].

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 335-14-5-.08(12)(m) as such rules were constituted on the date first above written.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

2. The following is an example of the certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in 335-14-5-.08(8)(j) or 335-14-6-.08(8)(j).

State of _____

County of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

(n) 1. A standby trust agreement as specified in 335-14-5-.08(8)(h) or 335-14-6-.08(8)(h) must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

STANDBY TRUST AGREEMENT

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator] a [name of a State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert, "incorporated in the State of _____" or "a national bank"], the "trustee".

Whereas the Alabama Department of Environmental Management (the "Department"), has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility or group of facilities must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the Grantor has elected to establish a standby trust into which the proceeds from a letter of credit may be deposited to assure all or part of such financial responsibility for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term Grantor means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term Trustee means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities. This agreement pertains to the facilities identified on attached schedule A [on schedule A, for each facility list the EPA Identification Number, name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a standby trust fund, hereafter the "Fund," for the benefit of any and all third parties injured or damaged by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of _____ [up to \$1 million] per occurrence and _____ [up to \$2 million] annual aggregate for sudden accidental occurrences and _____ [up to \$6 million] annual aggregate for nonsudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert Grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Grantor] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert Grantor] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert Grantor] arising from, and in the course of, employment by [insert Grantor]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Grantor].

This exclusion applies:

(A) Whether [insert Grantor] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert Grantor];

(2) Premises that are sold, given away or abandoned by [insert Grantor] if the property damage arises out of any part of those premises;

(3) Property loaned by [insert Grantor];

(4) Personal property in the care, custody or control of [insert Grantor];

(5) That particular part of real property on which [insert Grantor] or any contractors or subcontractors working directly or indirectly on behalf of [insert Grantor] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the fund shall be considered [insert "primary" or "excess"] coverage.

The Fund is established initially as consisting of the proceeds of the letter of credit deposited into the Fund. Such proceeds and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Department.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by drawing on the letter of credit described in Schedule B and by making payments from the Fund only upon receipt of one of the following documents:

(a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Grantor] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Grantor's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of \$ _____.

[Signature]

Grantor

[Signatures]

Claimant(s)

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of the proceeds from the letter of credit drawn upon by the Trustee in accordance with the requirements of 335-14-5-.08(12)(k) and Section 4. of this Agreement.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(a) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or a State government; and

(c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institutions affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements to the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Alabama Department of Environmental Management and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee. All orders, requests, certifications of valid claims, and instructions to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's order, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Department except as provided for herein.

Section 14. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Department, or by the Trustee and the Department if the Grantor ceases to exist.

Section 15. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 14., this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Department, or by the Trustee and the Department, if the Grantor ceases to exist. Upon termination of the Trust, all

remaining trust property, less final trust administration expenses, shall be paid to the Grantor.

The Department will agree to termination of the Trust, all remaining trust property, less final trust administration expenses, shall be paid to the Grantor.

The Department will agree to termination of the Trust when the owner or operator substitutes alternative financial assurance as specified in this section.

Section 16. Immunity and indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor and the Department issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Alabama.

Section 18. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation of the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in ADEM Admin. Code subparagraph 335-14-5-.08(12)(n) as such regulations were constituted on the date first above written.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

2. The following is an example of the certification of acknowledgment which must accompany the trust agreement for a standby trust fund as specified in 335-14-5-.08(8)(h) or 335-14-6-.08(8)(h). State requirements may differ on the proper content of this acknowledgment.

State of _____

County of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

Author: Stephen C. Maurer; Vernon H. Crockett; Amy P. Zachry; Justin Martindale; C. Edwin Johnston; James L. Bryant; Vernon H. Crockett; Bradley N. Curvin; Theresa A. Maines; Brian C. Espy; Heather M. Jones; Gary L. Ellis.

Statutory Authority: Code of Alabama 1975, §§ 22-30-11, 22-30-12 and 22-30-16.

History: February 9, 1983.

Amended: April 9, 1986; September 29, 1986; February 15, 1988; August 24, 1989; December 6, 1990; January 25, 1992; January 5, 1995; March 28, 1997; March 27, 1998; April 2, 1999; March 31, 2000; April 13, 2001; March 15, 2002; April 17, 2003; May 27, 2004; March 31, 2005; April 3, 2007; March 31, 2009; March 30, 2010; XXXXX, 2013.