

# **Transfer Based Exclusion Guidance for the Reclamation of Hazardous Secondary Materials**



**North Carolina Department of Environmental Quality  
Division of Waste Management  
Hazardous Waste Section**

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## General Information about the Transfer Based Exclusion

- This exclusion was effective in North Carolina on December 1, 2015.
- This guidance document has been updated due to EPA revising parts of the 2015 Resource Conservation and Recovery Act (RCRA) definition of solid waste as ordered by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit), on July 7, 2017, as modified on March 6, 2018. The revisions to the definition of solid waste under RCRA were published in the Federal Register (83 FR 24664, May 30, 2018) and were effective May 30, 2018.
- This exclusion is found at 15A North Carolina Administrative Code (NCAC) 13A .0106(a) where the federal regulation, 40 CFR 261.4(a)(24), is incorporated by reference. North Carolina adopted the entire federal regulation (40 CFR 261.4(a)(24)) except for the definition for "contained" which can be found at 15A NCAC 13A .0102(c) (See [Definitions](#), page 4).
- When all conditions of the exclusion are met, hazardous secondary material (specifically spent material, listed byproducts, and listed sludges) that are legitimately reclaimed are not solid waste.
- If any of the conditions of the exclusion are not met, the hazardous secondary material is considered a solid waste and discarded and the hazardous waste rules are again applicable.
- To claim the Transfer Based Exclusion, there are specific conditions (requirements) that the generator of the material must meet, conditions the reclamation facility and any intermediate facility must meet, and conditions the hazardous secondary material, itself, must meet. (See [Conditions for the Transfer Based Exclusion](#))
- If the originating state has adopted the exclusion, but the receiving (or transfer) state has not adopted the exclusion, the hazardous secondary material is subject to the hazardous waste requirements of the receiving state that has not adopted the rule upon reaching the border of that state (e.g., manifesting requirements).
- This exclusion is optional. Facilities in North Carolina may choose whether to manage hazardous secondary materials under the exclusion.
- This exclusion does not affect or replace any existing exclusion, exemption, or determination.
- Material that is otherwise subject to material-specific management conditions under 40 CFR 261.4(a) when reclaimed will not fall under this exclusion (e.g. lead acid batteries should be managed under 40 CFR 266.80 or 273.2).
- For questions or additional information about the Transfer Based Exclusion, contact your local Hazardous Waste Section Inspector. For more information on contacting your regional inspector, see the [Hazardous Waste Section, Compliance Branch, Regional Inspector Map](#).

## Definitions

"Contained" for HSM (15A NCAC 13A .0102(c)): Held in a unit (including a land-based unit) that meets the following criteria:

- The unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials or hazardous constituents originating from the hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary materials, to prevent releases of hazardous secondary materials to the environment. Unpermitted releases are releases that are not covered by a permit (such as a permit to discharge to water or air) and may include, but are not limited to, releases through surface transport by precipitation runoff, releases to soil and groundwater, windblown dust, fugitive air emissions, and catastrophic unit failures;
- The unit is properly labeled or otherwise has a system (such as a log) to immediately identify the hazardous secondary materials in the unit; and
- The unit holds hazardous secondary materials that are compatible with other hazardous secondary materials placed in the unit and is compatible with the materials used to construct the unit and addresses any potential risks of fires or explosions.
- Hazardous secondary materials in units that meet the applicable requirements of 40 CFR parts 264 or 265 are presumptively contained.

HSM = Hazardous Secondary Materials

Intermediate facility of HSM (40 CFR 260.10):

- Facilities that store HSM for more than 10 days, but do not generate or reclaim materials.
- Does not include transfer facilities, which hold materials during the normal course of transportation for less than 10 days.
- Intermediate facilities must comply with the same conditions as a reclaimer.

Person (N.C.G.S. 130A-290): Person means an individual, corporation, company, association, partnership, unit of local government, State agency, federal agency or other legal entity.

Speculatively accumulated (40 CFR 261.1(c)(8)): A material is "speculatively accumulated" before being recycled. A material is not accumulated speculatively if the person accumulating it can show the material is

- Potentially recyclable and has a feasible means of being recycled and
- During the calendar year (commencing on January 1) the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75% by weight or volume of the amount of the material accumulated at the beginning of the period
  - In calculating the percentage of turnover, the 75% requirement is to be applied to each material of the same type that is recycled in the same way.
  - Materials accumulating in units that would be exempt from regulation under 40 CFR 261.4(c) [Hazardous waste generated from a product tanks] are not to be included in making the calculation.
  - Materials that are already defined as solid wastes also are not to be included in making the calculation.
  - Materials are no longer in this category once they are removed from accumulation for recycling.
- Materials must be placed in a storage unit
- Materials must be labeled indicating the first date the material began to be accumulated
  - If placing a label on the storage unit is not practicable, the accumulation period must be documented through an inventory log or other appropriate method.

*Note: Other hazardous waste definitions can be found at N.C.G.S. 130A-290, 15A NCAC 13A .0102, and 40 CFR 260.10 as adopted in 15A NCAC 13A .0102.*

## Conditions for the Transfer Based Exclusion

In order to claim the Transfer Based Exclusion, the generator of the HSM, any reclamation facility of the HSM, any intermediate facility of the HSM and the HSM, itself, must meet the following conditions.

- I. **Requirements for the HSM generated and transferred to another person for the purpose of reclamation:**
  - HSM must not be speculatively accumulated as defined in 40 CFR 261.1(c)(8) – [Definitions](#), page 4
  - HSM must be contained as defined in 15A NCAC 13A .0102(c) – [Definitions](#), page 4
    - HSM released to the environment is discarded and is a solid waste unless it is immediately recovered for the purpose of reclamation.
    - HSM managed in a unit with leaks or other continuing or intermittent unpermitted releases is discarded and is a solid waste.
    - One of the requirements of meeting the definition of "contained" is that the HSM unit must be properly labeled or otherwise have a system (such as a log) to immediately identify the hazardous secondary materials in the unit.
  - Reclamation of the HSM must meet legitimacy criteria under 40 CFR 260.43 -- See [Appendix A](#)
  - HSM may not be handled by another person or facility other than the HSM generator, the transporter, an intermediate facility, or a reclaimer, and while in transport is not stored for more than 10 days at a transfer facility.
  - The HSM is not otherwise subject to material-specific management conditions under 40 CFR 261.4(a) when reclaimed, and is not a spent lead-acid battery (managed under 40 CFR 266.80 or 40 CFR 273.2).
  
- II. **Notification Requirements: All facilities (HSM generators, HSM reclaimers, and HSM intermediate facilities) managing HSM under the Transfer Based Exclusion must provide notification under 40 CFR 260.42.**
  - Notification must be submitted *prior* to managing any HSM *and* by March 1 of each even-numbered year thereafter.
  - Notification must be submitted when the facility stops managing HSM.
  - Reclaimers and intermediate facilities managing HSM under the Transfer Based exclusion (40 CFR 261.4(a)(24)) must notify whether the reclaimer or intermediate facility has financial assurance.
  - To notify of the HSM activity, the facility must electronically submit the EPA 8700-12 form through EPA's RCRAInfo database in the Industry Application - myRCRAid.
    - Link to EPA's RCRAInfo database: <https://rcrainfo.epa.gov/rcrainfoprod/action/secured/login>
      - ~ If you are already registered in RCRAInfo (or CDX), sign in using your username and password.
      - If you are not already registered for RCRAInfo or CDX, see the below tutorial.
    - Link to a tutorial with information on how to register and use RCRAInfo Industry Application: <https://files.nc.gov/ncdeq/Waste%20Management/DWM/HW/8700-guidelines/Electronic-Filing-of-EPA-Notifications.pdf>
  - Tips and screen shots for completing HSM sections (to notify of HSM activity) of the electronic EPA 8700-12 form can be found at [Appendix C](#) of this document.
  
- III. **HSM Generator must meet the following conditions (in addition to requirements listed in Part I and II):**
  - 1) **HSM must be contained as defined in 15A NCAC 13A .0102(c) – [Definitions](#), page 4**
    - HSM released to the environment is discarded and is a solid waste unless it is immediately recovered for the purpose of reclamation.
    - HSM managed in a unit with leaks or other continuing or intermittent unpermitted releases is discarded and is a solid waste.

## Conditions for the Transfer Based Exclusion (continued)

- One of the requirements of meeting the definition of "contained" is that the HSM unit must be properly labeled or otherwise have a system (such as a log) to immediately identify the hazardous secondary materials in the unit.
- 2) **Reasonable Efforts must be made and documented by the HSM Generator as described in 40 CFR 261.4(a)(24)(v)(B) and (C)** -- See [Appendix D](#) of this document.
- Prior to arranging for transport of HSM to a reclamation facility (or facilities) where management of HSM is not addressed under a RCRA Part B permit or interim status standards, the HSM Generator must make reasonable efforts to ensure that each reclaimer intends to properly and legitimately reclaim the HSM and not discard it and that each reclaimer will manage the HSM in a manner that is protective of human health and the environment.
  - If the HSM will be passing through an intermediate facility where the management of the HSM is not addressed under a RCRA part B permit or interim status standards, the HSM generator must make contractual arrangements with the intermediate facility to ensure that the HSM is sent to the reclamation facility identified by the HSM generator and the HSM generator must perform reasonable efforts to ensure that the intermediate facility will manage the HSM in a manner that is protective of human health and the environment.
  - The **HSM Generator must affirmatively answer all of the following questions** for each reclamation facility and any intermediate facility (See [Appendix D](#) for additional information for answering the below questions):
    - Does the available information indicate that the reclamation process is legitimate pursuant to 40 CFR 260.43?
    - Does the publicly available information indicate that the reclamation facility and any intermediate facility that is used by the HSM generator notified the appropriate authorities of HSM reclamation activities pursuant to 40 CFR 260.42 and have they notified the appropriate authorities that the financial assurance condition is satisfied 40 CFR 261.4(a)(24)(vi)(F)?
    - Does publicly available information indicate that the reclamation facility or any intermediate facility that is used by the HSM generator has not had any formal enforcement actions taken against the facility in the previous three years for violations of the RCRA hazardous waste regulations and has not been classified as a significant non-complier with RCRA Subtitle C?
    - Does the available information indicate that the reclamation facility and any intermediate facility that is used by the HSM have the equipment and trained personnel to safely recycle the HSM?
    - If residuals are generated from the reclamation of the excluded HSM, does the reclamation facility have the permits required (if any) to manage the residuals? If not, does the reclamation facility have a contract with an appropriately permitted facility to dispose of the residuals? If not, does the HSM generator have credible evidence that the residuals will be managed in a manner that is protective of human health and the environment?
  - **Reasonable efforts must be repeated at a minimum of every three years** for the HSM generator to claim the exclusion and to send the HSM to each reclaimer and any intermediate facility.
  - **Reasonable Efforts must be documented and certified:** The HSM generator must maintain for a minimum of three years, documentation and certification that reasonable efforts were made for each reclamation facility and, if applicable, intermediate facility where the management of the HSM is not addressed under a RCRA part B permit or interim status standards prior to transferring HSM.

## Conditions for the Transfer Based Exclusion (continued)

- Documentation and certification must be made available upon request by a regulatory authority within 72 hours, or within a longer period of time as specified by the regulatory authority.
- The certification statement must:
  - Include the printed name and official title of an authorized representative of the hazardous secondary material generator company, the authorized representative's signature, and the date signed;
  - Incorporate the following language: "I hereby certify in good faith and to the best of my knowledge that, prior to arranging for transport of excluded hazardous secondary materials to [insert name(s) of reclamation facility and any intermediate facility], reasonable efforts were made in accordance with 40 CFR 261.4(a)(24)(v)(B) to ensure that the hazardous secondary materials would be recycled legitimately, and otherwise managed in a manner that is protective of human health and the environment, and that such efforts were based on current and accurate information."

### 3) HSM Generator must maintain records of off-site shipments and confirmations of receipt:

- The HSM generator must maintain, at the generating facility, for no less than three years, records of all off-site shipments of HSM. For each shipment, these records must, at a minimum, contain the following information:
  - Name of the transporter and date of the shipment;
  - Name and address of each reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent;
  - The type and quantity of hazardous secondary material in the shipment.
- The HSM generator must maintain, at the generating facility, for no less than three years, records of confirmations of receipt from each reclaimer and, if applicable, each intermediate facility for all off-site shipments of HSM. For each shipment, these records must, at a minimum, contain the following information:
  - Name and address of the reclaimer (or intermediate facility)
  - The type and quantity of the HSM received
  - Date on which HSM was received.

### 4) HSM Generator must meet emergency preparedness and response requirements described in 40 CFR 261 subpart M (See [Appendix E](#) of this document).

- Accumulates 6,000 kg or less HSM: must comply with 40 CFR 261.410 and 261.411 (essentially equivalent to small quantity generator of hazardous waste requirements for emergency preparedness and prevention)
- Accumulates more than 6,000 kg of HSM: must comply with 40 CFR 261.410 and 261.420 (essentially equivalent to large quantity generator of hazardous waste requirements for contingency plan and emergency preparedness and prevention)

## IV. Reclaimers and intermediate facilities of HSM must meet the following conditions (in addition to requirements listed in Part I and II):

### 1) Reclaimers and intermediate facilities of HSM must meet financial assurance requirements as required by 40 CFR 261 Subpart H.

- See [Appendix G](#) of this document for specifics on the financial assurance requirements of 40 CFR 261 Subpart H.
- Briefly summarized, the owner or operator of the reclamation or intermediate facility must have financial assurance and choose from one of these options:
  - Trust fund

## Conditions for the Transfer Based Exclusion (continued)

- Surety bond guaranteeing payment into a trust fund
  - Letter of credit
  - Insurance
  - Financial test and corporate guarantee
- Specific requirements for cost estimate; liability requirements; Incapacity of owners or operators, guarantors, or financial institutions; use of State-required mechanisms; State assumption of responsibility; and wording of the instruments are in 40 CFR 261 Subpart H which is included as [Appendix G](#) of this document.
- 2) Reclaimers and intermediate facilities of HSM must maintain 3 years of records of HSM shipments received at the facility and, if applicable, sent off for further reclamation.**
- Records must include:
- Name of transporter,
  - Date of shipment,
  - Name and address of the HSM generator,
  - Name and address of the reclaimer(s) or intermediate facility(ies), and
  - Type and quantity of HSM.
- 3) Intermediate facilities must send HSM to the reclaimer(s) designated by the generator.**
- 4) Reclaimers and intermediate facilities of HSM must send a confirmation of receipt to the HSM generator for all off-site shipments of HSM.**
- Confirmations of Receipt records must include:
- Name and address of the reclaimer or intermediate facility,
  - Type and quantity of HSM received, and
  - Date on which HSM was received.
- 5) Reclaimers and intermediate facilities of HSM must manage HSM in a manner that is at least as protective as that employed for analogous raw material and must be contained.**
- An "analogous raw material" is a raw material for which a HSM is a substitute and serves the same function and has similar physical and chemical properties as the HSM.
- HSM must be contained as defined in 15A NCAC 13A .0102(c) – [Definitions](#), page 4
- HSM released to the environment is discarded and is a solid waste unless it is immediately recovered for the purpose of reclamation.
  - HSM managed in a unit with leaks or other continuing or intermittent unpermitted releases is discarded and is a solid waste.
  - One of the requirements of meeting the definition of "contained" is that the HSM unit must be properly labeled or otherwise have a system (such as a log) to immediately identify the hazardous secondary materials in the unit.
- 6) Reclaimers and intermediate facilities of HSM must manage any residuals generated from reclamation in a manner protective of human health and the environment.**
- If the residuals from reclamation exhibit a hazardous characteristic (as defined in 40 CFR 261 subpart C) or they themselves are listed in 40 CFR 261 subpart D, they must be managed by all applicable hazardous waste rules.

## Appendix A

### Legitimacy Criteria

Recycling of hazardous secondary materials for the purpose of the exclusions or exemptions from the hazardous waste regulations must be legitimate. Hazardous secondary material that is not legitimately recycled is discarded material and is a solid waste. In determining whether recycling is legitimate, persons must address all the requirements of 40 CFR 260.43(a) and must consider the requirements of 40 CFR 260.43(b).

Persons performing the recycling of HSM under the Transfer Based Exclusion (40 CFR 261.4(a)(24)), must maintain documentation, on-site, of the legitimacy determination. Documentation must be a written description of how the recycling meets all three factors in 40 CFR 260.43(a) and how the factor in 40 CFR 260.43(b) was considered. Documentation must be maintained for three years after the recycling operation ceased.

The three Legitimacy Factors in 40 CFR 260.43(a) that must be met are:

- 1) Legitimate recycling must involve a HSM that provides a useful contribution to the recycling process or to a product or intermediate of the recycling process. The HSM provides a useful contribution if it:
  - Contributes valuable ingredients to a product or intermediate; or
  - Replaces a catalyst or carrier in the recycling process; or
  - Is the source of a valuable constituent recovered in the recycling process; or
  - Is recovered or regenerated by the recycling process; or
  - Is used as an effective substitute for a commercial product.
- 2) The recycling process must produce a valuable product or intermediate. The product or intermediate is valuable if it is:
  - Sold to a third party; or
  - Used by the recycler or the generator as an effective substitute for a commercial product or used an ingredient or intermediate in an industrial process
- 3) The generator and the recycler must manage the HSM as a valuable commodity when it is under their control.
  - Where there is an analogous raw material, the HSM must be managed, at a minimum, in a manner consistent with the management of the raw material or in an equally protective manner.
  - Where there is no analogous raw material, the HSM must be contained.
  - HSM that are released to the environment and are not recovered immediately are discarded.

The requirements of 40 CFR 260.43(b) *must be considered* in making a determination as to the overall legitimacy of a specific recycling activity is as follows:

- 1) The product of the recycling process does not:
  - Contain significant concentrations of any hazardous constituents found in appendix VIII of 40 CFR 261 that are not found in analogous products; or
  - Contain concentrations of hazardous constituents found in appendix VIII of 40 CFR 261 at levels that are significantly elevated from those found in analogous products, or
  - Exhibit a hazardous characteristic (as defined in 40 CFR 261 subpart C) that analogous products do not exhibit.
- 2) In making a determination that a HSM is legitimately recycled, persons must evaluate all factors and consider legitimacy as a whole. If, after careful evaluation of these considerations, the factor

## Legitimacy Criteria (cont'd)

in 40 CFR 260.43(b) is not met, then this fact may be an indication that the material is not legitimately recycled. However, the factor in 40 CFR 260.43(b) does not have to be met for the recycling to be considered legitimate. In evaluating the extent to which this factor is met and in determining whether a process that does not meet this factor is still legitimate, persons can consider exposure from toxics in the product, the bioavailability of the toxics in the product and other relevant considerations.

## Appendix B

### Documentation of Legitimate Recycling

Persons performing the recycling of hazardous secondary material (HSM) under the Generator Controlled exclusion of 40 CFR 261.4(a)(23) and/or the Transfer Based exclusion of 40 CFR 261.4(a)(24) must maintain documentation of their legitimacy determination on-site. Documentation must be a written description of how the recycling meets all three factors in 40 CFR 260.43(a) and how the requirements of 40 CFR 260.43(b) were considered. Documentation must be maintained for 3 years after the recycling operation has ceased. The template below is a suggested format for documenting legitimacy. A facility may choose to create its own format for documenting legitimate recycling. Any type of document is acceptable as long as it addresses the three legitimacy factors in 40 CFR 260.43(a) and describes how the requirements of 40 CFR 260.43(b) were considered.

#### Suggested Template for the Legitimacy Documentation

Provide a brief narrative description describing how the hazardous secondary material (HSM) is recycled by the generator.

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*For example: Spent solvents are reclaimed in an on-site distillation system in order to remove the contaminant and return the solvent back to commercial-grade.*

Next, check the box under each factor that most appropriately describes how the recycling meets the factor. Then add a brief narrative description explaining how the recycling meets the factor.

#### **Factor 1:**

Explain how the HSM provides a useful contribution:

- Contributes valuable ingredients to a product or intermediate
- Replaces a catalyst or carrier in the recycling process
- Is the source of a valuable constituent recovered in the recycling process
- Is recovered or regenerated by the recycling process
- Is used as an effective substitute for a commercial product

*For example: Spent solvents reclaimed on site to commercial grade are "recovered or regenerated by the recycling process." Check the fourth line.*

Provide a written description of how the hazardous secondary material provides a useful contribution to the recycling process or to a product or intermediate of the recycling process:

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*For example, the facility could identify what spent solvents are being regenerated in the recycling process.*

**Factor 2:**

Describe how the product or intermediate made from the HSM is valuable:

- Sold to a 3<sup>rd</sup> party
- Used by the recycler or generator as an effective substitute for a commercial product or as an ingredient or intermediate in an industrial process

*For example: Spent solvents reclaimed on site and then used by the generator are "used as an effective substitute for a commercial product." Check the second line.*

Provide a written description of how the product or intermediate is valuable:

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*For example, the facility could identify the commercial product for which their reclaimed solvents are substituting.*

**Factor 3:**

Describe how the HSM is managed as a valuable commodity:

- There is an analogous raw material and the HSM is managed, at a minimum, in a manner consistent with the raw material, or in an equally protective manner
- There is no analogous raw material and the HSM is contained per 15A NCAC 13A .0102(c)

*For example: There are analogous raw materials to the spent solvents. Check the first line.*

Provide a written description of how the hazardous secondary material is managed prior to being recycled:

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*For example, the facility should include a brief description of how the spent solvents are stored and managed prior to reclamation. The facility must manage their spent solvents before they are reclaimed in the same manner (or equally protective manner) as the original commercial solvents.*

**The requirements of 40 CFR 260.43(b) must be considered in making a determination as to the overall legitimacy of a specific recycling activity.**

The product of the recycling process does not:

- Contain significant concentrations of any hazardous constituents found in appendix VIII of 40 CFR 261 that are not found in analogous products; or
- Contain concentrations of hazardous constituents found in appendix VIII of 40 CFR 261 at levels that are significantly elevated from those found in analogous products, or
- Exhibit a hazardous characteristic (as defined in 40 CFR 261 subpart C) that analogous products do not exhibit.

\_\_\_ The product of the recycling process has levels of hazardous constituents that are not comparable to or unable to be compared to a legitimate product or intermediate as outlined above but the recycling is still legitimate<sup>1</sup>.

Provide a written description of how the product made with HSM is comparable to a legitimate product or intermediate:

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<sup>1</sup>In making a determination that a hazardous secondary material is legitimately recycled, persons must evaluate all factors and consider legitimacy as a whole. If, after careful evaluation of these considerations, the factor in 40 CFR 260.43(b) is not met, then this fact may be an indication that the material is not legitimately recycled. However, the factor in 40 CFR 260.43(b) does not have to be met for the recycling to be considered legitimate. In evaluating the extent to which this factor is met and in determining whether a process that does not meet this factor is still legitimate, persons can consider exposure from toxics in the product, the bioavailability of the toxics in the product and other relevant considerations.

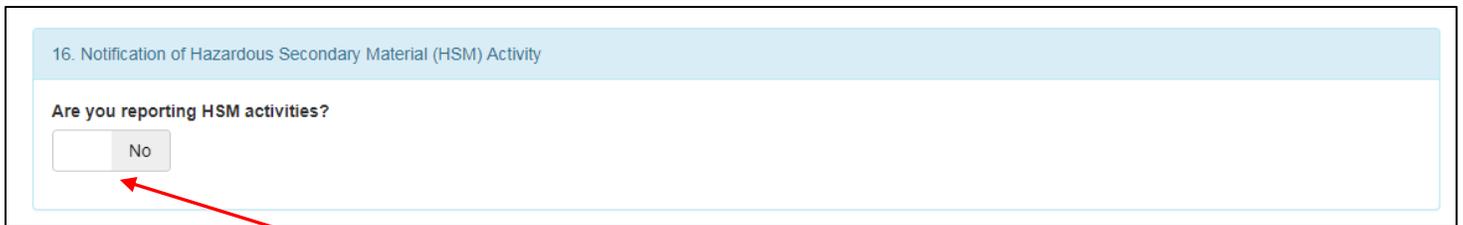
## Appendix C

### Notification Requirements for Reclaimers and Intermediate Facilities to operate under the Transfer Based Exclusion of HSM and for Generators sending HSM to a Reclaimer/Intermediate Facility operating under the Transfer Based Exclusion

Facilities managing HSM under the Transfer Based Exclusion (40 CFR 261.4(a)(24)) must electronically submit the EPA 8700-12 form (through EPA's RCRAInfo database Industry Application - myRCRAid) to notify *prior* to operating under this regulatory exclusion, *and* by March 1 of each even-numbered year, or when they stop operating under this regulatory exclusion. This Appendix offers tips and screen shots for completing the HSM sections (to notify of HSM activity) of the electronic EPA 8700-12 form.

- Link to EPA's RCRAInfo database: <https://rcrainfo.epa.gov/rcrainfoprod/action/secured/login>
  - If you are already registered in RCRAInfo (or CDX), sign in using your username and password. If you are not already registered for RCRAInfo or CDX, see the below tutorial.
- Link to a tutorial with information on how to register and use RCRAInfo Industry Application: <https://files.nc.gov/ncdeq/Waste%20Management/DWM/HW/8700-guidelines/Electronic-Filing-of-EPA-Notifications.pdf>

**Question 16** on the EPA 8700-12 form is the place to notify of HSM activity. Below is a screen shot of the electronic notification.

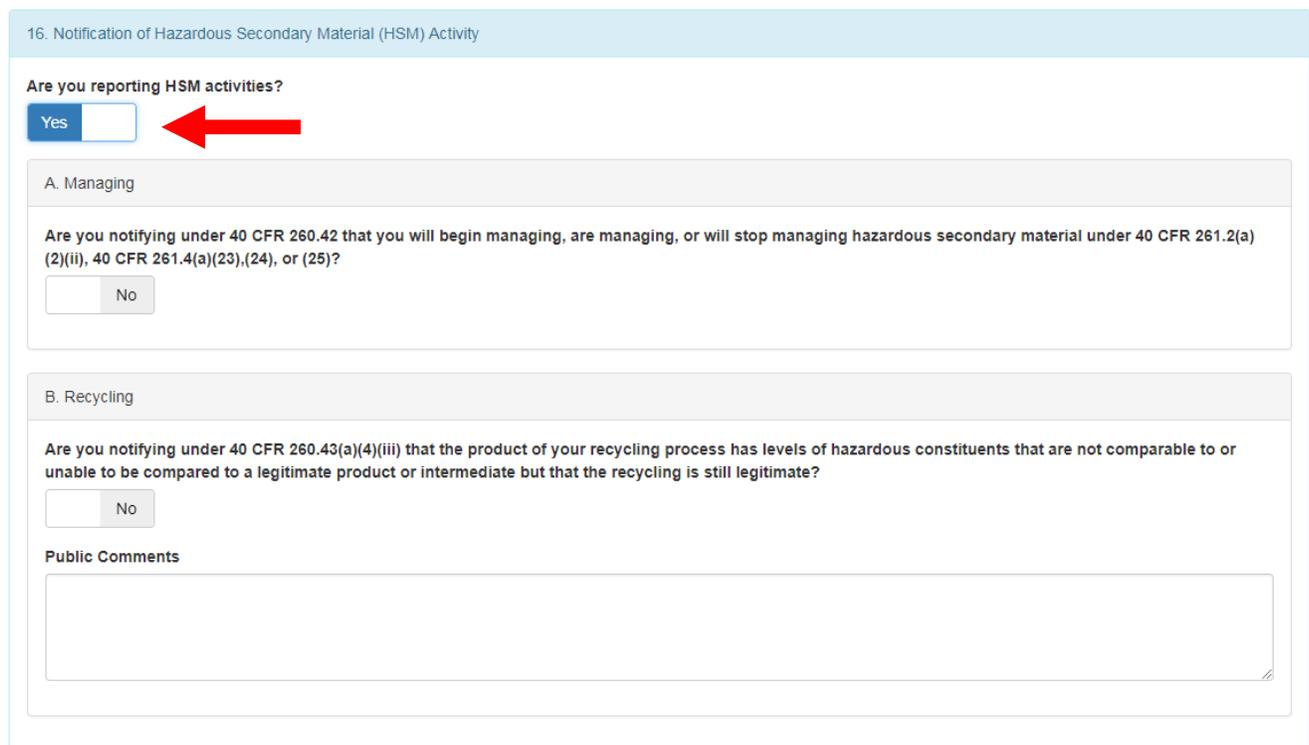


16. Notification of Hazardous Secondary Material (HSM) Activity

Are you reporting HSM activities?

No

Slide the button to "Yes" if the facility will claim the hazardous secondary material exclusion. When "Yes" is selected, the Addendum questions will appear depending on how questions are answered (see below).



16. Notification of Hazardous Secondary Material (HSM) Activity

Are you reporting HSM activities?

Yes

**A. Managing**

Are you notifying under 40 CFR 260.42 that you will begin managing, are managing, or will stop managing hazardous secondary material under 40 CFR 261.2(a)(2)(ii), 40 CFR 261.4(a)(23),(24), or (25)?

No

**B. Recycling**

Are you notifying under 40 CFR 260.43(a)(4)(iii) that the product of your recycling process has levels of hazardous constituents that are not comparable to or unable to be compared to a legitimate product or intermediate but that the recycling is still legitimate?

No

Public Comments

If the facility is notifying of HSM activities under the Transfer Based Exclusion (40 CFR 261.4(a)(24)), mark Question 16.A "Yes" (see the screen shot below). When "Yes" is selected, the "Reason for Notification and Date" (Question 16.A.1) and "Description of the HSM Activity" (Question 16.A.2) will appear.

16. Notification of Hazardous Secondary Material (HSM) Activity

Are you reporting HSM activities?  
 Yes

A. Managing

Are you notifying under 40 CFR 260.42 that you will begin managing, are managing, or will stop managing hazardous secondary material under 40 CFR 261.2(a)(2)(ii), 40 CFR 261.4(a)(23),(24), or (25)?  
 Yes

1. Reason for Notification and Date

Notification Reason \*

Notifying that the facility will begin managing hazardous secondary material

2. Description of hazardous secondary material (HSM) activity. \*

Facility Code	Waste Codes	Estimated Short Tons	Actual Short Tons	Land-based Unit

Add

If the facility is notifying of managing HSM under the Transfer Based Exclusion (40 CFR 261.4(a)(24)), click the "o" in front of "Notifying that the facility will begin managing hazardous secondary material" and enter the date the facility will begin managing HSM. (Remember that the notification must occur prior to the management of HSM at the facility).

16. Notification of Hazardous Secondary Material (HSM) Activity

Are you reporting HSM activities?  
 Yes

A. Managing

Are you notifying under 40 CFR 260.42 that you will begin managing, are managing, or will stop managing hazardous secondary material under 40 CFR 261.2(a)(2)(ii), 40 CFR 261.4(a)(23),(24), or (25)?  
 Yes

1. Reason for Notification and Date

Notification Reason \*

Notifying that the facility will begin managing hazardous secondary material

Effective Date of Notification \*

MM/DD/YYYY

2. Description of hazardous secondary material (HSM) activity. \*

Facility Code	Waste Codes	Estimated Short Tons	Actual Short Tons	Land-based Unit

Add

For Question 16.A.2. click "Add" to enter the description of the HSM activity.

16. Notification of Hazardous Secondary Material (HSM) Activity

Are you reporting HSM activities?  
 Yes

A. Managing

Are you notifying under 40 CFR 260.42 that you will begin managing, are managing, or will stop managing hazardous secondary material under 40 CFR 261.2(a)(2)(ii), 40 CFR 261.4(a)(23),(24), or (25)?  
 Yes

1. Reason for Notification and Date

**Notification Reason \***  
 Notifying that the facility will begin managing hazardous secondary material

**Effective Date of Notification \***  
MM/DD/YYYY

2. Description of hazardous secondary material (HSM) activity. \*

Facility Code	Waste Codes	Estimated Short Tons	Actual Short Tons	Land-based Unit
<input type="text"/>				



Once "Add" is clicked, another window will open to enter the required description of HSM activity. Go to the next page for guidance on "Facility Code", "Estimated Short Tons", and "Land-based Unit".

Add HSM Activity

**Facility Code \***  
Select Facility Code  
This field is required.

**Hazardous Waste Codes \***      **Selected**  
None selected ▾     

**Estimated Short Tons \***

**Land-based Unit \***  
Select Land-based Unit  
This field is required.

In the HSM Activity window, select the appropriate facility code, each waste code for the HSM that is managed, the estimated and actual quantities, in short tons, for the HSM, and the appropriate land-based code for how the HSM is managed. Do not include any information regarding any hazardous wastes in this section (only HSM activity information is entered in this window).

**Facility Code:** From the nationally-defined Facility Codes for the Transfer Based Exclusion (below) select the appropriate 2-digit code that correctly describes the facility. Facility codes describe the specific regulation a facility uses to manage its hazardous secondary material (HSM) and the type of activity the facility performs under the regulation (e.g., generator, reclaimer).

<b>Transfer-Based Exclusion (40 CFR 261.4(a)(24) and (a)(25))</b>	
<b>Code</b>	<b>Facility Code Description</b>
06	<b>HSM Generator transferring HSM off-site to a reclamation facility:</b> This code applies if you generate and send hazardous secondary material for reclamation to an off-site reclamation facility.
07	<b>Reclaimer receiving HSM from off-site:</b> This code applies if you reclaim hazardous secondary material received from an off-site hazardous secondary material generator or other facility and you certify that you have financial assurance per 40 CFR 260.42.
08	<b>Intermediate facility receiving HSM from off-site:</b> This code applies if you receive hazardous secondary material from an off-site hazardous secondary material generator or another facility and you store it for more than ten days and you certify that you have financial assurance per 40 CFR 260.42. This code does not apply if you generate or reclaim the hazardous secondary material.
09	<b>HSM Generator exporting HSM to a foreign entity for recycling:</b> This code applies if you generate and plan to send hazardous secondary material for reclamation to a foreign entity and will meet the notice and consent procedures in 40 CFR 261.4(a)(25).
10	<b>HSM Generator importing HSM from a foreign entity to send to recycling:</b> This code applies if you import hazardous secondary material from a foreign entity and send the material to a reclamation facility.
11	<b>HSM Generator AND Reclaimer of imported HSM:</b> This code applies if you import hazardous secondary material from a foreign entity and reclaim the material at your facility.

**Waste Code(s) for HSM:** Select the appropriate 4-digit hazardous waste code(s) that would apply to your hazardous secondary material if it was managed as hazardous waste (i.e., the waste code(s) that would apply if you did not manage your material in accordance with the Transfer Based Exclusion (40 CFR 261.4(a)(24)).

**Estimate Short Tons of Excluded HSM to be Managed Annually:** Enter the estimated quantity (using short tons) of HSM expected to be managed annually. Convert all physical quantities (e.g., gallons, cubic yards, kilograms, metric tons, etc.) to short tons (1 short ton = 2,000 pounds) and round to the nearest ton (no decimals). Your estimated quantity should be for the entire amount of HSM to be reclaimed NOT just the quantity of constituent or product reclaimed.

**Land-based Unit Code:** From the nationally-defined Land-based Unit Codes (below), select the 2-digit code that best describes the land-based unit used or will be used to manage the HSM. If land-based units will not be used, enter "NA." If the code "OT" (Other), is used, describe the land-based unit in the Comments Section.

<b>Code</b>	<b>Land-based Unit Code Description</b>
NA	Do not use land-based units to manage hazardous secondary material.
SI	Use surface impoundment(s) to manage hazardous secondary material. A surface impoundment is a natural topographic depression, man-made excavation or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid hazardous secondary materials or materials containing free liquids and which is not an injection well.
PL	Use pile(s) to manage hazardous secondary material. Pile means any non-containerized accumulation of solid, non-flowing hazardous secondary material that is used for storage and is not a containment building.
OT	Use other land-based unit(s) to manage hazardous secondary material.

When information has been entered for the Facility Code, Hazardous Waste Codes, Estimated Short Tons and Land-based Unit, click on "Save Changes".

**Add HSM Activity**

**Facility Code \***  
01 - HSM generator reclaiming HSM on-site

**Hazardous Waste Codes \***      **Selected**  
3 selected      D001 x F003 x F005 x

**Clear All**

**Estimated Short Tons \***  
550

**Land-based Unit \***  
NA - Do not used land-based uni...

**Save Changes**    **Close**

Once, you click "Save Changes", the pop up window will close and the information will be entered in the form for Question 16.A.2.

**16. Notification of Hazardous Secondary Material (HSM) Activity**

**Are you reporting HSM activities?**  
**Yes**

**A. Managing**

**Are you notifying under 40 CFR 260.42 that you will begin managing, are managing, or will stop managing hazardous secondary material under 40 CFR 261.2(a)(2)(ii), 40 CFR 261.4(a)(23),(24), or (25)?**  
**Yes**

**1. Reason for Notification and Date**

**Notification Reason \***      **Effective Date of Notification \***  
● Notifying that the facility will begin managing hazardous secondary material      06/29/2018

**2. Description of hazardous secondary material (HSM) activity. \***

Facility Code	Waste Codes	Estimated Short Tons	Actual Short Tons	Land-based Unit	
01	D001,F003,F005	550		NA	

**Add**    **Delete All Activities**

If the facility is managing more than one HSM stream under the Generator Controlled Exclusion (40 CFR 261.4(a)(23)) and/or the Transfer Based Exclusion (40 CFR 261.4(a)(24)), click on "Add" to include another HSM stream that is reclaimed under the Generator Controlled Exclusion and/or Transfer Based Exclusion.

16. Notification of Hazardous Secondary Material (HSM) Activity

Are you reporting HSM activities?  
 Yes

A. Managing

Are you notifying under 40 CFR 260.42 that you will begin managing, are managing, or will stop managing hazardous secondary material under 40 CFR 261.2(a)(2)(ii), 40 CFR 261.4(a)(23),(24), or (25)?  
 Yes

1. Reason for Notification and Date

Notification Reason \*  
 Notifying that the facility will begin managing hazardous secondary material

Effective Date of Notification \*  
06/29/2018

2. Description of hazardous secondary material (HSM) activity. \*

Facility Code	Waste Codes	Estimated Short Tons	Actual Short Tons	Land-based Unit	
01	D001,F003,F005	550		NA	 

If you do not need to add any other HSM Activity descriptions, go to Questions 16.B. Question 16.B. still appears on the electronic notification. However, 40 CFR 260.43(a)(4)(iii) has been vacated from the rule. **Answer this question "No."**

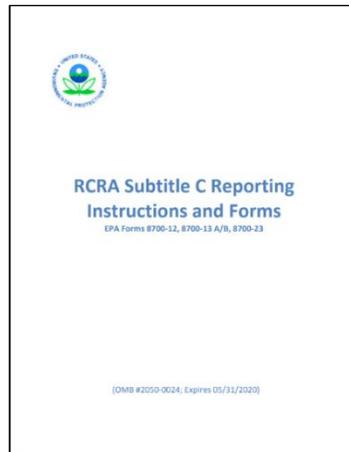
B. Recycling

Are you notifying under 40 CFR 260.43(a)(4)(iii) that the product of your recycling process has levels of hazardous constituents that are not comparable to or unable to be compared to a legitimate product or intermediate but that the recycling is still legitimate?  
 No

Public Comments

For guidance on how to complete the HSM questions, refer to the "Notification of RCRA Subtitle C Activity Instructions and Form" found at this link:

[https://rcrapublic.epa.gov/rcrainfoweb/documents/rcra\\_subtitleC\\_forms\\_and\\_instructions.pdf](https://rcrapublic.epa.gov/rcrainfoweb/documents/rcra_subtitleC_forms_and_instructions.pdf)



Guidance for completing the HSM questions can be found starting on page 33 in the Notification of RCRA Subtitle C Activity Instructions and Form booklet. Examples for completing the HSM questions can be found on pages 36 through 38 in the Notification of RCRA Subtitle C Activity Instructions and Form booklet.

For **Facilities Still Managing Excluded HSM and Renotifying as Required by March 1, of Each Even Numbered Year**, you will need to mark "Yes" to Question 16. Once you click "Yes", Question 16.A.1 will request information on whether you are re-notifying or have stopped managing HSM. Click "Renotifying that the facility is still managing hazardous secondary material."

16. Notification of Hazardous Secondary Material (HSM) Activity

Are you reporting HSM activities?

Yes

A. Managing

Are you notifying under 40 CFR 260.42 that you will begin managing, are managing, or will stop managing hazardous secondary material under 40 CFR 261.2(a)(2)(ii), 40 CFR 261.4(a)(23),(24), or (25)?

Yes

1. Reason for Notification and Date

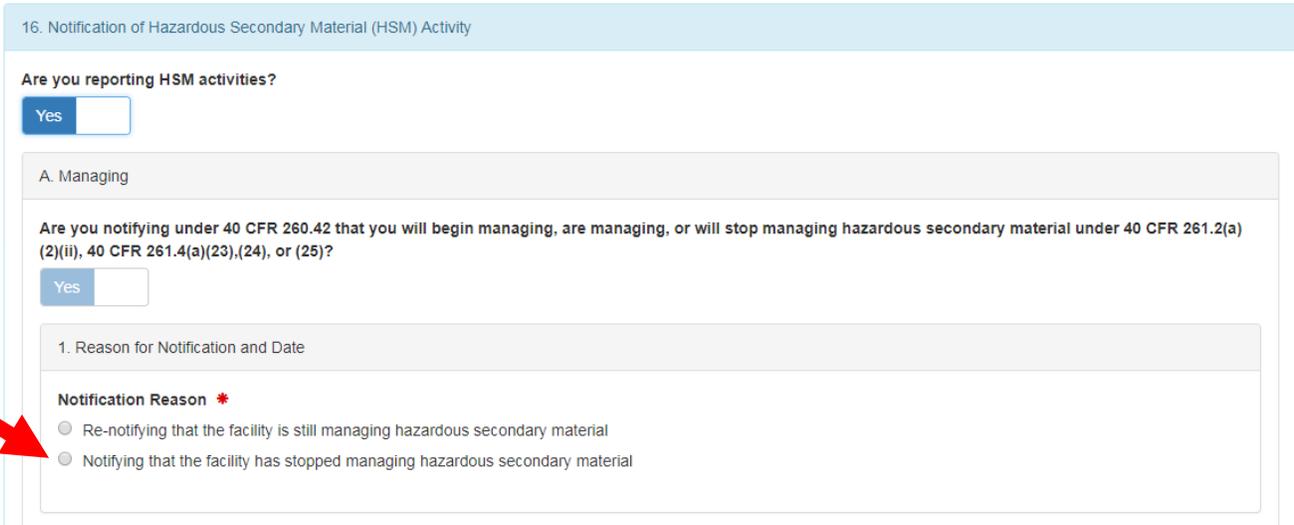
Notification Reason \*

- Re-notifying that the facility is still managing hazardous secondary material
- Notifying that the facility has stopped managing hazardous secondary material

**Actual Short Tons of Excluded HSM Managed During the Most Recent Odd-Numbered Year:** Report the quantity (using short tons) of each HSM actually managed during the most recent odd-numbered year. For example, if you are submitting this notification on February 20, 2018, enter the amount you actually managed during 2017 (i.e., the quantity you managed from January 1, 2017 to December 31, 2017). Convert all physical quantities (e.g., gallons, cubic yards, kilograms, metric tons, etc.) to short tons (1 short ton = 2,000 pounds) and round to the nearest ton (no decimals). If this is your initial notification, enter "0." Your actual quantity should be for the entire amount of hazardous secondary material that was sent for reclamation NOT just the quantity of constituent or product reclaimed.

For **Facilities that have Stopped Managing Excluded HSM** (and do not expect to manage HSM for at least one year), you will need to mark "Yes" to Question 16. Once you click "Yes", Question 16.A.1 will request information on whether you are re-notifying or have stopped managing HSM. Click "Notifying that the facility has stopped managing hazardous secondary material."

Facilities must notify within 30 days of when they stopped managing hazardous secondary material. You are considered to have stopped managing hazardous secondary material if: (1) you stop managing hazardous secondary material completely (e.g., you cease operations); (2) you choose to manage the hazardous secondary material as hazardous waste; (3) you undergo closure and request release from financial assurance per 40 CFR 261.143(h) or 40 CFR 264.143; or (4) you temporarily suspend management of hazardous secondary material for at least one year.



16. Notification of Hazardous Secondary Material (HSM) Activity

Are you reporting HSM activities?  
 Yes

A. Managing

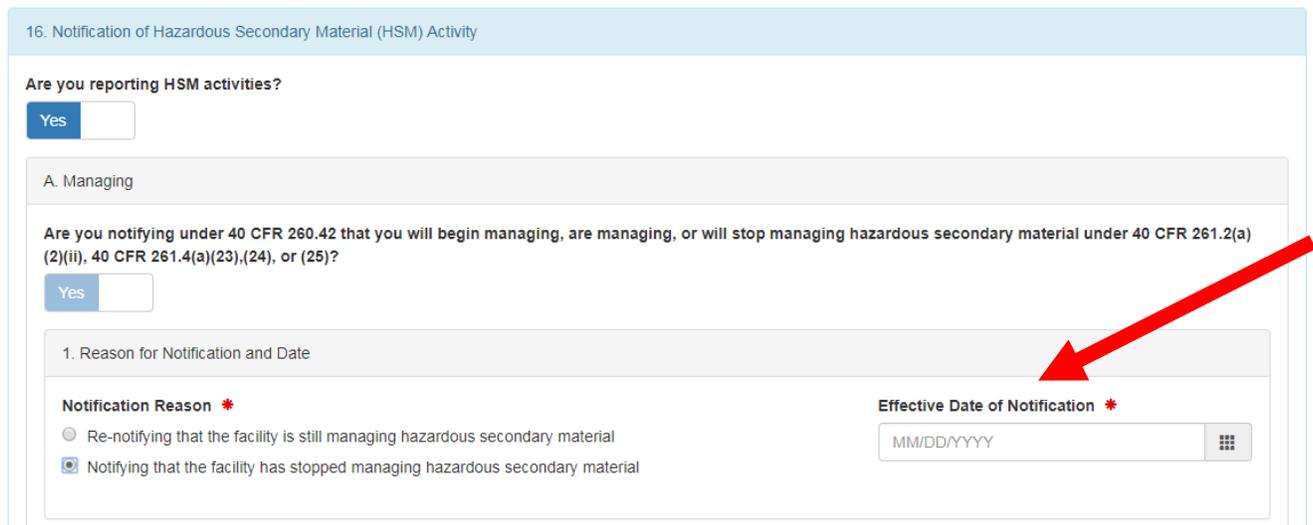
Are you notifying under 40 CFR 260.42 that you will begin managing, are managing, or will stop managing hazardous secondary material under 40 CFR 261.2(a)(2)(ii), 40 CFR 261.4(a)(23),(24), or (25)?  
 Yes

1. Reason for Notification and Date

**Notification Reason \***

- Re-notifying that the facility is still managing hazardous secondary material
- Notifying that the facility has stopped managing hazardous secondary material

Then enter the date when HSM was no longer managed on-site.



16. Notification of Hazardous Secondary Material (HSM) Activity

Are you reporting HSM activities?  
 Yes

A. Managing

Are you notifying under 40 CFR 260.42 that you will begin managing, are managing, or will stop managing hazardous secondary material under 40 CFR 261.2(a)(2)(ii), 40 CFR 261.4(a)(23),(24), or (25)?  
 Yes

1. Reason for Notification and Date

**Notification Reason \***

- Re-notifying that the facility is still managing hazardous secondary material
- Notifying that the facility has stopped managing hazardous secondary material

**Effective Date of Notification \***  
MM/DD/YYYY

Only notify as having stopped managing HSM if you have stopped managing **all** HSM under the exclusion(s). For example, if your facility only stopped managing one hazardous secondary material, but continued to manage another hazardous secondary material, you would leave this box blank since your facility continues to manage some amount of hazardous secondary material.

## Appendix D

### Reasonable Efforts Required to be Made by the HSM Generator

Reasonable Efforts must be made and documented as described in 40 CFR 261.4(a)(24)((v)(B) and (C).

*Prior* to arranging for transport of HSM to a reclamation facility (or facilities) where management of HSM is not addressed under a RCRA Part B permit or interim status standards, the HSM Generator **must make reasonable efforts to ensure** that each reclaimer intends to properly and legitimately reclaim the HSM and not discard it and that each reclaimer will manage the HSM in a manner that is protective of human health and the environment.

If the HSM will be passing through an intermediate facility where the management of the HSM is not addressed under a RCRA part B permit or interim status standards, the HSM generator must make contractual arrangements with the intermediate facility to ensure that the HSM is sent to the reclamation facility identified by the HSM generator, and the HSM generator must perform reasonable efforts to ensure that the intermediate facility will manage the HSM in a manner that is protective of human health and the environment.

Reasonable efforts *must be repeated at a minimum of every three years* for the HSM generator to claim the exclusion and to send the HSM to each reclaimer and any intermediate facility.

In making these reasonable efforts, the generator may use any credible evidence available, including information gathered by the HSM generator, provided by the reclaimer or intermediate facility, and/or provided by a third party. **The HSM generator must affirmatively answer all of the following questions for each reclamation facility and any intermediate facility:**

- 1) **Does the available information indicate that the reclamation process is legitimate pursuant to 40 CFR 260.43?**
  - In answering this question, the HSM generator can rely on their existing knowledge of the physical and chemical properties of the HSM, as well as information from other sources (e.g., the reclamation facility, audit reports, etc.) about the reclamation process.
- 2) **Does the publicly available information indicate that the reclamation facility and any intermediate facility that is used by the HSM generator notified the appropriate authorities of HSM reclamation activities pursuant to 40 CFR 260.42 and have they notified the appropriate authorities that the financial assurance condition is satisfied 40 CFR 261.4(a)(24)(vi)(F)?**
  - In answering these questions, the HSM generator can rely on the available information documenting the reclamation facility's and any intermediate facility's compliance with the notification requirements per 40 CFR 260.42, including the requirement in 40 CFR 260.42(a)(5) to notify the Hazardous Waste Section whether the reclaimer or intermediate facility has financial assurance.
- 3) **Does publicly available information indicate that the reclamation facility or any intermediate facility that is used by the HSM generator has not had any formal enforcement actions taken against the facility in the previous three years for violations of the RCRA hazardous waste regulations and has not been classified as a significant non-complier with RCRA Subtitle C?**
  - In answering this question, HSM generator can rely on the publicly available information from EPA or the state. If the reclamation facility or any intermediate facility that is used by the HSM generator has had a formal enforcement action taken against the facility in the previous three years for violations of the RCRA hazardous waste regulations and has been classified as a significant non-complier with RCRA Subtitle C, does the HSM generator have credible evidence that the facilities will manage the HSM(s)

properly? In answering this question, the HSM generator can obtain additional information from EPA, the state, or the facility itself that the facility has addressed the violations, taken remedial steps to address the violations and prevent future violations, or that the violations are not relevant to the proper management of the HSM(s).

- 4) **Does the available information indicate that the reclamation facility and any intermediate facility that is used by the HSM have the equipment and trained personnel to safely recycle the HSM?**
- In answering this question, the generator may rely on a description by the reclamation facility or by an independent third party of the equipment and trained personnel to be used to recycle the generator's HSM.
- 5) **If residuals are generated from the reclamation of the excluded HSM(s), does the reclamation facility have the permits required (if any) to manage the residuals? If not, does the reclamation facility have a contract with an appropriately permitted facility to dispose of the residuals? If not, does the HSM generator have credible evidence that the residuals will be managed in a manner that is protective of human health and the environment?**
- In answering these questions, the HSM generator can rely on publicly available information from EPA or the state, or information provided by the facility itself.

**Reasonable Efforts must be documented and certified:**

The HSM generator must maintain for a *minimum of three years* documentation and certification that reasonable efforts were made for each reclamation facility and, if applicable, intermediate facility where the management of the hazardous secondary materials is not addressed under a RCRA part B permit or interim status standards prior to transferring hazardous secondary material.

Documentation and certification must be made available upon request by a regulatory authority within 72 hours, or within a longer period of time as specified by the regulatory authority.

**The certification statement must:**

- Include the printed name and official title of an authorized representative of the HSM generator company, the authorized representative's signature, and the date signed;
- Incorporate the following language: "I hereby certify in good faith and to the best of my knowledge that, prior to arranging for transport of excluded hazardous secondary materials to [insert name(s) of reclamation facility and any intermediate facility], reasonable efforts were made in accordance with 40 CFR261.4(a)(24)(v)(B) to ensure that the hazardous secondary materials would be recycled legitimately, and otherwise managed in a manner that is protective of human health and the environment, and that such efforts were based on current and accurate information."

## Appendix E

### Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials (40 CFR 261 Subpart M)

Any facility operating under the Transfer Based Exclusion must meet the requirements of 40 CFR 261 Subpart M.

#### 40 CFR 261.400 - Applicability

The requirements of this subpart apply to those areas of an entity managing hazardous secondary materials excluded under 40 CFR 261.4(a)(23) and/or (24) where hazardous secondary materials are generated or accumulated on site.

- (a) A generator of hazardous secondary material, or an intermediate or reclamation facility, that accumulates 6,000 kg or less of hazardous secondary material at any time must comply with 40 CFR 261.410 and 261.411.
- (b) A generator of hazardous secondary material, or an intermediate or reclamation facility that accumulates more than 6,000 kg of hazardous secondary material at any time must comply with 40 CFR 261.410 and 261.420.

#### 40 CFR 261.410 - Preparedness and prevention

- (a) *Maintenance and operation of facility.* Facilities generating or accumulating hazardous secondary material must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous secondary materials or hazardous secondary material constituents to air, soil, or surface water which could threaten human health or the environment.
- (b) *Required equipment.* All facilities generating or accumulating hazardous secondary material must be equipped with the following, *unless* none of the hazards posed by hazardous secondary material handled at the facility could require a particular kind of equipment specified below:
  - (1) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;
  - (2) A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or state or local emergency response teams;
  - (3) Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment, and decontamination equipment; and
  - (4) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.
- (c) *Testing and maintenance of equipment.* All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, must be tested and maintained as necessary to assure its proper operation in time of emergency.
- (d) *Access to communications or alarm system.*
  - (1) Whenever hazardous secondary material is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required under paragraph (b) of this section.
  - (2) If there is ever just one employee on the premises while the facility is operating, he must have immediate access to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, *unless* such a device is not required under paragraph (b) of this section.

- (e) *Required aisle space.* The hazardous secondary material generator or intermediate or reclamation facility must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.
- (f) *Arrangements with local authorities.*
  - (1) The hazardous secondary material generator or an intermediate or reclamation facility must attempt to make the following arrangements, as appropriate for the type of waste handled at his facility and the potential need for the services of these organizations:
    - (i) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous secondary material handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes;
    - (ii) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;
    - (iii) Agreements with state emergency response teams, emergency response contractors, and equipment suppliers; and
    - (iv) Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.
  - (2) Where state or local authorities decline to enter into such arrangements, the hazardous secondary material generator or an intermediate or reclamation facility must document the refusal in the operating record.

**40 CFR 261.411 - Emergency procedures for facilities generating or accumulating 6,000 kg or less of hazardous secondary material**

A generator or an intermediate or reclamation facility that generates or accumulates 6,000 kg or less of hazardous secondary material must comply with the following requirements:

- (a) At all times there must be at least one employee either on the premises or on call (*i.e.*, available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures specified in paragraph (d) of this section. This employee is the emergency coordinator.
- (b) The generator or intermediate or reclamation facility must post the following information next to the telephone:
  - (1) The name and telephone number of the emergency coordinator;
  - (2) Location of fire extinguishers and spill control material, and, if present, fire alarm; and
  - (3) The telephone number of the fire department, unless the facility has a direct alarm.
- (c) The generator or an intermediate or reclamation facility must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies;
- (d) The emergency coordinator or his designee must respond to any emergencies that arise. The applicable responses are as follows:
  - (1) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;
  - (2) In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil;
  - (3) In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the generator or an intermediate or reclamation facility has knowledge that a spill has reached surface water, the generator or an intermediate or reclamation facility must immediately notify the National Response Center (using their 24-hour toll free number 800/424-8802). The report must include the following information:

- (i) The name, address, and U.S. EPA Identification Number of the facility;
- (ii) Date, time, and type of incident (*e.g.*, spill or fire);
- (iii) Quantity and type of hazardous waste involved in the incident;
- (iv) Extent of injuries, if any; and
- (v) Estimated quantity and disposition of recovered materials, if any.

**40 CFR 261.420 - Contingency planning and emergency procedures for facilities generating or accumulating more than 6,000 kg of hazardous secondary material**

A generator or an intermediate or reclamation facility that generates or accumulates more than 6,000 kg of hazardous secondary material must comply with the following requirements:

(a) *Purpose and implementation of contingency plan.*

- (1) Each generator or an intermediate or reclamation facility that accumulates more than 6,000 kg of hazardous secondary material must have a contingency plan for his facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous secondary material or hazardous secondary material constituents to air, soil, or surface water.
- (2) The provisions of the plan must be carried out immediately whenever there is a fire, explosion, or release of hazardous secondary material or hazardous secondary material constituents which could threaten human health or the environment.

(b) *Content of contingency plan.*

- (1) The contingency plan must describe the actions facility personnel must take to comply with paragraphs (a) and (f) in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous secondary material or hazardous secondary material constituents to air, soil, or surface water at the facility.
- (2) If the generator or an intermediate or reclamation facility accumulating more than 6,000 kg of hazardous secondary material has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with part 112 of this chapter, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this part. The hazardous secondary material generator or an intermediate or reclamation facility may develop one contingency plan which meets all regulatory requirements. EPA recommends that the plan be based on the National Response Team's Integrated Contingency Plan Guidance ("One Plan"). When modifications are made to non-RCRA provisions in an integrated contingency plan, the changes do not trigger the need for a RCRA permit modification.
- (3) The plan must describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, pursuant to 40 CFR 262.410(f).
- (4) The plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see paragraph (e) of this section), and this list must be kept up-to-date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.
- (5) The plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.
- (6) The plan must include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).

- (c) *Copies of contingency plan.* A copy of the contingency plan and all revisions to the plan must be:
- (1) Maintained at the facility; and
  - (2) Submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.
- (d) *Amendment of contingency plan.* The contingency plan must be reviewed, and immediately amended, if necessary, whenever:
- (1) Applicable regulations are revised;
  - (2) The plan fails in an emergency;
  - (3) The facility changes—in its design, construction, operation, maintenance, or other circumstances—in a way that materially increases the potential for fires, explosions, or releases of hazardous secondary material or hazardous secondary material constituents, or changes the response necessary in an emergency;
  - (4) The list of emergency coordinators changes; or
  - (5) The list of emergency equipment changes.
- (e) *Emergency coordinator.* At all times, there must be at least one employee either on the facility premises or on call (*i.e.*, available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan. The emergency coordinator's responsibilities are more fully spelled out in paragraph (f). Applicable responsibilities for the emergency coordinator vary, depending on factors such as type and variety of hazardous secondary material(s) handled by the facility, and type and complexity of the facility.
- (f) *Emergency procedures.*
- (1) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or his designee when the emergency coordinator is on call) must immediately:
    - (i) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and
    - (ii) Notify appropriate State or local agencies with designated response roles if their help is needed.
  - (2) Whenever there is a release, fire, or explosion, the emergency coordinator must immediately identify the character, exact source, amount, and areal extent of any released materials. He may do this by observation or review of facility records or manifests and, if necessary, by chemical analysis.
  - (3) Concurrently, the emergency coordinator must assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of the release, fire, or explosion (*e.g.*, the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-offs from water or chemical agents used to control fire and heat-induced explosions).
  - (4) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, he must report his findings as follows:
    - (i) If his assessment indicates that evacuation of local areas may be advisable, he must immediately notify appropriate local authorities. He must be available to help appropriate officials decide whether local areas should be evacuated; and
    - (ii) He must immediately notify either the government official designated as the on-scene coordinator for that geographical area, or the National Response Center (using their 24-hour toll free number 800/424-8802). The report must include:
      - (A) Name and telephone number of reporter;
      - (B) Name and address of facility;
      - (C) Time and type of incident (*e.g.*, release, fire);
      - (D) Name and quantity of material(s) involved, to the extent known;
      - (E) The extent of injuries, if any; and

- (F) The possible hazards to human health, or the environment, outside the facility.
- (5) During an emergency, the emergency coordinator must take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous secondary material at the facility. These measures must include, where applicable, stopping processes and operations, collecting and containing released material, and removing or isolating containers.
  - (6) If the facility stops operations in response to a fire, explosion or release, the emergency coordinator must monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.
  - (7) Immediately after an emergency, the emergency coordinator must provide for treating, storing, or disposing of recovered secondary material, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility. Unless the hazardous secondary material generator can demonstrate, in accordance with 40 CFR261.3(c) or (d) of this chapter, that the recovered material is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of parts 262, 263, and 265 of this chapter.
  - (8) The emergency coordinator must ensure that, in the affected area(s) of the facility:
    - (i) No secondary material that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and
    - (ii) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.
  - (9) The hazardous secondary material generator must note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, he must submit a written report on the incident to the Regional Administrator. The report must include:
    - (i) Name, address, and telephone number of the hazardous secondary material generator;
    - (ii) Name, address, and telephone number of the facility;
    - (iii) Date, time, and type of incident (*e.g.*, fire, explosion);
    - (iv) Name and quantity of material(s) involved;
    - (v) The extent of injuries, if any;
    - (vi) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and
    - (vii) Estimated quantity and disposition of recovered material that resulted from the incident.

## Appendix F

### Checklist for HSM Generated and Transferred to a Reclamation or Intermediate Facility *A Brief Summary of the Transfer Based Exclusion Conditions*

- I. HSM generated and transferred to an intermediate/reclamation facility – 40 CFR 261.4(a)(24):**
- HSM must not be speculatively accumulated as defined in 40 CFR 261.1(c)(8).
  - HSM must be contained as defined in 15A NCAC 13A .0102(c).
  - HSM may not be handled by persons other than the HSM generator, the transporter, an intermediate facility, or a reclaimer and while in transport, is not stored for more than 10 days at a transfer facility.
  - Reclamation of the HSM must meet legitimacy criteria under 40 CFR 260.43.
  - DOT requirements apply for packaging and shipping of HSM.
- II. All facilities (HSM generators, HSM reclaimers, and HSM intermediate facilities) managing HSM under the Transfer Based Exclusion must provide notification under 40 CFR 260.42.**
- Notification must be submitted *prior* to managing any HSM *and* by March 1 of each even-numbered year thereafter.
  - Notification must be submitted when the facility stops managing HSM.
- III. HSM Generator must meet all these conditions:**
- HSM must be contained as defined in 15A NCAC 13A .0102(c).
  - Reasonable Efforts must be made and documented by the HSM Generator (including affirmative responses to the five questions) as described in 40 CFR 261.4(a)(24)(v)(B) and (C).
  - Must maintain three years of records of:
    - Off-site shipments of HSM (including the name of the transporter and date of the shipment; name and address of each reclaimer and, if applicable, the name and address of each intermediate facility to which the HSM was sent; and the type and quantity of HSM in the shipment).
    - Confirmations of Receipt from the reclaimer/intermediate facility (if applicable) (including the name and address of the reclaimer (or intermediate facility), type and quantity of the HSM received, and date on which HSM was received).
  - Must meet emergency preparedness and response requirements:
    - Accumulates 6,000 kg or less HSM - must comply with 40 CFR 261.410 and 261.411
    - Accumulates more than 6,000 kg of HSM – must comply with 40 CFR 261.410 and 261.420
- IV. Reclaimers and intermediate facility of HSM must meet all these conditions:**
- Must maintain three years of records of HSM shipments received at the facility and, if applicable, sent off for further reclamation (name of transporter, date of shipment, name and address of the HSM generator, name and address of the reclaimer(s) or intermediate facility(ies), type and quantity of HSM).
  - Intermediate facility must send HSM to reclaimer designated by the generator.
  - Confirmation of receipt must be sent to the HSM generator for all off-site shipments of HSM (name and address of reclaimer/intermediate facility, type and quantity of HSM, and date which HSM was received).
  - HSM must be managed in a manner that is at least as protective as that employed for analogous raw material and must be contained (“Contained” is defined in 15A NCAC 13A .0102(c)).
  - Any residuals from reclamation process must be managed in a manner protective of human health and the environment. If residuals are characteristic and/or listed, they must be managed by all applicable hazardous waste rules.
  - Must have financial assurance as required by 40 CFR 261 Subpart H.

## Appendix G

### Financial Assurance Requirements for Reclaimers and Intermediate Facilities to Reclaim HSM Under the Transfer Based Exclusion (40 CFR 261 Subpart H)

#### 40 CFR 261.140 Applicability.

- (a) The requirements of this subpart apply to owners or operators of reclamation and intermediate facilities managing hazardous secondary materials excluded under 40 CFR 40 CFR261.4(a)(24), except as provided otherwise in this section.
- (b) States and the Federal government are exempt from the financial assurance requirements of this subpart.

#### 40 CFR 261.141 Definitions of terms as used in this subpart.

The terms defined in 40 CFR265.141(d), (f), (g), and (h) of this chapter have the same meaning in this subpart as they do in 40 CFR265.141 of this chapter.

#### 40 CFR 261.142 Cost estimate.

- (a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of disposing of any hazardous secondary material as listed or characteristic hazardous waste, and the potential cost of closing the facility as a treatment, storage, and disposal facility.
  - (1) The estimate must equal the cost of conducting the activities described in paragraph (a) of this section at the point when the extent and manner of the facility's operation would make these activities the most expensive; and
  - (2) The cost estimate must be based on the costs to the owner or operator of hiring a third party to conduct these activities. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in 40 CFR265.141(d) of this chapter.) The owner or operator may use costs for on-site disposal in accordance with applicable requirements if he can demonstrate that on-site disposal capacity will exist at all times over the life of the facility.
  - (3) The cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous secondary materials, or hazardous or non-hazardous wastes if applicable under 40 CFR265.5113(d) of this chapter, facility structures or equipment, land, or other assets associated with the facility.
  - (4) The owner or operator may not incorporate a zero cost for hazardous secondary materials, or hazardous or non-hazardous wastes if applicable under 40 CFR265.5113(d) of this chapter that might have economic value.
- (b) During the active life of the facility, the owner or operator must adjust the cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with 40 CFR261.143. For owners and operators using the financial test or corporate guarantee, the 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 Regional Administrator as specified in 40 CFR261.143(e)(3). The adjustment may be made by recalculating the 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 paragraphs (b)(1) and (2) of this section. 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 cost estimate by the inflation factor. The result is the adjusted cost estimate.
  - (2) Subsequent adjustments are made by multiplying the latest adjusted cost estimate by the latest inflation factor.

- (c) During the active life of the facility, the owner or operator must revise the cost estimate no later than 30 days after a change in a facility's operating plan or design that would increase the costs of conducting the activities described in paragraph (a) or no later than 60 days after an unexpected event which increases the cost of conducting the activities described in paragraph (a) of this section. The revised cost estimate must be adjusted for inflation as specified in paragraph (b) of this section.
- (d) The owner or operator must keep the following at the facility during the operating life of the facility: The latest cost estimate prepared in accordance with paragraphs (a) and (c) and, when this estimate has been adjusted in accordance with paragraph (b), the latest adjusted cost estimate.

**40 CFR 261.143 Financial assurance condition.**

Per 40 CFR261.4(a)(24)(vi)(F) of this chapter, an owner or operator of a reclamation or intermediate facility must have financial assurance as a condition of the exclusion as required under 40 CFR261.4(a)(24) of this chapter. He must choose from the options as specified in paragraphs (a) through (e) of this section.

**(a) Trust fund.**

- (1) An owner or operator may satisfy the requirements of this section by establishing a trust fund which conforms to the requirements of this paragraph and submitting an originally signed duplicate of the trust agreement to the Regional Administrator. 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 40 CFR261.151(a)(1), and the trust agreement must be accompanied by a formal certification of acknowledgment (for example, see 40 CFR261.151(a)(2)). Schedule A of the trust agreement must be updated within 60 days after a change in the amount of the current cost estimate covered by the agreement.
- (3) The trust fund must be funded for the full amount of the current cost estimate before it may be relied upon to satisfy the requirements of this section.
- (4) Whenever the current 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 cost estimate, or obtain other financial assurance as specified in this section to cover the difference.
- (5) If the value of the trust fund is greater than the total amount of the current cost estimate, the owner or operator may submit a written request to the Regional Administrator for release of the amount in excess of the current cost estimate.
- (6) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund, he may submit a written request to the Regional Administrator for release of the amount in excess of the current cost estimate covered by the trust fund.
- (7) Within 60 days after receiving a request from the owner or operator for release of funds as specified in paragraph (a) (5) or (6) of this section, the Regional Administrator will instruct the trustee to release to the owner or operator such funds as the Regional Administrator specifies in writing. If the owner or operator begins final closure under subpart G of 40 CFR part 264 or 265, an owner or operator may request reimbursements for partial or final closure expenditures by submitting itemized bills to the Regional Administrator. 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 Regional Administrator will instruct the trustee to make reimbursements in those amounts as the Regional Administrator specifies in writing, if the Regional Administrator determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the Regional Administrator 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 40 CFR265.143(i) that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Regional Administrator does not instruct the trustee to make such reimbursements, he will provide to the owner or operator a detailed written statement of reasons.

- (8) The Regional Administrator will agree to termination of the trust when:
- (i) An owner or operator substitutes alternate financial assurance as specified in this section; or
  - (ii) The Regional Administrator releases the owner or operator from the requirements of this section in accordance with paragraph (i) of this section.

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

- (1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this paragraph and submitting the bond to the Regional Administrator. 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 40 CFR261.151(b).
- (3) The owner or operator who uses a surety bond to satisfy the requirements of this section must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Regional Administrator. This standby trust fund must meet the requirements specified in paragraph (a) of this section, except that:
  - (i) An originally signed duplicate of the trust agreement must be submitted to the Regional Administrator with the surety bond; and
  - (ii) Until the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:
    - (A) Payments into the trust fund as specified in paragraph (a) of this section;
    - (B) Updating of Schedule A of the trust agreement (see 40 CFR261.151(a)) to show current cost estimates;
    - (C) Annual valuations as required by the trust agreement; and
    - (D) 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 loss of the exclusion under 40 CFR261.4(a)(24) of this chapter or
  - (ii) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin closure issued by the Regional Administrator becomes final, or within 15 days after an order to begin closure is issued by a U.S. district court or other court of competent jurisdiction; or
  - (iii) Provide alternate financial assurance as specified in this section, and obtain the Regional Administrator's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Regional Administrator 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 cost estimate, except as provided in paragraph (f) of this section.
- (7) Whenever the current 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 cost estimate and submit evidence of such increase to the Regional Administrator, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current cost estimate decreases, the penal sum may be reduced to the amount of the current cost estimate following written approval by the Regional Administrator.
- (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 Regional Administrator. 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 Regional Administrator, as evidenced by the return receipts.

- (9) The owner or operator may cancel the bond if the Regional Administrator has given prior written consent based on his receipt of evidence of alternate financial assurance as specified in this section.

**(c) Letter of credit.**

- (1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph and submitting the letter to the Regional Administrator. 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 40 CFR261.151(c).
- (3) An owner or operator who uses a letter of credit to satisfy the requirements of this section must also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Regional Administrator will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Regional Administrator. This standby trust fund must meet the requirements of the trust fund specified in paragraph (a) of this section, except that:
  - (i) An originally signed duplicate of the trust agreement must be submitted to the Regional Administrator with the letter of credit; and
  - (ii) Unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:
    - (A) Payments into the trust fund as specified in paragraph (a) of this section;
    - (B) Updating of Schedule A of the trust agreement (see 40 CFR261.151(a)) to show current cost estimates;
    - (C) Annual valuations as required by the trust agreement; and
    - (D) 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 (if any issued), name, and address of the facility, and the amount of funds assured for 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 Regional Administrator 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 Regional Administrator 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 cost estimate, except as provided in paragraph (f) of this section.
- (7) Whenever the current 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 cost estimate and submit evidence of such increase to the Regional Administrator, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current cost estimate decreases, the amount of the credit may be reduced to the amount of the current cost estimate following written approval by the Regional Administrator.
- (8) Following a determination by the Regional Administrator that the hazardous secondary materials do not meet the conditions of the exclusion under 40 CFR261.4(a)(24), the Regional Administrator may draw on the letter of credit.
- (9) If the owner or operator does not establish alternate financial assurance as specified in this section and obtain written approval of such alternate assurance from the Regional Administrator within 90 days after receipt by both the owner or operator and the Regional Administrator of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the

Regional Administrator will draw on the letter of credit. The Regional Administrator 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 Regional Administrator will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this section and obtain written approval of such assurance from the Regional Administrator.

- (10) The Regional Administrator 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 this section; or
  - (ii) The Regional Administrator releases the owner or operator from the requirements of this section in accordance with paragraph (i) of this section.

**(d) Insurance.**

- (1) An owner or operator may satisfy the requirements of this section by obtaining insurance which conforms to the requirements of this paragraph and submitting a certificate of such insurance to the Regional Administrator. 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 one or more States.
- (2) The wording of the certificate of insurance must be identical to the wording specified in 40 CFR 261.151(d).
- (3) The insurance policy must be issued for a face amount at least equal to the current cost estimate, except as provided in paragraph (f) of this section. 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 insurance policy must guarantee that funds will be available whenever needed to pay the cost of removal of all hazardous secondary materials from the unit, to pay the cost of decontamination of the unit, to pay the costs of the performance of activities required under subpart G of 40 CFR parts 264 or 265, as applicable, for the facilities covered by this policy. The policy must also guarantee that once funds are needed, 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 Regional Administrator, to such party or parties as the Regional Administrator specifies.
- (5) After beginning partial or final closure under 40 CFR parts 264 or 265, as applicable, an owner or operator or any other authorized person may request reimbursements for closure expenditures by submitting itemized bills to the Regional Administrator. The owner or operator may request reimbursements 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 Regional Administrator will instruct the insurer to make reimbursements in such amounts as the Regional Administrator specifies in writing if the Regional Administrator determines that the expenditures are in accordance with the approved plan or otherwise justified. If the Regional Administrator has reason to believe that the maximum cost 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 paragraph (h) of this section, that the owner or operator is no longer required to maintain financial assurance for the particular facility. If the Regional Administrator 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 Regional Administrator consents to termination of the policy by the owner or operator as specified in paragraph (i)(10) of this section. Failure to pay the premium, without substitution of alternate financial assurance as specified in this section, will constitute a significant violation of these regulations warranting such remedy as the Regional Administrator deems necessary. Such violation will be deemed to begin upon receipt by the Regional Administrator 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 Regional Administrator. 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 Regional Administrator 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 Regional Administrator deems the facility abandoned; or
  - (ii) Conditional exclusion or interim status is lost, terminated, or revoked; or
  - (iii) Closure is ordered by the Regional Administrator or a U.S. district court or other 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 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 cost estimate and submit evidence of such increase to the Regional Administrator, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current cost estimate decreases, the face amount may be reduced to the amount of the current cost estimate following written approval by the Regional Administrator.
- (10) The Regional Administrator 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 this section; or
  - (ii) The Regional Administrator releases the owner or operator from the requirements of this section in accordance with paragraph (i) of this section.

**(e) Financial test and corporate guarantee.**

- (1) An owner or operator may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria of either paragraph (e)(1) (i) or (ii) of this section:
  - (i) The owner or operator must have:
    - (A) 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
    - (B) Net working capital and tangible net worth each at least six times the sum of the current cost estimates and the current plugging and abandonment cost estimates; and
    - (C) Tangible net worth of at least \$10 million; and
    - (D) 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 cost estimates and the current plugging and abandonment cost estimates.
  - (ii) The owner or operator must have:
    - (A) 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
    - (B) Tangible net worth at least six times the sum of the current cost estimates and the current plugging and abandonment cost estimates; and
    - (C) Tangible net worth of at least \$10 million; and

- (D) 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 cost estimates and the current plugging and abandonment cost estimates.
- (2) The phrase “current cost estimates” as used in paragraph (e)(1) of this section 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 (40 CFR261.151(e)). The phrase “current plugging and abandonment cost estimates” as used in paragraph (e)(1) of this section 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 (40 CFR144.70(f) of this chapter).
- (3) To demonstrate that he meets this test, the owner or operator must submit the following items to the Regional Administrator:
- (i) A letter signed by the owner's or operator's chief financial officer and worded as specified in 40 CFR261.151(e); 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) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies paragraph (e)(1)(i) of this section that are different from the data in the audited financial statements referred to in paragraph (e)(3)(ii) of this section or any other audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of the comparison, and the reasons for any differences.
- (4) The owner or operator may obtain an extension of the time allowed for submission of the documents specified in paragraph (e)(3) of this section 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 Regional Administrator of each Region in which the owner's or operator's facilities to be covered by the financial test are located. 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 (if any issued), 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 in this subpart;
  - (v) Specify the date, no later than 90 days after the end of such fiscal year, when he will submit the documents specified in paragraph (e)(3) of this section; 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 paragraph (e)(3) of this section, the owner or operator must send updated information to the Regional Administrator within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in paragraph (e)(3) of this section.
- (6) If the owner or operator no longer meets the requirements of paragraph (e)(1) of this section, he must send notice to the Regional Administrator of intent to establish alternate financial assurance as specified in this section. 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 Regional Administrator may, based on a reasonable belief that the owner or operator may no longer meet the requirements of paragraph (e)(1) of this section, require reports of financial condition at any time from the owner or operator in addition to those specified in paragraph (e)(3) of this section. If the Regional Administrator finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of paragraph (e)(1) of this section, the owner or operator must provide alternate financial assurance as specified in this section within 30 days after notification of such a finding.
- (8) The Regional Administrator 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 paragraph (e)(3)(ii) of this section). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Regional Administrator will evaluate other qualifications on an individual basis. The owner or operator must provide alternate financial assurance as specified in this section within 30 days after notification of the disallowance.
- (9) The owner or operator is no longer required to submit the items specified in paragraph (e)(3) of this section when:
  - (i) An owner or operator substitutes alternate financial assurance as specified in this section; or
  - (ii) The Regional Administrator releases the owner or operator from the requirements of this section in accordance with paragraph (i) of this section.
- (10) An owner or operator may meet the requirements of this section by obtaining a written 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 paragraphs (e)(1) through (8) of this section and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in 40 CFR261.151(g)(1). A certified copy of the guarantee must accompany the items sent to the Regional Administrator as specified in paragraph (e)(3) of this section. 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) Following a determination by the Regional Administrator that the hazardous secondary materials at the owner or operator's facility covered by this guarantee do not meet the conditions of the exclusion under 40 CFR261.4(a)(24) of this chapter, the guarantor will dispose of any hazardous secondary material as hazardous waste and close the facility in accordance with closure requirements found in parts 264 or 265 of this chapter, as applicable, or establish a trust fund as specified in paragraph (a) of this section in the name of the owner or operator in the amount of the current cost estimate.
  - (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 Regional Administrator. 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 Regional Administrator, as evidenced by the return receipts.
  - (iii) If the owner or operator fails to provide alternate financial assurance as specified in this section and obtain the written approval of such alternate assurance from the Regional Administrator within 90 days after receipt by both the owner or operator and the Regional Administrator 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 this section 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 paragraphs (a) through (d) of this section, respectively, of this section, 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 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 Regional Administrator may use any or all of the mechanisms to provide for the facility.

**(g) Use of a financial mechanism for multiple facilities.**

An owner or operator may use a financial assurance mechanism specified in this section to meet the requirements of this section for more than one facility. Evidence of financial assurance submitted to the Regional Administrator must include a list showing, for each facility, the EPA Identification Number (if any issued), name, address, and the amount of funds assured by the mechanism. If the facilities covered by the mechanism are in more than one Region, identical evidence of financial assurance must be submitted to and maintained with the Regional Administrators of all such Regions. 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 any of the facilities covered by the mechanism, the Regional Administrator 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) Removal and Decontamination Plan for Release**

- (1) An owner or operator of a reclamation facility or an intermediate facility who wishes to be released from his financial assurance obligations under 40 CFR261.4(a)(24)(vi)(F) of this chapter must submit a plan for removing all hazardous secondary material residues to the Regional Administrator at least 180 days prior to the date on which he expects to cease to operate under the exclusion.
- (2) The plan must include, at least:
  - (A) For each hazardous secondary materials storage unit subject to financial assurance requirements under 40 CFR 261.4(a)(24)(vi)(F), a description of how all excluded hazardous secondary materials will be recycled or sent for recycling, and how all residues, contaminated containment systems (liners, etc), contaminated soils, subsoils, structures, and equipment will be removed or decontaminated as necessary to protect human health and the environment, and
  - (B) A detailed description of the steps necessary to remove or decontaminate all hazardous secondary material residues and contaminated containment system components, equipment, structures, and soils including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination necessary to protect human health and the environment; and
  - (C) A detailed description of any other activities necessary to protect human health and the environment during this timeframe, including, but not limited to, leachate collection, run-on and run-off control, etc; and
  - (D) A schedule for conducting the activities described which, at a minimum, includes the total time required to remove all excluded hazardous secondary materials for recycling and decontaminate all units subject to financial assurance under 40 CFR261.4(a)(24)(vi)(F) and the time required for intervening activities which will allow tracking of the progress of decontamination.
- (3) The Regional Administrator will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the plan and request modifications to the plan no later than 30 days from the date of the notice. He will also, in response to a request or at his discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the plan. The Regional Administrator will give public notice of the hearing at least 30 days before it

occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The Regional Administrator will approve, modify, or disapprove the plan within 90 days of its receipt. If the Regional Administrator does not approve the plan, he shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator must modify the plan or submit a new plan for approval within 30 days after receiving such written statement. The Regional Administrator will approve or modify this plan in writing within 60 days. If the Regional Administrator modifies the plan, this modified plan becomes the approved plan. The Regional Administrator must assure that the approved plan is consistent with paragraph (h) of this section. A copy of the modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator.

- (4) Within 60 days of completion of the activities described for each hazardous secondary materials management unit, the owner or operator must submit to the Regional Administrator, by registered mail, a certification that all hazardous secondary materials have been removed from the unit and the unit has been decontaminated in accordance with the specifications in the approved plan. The certification must be signed by the owner or operator and by a qualified Professional Engineer. Documentation supporting the Professional Engineer's certification must be furnished to the Regional Administrator, upon request, until he releases the owner or operator from the financial assurance requirements for 40 CFR261.4(a)(24)(vi)(F).

**(i) Release of the owner or operator from the requirements of this section.**

Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that all hazardous secondary materials have been removed from the facility or a unit at the facility and the facility or a unit has been decontaminated in accordance with the approved plan per paragraph (h), the Regional Administrator will notify the owner or operator in writing that he is no longer required under 40 CFR261.4(a)(24)(vi)(F) to maintain financial assurance for that facility or a unit at the facility, unless the Regional Administrator has reason to believe that all hazardous secondary materials have not been removed from the facility or unit at a facility or that the facility or unit has not been decontaminated in accordance with the approved plan. The Regional Administrator shall provide the owner or operator a detailed written statement of any such reason to believe that all hazardous secondary materials have not been removed from the unit or that the unit has not been decontaminated in accordance with the approved plan.

**40 CFR 261.144-261.146 [Reserved]**

**40 CFR 261.147 Liability requirements.**

**(a) Coverage for sudden accidental occurrences.**

An owner or operator of a hazardous secondary material reclamation facility or an intermediate facility subject to financial assurance requirements under 40 CFR261.4(a)(24)(vi)(F) of this chapter, 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 paragraphs (a) (1), (2), (3), (4), (5), or (6) of this section:

- (1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this paragraph.
- (i) Each insurance policy must be amended by attachment of the Hazardous Secondary Material Facility Liability Endorsement, or evidenced by a Certificate of Liability Insurance. The wording of the endorsement must be identical to the wording specified in 40 CFR261.151(h). The wording of the certificate of insurance must be identical to the wording specified in 40 CFR261.151(i). The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Regional Administrator, or Regional Administrators if the facilities are located in

more than one Region. If requested by a Regional Administrator, 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 one or more States.
- (2) An owner or operator may meet the requirements of this section by passing a financial test or using the guarantee for liability coverage as specified in paragraphs (f) and (g) of this section.
- (3) An owner or operator may meet the requirements of this section by obtaining a letter of credit for liability coverage as specified in paragraph (h) of this section.
- (4) An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in paragraph (i) of this section.
- (5) An owner or operator may meet the requirements of this section by obtaining a trust fund for liability coverage as specified in paragraph (j) of this section.
- (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 this section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this paragraph, 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 Regional Administrator 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 paragraphs (a)(1) through (a)(6) of this section; 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 secondary material reclamation facility or intermediate facility is entered between the owner or operator and third-party claimant for liability coverage under paragraphs (a)(1) through (a)(6) of this section; 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 secondary material reclamation facility or intermediate facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under paragraphs (a)(1) through (a)(6) of this section.

**(b) Coverage for nonsudden accidental occurrences.**

An owner or operator of a hazardous secondary material reclamation facility or intermediate facility with land-based units, as defined in 40 CFR260.10 of this chapter, which are used to manage hazardous secondary materials excluded under 40 CFR261.4(a)(24) of this chapter 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 this section may combine the required per-occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences must maintain liability coverage in the amount of at least \$4 million per occurrence and \$8 million annual aggregate. This liability coverage may be demonstrated as specified in paragraph (b)(1), (2), (3), (4), (5), or (6) of this section:

- (1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this paragraph.

- (i) Each insurance policy must be amended by attachment of the Hazardous Secondary Material Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement must be identical to the wording specified in 40 CFR261.151(h). The wording of the certificate of insurance must be identical to the wording specified in 40 CFR261.151(i). The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Regional Administrator, or Regional Administrators if the facilities are located in more than one Region. If requested by a Regional Administrator, 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 one or more States.
- (2) An owner or operator may meet the requirements of this section by passing a financial test or using the guarantee for liability coverage as specified in paragraphs (f) and (g) of this section.
  - (3) An owner or operator may meet the requirements of this section by obtaining a letter of credit for liability coverage as specified in paragraph (h) of this section.
  - (4) An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in paragraph (i) of this section.
  - (5) An owner or operator may meet the requirements of this section by obtaining a trust fund for liability coverage as specified in paragraph (j) of this section.
  - (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 this section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this paragraph, 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 Regional Administrator 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 paragraphs (b)(1) through (b)(6) of this section; 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 secondary material treatment and/or storage facility is entered between the owner or operator and third-party claimant for liability coverage under paragraphs (b)(1) through (b)(6) of this section; 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 secondary material treatment and/or storage facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under paragraphs (b)(1) through (b)(6) of this section.

**(c) Request for variance.**

If an owner or operator can demonstrate to the satisfaction of the Regional Administrator that the levels of financial responsibility required by paragraph (a) or (b) of this section are not consistent with the degree and duration of risk associated with treatment and/or storage at the facility or group of facilities, the owner or operator may obtain a variance from the Regional Administrator. The request for a variance must be submitted in writing to the Regional Administrator. If granted, the variance will take the form of an adjusted level of required liability coverage, such level to be based on the Regional Administrator's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. The Regional Administrator may require an owner or operator who requests a variance to provide such technical and engineering information as is deemed necessary by the Regional Administrator to determine a level of financial responsibility other than that required by paragraph (a) or (b) of this section.

**(d) Adjustments by the Regional Administrator.**

If the Regional Administrator determines that the levels of financial responsibility required by paragraph (a) or (b) of this section are not consistent with the degree and duration of risk associated with treatment and/or storage at the facility or group of facilities, the Regional Administrator may adjust the level of financial responsibility required under paragraph (a) or (b) of this section as may be necessary to protect human health and the environment. This adjusted level will be based on the Regional Administrator'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 Regional Administrator 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, pile, or land treatment facility, he may require that an owner or operator of the facility comply with paragraph (b) of this section. An owner or operator must furnish to the Regional Administrator, within a reasonable time, any information which the Regional Administrator requests to determine whether cause exists for such adjustments of level or type of coverage.

**(e) Period of coverage.**

Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that all hazardous secondary materials have been removed from the facility or a unit at the facility and the facility or a unit has been decontaminated in accordance with the approved plan per 40 CFR261.143(h), the Regional Administrator will notify the owner or operator in writing that he is no longer required under 40 CFR261.4(a)(24)(vi)(F) to maintain liability coverage for that facility or a unit at the facility, unless the Regional Administrator has reason to believe that that all hazardous secondary materials have not been removed from the facility or unit at a facility or that the facility or unit has not been decontaminated in accordance with the approved plan.

**(f) Financial test for liability coverage.**

- (1) An owner or operator may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria of paragraph (f)(1) (i) or (ii) of this section:
  - (i) The owner or operator must have:
    - (A) Net working capital and tangible net worth each at least six times the amount of liability coverage to be demonstrated by this test; and
    - (B) Tangible net worth of at least \$10 million; and
    - (C) Assets in the United States amounting to either:
      - (1) At least 90 percent of his total assets; or
      - (2) at least six times the amount of liability coverage to be demonstrated by this test.
  - (ii) The owner or operator must have:
    - (A) 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
    - (B) Tangible net worth of at least \$10 million; and
    - (C) Tangible net worth at least six times the amount of liability coverage to be demonstrated by this test; and
    - (D) Assets in the United States amounting to either:
      - (1) At least 90 percent of his total assets; or
      - (2) 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 paragraph (f)(1) of this section refers to the annual aggregate amounts for which coverage is required under paragraphs (a) and (b) of this section and the annual aggregate amounts for which coverage is required under paragraphs (a) and (b) of 40 CFR 264.147 and 265.147.
- (3) To demonstrate that he meets this test, the owner or operator must submit the following three items to the Regional Administrator:
  - (i) A letter signed by the owner's or operator's chief financial officer and worded as specified in 40 CFR261.151(f). If an owner or operator is using the financial test to demonstrate both assurance

as specified by 40 CFR261.143(e), *and* liability coverage, he must submit the letter specified in 40 CFR261.151(f) to cover both forms of financial responsibility; a separate letter as specified in 40 CFR261.151(e) is not required.

- (ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year.
  - (iii) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies paragraph (f)(1)(i) of this section that are different from the data in the audited financial statements referred to in paragraph (f)(3)(ii) of this section or any other audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of the comparison, and the reasons for any difference.
- (4) The owner or operator may obtain a one-time extension of the time allowed for submission of the documents specified in paragraph (f)(3) of this section 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 Regional Administrator of each Region in which the owner's or operator's facilities to be covered by the financial test are located. 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, the amount of liability coverage and, when applicable, current closure and post-closure 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 paragraph (f)(3) of this section; 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 paragraph (f)(3) of this section, the owner or operator must send updated information to the Regional Administrator within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in paragraph (f)(3) of this section.
- (6) If the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, 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 this section. Evidence of liability coverage must be submitted to the Regional Administrator 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 Regional Administrator 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 paragraph (f)(3)(ii) of this section). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Regional Administrator will evaluate other qualifications on an individual basis. The owner or operator must provide evidence of insurance for the entire amount of required liability coverage as specified in this section within 30 days after notification of disallowance.

**(g) Guarantee for liability coverage.**

- (1) Subject to paragraph (g)(2) of this section, an owner or operator may meet the requirements of this section 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 paragraphs (f)(1) through (f)(6) of this section. The wording of the guarantee must be identical to the wording specified in 40 CFR261.151(g)(2). A certified copy of the guarantee must accompany the items sent to the Regional Administrator as specified in paragraph (f)(3) of this section. 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 corporate guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor will do so up to the limits of coverage.
  - (ii) [Reserved]
- (2)(i) In the case of corporations incorporated in the United States, a guarantee may be used to satisfy the requirements of this section only if the Attorneys General or Insurance Commissioners of:
  - (A) The State in which the guarantor is incorporated; and
  - (B) 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 this section and 40 CFR264.151(g)(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 this section only if:
  - (A) 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
  - (B) 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 EPA that a guarantee executed as described in this section and 40 CFR261.151(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 this section by obtaining an irrevocable standby letter of credit that conforms to the requirements of this paragraph and submitting a copy of the letter of credit to the Regional Administrator.
- (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 40 CFR261.151(j).
- (4) An owner or operator who uses a letter of credit to satisfy the requirements of this section 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 40 CFR261.151(m).

**(i) Surety bond for liability coverage.**

- (1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond that conforms to the requirements of this paragraph and submitting a copy of the bond to the Regional Administrator.
- (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 40 CFR261.151(k) of this chapter.
- (4) A surety bond may be used to satisfy the requirements of this section 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 EPA that a surety bond executed as described in this section and 40 CFR261.151(k) 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 this section by establishing a trust fund that conforms to the requirements of this paragraph and submitting an originally signed duplicate of the trust agreement to the Regional Administrator.
- (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 this section. 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 this section to cover the difference. For purposes of this paragraph, “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 this section, 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 40 CFR261.151(l).

**40 CFR 261.148 Incapacity of owners or operators, guarantors, or financial institutions.**

- (a) An owner or operator must notify the Regional Administrator 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 40 CFR261.143(e) must make such a notification if he is named as debtor, as required under the terms of the corporate guarantee.
- (b) An owner or operator who fulfills the requirements of 40 CFR261.143 or 40 CFR261.147 by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee 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.

**40 CFR 261.149 Use of State-required mechanisms.**

- (a) For a reclamation or intermediate facility located in a State where EPA is administering the requirements of this subpart but where the State has regulations that include requirements for financial assurance of closure or liability coverage, an owner or operator may use State-required financial mechanisms to meet the requirements of 40 CFR 261.143 or 40 CFR261.147 if the Regional Administrator determines that the

State mechanisms are at least equivalent to the financial mechanisms specified in this subpart. The Regional Administrator will evaluate the equivalency of the mechanisms principally in terms of certainty of the availability of: Funds for the required closure activities or liability coverage; and the amount of funds that will be made available. The Regional Administrator may also consider other factors as he deems appropriate. The owner or operator must submit to the Regional Administrator evidence of the establishment of the mechanism together with a letter requesting that the State-required mechanism be considered acceptable for meeting the requirements of this subpart. The submission must include the following information: The facility's EPA Identification Number (if available), name, and address, and the amount of funds for closure or liability coverage assured by the mechanism. The Regional Administrator will notify the owner or operator of his determination regarding the mechanism's acceptability in lieu of financial mechanisms specified in this subpart. The Regional Administrator may require the owner or operator to submit additional information as is deemed necessary to make this determination. Pending this determination, the owner or operator will be deemed to be in compliance with the requirements of 40 CFR 261.143 or 40 CFR 261.147, as applicable.

- (b) If a State-required mechanism is found acceptable as specified in paragraph (a) of this section except for the amount of funds available, the owner or operator may satisfy the requirements of this subpart by increasing the funds available through the State-required mechanism or using additional financial mechanisms as specified in this subpart. The amount of funds available through the State and Federal mechanisms must at least equal the amount required by this subpart.

#### **40 CFR 261.150 State assumption of responsibility.**

- (a) If a State either assumes legal responsibility for an owner's or operator's compliance with the closure or liability requirements of this part or assures that funds will be available from State sources to cover those requirements, the owner or operator will be in compliance with the requirements of 40 CFR 261.143 or 40 CFR 261.147 if the Regional Administrator determines that the State's assumption of responsibility is at least equivalent to the financial mechanisms specified in this subpart. The Regional Administrator will evaluate the equivalency of State guarantees principally in terms of: Certainty of the availability of funds for the required closure activities or liability coverage; and the amount of funds that will be made available. The Regional Administrator may also consider other factors as he deems appropriate. The owner or operator must submit to the Regional Administrator a letter from the State describing the nature of the State's assumption of responsibility together with a letter from the owner or operator requesting that the State's assumption of responsibility be considered acceptable for meeting the requirements of this subpart. The letter from the State must include, or have attached to it, the following information: The facility's EPA Identification Number (if available), name, and address, and the amount of funds for closure or liability coverage that are guaranteed by the State. The Regional Administrator will notify the owner or operator of his determination regarding the acceptability of the State's guarantee in lieu of financial mechanisms specified in this subpart. The Regional Administrator may require the owner or operator to submit additional information as is deemed necessary to make this determination. Pending this determination, the owner or operator will be deemed to be in compliance with the requirements of 40 CFR 265.143 or 40 CFR 265.147, as applicable.
- (b) If a State's assumption of responsibility is found acceptable as specified in paragraph (a) of this section except for the amount of funds available, the owner or operator may satisfy the requirements of this subpart by use of both the State's assurance and additional financial mechanisms as specified in this subpart. The amount of funds available through the State and Federal mechanisms must at least equal the amount required by this subpart.

#### **40 CFR 261.151 Wording of the instruments.**

- (a)(1) A trust agreement for a trust fund, as specified in 40 CFR 261.143(a) must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

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

Whereas, the United States Environmental Protection Agency, “EPA,” an agency of the United States Government, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a facility regulated under parts 264, or 265, or satisfying the conditions of the exclusion under 40 CFR261.4(a)(24) shall provide assurance that funds will be available if needed for care of the facility under 40 CFR parts 264 or 265, subparts G, as applicable ,

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

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

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

Section 1. Definitions. As used in this Agreement:

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

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

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

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the “Fund,” for the benefit of EPA in the event that the hazardous secondary materials of the grantor no longer meet the conditions of the exclusion under 40 CFR 261.4(a)(24). The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by EPA.

Section 4. Payments from the Fund. The Trustee shall make payments from the Fund as the EPA Regional Administrator shall direct, in writing, to provide for the payment of the costs of the performance of activities required under subpart G of 40 CFR parts 264 or 265 for the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the EPA Regional Administrator from the Fund for expenditures for such activities in such amounts as the beneficiary shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the EPA Regional Administrator specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

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

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in

writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- (i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;
- (ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and
- (iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

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

- (a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
- (b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 *et seq.*, including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

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

- (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;
- (b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;
- (d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and
- (e) To compromise or otherwise adjust all claims in favor of or against the Fund.

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

by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

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

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

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

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

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

Section 15. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the appropriate EPA Regional Administrator, or by the Trustee and the appropriate EPA Regional Administrator if the Grantor ceases to exist.

Section 16. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the EPA Regional Administrator, or by the Trustee and the

EPA Regional Administrator, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 17. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the EPA Regional Administrator issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 18. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of [insert name of State].

Section 19. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written: The parties below certify that the wording of this Agreement is identical to the wording specified in 40 CFR 261.151(a)(1) as such regulations were constituted on the date first above written.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

- (2) The following is an example of the certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in 40 CFR 261.143(a) of this chapter. State requirements may differ on the proper content of this acknowledgment.

State of

County of

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

[Signature of Notary Public]

- (b) A surety bond guaranteeing payment into a trust fund, as specified in 40 CFR 261.143(b) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### FINANCIAL GUARANTEE BOND

Date bond executed:

Effective date:

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

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

State of incorporation:

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

EPA Identification Number, name, address and amount(s) for each facility guaranteed by this bond:

Total penal sum of bond: \$

Surety's bond number:

Know All Persons By These Presents, That we, the Principal and Surety(ies) are firmly bound to the U.S. EPA in the event that the hazardous secondary materials at the reclamation or intermediate facility listed below no longer meet the conditions of the exclusion under 40 CFR 261.4(a)(24), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the Resource Conservation and Recovery Act as amended (RCRA), to have a permit or interim status in order to own or operate each facility identified above, or to meet conditions under 40 CFR sections 261.4(a)(24), and

Whereas said Principal is required to provide financial assurance as a condition of permit or interim status or as a condition of an exclusion under 40 CFR sections 261.4(a)(24) and

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

Now, Therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of each facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

Or, if the Principal shall satisfy all the conditions established for exclusion of hazardous secondary materials from coverage as solid waste under 40 CFR sections 261.4(a)(24),

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

Or, if the Principal shall provide alternate financial assurance, as specified in subpart H of 40 CFR part 261, as applicable, and obtain the EPA Regional Administrator's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the EPA Regional Administrator(s) from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

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

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

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is (are) located, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the EPA Regional Administrator(s), as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the EPA Regional Administrator(s) of the EPA Region(s) in which the bonded facility(ies) is (are) located.

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

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the EPA Regional Administrator(s).

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

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 40 CFR 261.151(b) as such regulations were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

CORPORATE SURETY(IES)

[Name and address]

State of incorporation:

Liability limit:

\$

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

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

Bond premium: \$

(c) A letter of credit, as specified in 40 CFR 261.143(c) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Irrevocable Standby Letter of Credit  
Regional Administrator(s)

Region(s)

U.S. Environmental Protection Agency

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No.\_\_\_\_ in your favor, in the event that the hazardous secondary materials at the covered reclamation or intermediary facility(ies) no longer meet the conditions of the exclusion under 40 CFR 261.4(a)(24), at the request and for the account of [owner's or operator's name and address] up to the aggregate amount of [in words] U.S. dollars \$\_\_\_\_, available upon presentation of

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

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the Resource Conservation and Recovery Act of 1976 as amended."

This letter of credit is effective as of [date] and shall expire on [date at least 1 year later], but such expiration date shall be automatically extended for a period of [at least 1 year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the

current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and [owner's or operator's name], as shown on the signed return receipts.

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

We certify that the wording of this letter of credit is identical to the wording specified in 40 CFR 261.151(c) as such regulations were constituted on the date shown immediately below.

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

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

- (d) A certificate of insurance, as specified in 40 CFR 261.143(e) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certificate of Insurance

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

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

Facilities Covered: [List for each facility: The EPA Identification Number (if any issued), name, address, and the amount of insurance for all facilities covered, which must total the face amount shown below.

Face Amount:

Policy Number:

Effective Date:

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance so that in accordance with applicable regulations all hazardous secondary materials can be removed from the facility or any unit at the facility and the facility or any unit at the facility can be decontaminated at the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of 40 CFR 261.143(d) as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the EPA Regional Administrator(s) of the U.S. Environmental Protection Agency, the Insurer agrees to furnish to the EPA Regional Administrator(s) a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in 40 CFR 261.151(d) such regulations were constituted on the date shown immediately below.

[Authorized signature for Insurer]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

[Date]

- (e) A letter from the chief financial officer, as specified in 40 CFR 261.143(e) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Letter From Chief Financial Officer

[Address to Regional Administrator of every Region in which facilities for which financial responsibility is to be demonstrated through the financial test are located].

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance, as specified in subpart H of 40 CFR part 261.

[Fill out the following nine paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number (if any issued), name, address, and current cost estimates.]

1. This firm is the owner or operator of the following facilities for which financial assurance is demonstrated through the financial test specified in subpart H of 40 CFR 261. The current cost estimates covered by the test are shown for each facility: \_\_\_\_\_.
2. This firm guarantees, through the guarantee specified in subpart H of 40 CFR part 261, the following facilities owned or operated by the guaranteed party. The current cost estimates so guaranteed are shown for each facility: \_\_\_\_\_. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee\_\_\_\_, or (3) engaged in the following substantial business relationship with the owner or operator \_\_\_\_\_, and receiving the following value in consideration of this guarantee\_\_\_\_\_]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].
3. In States where EPA is not administering the financial requirements of subpart H of 40 CFR part 261, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in subpart H of 40 CFR part 261. The current cost estimates covered by such a test are shown for each facility:\_\_\_\_\_.
4. This firm is the owner or operator of the following hazardous secondary materials management facilities for which financial assurance is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in subpart H of 40 CFR part 261 or equivalent or substantially equivalent State mechanisms. The current cost estimates not covered by such financial assurance are shown for each facility:\_\_\_\_\_.
5. This firm is the owner or operator of the following UIC facilities for which financial assurance for plugging and abandonment is required under part 144. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility:\_\_\_\_\_.
6. This firm is the owner or operator of the following facilities for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in subpart H of 40 CFR parts 264 and 265. The current closure and/or post-closure cost estimates covered by the test are shown for each facility:\_\_\_\_\_.
7. This firm guarantees, through the guarantee specified in subpart H of 40 CFR parts 264 and 265, the closure or post-closure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: \_\_\_\_\_. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee \_\_\_\_; or (3) engaged in the following substantial business relationship with the owner or operator \_\_, and receiving the following value in consideration of this guarantee \_\_]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].
8. In States where EPA is not administering the financial requirements of subpart H of 40 CFR part 264 or 265, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in subpart H of 40 CFR parts 264 and 265. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility:\_\_\_\_\_.
9. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in subpart H of 40 CFR parts 264 and 265 or equivalent or substantially equivalent State mechanisms. The current

closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: \_\_.

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

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

[Fill in Alternative I if the criteria of paragraph (e)(1)(i) of 40 CFR 261.143 of this chapter are used. Fill in Alternative II if the criteria of paragraph (e)(1)(ii) of 40 CFR 261.143(e) of this chapter are used.]

#### Alternative I

1. Sum of current cost estimates [total of all cost estimates shown in the nine paragraphs above] \$\_\_
- \*2. Total liabilities [if any portion of the cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4] \$\_\_
- \*3. Tangible net worth \$\_\_\_\_
- \*4. Net worth \$\_\_\_\_ -
- \*5. Current assets \$\_\_\_\_
- \*6. Current liabilities \$\_\_\_\_
7. Net working capital [line 5 minus line 6] \$\_\_\_\_
- \*8. The sum of net income plus depreciation, depletion, and amortization \$\_\_\_\_ -
- \*9. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) \$\_\_\_\_ -
10. Is line 3 at least \$10 million? (Yes/No) \_\_\_\_
11. Is line 3 at least 6 times line 1? (Yes/No) \_\_\_\_ -
12. Is line 7 at least 6 times line 1? (Yes/No) \_\_\_\_ -
- \*13. Are at least 90% of firm's assets located in the U.S.? If not, complete line 14 (Yes/No) \_\_\_\_
14. Is line 9 at least 6 times line 1? (Yes/No) \_\_\_\_ -
15. Is line 2 divided by line 4 less than 2.0? (Yes/No) \_\_\_\_ -
16. Is line 8 divided by line 2 greater than 0.1? (Yes/No) \_\_\_\_ -
17. Is line 5 divided by line 6 greater than 1.5? (Yes/No) \_\_\_\_ -

#### Alternative II

1. Sum of current cost estimates [total of all cost estimates shown in the eight paragraphs above] \$\_\_\_\_ -
2. Current bond rating of most recent issuance of this firm and name of rating service \_\_\_\_ -
3. Date of issuance of bond \_\_\_\_ -
4. Date of maturity of bond \_\_\_\_ -
- \*5. Tangible net worth [if any portion of the cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line] \$\_\_\_\_ -
- \*6. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) \$\_\_\_\_ -
7. Is line 5 at least \$10 million? (Yes/No) \_\_\_\_
8. Is line 5 at least 6 times line 1? (Yes/No) \_\_\_\_
- \*9. Are at least 90% of firm's assets located in the U.S.? If not, complete line 10 (Yes/No) \_\_\_\_
10. Is line 6 at least 6 times line 1? (Yes/No) \_\_\_\_ -

I hereby certify that the wording of this letter is identical to the wording specified in 40 CFR 261.151(e) as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

- (f) A letter from the chief financial officer, as specified in Sec. 261.147(f) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

## Letter From Chief Financial Officer

[Address to Regional Administrator of every Region in which facilities for which financial responsibility is to be demonstrated through the financial test are located].

I am the chief financial officer of [firm's name and address]. This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage under 40 CFR 261.147 [insert "and costs assured 40 CFR 261.143(e)" if applicable] as specified in subpart H of 40 CFR part 261.

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

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified in subpart H of 40 CFR part 261: \_\_\_\_\_

The firm identified above guarantees, through the guarantee specified in subpart H of 40 CFR part 261, liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the following: \_\_\_\_-. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee - \_\_\_\_; or (3) engaged in the following substantial business relationship with the owner or operator \_\_\_\_-, and receiving the following value in consideration of this guarantee \_\_\_\_-]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.]

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified in subpart H of 40 CFR parts 264 and 265: \_\_\_\_\_

The firm identified above guarantees, through the guarantee specified in subpart H of 40 CFR parts 264 and 265, liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the following: \_\_. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee \_\_; or (3) engaged in the following substantial business relationship with the owner or operator \_\_, and receiving the following value in consideration of this guarantee \_\_]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.]

[If you are using the financial test to demonstrate coverage of both liability and costs assured under 40 CFR 261.143(e) or closure or post-closure care costs under 40 CFR 264.143, 264.145, 265.143 or 265.145, fill in the following nine paragraphs regarding facilities and associated cost estimates. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA identification number (if any issued), name, address, and current cost estimates.]

1. This firm is the owner or operator of the following facilities for which financial assurance is demonstrated through the financial test specified in subpart H of 40 CFR 261. The current cost estimates covered by the test are shown for each facility: \_\_\_\_\_.
2. This firm guarantees, through the guarantee specified in subpart H of 40 CFR part 261, the following facilities owned or operated by the guaranteed party. The current cost estimates so guaranteed are shown for each facility: \_\_\_\_\_. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee \_\_\_\_\_, or (3) engaged in the following substantial business relationship with the owner or operator \_\_\_\_\_, and receiving the following value in consideration of this guarantee \_\_\_\_\_]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].
3. In States where EPA is not administering the financial requirements of subpart H of 40 CFR part 261, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the following facilities

- through the use of a test equivalent or substantially equivalent to the financial test specified in subpart H of 40 CFR part 261. The current cost estimates covered by such a test are shown for each facility: \_\_\_\_.
4. This firm is the owner or operator of the following hazardous secondary materials management facilities for which financial assurance is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in subpart H of 40 CFR part 261 or equivalent or substantially equivalent State mechanisms. The current cost estimates not covered by such financial assurance are shown for each facility: \_\_\_\_.
  5. This firm is the owner or operator of the following UIC facilities for which financial assurance for plugging and abandonment is required under part 144. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility: \_\_\_\_.
  6. This firm is the owner or operator of the following facilities for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in subpart H of 40 CFR parts 264 and 265. The current closure and/or post-closure cost estimates covered by the test are shown for each facility: \_\_\_\_.
  7. This firm guarantees, through the guarantee specified in subpart H of 40 CFR parts 264 and 265, the closure or post-closure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: \_\_\_\_\_. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee \_\_\_\_; or (3) engaged in the following substantial business relationship with the owner or operator \_\_\_\_, and receiving the following value in consideration of this guarantee \_\_\_\_].
- [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].
8. In States where EPA is not administering the financial requirements of subpart H of 40 CFR part 264 or 265, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in subpart H of 40 CFR parts 264 and 265. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility: \_\_\_\_.
  9. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in subpart H of 40 CFR parts 264 and 265 or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: \_\_\_\_.

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

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

#### PART A. LIABILITY COVERAGE FOR ACCIDENTAL OCCURRENCES

[Fill in Alternative I if the criteria of paragraph (f)(1)(i) of Sec. 261.147 are used. Fill in Alternative II if the criteria of paragraph (f)(1)(ii) of Sec. 261.147 are used.]

##### ALTERNATIVE I

1. Amount of annual aggregate liability coverage to be demonstrated \$ \_\_\_\_-.
- \*2. Current assets \$ \_\_\_\_-.
- \*3. Current liabilities \$ \_\_\_\_-.
4. Net working capital (line 2 minus line 3) \$ \_\_\_\_-.
- \*5. Tangible net worth \$ \_\_\_\_-.

- \*6. If less than 90% of assets are located in the U.S., give total U.S. assets \$ \_\_\_\_ -.
- 7. Is line 5 at least \$10 million? (Yes/No) \_\_\_\_ -.
- 8. Is line 4 at least 6 times line 1? (Yes/No) \_\_\_\_ -.
- 9. Is line 5 at least 6 times line 1? (Yes/No) \_\_\_\_ -.
- \*10. Are at least 90% of assets located in the U.S.? (Yes/No) \_\_\_\_ . If not, complete line 11.
- 11. Is line 6 at least 6 times line 1? (Yes/No) \_\_\_\_ .

ALTERNATIVE II

- 1. Amount of annual aggregate liability coverage to be demonstrated \$ \_\_\_\_ -.
- 2. Current bond rating of most recent issuance and name of rating service \_\_\_\_ - \_\_\_\_ -.
- 3. Date of issuance of bond \_\_\_\_\_ -.
- 4. Date of maturity of bond \_\_\_\_\_ -.
- \*5. Tangible net worth \$ \_\_\_\_ -.
- \*6. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.) \$ \_\_\_\_ -.
- 7. Is line 5 at least \$10 million? (Yes/No) \_\_\_\_ -.
- 8. Is line 5 at least 6 times line 1? \_\_\_\_ -.
- 9. Are at least 90% of assets located in the U.S.? If not, complete line 10. (Yes/No) \_\_\_\_ .
- 10. Is line 6 at least 6 times line 1? \_\_\_\_ -.

[Fill in part B if you are using the financial test to demonstrate assurance of both liability coverage and costs assured under 40 CFR 261.143(e) or closure or post-closure care costs under 40 CFR 264.143, 264.145, 265.143 or 265.145.]

PART B. FACILITY CARE AND LIABILITY COVERAGE

[Fill in Alternative I if the criteria of paragraphs (e)(1)(i) of Sec. 261.143 and (f)(1)(i) of Sec. 261.147 are used. Fill in Alternative II if the criteria of paragraphs (e)(1)(ii) of Sec. 261.143 and (f)(1)(ii) of Sec. 261.147 are used.]

ALTERNATIVE I

- 1. Sum of current cost estimates (total of all cost estimates listed above) \$ \_\_\_\_ -
- 2. Amount of annual aggregate liability coverage to be demonstrated \$ \_\_\_\_ -
- 3. Sum of lines 1 and 2 \$ \_\_\_\_
- \*4. Total liabilities (if any portion of your cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6) \$ \_\_\_\_ -
- \*5. Tangible net worth \$ \_\_\_\_
- \*6. Net worth \$ \_\_\_\_ -
- \*7. Current assets \$ \_\_\_\_
- \*8. Current liabilities \$ \_\_\_\_
- 9. Net working capital (line 7 minus line 8) \$ \_\_\_\_
- \*10. The sum of net income plus depreciation, depletion, and amortization \$ \_\_\_\_ -
- \*11. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.) \$ \_\_\_\_
- 12. Is line 5 at least \$10 million? (Yes/No)
- 13. Is line 5 at least 6 times line 3? (Yes/No)
- 14. Is line 9 at least 6 times line 3? (Yes/No)
- \*15. Are at least 90% of assets located in the U.S.? (Yes/No) If not, complete line 16.
- 16. Is line 11 at least 6 times line 3? (Yes/No)
- 17. Is line 4 divided by line 6 less than 2.0? (Yes/No)
- 18. Is line 10 divided by line 4 greater than 0.1? (Yes/No)
- 19. Is line 7 divided by line 8 greater than 1.5? (Yes/No)

ALTERNATIVE II

- 1. Sum of current cost estimates (total of all cost estimates listed above) \$ \_\_\_\_ -
- 2. Amount of annual aggregate liability coverage to be demonstrated \$ \_\_\_\_ -
- 3. Sum of lines 1 and 2 \$ \_\_\_\_

4. Current bond rating of most recent issuance and name of rating service \_\_\_\_\_ -
5. Date of issuance of bond \_\_\_\_\_ -
6. Date of maturity of bond \_\_\_\_\_ -
- \*7. Tangible net worth (if any portion of the cost estimates is included in "total liabilities" on your financial statements you may add that portion to this line) \$ \_\_\_\_\_ -
- \*8. Total assets in the U.S. (required only if less than 90% of assets are located in the U.S.) \$ \_\_\_\_\_ -
9. Is line 7 at least \$10 million? (Yes/No)
10. Is line 7 at least 6 times line 3? (Yes/No)
- \*11. Are at least 90% of assets located in the U.S.? (Yes/No) If not complete line 12.
12. Is line 8 at least 6 times line 3? (Yes/No)

I hereby certify that the wording of this letter is identical to the wording specified in 40 CFR 261.151(f) as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

- (g)(1) A corporate guarantee, as specified in 40 CFR 261.143(e) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### CORPORATE GUARANTEE FOR FACILITY CARE

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the State of [insert name of State], herein referred to as guarantor. This guarantee is made on behalf of the [owner or operator] of [business address], which is [one of the following: "our subsidiary"; "a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary"; or "an entity with which guarantor has a substantial business relationship, as defined in 40 CFR 264.141(h) and 265.141(h)"] to the United States Environmental Protection Agency (EPA).

#### RECITALS

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in 40 CFR 261.143(e).
2. [Owner or operator] owns or operates the following facility(ies) covered by this guarantee: [List for each facility: EPA Identification Number (if any issued), name, and address.
3. "Closure plans" as used below refer to the plans maintained as required by subpart H of 40 CFR part 261 for the care of facilities as identified above.
4. For value received from [owner or operator], guarantor guarantees that in the event of a determination by the Regional Administrator that the hazardous secondary materials at the owner or operator's facility covered by this guarantee do not meet the conditions of the exclusion under 40 CFR 261.4(a)(24), the guarantor will dispose of any hazardous secondary material as hazardous waste, and close the facility in accordance with closure requirements found in parts 264 or 265 of this chapter, as applicable, or establish a trust fund as specified in 40 CFR 261.143(a) in the name of the owner or operator in the amount of the current cost estimate.
5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is(are) located and to [owner or operator] that he intends to provide alternate financial assurance as specified in subpart H of 40 CFR part 261, as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [owner or operator] has done so.
6. The guarantor agrees to notify the EPA Regional Administrator by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by an EPA Regional Administrator of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate financial assurance as specified in of 40 CFR parts 264, 265, or subpart H of 40 CFR part 261, as applicable, in the name of [owner or operator] unless [owner or operator] has done so.
8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure plan, the extension or reduction of the time of performance, or any other modification or alteration of an obligation of the owner or operator pursuant to 40 CFR parts 264, 265, or Subpart H of 40 CFR part 261.
9. Guarantor agrees to remain bound under this guarantee for as long as [owner or operator] must comply with the applicable financial assurance requirements of 40 CFR parts 264 and 265 or the financial assurance condition of 40 CFR 261.4(a)(24)(vi)(F) for the above-listed facilities, except as provided in paragraph 10 of this agreement.
10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:  
 Guarantor may terminate this guarantee by sending notice by certified mail to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is(are) located and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the EPA Regional Administrator(s) approve(s), alternate coverage complying with 40 CFR 261.143.  
 [Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator]  
 Guarantor may terminate this guarantee 120 days following the receipt of notification, through certified mail, by the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is(are) located and by [the owner or operator].
11. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance as specified in 40 CFR parts 264, 265, or subpart H of 40 CFR 261, as applicable, and obtain written approval of such assurance from the EPA Regional Administrator(s) within 90 days after a notice of cancellation by the guarantor is received by an EPA Regional Administrator from guarantor, guarantor shall provide such alternate financial assurance in the name of [owner or operator].
12. Guarantor expressly waives notice of acceptance of this guarantee by the EPA or by [owner or operator]. Guarantor also expressly waives notice of amendments or modifications of the closure plan and of amendments or modifications of the applicable requirements of 40 CFR parts 264, 265, or subpart H of 40 CFR 261.  
 I hereby certify that the wording of this guarantee is identical to the wording specified in 40 CFR 261.151(g)(1) as such regulations were constituted on the date first above written.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

- (2) A guarantee, as specified in Sec. 261.147(g) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### GUARANTEE FOR LIABILITY COVERAGE

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of [if incorporated within the United States insert "the State of \_\_\_\_-" and insert name of State; if incorporated outside the United States insert the name of the country in which incorporated, the principal place of business within the United States, and the name and address of the registered agent in the State of the principal place of business], herein referred to as guarantor. This guarantee is made on behalf of [owner or operator] of [business address], which is one of the following: "our subsidiary;" "a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary;" or "an entity with

which guarantor has a substantial business relationship, as defined in 40 CFR [either 264.141(h) or 265.141(h)]”, to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

#### RECITALS

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in 40 CFR 261.147(g).
2. [Owner or operator] owns or operates the following facility(ies) covered by this guarantee: [List for each facility: EPA identification number (if any issued), name, and address; and if guarantor is incorporated outside the United States list the name and address of the guarantor's registered agent in each State.] This corporate guarantee satisfies RCRA third-party liability requirements for [insert “sudden” or “nonsudden” or “both sudden and nonsudden”] accidental occurrences in above-named owner or operator facilities for coverage in the amount of [insert dollar amount] for each occurrence and [insert dollar amount] annual aggregate.
3. For value received from [owner or operator], guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operations of the facility(ies) covered by this guarantee that in the event that [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [sudden and/or nonsudden] accidental occurrences, arising from the operation of the above-named facilities, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s) or settlement agreement(s) up to the limits of coverage identified above.
4. Such obligation does not apply to any of the following:
  - (a) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert owner or operator] would be obligated to pay in the absence of the contract or agreement.
  - (b) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.
  - (c) Bodily injury to:
    - (1) An employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator]; or
    - (2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert owner or operator]. This exclusion applies:
      - (A) Whether [insert owner or operator] may be liable as an employer or in any other capacity; and
      - (B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).
  - (d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.
  - (e) Property damage to:
    - (1) Any property owned, rented, or occupied by [insert owner or operator];
    - (2) Premises that are sold, given away or abandoned by [insert owner or operator] if the property damage arises out of any part of those premises;
    - (3) Property loaned to [insert owner or operator];
    - (4) Personal property in the care, custody or control of [insert owner or operator];
    - (5) That particular part of real property on which [insert owner or operator] or any contractors or subcontractors working directly or indirectly on behalf of [insert owner or operator] are performing operations, if the property damage arises out of these operations.
5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to

the EPA Regional Administrator[s] for the Region[s] in which the facility[ies] is[are] located and to [owner or operator] that he intends to provide alternate liability coverage as specified in 40 CFR 261.147, as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless [owner or operator] has done so.

6. The guarantor agrees to notify the EPA Regional Administrator by certified mail of a voluntary or involuntary proceeding under title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding. Guarantor agrees that within 30 days after being notified by an EPA Regional Administrator of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate liability coverage as specified in 40 CFR 261.147 in the name of [owner or operator], unless [owner or operator] has done so.
7. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability requirements set by 40 CFR 261.147, provided that such modification shall become effective only if a Regional Administrator does not disapprove the modification within 30 days of receipt of notification of the modification.
8. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable requirements of 40 CFR 261.147 for the above-listed facility(ies), except as provided in paragraph 10 of this agreement.
9. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:
10. Guarantor may terminate this guarantee by sending notice by certified mail to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is(are) located and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the EPA Regional Administrator(s) approve(s), alternate liability coverage complying with 40 CFR 261.147.

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

Guarantor may terminate this guarantee 120 days following receipt of notification, through certified mail, by the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is(are) located and by [the owner or operator].

11. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.
12. Guarantor agrees that this guarantee is in addition to and does not affect any other responsibility or liability of the guarantor with respect to the covered facilities.
13. The Guarantor shall satisfy a third-party liability claim only on receipt of one of the following documents:
  - (a) Certification from the Principal and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### CERTIFICATION OF VALID CLAIM

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

[Signatures]

Principal

(Notary) Date

[Signatures]

Claimant(s)

(Notary) Date

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

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

I hereby certify that the wording of the guarantee is identical to the wording specified in 40 CFR 261.151(g)(2) as such regulations were constituted on the date shown immediately below.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

- (h) A hazardous waste facility liability endorsement as required 40 CFR 261.147 must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

HAZARDOUS SECONDARY MATERIAL RECLAMATION/INTERMEDIATE FACILITY LIABILITY ENDORSEMENT

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with the insured's obligation to demonstrate financial responsibility under 40 CFR 261.147. The coverage applies at [list EPA Identification Number (if any issued), name, and address for each facility] for [insert "sudden accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental occurrences"]; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs.
2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):
  - (a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy to which this endorsement is attached.
  - (b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in 40 CFR 261.147(f).
  - (c) Whenever requested by a Regional Administrator of the U.S. Environmental Protection Agency (EPA), the Insurer agrees to furnish to the Regional Administrator a signed duplicate original of the policy and all endorsements.
  - (d) Cancellation of this endorsement, whether by the Insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the facility, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the Regional Administrator(s) of the EPA Region(s) in which the facility(ies) is(are) located.
  - (e) Any other termination of this endorsement will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the Regional Administrator(s) of the EPA Region(s) in which the facility(ies) is (are) located.

Attached to and forming part of policy No. \_\_\_ issued by [name of Insurer], herein called the Insurer, of [address of Insurer] to [name of insured] of [address] this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_. The effective date of said policy is \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

I hereby certify that the wording of this endorsement is identical to the wording specified in 40 CFR 261.151(h) as such regulation was constituted on the date first above written, and that the Insurer is

licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

[Signature of Authorized Representative of Insurer]

[Type name]

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

[Address of Representative]

- (i) A certificate of liability insurance as required in 40 CFR 261.147 must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

HAZARDOUS SECONDARY MATERIAL RECLAMATION/INTERMEDIATE FACILITY CERTIFICATE OF LIABILITY INSURANCE

1. [Name of Insurer], (the "Insurer"), of [address of Insurer] hereby certifies that it has issued liability insurance covering bodily injury and property damage to [name of insured], (the "insured"), of [address of insured] in connection with the insured's obligation to demonstrate financial responsibility under 40 CFR parts 264, 265, and the financial assurance condition of 40 CFR 261.4(a)(24)(vi)(F). The coverage applies at [list EPA Identification Number (if any issued), name, and address for each facility] for [insert "sudden accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs. The coverage is provided under policy number, issued on [date]. The effective date of said policy is [date].
2. The Insurer further certifies the following with respect to the insurance described in Paragraph 1:
  - (a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy.
  - (b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in 40 CFR 261.147.
  - (c) Whenever requested by a Regional Administrator of the U.S. Environmental Protection Agency (EPA), the Insurer agrees to furnish to the Regional Administrator a signed duplicate original of the policy and all endorsements.
  - (d) Cancellation of the insurance, whether by the insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the Regional Administrator(s) of the EPA Region(s) in which the facility(ies) is(are) located.
  - (e) Any other termination of the insurance will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the Regional Administrator(s) of the EPA Region(s) in which the facility(ies) is (are) located.

I hereby certify that the wording of this instrument is identical to the wording specified in 40 CFR 261.151(i) as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

[Signature of authorized representative of Insurer]

[Type name]

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

[Address of Representative]

- (j) A letter of credit, as specified in 40 CFR 261.147(h) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

IRREVOCABLE STANDBY LETTER OF CREDIT

Name and Address of Issuing Institution

Regional Administrator(s)

Region(s)

U.S. Environmental Protection Agency

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. \_\_\_\_-\_\_\_\_\_ in the favor of [“any and all third-party liability claimants” or insert name of trustee of the standby trust fund], at the request and for the account of [owner or operator's name and address] for third-party liability awards or settlements up to [in words] U.S. dollars \$\_\_\_\_-\_\_\_\_\_ per occurrence and the annual aggregate amount of [in words] U.S. dollars \$\_\_\_\_-, for sudden accidental occurrences and/or for third-party liability awards or settlements up to the amount of [in words] U.S. dollars \$\_\_\_\_-\_\_\_\_\_ per occurrence, and the annual aggregate amount of [in words] U.S. dollars \$\_\_\_\_-\_\_\_\_\_, for nonsudden accidental occurrences available upon presentation of a sight draft bearing reference to this letter of credit No. \_\_\_\_-\_\_\_\_\_, and [insert the following language if the letter of credit is being used without a standby trust fund: (1) a signed certificate reading as follows:

CERTIFICATE OF VALID CLAIM

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

- (a) Bodily injury or property damage for which [insert principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal] would be obligated to pay in the absence of the contract or agreement.
- (b) Any obligation of [insert principal] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.
- (c) Bodily injury to:
  - (1) An employee of [insert principal] arising from, and in the course of, employment by [insert principal]; or
  - (2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal].This exclusion applies:
  - (A) Whether [insert principal] may be liable as an employer or in any other capacity; and
  - (B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).
- (d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.
- (e) Property damage to:
  - (1) Any property owned, rented, or occupied by [insert principal];
  - (2) Premises that are sold, given away or abandoned by [insert principal] if the property damage arises out of any part of those premises;
  - (3) Property loaned to [insert principal];
  - (4) Personal property in the care, custody or control of [insert principal];
  - (5) That particular part of real property on which [insert principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert principal] are performing operations, if the property damage arises out of these operations.

[Signatures]

Grantor

[Signatures]  
Claimant(s)

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

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

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

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

We certify that the wording of this letter of credit is identical to the wording specified in 40 CFR 261.151(j) as such regulations were constituted on the date shown immediately below. [Signature(s) and title(s) of official(s) of issuing institution] [Date].

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

- (k) A surety bond, as specified in Sec. 261.147(i) of this chapter, must be worded as follows: except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

PAYMENT BOND

Surety Bond No. [Insert number]

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

EPA Identification Number (if any issued), name, and address for each facility guaranteed by this bond: \_\_

Nonsudden  
Sudden accidental  
accidental  
occurrences  
occurrences

Penal Sum Per Occurrence	[insert amount]	[insert amount]
Annual Aggregate	[insert amount]	[insert amount]

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

Governing Provisions:

- (1) Section 3004 of the Resource Conservation and Recovery Act of 1976, as amended.
- (2) Rules and regulations of the U.S. Environmental Protection Agency (EPA), particularly 40 CFR parts 264, 265, and Subpart H of 40 CFR part 261 (if applicable).
- (3) Rules and regulations of the governing State agency (if applicable) [insert citation].

Conditions:

- (1) The Principal is subject to the applicable governing provisions that require the Principal to have and maintain liability coverage for bodily injury and property damage to third parties caused by [“sudden” and/or “nonsudden”] accidental occurrences arising from operations of the facility or group of facilities. Such obligation does not apply to any of the following:
  - (a) Bodily injury or property damage for which [insert Principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Principal] would be obligated to pay in the absence of the contract or agreement.
  - (b) Any obligation of [insert Principal] under a workers' compensation, disability benefits, or unemployment compensation law or similar law.
  - (c) Bodily injury to:
    - (1) An employee of [insert Principal] arising from, and in the course of, employment by [insert principal]; or
    - (2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Principal]. This exclusion applies:
      - (A) Whether [insert Principal] may be liable as an employer or in any other capacity; and
      - (B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).
  - (d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.
  - (e) Property damage to:
    - (1) Any property owned, rented, or occupied by [insert Principal];
    - (2) Premises that are sold, given away or abandoned by [insert Principal] if the property damage arises out of any part of those premises;
    - (3) Property loaned to [insert Principal];
    - (4) Personal property in the care, custody or control of [insert Principal];
    - (5) That particular part of real property on which [insert Principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert Principal] are performing operations, if the property damage arises out of these operations.
- (2) This bond assures that the Principal will satisfy valid third party liability claims, as described in condition 1.
- (3) If the Principal fails to satisfy a valid third party liability claim, as described above, the Surety(ies) becomes liable on this bond obligation.
- (4) The Surety(ies) shall satisfy a third party liability claim only upon the receipt of one of the following documents:
  - (a) Certification from the Principal and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATION OF VALID CLAIM

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

[Signature]  
Principal

[Notary] Date  
[Signature(s)]  
Claimant(s)  
[Notary] Date

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

- (5) In the event of combination of this bond with another mechanism for liability coverage, this bond will be considered [insert "primary" or "excess"] coverage.
- (6) The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum, provided that the Surety(ies) furnish(es) notice to the Regional Administrator forthwith of all claims filed and payments made by the Surety(ies) under this bond.
- (7) The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and the USEPA Regional Administrator for Region [Region ], provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal and the Regional Administrator, as evidenced by the return receipt.
- (8) The Principal may terminate this bond by sending written notice to the Surety(ies) and to the EPA Regional Administrator(s) of the EPA Region(s) in which the bonded facility(ies) is (are) located.
- (9) The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules and regulations and agree(s) that no such amendment shall in any way alleviate its (their) obligation on this bond.
- (10) This bond is effective from [insert date] (12:01 a.m., standard time, at the address of the Principal as stated herein) and shall continue in force until terminated as described above.

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

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 40 CFR 261.151(k), as such regulations were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)]  
[Name(s)]  
[Title(s)]  
[Corporate Seal]

CORPORATE SURETY[IES]

[Name and address]

State of incorporation:

Liability Limit: \$

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

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

Bond premium: \$

(l)(1) A trust agreement, as specified in 40 CFR 261.147(j) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

## Trust Agreement

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

Whereas, the United States Environmental Protection Agency, "EPA," an agency of the United States Government, has established certain regulations applicable to the Grantor, requiring that an owner or operator must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

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

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

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

**Section 1. Definitions.** As used in this Agreement:

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

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

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

- (a) Bodily injury or property damage for which [insert Grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Grantor] would be obligated to pay in the absence of the contract or agreement.
- (b) Any obligation of [insert Grantor] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.
- (c) Bodily injury to:
  - (1) An employee of [insert Grantor] arising from, and in the course of, employment by [insert Grantor]; or
  - (2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Grantor]. This exclusion applies:
    - (A) Whether [insert Grantor] may be liable as an employer or in any other capacity; and
    - (B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).
- (d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.
- (e) Property damage to:
  - (1) Any property owned, rented, or occupied by [insert Grantor];
  - (2) Premises that are sold, given away or abandoned by [insert Grantor] if the property damage arises out of any part of those premises;
  - (3) Property loaned to [insert Grantor];
  - (4) Personal property in the care, custody or control of [insert Grantor];

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

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

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

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

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

Certification of Valid Claim

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

[Signatures]

Grantor

[Signatures]

Claimant(s)

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

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

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

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

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

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

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

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

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

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

- (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;
- (b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;
- (d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and
- (e) To compromise or otherwise adjust all claims in favor of or against the Fund.

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

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

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

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

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

appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the EPA Regional Administrator, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

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

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

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

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

The Regional Administrator will agree to termination of the Trust when the owner or operator substitutes alternate financial assurance as specified in this section.

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

**Section 19.** Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of [enter name of State].

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

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above

written. The parties below certify that the wording of this Agreement is identical to the wording specified in 40 CFR 261.151(l) as such regulations were constituted on the date first above written.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

- (2) The following is an example of the certification of acknowledgement which must accompany the trust agreement for a trust fund as specified in Sec. 261.147(j) of this chapter. State requirements may differ on the proper  
State of  
County of

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

[Signature of Notary Public]

- (m)(1) A standby trust agreement, as specified in 40 CFR 261.147(h) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

## Standby Trust Agreement

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

Whereas the United States Environmental Protection Agency, "EPA," an agency of the United States Government, has established certain regulations applicable to the Grantor, requiring that an owner or operator must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the Grantor has elected to establish a standby trust into which the proceeds from a letter of credit may be deposited to assure all or part of such financial responsibility for the facilities identified herein.

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

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

**Section 1.** Definitions. As used in this Agreement:

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

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

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

- (a) Bodily injury or property damage for which [insert Grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Grantor] would be obligated to pay in the absence of the contract or agreement.
- (b) Any obligation of [insert Grantor] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.
- (c) Bodily injury to:
  - (1) An employee of [insert Grantor] arising from, and in the course of, employment by [insert Grantor]; or
  - (2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Grantor].

This exclusion applies:

- (A) Whether [insert Grantor] may be liable as an employer or in any other capacity; and
  - (B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).
- (d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.
  - (e) Property damage to:
    - (1) Any property owned, rented, or occupied by [insert Grantor];
    - (2) Premises that are sold, given away or abandoned by [insert Grantor] if the property damage arises out of any part of those premises;

- (3) Property loaned by [insert Grantor];
- (4) Personal property in the care, custody or control of [insert Grantor];
- (5) That particular part of real property on which [insert Grantor] or any contractors or subcontractors working directly or indirectly on behalf of [insert Grantor] are performing operations, if the property damage arises out of these operations.

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

The Fund is established initially as consisting of the proceeds of the letter of credit deposited into the Fund. Such proceeds and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by EPA.

**Section 4.** Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by drawing on the letter of credit described in Schedule B and by making payments from the Fund only upon receipt of one of the following documents:

- (a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid.

The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

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

[Signature]

Grantor

[Signatures]

Claimant(s)

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

Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of the proceeds from the letter of credit drawn upon by the Trustee in accordance with the requirements of 40 CFR 261.151(k) and Section 4 of this Agreement.

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

- (i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;
- (ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or a State government; and
- (iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

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

- (a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
- (b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 *et seq.*, including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

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

- (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;
- (b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;
- (d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and
- (e) To compromise or otherwise adjust all claims in favor of or against the Fund.

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

**Section 10.** Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

**Section 11.** Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

**Section 12.** Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the EPA Regional Administrator and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

**Section 13.** Instructions to the Trustee. All orders, requests, certifications of valid claims, and instructions to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the EPA Regional Administrator hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or EPA, except as provided for herein.

**Section 14.** Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the EPA Regional Administrator, or by the Trustee and the EPA Regional Administrator if the Grantor ceases to exist.

**Section 15.** Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the EPA Regional Administrator, or by the Trustee and the EPA Regional Administrator, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be paid to the Grantor.

The Regional Administrator will agree to termination of the Trust when the owner or operator substitutes alternative financial assurance as specified in this section.

**Section 16.** Immunity and indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor and the EPA Regional Administrator issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

**Section 17.** Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of [enter name of State].

**Section 18.** Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation of the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 40 CFR 261.151(m) as such regulations were constituted on the date first above written.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

- (2) The following is an example of the certification of acknowledgement which must accompany the trust agreement for a standby trust fund as specified in section 261.147(h) of this chapter. State requirements may differ on the proper content of this acknowledgement.

State of

County of

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said

corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/ his name thereto by like order.  
[Signature of Notary Public]

## **Appendix H**

### **Hazardous Waste Section, Compliance Branch Regional Inspector Map**

Link to the most current version of the Hazardous Waste Section, Compliance Branch, Regional Inspector Map:

<https://www.deq.nc.gov/compliance-map-inspector/download?attachment?attachment>