

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control No. 335 Department or Agency Environmental Management
Rule No. 335-14-6-.08
Rule Title: Financial Requirements

 New X 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 Maury Elliott

Date October 20, 2016

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
LAND DIVISION

NOTICE OF INTENDED ACTION

AGENCY NAME: Department of Environmental Management

RULE NO. & TITLE:

- 335-14-6-.01 General
- 335-14-6-.02 General Facility Standards
- 335-14-6-.04 Contingency Plan and Emergency Procedures
- 335-14-6-.05 Manifest System, Recordkeeping and Reporting
- 335-14-6-.07 Closure and Post-Closure
- 335-14-6-.08 Financial Requirements
- 335-14-6-.09 Use and Management of Containers
- 335-14-6-.10 Tank Systems
- 335-14-6-.14 Landfills
- 335-14-6-.23 Drip Pads
- 335-14-6-.27 Subpart AA - Air Emission Standards For Process Vents
- 335-14-6-.28 Subpart BB - Air Emission Standards For Equipment Leaks
- 335-14-6-.29 Subpart CC - Air Emission Standards For Tanks, Surface Impoundments, And Containers
- 335-14-6-.30 Containment Buildings

INTENDED ACTION: Amend chapter 335-14-6 of the ADEM Administrative Code

SUBSTANCE OF PROPOSED ACTION

The Department of Environmental Management proposes to amend portions of the Division 14 Hazardous Waste Program Regulations to make typographical and grammatical corrections, to make clarifications necessary to maintain consistency with analogous federal rules, and to adopt new amendments required by the USEPA which are necessary to maintain the programs fully authorized status.

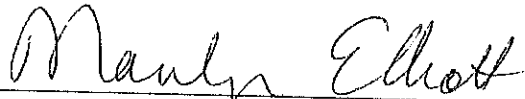
TIME, PLACE, MANNER OF PRESENTING VIEWS

Comments may be submitted in writing or orally at a public hearing to be held Wednesday, December 7, 2016 at 2:00 p.m. in the Main Hearing Room at the ADEM Central Office located at 1400 Coliseum Blvd, Montgomery, Alabama 36110.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE

Wednesday, December 7, 2016 at 5:00 p.m.

CONTACT PERSON AT AGENCY: Chip Crockett, Chief of the Industrial Hazardous Waste Branch, ADEM Land Division, (334) 270-5627.



Lance R. LeFleur
Director

335-14-6-.08 Financial Requirements.

(1) Applicability.

(a) The requirements of 335-14-6-.08(3), (4), (8), and (9) apply to owners and operators of all hazardous waste facilities, except as provided otherwise in 335-14-6-.08(1) or in 335-14-6-.01(1).

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

1. Disposal facilities;
2. Tank systems that are required under 335-14-6-.10(8) to meet the requirements for landfills; and
3. Containment buildings that are required under rule 335-15-6-.30(3) to meet the requirements for landfills; and
4. Other hazardous waste management units which are unable to demonstrate closure by removal.

(c) Except for the requirements to provide and update cost estimates, as described in 335-14-6-.08(3), 335-14-6-.08(5), the State of Alabama and the Federal government are exempt from the requirements of 335-14-6-.08.

(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 335-14-6-.07(2) through 335-14-6-.07(6) and applicable closure requirements of 335-14-6-.09(9), 335-14-6-.10(8), 335-14-6-.11(9), 335-14-6-.12(9), 335-14-6-.13(11), 335-14-6-.14(11), 335-14-6-.15(12), 335-14-6-.16(12), 335-14-6-.17(5), 335-14-6-.23(6), and 335-14-6-.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 [see 335-14-6-.07(3)(b)]; 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 335-14-6-.07(4)(d), facility structures or equipment, land or other facility 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 335-14-6-.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 335-14-6-.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 335-14-6-.08(4)(e)5. The adjustment may be made by recalculating the 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 335-14-6-.08(3)(b)1. and (b)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 a revision has been made to the closure plan which increases the cost of closure. If the owner or operator has an approved closure plan, the closure cost estimate must be revised 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 335-14-6-.08(3)(b).

(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 335-14-6-.08(3)(a) and (c) and, when this estimate has been adjusted in accordance with 335-14-6-.08(3)(b), the latest adjusted closure cost estimate.

(4) Financial assurance for closure. By the effective date of these regulations, 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 335-14-6-.08(4)(a) through (e).

(a) Closure trust fund.

1. An owner or operator may satisfy the requirements of 335-14-6-.08(4) by establishing a closure trust fund which conforms to the requirements of 335-14-6-.08(4)(a) and submitting an originally signed duplicate of the trust agreement to the Department. 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), 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 8 years beginning with the effective date of these regulations or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereafter referred to as the "pay-in period". The payments into the closure trust fund must be made as follows:

(i) The first payment must be made by the effective date of these regulations, except as provided in 335-14-6-.08(4)(a)5. The initial payment must be at least equal to the amount determined according to the schedule set out in 335-14-6-.08(4)(a)3.(ii)(I) through (a)3.(ii)(VIII).

(ii) Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. Payments must be made according to the following schedule:

(I) If the remaining operating life of the facility is one year, 100% of the current closure cost estimate must be paid initially;

(II) If the remaining operating life of the facility is two years, 50% of the current closure cost estimate must be paid each of the two years;

(III) If the remaining operating life of the facility is 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 remaining operating life of the facility is four years, 25% of the current closure cost estimate must be paid each of the four years;

(V) If the remaining operating life of the facility is five years, 20% of the current closure cost estimate must be paid each of the five years;

(VI) If the remaining operating life of the facility is 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 remaining operating life of the facility is 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 remaining operating life of the facility is 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;

(iii) 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 335-14-6-.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.

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 335-14-6-.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 335-14-6-.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 as specified in 335-14-6-.08(4)(a)3.

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 335-14-6-.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 335-14-6-.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 335-14-6-.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. No later than 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 335-14-6-.08(4)(h), 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 to the owner or operator 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 335-14-6-.08(4); or

(ii) The Department releases the owner or operator from the requirements of 335-14-6-.08(4) in accordance with 335-14-6-.08(4)(h).

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

1. An owner or operator may satisfy the requirements of 335-14-6-.08(4) by obtaining a surety bond which conforms to the requirements of 335-14-6-.08(4)(b) and submitting the bond to the Department. 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 335-14-6-.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 fund must meet the requirements specified in 335-14-6-.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 335-14-6-.08(4), the following are not required by these regulations:

(I) Payments into the trust fund as specified in 335-14-6-.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 court of competent jurisdiction; or

(iii) Provide alternate financial assurance as specified in 335-14-6-.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 335-14-6-.08(4)(f).

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 335-14-6-.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 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 335-14-6-.08(4); or

(ii) The Department releases the owner or operator from the requirements of 335-14-6-.08(4) in accordance with 335-14-6-.08(4)(h).

(c) Closure letter of credit.

1. An owner or operator may satisfy the requirements of 335-14-6-.08(4) by obtaining an irrevocable standby letter of credit which conforms to the requirements of 335-14-6-.08(4)(c) and submitting the letter to the Department. 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 335-14-6-.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 335-14-6-.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 335-14-6-.08(4), the following are not required by these regulations:

(I) Payments into the trust fund as specified in 335-14-6-.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 or Alabama 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 1 year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least 1 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 335-14-6-.08(4)(f).

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 335-14-6-.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 the AHWMMA that the owner or operator has failed to perform final closure in accordance with the approved closure plan 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 335-14-6-.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 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 335-14-6-.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 335-14-6-.08(4); or

(ii) The Department releases the owner or operator from the requirements of 335-14-6-.08(4) in accordance with 335-14-6-.08(4)(h).

(d) Closure insurance.

1. An owner or operator may satisfy the requirements of 335-14-6-.08(4) by obtaining closure insurance which conforms to the requirements of 335-14-6-.08(4)(d) and submitting an originally signed certificate of such insurance to the Department. By the effective date of these regulations, the owner or operator must submit the certificate of insurance to the Department or establish other financial assurance as specified in 335-14-6-.08(4). 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 335-14-6-.08(4)(d)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 335-14-6-.08(4)(d)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.

(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 335-14-6-.08(4)(e).

2. The wording of the certificate of insurance must be identical to the wording specified in 335-14-6-.08(6)(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 335-14-6-.08(4)(f). 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 reimbursement of such amounts as he deems prudent until he determines, in accordance with 335-14-6-.08(4)(h), that the owner or operator is no longer required to maintain financial assurance for final closure of the particular facility. If the Department does not instruct the insurer to make such reimbursements, he will provide to the owner or operator 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 335-14-6-.08(4)(d)10. Failure to pay the premium, without substitution of alternate financial assurance as specified in 335-14-6-.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) Interim status is terminated or revoked; 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 335-14-6-.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 he may terminate the insurance policy when:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-6-.08(4); or

(ii) The Department releases the owner or operator from the requirements of 335-14-6-.08(4) in accordance with 335-14-6-.08(4)(h).

(e) Financial test and corporate guarantee for closure.

1. An owner or operator may satisfy the requirements of 335-14-6-.08(4) by demonstrating that he passes a financial test as specified in 335-14-6-.08(4)(e). To pass this test the owner or operator must meet the criteria of either 335-14-6-.08(4)(e)1.(i) or (e)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 335-14-6-.08(4)(e)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) and (g)].

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. The owner or operator may obtain an extension of the time allowed for submission of the documents specified in 335-14-6-.08(4)(e)3. if the fiscal year of the owner or operator ends during the 90 days prior to the effective date of these regulations and if the year-end financial statements for that fiscal year will be audited by an independent certified public accountant. The extension will end no later than 90 days after the end of the owner's or operator's fiscal year. To obtain the extension, the owner's or operator's chief financial officer must send, by the effective date of these regulations, a letter to the Department. This letter from the chief financial officer must:

(i) Request the extension;

(ii) Certify that he has grounds to believe that the owner or operator meets the criteria of the financial test;

(iii) Specify for each facility to be covered by the test the EPA Identification Number, name, address, and current cost estimates to be covered by the test;

(iv) Specify the date ending the owner's or operator's last complete fiscal year before the effective date of these regulations;

(v) Specify the date, no later than 90 days after the end of such fiscal year, when he will submit the documents specified in 335-14-6-.08(4)(e)3.; and

(vi) Certify that the year-end financial statements of the owner or operator for such fiscal year will be audited by an independent certified public accountant.

5. After the initial submission of items specified in 335-14-6-.08(4)(e)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 335-14-6-.08(4)(e)3.

6. If the owner or operator no longer meets the requirements of 335-14-6-.08(4)(e)1., he must send notice to the Department of intent to establish alternate financial assurance as specified in 335-14-6-.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, based on a reasonable belief that the owner or operator may no longer meet the requirements of 335-14-6-.08(4)(e)1., require reports of financial condition at any time from the owner or operator in addition to those specified in 335-14-6-.08(4)(e)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 335-14-6-.08(4)(e)1., the owner or operator must provide alternate financial assurance as specified in 335-14-6-.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 335-14-6-.08(4)(e)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 335-14-6-.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 335-14-6-.08(4)(e)3. when:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-6-.08(4); or

(ii) The Department releases the owner or operator from the requirements of 335-14-6-.08(4) in accordance with 335-14-6-.08(4)(h).

10. An owner or operator may meet the requirements of 335-14-6-.08(4) by obtaining a written guarantee, hereafter 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 335-14-6-.08(4)(e)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 rule 335-14-5-.08(12)(h). The certified copy of the guarantee must accompany the items sent to the Department as specified in 335-14-6-.08(4)(e)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 interim status permit requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in 335-14-6-.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 335-14-6-.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 alternate financial assurance in the name of the owner or operator.

(f) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of 335-14-6-.08(4) by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds, letters of credit and insurance. The mechanisms must be as specified in 335-14-6-.08(4)(a) through (d), 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 a 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.

(g) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in 335-14-6-.08(4) to meet the requirements of 335-14-6-.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.

(h) Release of the owner or operator from the requirements of 335-14-6-.08(4). Within 60 days after receiving certification from the owner or operator and an qualified independent 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 335-14-6-.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 hazardous waste disposal unit or other hazardous waste management unit which is unable to demonstrate closure by removal 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 of 335-14-6-.07(8) through 335-14-6-.07(11), 335-14-6-.11(9), 335-14-6-.12(9), 335-14-6-.13(11), and 335-14-6-.14(11).

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 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 335-14-6-.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 335-14-6-.08(6). For owners or operators using the financial test or corporate guarantee, the post-closure care cost estimate must be updated for inflation no later than 30 days after the close of the firm's fiscal year and before submission of updated information to the Department as specified in 335-14-6-.08(6)(e)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 335-14-6-.08(5)(b)1. and (5)(b)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 no later than 30 days after a revision to the post-closure plan which increases the cost of post-closure care. If the owner or operator has an approved post-closure plan, the post-closure cost estimate must be revised no later than 30 days after the Department has approved the request to modify the plan, if the change in the post-closure plan increases the cost of post-closure care. The revised post-closure cost estimate must be adjusted for inflation as specified in 335-14-6-.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 335-14-6-.08(5)(a) and 335-14-6-.08(5)(c) and, when this estimate has been adjusted in accordance with 335-14-6-.08(5)(b), the latest adjusted post-closure cost estimate.

(6) Financial assurance for post-closure care. By the effective date of these regulations, an owner or operator of a facility with a hazardous waste disposal unit must establish financial assurance for post-closure care of the disposal unit(s).

- (a) Post-closure trust fund.

1. An owner or operator may satisfy the requirements of 335-14-6-.08(6) by establishing a post-closure trust fund which conforms to the requirements of 335-14-6-.08(6)(a) and submitting an originally signed duplicate of the trust agreement to the Department. 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), 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. Payments into the trust fund must be made annually by the owner or operator over the 8 years beginning with the effective date of these regulations or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter. The owner or operator of a post-closure facility must make annual payments into the fund over a term of eight years beginning on the effective date of these regulations. This period is hereafter referred to as the "pay-in period". The payments into the post-closure trust fund must be made as follows:

(i) The first payment must be made by the effective date of these regulations, except as provided in 335-14-6-.08(6)(a)5. The first payment must be at least equal to the amount determined according to the schedule set out in 335-14-6-.08(6)(a)3.(ii)(I) through (a)3.(ii)(VIII).

(ii) Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. Payments must be made according to the following schedule:

(I) If the remaining operating life of the facility is one year, 100% of the current post-closure cost estimate must be paid initially;

(II) If the remaining operating life of the facility is two years, 50% of the current post-closure cost estimate must be paid each of the two years;

(III) If the remaining operating life of the facility is 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 remaining operating life of the facility is four years, 25% of the current post-closure cost estimate must be paid each of the four years;

(V) If the remaining operating life of the facility is five years, 20% of the current post-closure estimate must be paid each of the five years;

(VI) If the remaining operating life of the facility is 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 remaining operating life of the facility is 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 remaining operating life of the facility is 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 estimate must be paid each of the six subsequent years;

(IX) For post-closure facilities, 20% of the current post-closure cost estimate must be paid the first year and 10% of the current post-closure cost estimate must be paid each of the seven subsequent years;

(iii) 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 335-14-6-.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.

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 335-14-6-.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 335-14-6-.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 as specified in 335-14-6-.08(6)(a)3.

6. After the pay-in period is completed, whenever the current post-closure cost estimate changes during the operating life of the facility and throughout the post-closure period, 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 335-14-6-.08(6) to cover the difference.

7. During the operating life of the facility and throughout the post-closure 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 335-14-6-.08(6) 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 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 335-14-6-.08(6)(a)7. or (a)8., the Department will approve or disapprove the request for release. If the Department approves the release of fund, it 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 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 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, 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 335-14-6-.08(6) and approved by the Department; or

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

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

1. An owner or operator may satisfy the requirements of 335-14-6-.08(6) by obtaining a surety bond which conforms to the requirements of 335-14-6-.08(6)(b) and submitting the bond to the Department. 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 335-14-6-.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 335-14-6-.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 335-14-6-.08(6), the following are not required by these regulations:

(I) Payments into the trust fund as specified in 335-14-6-.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 court of competent jurisdiction; or

(iii) Provide alternate financial assurance as specified in 335-14-6-.08(6) 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 post-closure cost estimate, except as provided in 335-14-6-.08(6)(f).

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 335-14-6-.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 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 335-14-6-.08(6) and approved by the Department; or

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

(c) Post-closure letter of credit.

1. An owner or operator may satisfy the requirements of 335-14-6-.08(6) by obtaining an irrevocable standby letter of credit which conforms to the requirements of 335-14-6-.08(6)(c) and submitting the letter to the Department. 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 335-14-6-.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 335-14-6-.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 335-14-6-.08(6), the following are not required by these regulations:

(I) Payments into the trust fund as specified in 335-14-6-.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 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 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 cost estimate, except as provided in 335-14-6-.08(6)(f).

7. Whenever the current post-closure cost estimate increases to an amount greater than the amount of the credit during the operating life of the facility and throughout 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 cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in 335-14-6-.08(6) to cover the increase. Whenever the current post-closure cost estimate decreases during the operating life of the facility or during the post-closure care period, the amount of the credit may be reduced to the amount of the current post-closure cost estimate following written approval by the Department.

8. During the period of post-closure care, 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.

9. Following a final administrative determination pursuant to the AHWMA that the owner or operator has failed to perform post-closure care in accordance with the approved post-closure plan and other permit 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 335-14-6-.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 335-14-6-.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 335-14-6-.08(6) and approved by the Department; or

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

(d) Post-closure insurance.

1. An owner or operator may satisfy the requirements of 335-14-6-.08(6) by obtaining post-closure insurance which conforms to the requirements of 335-14-6-.08(6)(d) and submitting an originally signed certificate of such insurance to the Department. By the effective date of these regulations the owner or operator must submit to the Department the certificate of insurance or establish other financial assurance as specified in 335-14-6-.08(6). 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 335-14-6-.08(6)(d)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 335-14-6-.08(6)(d)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.

(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 335-14-6-.08(6)(e).

2. The wording of the certificate of insurance must be identical to the wording specified in 335-14-6-.08(6)(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 335-14-6-.08(6)(f). 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 perform post-closure care may request reimbursement 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 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 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 335-14-6-.08(6)(d)11. Failure to pay the premium, without substitution of alternate financial assurance as specified in the paragraph, 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 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 facility's interim status permit is terminated or revoked; 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 or during the post-closure care period, 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 335-14-6-.08(6) to cover the increase. Whenever the current post-closure cost estimate decreases during the operating life of the facility or during the post-closure care period, 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. Such increase must be equivalent to the face amounts 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 335-14-6-.08(6) and approved by the Department; or

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

- (e) Financial test and corporate guarantee for post-closure care.

1. An owner or operator may satisfy requirements of 335-14-6-.08(6) by demonstrating that he passes a financial test as specified in 335-14-6-.08(6)(e). To pass this test the owner or operator must meet the criteria either of 335-14-6-.08(6)(e)1.(i) or (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 335-14-6-.08(6)(e)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. The owner or operator may obtain an extension of the time allowed for submission of the documents specified in 335-14-6-.08(6)(e)3. if the fiscal year of the owner or operator ends during the 90 days prior to the effective date of these regulations and if the year-end financial statements for that fiscal year will be audited by an independent certified public accountant. The extension will end no later than 90 days after the end of the owner's or operator's fiscal year. To

obtain the extension, the owner's or operator's chief financial officer must send, by the effective date of these regulations, a letter to the Department. This letter from the chief financial officer must:

- (i) Request the extension;
- (ii) Certify that he has grounds to believe that the owner or operator meets the criteria of the financial test;
- (iii) Specify for each facility to be covered by the test the EPA Identification Number, name, address and the current cost estimates to be covered by the test;
- (iv) Specify the date ending the owner's or operator's latest complete fiscal year before the effective date of these regulations;
- (v) Specify the date, no later than 90 days after the end of such fiscal year, when he will submit the documents specified in 335-14-6-.08(6)(e)3.; and
- (vi) Certify that the year-end financial statements of the owner or operator for such fiscal year will be audited by an independent certified public accountant.

5. After the initial submission of items specified in 335-14-6-.08(6)(e)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 335-14-6-.08(6)(e)3.

6. If the owner or operator no longer meets the requirements of 335-14-6-.08(6)(e)1., he must send notice to the Department of intent to establish alternate financial assurance as specified in 335-14-6-.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 335-14-6-.08(6)(e)1., require reports of financial condition at any time from the owner or operator in addition to those specified in 335-14-6-.08(6)(e)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 335-14-6-.08(6)(e)1., the owner or operator must provide alternate financial assurance as specified in 335-14-6-.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 335-14-6-.08(6)(e)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 335-14-6-.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 335-14-6-.08(6)(e)3. when:

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

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

11. An owner or operator may meet the requirements of 335-14-6-.08(6) by obtaining a written guarantee, hereafter 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 335-14-6-.08(6)(e)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 rule 335-14-5-.08(12)(h). A certified copy of the guarantee must accompany the items sent to the Department as specified in 335-14-6-.08(6)(e)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 interim status requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in 335-14-6-.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 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 335-14-6-.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.

(f) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of 335-14-6-.08(6) by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds, letters of credit and insurance. The mechanisms must be as specified in 335-14-6-.08(6)(a) through (d), 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.

(g) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in 335-14-6-.08(6) to meet the requirements of 335-14-6-.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 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.

(h) Release of the owner or operator from the requirements of 335-14-6-. Within 60 days after receiving certifications from the owner or operator and an qualified-independent registered 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 in writing that he is no longer required to maintain financial assurance for post-closure care 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 financial assurance of both closure and post-closure care. 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 335-14-6-.08(4) and (6). 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 and of post-closure care.

(8) Liability requirements.

(a) Coverage for sudden accidental occurrences. An owner or operator of a 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 335-14-6-.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 335-14-6-.08(8)(a).

(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.

(ii) Each insurance policy must be issued by an insurer which, at a minimum, 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 335-14-6-.08(8) by passing a financial test or using the guarantee for liability coverage as specified in 335-14-6-.08(8)(f) and (g).

3. An owner or operator may meet the requirements of 335-14-6-.08(8) by obtaining a letter of credit for liability coverage as specified in 335-14-6-.08(8)(h).

4. An owner or operator may meet the requirements of 335-14-6-.08(8) by obtaining a surety bond for liability coverage as specified in 335-14-6-.08(8)(i).

5. An owner or operator may meet the requirements of 335-14-6-.08(8) by obtaining a trust fund for liability coverage as specified in 335-14-6-.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 335-14-6-.08(8). If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under 335-14-6-.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 335-14-6-.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 335-14-6-.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 335-14-6-.08(8)(a)1. through (a)6.

(b) Coverage for nonsudden accidental occurrences. An owner or operator of a surface impoundment, landfill, or 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 335-14-6-.08(8) may combine the required per-occurrence coverage levels for sudden and non-sudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and non-sudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and non-sudden 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 335-14-6-.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 335-14-6-.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.

(ii) Each insurance policy must be issued by an insurer which, at a minimum, 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 335-14-6-.08(8) by passing a financial test or using the guarantee for liability coverage as specified in 335-14-6-.08(8)(f) and (g).

3. An owner or operator may meet the requirements of 335-14-6-.08(8) by obtaining a letter of credit for liability coverage as specified in 335-14-6-.08(8)(h).

4. An owner or operator may meet the requirements of 335-14-6-.08(8) obtaining a surety bond for liability coverage as specified in 335-14-6-.08(8)(i).

5. An owner or operator may meet the requirements of 335-14-6-.08(8) by obtaining a trust fund for liability coverage as specified in 335-14-6-.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 335-14-6-.08(8). If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under 335-14-6-.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 335-14-6-.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 335-14-6-.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 335-14-6-.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 335-14-6-.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 in writing to the Department. 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 335-14-6-.08(8)(a) or (b). The Department will process a variance request as if it were a permit modification request under 335-14-8-.04(2)(a)5. and subject to the procedures of 335-14-8-.08(3). Notwithstanding any other provision, the Department may hold a public hearing at its discretion or whenever it finds, on the basis of requests for a public hearing, a significant degree of public interest in a tentative decision to grant a variance.

(d) Adjustments by the Department. If the Department determines that the levels of financial responsibility required by 335-14-6-.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 335-14-6-.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, it may require that an owner or operator of the facility comply with 335-14-6-.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. The Department will process an adjustment of the level of required coverage as if it were a permit modification under 335-14-8-.04(2)(a)5. and subject to the procedures of 335-14-8-.08(3). Notwithstanding any other provision, the Department may hold a public hearing at its discretion or whenever it finds, on the basis of requests for a public hearing, a significant

degree of public interest in a tentative decision to adjust the level or type of required coverage.

(e) Period of coverage. Within 60 days after receiving certifications from the owner or operator and an ~~an~~ qualified-independent registered 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 335-14-6 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 335-14-6-.08(8) by demonstrating that he passes a financial test as specified in 335-14-6-.08(8)(f). To pass this test the owner or operator must meet the criteria of 335-14-6-.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 of 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 335-14-6-.08(8)(f)1. refers to the annual aggregate amounts for which coverage is required under 335-14-6-.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), 335-14-5-.08(6)(f), 335-14-6-.08(4)(e), and 335-14-6-.08(6)(e), 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; 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 specific data should be adjusted.

4. After the initial submission of items specified in 335-14-6-.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 335-14-6-.08(8)(f)3.

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

6. If the owner or operator no longer meets the requirements of 335-14-6-.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 335-14-6-.08(8). Evidence of a 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.

7. 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 335-14-6-.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 335-14-6-.08(8) within 30 days after notification of disallowance.

(g) Guarantee for liability coverage.

1. Subject to 335-14-6-.08(8)(g)2., an owner or operator may meet the requirements of 335-14-6-.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 335-14-6-.08(8)(f)1. through (f)6. 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 335-14-6-.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. A guarantee may be used to satisfy the requirements of 335-14-6-.08(8) only if the Attorney General(s) or insurance commissioner(s) of the State in which the guarantor is incorporated and the State(s) in which the facility(ies) covered by the guarantee is (are) located has (have) submitted a written statement to the Department that a guarantee executed as described in 335-14-6-.08(8) and 335-14-5-.08(12)(h)2. is a legally valid and enforceable obligation in that State.

(i) In the case of corporations incorporated in the United States, a guarantee may be used to satisfy the requirements of 335-14-6-.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 EPA that a guarantee executed as described in 335-14-6-.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 335-14-6-.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 if

(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 335-14-6-.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 335-14-6-.08(8) by obtaining an irrevocable standby letter of credit that conforms to the requirements of 335-14-6-.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 rule 335-14-5-.08(12)(k).

4. An owner or operator who uses a letter of credit to satisfy the requirements of 335-14-6-.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 rule 335-14-5-.08(12)(n).

(i) Surety bond for liability coverage.

1. An owner or operator may satisfy the requirements of 335-14-6-.08(8) by obtaining a surety bond that conforms to the requirements of 335-14-6-.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 335-14-6-.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 335-14-6-.08(8) 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 335-14-6-.08(8) by establishing a trust fund that conforms to the requirements of 335-14-6-.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 335-14-6-.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 335-14-6-.08(8) to cover the difference. For purposes of 335-14-6-.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 335-14-6-.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 335-14-6-.08(4)(e) and 335-14-6-.08(6)(e) 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 335-14-6-.08(4), (6), or (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 suspension or revocation of the authority of the trustee 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.

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