4/16/19

Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
February 15, 2019

This is to certify that the Minutes contained herein are a true and accurate account of actions taken by the Alabama Environmental Management Commission on February 15, 2019.

Samuel L. Miller, Chair
Alabama Environmental Management Commission

Certified this 12th day of April 2019.

Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
February 15, 2019

Convened: 11:05 a.m.
Adjourned: 12:09 p.m.

Part A

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Part A

1 ALABAMA ENVIRONMENTAL MANAGEMENT
2 COMMISSION MEETING
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9 ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
10 Alabama Room
11 1400 Coliseum Boulevard
12 Montgomery, Alabama, 36110-2400
13 February 15, 2019
14 11:05 a.m.
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18
19
20
21
22
23 Taken by: Victoria M. Castillo, ACCR No. 17

1 A P P E A R A N C E S
2
3 COMMISSION MEMBERS PRESENT:
4 Samuel L. Miller, M.D., Chair
5 John H. Masingill, III
6 Kevin McKinstry
7 Mary J. Merritt
8 Ruby L. Perry, D.V.M.
9 Thomas P. Walters, P.E.
10
11 COMMISSION MEMBER NOT PRESENT:
12 H. Lanier Brown, II, Esquire, Vice Chair
13
14 ALSO PRESENT:
15 Robert Tambling, AEMC Legal Counsel
16 Kayla A. Currie, AEMC Legal Counsel
17 Dabi Thomas, AEMC Executive Assistant
18 Lance R. LeFleur, ADEM Director
19
20
21
22
23

1 (WHEREUPON, proceedings began at
2 11:05 a.m.)
3 DR. MILLER: I'm going to call
4 the meeting to order, so let's begin with Item
5 No. 1. We're here to consider the minutes from
6 the last meeting. And surely everybody has read
7 over these minutes, which have been circulated.
8 Do I have a motion that we accept
9 the minutes as written?
10 DR. PERRY: I move that we
11 accept the minutes as written.
12 MR. MASINGILL: I second.
13 DR. MILLER: Is there any
14 discussion?
15 (No response)
16 DR. MILLER: If not, all in
17 favor please say "aye."
18 (All Commissioners respond with
19 "aye.")
20 DR. MILLER: All opposed, "no."
21 (No response)
22 DR. MILLER: The ayes have it.
23 Our next item is the report from

1 Mr. LeFleur, our ADEM Director.
2 MR. LeFLEUR: Good morning.
3 Welcome to the third meeting of the Alabama
4 Environmental Management Commission for fiscal
5 year 2019. Today's report will: update you on
6 the Department's funding for this fiscal year and
7 plans for fiscal year 2020; describe activities
8 of the Land Division, including an analysis of
9 the Department's Hazardous Waste program using
10 EPA dashboards; follow up on several issues
11 raised by citizens in the December Commission
12 meeting; and, recognize an accomplishment by one
13 of our personnel.
14 We are four months into fiscal year
15 2019 and on target with funding and expenditures.
16 It appears the trends of nearly flat revenues and
17 the need for increased expenditures to cover
18 already imbedded inflation, unfunded state and
19 federal mandates, and upgrades to several large
20 software systems are continuing. Future gains in
21 efficiency are not anticipated to be able to
22 overcome the emerging funding gap. Increased
23 fees from the regulated industries are not a

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1 recommended source of funding since they were
2 increased by more than 100 percent in recent
3 years to offset the cuts to ADEM's prior General
4 Fund appropriations.
5 The Department has submitted
6 proposed budgets to the governor's office for
7 several years to address the anticipated funding
8 shortfall without success. We are working
9 directly with the state legislature to seek an
10 increase in the Department's General Fund
11 appropriation from the current $575,000 to
12 $4 million beginning FY 2020.
13 On the federal side we are operating
14 under a Continuing Resolution, which means our
15 federal funding this fiscal year will be at the
16 same rate as last year until a final federal
17 budget is adopted. The Department experienced no
18 adverse impacts from the partial federal
19 shutdown. A small number of projects EPA was
20 working on in Alabama were temporarily delayed
21 without imminent risk to human health or the
22 environment.
23 Progress continues in our effort to

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1 obtain funding for a field office in Mobile from
2 the RESTORE Act funds Alabama is receiving
3 following the 2010 Deepwater Horizon oil spill.
4 The group of projects that includes our field
5 office funding completed the required public
6 comment period and the final State Expenditure
7 Plan has been sent to the Federal RESTORE Council
8 for review and approval. Approval is expected by
9 the end of March. A Request For Qualifications
10 for design and engineering services for the new
11 field office will go out next week.
12 Most of today's report will focus on
13 the activities of the Land Division. The Land
14 Division administers both federally-authorized
15 and state-authorized programs and activities. I
16 will group those activities under the heading of
17 "Land Division Activities."
18 Solid waste is a state-authorized,
19 federally-approved program that oversees
20 landfills and materials management.
21 Groundwater is also a
22 state-authorized and federally-approved program
23 and its main focus is on underground storage

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1 tanks, or USTs.
2 Corrective action activities involve
3 assessment, response, removal, remediation, and
4 redevelopment across several different
5 federally-authorized and state-authorized
6 programs.
7 Finally, the Land Division is where
8 state oversight of governmental and industrial
9 hazardous wastes takes place.
10 Before reviewing the latest
11 hazardous waste compliance and enforcement
12 dashboards, I will highlight some of the solid
13 waste, groundwater, and corrective action
14 activities. Since these programs do not have
15 direct federal oversight -- or have federal
16 oversight in a different manner than that of the
17 Department's Air, Water, Drinking Water, and
18 Hazardous Waste programs -- there are no
19 performance metrics comparable to the
20 EPA-generated dashboards such as we have for Air,
21 Water, Drinking Water, and Hazardous Waste.
22 The Solid Waste Branch of the Land
23 Division oversees solid waste landfills and

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1 efforts to reduce the amount of solid waste going
2 to landfills while controlling unauthorized waste
3 disposal.
4 First, looking at landfills: There
5 are 32 active public municipal solid waste (MSW)
6 landfills in Alabama and all are
7 state-of-the-art.
8 There are 71 permitted public
9 construction and demolition, or C&D, landfills in
10 Alabama that handle inert waste.
11 There are 16 permitted public
12 industrial landfills in Alabama. All public
13 landfills first require siting approval by local
14 elected officials before permitting by ADEM can
15 occur.
16 There are also 49 private landfills
17 that do not require local siting approval but are
18 required to obtain ADEM permits.
19 There are also at least 300
20 landfills in Alabama that are no longer
21 operating. The exact number of formerly
22 operating landfills is unknown because many were
23 operated and closed before ADEM or its

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1 predecessor agency came into existence and before
2 accurate records were kept.
3 ADEM has state-granted statutory
4 authority to regulate the design, construction,
5 and operation of landfills in Alabama. All MSW
6 landfills operating in Alabama are
7 state-of-the-art and are designed and constructed
8 to be at least five feet above the top of the
9 local groundwater level, to have an impervious
10 bottom liner, and to have a leachate collection
11 system. MSW landfills have specific operating
12 requirements that include utilizing discrete cell
13 structures, daily cover, weekly cover, slope
14 limitations, gas collection systems, and closure
15 procedures that require an impervious cap that is
16 covered with soil and vegetation and monitoring
17 of the closed site for a specified time period.
18 The siting of MSW landfills has been
19 a topic receiving considerable attention in
20 recent years. The siting of all public landfills
21 in Alabama begins with an approval from local
22 elected officials who are required to consider
23 social, economic, health, and safety impacts to

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1 local citizens, which would include impacts on
2 property values and traffic patterns. Recently
3 enacted state legislation also requires a review
4 by the circuit court to confirm that the local
5 elected officials have complied with all
6 statutory requirements in siting a public
7 landfill. ADEM has no statutory authority to
8 determine the siting of any landfill, rather, it
9 is a local land use decision.
10 ADEM has been subjected to a series
11 of complaints filed with EPA under Title VI of
12 the Civil Rights Act of 1964 alleging that ADEM's
13 renewal of certain landfill permits allowing
14 continued landfill operations, are acts of
15 discrimination because protected classes of
16 individuals live near the landfill sites. There
17 have also been complaints that ADEM's method of
18 administering its Solid Waste Program is
19 discriminatory. In every case the complaints
20 have been dismissed with no finding of
21 discrimination.
22 The Department continually seeks to
23 improve its programs and the Solid Waste program

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1 is no different. Improvement is often aided by
2 having input from outside parties. For example,
3 since the Solid Waste program is not an
4 EPA-delegated program, it does not normally have
5 the benefit of independent review by EPA,
6 however, one of the recent Title VI complaint
7 investigations by EPA did involve an extensive
8 review of the Solid Waste program. That review
9 resulted in one helpful observation regarding an
10 inspection protocol. When a removal material,
11 such as a tarp, is used as daily cover and
12 removed the next workday, it can be difficult,
13 especially for new inspectors, to determine if
14 the cover was actually in place, as required, if
15 the inspection is not conducted at the very
16 beginning or very end of a workday.
17 One of ADEM's key strategies to
18 obtain compliance is inspections. Anything that
19 improves inspections is welcomed. The inspection
20 procedure for landfills, thanks to EPA input, now
21 calls for timing more inspections at the
22 beginning or end of the landfill workday to
23 ensure adequate daily cover is being utilized.

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1 Working toward continuous improvement is one of
2 our goals.
3 Other efforts in the Solid Waste
4 Branch is dedicated to materials management
5 activities to reduce the need for landfills and
6 to control the unauthorized disposal of waste.
7 Like other programs in the Solid Waste Branch of
8 the Land Division, EPA does not oversee these
9 activities.
10 A fee of one dollar per ton of waste
11 delivered to landfills in Alabama was instituted
12 by the Alabama legislature in 2008 to operate the
13 Solid Waste program, to promote recycling, and to
14 clean up unauthorized dumps.
15 More than $1 million per year is
16 awarded to municipalities and other governmental
17 entities to promote recycling activities. Those
18 receiving grants in 2018 include the cities of
19 Florence, Guntersville, Auburn, Troy, and Gulf
20 Shores for such things as curbside recycling
21 bins, balers, and sorting equipment. To date,
22 more than $16 million has been awarded to local
23 recycling programs through the Alabama Recycling

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1 Grants Program.
2 The rate of waste reduction in
3 Alabama was approximately eight percent per year
4 in 2007 and is now at approximately 25 percent, a
5 threefold increase in the rate. An Alabama
6 statewide solid waste reduction goal of 25
7 percent was set in 1991. 2018 is the first year
8 the goal has been achieved.
9 Another portion of the
10 one-dollar-per-ton fee goes to tracking down
11 unauthorized dump sites and either getting the
12 responsible party to clean them up or paying for
13 the cleanup if no responsible party can be
14 located.
15 Controlling unauthorized disposal of
16 waste is also directed at scrap tires, which are
17 both a source of vectors and a fire hazard. This
18 program is funded by a one-dollar-per-tire fee on
19 new tires purchased in Alabama which was
20 implemented by the Alabama legislature in 2003.
21 Working in partnership with individual county
22 governments and others, the program has properly
23 disposed of more than 9 million tires.

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1 The Groundwater Branch of the Land
2 Division implements programs that address
3 contamination to groundwater utilizing
4 state-granted regulatory authority. The main
5 sources of groundwater contamination are
6 underground storage tanks, typically found at
7 gasoline stations, and industrial sources of
8 contamination. The UST work of the Groundwater
9 Branch involves three key elements: release
10 prevention, release detection, and corrective
11 action.
12 Although it is a federally approved
13 program, there are no dashboard metrics available
14 comparing UST programs around the nation.
15 However, we do measure UST program results.
16 Compliance with regulations is the
17 objective for all operating underground storage
18 tanks.
19 As in other Departmental programs,
20 inspections have been found to be the most
21 effective method of ensuring compliance, which in
22 the case of USTs is release prevention, and they
23 are an integral component of the UST program.

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1 Approximately 40 percent of the nearly 5,600
2 operating UST sites are inspected each year.
3 Leak detection systems are required
4 for all service stations and secondary
5 containment has been required for new UST systems
6 for more than a decade. This has dramatically
7 reduced the number of new releases to soil and
8 groundwater. The number of new releases yearly
9 continues to be well below the number of legacy
10 sites remediated each year.
11 For legacy sites, corrective action
12 is the main focus. There were nearly 12,000 UST
13 leak sites in existence when the program was
14 initiated in 1986. More than 11,000 of those
15 have now been remediated.
16 The UST State Trust Fund, which is
17 funded through a state-authorized fee of one to
18 two cents per gallon of fuel at the wholesale
19 level, will pay up to $1.75 million per site for
20 remediation.
21 In addition to the UST program, the
22 Land Division also undertakes corrective actions
23 at contaminated sites covered by a number of

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1 other programs including unauthorized dumps,
2 scrap tires, brownfields, voluntary cleanup, dry
3 cleaners, CERCLA, and RCRA. As noted a few
4 moments ago, corrective actions may include
5 assessment, response, removal, remediation, and
6 redevelopment. Modern environmental management
7 has almost completely stopped the development of
8 large new contaminated sites, so corrective
9 action is primarily focused on legacy sites that
10 came into existence before environmental laws
11 were fully developed.
12 Performance metrics comparing
13 corrective action activities to similar
14 activities in other states are not available, so
15 we measure cumulative changes in working down the
16 inventory of contaminated sites.
17 These are some of the statistics on
18 the cumulative totals of corrective actions for
19 contaminated sites in Alabama.
20 More than 1,800 unauthorized dump
21 sites have been cleaned up. A responsible party
22 could not be identified in about one-third of
23 those instances and those corrective actions,

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1 totaling about $15 million, were funded out of
2 the one-dollar-per-ton Solid Waste fee initiated
3 in 2009.
4 341 scrap tire dump sites have been
5 cleaned up since the Scrap Tire program began in
6 2006. More than $10 million was provided by the
7 Scrap Tire Fund for those efforts.
8 As mentioned a moment ago, more than
9 11,000 underground storage tank leak sites have
10 been remediated since that program began in 1986.
11 The more than $600 million cost was funded from
12 the UST State Trust Fund.
13 During the last 17 years, 468
14 brownfields, including old industrial sites and
15 dry cleaners, have been remediated with many
16 returned to productive use. A variety of funding
17 mechanisms have been used including the
18 Department's Voluntary Cleanup Program.
19 CERCLA is a federal program that is
20 not delegated to states. It deals with inactive
21 or legacy hazardous substance sites. The Land
22 Division works with EPA as a contractor in
23 remediating a number of the CERCLA Superfund

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1 sites in Alabama. RCRA is the Hazardous Waste
2 program dealing with active operating facilities
3 that has been delegated to ADEM. The CERCLA and
4 RCRA programs generally address sites which are
5 much larger and more complex than those addressed
6 by the other cleanup programs. The two hazardous
7 substance programs together have completed the
8 remediation of approximately 27 hazardous
9 substance sites in Alabama with 85 additional
10 sites currently undergoing corrective action.
11 Okay. Now on to the comprehensive
12 objective compliance and enforcement performance
13 metrics we do have available for the Hazardous
14 Waste programs in the Land Division. The
15 Resource Conservation and Recovery Act, or
16 Hazardous Waste, dashboards we will be reviewing
17 are posted on EPA's Enforcement and Compliance
18 Online website.
19 Hazardous Waste dashboards are
20 unlike the Air, Water, and Drinking Water
21 dashboards. The compliance and enforcement
22 metrics for those program dashboards include data
23 for nearly all the facilities covered under those

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1 programs. That is not the case in the Hazardous
2 Waste program because the federal regulatory
3 approach used in the Resource Conservation and
4 Recovery Act, or RCRA, is different from that
5 used in other federal environmental statutes.
6 The RCRA program has separate and distinct
7 permitting and compliance areas. RCRA-permitted
8 facilities make up only a small subset of the
9 total number of regulated facilities.
10 The Hazardous Waste program
11 permitting component encompasses both active
12 hazardous waste facilities, as well as inactive
13 facilities undergoing post-closure care and
14 corrective action for previously contaminated
15 hazardous waste management areas. Most often
16 these cleanups are not initiated through a
17 compliance and enforcement action, so those
18 activities are not reflected in EPA Hazardous
19 Waste compliance and enforcement dashboards.
20 So with those caveats, the following
21 slides will look at the size and composition of
22 the regulated universe, the rate of inspections
23 of components of the universe, the rate of

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1 identifying non-compliance, and the timeliness of
2 enforcement actions.
3 To begin, this dashboard shows the
4 total universe of RCRA-related facilities in
5 Alabama. In fiscal year 2018, Alabama's total
6 hazardous waste universe was 5,347 facilities
7 which is up slightly from 2017. As you can see,
8 the RCRA universe is broken down into four
9 categories: treatment, storage and disposal
10 facilities (TSDFs) shown as the very small purple
11 line; large quantity generators (LQGs) shown in
12 yellow; small quantity generators (SQGs) shown as
13 the blue portion; and "others" are represented in
14 orange.
15 There are ten operating
16 RCRA-permitted treatment, storage, and disposal
17 facilities in Alabama. The rest of the regulated
18 universe shown on this slide are generators of
19 hazardous waste which do not operate under a
20 permit but are required to comply with the rules
21 for managing hazardous waste. Facilities in this
22 group are classified based on the amount of
23 hazardous waste they produce monthly.

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1 The majority of the RCRA-regulated
2 universe in our state falls into the small
3 quantity generator and "other" categories. These
4 types of facilities either generate or accumulate
5 small amounts of hazardous waste or they only
6 transport hazardous wastes. Even though there
7 are a large number of small quantity and other
8 generators, the blue and orange portions, they
9 represent a very small fraction of the total
10 hazardous waste generated and managed in Alabama.
11 The last category represented on
12 this chart is large quantity generators, the
13 yellow portion. Their universe is substantially
14 smaller than the small quantity generator and
15 "others" categories; however, this category of
16 generators produces the majority of the hazardous
17 waste generated in Alabama.
18 The next slides focus on large
19 quantity generators, which represent the greatest
20 potential hazardous waste risk based on volume.
21 This slide is a performance dashboard. It shows
22 a comparison of the percentage of annual
23 inspection coverage of large quantity generators

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1 made in Alabama for the period 2011 through 2018
2 to the national average and the national goal of
3 20 percent established by EPA. The green columns
4 represent ADEM's inspection coverage. The
5 national average for inspection coverage is the
6 dashed blue line, and the EPA national goal is
7 the solid black line. The national goal for the
8 RCRA program is that all large quantity
9 generators receive a comprehensive inspection
10 every five years, resulting in a goal of 20
11 percent of the universe being inspected every
12 year. The RCRA program is primarily a
13 preventative program. Inspections help prevent
14 non-compliance, so the rate of inspections is a
15 critical element in our strategy to achieve the
16 highest practical level of regulatory compliance.
17 As you can see, the national average
18 percentage rate of inspections, the blue dashed
19 line, beginning in 2015 dropped below the 20
20 percent EPA goal, that heavy black line, and in
21 2017 ADEM's inspection rate, the green column,
22 for the first time fell slightly below both the
23 20 percent goal and the national average, that

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1 blue dashed line. This result and the negative
2 trend in the ADEM data was unexpected and was a
3 cause for concern. In 2018 the situation was
4 addressed and, as shown on the graph, we are now
5 once again above the 20 percent target rate and
6 the national average. As you will see in the
7 next two slides, the 20 percent inspection rate
8 allows us to maintain a very low violation rate.
9 This next slide is another
10 performance dashboard that shows the percentage
11 of comprehensive hazardous waste inspections in
12 which one or more violations were found during
13 the inspection. The national average for states,
14 shown as the green dotted line, has been fairly
15 steady at approximately 45 percent. The
16 Department's results, represented by the blue
17 columns, equaled or exceeded the national average
18 for all years prior to 2017, but the graph shows
19 a slight reduction in the rate of violations
20 identified in 2017 followed by a continued
21 decline into 2018.
22 We believe the decline in violations
23 are due to the recent addition of the

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1 pharmaceutical and retail sector large quantity
2 generators to our universe. Examples of these
3 retail sector generators include CVS, Wal-Mart,
4 and Target stores. These types of entities tend
5 to have very few violations which are most often
6 minor infractions such as a missing report or
7 paperwork rather than a release of hazardous
8 waste. The national average does not yet seem to
9 reflect the downward trend we are seeing. It
10 appears this may be due to slower reporting
11 nationally. Over time the national trend should
12 begin to reflect the same downward trend we are
13 seeing; nevertheless, these numbers will continue
14 to receive very close attention.
15 This slide is another RCRA
16 performance dashboard which shows the percentage
17 of treatment, storage and disposal facilities
18 (TSDFs) and large quantity generators (LQGs) that
19 were found to be in significant non-compliance
20 (SNC) with an applicable federal or state
21 requirement. Fortunately, the percentages of
22 these facilities found to be in "significant
23 non-compliance" in both Alabama and the nation is

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1 very small. The blue column, which represents
2 results in Alabama, shows us slightly above the
3 national average, represented by the dashed green
4 line. There were four facilities that fell into
5 this category and in each case timely formal
6 enforcement action has been taken. Overall, both
7 the national trend and the Department's trend are
8 essentially flat.
9 The red columns in this slide,
10 representing the percentages of sites where EPA
11 participated with ADEM in the inspection, are in
12 several cases higher than the other percentages
13 shown. This would stand to reason since ADEM and
14 EPA jointly target for inspection a small number
15 of facilities where there is either a high
16 probability or a history of significant
17 non-compliance.
18 This final graph is a performance
19 dashboard for the timeliness of formal
20 enforcement actions. Formal enforcement actions
21 according to EPA's dashboards consist of
22 Administrative Orders and Consent Orders. Other
23 media program dashboards do not have a timeliness

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1 metric as shown on this slide for RCRA. This
2 dashboard shows the percentage of facilities
3 where a formal enforcement action has been taken
4 for a facility within 360 days of discovery of
5 the violation. Both the EPA and State National
6 Goals, shown as the black line, are to have at
7 least 80 percent of all formal enforcement
8 actions issued in 360 days or less.
9 The yellow bars represent the
10 Department's rate of timely enforcement. As was
11 noted in previous reviews of this Hazardous Waste
12 dashboard, we did not achieve the 80 percent goal
13 for 2013 and 2014 due to an unannounced change by
14 EPA in how timeliness is calculated. As you can
15 see, the Hazardous Waste program is now
16 maintaining 100 percent timeliness for orders
17 issued under the RCRA program.
18 So to summarize, these dashboards
19 show:
20 One, an increased total universe of
21 hazardous waste handling facilities with the
22 subset of large quantity generators increasing
23 markedly during the last several years;

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1 The 2017 EPA reporting anomaly in
2 the rate of inspections of large quantity
3 generators has been resolved and the Department's
4 reported rate of inspections has returned to a
5 rate above both the national average and the 20
6 percent national goal;
7 Three, identification of facilities
8 found to be in both non-compliance and
9 significant non-compliance is on par with the
10 national averages;
11 And, fourth, enforcement actions are
12 timely.
13 Next I'd like to give you a brief
14 follow-up on several matters raised at the last
15 Commission meeting. The issue the Department
16 became aware of at the Commission meeting
17 regarding two quarry sites, potential flooding,
18 and litter in the vicinity of the area in
19 Birmingham known as 35th Avenue resulted in a
20 site visit with Ms. Keisha Brown and local State
21 Representative Mary Moore, by staff from our
22 Stormwater Management Branch. There is water
23 accumulating in the two quarries; however, the

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1 topography and location of permitted outfalls are
2 such that flooding from the quarries into the
3 neighborhood is not possible.
4 Although no permit violation was
5 present, the City of Birmingham has been made
6 aware of the litter concerns and reminded of its
7 stormwater permit requirement related to litter.
8 In the course of the visit, several additional
9 concerns were raised. An unauthorized dump site
10 and an illegal scrap tire dump site were
11 identified and enforcement action initiated.
12 Follow-up conversations with Ms. Brown have
13 confirmed the findings and the actions being
14 undertaken. I will take this occasion to remind
15 the public that contacting the Department
16 directly is the best method to obtain quick and
17 efficient handling of concerns.
18 The Department also contacted EPA
19 requesting that they provide interested parties
20 an update on progress in removing contaminated
21 soil from the 35th Avenue site. Unfortunately,
22 the federal government shutdown has delayed
23 follow-up on that request.

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1 Also, it appears there may have been
2 some misunderstanding by a citizen regarding
3 ethics training for members of the Commission and
4 Departmental personnel. So I would like to make
5 it clear that for many years all Commissioners
6 and all ADEM employees receive ethics training
7 provided by the Ethics Commission. Also,
8 Commissioners as well as ADEM employees above a
9 specified pay grade annually file statements with
10 the Ethics Commission. In other words, all
11 ethics training and reporting requirements have
12 been and continue to be in place.
13 Last, but not least, our employees
14 are our most valuable resource and their
15 professional development is important to our
16 success. Today I'm pleased to recognize Tyler
17 Phillips in our Air Division who has reached that
18 significant milestone of having earned the
19 designation "Professional Engineer." Tyler,
20 congratulations. As I say, you do get a pay
21 raise.
22 (Audience applause)
23 MR. LeFLEUR: That concludes

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1 today's report. I will be pleased to answer any
2 questions you may have.
3 DR. MILLER: Any questions?
4 (No response)
5 DR. MILLER: Thank you,
6 Director.
7 The Chair reports: I'm sad to
8 report that we were informed this morning that
9 Kayla Currie is going to be leaving us. She's
10 been a very tireless helper, for me especially,
11 and for Robert. She's taking a job in
12 Washington, D.C., with the -- is it okay to say?
13 MS. CURRIE: Yes, that's fine.
14 DR. MILLER: -- with the EPA,
15 and I'm sure she will bring her same common-sense
16 approach there as she did here. We appreciate
17 you very much. Thank you.
18 MS. CURRIE: Thank you. Thank
19 you.
20 (Audience applause)
21 DR. MILLER: All right. Our
22 next item is we will consider proposed amendments
23 to the ADEM Administrative Code 335-14, Hazardous

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1 Waste Program Violations. Call on the Department
2 for comments.
3 MR. COBB: Thank you,
4 Mr. Chairman. Good morning, Commissioners. I'm
5 Stephen Cobb, Chief of the Land Division. The
6 Department is proposing to amend Division 14 of
7 the ADEM Administrative Code in order to adopt
8 three new federal rules promulgated by U.S. EPA.
9 A description of each of these rules is provided
10 in your packets. Adoption of these rules is
11 necessary to ensure ADEM's Hazardous Waste
12 regulations remain as stringent as the federal
13 rules, which is a requirement to preserve the
14 program's federally-authorized status.
15 The Department made the proposed
16 rules available for public review and comment
17 between October 21st and December 7th, 2018. No
18 written comments were received. A public hearing
19 was held on December 7th, 2018, and there were no
20 comments or testimony offered at the hearing. As
21 required by law, the proposed rules were approved
22 by the State Committee of Public Health at its
23 last meeting on January 16th.

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1 The Department asks that the
2 Commission adopt these rules as proposed. And
3 I'm happy to answer any questions.
4 DR. MILLER: Thank you. All
5 right. Do I hear a motion that we adopt the
6 proposed amendments?
7 MR. MASINGILL: Move we adopt
8 the proposed amendments.
9 MS. MERRITT: Second.
10 DR. MILLER: Any discussion?
11 (No response)
12 DR. MILLER: All right. All
13 those in favor of adopting the proposed
14 amendments please say "aye."
15 (All Commissioners respond with
16 "aye.")
17 DR. MILLER: All opposed, "no."
18 (No response)
19 DR. MILLER: Thank you,
20 Chairman.
21 (All Commissioners sign the
22 adoption.)
23 DR. MILLER: The next item is

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1 that we acknowledge that the petitioner Invictus
2 Energy has withdrawn a request for a hearing on
3 EMC Docket No. 18-05.
4 Along with that, we note that on
5 February 14th, yesterday, Alabama Treatment and
6 Energy Company filed a withdrawal of their motion
7 to grant an 180-day stay for compliance with an
8 administrative order.
9 The next item is Danny Clements
10 Builder versus ADEM, Docket No. 18-07, an NPDES-
11 related matter. We have all been circulated the
12 Hearing Officer's report on this matter, and we
13 would open up the conversation for any discussion
14 prior to a motion.
15 (No response)
16 DR. MILLER: If there is none,
17 then do I hear a motion from the Commission
18 regarding the report of the Hearing Officer?
19 MR. MASINGILL: Move to adopt
20 the report of the Hearing Officer.
21 DR. MILLER: Is there a second?
22 DR. PERRY: Second.
23 DR. MILLER: All right. Any

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1 further discussion?
2 (No response)
3 DR. MILLER: If not, I will call
4 for the question. All in favor of the motion
5 please say "aye."
6 (All Commissioners respond with
7 "aye.")
8 DR. MILLER: All opposed?
9 (No response)
10 DR. MILLER: None? The "ayes"
11 have it.
12 (All Commissioners sign the
13 adoption.)
14 DR. MILLER: All right. I know
15 of no other business in front of the Commission
16 for this meeting. I will note that our next
17 Commission meeting is scheduled for April 12th,
18 2019, which is kind of odd in that it's moved
19 back a week, looks like to me.
20 MS. THOMAS: I think it had to
21 do with Good Friday.
22 DR. MILLER: Okay. I wasn't
23 aware when Good Friday was. I apologize for

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1 that.
2 All right. Now, we've had two
3 requests for three-minute presentations to the
4 Commission this morning. Our first one is
5 Mr. David Ludder.
6 And, Mr. Ludder, please come forward
7 and limit your comments to three minutes, please.
8 MR. LUDDER: Thank you,
9 Mr. Chairman, members of the Commission. My name
10 is David Ludder. I represent the Environmental
11 Defense Alliance, and I'm here today to present
12 you with some new information on the issue of
13 e-mails. At the last meeting of the Commission,
14 your attorney, Mr. Tambling, informed you-all
15 that he was not aware of any statutes or other
16 legal authority that would authorize an agency in
17 any way to restrict or regulate how its members
18 are allowed to use their own personal -- their
19 own private personal e-mail accounts. He then
20 said: So for that reason alone, I would
21 recommend that the Commission not take any action
22 on this proposal. I think Mr. Ludder's best
23 recourse would be to take this matter up with the

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1 legislature and have them pass a law requiring it
2 if they so desire. Chairman Miller said: I
3 guess the answer, Mr. Ludder, would be go to the
4 legislature and get them to pass it.
5 Well, not being satisfied with that
6 response, I went back to my office and did some
7 research and found that the legislature has
8 already addressed the issue in the Uniform
9 Electronic Transactions Act. In that act, the
10 legislature gave every state agency that has
11 authority to adopt rules -- shouldn't say
12 "every," most state agencies. You are not
13 excepted. If you have authority to adopt rules,
14 you may adopt rules governing the manner in which
15 electronic records shall be sent, received, and
16 stored, and you may specify the systems
17 established for such purposes.
18 So you do have the authority to
19 adopt rules regarding the use of e-mail systems
20 and the storage of e-mail. In other words, you
21 could require that all members of this Commission
22 use a state e-mail address and that all e-mails
23 be stored on a state system rather than a

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1 personal system. That is -- that statute is
2 Exhibit 1A in the handout that I provided.
3 Exhibit 1B is an attorney general's
4 opinion interpreting that statute. And in that
5 opinion, the attorney general said the secretary
6 of state has authority to promulgate rules
7 applicable to online voter registration, where
8 otherwise the secretary of state statutes did not
9 speak to online activity. The attorney general
10 concluded that this statute gave the secretary of
11 state that authority.
12 A couple of other items I wanted to
13 address regarding e-mails. Exhibit 2A and 2B, 2D
14 and 2C impose requirements on public officers
15 such as yourselves not to destroy or dispose of
16 any public records that you have in your
17 possession. That includes e-mails that discuss
18 business -- government activity. What that means
19 is that you can't hit the delete button on your
20 computer for a government e-mail without
21 violating these provisions. If you intentionally
22 hit that delete button, you have committed a
23 crime.

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1 So wouldn't it be easier to make
2 sure that all those e-mails are generated and
3 stored in a state system where you don't have to
4 be worried about that? At the very least, you
5 had better maintain a backup system for all those
6 e-mails.
7 Exhibit 2A is a statute which says
8 that public officers shall accurately keep in and
9 for their respective offices or places of
10 business all records that will afford full and
11 detailed information in reference to the
12 activities or business carried out by such
13 officer.
14 I note that -- well, this statute
15 was probably written back in 1923. So at that
16 time agencies probably hadn't developed very far,
17 and public officers probably didn't have -- often
18 didn't have a central office such as you have
19 here. But in that statute, it requires that the
20 public records be kept in offices or places of
21 business of those public officers.
22 Exhibit 2B is an attorney general's
23 opinion interpreting that statute. And in that

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1 case the agency did not have a central office.
2 And the question was: Where do we keep public
3 records if we don't have a central office? The
4 attorney general responded that they should be
5 kept where they will be reasonably accessible to
6 those persons who need to consult them and have a
7 right to see them. That's the public. They
8 should be under the supervision of a responsible
9 person selected by the board.
10 You already have that. You have a
11 central facility here. You have a responsible
12 person who can manage those records. That's
13 where they should be kept. Now, if you were to
14 ask the attorney general for a formal opinion
15 today, I suspect he would say your records should
16 be kept here at the central office where they can
17 be accessed by the public. But you haven't asked
18 for a formal attorney general's opinion. An
19 opinion from Mr. Tambling, while I'm sure he
20 exercises his best judgment, is not a formal
21 opinion from the attorney general.
22 Now, the -- or two more things I
23 wanted to mention were that there are several

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1 sections in the code that talk about public
2 records of former public officials. Exhibits 2E,
3 2F, and 2G address those. 2E says: When a
4 public official vacates his office, he has to
5 turn over all public records to his successor.
6 Exhibit 2F says that: The successor
7 to a person who has vacated their office has the
8 right to demand of the predecessor in office that
9 he turn over public records. And 2G says: If a
10 person dies in public office, the successor to
11 that office can demand of any person who has
12 custody of those records that they turn over
13 those public records.
14 Now, I imagine -- well, I won't
15 imagine. Mr. Miller, I believe your predecessor
16 in office was Conrad Pierce. I could be wrong.
17 I believe that's the case. Did he turn over his
18 public records to you as his successor in office?
19 DR. MILLER: No.
20 MR. LUDDER: Mr. Walters, you're
21 the professional engineer. James Laier was your
22 predecessor. Did he turn over any public records
23 to you?

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1 MR. WALTERS: No.
2 MR. LUDDER: Right. Did either
3 of you or any of you ask your predecessors to
4 turn over to you any public records in their
5 custody?
6 MR. WALTER: No.
7 MR. LUDDER: That's something
8 that ought to be done as a matter of course.
9 These are public records. They're going to be
10 lost forever if you don't do what the statute
11 suggests that you do.
12 Lastly, Exhibits 3A and 3B are
13 publications of the Department of Archives and
14 History. That department is responsible for
15 advising agencies about records management, and
16 it's responsible for collecting and keeping
17 public records once they're use has kind of been
18 minimized. But they do provide advice to
19 agencies. I would certainly encourage you to
20 contact them about your e-mails.
21 In these two documents, Exhibit 3A
22 and 3B, they both say that they encourage
23 official government e-mail accounts to be used in

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1 the conduct of public business. Of course they
2 can't require it, but they do encourage it for
3 obvious reasons. These are public records. They
4 have to be preserved. They go through pretty
5 extensive detail about the fact that e-mails are
6 indeed public records. And as long as they
7 address government activity, they are public
8 records.
9 When I say "public records," I'm not
10 talking about records that are exempt -- well, I
11 am talking about all public records. But calling
12 something a public record does not mean it's not
13 exempt from disclosure. It can still be exempt
14 from disclosure. But regardless of whether it's
15 exempt, it's a public record and has to be
16 maintained, preserved, not destroyed. So don't
17 hit the delete button; you may be committing a
18 crime.
19 Thank you. And if there's any
20 questions, I will be happy to take them.
21 DR. MILLER: Thank you,
22 Mr. Ludder.
23 Next we have a Haley Lewis

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1 representing Gasp.
2 MS. LEWIS: Good morning,
3 Commissioners. Thank you for the time to speak
4 to you. As you mentioned, I'm Haley Lewis. I
5 work for an organization called Gasp, and you
6 heard from our director, Michael, at the last --
7 at the December meeting. And I'm here today to
8 bring some new information regarding a topic
9 Michael discussed with you. And just to refresh
10 your memory, we asked -- we renewed our request
11 from 2014, which is to advise the Director that
12 his position on the National Priority listing --
13 hence force, I will say "NPL" for ease of it
14 coming out of my mouth -- is wrong.
15 After reviewing the meeting minutes
16 from the December meeting, I'd like to address
17 several issues I noticed that were raised by
18 Dr. Miller, Commissioner Brown, Director LeFleur,
19 and a member of the ADEM staff. I also have a
20 letter today that I will give you when I am done
21 presenting that goes way more in-depth on these
22 points that I'm making. They are all
23 evidence-based arguments that are based in a

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1 strong legal analysis of Gasp's position that the
2 35th Avenue site should be listed on the NPL.
3 First and foremost, we must discuss
4 the history of the proposed listing of the 35th
5 Avenue site on the NPL as it is grounded in facts
6 in evidence. Commissioner Brown made a statement
7 in December: Whatever action we take must be
8 based on whether there is a risk to public
9 health. I'm sure you-all are aware of ADEM's
10 mission and for what the EMC is charged with.
11 Nowhere enumerated in that mission or the duties
12 of the EMC is public health mentioned. The
13 environment, however, is mentioned several times.
14 So I will first raise that point.
15 Secondly -- I have no idea how to
16 get this where you guys can see it for a long
17 period of time. But this is what I will be
18 referring to as "the rule." It is
19 40 CFR 300.425(c). I will set it here knowing
20 that you guys probably can't read it from the
21 floor.
22 As Michael mentioned to you-all in
23 December, only one element of these two need to

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1 be met to satisfy listing on the NPL. The HRS
2 score for the 35th Avenue site was a 50. To be
3 listed on NPL -- thank you -- to be listed on NPL
4 a site need only score 28.5 or greater. So as
5 you can understand, the score of 50 is almost
6 double of what the requirement is. We can end
7 the conversation there. One element is
8 satisfied. The HRS score was high enough. That
9 should be controlling, especially for an agency
10 whose mission is focused on the environment.
11 Further, a plain reading of the rule
12 shows that the ATSDR health consultation referred
13 to by Director LeFleur and Commissioner Brown is
14 not relevant to, nor the same thing as, a health
15 advisory mentioned in the rule. A consultation
16 is due no consideration whatsoever under the
17 rule. The JPH health study is not an EPA
18 determination that a release does not pose a
19 significant threat to public health. Therefore,
20 it is due no consideration whatsoever. Nothing
21 about the Director's reasoning for objecting to
22 the NPL is supported by this rule.
23 I would also like to say that there

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1 needs to be an honest and factual dialogue about
2 the difference between an emergency removal,
3 which is currently occurring at the 35th Avenue
4 site, and listing a site on the NPL. Again, some
5 of the EPA's own words directly contradict the
6 positions that were taken at the December
7 meeting, as reflected by the proposed meeting
8 minutes.
9 EPA states publicly on their website
10 that: The removal responses are common at
11 Superfund sites when the contamination poses an
12 immediate threat to human health and the
13 environment. That's what's going on at the 35th
14 Avenue site that is being touted as superior to
15 listing on the NPL.
16 Additionally, why would ADEM tout
17 this emergency removal as an approved path
18 forward, a process that EPA states occurs because
19 of an immediate threat to the health and
20 environment, if ADEM insists that there is no
21 public health risk at the 35th Avenue site?
22 DR. MILLER: Would you repeat
23 that? I didn't understand what you said.

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1 MS. LEWIS: Sure. Why would
2 ADEM tout the emergency removal that is currently
3 occurring at the 35th Avenue site as an approved
4 path forward, a process which EPA states occurred
5 because of an immediate threat to human health
6 and the environment, if ADEM insists that there
7 is no public health risk at the 35th Avenue site?
8 Finally, there were some legitimate
9 points raised by Director LeFleur and Mr. Cobb at
10 that meeting. And it was they addressed the
11 history of NPL, how long things might take, the
12 issue of finding funding for NPL sites. And so
13 I -- the new information I have for you-all today
14 is that we are in a new era under President Trump
15 when it comes to Superfund. Regardless of what
16 the Director's view of the efficacy of the
17 listing on the site of the NPL was in 2014,
18 Superfund is operating more quickly and
19 efficiently under this new administration.
20 In the letter I will give you, I
21 highlight one specific example in Portland,
22 Oregon. It is a belabored NPL listing just like
23 the 35th Avenue site. And EPA is playing

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1 hardball. They rented a 400-person -- a
2 500-person auditorium, brought in the
3 100-something PRBs, and told them: These are the
4 costs associated. Here you go. Duke it out.
5 We're moving forward.
6 President Trump has been very clear
7 that Superfund is a priority, cleaning up these
8 NPL sites are a priority. And there is a real
9 opportunity for this community right now to get
10 much-needed relief.
11 Finally -- and I go into this in
12 great detail in my letter, but just to bring it
13 all home. Just as a revisionist history needs to
14 be avoided -- and I would argue that a lot of
15 what has been presented about the 35th Avenue
16 site is a revisionist history -- we also need to
17 look at the benefits of NPL listing at the 35th
18 Avenue site under President Trump's
19 prioritization of Superfund cleanup.
20 Director LeFleur, I urge you to not
21 cling to whatever limitations might have existed
22 in 2014. The Commission needs to understand that
23 the reality presented by Director LeFleur and

1 Mr. Cobb has changed under President Trump. The
2 ATSDR health consultation and JPH health study
3 are and have always been an excuse and
4 distraction that were born from inappropriate
5 industry influence in this community.
6 Director LeFleur, you may take
7 exception to that characterization, but the
8 evidence speaks for itself. It is a new day.
9 And no one needs to move forward more desperately
10 than this community. The 35th Avenue site must
11 be listed on the NPL. For the aforementioned
12 reasons, the Director's position on NPL was wrong
13 in 2014 and it's even more wrong today given the
14 benefit of hindsight and a new EPA with a renewed
15 focus on Superfund cleanup and efficiency. I
16 implore all Commissioners to consider these facts
17 and evidence-supported history of the belabored
18 NPL listing for the 35th Avenue site and advise
19 the Director that he must change his position to
20 support listing of the 35th Avenue site on the
21 NPL.
22 Thank you all for your time and your
23 attention, and I will now give you the letter.

1 DR. MILLER: It would be good if
2 you had -- it may be in what you're going to give
3 us -- some documentation as to your positions.
4 MS. LEWIS: Absolutely. I love
5 footnotes, so there are a lot of them in this
6 letter. And should you need any additional
7 information, I am happy for you to call me or
8 e-mail or write me, and I will drop whatever I am
9 doing to get any of you anything you need that
10 would help you better understand the argument I'm
11 making.
12 DR. MILLER: All right. Thank
13 you very much. Well, I think that concludes our
14 business for the day. Do I have a motion to
15 adjourn?
16 DR. PERRY: So moved.
17 MR. WALTER: Second.
18 MR. MASINGILL: Second.
19 DR. MILLER: All right.
20 (Proceedings concluded at
21 12:09 p.m.)
22 **********
23

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2 COUNTY OF MONTGOMERY)
3
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5 I hereby certify that the above
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9 said proceedings taken down by me and transcribed
10 by me.
11 I further certify that I am neither
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13 in anywise financially interested in the outcome
14 of this case.
15 I further certify that I am duly
16 licensed by the Alabama Board of Court Reporting
17 as a Certified Court Reporter as evidenced by the
18 ACCR number following my name found below.
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21 Victoria Castillo
22 VICTORIA CASTILLO, ACCR #17, 9/30/19
23 FREELANCE COURT REPORTER

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Part B

Attachment Index

Attachment 1 **Agenda**

Attachment 2 **Director's Slides**
(Agenda Item 2)

Attachment 3 **Resolution adopting amendments to ADEM Administrative Code 335-14, Hazardous Waste Program Regulations, and Attachment A – Adopted Amendments**
(Agenda Item 4)

Attachment 4 **Order adopting Report of Hearing Officer**
(Agenda Item 7)

Attachment 1

Amended 2/1/19(2)

AGENDA*
MEETING OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION
DATE: February 15, 2019
TIME: 11:00 a.m.
LOCATION: Alabama Department of Environmental Management (ADEM) Building
Alabama Room (Main Conference Room)
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400

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6.	Alabama Treatment and Energy Company, Inc. v. ADEM EMC Docket No. 18-06	2
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* The Agenda for this meeting will be available on the ADEM website, www.adem.alabama.gov, under Environmental Management Commission.

** The Minutes for this meeting will be available on the ADEM website under Environmental Management Commission.

1. CONSIDERATION OF MINUTES OF MEETING HELD ON DECEMBER 14, 2018

2. REPORT FROM THE ADEM DIRECTOR

3. REPORT FROM THE COMMISSION CHAIR

4. CONSIDERATION OF PROPOSED AMENDMENTS TO ADEM ADMINISTRATIVE CODE 335-14, HAZARDOUS WASTE PROGRAM REGULATIONS

The Commission will consider proposed amendments to ADEM Administrative Code 335-14, Hazardous Waste Program Regulations. Revisions to Division 14 Code are being proposed to maintain the program's authorized status, to adopt new rules published by EPA, and to make typographical and grammatical corrections. The first of the new rules published by EPA proposed for adoption is the Confidentiality Determinations for Hazardous Waste Export and Import Documents Rule. This rule amends existing regulations regarding the export and import of hazardous wastes from and into the United States. The second is the Hazardous Waste Electronic Manifest System User Fee Rule, and is the second in a series of new rules that implement the national electronic manifest system. The third rule is the Revisions to the Definition of Solid Waste, Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule, promulgated in Response to vacaturs ordered by the United States Court of Appeals for the District of Columbia Circuit. The Department held a public hearing on the proposed amendments on December 7, 2018.

5. INVICTUS ENERGY, INC. V. ADEM, EMC DOCKET NO. 18-05

The Commission will acknowledge for the record Petitioner Invictus Energy, Inc.'s withdrawal of the request for hearing in this matter.

6. ALABAMA TREATMENT AND ENERGY COMPANY, INC. V. ADEM, EMC DOCKET NO. 18-06

The Commission will consider Petitioner Alabama Treatment and Energy Company, Inc.'s *Motion to Stay 180-Day Deadline for Compliance With Administrative Order.* Respondent ADEM filed an *Objection to Request for Stay of 180-Day Deadline for Compliance With Administrative Order.* The subject of the motion to stay and the appeal/request for hearing is ADEM Administrative Order No. 18-067-HW issued on May 16, 2018, to Invictus Energy, Inc. and Alabama Treatment and Energy Company, Inc., Fort Mitchell, Russell County, Alabama, EPA Identification No. ALR000005322.

7. DANNY CLEMENTS BUILDER, INC. V. ADEM, EMC DOCKET NO. 18-07 (NPDES-RELATED MATTER)

The Commission will consider the *Report of Hearing Officer*, which includes Findings of Fact, Conclusions of Law and Recommendation. The subject of the appeal/request for hearing is ADEM Administrative Order No. 18-083-LD issued on June 21, 2018, to Danny Clements, Danny Clements Builder, Inc., Clements Eastchase, Montgomery, Montgomery County, Alabama, FID 59204, Unpermitted Site.

8. OTHER BUSINESS

9. FUTURE BUSINESS SESSION

PUBLIC COMMENT PERIOD

BRIEF STATEMENTS BY MEMBERS OF THE PUBLIC REGISTERED TO SPEAK

Members of the public that wish to make a brief statement at a Commission meeting may do so by first signing in on a register maintained by the Commission office prior to each regularly scheduled meeting. The register will close ten minutes prior to convening each meeting of the Commission. Following completion of all agenda items, the Commission Chair will call on members of the public wishing to make a statement in the order their names appear on the register. Speakers are encouraged to limit their statement to matters that directly relate to the Commission's functions. Speakers will be asked to observe a three minute time limit. While an effort will be made to hear all members of the public signed on the register, the Commission may place reasonable limitations on the number of speakers to be heard. (Guideline 11, Guidelines for Public Comment).

The Guidelines for Public Comment are used in the application of ADEM Administrative Code 335-2, Environmental Management Commission Regulations, Rule 335-2-3-.05, Agenda and Public Participation. The Guidelines for Public Comment serve to educate and inform the public as to how the Commission interprets and intends to apply the Rule. The revised Rule 335-2-3-.05 was effective October 7, 2016.

Attachment 2

Alabama Department Of Environmental Management

Land Division Activities

- Solid Waste – landfills & materials mgmt
- Groundwater – Underground Storage Tanks
- Corrective Action – assess, response, removal, remediation, redevelopment
- Hazardous Waste – governmental & industrial

Alabama Department Of Environmental Management

Types of Permitted Landfills

- Public Municipal Solid Waste – 32
- Public Constr. & Demo. – 71
- Public Industrial – 16
- Private C&D and Industrial – 49

Alabama Department Of Environmental Management

Materials Management Activities

- Recycling Grants
- Waste Reduction
- Cleaning up Unauthorized Dumps
- Cleaning up Scrap Tire Dumps

Alabama Department Of Environmental Management

Underground Storage Tank Activities

- Compliance
  - Inspection program
  - Few new releases
- Corrective Action
  - Legacy backlog
  - UST Trust Fund

ADEM

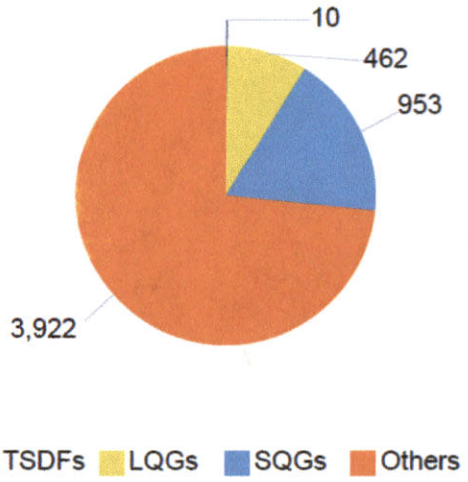
Alabama Department Of Environmental Management

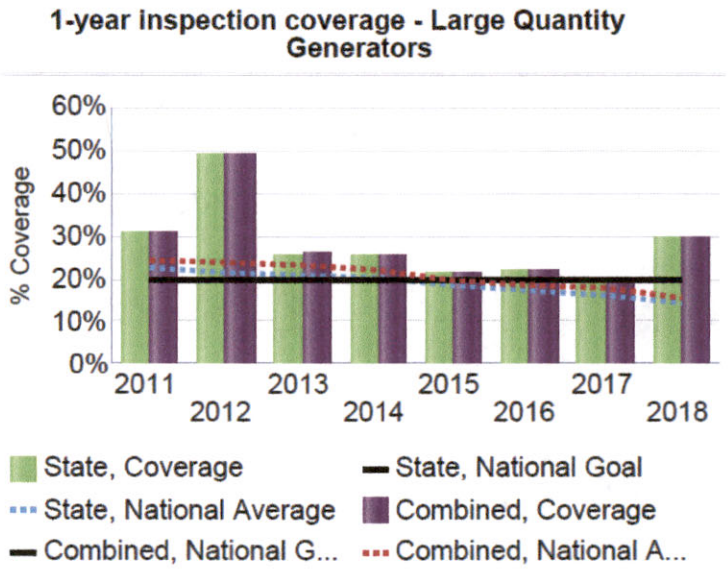
Cumulative Corrective Actions

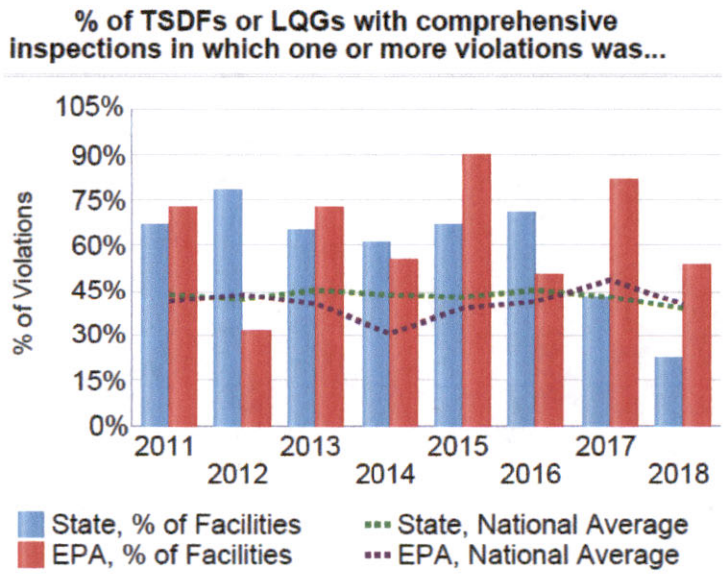
- Unauthorized Dumps – 1,800+ sites; $15 mil.
- Scrap Tire Dumps – 341 sites; $10 mil.
- UST sites – 11,000 remediated; $600 mil.
- Brownfields – 468 sites
- CERCLA & RCRA – 27 sites

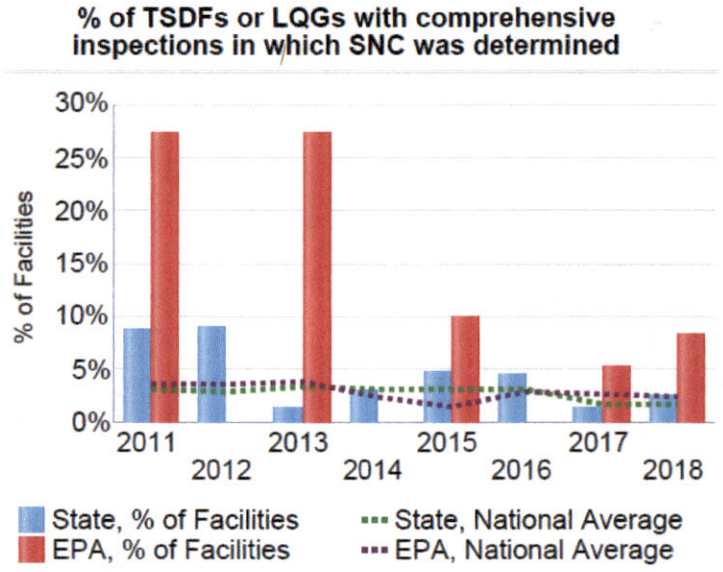
Fiscal Year 2018 Agency State

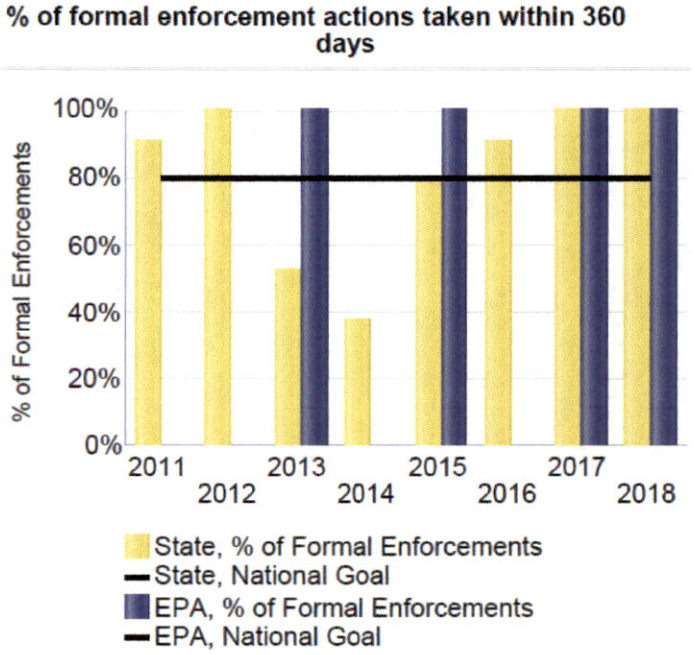
Facilities Regulated




1-year inspection coverage - Large Quantity Generators
% Coverage
60%
50%
40%
30%
20%
10%
0%
2011
2012
2013
2014
2015
2016
2017
2018
State, Coverage
State, National Goal
State, National Average
Combined, Coverage
Combined, National G...
Combined, National A...


% of TSDFs or LQGs with comprehensive inspections in which one or more violations was...
% of Violations
105%
90%
75%
60%
45%
30%
15%
0%
2011
2012
2013
2014
2015
2016
2017
2018
State, % of Facilities
State, National Average
EPA, % of Facilities
EPA, National Average


% of TSDFs or LQGs with comprehensive inspections in which SNC was determined
% of Facilities
30%
25%
20%
15%
10%
5%
0%
2011
2012
2013
2014
2015
2016
2017
2018
State, % of Facilities
EPA, % of Facilities
State, National Average
EPA, National Average


% of formal enforcement actions taken within 360 days
% of Formal Enforcements
100%
80%
60%
40%
20%
0%
2011
2012
2013
2014
2015
2016
2017
2018
State, % of Formal Enforcements
State, National Goal
EPA, % of Formal Enforcements
EPA, National Goal

Attachment 3

ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION

WHEREAS, the Alabama Department of Environmental Management gave notice of a public hearing on the proposed revisions to ADEM Admin. Code 335-14 of the Department's Land Division's Hazardous Waste Program Rules and Regulations in accordance with Ala. Code § 22-22A-8 (2006 Rplc. Vol.) and Ala. Code § 41-22-4 (2000 Rplc. Vol.); and

WHEREAS, a public hearing was held before a representative of the Alabama Department of Environmental Management designated by the Environmental Management Commission for the purpose of receiving data, views and arguments on the amendment of such proposed rules; and

WHEREAS, the Alabama Department of Environmental Management did not receive any written or oral comments at the public hearing or during the public comment period.

NOW THEREFORE, pursuant to Ala. Code. §§ 22-30-3, 22-30-9, 22-30-10, 22-30-11, 22-30-12, 22-30-14, 22-30-15, 22-30-16 (2006 Rplc. Vol.), and Ala. Code. § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-14 [rules 335-14-1-.01/General (Amend); 335-14-1-.02/Definitions and References (Amend); 335-14-1-.03/Rulemaking Petitions (Amend); 335-14-2-.01/General (Amend); 335-14-2-.05/Exclusions/Exemptions (Amend); 335-14-2-.08/Financial Requirements for Management of Excluded Hazardous Secondary Materials (Amend); 335-14-2-.13/Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials (Amend); 335-14-3-.01/General (Amend); 335-14-3-.02/Manifest Requirements Applicable to Small and Lange Quantity Generators (Amend); 335-14-3-.09/Transboundary Movements of Hazardous Waste for Recovery or Disposal (Amend); 335-14-3-Appendix I/Uniform Hazardous Waste Manifest and Instructions (EPA Forms 8700 22 and 8700 22A and their Instructions) (Repeal); 335-14-4-.02/Compliance with the Manifest System and Recordkeeping (Amend); 335-14-5-.05/Manifest System, Recordkeeping and Reporting (Amend);

ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION

335-14-5-.29/Subpart CC – Air Emission Standards for Tanks, Surface Impoundments, and Containers (Amend); 335-14-6-.05/Manifest System, Recordkeeping and Reporting (Amend); 335-14-6-.29/Subpart CC – Air Emission Standards for Tanks, Surface Impoundments, and Containers (Amend); 335-14-17-.06/Standards for Used Oil Processors and Re-Refiners (Amend); 335-14-17-.05/Standards for Used Oil Transporter and Transfer Facilities (Amend)] of the Department's Hazardous Waste Program rules, administrative code attached hereto, to become effective forty-five days, unless otherwise indicated, after filing with the Alabama Legislative Service Agency.

ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION

ADEM Admin. Code division 335-14 – Hazardous Waste Program

IN WITNESS WHEREOF, we have affixed our signatures below on this 15th day of February 2019.

APPROVED:

DISAPPROVED:

ABSTAINED:

This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 15th day of February 2019.

Samuel L. Miller, Chair
Environmental Management Commission
Certified this 15th day of February 2019

335-14-1-.01 **General.**

(1) Purpose, scope, applicability, citations, and submissions.

(a) 335-14-1 provides definitions of terms, general standards, and overview information applicable to 335-14.

(b) In 335-14-1:

1. 335-14-1-.01(2) sets forth the rules that EPA and ADEM will use in making information they receive available to the public and sets forth the requirements that generators, transporters, or owners or operators of treatment, storage or disposal facilities must follow to assert claims of business confidentiality with respect to information that is submitted to EPA and ADEM under 335-14-1 through 335-14-6 and 335-14-9.

2. 335-14-1-.01(3) establishes rules of grammatical construction for 335-14.

3. 335-14-1-.02 defines terms which are used in 335-14.

4. 335-14-1-.03 establishes procedures for petitioning ADEM and EPA to amend, modify, or revoke any provision of 335-14 and establishes procedures for governing ADEM action on such petitions.

5. 335-14-1-.03(1) establishes procedures for petitioning ADEM to approve testing methods as equivalent to those prescribed in 335-14-2, 335-14-5, or 335-14-6.

6. 335-14-1-.03(2) establishes procedures for petitioning ADEM to amend 335-14-2-.04 to exclude a waste from a particular facility.

7. 335-14-1-.03(3) establishes procedures for petitioning ADEM to include a waste in 335-14-11.

[NOTE: Generators cannot petition ADEM under Rule 335-14-1-.03 and 335-14-11-.07 until the Department has received authorization from EPA for this revision of the Department's base program.]

(c) Unless specified otherwise by citation to the Code of Federal Regulations (CFR) or other authority, all citations to Divisions, Rules, paragraphs, and subparagraphs are to the Alabama Department of Environmental Management Administrative Code.

(d) Unless specified otherwise in 335-14, reports, notices, permit applications and all other submissions required by 335-14 shall be addressed to the following:

1. If such submission is to the Director,

Mail:

Director
Alabama Department of Environmental Management
P. O. Box 301463
Montgomery, AL 36130-1463

Hand Delivery:

Director
Alabama Department of Environmental Management
1400 Coliseum Boulevard
Montgomery, AL 36110-2400

2. If such submission is to the Department,

Mail:

Chief, Land Division
Alabama Department of Environmental Management
P. O. Box 301463
Montgomery, AL 36130-1463

Hand Delivery:

Chief, Land Division
Alabama Department of Environmental Management
1400 Coliseum Boulevard
Montgomery, AL 36110-2400

(e) Certain submissions required by 335-14 involve the practice of engineering and/or land surveying, as those terms are defined in Code of Alabama 1975, as amended, §§ 34-11-1 to 34-11-37; and/or the practice of geology, as that term is defined in Code of Alabama 1975, as amended, §§ 34-41-1 to 34-41-24. It is the responsibility of any person preparing or submitting such submissions to ensure compliance with these laws and any regulations promulgated thereunder, as may be required by the Alabama Board of Licensure for Professional Engineers and Land Surveyors and/or the Alabama Board of Licensure for Professional Geologists. All submissions, or parts thereof, which are required by State of Alabama law to be prepared by a licensed engineer, land surveyor, or geologist, must include the engineer's, land surveyor's, and/or geologist's signature and/or seal, as required by the applicable licensure laws.

(2) Availability of information; confidentiality of information.

(a) Any information provided to EPA under Parts 260 through 266 and 268 of 40 CFR will be made available to the public to the extent and in the manner authorized by the Freedom of Information Act, 5 U.S.C. Section 552, Section 3007(b) of

RCRA and EPA regulations implementing the Freedom of Information Act and Section 3007(b), Part 2 of 40 CFR, as applicable. Any information provided to ADEM under 335-14-1 through 335-14-6 and 335-14-9 will be made available to the public to the extent and in the manner authorized by Rule 335-1-1-.06.

(b) Except as provided in 335-14-1-.01(2)(c), any person who submits information to EPA in accordance with Parts 260 through 266 and 268 of 40 CFR may assert a claim of business confidentiality covering part or all of that information by following the procedures set forth in §2.203(b) of 40 CFR. Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures, set forth in Part 2, Subpart B, of 40 CFR. Any person who submits information to ADEM in accordance with 335-14-1 through 335-14-7 and 335-14-9 may assert a claim of business confidentiality in accordance with Rule 335-1-1-.06.

(c) After August 6, 2014, no claim of business confidentiality may be asserted by any person with respect to information entered on a Hazardous Waste Manifest (EPA Form 8700-22), a Hazardous Waste Manifest Continuation Sheet (EPA Form 8700-22A), or an electronic manifest format that may be prepared and used in accordance with 335-15-3.02(1)(b).

(d) EPA will make any electronic manifest that is prepared and used in accordance with 335-14-3-.02(1)(a)3., or any paper manifest that is submitted to the system under 335-14-5-.05 or 335-14-6-.05 of this chapter available to the public under this section when the electronic or paper manifest is a complete and final document. Electronic manifests and paper manifests submitted to the system are considered by EPA to be complete and final documents and publicly available information after 90 days have passed since the delivery to the designated facility of the hazardous waste shipment identified in the manifest.

1. After June 26, 2018, no claim of business confidentiality may be asserted by any person with respect to information contained in cathode ray tube export documents prepared, used and submitted under §§ 261.39(a)(5) and 261.41(a) of 40 CFR, and with respect to information contained in hazardous waste export, import, and transit documents prepared, used and submitted under 40 CFR §§ 262.82, 262.83, 262.84, 263.20, 264.12, 264.71, 265.12, 265.71, and 267.71, whether submitted electronically into EPA's Waste Import Export Tracking System or in paper format.

2. EPA will make any cathode ray tube export documents prepared, used and submitted under 40 CFR §§ 261.39(a)(5) and 261.41(a), and any hazardous waste export, import, and transit documents prepared, used and submitted under 40 CFR §§ 262.82, 262.83, 262.84, 263.20, 264.12, 264.71, 265.12, 265.71, and 267.71 of this chapter available to the public under this section when these electronic or paper documents are considered by EPA to be final documents. These submitted electronic and paper documents related to hazardous waste exports, imports and transits and cathode ray tube exports are considered by EPA to be final documents on March 1 of the calendar year after the related cathode ray tube exports or hazardous waste exports, imports, or transits occur.

(3) Use of number and gender. As used in 335-14:

(a) Words in the masculine gender also include the feminine and neuter genders; and

(b) Words in the singular include the plural; and

(c) Words in the plural include the singular.

(4) Manifest copy submission requirements for certain interstate waste shipments.

(a) A designated facility that receives waste through a hazardous waste manifest, either because the waste is a hazardous waste as defined in 335-14-2, or, for waste generated out of state, the state in which the waste is generated requires it to be regulated as a hazardous waste, shall:

1. Complete the facility portion of the applicable manifest;

2. Sign and date the facility certification;

3. Submit to the e-Manifest system a final copy of the manifest for data processing purposes; and

4. Pay the appropriate per manifest fee to EPA for each manifest submitted to the e-Manifest system, subject to the fee determination methodology, payment methods, dispute procedures, sanctions, and other fee requirements specified in subpart FF of 40 CFR 264.

Authors: Stephen C. Maurer, Michael B. Jones, Amy P. Zachry, Stephen A. Cobb, Vernon H. Crockett, C. Edwin Johnston, Heather M. Jones
Statutory Authority: Code of Alabama 1975, §22-30-11.
History: April 9, 1986. **Amended:** Effective: February 15, 1988; **Amended:** Effective: August 24, 1989; **Amended:** Effective: January 5, 1995; **Amended:** Effective: January 12, 1996; **Amended:** Effective: March 28, 1997; **Amended:** Effective: March 27, 1998; **Amended:** Effective: April 2, 1999; **Amended:** Effective: March 31, 2000; **Amended:** Effective: April 13, 2001; **Amended:** Effective: March 15, 2002; **Amended:** Effective: April 4, 2006; **Amended:** Effective: March 26, 2013; **Amended:** Effective: April 8, 2016; **Amended:** Effective: March 31, 2017; **Amended:** Effective: April 6, 2018; **Amended:** Filed: February 19, 2019; Effective: April 5, 2019.

335-14-1-.02 **Definitions and References.**

(1) Definitions.

(a) For the purpose of these rules, the following words and phrases shall have the meanings given to them in this rule and as given by law unless the context of ADEM Administrative Code 335-14 indicates differently.

1. "Aboveground tank" means a device meeting the definition of "tank" in 335-14-1-.02 and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

2. "Aboveground used oil tank" means a tank used to store or process used oil that is not an underground storage tank as defined in 335-6-15-.02.

3. "Accumulated speculatively" or "Speculative accumulation" means a material that is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled; and that – 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 percent by weight or volume of the amount of that material accumulated at the beginning of the period. Materials must be placed in a storage unit with a label indicating the first date that 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. In calculating the percentage of turnover, the 75 percent requirement is to be applied to each material of the same type (e.g., slags from a single smelting process) that is recycled in the same way (i.e., from which the same material is recovered or that is used in the same way). Materials accumulating in units that would be exempt from regulation under 335-14-2-.01(4)(c) 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, however.

(i) A material is not accumulated speculatively, however, if the person accumulating it can show that:

(I) the material is managed in lined waste pile(s) which meet(s) the requirements of 335-14-5-.12 or tank(s) or container(s) as those terms are defined in 335-14;

(II) the material is potentially recyclable and has a feasible means of being recycled; and

(III) that, 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 percent by weight or volume of the amount of that material accumulated at the beginning of the period. [In calculating the percentage of turnover, the 75 percent requirement is to be applied to each material of the same type (e.g., slags from a single

smelting process) that is recycled in the same way (i.e., from which the same material is recovered or that is used in the same way). Materials accumulating in units that would be exempt from regulation under 335-14-2-.01(4)(c) are not 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, however.]

(ii) Notwithstanding the preceding requirements, pulping liquors (i.e., black liquor) subject to the exclusion provided by 335-14-2-.01(4)(a)6. are not required to be managed in lined waste pile(s) which meet(s) the requirements of 335-14-5-.12 or tank(s) or container(s) as those terms are defined in 335-14.

4. "Active life" of a facility means the period from the initial receipt of hazardous waste at the facility until the Department receives certification of final closure.

5. "Active portion" means that portion of a facility where treatment, storage, or disposal operations are being or have been conducted after November 19, 1980 and which is not a closed portion. (See also "closed portion" and "inactive portion".)

6. "Active range" for the purposes of 335-14-7-.13 means a military range that is currently in service and is being regularly used for range activities.

7. "Acute hazardous waste" means hazardous wastes that meet the listing criteria in 335-14-2-.02(2) and therefore all either listed in 335-14-2-.04(2) with the assigned hazard code (H) or are listed in 335-14-2-.04(4)(e).

8. "ADEM" means the Alabama Department of Environmental Management as established by Code of Alabama 1975, §22-22A-4.

9. "Adequate notification" for the purposes of 335-14-3-.08 means one meeting the requirements of 335-14-3-.08(5)(a) for each waste stream. An adequate notification shall be made for each individual waste stream from each generator.

10. "Administrator" means the Administrator of EPA or his designee.

11. "Agreement State" for the purposes of 335-14-7-.14 means a State that has entered into an agreement with the NRC under subsection 274b of the Atomic Energy Act of 1954, as amended (68 Stat. 919), to assume responsibility for regulating within its borders byproduct, source, or special nuclear material in quantities not sufficient to form a critical mass.

12. "AHWMMA" means the Alabama Hazardous Wastes Management and Minimization Act of 1978, as amended, Code of Alabama 1975, §§22-30-1, et seq.

13. "Ampule" means an airtight vial made of glass, plastic, metal, or any combination of these materials.

14. "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to a storage or treatment tank(s), between hazardous waste storage and treatment tanks to a point of disposal onsite, or to a point of shipment for disposal off-site.

15. "Annual" means a calendar year.

16. "Annually" means once during each calendar year.

17. "Application" for the purposes of 335-14-8 means the EPA standard national forms for applying for a permit, including any additions, revisions or modifications by the Department. Application also includes the information required by the Department in 335-14-8-.02(5) through (19) (contents of Part B of the application).

18. "Aquifer" means a geologic formation, group of formations or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

19. "Area of concern (AOC)" includes any area having a probable release of hazardous waste or hazardous constituent which is not from a solid waste management unit and is determined by the Department to pose a current or potential threat to human health or the environment. Such areas of concern may require investigations and remedial action as required under Section 3005(c)(3) of the Resource Conservation and Recovery Act and ADEM Admin. Code Rule 335-14-8-.03(3)(b)2. in order to ensure adequate protection of human health and the environment.

20. "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit (i.e., part of a facility), e.g., the plant manager, superintendent, or person of equivalent responsibility.

21. "Battery" means a device consisting of one or more electrically connected electrochemical cells which are designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

22. "Battery breaking" for the purposes of 335-14-7 means the decapitation, cutting, or otherwise liberating the contents of a lead-acid battery. This activity includes the separation of any component of the battery from the other components (e.g., drainage of acid from a spent lead-acid battery or removal of plates and groups from a spent lead-acid battery).

23. "Boiler" means an enclosed device using controlled flame combustion and having the following characteristics:

(i)(I) The unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

(II) The unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream) and fluidized bed combustion units; and

(III) While in operation, the unit must maintain a thermal energy recovery efficiency of at least 60 percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(IV) The unit must export and utilize at least 75 percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air and the driving of induced or forced draft fans or feedwater pumps); or

(V) The unit is one which the Department has determined, on a case-by-case basis, to be a boiler, after consideration of the standards in 335-14-1-.03(12).

24. "Broker" for the purposes of 335-14-3-.08 means a person who acts as an agent for a generator in return for a fee or commission.

25. "Bulked waste stream" for the purposes of 335-14-3-.08 means one in which multiple waste streams have been physically mixed together into an individual container or containers.

26. "By-product" for the purposes of 335-14-2-.01 is a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a co-product that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

27. "CAMU-eligible waste" means all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, that are managed for implementing cleanup, pursuant to the requirements of 335-14-5-.19(1), (2), and (3).

28. "Captive insurance" as used in 335-14-5-.08 and 335-14-6-.08 means insurance provided by a company meeting any of the following conditions:

(i) Shares a common pool of assets as its parent corporation,

(ii) Belongs to the same economic family as its parent corporation,

(iii) Is wholly owned and/or capitalized with funds provided exclusively by the parent company, or

(iv) Is a wholly owned insurance interest operated and managed within the corporate family of the owner or operator for the primary purpose of insuring risks from within the same corporate family.

29. "Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

30. "Cathode ray tube" or CRT means a vacuum tube, composed primarily of glass, which is the visual or video display component of an electronic device. A used, intact CRT means a CRT whose vacuum has not been released. A used, broken CRT means glass removed from its housing or casing whose vacuum has been released.

31. "Central accumulation area" means an on-site hazardous waste accumulation area subject to either 335-14-3-.01(7)(a) for large quantity generators; or 335-14-3-.01(6)(b) for small quantity generators. A central accumulation area at an eligible academic entity that chooses to be subject to 335-14-3-.12 must also comply with 335-14-3-.12(12) when accumulating unwanted material and/or hazardous waste.

32. "Certification" or "Recertification" means:

(i) A statement of professional opinion based upon knowledge and belief.

(ii) For the purposes of 335-14-3-.08 and Appendices thereto is a statement based upon knowledge and belief of the accuracy of the information required by Rule 335-14-3-.08.

33. "Certified delivery" for the purposes of 335-14-7-.14 means certified mail with return receipt requested, or equivalent courier service, or other means, that provides the sender with a receipt confirming delivery.

34. "Chemical agents and munitions" for the purposes of 335-14-7-.13 are as defined in 50 U.S.C. section 1521(j)(1).

35. "Closed container" means a container with a lid that is secured in a manner such that the waste will not leak if the container is tipped over.

36. "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. (See also "active portion" and "inactive portion".)

37. "Closure" for the purposes of 335-14-8 means the act of securing a facility pursuant to the requirements of 335-14-5.

38. "Closure plan" as used in 335-14-5-.08 and 335-14-6-.08 means the plan for closure prepared in accordance with the requirements of 335-14-5-.07(3) or 335-14-6-.07(3).

39. "College/University" for the purpose of 335-14-3-.12 means a private or public, post-secondary, degree-granting, academic institution, that is accredited by an accrediting agency listed annually by the U.S. Department of Education.

40. "Commercial hazardous waste disposal facility" is one receiving hazardous waste not generated on site for disposal and to which a fee is paid or other compensation is given for disposal.

41. "Commission" means the Alabama Environmental Management Commission as established by Code of Alabama 1975, §2-22A-6.

42. "Component" means:

(i) Either the tank or ancillary equipment of a tank system.

(ii) For the purposes of 335-14-7 means any of the various materials and parts of a spent lead-acid battery, including but not limited to, plates and groups, rubber and plastic battery chips, acid, and paper/cellulose material.

(iii) For the purposes of 335-14-8 means any constituent part of a unit or any group of constituent parts of a unit which are assembled to perform a specific function (e.g., a pump seal, pump, kiln liner, kiln thermocouple).

43. "Condition for exemption" means any requirement in 335-14-3 that states an event, action, or standard that must occur or be met in order to obtain an exemption from any application requirement in 335-14.

44. "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

45. "Consolidated waste stream" for the purposes of 335-14-3-.08 means one in which multiple waste streams are grouped together in individual containers for shipping purposes, but are not physically mixed together.

46. "Contained" means held in a unit (including a land-based unit as defined in 335-14-1-.02(1)(a)) that meets the following criteria:

(i) The unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of 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, wind-blown dust, fugitive air emissions, and catastrophic unit failures.

(ii) 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.

(iii) 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.

(iv) Hazardous secondary materials in units that meet the applicable requirements of 335-14-5 and 335-14-6 are presumptively contained.

47. "Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

48. "Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of 335-14-5-.30 or 335-14-6-.30.

49. "Contamination" means the presence of any hazardous constituent in a concentration that exceeds the naturally occurring concentration of that constituent.

50. "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous wastes or hazardous waste constituents which could threaten human health or the environment.

51. "Corrective action cost estimate" for the purposes of 335-14-5-.08 means the most recent of the estimates prepared in accordance with 335-14-5-.08(10).

52. "Corrective action management unit (CAMU)" means an area within a facility that is used only for implementing corrective action or cleanup at the facility, pursuant to the requirements of 335-14-5-.19(1), (2), and (3).

[**Note:** All regulated units included in a CAMU remain subject to all applicable requirements including, but not limited to, the requirements of 335-14-5-.06, 335-14-5-.07 and 335-14-5-.08, 335-14-8, and the unit-specific requirements of 335-14-5 and 335-14-6 that applied to the units prior to their incorporation into the CAMU. See 335-14-5-.19(1)(b).]

53. "Corrective action plan" for the purposes of 335-14-5-.08 means the plan(s) which describes the corrective actions to be performed in accordance with the requirements of 335-14-5-.06(11) and (12).

54. "Corrosion expert" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the National Association of Corrosion Engineers (NACE) or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

55. "CRT collector" means a person who receives used, intact CRTs for recycling, repair, resale, or donation.

56. "CRT Exporter" means any person in the United States who initiates a transaction to send used CRTs outside the United States or its territories for recycling or reuse, or any intermediary in the United States arranging for such export.

57. "CRT glass manufacturer" means an operation or part of an operation that uses a furnace to manufacture CRT glass.

58. "CRT processing" means conducting all of the following activities:

(i) Receiving broken or intact CRTs; and

(ii) Intentionally breaking intact CRTs or further breaking or separating broken CRTs; and

(iii) Sorting or otherwise managing glass removed from CRT monitors.

59. "Current closure cost estimate" as used in 335-14-5-.08 and 335-14-6-.08 means the most recent of the estimates prepared in accordance with 335-14-5-.08(3)(a), (3)(b), and (3)(c) or 335-14-6-.08(3)(a), (3)(b), and (3)(c).

60. "Current post-closure cost estimate" as used in 335-14-5-.08 and 335-14-6-.08 means the most recent of the estimates prepared in accordance with 335-14-5-.08(5)(a), (5)(b), and (5)(c) or 335-14-6-.08(5)(a), (5)(b), and (5)(c).

61. "CWA" or "Clean Water Act" for the purposes of 335-14-8 means the act formerly referred to as the Federal Water Pollution Control Act and the amendments to that act.

62. "Daily" means once during each day of the year.

63. "Day" means a day of the year.

64. "Department" means the Alabama Department of Environmental Management as established by Code of Alabama 1975, §22-22A-4.

65. "Designated facility" means:

(i) a hazardous waste treatment, storage, or disposal facility which:

(I) has received a permit (or interim status) in accordance with the requirements of 40 CFR, Parts 270 and 124,

(II) has received a permit (or interim status) from a state authorized in accordance with 40 CFR Part 271; or

(III) is regulated under 335-14-2-.01(6)(c)2. or 335-14-7-.06, and

(IV) that has been designated on the manifest by the generator pursuant to 335-14-3-.02(1).

66. "Designated facility" also means a generator site designated on the manifest to receive its waste as a return shipment from a facility that has rejected the waste in accordance with 335-14-5-.05(3)(f) or 335-14-6-.05(3)(f).

(i) If a waste is destined to a facility in an authorized State which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving State to accept such waste.

67. "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in 335-14-11-.02(4)(a) and (c) and 335-14-11-.03(4)(a) and (c). A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

68. "Dike" means an embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

69. "Dioxins and furans (D/F)" means tetra, penta, hexa, hepta, and octachlorinated dibenzo dioxins and furans.

70. "Director" means the Director of the Department, appointed pursuant to Code of Ala. 1975, §22-22A-4, or his designee.

71. "Discharge" or "hazardous waste discharge" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous waste into or on any land or water.

72. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste into or on any land or water so that such hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters including groundwaters.

73. "Disposal facility" means a disposal site. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed but does include all hazardous waste management units within a corrective action management unit.

74. "Disposal site" means the location where any ultimate disposal of hazardous waste occurs.

75. "Do-it-yourselfer used oil collection center" means any site or facility that accepts/aggregates and stores used oil collected only from household do-it-yourselfers.

76. "Draft permit" for the purposes of 335-14-8 means a document prepared under 335-14-8-.08(4) indicating the Department's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit and a notice of intent to deny a permit are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination is not a draft permit. [See 335-14-8-.08(4).] A proposed permit is not a draft permit.

77. "Drip pad" is an engineered structure consisting of a curbed, free-draining base, constructed of non-earthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

78. "Electronic manifest" or "e-Manifest" means the electronic format of the hazardous waste manifest that is obtained from EPA's nation e-Manifest system and transmitted electronically to the system, and that is the legal equivalent of EPA Forms 8700-22 (Manifest) and 8700-22A (Continuation Sheet).

79. "Electronic manifest system" or "e-Manifest system" means EPA's national information technology system through which the electronic manifest may be obtained, completed, transmitted, and distributed to users of the electronic manifest and to regulatory agencies.

80. "Elementary neutralization unit" means a device which:

(i) Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in 335-14-2-.03(3), or they are listed in 335-14-2-.04 only for this reason; and

(ii) Meets the definition of a tank, tank system, container, transport vehicle, or vessel in this paragraph.

81. "Eligible academic entity" for the purposes of 335-14-3-.12 means a college or university, or a non-profit research institute that is owned by or has a formal written affiliation agreement with a college or university, or a teaching hospital that is owned by or has a formal written affiliation agreement with a college or university.

82. "Eligible Naturally Occurring and/or Accelerator-produced Radioactive Material (NARM)" for the purposes of 335-14-7-.14 is NARM that is eligible for the Transportation and Disposal Conditional Exemption. It is a NARM waste that contains RCRA hazardous waste, meets the waste acceptance criteria of, and is allowed by State of Alabama NARM regulations to be disposed of at a low-level radioactive waste disposal facility (LLRWDF) licensed in accordance with 10 CFR Part 61 or NRC Agreement State equivalent regulations.

83. "Emergency permit" for the purposes of 335-14-8 means a permit issued in accordance with 335-14-8-.06(1).

84. "Engineer" means a person registered as a licensed professional engineer with the Alabama Board of Licensure for Professional Engineers and Land Surveyors and practicing under the Rules of Professional Conduct, specifically Canon II.

85. "EPA" means the United States Environmental Protection Agency.

86. "EPA hazardous waste number" means the number assigned by EPA and the Department to each hazardous waste listed in 335-14-2-.04 and to each characteristic identified in 335-14-2-.03.

87. "EPA identification number" means the number assigned by EPA or the Department to each generator, transporter, and treatment, storage or disposal facility.

88. "Episodic event" means an activity or activities, either planned or unplanned, that does not normally occur during generator operations, resulting in an increase in the generation of hazardous wastes that exceeds the calendar month quantity limits for the generator's usual category.

89. "Equivalent method" means any testing or analytical method approved by the Department under 335-14-1-.03(1).

90. "Excluded scrap metal" for the purposes of 335-14-2-.01 is processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal.

91. "Exempted waste" for the purposes of 335-14-7-.14 means a waste that meets the eligibility criteria in 335-14-7-.14(3) and meets all of the conditions in 335-14-7-.14(4), or meets the eligibility criteria in 335-14-7-.14(12) and complies with all the conditions in 335-14-7-.14(13). Such waste is conditionally exempted from the regulatory definition of hazardous waste described in 335-14-2-.01(3).

92. "Existing aboveground used oil tank" means a tank that is used for the storage or processing of used oil and that is in operation, or for which installation has commenced on or prior to the effective date of these rules. Installation will be considered to have commenced if the owner or operator has obtained all federal, State of Alabama, and local approvals or permits necessary to begin installation of the tank and if either:

(i) A continuous on-site installation program has begun, or

(ii) The owner or operator has entered into contractual obligations – which cannot be canceled or modified without substantial loss – for installation of the tank to be completed within a reasonable time.

93. "Existing hazardous waste management (HWM) facility" or "existing facility" means a facility which was in operation or for which construction commenced on or before November 19, 1980. A facility had commenced construction if:

(i) The owner or operator had obtained the Federal, State of Alabama, and local approvals or permits necessary to begin actual construction; and

(ii) Either

(I) a continuous on-site physical construction program had begun; or

(II) the owner or operator had entered into contractual obligations which could not be canceled or modified without substantial loss for physical construction of the facility to be completed within a reasonable time.

94. "Existing portion" means that land surface area of an existing waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

95. "Existing tank system" or "existing component" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation has commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all Federal, State of Alabama, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(i) A continuous on-site physical construction or installation program has begun; or

(ii) The owner or operator has entered into contractual obligations - which cannot be canceled or modified without substantial loss - for physical construction of the site or installation of the tank system to be completed within a reasonable time.

96. "Explosives or munitions emergency" means a situation involving the suspected or detected presence of unexploded ordnance (UXO), damaged or deteriorated explosives or munitions, an improvised explosive device (IED), other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. Such situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat.

97. "Explosives or munitions emergency response" means all immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency. An explosives or munitions emergency response may include in-place render-safe procedures, treatment or destruction of the explosives or munitions and/or transporting those items to another location to be rendered safe,

treated, or destroyed. Any reasonable delay in the completion of an explosives or munitions emergency response caused by a necessary, unforeseen, or uncontrollable circumstance will not terminate the explosives or munitions emergency. Explosives and munitions emergency responses can occur on either public or private lands and are not limited to responses at RCRA facilities.

98. "Explosives or munitions emergency response specialist" means an individual trained in chemical or conventional munitions or explosives handling, transportation, render-safe procedures, or destruction techniques. Explosives or munitions emergency response specialists include Department of Defense (DOD) emergency explosive ordnance disposal (EOD), technical escort unit (TEU), and DOD-certified civilian or contractor personnel; and other Federal, State of Alabama, or local government, or civilian personnel similarly trained in explosives or munitions emergency responses.

99. "Extent of contamination" means the horizontal and vertical area in which the concentrations of hazardous constituents in environmental media are above detection limits or background concentrations indicative of the region, whichever is appropriate as determined by the Department.

100. "Facility" or "hazardous waste management facility" or "HWM facility" means:

(i) All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).

(ii) For the purpose of implementing corrective action under 335-14-5-.06(12), all contiguous property under the control of the owner or operator seeking a permit under Chapter 30 of Title 22, Code of Alabama 1975, (AHWMMA). This definition also applies to facilities implementing corrective action under §22-30-19 et seq., Code of Alabama 1975, and/or RCRA Section 3008(h).

(iii) Notwithstanding subparagraph (ii) of this definition, a remediation waste management site is not a facility that is subject to 335-14-5-.06(12), but is subject to corrective action requirements if the site is located within such a facility.

101. "Facility mailing list" for the purposes of 335-14-8 means the mailing list for a facility maintained by ADEM in accordance with 335-14-8-.08(6)(c)1.(iv).

102. "Facility owner" means a person who owns a facility. In most cases, this will be the "operator" or the "owner".

103. "Federal, State of Alabama and local approvals or permits necessary to begin physical construction" means permits and approvals required under Federal, State of Alabama, or local hazardous waste control statutes, regulations, or ordinances.

104. "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136-136y).

105. "Final closure" means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under 335-14-5 and 335-14-6 are no longer conducted at the facility unless subject to the provisions in 335-14-3-.01(7)(a)8.

106. "Food-chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

107. "Formal written affiliation agreement" for the purposes of 335-14-3-.12 for a non-profit research institute means a written document that establishes a relationship between institutions for the purposes of research and/or education and is signed by authorized representatives, as defined by 335-14-1-.02 for each institution. A relationship on a project-by-project basis or grant-by-grant basis is not considered a formal written affiliation agreement. A "formal written affiliation agreement" for a teaching hospital means a master affiliation agreement and program letter of agreement, as defined by the Accreditation Council for Graduate Medical Education, with an accredited medical program or medical school.

108. "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

109. "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike and the surface of the waste contained therein.

110. "Functionally equivalent component" for the purposes of 335-14-8 means a component which performs the same function or measurement and which meets or exceeds the performance specifications of another component.

111. "Generator" means:

(i) Any person, by individual generation site, whose act or process produces hazardous waste identified or listed in 335-14-2 or whose act first causes a hazardous waste to become subject to regulation. The term generator includes those persons further defined as a large quantity generator, a small quantity generator, and/or a very small quantity generator.

(ii) For the purposes of 335-14-3-.08 is a person as defined in 335-14-1-.02, but such term shall not include the treatment, storage, disposal, or other management of solid or hazardous wastes received from off-site when the final disposal of the waste occurs at the same facility which treated, stored, or otherwise managed the waste.

112. "Geologist" means a person who holds a license as a professional geologist under the Alabama Professional Geologist Licensing Act.

113. "Groundwater" means water below the land surface in a zone of saturation.

114. "Hazardous constituents" are those substances listed in 335-14-2 Appendix VIII and/or 335-14-5 Appendix IX and include hazardous constituents released from solid waste, hazardous waste, or hazardous waste constituents that are reaction by-products.

115. "Hazardous secondary material" means a secondary material (e.g., spent material, by-product, or sludge) that, when discarded, would be identified as hazardous waste under 335-14-2.

116. "Hazardous secondary material generator" means any person whose act or process produces hazardous secondary materials at the generating facility. For purposes of this paragraph, "generating facility" means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator. For the purposes 335-14-2-.01(4)(a)23., a facility that collects hazardous secondary materials from other persons is not the hazardous secondary material generator.

117. "Hazardous waste" means a hazardous waste as defined in 335-14-2-.01(3).

118. "Hazardous waste constituent" means a constituent that caused the Department to list the hazardous waste in 335-14-2-.04 or a constituent listed in Table 1 of 335-14-2-.03(5).

119. "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system, and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

120. "Home scrap metal" for the purposes of 335-14-2-.01 means scrap metal as generated by steel mills, foundries, and refineries such as turnings, cuttings, punchings, and borings.

121. "In operation" for the purposes of 335-14-8 refers to a facility which is treating, storing, or disposing of hazardous waste.

122. "Inactive portion" means that portion of a facility which is not operated after November 19, 1980. (See also "active portion" and "closed portion".)

123. "Inactive range" for the purposes of 335-14-7-.13 means a military range that is not currently being used, but that is still under military control and considered by the military to be a potential range area, and that has not been put to a new use that is incompatible with range activities.

124. "Incinerator" means any enclosed device that:

(i) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(ii) Meets the definition of infrared incinerator or plasma arc incinerator.

125. "Incompatible waste" means a hazardous waste which is unsuitable for:

(i) Placement in a particular device or facility because it may cause corrosion or decay of containment materials (e.g., container inner liners or tank walls); or

(ii) Commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.. (See Appendix V of 335-14-5 and 6 for examples.)

126. "Independent requirement" means a requirement of 335-14-3 that states an event, action, or standard that must occur or be met; and that applies without relation to, or irrespective of, the purpose of obtaining a conditional exemption from storage facility permit, interim status, and operating requirements under 335-14.

127. "Individual generation site" means the contiguous site at or on which one or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

128. "Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

(i) Cement kilns;

(ii) Lime kilns;

(iii) Aggregate kilns;

(iv) Phosphate kilns;

(v) Coke ovens;

(vi) Blast furnaces;

(vii) Smelting, melting and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);

(viii) Titanium dioxide chloride process oxidation reactors;

(ix) Methane reforming furnaces;

(x) Pulping liquor recovery furnaces;

(xi) Combustion devices used in the recovery of sulfur values from spent sulfuric acid; and

(xii) Halogen acid furnaces for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3 percent, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20 percent as generated.

(xiii) Such other devices as the Department may, after notice and comment, add to this list on the basis of one or more of the following factors:

(I) The design and use of the device primarily to accomplish recovery of material products;

(II) The use of the device to burn or reduce raw materials to make a material product;

(III) The use of the device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feedstocks;

(IV) The use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;

(V) The use of the device in common industrial practice to produce a material product; and

(VI) Other factors, as appropriate.

129. "Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

130. "Inground tank" means a device meeting the definition of "tank" in 335-14-1-.02 whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

131. "Injection well" means a bored, drilled, or driven shaft or dug hole which is used for the injection of pollutants. (See also "underground injection".)

132. "Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.

133. "Installation inspector" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

134. "Intermediate facility" means any facility that stores hazardous secondary materials for more than 10 days, other than a hazardous secondary material generator or reclaimer of such material.

135. "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

136. "Laboratory" for the purposes of 335-14-3-.12 means an area owned by an eligible academic entity where relatively small quantities of chemicals and other substances are used on a non-production basis for teaching or research (or diagnostic purposes at a teaching hospital) and are stored and used in containers that are easily manipulated by one person. Photo laboratories, art studios, and field laboratories are considered laboratories. Areas such as chemical stockrooms and preparatory laboratories that provide a support function to teaching or research laboratories (or diagnostic laboratories at teaching hospitals) are also considered laboratories.

137. "Laboratory clean-out" for the purposes of 335-14-3-.12 means an evaluation of the inventory of chemicals and other materials in a laboratory that are no longer needed or that have expired and the subsequent removal of those chemicals or other unwanted materials from the laboratory. A clean-out may occur for several reasons. It may be on a routine basis (e.g., at the end of a semester or academic year) or as a result of a renovation, relocation, or change in laboratory supervisor/occupant. A regularly scheduled removal of unwanted material as required by 335-14-3-.12(9) does not qualify as a laboratory clean-out.

138. "Laboratory worker" for the purposes of 335-14-3-.12 means a person who handles chemicals and/or unwanted material in a laboratory and may include, but is not limited to, faculty, staff, post-doctoral fellows, interns, researchers, technicians, supervisors/managers, and principal investigators. A person does not need to be paid or otherwise compensated for his/her work in the laboratory to be considered a laboratory worker. Undergraduate and graduate students in a supervised classroom setting are not laboratory workers.

139. "Lamp", also referred to as "universal waste lamp", means the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infrared regions of the electromagnetic spectrum. Examples of common universal waste electric lamps include, but are not limited to, fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.

140. "Land-based unit" means an area where hazardous secondary materials are placed in or on the land before recycling. This definition does not include land-based production units.

141. "Land Disposal Restriction (LDR) treatment standards" for the purposes of 335-14-7-.14 means treatment standards, under 335-14-9, that a RCRA hazardous waste must meet before it can be disposed of in a RCRA hazardous waste land disposal unit.

142. "Land surveyor" means a person registered as a licensed Land Surveyor with the Alabama Board of Licensure for Professional Engineers and Land Surveyors and practicing under the Rules of Professional Conduct (Code of Ethics).

143. "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure.

144. "Land use controls" has the same meaning as in 335-15-1-.02.

145. "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave or a corrective action management unit.

146. "Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

147. "Large Quantity Generator (LQG)" is a generator who generates any of the following amounts in a calendar month:

(i) Greater than or equal to 1,000 kilograms (2200 lbs) of non-acute hazardous waste; or

(ii) Greater than 1 kilogram (2.2 lbs) of acute hazardous waste listed in 335-14-2-.04(2) or 335-14-2-.04(4)(e); or

(iii) Greater than 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in 335-14-2-.04(2) or 335-14-2-.04(4)(e). The generator's twelve month period is assigned by county in the "specified month schedule" located at 335-14-1-.02(1)(a).

148. "Large Quantity Handler of Universal Waste" means a universal waste handler (as defined in 335-14-1-.02) who accumulates 5,000 kilograms or more total of universal waste (batteries, pesticides, mercury-containing equipment, or lamps, calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which the 5,000 kilogram limit is met or exceeded.

149. "Leachate" means any liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste.

150. "Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of hazardous waste or accumulated liquid in the secondary containment structure. Such a system must employ operational controls (e.g., daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of hazardous waste into the secondary containment structure.

151. "License" for the purposes of 335-14-7-.14 means a license issued by the Nuclear Regulatory Commission, or NRC Agreement State, to users that manage radionuclides regulated by NRC, or NRC Agreement States, under authority of the Atomic Energy Act of 1954, as amended.

152. "Liner" means a continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment, waste pile, landfill, or landfill cell, which restricts the downward or lateral escape of hazardous waste, hazardous waste constituents, or leachate.

153. "Low-Level Mixed Waste (LLMW)" for the purposes of 335-14-7-.14 is a waste that contains both low-level radioactive waste and RCRA hazardous waste.

154. "Low-Level Radioactive Waste (LLW)" for the purposes of 335-14-7-.14 is a radioactive waste which contains source, special nuclear, or byproduct material, and which is not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in section 11e.(2) of the Atomic Energy Act. (See also NRC definition of "waste" at 10 CFR 61.2)

155. "Low-Level Radioactive Waste Disposal Facility (LLRWDF)" for the purposes of 335-14-7-.14 is a disposal facility licensed by the NRC or an NRC Agreement State to dispose of low-level radioactive waste.

156. "Major facility" for the purposes of 335-14-8 means any facility or activity classed as such by the Department.

157. "Management" or "hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and/or disposal of hazardous waste.

158. "Manifest" means the shipping document EPA Form 8700-22 (including, if necessary, EPA Form 8700-22A), or the electronic manifest, originated and signed in accordance with the applicable requirements of 335-14-3 through 335-14-6.

159. "Manifest tracking number" means the alphanumeric identification number (i.e., a unique three letter suffix preceded by nine numerical digits), which is pre-printed in Item 4 of the Manifest by a registered source.

160. "Mercury-containing equipment" means a device or part of a device (including thermostats, but excluding batteries and lamps) that contains elemental mercury integral to its function.

161. "Method detection limit or MDL" means the minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix type containing the analyte.

162. "Military" for the purposes of 335-14-7-.13 means the Department of Defense (DOD), the Armed Services, Coast Guard, National Guard, Department of Energy (DOE), or other parties under contract or acting as an agent for the foregoing, who handle military munitions.

163. "Military munitions" means all ammunition products and components produced or used by or for the US Department of Defense or the US Armed Services for national defense and security, including military munitions under the control of the Department of Defense, the US Coast Guard, the US Department of Energy (DOE), and National Guard personnel. The term military munitions includes: confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. Military munitions do not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices and nuclear components thereof. However, the term does include non-nuclear components of nuclear devices, managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, have been completed.

164. "Military range" for the purposes of 335-14-7-.13 means designated land and water areas set aside, managed, and used to conduct research on, develop, test, and evaluate military munitions and explosives, other ordnance, or weapon systems, or to train military personnel in their use and handling. Ranges include firing lines and positions, maneuver areas, firing lanes, test pads, detonation pads, impact areas, and buffer zones with restricted access and exclusionary areas.

165. "Mining overburden returned to the mine site" means any material overlaying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

166. "Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR Part 146, containment building, corrective action management unit, unit eligible for a research, development and demonstration permit under 335-14-8-.06(4); or staging pile.

167. "Mixed waste" means a solid waste that is a mixture of hazardous waste [as defined in 335-14-2-.01(3)] and radioactive waste (as defined in 10 CFR 61.2). The radioactive component of mixed waste is subject to regulation by the Atomic Energy Act (AEA)/Nuclear Regulatory Commission (NRC). The non-radioactive chemically hazardous component of mixed waste is subject to regulation by the AHWMMA and ADEM Admin. Code Rule 335-14.

168. "Month" means a month of the year.

169. "Monthly" means once during each month of the year.

170. "Motor vehicle manufacturing" means the manufacture of automobiles and light trucks/utility vehicles (including light duty vans, pick-up trucks, minivans, and sport utility vehicles). Facilities must be engaged in manufacturing complete vehicles (body and chassis or unibody) or chassis only.

171. "Movement" means that hazardous waste transported to a facility in an individual vehicle.

172. "National Pollutant Discharge Elimination System" or "NPDES" means the program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and enforcing pretreatment requirements under the Alabama Water Pollution Control Act, Code of Alabama 1975, §§ 22-22-1 to 22-22-14, as amended, and the regulations in Division 6 of the Department's Administrative Code.

173. "Naturally Occurring and/or Accelerator-produced Radioactive Material (NARM)" for the purposes of 335-14-7-.14 means radioactive materials that:

(i) Are naturally occurring and are not source, special nuclear, or byproduct materials (as defined by the AEA) or

(ii) Are produced by an accelerator.

[**Note:** NARM is regulated by the States under State law, or by DOE (as authorized by the AEA) under DOE orders.]

174. "New aboveground used oil tank" means an aboveground tank that will be used to store or process used oil and for which installation has commenced after the effective date of these rules.

175. "New hazardous waste management facility" or "new facility" means a facility which began operation, or for which construction commenced after November 19, 1980.

176. "New tank system" or "new tank component" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation has commenced after July 14, 1986; except, however, for purposes of 335-14-5-.10(4)(g)4. and 335-14-6-.10(4)(g)4., a new tank system is one for which construction commences after July 14, 1986. (See also "existing tank system".)

177. Non-acute hazardous waste means all hazardous wastes that are not acute hazardous waste, as defined 335-14-1-.02.

178. "Non-profit research institute" for the purposes of 335-14-3-.12 means an organization that conducts research as its primary function and files as a non-profit organization under the tax code of 26 U.S.C. 501(c)(3).

179. "NRC" for the purposes of 335-14-7-.14 means the U. S. Nuclear Regulatory Commission.

180. "No free liquids" for the purposes of 335-14-2-.01(4)(a)26. and 335-14-2-.01(4)(b)18. means that solvent-contaminated wipes may not contain free liquids as determined by Method 9095B (Paint Filter Liquids Test), included in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (EPA Publication SW-846), which is incorporated by reference, and that there is no free liquid in the container holding the wipes. No free liquids may also be determined using another standard or test method as defined by the Department.

181. "One-time shipment" means a unique waste received at a commercial hazardous waste disposal facility which originated from a single generator and is not routinely produced by that generator on a regularly recurring basis. Such waste would include, but would not be limited to, lab packs. Other examples might include spill cleanups, or the removal of obsolete or out-dated commercial chemicals.

182. "Onground tank" means a device meeting the definition of "tank" in 335-14-1-.02 and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

183. "On-site" means the same or geographically contiguous property which may be divided by public or private right-of-way, provided that the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along the right-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which he/she controls and to which the public does not have access, are also considered on-site property.

184. "Open burning" means the combustion of any material without the following characteristics:

(i) Control of combustion air to maintain adequate temperature for efficient combustion;

(ii) Containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(iii) Control of emission of the gaseous combustion products.

185. "Operating day" means any day on which hazardous waste is treated, stored, or disposed of in a unit. For example, each day that a hazardous waste

storage unit contains hazardous waste is an operating day; as is each day that a disposal unit contains or receives hazardous waste, or each day that hazardous waste is treated in a treatment unit.

186. "Operating facility" as used in 335-14-5-.08 and 335-14-6-.08 means a facility with active treatment, storage, and/or disposal units subject to the requirements of 335-14-5, 335-14-6, and 335-14-8.

187. "Operator" means the person responsible for the overall operation of a facility.

188. "Other wastes" are wastes as defined in 335-14-1-.02 that are not hazardous waste as defined in 335-14-2-.01.

189. "Owner" means the person who owns in fee simple the property on which a facility or part of a facility is sited.

190. "Parent corporation" means a corporation which directly owns at least 50 percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

191. "Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of 335-14-5 and 335-14-6 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

192. "Permit" for the purposes of 335-14-8 means an authorization or equivalent control document issued by the Department to implement the requirements of 335-14-8. Permit does not include any authorization which has not been the subject of final administrative action, such as a draft permit or a proposed permit; but permit does include interim status permits to the extent set out in 335-14-8-.07.

193. "Person" means any and all persons, natural or artificial, including, but not limited to any individual, partnership, association, society, joint stock company, firm company, corporation, institution, trust, estate, or other legal entity or other business organization or any governmental entity, and any successor, representative, agent or agency of the foregoing.

194. "Personnel" or "facility personnel" means all persons who work at, or oversee the operations of, a hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of 335-14-5 or 335-14-6.

195. "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(i) Is a new animal drug under the Federal Food, Drug, and Cosmetic Act (FFDCA) section 201(w), or

(ii) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or

(iii) Is an animal feed under FFDCA section 201(x) that bears or contains any substances described by paragraph (i) or (ii) of this definition, or

(iv) Is an animal feed under FFDCA Section 201(x) that bears or contains any substances described by 335-14-11-.01(3)(a) or (b).

196. "Petroleum refining facility" means an establishment primarily engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, and lubricants, through fractionation, straight distillation of crude oil, redistillation of unfinished petroleum derivatives, cracking or other processes (i.e., facilities classified as SIC 2911).

197. "Physical construction" for the purposes of 335-14-8 means excavation, movement of earth, erection of forms or structures, or similar activity to prepare a hazardous waste management facility to accept hazardous waste.

198. "Pile" means any non-containerized accumulation of solid, non-flowing hazardous waste that is used for treatment or storage and that is not a containment building.

199. "Planned episodic event" means an episodic event that the generator planned and prepared for, including regular maintenance, tank cleanouts, short-term projects, and removal of excess chemical inventory.

200. "Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

201. "Plastic" means the non-metallic compounds that result from a chemical reaction and are molded or formed into rigid or pliable construction materials.

202. "Plastic battery chips" for the purposes of 335-14-7 means whole components and any pieces thereof which are constructed of plastic and utilized in a lead-acid battery.

203. "Plates and groups" for the purposes of 335-14-7 means the internal components of a lead-acid battery which are constructed of lead and/or lead alloys. Plates and groups shall be considered a spent material (solid waste) and a hazardous waste (D008) due to the concentration of leachable lead therein.

204. "Point source" means any discernible, confined, and discrete conveyance, including, but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or

vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

205. "Post-closure facility" as used in 335-14-5-.08 and 335-14-6-.08 means a facility at which all treatment, storage, and/or disposal units have been closed in accordance with 335-14-5-.07 or 335-14-6-.07, at which the owner or operator is unable to demonstrate closure by removal in accordance with 335-14-8-.01(1)(c)5., for one or more units.

206. "Post-closure only permit" for the purposes of 335-14-8 means a permit for a facility at which the only hazardous waste treatment, storage, or disposal activities conducted which require a permit pursuant to 335-14-8 are activities related to the post-closure care, monitoring, and/or corrective actions performed at closed hazardous waste management units. Corrective actions specified in post-closure only permits shall include activities related to regulated hazardous waste management units as well as solid waste management units (SWMU) and areas of concern (AOC).

207. "Post-closure permit" for the purposes of 335-14-8 means a permit which addresses the post-closure care requirements for closed hazardous waste treatment, storage, or disposal unit(s) at a facility. The term "post-closure permit" includes both post-closure only permits and the post-closure care portions of operating permits.

208. "Post-closure plan" as used in 335-14-5-.08 and 335-14-6-.08 means the plan for post-closure care prepared in accordance with the requirements of 335-14-5-.07(8) through (11) or 335-14-6-.07(8) through (11).

209. "Privatized municipal waste treatment facility" means a facility which is operated to treat domestic and/or industrial wastewaters from a municipality or industrial park and which otherwise meets the definition of a publicly owned treatment works (POTW), but which is not publicly owned.

210. "Processed scrap metal" for the purposes of 335-14-2-.01 means scrap metal which has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Processed scrap metal includes, but is not limited to scrap metal which has been baled, shredded, sheared, chopped, crushed, flattened, cut, melted, or separated by metal type (i.e., sorted), and, fines, drosses and related materials which have been agglomerated.

[**Note:** Shredded circuit boards being sent for recycling are not considered processed scrap metal. They are covered under the exclusion from the definition of solid waste for shredded circuit boards being recycled [335-14-2-.01(4)(a)14.].

211. "Prompt scrap metal" for the purposes of 335-14-2-.01 means scrap metal as generated by the metal working/fabrication industries and includes such scrap metal as turnings, cuttings, punchings, and borings. Prompt scrap is also known as industrial or new scrap metal.

212. "Publicly owned treatment works" or "POTW" means any device or system used in the treatment (including recycling and reclamation) of municipal sewage

or industrial wastes of a liquid nature which is owned by the State of Alabama or municipality [as defined by section 502(4) of the Clean Water Act]. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

213. "Qualified Groundwater Scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by State of Alabama registration, professional certifications, or completion of accredited university courses that enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

214. "Quarter" means a period of three consecutive months.

215. "Quarterly" means once during each period of three consecutive months for a total of four times each calendar year.

216. "RCRA" means the Federal Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. §6901 et seq.).

217. "Reactive acutely hazardous unwanted material" for the purposes of 335-14-3-.12 means an unwanted material that is one of the acutely hazardous commercial chemical products listed in 335-14-2-.04(4)(e) for reactivity.

218. "Reclaimed" for the purposes of 335-14-2-.01 means a material that is processed to recover a usable product, or if it is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents. In addition, for purposes of 335-14-2-.01(4)(a)23. and 335-14-2-.01(4)(a)24, smelting, melting, and refining furnaces are considered to be solely engaged in metals reclamation if the metal recovery from the hazardous secondary materials meets the same requirements as those specified for metals recovery from hazardous waste found in 335-14-7-.08, and if the residuals meet the requirements specified in 335-14-7-.08.

219. "Recycled" for the purposes of 335-14-2-.01 means a material is used, reused, or reclaimed.

220. "Regional Administrator" means the Regional Administrator for the EPA Region in which the facility is located, or his designee.

221. "Release" means any spilling, leaking, pouring, emitting, emptying, discharging, injecting, escaping, leaching, pumping, or disposing into the environment of any hazardous waste or hazardous constituent.

222. "Remanufacturing" means processing a higher-value hazardous secondary material in order to manufacture a product that serves a similar functional purpose as the original commercial-grade material. For the purpose of this definition, a hazardous secondary material is considered higher-value if it was generated from the

use of a commercial-grade material in a manufacturing process and can be remanufactured into a similar commercial-grade material.

223. "Remediation waste" means all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris that are managed for implementing cleanup, pursuant to the requirements of 335-14-5-.19(1), (2), and (3).

224. "Remediation waste management site" means a facility where an owner or operator is or will be treating, storing, or disposing of hazardous remediation wastes. A remediation waste management site is not a facility that is subject to corrective action under 335-14-5-.06(12), but is subject to corrective action requirements if the site is located in such a facility.

225. "Replacement unit" means a landfill, surface impoundment, or waste pile unit [1] from which all or substantially all of the waste is removed, and [2] that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility in accordance with an approved closure plan or EPA or State of Alabama approved corrective action.

226. "Representative sample" means a sample of a universe or whole (e.g., waste pile, lagoon, groundwater) which can be expected to exhibit the average properties of the universe or whole.

227. "Re-refining distillation bottoms" means the heavy fraction produced by vacuum distillation of filtered and dehydrated used oil. The composition of still bottoms varies with column operation and feedstock.

228. "Rubber" means any of numerous synthetic elastic materials of varying chemical composition with properties similar to those of natural rubber.

229. "Rubber battery chips" for the purposes of 335-14-7 means whole components and any pieces thereof which are constructed of rubber and utilized in a lead-acid battery.

230. "Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

231. "Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

232. "Satellite accumulation" means accumulation of as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste as listed in 335-14-2-.04(4)(e) in containers at or near any point of generation where the wastes initially accumulates, provided the generator complies with 335-14-3-.01(5).

233. "Saturated zone" or "zone of saturation" means that part of the earth's crust in which all voids are filled with water.

234. "Schedule of compliance" for the purposes of 335-14-8 means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements leading to compliance with the AHWMMA and Division 335-14.

235. "Scrap metal" for the purposes of 335-14-2-.01 means bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad box cars) which when worn or superfluous can be recycled.

236. "SDWA" or the "Safe Drinking Water Act" for the purposes of 335-14-8 means Code of Alabama 1975, §§ 22-23-30 to 22-23-54, as amended.

237. "Semi-annual" means a six month period.

238. "Semi-annually" means once during each six month period for a total of two times each calendar year.

239. "Site" means the land or water area where any facility, generator, or activity is physically located or conducted, including adjacent land used in connection with the facility, generator, or activity.

240. "Sludge" means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water treatment plant, or air pollution control facility, exclusive of the treated effluent from a wastewater treatment plant.

241. "Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 Btu/lb. of sludge treated on a wet-weight basis.

242. "Small Quantity Generator (SQG)" is a generator who generates the following amounts in a calendar month:

(i) Greater than 100 kilograms (220 lbs) but less than 1,000 kilograms (2200 lbs) of non-acute hazardous waste; and

(ii) Less than or equal to 1 kilogram (2.2 lbs) of acute hazardous waste listed in 335-14-2-.04(2) or 335-14-2-.04(4)(e); and

(iii) Less than or equal to 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in 335-14-2-.04(2) or 335-14-2-.04(4)(e). The generator's twelve month period is assigned by county in the "specified month schedule" located at 335-14-1-.02(1)(a).

243. "Small Quantity Handler of Universal Waste" means a universal waste handler (as defined in 335-14-1-.02) who does not accumulate 5,000 kilograms

or more of universal waste (batteries, pesticides, mercury-containing equipment, or lamps, calculated collectively) at any time.

244. "Solid waste" means a waste as defined by 335-14-2-.01(2).

245. "Solid waste management unit" or "SWMU" includes any unit which has been used for the treatment, storage, or disposal of solid waste at any time, irrespective of whether the unit is or ever was intended for the management of solid waste. Units subject to regulation under 335-14-5, 335-14-6, 335-14-7, or 335-14-8 are also solid waste management units. SWMU's include areas that have been contaminated by routine and systematic releases of hazardous waste or hazardous constituents, excluding one-time accidental spills that are immediately remediated and cannot be linked to solid waste management activities (e.g., product or process spills).

246. "Solvent-contaminated wipe" means a wipe that, after the use or after cleaning up a spill, either (1) contains one or more of the F001 through F005 solvents listed in 335-14-2-.04(2) or the corresponding P- or U- listed solvents found in 335-14-2-.04(4); (2) exhibits a hazardous characteristic found in 335-14-2-.03 when that characteristic results from a solvent listed in 335-14-2; and/or (3) exhibits only the hazardous waste characteristic of ignitability found in 335-14-2-.03(2) due to the presence of one or more solvents that are not listed in 335-14-2. Solvent-contaminated wipes that contain listed hazardous waste other than solvents, or exhibit the characteristic of toxicity, corrosivity, or reactivity due to contaminants other than solvents, are not eligible for the exclusions in 335-14-2-.01(4)(a)26. and 335-14-2-.01(4)(b)18.

247. "Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both. "Sorb" means to either adsorb or absorb, or both.

248. "Specified month schedule" for the purposes of the "Annual Submission of ADEM Form 8700-12" is defined by the chart below according to the county in which the facility is located.

If your site of waste generation is located in the county of ...	**Submit ADEM Form 8700-12 by the 15th of ...**
Colbert, Fayette, Franklin, Greene, Hale, Lamar, Lauderdale, Lawrence, Limestone, Marion, Morgan, Pickens, Sumter, Tuscaloosa, Walker, Winston	February
Blount, Cherokee, Cullman, DeKalb, Etowah, Jackson, Madison, Marshall, St. Clair	April
Jefferson	June
Calhoun, Chambers, Clay, Cleburne, Coosa, Elmore, Lee, Macon, Montgomery, Randolph, Shelby, Talladega, Tallapoosa	August

If your site of waste generation is located in the county of ...	Submit ADEM Form 8700-12 by the 15th of ...
Autauga, Baldwin, Barbour, Bibb, Bullock, Butler, Chilton, Choctaw, Clarke, Coffee, Conecuh, Covington, Crenshaw, Dale, Dallas, Escambia, Geneva, Henry, Houston, Lowndes, Marengo, Monroe, Perry, Pike, Russell, Washington, Wilcox	October
Mobile	December

249. "Spent materials" for the purposes of 335-14-2-.01 and 335-14-7 means those materials which have been used, and as a result of that use become contaminated by physical or chemical impurities, and can no longer serve the purpose for which they were produced without being regenerated, reclaimed, or otherwise reprocessed. For the purposes of 335-14-7, spent materials shall include all battery components, including but not limited to plates and groups, plastic and rubber battery chips, paper/cellulose materials and acid removed from a spent lead-acid battery.

(i) Contamination means any impurity, factor, or circumstance that causes the material to be taken out of service for reprocessing.

(ii) The portion of the definition stating a spent material "can no longer serve the purpose for which they were produced" is satisfied when the material is no longer serving its original purpose and is being reprocessed or being accumulated prior to reprocessing.

250. "Spill" means the unplanned, accidental, or unpermitted discharge, deposit, injection, leaking, pumping, pouring, emitting, dumping, placing, or releasing of hazardous wastes, or materials which when spilled become hazardous wastes, into or on the land, the air, or the water.

251. "Staging pile" means an accumulation of solid, non-flowing remediation waste (as defined in 335-14-1-.02) that is not a containment building and that is used only during remedial operations for temporary storage at a facility. Staging piles must be designated by the Department according to the requirements of 335-14-5-.19(3).

252. "State" means any of the United States except the State of Alabama.

253. "Storage" means the actual or intended containment of wastes, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such wastes.

254. "Storage facility" means any facility or part of a facility at which hazardous waste is placed in storage, exclusive of transfer facilities where waste is stored for ten days or less and on-site storage by generators in compliance with 335-14-3.

255. "Storm event" means a 1-year, 24-hour storm event or rainfall which measures 1 inch or greater in 1 hour or less as determined by measurements taken at the facility, or the closest official weather monitoring station.

256. "Substantial business relationship" means the extent of a business relationship necessary under applicable State of Alabama law to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" must arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the Department.

257. "Sump" means any pit or reservoir that meets the definition of tank and those troughs/trenches connected to it that serve to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

258. "Surface impoundment" or "impoundment" means a facility or part of a facility which 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 wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

259. "SWMU corrective action facility" for the purposes of 335-14-5-.08 means a facility which is subject to the requirements of 335-14-5-.06(12) for the corrective action of Solid Waste Management Units, and has been issued a permit or an enforceable document (as defined in 335-14-8-.01(1)(c)7.) in accordance with 335-14-8 or an order pursuant to Section 3008(h) of RCRA.

260. "Tank" means a stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

261. "Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

262. "Teaching hospital" for the purposes of 335-14-3-.12 means a hospital that trains students to become physicians, nurses or other health or laboratory personnel.

263. "TEQ" means toxicity equivalence, the international method of relating the toxicity of various dioxin/furan congeners to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin.

264. "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of

thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge.

265. "Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of 335-14-11-.02(4)(c)2. or 335-14-11-.03(4)(c)2.

266. "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which waste acid is neutralized. An owner or operator who removes hazardous waste from a totally enclosed treatment system must comply with the applicable standards set forth in 335-14-3 with respect to any hazardous waste removed from the totally enclosed treatment facility. An owner or operator who removes hazardous waste from a totally enclosed treatment facility may not reintroduce the waste into the totally enclosed treatment facility unless the owner/operator has first complied with the applicable standards and permit requirements set forth in 335-14-5, 335-14-6, 335-14-8, and 335-14-9.

267. "Trade secret" includes, but is not limited to, any formula, plan, pattern, process, tool, mechanism, compound or procedure, as well as production data or compilation of information, financial and marketing data, which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce or compound an article of trade or a service having commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know of it.

268. "Trained professional" for the purposes of 335-14-3-.12 means a person who has completed the applicable RCRA training requirements of 335-14-3-.01(7)(a)7. for large quantity generators, or is knowledgeable about normal operations and emergencies in accordance with 335-14-3-.01(6) for small quantity generators and very small quantity generators. A trained professional may be an employee of the eligible academic entity or may be a contractor or vendor who meets the requisite training requirements.

269. "Transfer facility" means any transportation-related facilities including loading docks, parking areas, storage areas, and other related areas where shipments of hazardous waste or hazardous secondary materials are held for more than 24 hours and not longer than 10 days during the normal course of transportation. Transfer facilities that store hazardous waste for more than 10 days are subject to regulation as a storage facility under 335-14-5, 335-14-6, 335-14-8, and 335-14-9.

270. "Transport vehicle" means a motor vehicle or railcar used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle.

271. "Transportation" means the movement of wastes from the point of generation to any intermediate transfer points, and finally to the disposal site.

272. "Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway, or water.

273. "Treatability study" means a study in which a hazardous waste is subjected to a treatment process to determine: [1] whether the waste is amenable to the treatment process, [2] what pretreatment (if any) is required, [3] the optimal process conditions needed to achieve the desired treatment, [4] the efficiency of a treatment process for a specific waste or wastes, or [5] the characteristics and volumes of residuals from a particular treatment process. Also included in this definition for the purpose of 335-14-2-.01(4)(e) and (f) exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies. A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

274. "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to render such waste non-hazardous or less hazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it non-hazardous or less hazardous.

275. "Treatment facility" means a location at which wastes are subjected to treatment, and may include a facility where waste has been generated.

276. "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed or immobilized.

277. "Underground injection" means the injection of pollutants through a bored, drilled or driven shaft or dug hole.

278. "Underground source of drinking water" or "USDW" for the purposes of 335-14-8 means an aquifer or its portion:

(i)(I) Which supplies any public water system; or

(II) Which contains a sufficient quantity of groundwater to supply a public water system; and

(III) Currently supplies drinking water for human consumption; or

(IV) Contains fewer than 10,000 mg/liter total dissolved solids; and

(ii) Which is not an exempted aquifer.

279. "Underground tank" means a device meeting the definition of "tank" in 335-14-1-.02 whose entire surface area is totally below the surface of and covered by the ground.

280. "Unexploded ordnance (UXO)" for the purposes of 335-14-7-.13 means military munitions that have been primed, fused, armed, or otherwise prepared for action, and have been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard to operations, installation, personnel, or material and remain unexploded either by malfunction, design, or any other cause.

281. "Unfit-for-use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

282. "Universal waste" means any of the following hazardous wastes that are subject to the universal waste requirements of 335-14-11:

(i) Batteries as described in 335-14-11-.01(2);

(ii) Pesticides as described in 335-14-11-.01(3);

(iii) Mercury-containing equipment as described in 335-14-11-.01(4); and

(iv) Lamps as described in 335-14-11-.01(5).

283. "Universal waste handler":

(i) Means:

(I) A generator (as defined in 335-14-1-.02) of universal waste; or

(II) The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(ii) Does not mean:

(I) A person who treats [except under the provisions of 335-14-8-.01(1)(c)2.(ix), 335-14-11-.02(4)(a) or (c) and 335-14-11-.03(4)(a) or (c)], disposes of, or recycles universal waste; or

(II) A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

284. "Universal waste transfer facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas

where shipments of universal waste are held during the normal course of transportation for ten days or less.

285. "Universal waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

286. "Unsaturated zone" or "zone of aeration" means the zone between the land surface and the water table.

287. "Unplanned episodic event" means an episodic event that the generator did not plan or reasonably did not expect to occur, including production process upsets, product recalls, accidental spills, or "acts of nature," such as tornado, hurricane, or flood.

288. "Unwanted material" for the purposes of 335-14-3-.12 means any chemical, mixtures of chemicals, products of experiments or other material from a laboratory that is no longer needed, wanted or usable in the laboratory and that is destined for hazardous waste determination by a trained professional. Unwanted materials include reactive acutely hazardous unwanted materials and materials that may eventually be determined not to be solid waste pursuant to 335-14-2-.01(2), or a hazardous waste pursuant to 335-14-2-.01(3). If an eligible academic entity elects to use another equally effective term in lieu of "unwanted material," as allowed by 335-14-3-.12(7)(a)1.(i), the equally effective term has the same meaning and is subject to the same requirements as "unwanted material".

289. "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

290. "Used" or "reused" for the purposes of 335-14-2-.01 a material is used or reused if it is either:

(i) Employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one process used as feedstock in another process). However, a material will not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

(ii) Employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

291. "Used oil" means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use, is contaminated by physical or chemical impurities.

292. "Used oil aggregation point" means any site or facility that accepts, aggregates, and/or stores used oil collected only from other used oil generation sites owned or operated by the owner or operator of the aggregation point, from which oil is

transported to the aggregation point in shipments of no more than 55 gallons. Used oil aggregation points may also accept used oil from household do-it-yourselfers.

293. "Used oil burner" means a facility where used oil not meeting the specification requirements in 335-14-17-.02(2) is burned for energy recovery in devices identified in 335-14-17-.07(2)(a).

294. "Used oil collection center" means any site or facility that is recognized by the Department, in accordance with 335-14-17-.04(2)(b) and accepts/aggregates and stores used oil collected from used oil generators regulated under 335-14-17-.03 who bring used oil to the collection center in shipments of no more than 55 gallons under the provisions of 335-14-17-.03(6). Used oil collection centers may also accept used oil from household do-it-yourselfers.

295. "Used oil fuel marketer" means any person who conducts either of the following activities:

(i) Directs a shipment of off-specification used oil from their facility to a used oil burner; or

(ii) First claims that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in 335-14-17-.02(2).

296. "Used oil generator" means any person, by individual generation site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation.

297. "Used oil processing" means chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of fuel oils, lubricants, or other used oil-derived products. Used oil processing includes, but is not limited to: blending used oil with virgin petroleum products, blending used oils to meet the fuel specification, filtration, simple distillation, chemical or physical separation and re-refining.

298. "Used oil processor/re-refiner" means a facility that processes used oil.

299. "Used oil tank" means any stationary device, designed to contain an accumulation of used oil which is constructed primarily of non-earthen materials, (e.g., wood, concrete, steel, plastic) which provides structural support.

300. "Used oil transfer facility" means any transportation related facility including loading docks, parking areas, storage areas, and other areas where shipments of used oil are held for more than 24 hours and not longer than 35 days during the normal course of transportation or prior to an activity performed pursuant to 335-14-17-.03(1)(b)2. Transfer facilities that store used oil for more than 35 days are subject to regulation under 335-14-17-.06.

301. "Used oil transporter" means any person who transports used oil, any person who collects used oil from more than one generator and transports the

collected oil, and owners and operators of used oil transfer facilities. Used oil transporters may consolidate or aggregate loads of used oil for purposes of transportation but, with the following exception, may not process used oil. Transporters may conduct incidental used oil processing operations that occur in the normal course of used oil transportation (e.g., settling and water separation), but that are not designed to produce (or make more amenable for production of) used oil derived products or used oil fuel.

302. "User of the electronic manifest system" means a hazardous waste generator, a hazardous waste transporter, an owner or operator of a hazardous waste treatment, storage, recycling, or disposal facility, or any other person that:

(i) Is required to use a manifest to comply with:

(I) Any federal or state requirement to track the shipment, transportation, and receipt of hazardous waste or other waste material that is shipped from the site of generation to an off-site designated facility for treatment, storage, recycling, or disposal; or

(II) Any federal or state requirement to track the shipment, transportation, and receipt of rejected wastes or regulated container residues that are shipped from a designated facility to an alternative facility, or returned to the generator; and

(ii) Elects to use the system to obtain, complete and transmit an electronic manifest format supplied by the EPA electronic manifest system, or

(iii) Elects to use the paper manifest form and submits to the system for data processing purposes a paper copy of the manifest (or data from such a paper copy), in accordance with 335-14-5-.05(2)(a)1.(v) or 335-14-6-.05(2)(a)1.(v). These paper copies are submitted for data exchange purposes only and are not the official copies of record for legal purposes.

303. "Very Small Quantity Generator (VSQG)" is a generator who generates less than or equal to the following amounts in a calendar month:

(i) 100 kilograms (220 lbs) of nonacute hazardous waste; and

(ii) 1 kilogram (2.2 lbs) of acute hazardous waste listed in 335-14-2-.04(2) or 335-14-2-.04(4)(e); and

(iii) 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in 335-14-2-.04(2) or 335-14-2-.04(4)(e).

304. "Vessel" means every description of watercraft, used or capable of being used as a means of transportation on the water.

305. "Waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded

material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations and from community activities, including any material to be discarded by a generator, but such term does not include solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges which are point sources subject to permits under 33 U.S.C. §1342 or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954.

306. "Waste stream" for the purposes of 335-14-3-.08 means a waste of given characteristics that is unique to a particular process or individual generation site.

307. "Wastewater treatment unit" means a device which:

(i) Is part of a wastewater treatment facility that is subject to regulation under either Section 402 or 307(b) of the Clean Water Act; and

(ii) Receives and treats or stores an influent wastewater which is a hazardous waste as defined in 335-14-2-.01(3), or that generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in 335-14-2-.01(3), or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in 335-14-2-.01(3); and

(iii) Meets the definition of tank or tank system in 335-14-1-.02.

308. "Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

309. "Week" means a calendar week (e.g., Sunday-Saturday).

310. "Weekly" means once during each calendar week.

311. "Well" means any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

312. "Well injection" means "underground injection".

313. "Wipe" means a woven or non woven shop towel, rag, pad, or swab made of wood pulp, fabric, cotton, polyester blends, or other material.

314. "Working container" for the purposes of 335-14-3-.12 means a small container (i.e., two gallons or less) that is in use at a laboratory bench, hood, or other work station, to collect unwanted material from a laboratory experiment or procedure.

315. "Working day" for the purposes of 335-14-3-.08 means any day, Monday through Friday, on which the offices of the Alabama Department of Environmental Management are open for business, and shall not include weekends or any State of Alabama observed holiday.

316. "Zone of engineering control" means an area under the control of the owner/operator that, upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to groundwater or surface water.

317. The following terms are used in the specifications for the financial tests for closure, post-closure care, and liability coverage. The definitions are intended to assist in the understanding of these regulations and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices.

(i) "Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

(ii) "Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(iii) "Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

(iv) "Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with 40 CFR §144.62(a), (b), and (c) or any State equivalent.

(v) "Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

(vi) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(vii) "Net working capital" means current assets minus current liabilities.

(viii) "Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

(ix) "Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

318. In the liability insurance requirements the terms "bodily injury" and "property damage" shall have the meanings given these terms by applicable State of Alabama law. However, these terms do not include those liabilities which, consistent with standard industry practice, are excluded from coverage in liability policies for bodily injury and property damage. The Department intends the meanings of other terms used in the liability insurance requirements to be consistent with their common

meanings within the insurance industry. The definitions given below of several of the terms are intended to assist in the understanding of these regulations and are not intended to limit their meanings in a way that conflicts with general insurance industry usage.

(i) "Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

(ii) "Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

(iii) "Nonsudden accidental occurrence" means an occurrence which takes place over time and involves continuous or repeated exposure.

(iv) "Sudden accidental occurrence" means an occurrence which is not continuous or repeated in nature.

(2) References.

The Environmental Protection Agency Regulations as they exist as set forth in 40 CFR § 260.11(as published on June 14, 2005, and as amended on September 8, 2005; October 12, 2005; July 18, 2007; and May 18, 2012) are incorporated herein by reference.

A list of the publications and analytical testing methods incorporated by reference are available for purchase and inspection at the Department's offices at 1400 Coliseum Boulevard, Montgomery, Alabama 36110.

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335-14-1-.03 **Rulemaking Petitions**

(1) Petitions for equivalent testing or analytical methods.

(a) Any person seeking to add a testing or analytical method to Chapters 335-14-2, 335-14-5 or 335-14-6 may petition for such addition under 335-14-1-.03(1). To be successful the person must demonstrate to the satisfaction of the Director that the proposed method is equal to or superior to the corresponding method prescribed in Chapters 335-14-2, 335-14-5 or 335-14-6, in terms of its sensitivity, accuracy, and precision (i.e., reproducibility).

(b) Each petition must be submitted to the Department by certified mail and must include:

1. The petitioner's name and address;

2. A statement of the petitioner's interest in the proposed action;

3. A statement of the need and justification for the proposed action;

4. A full description of the proposed method, including all procedural steps and equipment used in the method;

5. A description of the types of waste or waste matrices for which the proposed method may be used;

6. Comparative results obtained from using the proposed method with those obtained from using the relevant or corresponding methods prescribed in Chapters 335-14-2, 335-14-5 or 335-14-6;

7. An assessment of any factors which may interfere with, or limit the use of, the proposed method;

8. A description of the quality control procedures necessary to ensure the sensitivity, accuracy, and precision of the proposed method; and

9. A copy of the Federal Register notice indicating that EPA has added the testing or analytical method to 40 CFR Parts 261, 264 or 265.

(c) After receiving a petition for an equivalent method, the Department may request any additional information on the proposed method which it may reasonably require to evaluate the method.

(d) If the Director permits the use of a new testing method, the applicant will be notified and allowed to use the method pending the next revision of Division 335-14. When Division 335-14 is next amended after such a determination, the equivalent method will be proposed to be added to the rules and will be treated as any other rule amendment under Code of Alabama 1975, §22-22A-8.

(2) Petitions to amend Chapter 335-14-2 to exclude a waste produced at a particular facility.

(a) Any person seeking to exclude a waste at a particular generating facility from the lists in 335-14-2-.04 may petition for such exclusion under 335-14-1-.03(2). To be successful:

1. The petitioner must demonstrate to the satisfaction of the Director that the waste produced by a particular generating facility does not meet any of the criteria under which the waste was listed as a hazardous or an acutely hazardous waste; and

2. Based on a complete application [335-14-1-.03(2)(i)], the Director must determine, where he has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded, however, still may be a hazardous waste by operation of 335-14-2-.03.

(b) The procedures in rules 335-14-1-.03(2) and 335-14-1-.03 may also be used to petition the Director for a regulatory amendment to exclude from 335-14-2-.01(3)(a)2.(ii) or (c), a waste which is described in these subparagraphs and is either a waste listed in 335-14-2-.04 or is derived from a waste listed in 335-14-2-.04. This exclusion may only be issued for a particular generating, storage, treatment, or disposal facility. The petitioner must make the same demonstration as required by 335-14-1-.03(2)(a). Where the waste is a mixture of solid waste and one or more listed hazardous wastes or is derived from one or more hazardous wastes, his demonstration must be made with respect to the waste mixture as a whole; analyses must be conducted for not only those constituents for which the listed waste contained in the mixture was listed as hazardous, but also for factors (including additional constituents) that could cause the waste mixture to be a hazardous waste. A waste which is so excluded may still be a hazardous waste by operation of 335-14-2-.03.

(c) If the waste is listed with codes "I", "C", "R", or "E" in 335-14-2-.04,

1. The petitioner must show that the waste does not exhibit the relevant characteristic for which the waste was listed as defined in rules 335-14-2-.03(2), (3), (4), or (5) using any applicable methods prescribed therein. The petitioner also must show that the waste does not exhibit any of the other characteristics defined in rules 335-14-2-.03(2), (3), (4), or (5) using any applicable methods prescribed therein;

2. Based on a complete application, the Director must determine, where he has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded, however, still may be a hazardous waste by operation of 335-14-2-.03;

(d) If the waste is listed with code "T" in 335-14-2-.04,

1. The petitioner must demonstrate that the waste:

(i) Does not contain the constituent or constituents (as defined in 335-14-2 Appendix VII) that caused the Department to list the waste; or

(ii) Although containing one or more of the hazardous constituents (as defined in 335-14-2 Appendix VII) that caused the Department to list the waste, does not meet the criterion of 335-14-2-.02(2)(a)3. when considering the factors used by the Department in rules 335-14-2-.02(2)(a)3.(i) through (xi) under which the waste was listed as hazardous; and

2. Based on a complete application, the Director must determine, where he has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste; and

3. The petitioner must demonstrate that the waste does not exhibit any of the characteristics defined in rules 335-14-2-.03(2), (3), (4), or (5) using any applicable methods prescribed therein;

4. A waste which is so excluded, however, still may be a hazardous waste by operation of 335-14-2-.03.

(e) If the waste is listed with the code "H" in 335-14-2-.04,

1. The petitioner must demonstrate that the waste does not meet the criterion of 335-14-2-.02(2)(a)2.; and

2. Based on a complete application, the Director must determine, where he has a reasonable basis to believe that additional factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste; and

3. The petitioner must demonstrate that the waste does not exhibit any of the characteristics defined in rules 335-14-2-.03(2), (3), (4), and (5) using any applicable methods prescribed therein;

4. A waste which is so excluded, however, still may be a hazardous waste by operation of 335-14-2-.03.

(f) If a solid waste at a particular generating facility fails the test for the characteristic of toxicity described in 335-14-2-.03(5) because chromium is present or is listed in 335-14-2-.04 due to the presence of chromium, but does not fail the test for the toxicity characteristic for any other constituent and is not listed for any other constituent, the waste may be excluded from regulation as a hazardous waste, if the petitioner can demonstrate all of the following:

1. The waste meets the criteria for exclusion as described in 335-14-2-.01(4)(b)6.(i).

2. Where the waste is a mixture of solid waste and one or more listed or hazardous wastes or is derived from one or more hazardous wastes, this demonstration must be made with respect to the waste mixture as a whole; analyses must be conducted for not only chromium but also for factors (including additional constituents) that could cause the waste mixture to be a hazardous waste.

3. Based on a complete application [335-14-1-.03(2)(i)], the Director must determine, where he has a reasonable basis to believe that other factors (including additional constituents) could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste.

(g) [Reserved]

(h) Demonstration samples must consist of enough representative samples, but in no case less than four samples, taken over a period of time sufficient to represent the variability or the uniformity of the waste.

(i) Each petition must be submitted to the Department by certified mail and must include:

1. The petitioner's name and address;

2. A statement of the petitioner's interest in the proposed action;

3. A statement of the need and justification for the proposed action;

4. The name and address of the laboratory facility performing the sampling or tests of the waste;

5. The names and qualifications of the persons sampling and testing the waste;

6. The dates of sampling and testing;

7. The location of the generating facility;

8. A description of the manufacturing processes or other operations and feed materials producing the waste and an assessment of whether such processes, operations or feed materials can or might produce a waste that is not covered by the demonstration;

9. A description of the waste and an estimate of the average and maximum monthly and annual quantities of waste covered by the demonstration;

10. Pertinent data on and discussion of the factors delineated in the respective criterion for listing a hazardous waste, where the demonstration is based on

the factors in 335-14-2-.02(2)(a)3.; or for a trivalent chromium waste, the exclusion criteria in 335-14-2-.01(4)(b)6.(i);

11. A description of the methodologies and equipment used to obtain the representative samples;

12. A description of the sample handling and preparation techniques used for extraction, containerization, and preservation of the samples;

13. A description of the tests performed (including results);

14. The names and model numbers of the instruments used in performing the tests; and

15. The following statement signed by the generator of the waste:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

(j) After receiving a petition for an exclusion, the Department may request any additional information which it may reasonably require to evaluate the petition. This may include, but is not limited to, samples of the waste collected and analyzed by the Department.

(k) An exclusion will only apply to the waste generated at the individual facility covered by the demonstration and will not apply to waste from any other facility.

(l) The Director may exclude only part of the waste for which the demonstration is submitted where he has reason to believe that variability of the waste justifies a partial exclusion.

(m) The Department will evaluate the application and issue a draft notice tentatively granting or denying the exclusion. Notification of the tentative decision will be provided by a onetime publication of notice in a daily or weekly major local newspaper of general circulation in the locality where the generator is located. The Department will accept comment on the tentative decision for a minimum of 30 days and may hold a hearing at its discretion. The Director will issue a final decision after the close of the comment period and hearing (if any).

(3) <u>Petitions to amend Chapter 335-14-11 to include additional hazardous wastes</u>.

(a) Any person seeking to add a hazardous waste or a category of hazardous waste to the universal waste regulations of Chapter 335-14-11, may petition for a regulatory amendment under rules 335-14-1-.03(3) and 335-14-11-.07.

(b) To be successful, the petitioner must demonstrate to the satisfaction of the Director that regulation under the universal waste regulations of Chapter 335-14-11; is appropriate for the waste or category of waste; and will improve implementation of the hazardous waste program. Each petition must be submitted to the Department by certified mail and must include:

1. The petitioner's name and address;

2. A statement of the petitioner's interest in the proposed action;

3. A description of the proposed action, including (where appropriate) suggested regulatory language; and

4. A statement of the need and justification of the proposed action, including any supporting tests, studies, or other information. The petition should also address as many of the factors listed in 335-14-11-.07(2) as are appropriate for the waste or category of waste addressed in the petition.

(c) The Director will grant or deny a petition using the factors listed in 335-14-11-.07(2). The decision will be based on the weight of evidence showing that regulation under Chapter 335-14-11 is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

(d) The Director may request additional information needed to evaluate the merits of the petition.

(e) The Department will evaluate the application and issue a draft notice tentatively granting or denying the addition of hazardous waste or category of hazardous waste to the universal waste regulations of Chapter 335-14-11. Notification of the tentative decision will be provided by a one-time publication of notice in a daily or weekly major local newspaper of general circulation in the locality where the generator is located. The Department will accept comment on the tentative decision for a minimum of 30 days and may hold a hearing at its discretion. The Director will issue a final decision after the close of the comment period and hearing (if any).

(4) through (9) [Reserved]

(10) Non-waste determinations and variances from classification as a solid waste. In accordance with the standards and criteria in 335-14-1-.03(11) and 335-14-1-.03(14) and the procedures in 335-14-1-.03(13), the Department may determine on a case-by-case basis that the following recycled materials are not solid wastes:

(a) Materials that are accumulated speculatively without sufficient amounts being recycled (as defined in 335-14-1-.02);

(b) Materials that are reclaimed and then reused within the original production process in which they were generated;

(c) Materials that have been reclaimed but must be reclaimed further before the materials are completely recovered;

(d) Hazardous secondary materials that are reclaimed in a continuous industrial process; and

(e) Hazardous secondary materials that are indistinguishable in all relevant aspects from a product or intermediate.

(11) Standards and criteria for variances from classification as a solid waste.

(a) The Director may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The Director's decision will be based on the following criteria:

1. The manner in which the material is expected to be recycled, when the material is expected to be recycled and whether this expected disposition is likely to occur (for example, because of past practice, market factors, the nature of the material or contractual arrangements for recycling);

2. The reason that the applicant has accumulated the material for one or more years without recycling 75 percent of the volume accumulated at the beginning of the year;

3. The quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled;

4. The extent to which the material is handled to minimize loss; and

5. Other relevant factors.

(b) The Director may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria:

1. How economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;

2. The extent to which the material is handled before reclamation to minimize loss;

3. The time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;

4. The location of the reclamation operation in relation to the production process;

5. Whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;

6. Whether the person who generates the material also reclaims it; and

7. Other relevant factors.

(c) The Director may grant requests for a variance from classifying as a solid waste those hazardous secondary materials that have been partially reclaimed, but must be reclaimed further before recovery is completed, if the partial reclamation has produced a commodity-like material. A determination that a partially reclaimed material for which the variance is sought is commodity-like will be based on whether the hazardous secondary material is legitimately recycled as specified in 335-14-1-.03(23) of this part and on whether all of the following decision criteria are satisfied:

1. Whether the degree of partial reclamation the material has undergone is substantial as demonstrated by using a partial reclamation process other than the process that generated the hazardous waste;

2. Whether the partially-reclaimed material has sufficient economic value that it will be purchased for further reclamation;

3. Whether the partially-reclaimed material is a viable substitute for a product or intermediate produced from virgin or raw materials which is used in subsequent production steps;

4. Whether there is a market for the partially-reclaimed material as demonstrated by known customer(s) who are further reclaiming the material (e.g., records of sales and/or contracts and evidence of subsequent use, such as bills of lading); and

5. Whether the partially-reclaimed material is handled to minimize loss.

(12) Variance to be classified as a boiler. In accordance with the standards and criteria in 335-14-1-.02(1) (definition of "boiler"), and the procedures in 335-1-.03(13), the Director may determine on a case-by-case basis that certain enclosed devices using controlled flame combustion are boilers, even though they do not otherwise meet the definition of a boiler contained in 335-14-1-.02(1), after considering the following criteria:

(a) The extent to which the unit has provisions for recovering and exporting thermal energy in the form of steam, heated fluids or heated gases; and

(b) The extent to which the combustion chamber and energy recovery equipment are of integral design; and

(c) The efficiency of energy recovery, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(d) The extent to which exported energy is utilized; and

(e) The extent to which the device is in common and customary use as a "boiler" functioning primarily to produce steam, heated fluids or heated gases; and

(f) Other factors as appropriate.

(13) Procedures for variances from classification as a solid waste or to be classified as a boiler, or for non-waste determinations. The Department will use the following procedures in evaluating applications for variances from classification as a solid waste, applications to classify particular enclosed controlled flame combustion devices as boilers, or applications for non-waste determinations:

(a) The applicant must apply to the Department for the variance or non-waste determination. The application must address the relevant criteria contained in 335-14-1-.03(11), (12), or (14), as applicable.

(b) The Department will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of the tentative decision will be provided by newspaper advertisement or radio broadcast in the locality where the recycler is located, if the recycler is within Alabama, or in the locality where the generator is located, if the recycler is located outside Alabama. The Department will accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at its discretion. The Director will issue a final decision after receipt of comments and after the hearing (if any).

(c) In the event of a change in circumstances that affect how a hazardous secondary material meets the relevant criteria contained in 335-14-1-.03(11), (12) or (14) upon which a variance or non-waste determination has been based, the applicant must send a description of the change in circumstances to the Director. The Director may issue a determination that the hazardous secondary material continues to meet the relevant criteria of the variance or non-waste determination or may require the facility to re-apply for the variance or non-waste determination.

(d) Variances and non-waste determinations shall be effective for a fixed term not to exceed ten years. No later than six months prior to the end of this term, facilities must re-apply for a variance or non-waste determination. If a facility re-applies for a variance or non-waste determination within six months, the facility may continue to operate under an expired variance or non-waste determination until receiving a decision on their re-application from the Director.

(e) Facilities receiving a variance or non-waste determination must provide notification as required by 335-14-1-.03(22) of this chapter.

(14) Standards and criteria for non-waste determinations.

(a) An applicant may apply to the Department for a formal determination that a hazardous secondary material is not discarded and therefore not a solid waste. The determinations will be based on the criteria contained in 335-14-1-.03(14)(b) or (c) of this section, as applicable. If an application is denied, the hazardous secondary material might still be eligible for a solid waste variance or exclusion (for example, one of the solid waste variances under 335-14-1-.03(11).

(b) The Department may grant a non-waste determination for hazardous secondary material which is reclaimed in a continuous industrial process if the applicant demonstrates that the hazardous secondary material is a part of the production process and is not discarded. The determination will be based on whether the hazardous secondary material is legitimately recycled as specified in 335-14-1-.03(23) and on the following criteria:

1. The extent that the management of the hazardous secondary material is part of the continuous primary production process and is not waste treatment;

2. Whether the capacity of the production process would use the hazardous secondary material in a reasonable time frame and ensure that the hazardous secondary material will not be abandoned (for example, based on past practices, market factors, the nature of the hazardous secondary material, or any contractual arrangements);

3. Whether the hazardous constituents in the hazardous secondary material are reclaimed rather than released to the air, water or land at significantly higher levels from either a statistical or from a health and environmental risk perspective than would otherwise be released by the production process; and

4. Other relevant factors that demonstrate the hazardous secondary material is not discarded, including why the hazardous secondary material cannot meet, or should not have to meet, the conditions of an exclusion under 335-14-2-.01(2) or 335-14-2-.01(4) .

(c) The Department may grant a non-waste determination for hazardous secondary material which is indistinguishable in all relevant aspects from a product or intermediate if the applicant demonstrates that the hazardous secondary material is comparable to a product or intermediate and is not discarded. The determination will be based on whether the hazardous secondary material is legitimately recycled as specified in 335-14-1-.03(23) and on the following criteria:

1. Whether market participants treat the hazardous secondary material as a product or intermediate rather than a waste (for example, based on the current positive value of the hazardous secondary material, stability of demand, or any contractual arrangements);

2. Whether the chemical and physical identity of the hazardous secondary material is comparable to commercial products or intermediates;

3. Whether the capacity of the market would use the hazardous secondary material in a reasonable time frame and ensure that the hazardous secondary material will not be abandoned (for example, based on past practices, market factors, the nature of the hazardous secondary material, or any contractual arrangements);

4. Whether the hazardous constituents in the hazardous secondary material are reclaimed rather than released to the air, water or land at significantly higher levels from either a statistical or from a health and environmental risk perspective than would otherwise be released by the production process; and

5. Other relevant factors that demonstrate the hazardous secondary material is not discarded, including why the hazardous secondary material cannot meet, or should not have to meet, the conditions of an exclusion under 335-14-2-.01(2) or 335-14-2-.01(4) of this chapter.

(15) through (19) [Reserved]

(20) Additional regulation of certain hazardous waste recycling activities on a case-by-case basis.

(a) The Director may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in 335-14-2-.01(6)(a)2.(iii) should be regulated under rules 335-14-2-.01(6)(b) and (c). The basis for this decision is that the materials are being accumulated or stored in a manner that does not protect human health and the environment because the materials or their toxic constituents have not been adequately contained, or because the materials being accumulated or stored together are incompatible. In making this decision, the Director will consider the following factors:

1. The types of materials accumulated or stored and the amounts accumulated or stored;

2. The method of accumulation or storage;

3. The length of time the materials have been accumulated or stored before being reclaimed;

4. Whether any contaminants are being released into the environment, or are likely to be so released; and

5. Other relevant factors.

(21) Procedures for case-by-case regulation of hazardous waste recycling activities. The Director will use the following procedures when determining whether to regulate hazardous waste recycling activities described in 335-14-2-.01(6)(a)2.(iii) under the provisions of rules 335-14-2-.01(6)(b) and (c), rather than under the provisions of 335-14-7-.06.

(a) If a generator is accumulating the waste, the Department will issue a notice setting forth the factual basis for the decision and stating that the person must comply with the applicable requirements of rules 335-14-3-.01, 335-14-3-.03, 335-14-3-.04 and 335-14-3-.09. The notice will become final within 30 days, unless the person served requests a public hearing to challenge the decision. Upon receiving such a request, the Department will hold a public hearing. The Department will provide notice of the hearing to the public and will allow public participation at the hearing. The Director will issue a final order after the hearing stating whether or not compliance with Chapter 335-14-3 is required.

The order becomes effective 30 days after service of the decision unless the Department specifies a later date or unless review by the Commission is requested. The order may be appealed to the Commission by any person who participated in the public hearing. The Commission may choose to grant or to deny the appeal. Final Department action occurs when a final order is issued and Department review procedures are exhausted.

(b) If the person is accumulating the recyclable material as a storage facility, the notice will state that the person must obtain a permit in accordance with all applicable provisions of Chapter 335-14-8. The owner or operator of the facility must apply for a permit within no less than 60 days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the Director's decision, he may do so in his permit application, in a public hearing on the draft permit or in comments filed on the draft permit or on the notice of intent to deny the permit. The fact sheet accompanying the permit will specify the reasons for the Director's determination.

(22) Notification requirement for hazardous secondary materials.

(a) Facilities managing hazardous secondary materials under335-14-1-.01(10), 335-14-2-.01(4)(a)23., 24., 25., or 27. must send a notification prior to operating under the regulatory provision and, thereafter, no later than the 15th of the month specified in the schedule located at 335-14-1-.02(1)(a) using ADEM Form 8700-12 that includes the following information:

1. The name, address, and EPA ID number (if applicable) of the facility;

2. The name and telephone number of a contact person;

3. The NAICS code of the facility;

4. The regulation under which the hazardous secondary materials will be managed;

5. For reclaimers and intermediate facilities managing hazardous secondary materials in accordance with 335-14-2-.01(4)(a)24. or 25., whether the reclaimer or intermediate facility has financial assurance (not applicable for persons

managing hazardous secondary materials generated and reclaimed under the control of the generator);

6. When the facility began or expects to begin managing the hazardous secondary materials in accordance with the regulation;

7. A list of hazardous secondary materials that will be managed according to the regulation (reported as the EPA hazardous waste numbers that would apply if the hazardous secondary materials were managed as hazardous wastes);

8. For each hazardous secondary material, whether the hazardous secondary material, or any portion thereof, will be managed in a land-based unit;

9. The quantity of each hazardous secondary material to be managed annually; and

10. The certification (included in ADEM Form 8700-12) signed and dated by an authorized representative of the facility.

(b) If a facility managing hazardous secondary materials has submitted a notification, but then subsequently stops managing hazardous secondary materials in accordance with the regulation(s) listed above, the facility must notify the Department within thirty (30) days using ADEM Form 8700-12. For purposes of this section, a facility has stopped managing hazardous secondary materials if the facility no longer generates, manages and/or reclaims hazardous secondary materials under the regulation(s) above and does not expect to manage any amount of hazardous secondary materials for at least 1 year.

(23) Legitimate recycling of hazardous secondary materials.

(a) 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 if their recycling is legitimate, persons must address all the requirements of 335-14-1-.03(23)(a) and consider the requirements of 335-14-1-.03(23)(b).

1. Legitimate recycling must involve a hazardous secondary material that provides a useful contribution to the recycling process or to a product or intermediate of the recycling process. The hazardous secondary material provides a useful contribution if it:

(i) Contributes valuable ingredients to a product or intermediate; or

(ii) Replaces a catalyst or carrier in the recycling process; or

(iii) Is the source of a valuable constituent recovered in the recycling process; or

(iv) Is recovered or regenerated by the recycling process; or

(v) 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:

(i) Sold to a third party; or

(ii) Used by the recycler or the generator as an effective substitute for a commercial product or as an ingredient or intermediate in an industrial process.

3. The generator and the recycler must manage the hazardous secondary material as a valuable commodity when it is under their control. Where there is an analogous raw material, the hazardous secondary material 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 hazardous secondary material must be contained. Hazardous secondary materials that are released to the environment and are not recovered immediately are discarded.

(b). The following factor must be considered in making a determination as to the overall legitimacy of a specific recycling activity.

1. The product of the recycling process does not:

(i) Contain significant concentrations of any hazardous constituents found in 335-14-2 Appendix VIII that are not found in analogous products;

(ii) Contain concentrations of hazardous constituents found in 335-14-2 Appendix VIII at levels that are significantly elevated from those found in analogous products, or

(iii) Exhibit a hazardous characteristic (as defined in 335-14-2-.03) that analogous products do not exhibit.

2. 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 this paragraph is not met, then this fact may be an indication that the material is not legitimately recycled. However, the factor in this paragraph 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.

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335-14-2-.01 **General.**

(1) Purpose and scope.

(a) 335-14-2 identifies those solid wastes which are subject to regulation as hazardous wastes under 335-14-3 through 335-14-6, 335-14-8, and 335-14-9 and which are subject to the notification requirements of Section 3010 of RCRA. In 335-14-2:

1. 335-14-2-.01 defines the terms "solid waste" and "hazardous waste", identifies those wastes which are excluded from regulation under 335-14-3 through 335-14-9, and establishes special management requirements for hazardous waste produced by very small quantity generators and hazardous waste which is recycled.

2. 335-14-2-.02 sets forth the criteria used by the Department to identify characteristics of hazardous waste and to list particular hazardous wastes.

3. 335-14-2-.03 identifies characteristics of hazardous waste.

4. 335-14-2-.04 lists particular hazardous wastes.

(b)1. The definition of solid waste contained in 335-14-2 applies only to wastes that also are hazardous for purposes of the AHWMMA. For example, it does not apply to materials (such as non-hazardous scrap, paper, textiles, or rubber) that are not otherwise hazardous wastes and that are recycled.

2. 335-14-2 identifies only some of the materials which are solid wastes and hazardous wastes under AHWMMA. A material which is not defined as a solid waste in 335-14-2, or is not a hazardous waste identified or listed in 335-14-2, is still a solid waste and a hazardous waste for purposes of the applicable sections of the AHWMMA if the material may be a solid waste within the meaning of Code of Alabama 1975, §22-30-3(11), and a hazardous waste within the meaning of Code of Alabama 1975, §22-30-3(5).

(c) **[Reserved].**

(2) Definition of solid waste.

(a) 1. A solid waste is any discarded material that is not excluded by 335-14-2-.01(4)(a) or that is not excluded by variance granted under 335-14-1-.03(10) or (11).

2. A "discarded material" is any material which is:

(i) "Abandoned", as explained in 335-14-2-.01(2)(b); or

(ii) "Recycled", as explained in 335-14-2-.01(2)(c); or

(iii) Considered "inherently waste-like", as explained in 335-14-2-.01(2)(d); or

(iv) A "military munition" identified as a solid waste in 335-14-7-.13(3).

(b) Materials are solid wastes if they are "abandoned" by being:

1. Disposed of; or

2. Burned or incinerated; or

3. Accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated; or

4. Sham recycled, as explained in 335-14-2-.01(2)(g).

(c) Materials are solid wastes if they are "recycled", or accumulated, stored, or treated before recycling, as specified in 335-14-2-.01(2)(c)1. through 4.:

1. "Used in a manner constituting disposal".

(i) Materials noted with a "*" in column 1 of Table 1 are solid wastes when they are:

(I) Applied to or placed on the land in a manner that constitutes disposal; or

(II) Used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste).

(ii) However, commercial chemical products listed in 335-14-2-.04(4) are not solid wastes if they are applied to the land and that is their ordinary manner of use;

2. "Burning for energy recovery".

(i) Materials noted with a "*" in column 2 of Table 1 are solid wastes when they are:

(I) Burned to recover energy;

(II) Used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself remains a solid waste);

(III) Contained in fuels (in which case the fuel itself remains a solid waste);

(ii) However, commercial chemical products listed in 335-14-2-.04(4) are not solid wastes if they are themselves fuels;

3. "Reclaimed". Materials noted with a "–" in column 3 of Table 1 are not solid wastes when reclaimed. Materials noted with a "*" in column 3 of Table 1 are solid wastes when reclaimed unless they meet the requirements of 335-14-2-.01(4)(a)17, 335-14-2-.01(4)(a)23., 335-14-2-.01(4)(a)24., and 335-14-2-.01(4)(a)27.

4. "Accumulated speculatively". Materials noted with a "*" in column 4 of Table 1 are solid wastes when accumulated speculatively.

Table 1

	Use constituting disposal 335-14-2-.01(2)(c)1.	Energy/ recovery fuel 335-14-2-.01(2)(c)2.	Reclamation 335-14-2-.01(2)(c)3, except as provided in 335-14-2-.01(4)(a)17, 335-14-2-.01(4)(a)23, 335-14-2-.01(4)(a)24, or 335-14-2-.01(4)(a)27.	Speculative accumulation 335-14-2-.01(2)(c)4.
	1	2	3	4
Spent materials	(*)	(*)	(*)	(*)
Sludges (listed in 335-14-2-.04(2) or (3))	(*)	(*)	(*)	(*)
Sludges exhibiting a characteristic of hazardous waste	(*)	(*)	- - - -	(*)
By-products (listed in 335-14-2-.04(2) or (3))	(*)	(*)	(*)	(*)
By-products exhibiting a characteristic of hazardous waste	(*)	(*)	- - - -	(*)
Commercial chemical products listed in 335-14-2-.04(4)	(*)	(*)	- - - -	- - - -
Scrap metal that is not excluded under 335-14-2-.01(4)(a)13	(*)	(*)	(*)	(*)

[**Note:** The terms "spent materials", "sludges", "by-products", "scrap metal", and "processed scrap metal" are defined in 335-14-1-.02.]

(d) "Inherently waste-like materials". The following materials are solid wastes when they are recycled in any manner:

1. Hazardous Waste Nos. F020, F021 (unless used as an ingredient to make a product at the site of generation), F022, F023, F026, and F028.

2. Secondary materials fed to a halogen acid furnace that exhibit a characteristic of a hazardous waste or are listed as a hazardous waste as defined in 335-14-2-.03 and 335-14-2-.04 except for brominated material that meets the following criteria:

(i) The material must contain a bromine concentration of at least 45%; and

(ii) The material must contain less than a total of 1% of toxic organic compounds listed in 335-14-2-Appendix VIII; and

(iii) The material is processed continually on-site in the halogen acid furnace via direct conveyance (hard piping).

3. The Department will use the following criteria to add wastes to that list:

(i)(I) The materials are ordinarily disposed of, burned, or incinerated; or

(II) The materials contain toxic constituents listed in 335-14-2-Appendix VIII and these constituents are not ordinarily found in raw materials or products for which the materials substitute (or are found in raw materials or products in smaller concentrations) and are not used or reused during the recycling process; and

(ii) The material may pose a substantial hazard to human health and the environment when recycled.

(e) "Materials which are not solid wastes when recycled".

1. Materials are not solid wastes when they can be shown to be recycled by being:

(i) Used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed; or

(ii) Used or reused as effective substitutes for commercial products.

(iii) Returned to the original process from which they are generated, without first being reclaimed or land disposed. The material must be returned as a substitute for feed stock materials. In cases where the original process to which the

material is returned is a secondary process, the materials must be managed such that there is no placement on the land. In cases where the materials are generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion found at 335-14-2-.01(4)(a)17. apply rather than this provision.

2. The following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process (described in 335-14-2-.01(2)(e)1.(i) to (e)1.(iii)):

(i) Materials used in a manner constituting disposal, or used to produce products that are applied to the land; or

(ii) Materials burned for energy recovery, used to produce a fuel or contained in fuels; or

(iii) Materials accumulated speculatively; or

(iv) Materials listed in 335-14-2-.01(2)(d)1. and 2.

(f) "Documentation of claims that materials are not solid wastes or are conditionally exempt from regulation". Respondents in actions to enforce rules and regulations implementing the AHWMMA who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so.

(g) "Sham recycling". A hazardous secondary material found to be sham recycled is considered discarded and a solid waste. Sham recycling is recycling that is not legitimate recycling as defined in 335-14-1-.03(23).

(3) Definition of hazardous waste.

(a) A solid waste, as defined in 335-14-2-.01(2), is a hazardous waste if:

1. It is not excluded from regulation as a hazardous waste under 335-14-2-.01(4)(b); and

2. It meets any of the following criteria:

(i) It exhibits any of the characteristics of hazardous waste identified in 335-14-2-.03. However, any mixture of a waste from the extraction, beneficiation, and processing of ores and minerals excluded under 335-14-2-.01(4)(b)7. and any other solid waste exhibiting a characteristic of hazardous waste under 335-14-2-.03 is a hazardous waste only if it exhibits a characteristic that would not have been exhibited by the excluded waste alone if such mixture had not occurred, or if it continues to

exhibit any of the characteristics exhibited by the non-excluded wastes prior to mixture. Further, for the purposes of applying the Toxicity Characteristic to such mixtures, the mixture is also a hazardous waste if it exceeds the maximum concentration for any contaminant listed in Table I of 335-14-2-.03(5) that would not have been exceeded by the excluded waste alone if the mixture had not occurred or if it continues to exceed the maximum concentration for any contaminant exceeded by the nonexempt waste prior to mixture.

(ii) It is listed in 335-14-2-.04 and has not been excluded from the lists in 335-14-2-.04 under 335-14-1-.03(2);

(iii) Reserved.

(iv) It is a mixture of solid waste and one or more hazardous wastes listed in 335-14-2-.04 and has not been excluded from 335-14-2-.01(3)(a)2. under 40 CFR 260.20 and 335-14-1-.03(2), 335-14-2-.01(3)(g), or 335-14-2-.01(3)(h); however, the following mixtures of solid wastes and hazardous wastes listed in 335-14-2-.04 are not hazardous wastes (except by application of 335-14-2-.01(3)(a)2.(i) or (a)2.(ii)) if the generator can demonstrate that the mixture consists of wastewater, the discharge of which is subject to regulation under either Section 402 or Section 307(b) of the Clean Water Act (including wastewater at generators which have eliminated the discharge of wastewater), and:

(I) One or more of the following spent solvents listed in 335-14-2-.04(2) — benzene, carbon tetrachloride, tetrachloroethylene, trichloroethylene or the scrubber waters derived-from the combustion of these spent solvents — provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed one part per million or the total measured concentration of these solvents entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Clean Air Act, as amended, at 40 CFR parts 60, 61, or 63, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions), does not exceed 1 part per million on an average weekly basis. Any facility that uses benzene as a solvent and claims this exemption must use an aerated biological wastewater treatment system and must use only lined surface impoundments or tanks prior to secondary clarification in the wastewater treatment system. Facilities that choose to measure concentration levels must file a copy of their sampling and analysis plan with the State Director ("Director" as defined in 335-14-1-.02). A facility must file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if he/she finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the

facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

(II) One or more of the following spent solvents listed in 335-14-2-.04(2)—methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents, 2-ethoxyethanol, or the scrubber waters derived from the combustion of these spent solvents — provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed 25 parts per million or the total measured concentration of these solvents entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Clean Air Act as amended, at 40 CFR parts 60, 61, or 63, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions), does not exceed 25 parts per million on an average weekly basis. Facilities that choose to measure concentration levels must file a copy of their sampling and analysis plan with the State Director, ("Director" as defined in 335-14-1-.02). A facility must file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if he/she finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

(III) One of the following wastes listed in 335-14-2-.04(3), provided that the wastes are discharged to the refinery oil recovery sewer before primary oil/water/solids separation -- heat exchanger bundle cleaning sludge from the petroleum refining industry (EPA Hazardous Waste Number K050), crude oil storage tank sediment from petroleum refining operations (EPA Hazardous Waste Number K169), clarified slurry oil tank sediment and/or in-line filter/separation solids from petroleum refining operations (EPA Hazardous Waste Number K170), spent hydrotreating catalyst (EPA Hazardous Waste Number K171), and spent hydrorefining catalyst (EPA Hazardous Waste Number K172); or

(IV) A discarded hazardous waste, commercial chemical product, or chemical intermediate listed in 335-14-2-.04(2) through (4), arising from de minimis losses of these materials. For purposes of 335-14-2-.04, "de minimis" losses are inadvertent releases to a wastewater treatment system, including those from normal material handling operations (e.g., spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials); minor leaks of process equipment, storage tanks or containers; leaks from well maintained pump packings and seals; sample purgings; relief device discharges,

discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing. Any manufacturing facility that claims an exemption for de minimis quantities of wastes listed in 335-14-2-.04(2) through (3), or any nonmanufacturing facility that claims an exemption for de minimis quantities of wastes listed in 335-14-2-.04 must either have eliminated the discharge of wastewaters or have included in its Clean Water Act permit application or submission to its pretreatment control authority the constituents for which each waste was listed (335-14-2-Appendix VII); and the constituents in the table "Treatment Standards for Hazardous Wastes" in 335-14-9-.04(1) for which each waste has a treatment standard (i.e., Land Disposal Restriction constituents). A facility is eligible to claim the exemption once the permit writer or control authority has been notified of possible de minimis releases via the Clean Water Act permit application or the pretreatment control authority submission. A copy of the Clean Water permit application or the submission to the pretreatment control authority must be placed in the facility's on-site files; or

(V) Wastewater resulting from laboratory operations containing toxic (T) wastes listed in 335-14-2-.04, provided that the annualized average flow of laboratory wastewater does not exceed one percent of total wastewater flow into the headworks of the facility's wastewater treatment or pretreatment system, or provided the wastes combined annualized average concentration does not exceed one part per million in the headworks of the facility's wastewater treatment or pretreatment facility. Toxic (T) wastes used in laboratories that are demonstrated not to be discharged to wastewater are not to be included in this calculation; or

(VI) One or more of the following wastes listed in 335-14-2-.04(3) — wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157) — provided that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine (including all amounts that cannot be demonstrated to be reacted in the process, destroyed through treatment, or is recovered, i.e., what is discharged or volatilized) divided by the average weekly flow of process wastewater prior to any dilution into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight or the total measured concentration of these chemicals entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Clean Air Act as amended, at 40 CFR parts 60, 61, or 63, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions), does not exceed 5 parts per million on an average weekly basis. Facilities that choose to measure concentration levels must file a copy of their sampling and analysis plan with the State Director ("Director" as defined in 335-14-1-.02). A facility must file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if he/she finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the

Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

(VII) Wastewaters derived from the treatment of one of more of the following wastes listed in 335-14-2-.04(3) — organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K156) — provided, that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 milligrams per liter or the total measured concentration of these chemicals entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Clean Air Act as amended, at 40 CFR parts 60, 61, or 63, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions), does not exceed 5 milligrams per liter on an average weekly basis. Facilities that choose to measure concentration levels must file a copy of their sampling and analysis plan with the State Director ("Director" as defined in 335-14-1-.02). A facility must file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if he/she finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected.

(v) Rebuttable presumption for used oil. Used oil containing more than 1000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in 335-14-2-.04. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in 335-14-2-Appendix VIII.)

(I) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(II) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(b) A solid waste which is not excluded from regulation under 335-14-2-.01(3)(a)1. becomes a hazardous waste when any of the following events occur:

1. In the case of a waste listed in 335-14-2-.04, when the waste first meets the listing description set forth in 335-14-2-.04;

2. In the case of a mixture of solid waste and one or more listed hazardous wastes, when a hazardous waste listed in 335-14-2-.04 is first added to the solid waste;

3. In the case of any other waste (including a waste mixture), when the waste exhibits any of the characteristics identified in 335-14-2-.03.

(c) Unless or until it meets the criteria of 335-14-2-.01(3)(d):

1. A hazardous waste will remain a hazardous waste;

2.(i) Except as otherwise provided in 335-14-2-.01(2)(c)2.(ii), 335-14-2-.01(3)(g), or 335-14-2-.01(3)(h), any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust, or leachate (but not including precipitation run-off) is a hazardous waste (However, materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.);

(ii) The following solid wastes are not hazardous even though they are generated from the treatment, storage, or disposal of hazardous waste, unless they exhibit one or more of the characteristics of hazardous waste:

(I) Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry (SIC codes 331 and 332).

(II) Waste from burning any of the materials exempted from regulation by 335-14-2-.01(6)(a)3.(iii) through (iv).

(III)(1) Nonwastewater residues, such as slag, resulting from high temperature metals recovery (HTMR) processing of K061, K062 or F006 waste, in units identified as rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations or industrial furnaces [as defined in 335-14-1-.02(1)], that are disposed in Subtitle D unit(s) (which are in compliance with the applicable requirements of ADEM Administrative Code Division 335-13, Solid Waste Program Rules, and which are authorized to receive such wastes), provided that these residues meet the generic exclusion levels identified in the tables in 335-14-2-.01(3)(c) for all constituents, and exhibit no characteristics of hazardous waste. Testing requirements must be incorporated in a facility's waste analysis plan or a generator's self-implementing waste analysis plan; at a minimum, composite samples of residues must be collected and analyzed quarterly and/or when the process or operation generating the waste changes. Persons claiming this exclusion in an

enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements.

Constituent	**Maximum for any single composite sample--TCLP (mg/L)**
Generic exclusion levels for K061 and K062 nonwastewater HTMR residues	
Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70
Generic exclusion levels for F006 nonwastewater HTMR residues	
Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Cyanide (total) (mg/kg)	1.8
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

(III)(2) A one-time notification and certification must be placed in the facility's files and sent to EPA Region 4 and to the Department for K061, K062 or F006 HTMR residues that meet the generic exclusion levels for all constituents and do not exhibit any characteristics that are sent to Subtitle D unit(s) regulated pursuant to Division 335-13 Rules. The notification and certification that is placed in the generator's or treater's files must be updated if the process or operation generating the waste changes and/or if the Subtitle D unit receiving the waste changes. However, the generator or treater need only notify EPA Region 4 and the Department on an annual basis if such changes occur. Such notification and certification should be sent to EPA Region 4 and the Department by the end of the calendar year, but no later than December 31. The notification must include the following information: The name and address of the Subtitle D unit(s) regulated pursuant to Division 335-13 Rules receiving

the waste shipments; the EPA Hazardous Waste Number(s) and treatability group(s) at the initial point of generation; and, the treatment standards applicable to the waste at the initial point of generation. The certification must be signed by an authorized representative and must state as follows: "I certify under penalty of law that the generic exclusion levels for all constituents have been met without impermissible dilution and that no characteristic of hazardous waste is exhibited. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

(IV) Biological treatment sludge from the treatment of one of the following wastes listed in 335-14-2-.04(3) - organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K156), and wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157).

(V) Catalyst inert support media separated from one of the following wastes listed in 335-14-2-.04(3)--Spent hydrotreating catalyst (EPA Hazardous Waste Number K171), and spent hydrorefining catalyst (EPA Hazardous Waste Number K172).

(d) Any solid waste described in 335-14-2-.01(3)(c) is not a hazardous waste if it meets the following criteria:

1. In the case of any solid waste, it does not exhibit any of the characteristics of hazardous waste identified in 335-14-2-.03. (However, wastes that exhibit a characteristic at the point of generation may still be subject to the requirements of 335-14-9, even if they no longer exhibit a characteristic at the point of land disposal.)

2. In the case of a waste which is a listed waste under 335-14-2-.04, contains a waste listed under 335-14-2-.04 or is derived from a waste listed in 335-14-2-.04, it also has been excluded from 335-14-2-.01(3)(c) under 335-14-1-.03(2).

(e) **[Reserved]**

(f) Notwithstanding 335-14-2-.01(3)(a) through (d) and provided the debris as defined in 335-14-9 does not exhibit a characteristic identified in 335-14-2-.03, the following materials are not subject to regulation under 335-14-1 through 335-14-9:

1. Hazardous debris as defined in 335-14-9 that has been treated using one of the required extraction or destruction technologies specified in 335-14-9-.04(6) [see Table 1, 40 CFR 268.45]; persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements; or

2. Debris as defined in 335-14-9 that the Department, considering the extent of contamination, has determined is no longer contaminated with hazardous waste.

(g)1. A hazardous waste that is listed in 335-14-2-.04 solely because it exhibits one or more characteristics of ignitability as defined under 35-14-2-.03(2), corrosivity as defined under 335-14-2-.03(3), or reactivity as defined under 335-14-2-.03(4) is not a hazardous waste, if the waste no longer exhibits any characteristic of hazardous waste identified in 335-14-2-.03.

2. The exclusion described in 335-14-2-.01(3)(g)1. also pertains to:

(i) Any mixture of a solid waste and a hazardous waste listed in 335-14-2-.04 solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity as regulated under 335-14-2-.01(3)(a)2.(iv); and

(ii) Any solid waste generated from treating, storing, or disposing of a hazardous waste listed in 335-14-2-.04 solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity as regulated under 335-14-2-.01(3)(c)2.(i).

3. Wastes excluded under 335-14-2-.01(3) are subject to 335-14-9 (as applicable), even if they no longer exhibit a characteristic at the point of land disposal.

4. Any mixture of a solid waste excluded from regulation under 335-14-2-.01(4)(b)7. and a hazardous waste listed in 335-14-2-.04 solely because it exhibits one or more of the characteristics of ignitability, corrosivity, or reactivity as regulated under 335-14-2-.01(3)(a)2.(iv) is not a hazardous waste, if the mixture no longer exhibits any characteristic of hazardous waste identified in 335-14-2-.03 for which the hazardous waste listed in 335-14-2-.04 was listed.

(h)1. Hazardous waste containing radioactive waste is no longer a hazardous waste when it meets the eligibility criteria and conditions of 335-14-7-.14 ("eligible radioactive mixed waste").

2. The exemption described in 335-14-2-.01(3)(h)1. also pertains to:

(i) Any mixture of a solid waste and an eligible radioactive mixed waste; and

(ii) Any solid waste generated from treating, storing, or disposing of an eligible radioactive mixed waste.

3. Waste exempted under 335-14-2-.01(3) must meet the eligibility criteria and specified conditions in 335-14-7-.14(3) and 335-14-7-.14(4) (for storage and treatment) and in 335-14-7-.14(12) and 335-14-7-.14(13) (for transportation and disposal). Waste that fails to satisfy these eligibility criteria and conditions is regulated as hazardous waste.

(4) <u>Exclusions</u>.

(a) "Materials which are not solid wastes". The following materials are not solid wastes for the purpose of 335-14-2:

1. (i) Domestic sewage; and

(ii) Any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly-owned treatment works for treatment. "Domestic sewage" means untreated sanitary wastes that pass through a sewer system;

2. Industrial wastewater discharges that are point source discharges subject to regulation under Section 402 of the federal Clean Water Act, as amended. This exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored, or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment;

3. Irrigation return flows;

4. Source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.;

5. Materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process;

6. Pulping liquors (i.e., black liquor) that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively as defined in 335-14-1-.02;

7. Spent sulfuric acid used to produce virgin sulfuric acid provided it is not accumulated speculatively as defined in 335-14-1-.02;

8. Secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(i) Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(ii) Reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

(iii) The secondary materials are never accumulated in such tanks for over twelve months without being reclaimed; and

(iv) The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

9. (i) Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; and

(ii) Wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood.

(iii) Prior to reuse, the wood preserving wastewaters and spent wood preserving solutions described in 335-14-2-.01(4)(a)9.(i) and (a)9.(ii), so long as they meet all of the following conditions:

(I) The wood preserving wastewaters and spent wood preserving solutions are reused on-site at water borne plants in the production process for their original intended purpose;

(II) Prior to reuse, the wastewaters and spent wood preserving solutions are managed to prevent release to either land or ground water or both;

(III) Any unit used to manage wastewaters and/or spent wood preserving solutions prior to reuse can be visually or otherwise determined to prevent such releases;

(IV) Any drip pad used to manage the wastewaters and/or spent wood preserving solutions prior to reuse complies with the standards in 335-14-6-.23, regardless of whether the plant generates a total of less than 100 kg/month of hazardous waste; and

(V) Prior to operating pursuant to this exclusion, the facility owner or operator prepares a one-time notification stating that the facility intends to claim the exclusion, giving the date on which the facility intends to begin operating under the exclusion, and containing the following language: "I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation." The facility must maintain a copy of that document in its on-site records until closure of the facility. The exclusion applies so long as the facility meets all of the conditions. If the facility goes out of compliance with any condition, it may apply to the Director for reinstatement. Director may reinstate the exclusion upon finding that the facility has returned to compliance with all conditions and that the violations are not likely to recur.

10. EPA Hazardous Waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148 and any wastes from the coke by-products processes that are hazardous only because they exhibit the Toxicity Characteristic specified in 335-14-2-.03(5), when, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar or are mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or tar recovery or refining processes, or mixed with coal tar.

11. Nonwastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units, provided it is shipped in drums (if shipped) and not land disposed before recovery.

12.(i) Oil-bearing hazardous secondary materials (i.e., sludges, by-products, or spent materials) that are generated at a petroleum refinery (SIC code 2911) and are inserted into the petroleum refining process (SIC code 2911—including, but not limited to, distillation, catalytic cracking, fractionation, or thermal cracking

units (i.e., cokers)) unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under 335-14-2-.01(4), provided that the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery, and still be excluded under this provision. Except as provided in 335-14-2-.01(4)(a)12.(ii), oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry (i.e., from sources other than petroleum refineries) are not excluded under 335-14-2-.01(4). Residuals generated from processing or recycling materials excluded under 335-14-2-.01(4)(a)12.(i), where such materials as generated would have otherwise met a listing under 335-14-2-.04, are designated as F037 listed wastes when disposed of or intended for disposal.

(ii) Recovered oil that is recycled in the same manner and with the same conditions as described in 335-14-2-.01(4)(a)12.(i). Recovered oil is oil that has been reclaimed from secondary materials (including wastewater) generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incident thereto (SIC codes 1311, 1321, 1381, 1382, 1389, 2911, 4612, 4613, 4922, 4923, 4789, 5171, and 5172.) Recovered oil does not include oil-bearing hazardous wastes listed in 335-14-2-.04; however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as defined in 335-14-1-.02.

13. Excluded scrap metal (processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal) being recycled.

14. Shredded circuit boards being recycled provided that they are:

(i) Stored in containers sufficient to prevent a release to the environment prior to recovery; and

(ii) Free of mercury switches, mercury relays and nickel-cadmium batteries and lithium batteries.

15. Condensates derived from the overhead gases from kraft mill steam strippers that are used to comply with 40 CFR 63.446(e). The exemption applies only to combustion at the mill generating the condensates.

16. **[Reserved].**

17. Spent materials (as defined in 335-14-2-.01(1)) (other than hazardous wastes listed in 335-14-2-.04) generated within the primary mineral processing industry from which minerals, acids, cyanide, water, or other values are recovered by mineral processing or by beneficiation, provided that:

(i) The spent material is legitimately recycled to recover minerals, acids, cyanide, water or other values;

(ii) The spent material is not accumulated speculatively;

(iii) Except as provided in 335-14-2-.01(4)(a)17.(iv), the spent material is stored in tanks, containers, or buildings meeting the following minimum integrity standards: a building must be an engineered structure with a floor, walls, and a roof all of which are made of non-earthen materials providing structural support (except smelter buildings may have partially earthen floors provided the spent material is stored on the non-earthen portion), and have a roof suitable for diverting rainwater away from the foundation; a tank must be free standing, not be a surface impoundment (as defined in 335-14-1-.02), and be manufactured of a material suitable for containment of its contents; a container must be free standing and be manufactured of a material suitable for containment of its contents. If tanks or containers contain any particulate which may be subject to wind dispersal, the owner/operator must operate these units in a manner which controls fugitive dust. Tanks, containers, and buildings must be designed, constructed and operated to prevent significant releases to the environment of these materials.

(iv) The Department may make a site-specific determination, after public review and comment, that only solid mineral processing spent materials may be placed on pads rather than in tanks, containers, or buildings. Solid mineral processing spent materials do not contain any free liquid. The Department must affirm that pads are designed, constructed and operated to prevent significant releases of the secondary material into the environment. Pads must provide the same degree of containment afforded by the non-RCRA tanks, containers and buildings eligible for exclusion.

(I) The Department must also consider if storage on pads poses the potential for significant releases via groundwater, surface water, and air exposure pathways. Factors to be considered for assessing the groundwater, surface water, and air exposure pathways are: the volume and physical and chemical properties of the spent material, including its potential for migration off the pad; the potential for human or environmental exposure to hazardous constituents migrating from the pad via each exposure pathway, and the possibility and extent of harm to human and environmental receptors via each exposure pathway.

(II) Pads must meet the following minimum standards: be designed of non-earthen material that is compatible with the chemical nature of the mineral processing spent material, capable of withstanding physical stresses associated with placement and removal, have run on/runoff controls, be operated in a manner which controls fugitive dust, and have integrity assurance through inspections and maintenance programs.

(III) Before making a determination under 335-14-2-.01(4), the Department must provide notice and the opportunity for comment to all persons potentially interested in the determination. This can be accomplished by placing notice of this action in major local newspapers, or broadcasting notice over local radio stations.

(v) The owner or operator provides a notice to the Department, identifying the following information: the types of materials to be recycled; the type and location of the storage units and recycling processes; and the annual quantities expected to be placed in non land-based units. This notification must be updated when there is a change in the type of materials recycled or the location of the recycling process.

(vi) For purposes of 335-14-2-.01(4)(b)7., mineral processing spent materials must be the result of mineral processing and may not include any listed hazardous wastes. Listed hazardous wastes and characteristic hazardous wastes generated by non-mineral processing industries are not eligible for the conditional exclusion from the definition of solid waste.

18. Petrochemical recovered oil from an associated organic chemical manufacturing facility, where the oil is to be inserted into the petroleum refining process (SIC code 2911) along with normal petroleum refinery process streams, provided:

(i) The oil is hazardous only because it exhibits the characteristic of ignitability (as defined in 335-14-2-.03(2) and/or toxicity for benzene (335-14-2-.03(5), hazardous waste number D018); and

(ii) The oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the petroleum refining process. An "associated organic chemical manufacturing facility" is a facility where the primary SIC code is 2869, but where operations may also include SIC codes 2821, 2822, and 2865; and is physically co-located with a petroleum refinery; and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. "Petrochemical recovered oil" is oil that has been reclaimed from secondary materials (i.e., sludges, byproducts, or spent materials, including wastewater) from normal organic chemical manufacturing operations, as well as oil recovered from organic chemical manufacturing processes.

19. Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or naphthenic acid unless the material is placed on the land, or accumulated speculatively as defined in 335-14-1-.02.

20. Hazardous secondary materials used to make zinc fertilizers, provided that the following conditions specified are satisfied:

(i) Hazardous secondary materials used to make zinc micronutrient fertilizers must not be accumulated speculatively, as defined in 335-14-1-.02.

(ii) Generators and intermediate handlers of zinc-bearing hazardous secondary materials that are to be incorporated into zinc fertilizers must:

(I) Submit a one-time notice to the Department, which contains the name, address and EPA ID number of the generator or intermediate handler facility, provides a brief description of the secondary material that will be subject to the exclusion, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in 335-14-2-.01(4)(a)20.

(II) Store the excluded secondary material in tanks, containers, or buildings that are constructed and maintained in a way that prevents releases of the secondary materials into the environment. At a minimum, any building used for this purpose must be an engineered structure made of non-earthen materials that provide

structural support, and must have a floor, walls and a roof that prevent wind dispersal and contact with rainwater. Tanks used for this purpose must be structurally sound and, if outdoors, must have roofs or covers that prevent contact with wind and rain. Containers used for this purpose must be kept closed except when it is necessary to add or remove material, and must be in sound condition. Containers that are stored outdoors must be managed within storage areas that:

I. Have containment structures or systems sufficiently impervious to contain leaks, spills and accumulated precipitation; and

II. Provide for effective drainage and removal of leaks, spills and accumulated precipitation; and

III. Prevent run-on into the containment system.

(III) With each off-site shipment of excluded hazardous secondary materials, provide written notice to the receiving facility that the material is subject to the conditions of 335-14-2-.01(4)(a)20.

(IV) Maintain at the generator's or intermediate handlers's facility for no less than three years records of all shipments of excluded hazardous secondary materials. For each shipment these records must at a minimum contain the following information:

I. Name of the transporter and date of the shipment;

II. Name and address of the facility that received the excluded material, and documentation confirming receipt of the shipment; and

III. Type and quantity of excluded secondary material in each shipment.

(iii) Manufacturers of zinc fertilizers or zinc fertilizer ingredients made from excluded hazardous secondary materials must:

(I) Store excluded hazardous secondary materials in accordance with the storage requirements for generators and intermediate handlers, as specified in 335-14-2-.01(4)(a)20(ii)(II).

(II) Submit a one-time notification to the Department that, at a minimum, specifies the name, address and EPA ID number of the manufacturing facility, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in 335-14-2-.01(4)(a)20.

(III) Maintain for a minimum of three years records of all shipments of excluded hazardous secondary materials received by the manufacturer, which must at a minimum identify for each shipment the name and address of the generating facility, name of transporter and date the materials were received, the quantity received, and a brief description of the industrial process that generated the material.

(IV) Submit to the Department an annual report that identifies the total quantities of all excluded hazardous secondary materials that were used to manufacture zinc fertilizers or zinc fertilizer ingredients in the previous year, the name and address of each generating facility, and the industrial process(s) from which they were generated.

(iv) Nothing in this section preempts, overrides or otherwise negates the provision in 335-14-3-.01(2), which requires any person who generates a solid waste to determine if that waste is a hazardous waste.

(v) Interim status and permitted storage units that have been used to store only zinc-bearing hazardous wastes prior to the submission of the one-time notice described in 335-14-2-.01(4)(a)20.(ii)(I), and that afterward will be used only to store hazardous secondary materials excluded under this paragraph, are not subject to the closure requirements of 335-14-5 or 335-14-6.

21. Zinc fertilizers made from hazardous wastes, or hazardous secondary materials that are excluded under 335-14-2-.01(4)(a)20., provided that:

(i) The fertilizers meet the following contaminant limits:

(I) For metal contaminants:

Table 1. – Limits on Metal Contaminants

Constituent	**Maximum Allowable Total Concentration in Fertilizer, per Unit (1%) of Zinc (ppm)**
Arsenic	0.3
Cadmium	1.4
Chromium	0.6
Lead	2.8
Mercury	0.3

(II) For dioxin contaminants the fertilizer must contain no more than eight (8) parts per trillion of dioxin, measured as toxic equivalent (TEQ).

(ii) The manufacturer performs sampling and analysis of the fertilizer product to determine compliance with the contaminant limits for metals no less than every six months, and for dioxins no less than every twelve months. Testing must also be performed whenever changes occur to manufacturing processes or ingredients that could significantly affect the amounts of contaminants in the fertilizer product. The manufacturer may use any reliable analytical method to demonstrate that no constituent of concern is present in the product at concentrations above the applicable limits. It is the responsibility of the manufacturer to ensure that the sampling and analysis are unbiased, precise, and representative of the product(s) introduced into commerce.

(iii) The manufacturer maintains for no less than three years records of all sampling and analyses performed for purposes of determining compliance with the requirements of 335-14-2-.01(4)(a)21(ii). Such records must at a minimum include:

(I) The dates and times product samples were taken, and the dates the samples were analyzed;

(II) The names and qualifications of the person(s) taking the samples;

(III) A description of the methods and equipment used to take the samples;

(IV) The name and address of the laboratory facility at which analyses of the samples were performed;

(V) A description of the analytical methods used, including any cleanup and sample preparation methods; and

(VI) All laboratory analytical results used to determine compliance with the contaminant limits specified in 335-14-2-.01(4)(a)21.

22. Used cathode ray tubes (CRTs).

(i) Used, intact CRTs as described in 335-14-1-.02 are not solid wastes within the United States unless they are disposed, or unless they are speculatively accumulated as defined in 335-14-1-.02 by CRT collectors or glass processors.

(ii) Used, intact CRTs as described in 335-14-1-.02 are not solid wastes when exported for recycling provided that they meet the requirements of 335-14-2-.05(2).

(iii) Used, broken CRTs as described in 335-14-1-.02 are not solid wastes provided that they meet the requirements of 335-14-2-.05(1).

(iv) Glass removed from CRTs is not a solid waste provided that it meets the requirements of 335-14-2-.05(1)(c).

23. Hazardous secondary material generated and legitimately reclaimed within the United States or its territories and under the control of the generator, provided that the material complies with paragraphs 335-14-2-.01(4)(a)23.(i) and (ii) of this section:

(i)(I) The hazardous secondary material is generated and reclaimed at the generating facility (for purposes of this definition, generating facility means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator); or

(II) The hazardous secondary material is generated and reclaimed at different facilities, if the reclaiming facility is controlled by the generator or if both the

generating facility and the reclaiming facility are controlled by a person as defined in 335-14-1-.02, and if the generator provides one of the following certifications: "on behalf of [insert generator facility name], I certify that this facility will send the indicated hazardous secondary material to [insert reclaimer facility name], which is controlled by [insert generator facility name] and that [insert name of either facility] has acknowledged full responsibility for the safe management of the hazardous secondary material," or "on behalf of [insert generator facility name], I certify that this facility will send the indicated hazardous secondary material to [insert reclaimer facility name], that both facilities are under common control, and that [insert name of either facility] has acknowledged full responsibility for the safe management of the hazardous secondary material." For purposes of this paragraph, "control" means the power to direct the policies of the facility, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate facilities on behalf of a different person as defined in 335-14-1-.02 shall not be deemed to "control" such facilities. The generating and receiving facilities must both maintain at their facilities for no less than three years records of hazardous secondary materials sent or received under this exclusion. In both cases, the records must contain the name of the transporter, the date of the shipment, and the type and quantity of the hazardous secondary material shipped or received under the exclusion. These requirements may be satisfied by routine business records (e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations); or

(III) The hazardous secondary material is generated pursuant to a written contract between a tolling contractor and a toll manufacturer and is reclaimed by the tolling contractor, if the tolling contractor certifies the following: "On behalf of [insert tolling contractor name], I certify that [insert tolling contractor name] has a written contract with [insert toll manufacturer name] to manufacture [insert name of product or intermediate] which is made from specified unused materials, and that [insert tolling contractor name] will reclaim the hazardous secondary materials generated during this manufacture. On behalf of [insert tolling contractor name], I also certify that [insert tolling contractor name] retains ownership of, and responsibility for, the hazardous secondary materials that are generated during the course of the manufacture, including any releases of hazardous secondary materials that occur during the manufacturing process". The tolling contractor must maintain at its facility for no less than three years records of hazardous secondary materials received pursuant to its written contract with the tolling manufacturer, and the tolling manufacturer must maintain at its facility for no less than three years records of hazardous secondary materials shipped pursuant to its written contract with the tolling contractor. In both cases, the records must contain the name of the transporter, the date of the shipment, and the type and quantity of the hazardous secondary material shipped or received pursuant to the written contract. These requirements may be satisfied by routine business records (e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations). For purposes of this paragraph, tolling contractor means a person who arranges for the production of a product or intermediate made from specified unused materials through a written contract with a toll manufacturer. Toll manufacturer means a person who produces a product or intermediate made from specified unused materials pursuant to a written contract with a tolling contractor.

(ii)(I) The hazardous secondary material is contained as defined in 335-14-1-.02. A hazardous secondary material released to the environment is discarded and

a solid waste unless it is immediately recovered for the purpose of reclamation. Hazardous secondary material managed in a unit with leaks or other continuing or intermittent unpermitted releases is discarded and a solid waste.

(II) The hazardous secondary material is not speculatively accumulated, as defined in 335-14-1-.02.

(III) Notice is provided as required by 335-14-1-.03(22).

(IV) The material is not otherwise subject to material-specific management conditions under paragraph (a) of this section when reclaimed, and it is not a spent lead-acid battery (see 335-14-7-.07(1) and 335-14-11-.01(2)).

(V) Persons performing the recycling of hazardous secondary materials under this exclusion must maintain documentation of their legitimacy determination on-site. Documentation must be a written description of how the recycling meets all four factors in 335-14-1-.03(23). Documentation must be maintained for three years after the recycling operation has ceased.

(VI) The emergency preparedness and response requirements found in 335-14-2-.13 are met.

24. Hazardous secondary material that is generated and then transferred to another person for the purpose of reclamation is not a solid waste, provided that:

(i) The material is not speculatively accumulated, as defined in 335-14-1-.02;

(ii) The material is not handled by any person or facility other than the hazardous secondary material 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, as defined in 335-14-1-.02(1), and is packaged according to applicable Department of Transportation regulations at 49 CFR parts 173, 178, and 179 while in transport;

(iii) The material is not otherwise subject to material-specific management conditions under this paragraph (a) when reclaimed, and it is not a spent lead-acid battery (see 335-14-7-.07(1) and 335-14-11-.01(2));

(iv) The reclamation of the material is legitimate, as specified under 335-14-1-.03(23);

(v) The hazardous secondary material generator satisfies all of the following conditions:

(I) The material must be contained as defined in 335-14-1-.02(1). A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of recycling. Hazardous

secondary material managed in a unit with leaks or other continuing releases is discarded and a solid waste.

(II) Prior to arranging for transport of hazardous secondary materials to a reclamation facility (or facilities) where the management of the hazardous secondary materials is not addressed under a RCRA Part B permit or interim status standards, the hazardous secondary material generator must make reasonable efforts to ensure that each reclaimer intends to properly and legitimately reclaim the hazardous secondary material and not discard it, and that each reclaimer will manage the hazardous secondary material in a manner that is protective of human health and the environment. If the hazardous secondary material will be passing through an intermediate facility where the management of the hazardous secondary materials is not addressed under a RCRA Part B permit or interim status standards, the hazardous secondary material generator must make contractual arrangements with the intermediate facility to ensure that the hazardous secondary material is sent to the reclamation facility identified by the hazardous secondary material generator, and the hazardous secondary material generator must perform reasonable efforts to ensure that the intermediate facility will manage the hazardous secondary material 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 hazardous secondary material generator to claim the exclusion and to send the hazardous secondary materials 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 hazardous secondary material generator, provided by the reclaimer or intermediate facility, and/or provided by a third party. The hazardous secondary material generator must affirmatively answer all of the following questions for each reclamation facility and any intermediate facility:

I. Does the available information indicate that the reclamation process is legitimate pursuant to 335-14-1-.03(23). In answering this question, the hazardous secondary material generator can rely on their existing knowledge of the physical and chemical properties of the hazardous secondary material, as well as information from other sources (e.g., the reclamation facility, audit reports, etc.) about the reclamation process.

II. Does the publicly available information indicate that the reclamation facility and any intermediate facility that is used by the hazardous secondary material generator notified the appropriate authorities of hazardous secondary materials reclamation activities pursuant to 335-14-1-.03(22) of this chapter and have they notified the appropriate authorities that the financial assurance condition is satisfied 335-14-2-.08? In answering these questions, the hazardous secondary material generator can rely on the available information documenting the reclamation facility's and any intermediate facility's compliance with the notification requirements per 335-14-1-.03(22), including the requirement in 335-14-1-.03(22)(a)(5) to notify the Department whether the reclaimer or intermediate facility has financial assurance.

III. Does publicly available information indicate that the reclamation facility or any intermediate facility that is used by the hazardous secondary material generator has not had any formal enforcement actions taken against the facility in the previous three years for violations of RCRA or state hazardous waste regulations and has not been classified as a significant non-complier with RCRA Subtitle C or equivalent

State regulations? In answering this question, the hazardous secondary material 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 hazardous secondary material generator has had a formal enforcement action taken against the facility in the previous three years for violations of RCRA or state hazardous waste regulations and has been classified as a significant non-complier with RCRA Subtitle C or equivalent state regulations, does the hazardous secondary material generator have credible evidence that the facilities will manage the hazardous secondary materials properly? In answering this question, the hazardous secondary material 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 hazardous secondary materials.

IV. Does the available information indicate that the reclamation facility and any intermediate facility that is used by the hazardous secondary material generator have the equipment and trained personnel to safely recycle the hazardous secondary material? 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 hazardous secondary material.

V. If residuals are generated from the reclamation of the excluded hazardous secondary materials, 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 hazardous secondary material 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 hazardous secondary material generator can rely on publicly available information from EPA or the state, or information provided by the facility itself.

(III) The hazardous secondary material 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:

I. 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;

II. 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 335-14-2-.01(4)(a)24.(v)(II) 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."

(IV) The hazardous secondary material generator must maintain at the generating facility for no less than three (3) years records of all off-site shipments of hazardous secondary materials. For each shipment, these records must, at a minimum, contain the following information:

I. Name of the transporter and date of the shipment;

II. 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;

III. The type and quantity of hazardous secondary material in the shipment.

(V) The hazardous secondary material generator must maintain at the generating facility for no less than three (3) years confirmations of receipt from each reclaimer and, if applicable, each intermediate facility for all off-site shipments of hazardous secondary materials. Confirmations of receipt must include the name and address of the reclaimer (or intermediate facility), the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records (e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt);

(VI) The hazardous secondary material generator must comply with the emergency preparedness and response conditions in 335-14-2-.13.

(vi) Reclaimers of hazardous secondary material excluded from regulation under this exclusion and intermediate facilities as defined in 335-14-1-.02(1) satisfy all of the following conditions:

(I) The reclaimer and intermediate facility must maintain at its facility for no less than three (3) years records of all shipments of hazardous secondary material that were received at the facility and, if applicable, for all shipments of hazardous secondary materials that were received and subsequently sent off-site from the facility for further reclamation. For each shipment, these records must at a minimum contain the following information:

I. Name of the transporter and date of the shipment;

II. Name and address of the hazardous secondary material generator and, if applicable, the name and address of the reclaimer or intermediate facility which the hazardous secondary materials were received from;

III. The type and quantity of hazardous secondary material in the shipment; and

IV. For hazardous secondary materials that, after being received by the reclaimer or intermediate facility, were subsequently transferred off-site for further reclamation, the name and address of the (subsequent) reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent.

(II) The intermediate facility must send the hazardous secondary material to the reclaimer(s) designated by the hazardous secondary materials generator.

(III) The reclaimer and intermediate facility must send to the hazardous secondary material generator confirmations of receipt for all off-site shipments of hazardous secondary materials. Confirmations of receipt must include the name and address of the reclaimer (or intermediate facility), the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records (e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt).

(IV) The reclaimer and intermediate facility must manage the hazardous secondary material 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 hazardous secondary material is a substitute and serves the same function and has similar physical and chemical properties as the hazardous secondary material.

(V) Any residuals that are generated from reclamation processes will be managed in a manner that is protective of human health and the environment. If any residuals exhibit a hazardous characteristic according to 335-14-2-.03, or if they themselves are specifically listed in 335-14-2-.04, such residuals are hazardous wastes and must be managed in accordance with the applicable requirements of 335-14-1 through 9.

(VI) The reclaimer and intermediate facility have financial assurance as required under 335-14-2-.08,

(vii) All persons claiming the exclusion under 335-14-2-.01(4)(a)24. of this section provide notification as required under 335-14-1-.03(22).

25. The Environmental Protection Agency Regulations as they exist as set forth in 40 CFR § 261.4(a)(25) (as published on May 30, 2018) are incorporated herein by reference.

26. Solvent-contaminated reusable wipes that are sent for cleaning and reuse are not solid wastes from the point of generation, provided that:

(i) The solvent-contaminated wipes, when accumulated, stored, and transported, are contained in non-leaking, closed containers that are labeled "Excluded Solvent-Contaminated Wipes." The containers must be able to contain free liquids, should free liquids occur. During accumulation, a container should be closed in

accordance with 335-14-1-.02, except when necessary to add or remove solvent-contaminated wipes;

(ii) The solvent-contaminated wipes may be accumulated by the generator for up to 180 days from the start date of accumulation for each container prior to being sent for cleaning;

(iii) At the point of being sent for cleaning on-site or at the point of being transported off-site for cleaning, the solvent-contaminated wipes must contain no free liquids as defined in 335-14-1-.02;

(iv) Free liquids removed from the solvent-contaminated wipes or from the container holding the wipes must be managed according to the applicable regulations found in 335-14-1 through 335-14-9;

(v) Generators must maintain at their site the following documentation:

(I) Name and address of the laundry or dry cleaner that is receiving the solvent-contaminated wipes;

(II) Documentation that the 180-day accumulation time limit in 335-14-2-.01(4)(a)26.(ii) is being met;

(III) Description of the process the generator is using to ensure the solvent-contaminated wipes contain no free liquids at the point of being laundered or dry cleaned on-site or at the point of being transported off-site for laundering or dry cleaning;

(IV) The generator must maintain in their onsite records, documentation that verifies that "no free liquids" were present in the container, prior to shipment. These records must be kept for at least three years from the date of shipment. At a minimum, these records must include the date and time of the verification, the name of the person verifying and a notation of the volume of free liquids removed from the container, if present.

(vi) The solvent-contaminated wipes are sent to a laundry or dry cleaner whose discharge, if any, is regulated under sections 301 and 402 or section 307 of the Clean Water Act.

27. Hazardous secondary material that is generated and then transferred to another person for the purpose of remanufacturing is not a solid waste, provided that:

(i) The hazardous secondary material consists of one or more of the following spent solvents: toluene, xylenes, ethylbenzene, 1,2,4-trimethylbenzene, chlorobenzene, n-hexane, cyclohexane, methyl tert-butyl ether, acetonitrile, chloroform, chloromethane, dichloromethane, methyl isobutyl ketone, NN-dimethylformamide, tetrahydrofuran, n-butyl alcohol, ethanol, and/or methanol;

(ii) The hazardous secondary material originated from using one or more of the solvents listed in 335-14-2-.01(4)(a)27.(i) of this section in a commercial grade for reacting, extracting, purifying, or blending chemicals (or for rinsing out the process lines associated with these functions) in the pharmaceutical manufacturing (NAICS 325412), basic organic chemical manufacturing (NAICS 325199), plastics and resins manufacturing (NAICS 325211), and/or the paints and coatings manufacturing sectors (NAICS 325510).

(iii) The hazardous secondary material generator sends the hazardous secondary material spent solvents listed in 335-14-2-.01(4)(a)27.(i) of this section to a remanufacturer in the pharmaceutical manufacturing (NAICS 325412), basic organic chemical manufacturing (NAICS 325199), plastics and resins manufacturing (NAICS 325211), and/or the paints and coatings manufacturing sectors (NAICS 325510).

(iv) After remanufacturing one or more of the solvents listed in 335-14-2-.01(4)(a)27.(i) of this section, the use of the remanufactured solvent shall be limited to reacting, extracting, purifying, or blending chemicals (or for rinsing out the process lines associated with these functions) in the pharmaceutical manufacturing (NAICS 325412), basic organic chemical manufacturing (NAICS 325199), plastics and resins manufacturing (NAICS 325211), and the paints and coatings manufacturing sectors (NAICS 325510) or to using them as ingredients in a product. These allowed uses correspond to chemical functional uses enumerated under the Chemical Data Reporting Rule of the Toxic Substances Control Act (40 CFR Parts 704, 710–711), including Industrial Function Codes U015 (solvents consumed in a reaction to produce other chemicals) and U030 (solvents become part of the mixture);

(v) After remanufacturing one or more of the solvents listed in 335-14-2-.01(4)(a)27.(i) of this section, the use of the remanufactured solvent does not involve cleaning or degreasing oil, grease, or similar material from textiles, glassware, metal surfaces, or other articles. (These disallowed continuing uses correspond to chemical functional uses in Industrial Function Code U029 under the Chemical Data Reporting Rule of the Toxics Substances Control Act.); and

(vi) Both the hazardous secondary material generator and the remanufacturer must:

(I) Notify the Director and update the notification annually in accordance with 335-14-1-.03(22);

(II) Develop and maintain an up-to-date remanufacturing plan which identifies:

I. The name, address and EPA ID number of the generator(s) and the remanufacturer(s),

II. The types and estimated annual volumes of spent solvents to be remanufactured,

III. The processes and industry sectors that generate the spent solvents,

IV. The specific uses and industry sectors for the remanufactured solvents, and

V. A certification from the remanufacturer stating "on behalf of [insert remanufacturer facility name], I certify that this facility is a remanufacturer under pharmaceutical manufacturing (NAICS 325412), basic organic chemical manufacturing (NAICS 325199), plastics and resins manufacturing (NAICS 325211), and/or the paints and coatings manufacturing sectors (NAICS 325510), and will accept the spent solvent(s) for the sole purpose of remanufacturing into commercial-grade solvent(s) that will be used for reacting, extracting, purifying, or blending chemicals (or for rinsing out the process lines associated with these functions) or for use as product ingredient(s). I also certify that the remanufacturing equipment, vents, and tanks are equipped with and are operating air emission controls in compliance with the appropriate Clean Air Act regulations under 40 CFR part 60, part 61 or part 63, or, absent such Clean Air Act standards for the particular operation or piece of equipment covered by the remanufacturing exclusion, are in compliance with the appropriate standards in 335-14-6-.27 (vents), 335-14-6-.28 (equipment) and 335-14-6-.29 (tank storage)";

(III) Maintain records of shipments and confirmations of receipts for a period of three years from the dates of the shipments;

(IV) Prior to remanufacturing, store the hazardous spent solvents in tanks or containers that meet technical standards found in 335-14-2-.09 and 335-14-2-.10, with the tanks and containers being labeled or otherwise having an immediately available record of the material being stored;

(V) During remanufacturing, and during storage of the hazardous secondary materials prior to remanufacturing, the remanufacturer certifies that the remanufacturing equipment, vents, and tanks are equipped with and are operating air emission controls in compliance with the appropriate Clean Air Act regulations under 40 CFR part 60, part 61 or part 63; or, absent such Clean Air Act standards for the particular operation or piece of equipment covered by the remanufacturing exclusion, are in compliance with the appropriate standards in 335-14-6-.27 (vents), 335-14-6-.28 (equipment) and 335-14-6-.29 (tank storage); and

(VI) Ensure that no hazardous secondary materials are speculatively accumulated.

(b) "Solid wastes which are not hazardous wastes". The following solid wastes are not hazardous wastes:

1. Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered (e.g., refuse-derived fuel), or reused. "Household waste" means any material (including garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas). A resource recovery facility managing municipal solid waste shall not be deemed to be treating, storing,

disposing of, or otherwise managing hazardous waste for the purposes of regulation under 335-14-2-.01, if:

(i) Such facility receives and burns only:

(I) Household waste (from single and multiple dwellings, hotels, motels, and other residential sources); and

(II) Solid waste from commercial or industrial sources that does not contain hazardous waste.

(ii) Such facility does not accept hazardous wastes and the owner or operator of such facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in such facility.

2. Solid wastes generated by the following and which are returned to the soils as fertilizers:

(i) The growing and harvesting of agricultural crops;

(ii) The raising of animals, including animal manures.

3. Mining overburden returned to the mine site.

4. Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels, except as provided by 335-14-7-.08(13) for facilities that burn or process hazardous waste.

5. Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy;

6.(i) Wastes which fail the test for the characteristic of toxicity because chromium is present or are listed in 335-14-2-.04 due to the presence of chromium, which do not fail the test for the characteristic of toxicity for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

(I) The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and

(II) The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and

(III) The waste is typically and frequently managed in non-oxidizing environments.

(ii) Specific wastes which meet the standard in 335-14-2-.01(4)(b)6.(i)(I) through (III) (so long as they do not fail the test for the toxicity characteristic for any other constituent, and do not exhibit any other characteristic) are:

(I) Chrome (blue) trimmings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(II) Chrome (blue) shavings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(III) Buffing dust generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(IV) Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(V) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(VI) Waste scrap leather from the leather tanning industry, the shoe manufacturing industry and other leather product manufacturing industries.

(VII) Wastewater treatment sludges from the production of TiO_2 pigment using chromium-bearing ores by the chloride process.

(iii) For waste meeting the criteria described in 335-14-2-.01(4)(b)6.(i) but not specifically listed in 335-14-2-.01(4)(b)6.(ii), the generator may petition the Department in accordance with 335-14-1-.03(2)(f) to have the waste excluded from regulation as a hazardous waste.

7. Solid waste from the extraction, beneficiation, and processing of ores and minerals (including coal, phosphate rock and overburden from the mining of uranium ore), except as provided by 335-14-7-.08(13) for facilities that burn or process hazardous waste.

(i) For the purposes of 335-14-2-.01(4)(b)7., beneficiation of ores and minerals is restricted to the following activities: crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water and/or carbon dioxide; roasting, autoclaving,

and/or chlorination in preparation for leaching (except where the roasting (and/or autoclaving and/or chlorination)/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning; precipitation; amalgamation; and heap, dump, vat, tank, and in-situ leaching.

(ii) For the purposes of 335-14-2-.01(4)(b)7., solid waste from the processing of ores and minerals includes only the following wastes as generated:

(I) Slag from primary copper processing;

(II) Slag from primary lead processing;

(III) Red and brown muds from bauxite refining;

(IV) Phosphogypsum from phosphoric acid production;

(V) Slag from elemental phosphorus production;

(VI) Gasifier ash from coal gasification;

(VII) Process wastewater from coal gasification;

(VIII) Calcium sulfate wastewater treatment plant sludge from primary copper processing;

(IX) Slag tailings from primary copper processing;

(X) Fluorogypsum from hydrofluoric acid production;

(XI) Process wastewater from hydrofluoric acid production;

(XII) Air pollution control dust/sludge from iron blast furnaces;

(XIII) Iron blast furnace slag;

(XIV) Treated residue from roasting/leaching of chrome ore;

(XV) Process wastewater from primary magnesium processing by the anhydrous process;

(XVI) Process wastewater from phosphoric acid production;

(XVII) Basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel production;

(XVIII) Basic oxygen furnace and open hearth furnace slag from carbon steel production;

(XIX) Chloride process waste solids from titanium tetrachloride production;

(XX) Slag from primary zinc processing.

(iii) A residue derived from coprocessing mineral processing secondary materials with normal beneficiation raw materials or with normal mineral processing raw materials remains excluded under 335-14-2-.01(4)(b) if the owner or operator:

(I) Processes at least 50 percent by weight normal beneficiation raw materials or normal mineral processing raw materials; and,

(II) Legitimately reclaims the secondary mineral processing materials.

8. Cement kiln dust waste, except as provided by 335-14-7-.08(13) for facilities that burn or process hazardous waste.

9. Solid waste which consists of discarded arsenical-treated wood or wood products which fails the test for the Characteristic of Toxicity for Hazardous Waste Codes D004 through D017 and which is not a hazardous waste for any other reason or reasons, if the waste is generated by persons who utilize the arsenical-treated wood and wood products for these materials' intended end use.

10. Petroleum-contaminated media and debris that fail the test for the Characteristic of Toxicity of 335-14-2-.03(5) (Hazardous Waste Codes D018 through D043 only) and are subject to the corrective action regulations under Part 280 of 40 CFR.

11. Injected groundwater that is hazardous only because it exhibits the Toxicity Characteristic (Hazardous Waste Codes D018 through D043 only) in 335-14-2-.03(5) that is reinjected through an underground injection well pursuant to free phase hydrocarbon recovery operations undertaken at petroleum refineries, petroleum marketing terminals, petroleum bulk plants, petroleum pipelines, and petroleum transportation spill sites until January 25, 1993. This extension applies to recovery operations in existence, or for which contracts have been issued, on or before March 25, 1991. For groundwater returned through infiltration galleries from such operations at petroleum refineries, marketing terminals, and bulk plants, until October 2, 1991. New operations involving injection wells (beginning after March 25, 1991) will qualify for this compliance date extension (until January 25, 1993) only if:

(i) Operations are performed pursuant to a written State of Alabama agreement that includes a provision to assess the groundwater and the need for further remediation once the free phase recovery is completed; and

(ii) A copy of the written agreement has been submitted to: Waste Identification Branch (5304), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

12. Used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including mobile air conditioning systems, mobile refrigeration, and

commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for further use.

13. Non-terne plated used oil filters that are not mixed with wastes listed in 335-14-2-.04 if these oil filters have been gravity hot-drained using one of the following methods:

(i) Puncturing the filter anti-drain back valve or the filter dome end and hot-draining;

(ii) Hot-draining and crushing;

(iii) Dismantling and hot-draining; or

(iv) Any other equivalent hot-draining method which will remove the free-flowing used oil.

14. Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

15. Leachate or gas condensate collected from landfills where certain solid wastes have been disposed, provided that:

(i) The solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, K172, K174, K175, K176, K177, K178, and K181, if these wastes had been generated after the effective date of the listing;

(ii) The solid wastes described in 335-14-2-.01(4)(b)15.(i) of this section were disposed prior to the effective date of the listing;

(iii) The leachate or gas condensate does not exhibit any characteristic of hazardous waste nor are derived from any other listed hazardous waste;

(iv) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under sections 307(b) or 402 of the Clean Water Act.

(v) After February 13, 2001, leachate or gas condensate derived from K169-K172 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. After February 26, 2007, leachate or gas condensate derived from K181 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. After November 21, 2003, leachate or gas condensate derived from K176, K177, and K178 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation (e.g., shutdown of wastewater treatment system), provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the

impoundment and continues to be managed in compliance with the conditions of 335-14-2-.01(4)(b)15.(v) after the emergency ends.

16. **[Reserved].**

17. **[Reserved].**

18. Solvent-contaminated disposable wipes, except for wipes that are hazardous waste due to the presence of trichloroethylene, that are sent for disposal are not hazardous wastes from the point of generation provided that:

(i) The solvent-contaminated wipes, when accumulated, stored, and transported, are contained in non-leaking, closed containers that are labeled "Excluded Solvent-Contaminated Wipes." The containers must be able to contain free liquids, should free liquids occur. During accumulation, a container should be closed in accordance with 335-14-1-.02, except when necessary to add or remove solvent contaminated wipes;

(ii) The solvent-contaminated wipes may be accumulated by the generator for up to 180 days from the start date of accumulation for each container prior to being sent for disposal;

(iii) At the point of being transported for disposal, the solvent-contaminated wipes must contain no free liquids as defined in 335-14-1-.02;

(iv) Free liquids removed from the solvent-contaminated wipes or from the container holding the wipes must be managed according to the applicable regulations found in 335-14-1 through 335-14-9;

(v) Generators must maintain at their site the following documentation:

(I) Name and address of the landfill or combustor that is receiving the solvent-contaminated wipes;

(II) Documentation that the 180 day accumulation time limit in accordance with 335-14-2-.01(4)(b)18.(ii) is being met;

(III) Description of the process the generator is using to ensure solvent-contaminated wipes contain no free liquids at the point of being transported for disposal;

(IV) The generator must maintain in their onsite records, Documentation that verifies that "no free liquids" were present in the container, prior to shipment. These records must be kept for at least three years from the date of shipment. At a minimum, these records must include the date and time of the verification, the name of the person verifying and a notation of the volume of free liquids removed from the container, if present.

(vi) The solvent-contaminated wipes are sent for disposal:

(I) To a municipal solid waste landfill regulated under Division 335-13 rules including 335-13-4-.11 and meets the municipal solid waste landfill standards of 40 CFR 258, or to a hazardous waste landfill regulated under 335-14-5, 335-14-6, and 335-14-8; or

(II) To a municipal waste combustor or other combustion facility regulated under section 129 of the Clean Air Act or to a hazardous waste combustor, boiler, or industrial furnace regulated under 335-14-5, 335-14-6, and 335-14-7.

(c) "Hazardous wastes which are exempted from certain regulations". A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated unit, is not subject to regulation under 335-14-3 through 335-14-6, 335-14-8, 335-14-9 or to the notification requirements of Section 3010 of RCRA until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials.

(d) Samples.

1. Except as provided in 335-14-2-.01(4)(d)2., a sample of solid waste or a sample of water, tested to determine its characteristics or composition, is not subject to any requirements of 335-14-2 or 335-14-3 through 335-14-9 or to the notification requirements of Section 3010 of RCRA, when:

(i) The sample is being transported to a laboratory for the purpose of testing; or

(ii) The sample is being transported back to the sample collector after testing; or

(iii) The sample is being stored by the sample collector before transport to a laboratory for testing; or

(iv) The sample is being stored in a laboratory before testing; or

(v) The sample is being stored in a laboratory after testing but before it is returned to the sample collector; or

(vi) The sample is being stored temporarily in the laboratory after testing for a specific purpose (for example, until conclusion of a court case or enforcement action where further testing of the sample may be necessary).

2. In order to qualify for the exemption in 335-14-2-.01(4)(d)1.(i) and (ii), a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector must:

(i) Comply with United States Department of Transportation (DOT), United States Postal Service (USPS), or any other applicable shipping requirements; or

(ii) Comply with the following requirements if the sample collector determines that DOT, USPS, or other shipping requirements do not apply to the shipment of the sample:

(I) Assure that the following information accompanies the sample:

I. The sample collector's name, mailing address, and telephone number;

II. The laboratory's name, mailing address, and telephone number;

III. The quantity of the sample;

IV. The date of shipment; and

V. A description of the sample; and

(II) Package the sample so that it does not leak, spill, or vaporize from its packaging.

3. This exemption does not apply if the laboratory determines that the waste is hazardous but the laboratory is no longer meeting any of the conditions stated in 335-14-2-.01(4)(d)1.

(e) "Treatability Study Samples".

1. Except as provided in 335-14-2-.01(4)(e)2., persons who generate or collect samples for the purpose of conducting treatability studies as defined in 335-14-1-.02(1), are not subject to any requirement of 335-14-2 through 335-14-4 or to the notification requirements of Section 3010 of RCRA, nor are such samples included in the quantity determinations of 335-14-3-.01(3) when:

(i) The sample is being collected and prepared for transportation by the generator or sample collector; or

(ii) The sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or

(iii) The sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.

2. The exemption in 335-14-2-.01(4)(e)1. is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies provided that:

(i) The generator or sample collector uses (in "treatability studies") no more than 10,000 kg of media contaminated with non-acute hazardous waste, 1000 kg

of non-acute hazardous waste other than contaminated media, 1 kg of acute hazardous waste, or 2500 kg of media contaminated with acute hazardous waste for each process being evaluated for each generated waste stream; and

(ii) The mass of each sample shipment does not exceed 10,000 kg; the 10,000 kg quantity may be all media contaminated with non-acute hazardous waste, or may include 2500 kg of media contaminated with acute hazardous waste, 1000 kg of hazardous waste, and 1 kg of acute hazardous waste; and

(iii) The sample must be packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the requirements of 335-14-2-.01(4)(e)2.(iii)(I) or (II) are met.

(I) The transportation of each sample shipment complies with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(II) If the DOT, USPS, or other shipping requirements do not apply to the shipment of the sample, the following information must accompany the sample:

I. The name, mailing address, and telephone number of the originator of the sample;

II. The name, address, and telephone number of the facility that will perform the treatability study;

III. The quantity of the sample;

IV. The date of shipment; and

V. A description of the sample, including its EPA Hazardous Waste Number.

(iv) The sample is shipped to a laboratory or testing facility which is exempt under 335-14-2-.01(4)(f) or has an appropriate RCRA permit or interim status.

(v) The generator or sample collector maintains the following records for a period ending 3 years after completion of the treatability study:

(I) Copies of the shipping documents;

(II) A copy of the contract with the facility conducting the treatability study;

(III) Documentation showing:

I. The amount of waste shipped under this exemption;

II. The name, address, and EPA identification number of the laboratory or testing facility that received the waste;

III. The date the shipment was made; and

IV. Whether or not unused samples and residues were returned to the generator.

(vi) The generator reports the information required under 335-14-2-.01(4)(e)2.(v)(III) in its biennial report.

3. The Department may grant requests on a case-by-case basis for up to an additional two years for treatability studies involving bioremediation. The Department may grant requests on a case-by-case basis for quantity limits in excess of those specified in 335-14-2-.01(4)(e)2.(i) and (ii) and 335-14-2-.01(4)(f)4., for up to an additional 5000 kg of media contaminated with non-acute hazardous waste, 500 kg of non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste and 1 kg of acute hazardous waste:

(i) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities in advance of commencing treatability studies. Factors to be considered in reviewing such requests include the nature of the technology, the type of process (e.g., batch versus continuous), size of unit undergoing testing (particularly in relation to scale-up considerations), the time/quantity of material required to reach steady state operating conditions, or test design considerations such as mass balance calculations.

(ii) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities after initiation or completion of initial treatability studies, when: There has been an equipment or mechanical failure during the conduct of a treatability study; there is a need to verify the results of a previously conducted treatability study; there is a need to study and analyze alternative techniques within a previously evaluated treatment process; or there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment.

(iii) The additional quantities and timeframes allowed in 335-14-2-.01(4)(e)3.(i) and (ii) are subject to all the provisions in 335-14-2-.01(4)(e)1. and 2.(iii) through (vi). The generator or sample collector must apply to the Department and provide in writing the following information:

(I) The reason why the generator or sample collector requires additional time or quantity of sample for the treatability study evaluation and the additional quantity needed;

(II) Documentation accounting for all samples of hazardous waste from the waste stream which have been sent for or undergone treatability studies including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results of each treatability study;

(III) A description of the technical modifications or change in specifications which will be evaluated and the expected results;

(IV) If such further study is being required due to equipment or mechanical failure, the applicant must include information regarding the reason for the failure or breakdown and also include what procedures or equipment improvements have been made to protect against further breakdowns; and

(V) Such other information that the Department considers necessary.

(f) Samples Undergoing Treatability Studies at Laboratories and Testing Facilities. Samples undergoing treatability studies and the laboratory or testing facility conducting such treatability studies (to the extent such facilities are not otherwise subject to AHWMMA or RCRA requirements) are not subject to any requirement of 335-14-2, and 335-14-3 through 335-14-9, or to the notification requirements of Section 3010 of RCRA provided that the conditions of 335-14-2-.01(4)(f)1. through 11. are met. A mobile treatment unit (MTU) may qualify as a testing facility subject to 335-14-2-.01(4)(f)1. through (f)11. Where a group of MTUs are located at the same site, the limitations specified in 335-14-2-.01(4)(f)1. through 11. apply to the entire group of MTUs collectively as if the group were one MTU.

1. No less than 45 days before conducting treatability studies, the facility notifies the State Director in writing that it intends to conduct treatability studies under 335-14-2-.01(4)(f).

2. The laboratory or testing facility conducting the treatability study has an EPA identification number.

3. No more than a total of 10,000 kg of "as received" media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste or 250 kg of other "as received" hazardous waste is subjected to initiation of treatment in all treatability studies in any single day. "As received" waste refers to the waste as received in the shipment from the generator or sample collector.

4. The quantity of "as received" hazardous waste stored at the facility for the purpose of evaluation in treatability studies does not exceed 10,000 kg, the total of which can include 10,000 kg of media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste, 1000 kg of non-acute hazardous wastes other than contaminated media, and 1 kg of acute hazardous waste. This quantity limitation does not include treatment materials (including nonhazardous solid waste) added to "as received" hazardous waste.

5. No more than 90 days have elapsed since the treatability study for the sample was completed, or no more than one year (two years for treatability studies involving bioremediation) has elapsed since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date first occurs. Up to 500 kg of treated material from a particular waste stream from treatability studies may be archived for future evaluation up to five years from the date of initial receipt. Quantities of materials archived are counted against the total storage limit for the facility.

6. The treatability study does not involve the placement of hazardous waste on the land or open burning of hazardous waste.

7. The facility maintains records for 3 years following completion of each study that show compliance with the treatment rate limits and the storage time and quantity limits. The following specific information must be included for each treatability study conducted:

(i) The name, address, and EPA identification number of the generator or sample collector of each waste sample;

(ii) The date the shipment was received;

(iii) The quantity of waste accepted;

(iv) The quantity of "as received" waste in storage each day;

(v) The date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day;

(vi) The date the treatability study was concluded;

(vii) The date any unused sample or residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated facility, the name of the facility and the EPA identification number.

8. The facility keeps, on-site, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for a period ending 3 years from the completion date of each treatability study.

9. The facility prepares and submits a report to the Director by March 15 of each year, that includes the following information for the previous calendar year:

(i) The name, address, and EPA identification number of the facility conducting the treatability studies;

(ii) The types (by process) of treatability studies conducted;

(iii) The names and addresses of persons for whom studies have been conducted (including their EPA identification numbers);

(iv) The total quantity of waste in storage each day;

(v) The quantity and types of waste subjected to treatability studies;

(vi) When each treatability study was conducted;

(vii) The final disposition of residues and unused sample from each treatability study.

10. The facility determines whether any unused sample or residues generated by the treatability study are hazardous waste under 335-14-2-.01(3) and, if so, are subject to 335-14-2 through 335-14-9, unless the residues and unused samples are returned to the sample originator under the 335-14-2-.01(4)(e) exemption.

11. The facility notifies the State Director by letter when the facility is no longer planning to conduct any treatability studies at the site.

(g) "Dredged material that is not a hazardous waste." Dredged material that is subject to the requirements of a permit that has been issued under §404 of the Federal Water Pollution Control Act (33 U.S.C. 1344) or section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413) is not a hazardous waste. For 335-14-2-.01(4)(g), the following definitions apply:

1. The term "dredged material" has the same meaning as defined in 40 CFR 232.2;

2. The term "permit" means:

(i) A permit issued by the U.S. Army Corps of Engineers (Corps) or an approved State under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344);

(ii) A permit issued by the Corps under section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413); or

(iii) In the case of Corps civil works projects, the administrative equivalent of the permits referred to in 335-14-2-.01(4)(g)2.(i) and (ii), as provided for in Corps regulation (for example, see 33 CFR 336.1, 336.2, and 337.6)

(5) [Reserved]

(6) Requirements for recyclable materials.

(a)1. Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of 335-14-2-.01(6)(b) and (c), except for the materials listed in 335-14-2-.01(6)(a)2. and (a)3. Hazardous wastes that are recycled will be known as "recyclable materials".

2. The following recyclable materials are not subject to the requirements of 335-14-2-.01(6) but are regulated under 335-14-7-.03 through 335-14-7-.14 and all applicable provisions of 335-14-8 and 335-14-9.

(i) Recyclable materials used in a manner constituting disposal (335-14-7-.03);

(ii) Hazardous wastes burned [the definition of which is incorporated by reference in rule 335-14-7-.08(1)] for energy recovery in boilers and industrial furnaces that are not regulated under 335-14-5-.15 and 335-14-6-.15 (335-14-7-.08);

(iii) Recyclable materials from which precious metals are reclaimed (335-14-7-.06).

(iv) Spent lead-acid batteries that are being reclaimed (335-14-7-.07).

3. The following recyclable materials are not subject to regulation under 335-14-3 through 335-14-9, and are not subject to the notification requirements of Section 3010 of RCRA:

(i) Industrial ethyl alcohol that is reclaimed except that exports and imports of such recyclable materials must comply with the requirements of 335-14-3-.09:

(I) A person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, must comply with the requirements applicable to a primary exporter in 335-14-3-.05(4), 335-14-3-.05(7)(a)1. through 4., 6., and 335-14-3-.05(7)(b), and 335-14-3-.05(8), export such materials only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in 335-14-1-.02, and provide a copy of the EPA Acknowledgment of Consent to the shipment to the transporter transporting the shipment for export;

(II) Transporters transporting a shipment for export may not accept a shipment if he knows the shipment does not conform to the EPA Acknowledgment of Consent, must ensure that a copy of the EPA Acknowledgment of Consent accompanies the shipment and must ensure that it is delivered to the facility designated by the person initiating the shipment.

(ii) Scrap metal that is not excluded under 335-14-2-.01(4)(a)13.;

(iii) Fuels produced from the refining of oil-bearing hazardous wastes along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices (this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under 335-14-2-.01(4)(a)12.);

(iv)(I) Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such hazardous wastes, where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under 335-14-17-.02(2) and so long as no other hazardous wastes are used to produce the hazardous waste fuel;

(II) Hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under 335-14-17-.02(2); and

(III) Oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specifications under 335-14-17-.02(2).

4. Used oil that is recycled and is also a hazardous waste solely because it exhibits a hazardous characteristic is not subject to the requirements of 335-14-1 through 335-14-7 and 335-14-9, but is regulated under 335-14-17. Used oil that is recycled includes any used oil which is reused, following its original use, for any purpose (including the purpose for which the oil was originally used). Such term includes, but is not limited to, oil which is re-refined, reclaimed, burned for energy recovery, or reprocessed.

5. Hazardous waste that is exported to or imported for the purpose of recovery is subject to the requirements of 335-14-3-.09.

(b) Generators and transporters of recyclable materials are subject to the applicable requirements of 335-14-3 and 335-14-4 and the notification requirements under Section 3010 of RCRA, except as provided in 335-14-2-.01(6)(a).

(c)1. Owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of 335-14-5-.01 through 335-14-5-.12, 335-14-5-.27, 335-14-5-.28, 335-14-5-.29, 335-14-6-.01 through 335-14-6-.12, 335-14-6-.27, 335-14-6-.28, 335-14-6-.29, and under 335-14-7, 335-14-8 (except as provided in 335-14-8-.01(1)(c)3.(v)), 335-14-9, and the notification requirements under Section 3010 of RCRA, except as provided in 335-14-2-.01(6)(a). [The recycling process itself is exempt from regulation except as provided in 335-14-2-.01(6)(d).]

2. Owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to the following requirements, except as provided in 335-14-2-.01(6)(a):

(i) Notification requirements for small and large quanity generators under 335-14-3-.01(8);

(ii) 335-14-6-.05(2) and (3) (dealing with the use of the manifest and manifest discrepancies);

(iii) 335-14-2-.01(6)(d);

(iv) 334-14-6-.05(6) (biennial reporting requirements).

(d) Owners or operators of facilities subject to RCRA or AHWMMA permitting requirements with hazardous waste management units that recycle hazardous wastes are subject to the requirements of 335-14-5-.27, 335-14-5-.28, 335-14-6-.27, and 335-14-6-.28.

(7) <u>Residues of hazardous waste in empty containers</u>.

(a)1. Any hazardous waste remaining in either:

(i) An empty container or

(ii) An inner liner removed from an empty container, as defined in 335-14-2-.01(7)(b), is not subject to regulation under 335-14-2 through 335-14-9 or to the notification requirements of Section 3010 of RCRA.

2. Any hazardous waste in either:

(i) A container that is not empty or

(ii) An inner liner removed from a container that is not empty, as defined in 335-14-2-.01(7)(b) is subject to regulation under 335-14-2 through 335-14-9 and to the notification requirements of Section 3010 of RCRA.

3. Residues removed from an empty container are solid wastes subject to the requirements of 335-14-3-.01(2).

(b)1. A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an acute hazardous waste listed in 335-14-2-.04(2), or (4)(e) is empty if:

(i) All wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container (e.g., pouring, pumping, and aspirating); and

(ii) No more than 2.5 centimeters (one inch) of residue remain on the bottom of the container or inner liner; or

(iii)(I) No more than 3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 119 gallons in size, or

(II) No more than 0.3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is greater than 119 gallons in size.

2. A container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container approaches atmospheric.

3. A container or an inner liner removed from a container that has held an acute hazardous waste listed in 335-14-2-.04(2), or (4)(e) is empty if:

(i) All visible residues have been removed and the container or inner liner has been triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;

(ii) The container or inner liner has been cleaned by another method that has been shown in the scientific literature, or by tests conducted by the generator, to achieve equivalent removal; or

(iii) In the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container, has been removed.

(8) PCB wastes regulated under Toxic Substance Control Act. The disposal of PCB-containing dielectric fluid and electric equipment containing such fluid authorized for use and regulated under Part 761 of 40 CFR and that are hazardous only because they fail the test for the Toxicity Characteristic (Hazardous Waste Codes D018 through D043 only) are exempt, except for the provisions of Rules 335-14-5-.25 and 335-14-6-.21, from regulation under 335-14-2 through 335-14-6, and 335-14-9, Parts 270 and 124 of 40 CFR, and the notification requirements of Section 3010 of RCRA.

(9) Requirements for Universal Waste. The wastes listed in 335-14-2-.01(9) are exempt from regulation under 335-14-3 through 335-14-9, except as specified in 335-14-11 and, therefore are not fully regulated as hazardous waste. The wastes listed in 335-14-2-.01(9) are subject to regulation under 335-14-11:

(a) Batteries as described in 335-14-11-.01(2);

(b) Pesticides as described in 335-14-11-.01(3);

(c) Mercury-containing equipment as described in 335-14-11-.01(4); and

(d) Lamps as described in 335-14-11-.01(5).

(10) Residues of hazardous waste in empty tanks.

(a) 335-14-2-.01(10) only applies to hazardous waste accumulated or stored in tanks. Tanks remain subject to applicable closure standards in 335-14-3, 335-14-5, and 335-14-6 for all hazardous waste numbers placed into the tank since it was last decontaminated, in accordance with 335-14-5-.07 or 335-14-6-.07.

(b) A tank that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an acute hazardous waste listed in 335-14-2-.04(2), (3), or (4)(e), is empty if:

1. All wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of tank (e.g., draining, pumping, and aspirating);

2. No more than 0.3 percent by volume of the total capacity of the tank or 100 gallons, whichever is less, remains in the tank; and

3. The removal of waste in accordance with 335-14-2-.01(10)(b)1. and volume and percent of total capacity remaining in the tank in accordance with

335-14-2-.01(10)(b)2. has been certified with the date, time and name of the person making the certification.

(c)1. Hazardous waste subsequently placed into a tank which has been emptied in accordance with 335-14-2-.01(10)(b) will be identified only by those hazardous waste numbers which are applicable to the waste prior to entering the tank. Any residue remaining in an empty tank system will not cause waste subsequently placed into the tank to be identified pursuant to 335-14-2-.01(3)(a)2.(iv). All hazardous waste numbers applicable to waste placed in the tank since it was last decontaminated will apply to the tank system upon closure.

2. Residues removed from an empty tank are solid wastes subject to the requirements of 335-14-3-.01(2).

(d) Respondents in actions to enforce rules and regulations implementing the AHWMMA, who raise a claim that a tank or tank system was empty in accordance with 335-14-2-.01(10), must demonstrate compliance with 335-14-2-.01(10) by providing appropriate documentation.

[**Note:** Rule 335-14-2-.01(10) is only mandatory when a generator or owner/operator wishes to break the continuing chain of previous hazardous waste numbers. It is not required for demonstrating compliance with the accumulation time limits of Chapter 335-14-3.]

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335-14-2-.05 **Exclusions/Exemptions.**

(1) Conditional exclusion for used, broken cathode ray tubes (CRTs) and processed CRT glass undergoing recycling. Used, broken CRTs are not solid wastes if they meet the following conditions:

(a) Prior to processing: These materials are not solid wastes if they are destined for recycling and if they meet the following requirements:

1. Storage. The broken CRTs must be either:

(i) Stored in a building with a roof, floor, and walls, or

(ii) Placed in a container (i.e., a package or a vehicle) that is constructed, filled, and closed to minimize releases to the environment of CRT glass (including fine solid materials).

2. Labeling. Each container in which the used, broken CRT is contained must be labeled or marked clearly with one of the following phrases: "Used cathode ray tube(s) - contains leaded glass" or "Leaded glass from televisions or computers." It must also be labeled: "Do not mix with other glass materials."

3. Transportation. The used, broken CRTs must be transported in a container meeting the requirements of 335-14-2-.05(1)(a)1.(ii) and (a)2.

4. Speculative accumulation and use constituting disposal. The used, broken CRTs are subject to the limitations on speculative accumulation as defined in 335-14-1-.02. If they are used in a manner constituting disposal, they must comply with the applicable requirements of 335-14-7-.03 instead of the requirements of this section.

5. Exports. In addition to the applicable conditions specified in 335-14-2-.05(1)(a)1. – 4. exporters of used, broken CRTs must comply with the following requirements:

(i) Notify EPA of an intended export before the CRTs are scheduled to leave the United States. A complete notification should be submitted sixty (60) days before the initial shipment is intended to be shipped off-site. This notification may cover export activities extending over a twelve (12) month or lesser period. The notification must be in writing, signed by the exporter, and include the following information:

(I) Name, mailing address, telephone number and EPA ID number (if applicable) of the exporter of the CRTs.

(II) The estimated frequency or rate at which the CRTs are to be exported and the period of time over which they are to be exported.

(III) The estimated total quantity of CRTs specified in kilograms.

(IV) All points of entry to and departure from each foreign country through which the CRTs will pass.

(V) A description of the means by which each shipment of the CRTs will be transported [e.g., mode of transportation vehicle (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.)].

(VI) The name and address of the recycler or recyclers and the estimated quantity of used CRTs to be sent to each facility, as well as the names of any alternate recyclers.

(VII) A description of the manner in which the CRTs will be recycled in the foreign country that will be receiving the CRTs.

(VIII) The name of any transit country through which the CRTs will be sent and a description of the approximate length of time the CRTs will remain in such country and the nature of their handling while there.

(ii) Notifications submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Hand-delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 1200 Pennsylvania Ave., NW., Washington, DC. In both cases, the following shall be prominently displayed on the front of the envelope: "Attention: Notification of Intent to Export CRTs."

(iii) Upon request by EPA, the exporter shall furnish to EPA any additional information which a receiving country requests in order to respond to a notification.

(iv) EPA will provide a complete notification to the receiving country and any transit countries. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of 335-14-2-.05(1)(a)5.(i) of this section.

(v) The export of CRTs is prohibited unless the receiving country consents to the intended export. When the receiving country consents in writing to the receipt of the CRTs, EPA will forward an Acknowledgment of Consent to Export CRTs to the exporter. Where the receiving country objects to receipt of the CRTs or withdraws a prior consent, EPA will notify the exporter in writing. EPA will also notify the exporter of any responses from transit countries.

(vi) When the conditions specified on the original notification change, the exporter must provide EPA with a written renotification of the change, except for changes to the telephone number in 335-14-2-.05(1)(a)5.(i)(I) and decreases in the quantity indicated pursuant to 335-14-2-.05(1)(a)5.(i)(III). The shipment cannot take place until consent of the receiving country to the changes has been obtained [except for changes to information about points of entry and departure and transit countries

pursuant to 335-14-2-.05(1)(a)5.(i)(IV) and (VIII)] and the exporter of CRTs receives from EPA a copy of the Acknowledgment of Consent to Export CRTs reflecting the receiving country's consent to the changes.

(vii) A copy of the Acknowledgment of Consent to Export CRTs must accompany the shipment of CRTs. The shipment must conform to the terms of the Acknowledgment.

(viii) If a shipment of CRTs cannot be delivered for any reason to the recycler or the alternate recycler, the exporter of CRTs must renotify EPA of a change in the conditions of the original notification to allow shipment to a new recycler in accordance with 335-14-2-.05(1)(a)5.(vi) and obtain another Acknowledgment of Consent to Export CRTs.

(ix) Exporters must keep copies of notifications and Acknowledgments of Consent to Export CRTs for a period of three years following receipt of the Acknowledgment.

(x) CRT exporters must file with EPA no later than March 1 of each year, an annual report summarizing the quantities (in kilograms), frequency of shipment, and ultimate destination(s) (i.e., the facility or facilities where the recycling occurs) of all used CRTs exported during the previous calendar year. Such reports must also include the following:

(I) The name, EPA ID number (if applicable), and mailing and site address of the exporter;

(II) The calendar year covered by the report;

(III) A certification signed by the CRT exporter that states:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents and that, based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

(xi) Annual reports must be submitted to the office specified in paragraph (a)(5)(ii) of this section. Exporters must keep copies of each annual report for a period of at least three years from the due date of the report.

(b) Requirements for used CRT processing: Used, broken CRTs undergoing CRT processing as defined in 335-14-1-.02 are not solid wastes if they meet the following requirements:

1. Storage. Used, broken CRTs undergoing processing are subject to the requirement of 335-14-2-.05(1)(a)4.

2. Processing.

(i) All activities specified in paragraphs (b) and (c) of the definition of "CRT processing" in 335-14-1-.02 must be performed within a building with a roof, floor, and walls; and

(ii) No activities may be performed that use temperatures high enough to volatilize lead from CRTs.

(c) Processed CRT glass sent to CRT glass making or lead smelting: Glass from used CRTs that is destined for recycling at a CRT glass manufacturer or a lead smelter after processing is not a solid waste unless it is speculatively accumulated as defined in 335-14-1-.02.

(d) Use constituting disposal: Glass from used CRTs that is used in a manner constituting disposal must comply with the requirements of 335-14-7-.03 instead of the requirements of this section.

(2) Conditional exclusion for used, intact cathode ray tubes (CRTs) exported for recycling. Used, intact CRTs exported for recycling are not solid wastes if they meet the notice and consent conditions of 335-14-2-.05(1)(a)5., and if they are not speculatively accumulated as defined in 335-14-1-.02.

(3) Notification and Recordkeeping for Used, Intact Cathode Ray Tubes (CRTs) Exported for Reuse.

(a) CRT exporters who export used, intact CRTs for reuse must send a notification to EPA. This notification may cover export activities extending over a twelve (12) month or lesser period.

1. The notification must be in writing, signed by the exporter, and include the following information:

(i) Name, mailing address, telephone number, and EPA ID number (if applicable) of the exporter of the used, intact CRTs;

(ii) The estimated frequency or rate at which the used, intact CRTs are to be exported for reuse and the period of time over which they are to be exported;

(iii) The estimated total quantity of used, intact CRTs specified in kilograms;

(iv) All points of entry to and departure from each transit country through which the used, intact CRTs will pass, a description of the approximate length of time the used, intact CRTs will remain in such country, and the nature of their handling while there;

(v) A description of the means by which each shipment of the used, intact CRTs will be transported (e.g., mode of transportation vehicle (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.));

(vi) The name and address of the ultimate destination facility or facilities where the used, intact CRTs will be reused, refurbished, distributed, or sold for reuse and the estimated quantity of used, intact CRTs to be sent to each facility, as well as the name of any alternate destination facility or facilities;

(vii) A description of the manner in which the used, intact CRTs will be reused (including reuse after refurbishment) in the foreign country that will be receiving the used, intact CRTs; and

(viii) A certification signed by the CRT exporter that states:

"I certify under penalty of law that the CRTs described in this notice are intact and fully functioning or capable of being functional after refurbishment and that the used CRTs will be reused or refurbished and reused. I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

2. Notifications required by 335-14 shall be addressed to the following:

Mail:
Office of Enforcement and Compliance Assurance
Office of Federal Activities
International Compliance Assurance Division (Mail Code 2254A)
Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460

Hand Delivery:
Office of Enforcement and Compliance Assurance
Office of Federal Activities
International Compliance Assurance Division (Mail Code 2254A),
Environmental Protection Agency, Management
William Jefferson Clinton Building, Room 6144
1200 Pennsylvania Ave, NW.
Washington, DC 20460.

In both cases, the following shall be prominently displayed on the front of the envelope: "Attention: Notification of Intent to Export CRTs."

(b) CRT exporters of used, intact CRTs sent for reuse must keep copies of normal business records, such as contracts, demonstrating that each shipment of exported used, intact CRTs will be reused. This documentation must be retained for a period of at least three years from the date the CRTs were exported. If the documents are written in a language other than English, CRT exporters of used, intact CRTs sent for reuse must provide both the original, non-English version of the normal business records as well as a third-party translation of the normal business records into English within 30 days upon request by EPA.

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335-14-2-.08 <u>Financial Requirements for Management of Excluded Hazardous Secondary Materials</u>.

(1) Applicability

(a) The requirements of this subpart apply to owners or operators of reclamation and intermediate facilities managing hazardous secondary materials excluded under 335-14-2-.01(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.

(2) Definitions of terms as used in this section.
Some terms used in this section are defined in 335-14-1-.02 have the same meaning as those used in 335-14-6-.08.

(3) 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) 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 335-14-1-.02.) 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 335-14-6-.07(4)(d), 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 335-14-6-.07(4)(d) that might have economic value.

(b) During the active life of the facility, the owner or operator must adjust the cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with 335-14-2-.08(4). 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 Department as specified in 335-14-2-.08(4)(e)3. The adjustment may be made by recalculating the closure cost

estimate in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business, as specified in 335-14-2-.08(3)(b)1. and (b)2. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

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

2. Subsequent adjustment 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 335-14-2-.08(3)(a) or no later than 60 days after an unexpected event which increases the cost of conducting the activities described in 335-14-2-.08(3)(a). The revised cost estimate must be adjusted for inflation as specified in 335-14-2-.08(3)(b).

(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 335-14-2-.08(3)(a) and (c) and, when this estimate has been adjusted in accordance with 335-14-2-.08(3)(b), the latest adjusted cost estimate.

(4) Per 335-14-2-.01(4)(a)24.(vi)(VI), an owner or operator of a reclamation or intermediate facility must have financial assurance as a condition of the exclusion as required 335-14-2-.01(4)(a)24. 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 335-14-2-.08(4) by establishing a trust fund which conforms to the requirements of 335-14-2-.08(4)(a) and submitting an originally signed duplicate of the trust agreement to the Department. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

2. The wording of the trust agreement must be identical to the wording specified in 335-14-2-.08(12)(a)1, and the trust agreement must be accompanied by a formal certification of acknowledgment (for example, see 335-14-2-.08(12)(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 335-14-2-.08(4) 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 Department 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 335-14-2-.08(4) for all or part of the trust fund, he may submit a written request to the Department for release of the amount in excess of the current 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 335-14-2-.08(4)(a)5. or 6., the Department will instruct the trustee to release to the owner or operator such funds as the Department specifies in writing. If the owner or operator begins final closure under subpart 335-14-5-.07 or 335-14-6-.07, an owner or operator may request reimbursements for partial or final closure expenditures by submitting itemized bills to the Department. The owner or operator may request reimbursements for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. No later than 60 days after receiving bills for partial or final closure activities, the Department will instruct the trustee to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the Department has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, he may withhold reimbursements of such amounts as he deems prudent until he determines, in accordance with 335-14-2-.08(4)(i) that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Department does not instruct the trustee to make such reimbursements, he will provide to the owner or operator a detailed written statement of reasons.

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

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-2-.08(4); or

(ii) The Department releases the owner or operator from the requirements of this section in accordance with paragraph 335-14-2-.08(4)(i).

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

1. An owner or operator may satisfy the requirements of 335-14-2-.08(4) by obtaining a surety bond which conforms to the requirements of this 335-14-2-.08(4)(b) and submitting the bond to the Department. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

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

3. The owner or operator who uses a surety bond to satisfy the requirements of 335-14-2-.08(4) must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund must meet the requirements specified in 335-14-2-.08(4)(a), except that:

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

(ii) Until the standby trust fund is funded pursuant to the requirements of 335-14-2-.08(4), the following are not required by these regulations:

(I) Payments into the trust fund as specified in 335-14-2-.08(4)(a);

(II) Updating of Schedule A of the trust agreement (see 335-14-2-.08(12)(a)) to show current cost estimates;

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

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

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

(i) Fund the standby trust fund in an amount equal to the penal sum of the bond before loss of the exclusion under 335-14-2-.01(4)(a)24; 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 Department 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 335-14-2-.08(4), and obtain the Department's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the bond from the surety.

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

6. The penal sum of the bond must be in an amount at least equal to the current cost estimate, except as provided in 335-14-2-.08(4)(f).

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 Department, or obtain other

financial assurance as specified in 335-14-2-.08(4) 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 Department.

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

9. The owner or operator may cancel the bond if the Department has given prior written consent based on his receipt of evidence of alternatefinancial assurance as specified in 335-14-2-.08(4).

(c) Letter of credit.

1. An owner or operator may satisfy the requirements of 335-14-2-.08(4) by obtaining an irrevocable standby letter of credit which conforms to the requirements of 335-14-2-.08(4)(c) and submitting the letter to the Department. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or State agency.

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

3. An owner or operator who uses a letter of credit to satisfy the requirements of 335-14-2-.08(4) must also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Department will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund must meet the requirements of the trust fund specified in 335-14-2-.08(4)(a) of this section, except that:

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

(ii) Unless the standby trust fund is funded pursuant to the requirements of 335-14-2-.08(4), the following are not required by these regulations:

(I) Payments into the trust fund as specified in 335-14-2-.08(4)(a);

(II) Updating of Schedule A of the trust agreement (see 335-14-2-.08(12)(a)) to show current cost estimates;

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

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

4. The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: The EPA Identification Number (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 Department by certified mail of adecision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the Department have received the notice, as evidenced by the return receipts.

6. The letter of credit must be issued in an amount at least equal to the current cost estimate, except as provided in 335-14-2-.08(4)(f).

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 Department, or obtain other financial assurance as specified in 335-14-2-.08(4) 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 Department.

8. Following a determination by the Department that the hazardous secondary materials do not meet the conditions of the exclusion under 335-14-2-.01(4)(a)24, the Department may draw on the letter of credit.

9. If the owner or operator does not establish alternate financial assurance as specified in 335-14-2-.08(4) and obtain written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Department will draw on the letter of credit. The Department may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the Department will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in 335-14-2-.08(4) and obtain written approval of such assurance from the Department.

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

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-2-.08(4); or

(ii) The Department releases the owner or operator from the requirements of this section in accordance with paragraph 335-14-2-.08(4)(i).

(d) Insurance.

1. An owner or operator may satisfy the requirements of 335-14-2-.08(4) by obtaining insurance which conforms to the requirements of this 335-14-2-.08(4)(d) and submitting a certificate of such insurance to the Department. 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 335-14-2-.08(12)(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 335-14-2-.08(4)(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 335-14-5-.07 or 335-14-6-.07, 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 Department, to such party or parties as the Department specifies.

5. After beginning partial or final closure under 335-14-5 or 335-14-6, as applicable, an owner or operator or any other authorized person may request reimbursements for closure expenditures by submitting itemized bills to the Department. 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 Department will instruct the insurer to make reimbursements in such amounts as the Department specifies in writing if the Department determines that the expenditures are in accordance with the approved plan or otherwise justified. If the Department 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 335-14-2-.08(4)(h), that the owner or operator is no longer required to maintain financial assurance for the particular facility. If the Department does not instruct the insurer to make such reimbursements, he will provide to the owner or operator a detailed written statement of reasons.

6. The owner or operator must maintain the policy in full force and effect until the Department consents to termination of the policy by the owner or operator as specified in 335-14-2-.08(4)(i)10. of this section. Failure to pay the premium, without substitution of alternate financial assurance as specified in 335-14-2-.08(4), will constitute a significant violation of these regulations warranting such remedy as the Department deems necessary. Such violation will be deemed to begin upon receipt by

the Department of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

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

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

(i) The Department deems the facility abandoned; or

(ii) Conditional exclusion or interim status is lost, terminated, or revoked; or

(iii) Closure is ordered by the Department or a U.S. district court or other court of competent jurisdiction; or

(iv) The owner or operator is named as a 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 Department, or obtain other financial assurance as specified in 335-14-2-.08(4) 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 Department.

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

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-2-.08(4); or

(ii) The Department releases the owner or operator from the requirements of 335-14-2-.08(4) in accordance with 335-14-2-.08(4)(i).

(e) Financial test and corporate guarantee.

1. An owner or operator may satisfy the requirements of 335-14-2-.08(4) by demonstrating that he passes a financial test as specified in 335-14-2-.08(4)(e). To pass this test the owner or operator must meet the criteria of either paragraph335-14-2-.08(4)(e)1.(i) or (ii):

(i) The owner or operator must have:

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

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

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

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

(ii) The owner or operator must have:

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

(II) Tangible net worth at least six times the sum of the current cost estimates and the current plugging and abandonment cost estimates; and

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

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

2. The phrase"current cost estimates" as used in 335-14-2-.08(4)(e)1. refers to the cost estimates required to be shown in paragraphs 1–4 of the letter from the owner's or operator's chief financial officer (335-14-2-.08(12)(e)). The phrase "current plugging and abandonment cost estimates" as used in 335-14-2-.08(4)(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 CFR 144.70(f)).

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

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in 335-14-2-.08(12)(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 335-14-2-.08(4)(e)1.(i) that are different from the data in the audited financial statements referred to in 335-14-2-.08(4)(e)3.(ii) 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 335-14-2-.08(4)(e)3. if the fiscal year of the owner or operator ends during the 90 days prior to the effective date of these regulations and if the year end financial statements for that fiscal year will be audited by an independent certified public accountant. The extension will end no later than 90 days after the end of the owner's or operator's fiscal year. To obtain the extension, the owner's or operator's chief financial officer must send, by the effective date of these regulations, a letter to the Department. This letter from the chief financial officer must:

(i) Request the extension;

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

(iii) Specify for each facility to be covered by the test the EPA Identification Number (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 335-14-2-.08(4)(e)3; and

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

5. After the initial submission of items specified in 335-14-2-.08(4)(e)3, the owner or operator must send updated information to the Department within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified 335-14-2-.08(4)(e)3.

6. If the owner or operator no longer meets the requirements of 335-14-2-.08(4)(e)1, he must send notice to the Department of intent to establish alternate financial assurance as specified in 335-14-2-.08(4). The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide the alternate financial assurance within 120 days after the end of such fiscal year.

7. The Department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of 335-14-2-.08(4)(e)1, require reports of financial condition at any time from the owner or operator in addition to those specified in 335-14-2-.08(4)(e)3. If the Department, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of 335-14-2-.08(4)(e)1, the owner or operator must provide alternate financial assurance as specified in 335-14-2-.08(4) within 30 days after notification of such a finding.

8. The Department may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see 335-14-2-.08(4)(e)3(ii)). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Department will evaluate other qualifications on an individual basis. The owner or operator must provide alternate financial assurance as specified in 335-14-2-.08(4) within 30 days after notification of the disallowance.

9. The owner or operator is no longer required to submit the items specified in 335-14-2-.08(4)(e)3. when:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-2-.08(4); or

(ii) The Department releases the owner or operator from the requirements of 335-14-2-.08(4) in accordance with 335-14-2-.08(4)(i).

10. An owner or operator may meet the requirements of 335-14-2-.08(4) 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 335-14-2-.08(4)(e)1. through 8. and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in 335-14-2-.08(12)(g)1. A certified copy of the guarantee must accompany the items sent to the Department as specified in 335-14-2-.08(4)(e)3. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee must provide that:

(i) Following a determination by the Department 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 335-14-2-.01(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 335-14-5 or 335-14-6, as applicable, or establish a trust fund as specified in 335-14-2-.08(4)(a) 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 Department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts.

(iii) If the owner or operator fails to provide alternate financial assurance as specified in 335-14-2-.08(4) and obtain the written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternate financial assurance in the name of the owner or operator.

(f) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of 335-14-2-.08(4) by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds, letters of credit, and insurance. The mechanisms must be as specified in 335-14-2-.08(4)(a) through (d), except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The Department may use any or all of the mechanisms to provide for the facility.

(g) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in 335-14-2-.08(4) to meet the requirements for more than one facility. Evidence of financial assurance submitted to the Department must include a list showing, for each facility, the EPA Identification Number (if any issued), name, address, and the amount of funds assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for any of the facilities covered by the mechanism, the Department may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

(h) 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 335-14-2-.01(4)(a)24.(vi)(VI) must submit a plan for removing all hazardous secondary

material residues to the Department 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:

(i) For each hazardous secondary materials storage unit subject to financial assurance requirements under 335-14-2-.01(4)(a)24.(vi)(VI), 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

(ii) 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

(iii) 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

(iv) 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 under335-14-2-.01(4)(a)24.(vi)(VI) and the time required for intervening activities which will allow tracking of the progress of decontamination.

3. The Department 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 Department 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 Department will approve, modify, or disapprove the plan within 90 days of its receipt. If the Department 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 Department will approve or modify this plan in writing within 60 days. If the Department modifies the plan, this modified plan becomes the approved plan. The Department must assure that the approved plan is consistent with 335-14-2-.08(4)(h). 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 Department, 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 Department, upon request, until he releases the owner or operator from the financial assurance requirements for 335-14-2-.01(4)(a)24.(vi)(VI).

(i) Release of the owner or operator from the requirements of 335-14-2-.08(4). 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 335-14-2-.08(4)(h), the Department will notify the owner or operator in writing that he is no longer required under 335-14-2-.01(4)(a)24(vi)(VI) to maintain financial assurance for that facility or a unit at the facility, unless the Department 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 Department 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.

(5) **[Reserved].**

(6) **[Reserved].**

(7) **[Reserved].**

(8) 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 335-14-2-.01(4)(a)24(vi)(VI), or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least $1 million per occurrence with an annual aggregate of at least $2 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in 335-14-2-.08(8)(a)1, 2, 3, 4, 5, or 6:

1. An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in 335-14-2-.08(8)(a).

(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 335-14-2-.08(12)(h). The wording of the certificate of insurance must be identical to the wording specified in 335-14-2-.08(12)(i). The owner or operator must submit a signed duplicate original of the endorsement or the certificate of

insurance to the Department. If requested by a Department, the owner or operator must provide a signed duplicate original of the insurance policy.

(ii) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

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

3. An owner or operator may meet the requirements of 335-14-2-.08(8) by obtaining a letter of credit for liability coverage as specified in 335-14-2-.08(8)(h).

4. An owner or operator may meet the requirements of 335-14-2-.08(8) by obtaining a surety bond for liability coverage as specified in 335-14-2-.08(8)(i).

5. An owner or operator may meet the requirements of 335-14-2-.08(8) by obtaining a trust fund for liability coverage as specified in 335-14-2-.08(8)(j).

6. An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amounts required by 335-14-2-.08(8). If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this 335-14-2-.08(8)(a), the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

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

(i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in 335-14-2-.08(8)(a)1. through 6; or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous secondary material reclamation facility or intermediate facility is entered between the owner or operator and third-party claimant for liability coverage under 335-14-2-.08(8)(a)1. through 6.; or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or nonsudden 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 335-14-2-.08(8)(a)1. through 6.

(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 335-14-1-.02(1), which are used to manage hazardous secondary materials excluded under 335-14-2-.01(4)(a)24. 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 335-14-2-.08(8)(b)1, 2, 3, 4, 5, or 6:

1. An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in 335-14-2-.08(8)(b).

(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 335-14-2-.08(12)(h). The wording of the certificate of insurance must be identical to the wording specified in 335-14-2-.08(12)(i). The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Department. If requested by the Department, the owner or operator must provide a signed duplicate original of the insurance policy.

(ii) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

2. An owner or operator may meet the requirements of 335-14-2-.08(8) by passing a financial test or using the guarantee for liability coverage as specified in 335-14-2-.08(12)(f) and (g).

3. An owner or operator may meet the requirements of 335-14-2-.08(8) by obtaining a letter of credit for liability coverage as specified in 335-14-2-.08(8)(h).

4. An owner or operator may meet the requirements of 335-14-2-.08(8) by obtaining a surety bond for liability coverage as specified in 335-14-2-.08(8)(i).

5. An owner or operator may meet the requirements of 335-14-2-.08(8) by obtaining a trust fund for liability coverage as specified in 335-14-2-.08(8)(j).

6. An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amounts required by 335-14-2-.08(8). If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under 335-14-2-.08(8)(b), the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

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

(i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in 335-14-2-.08(8)(b)1. through 6.; or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous secondary material treatment and/or storage facility is entered between the owner or operator and third-party claimant for liability coverage under 335-14-2-.08(8)(b)1. through 6.; or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or nonsudden 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 335-14-2-.08(8)(b)1. through 6.

(c) Request for variance. If an owner or operator can demonstrate to the satisfaction of the Department that the levels of financial responsibility required by 335-14-2-.08(8)(a) or (b) 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 Department. The request for a variance must be submitted in writing to the Department. If granted, the variance will take the form of an adjusted level of required liability coverage, such level to be based on the Department's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. The Department may require an owner or operator who requests a variance to provide such technical and engineering information as is deemed necessary by the Department to determine a level of financial responsibility other than thatrequired by 335-14-2-.08(8)(a) or (b).

(d) Adjustments by the Department. If the Department determines that the levels of financial responsibility required by 335-14-2-.08(8)(a) or (b) are not consistent with the degree and duration of risk associated with treatment and/or storage at the facility or group of facilities, the Department may adjust the level of financial responsibility required under 335-14-2-.08(8)(a) or (b) as may be necessary to protect human health and the environment. This adjusted level will be based on the

Department's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the Department determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operations of a facility that is not a surface impoundment, pile, or land treatment facility, he may require that an owner or operator of the facility comply with 335-14-2-.08(8)(b). An owner or operator must furnish to the Department, within a reasonable time, any information which the Department requests to determine whether cause exists for such adjustments of level or type of coverage.

(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 335-14-2-.08(4)(h), the Department will notify the owner or operator in writing that he is no longer required under 335-14-2-.01(4)(a)24.(vi)(VI) to maintain liability coverage for that facility or a unit at the facility, unless the Department 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 335-14-2-.08(8) by demonstrating that he passes a financial test as specified in 335-14-2-.08(8)(f). To pass this test the owner or operator must meet the criteria of 335-14-2-.08(8)(f)1.(i) or (ii):

(i) The owner or operator must have:

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

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

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

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

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

(ii) The owner or operator must have:

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

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

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

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

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

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

2. The phrase "amount of liability coverage" as used in 335-14-2-.08(8)(f)1. refers to the annual aggregate amounts for which coverage is required under 335-14-2-.08(8)(a) and (b) and the annual aggregate amounts for which coverage is required under 335-14-5-.08(8)(a) and (b) and 335-14-6-.08(8)(a) and (b).

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

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in 335-14-2-.08(12)(f). If an owner or operator is using the financial test to demonstrate both assurance as specified by 335-14-2-.08(4)(e), and liability coverage, he must submit the letter specified in 335-14-2-.08(12)(f) to cover both forms of financial responsibility; a separate letter as specified in 335-14-2-.08(12)(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 335-14-2-.08(8)(f)1.(i) that are different from the data in the audited financial statements referred to in 335-14-2-.08(8)(f)3.(ii) 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, yearend 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 335-14-2-.08(8)(f)3 if the fiscal year of the owner or operator ends during the 90 days prior to the effective date of these regulations and if the year end financial statements for that fiscal year will be audited by an independent certified public accountant. The extension will end no later than 90 days after the end of the owner's or operator's fiscal year. To obtain the extension, the owner's or operator's chief financial officer must send, by the effective date of these regulations, a letter to the Department. This letter from the chief financial officer must:

(i) Request the extension;

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

(iii) Specify for each facility to be covered by the test the EPA Identification Number, name, address, 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 335-14-2-.08(8)(f)3; and

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

5. After the initial submission of items specified in 335-14-2-.08(8)(f)3, the owner or operator must send updated information to the within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in 335-14-2-.08(8)(f)3.

6. If the owner or operator no longer meets the requirements of 335-14-2-.08(8)(f)1, he must obtain insurance, a letter of credit, a surety bond, a trust fund, or a guarantee for the entire amount of required liability coverage as specified in 335-14-2-.08(8). Evidence of liability coverage must be submitted to the Department within 90 days after the end of the fiscal year for which the year end financial data show that the owner or operator no longer meets the test requirements.

7. The Department may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see 335-14-2-.08(8)(f)3.(ii). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Department will evaluate other qualifications on an individual basis. The owner or operator must provide evidence of insurance for the entire amount of required liability coverage as specified in 335-14-2-.08(8) within 30 days after notification of disallowance.

(g) Guarantee for liability coverage.

1. Subject to 335-14-2-.08(8)(g)2, an owner or operator may meet the requirements of 335-14-2-.08(8) by obtaining a written guarantee, hereinafter referred to as "guarantee." The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in 335-14-2-.08(8)(f)1. through 6. The wording of the guarantee must be identical to the wording specified in 335-14-2-.08(12)(g)2. A certified copy of the guarantee must

accompany the items sent to the Department as specified in 335-14-2-.08(8)(f)3. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee.

(i) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden or nonsudden accidental occurrences (or both as the case may be), arising from the operation of facilities covered by this 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 335-14-2-.08(8) only if the Attorneys General or Insurance Commissioners of:

(I) The State in which the guarantor is incorporated; and

(II) Each State in which a facility covered by the guarantee is located have submitted a written statement to EPA that a guarantee executed as described in 335-14-2-.08(8) and 335-14-2-.08(12)(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 335-14-2-.08(8) only if:

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

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

(h) Letter of credit for liability coverage.

1. An owner or operator may satisfy the requirements of 335-14-2-.08(8) by obtaining an irrevocable standby letter of credit that conforms to the requirements of 335-14-2-.08(8)(h) and submitting a copy of the letter of credit to the Department.

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

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

4. An owner or operator who uses a letter of credit to satisfy the requirements of 335-14-2-.08(8) may also establish a standby trust fund. Under the terms of such a letter of credit, all amounts paid pursuant to a draft by the trustee of the standby trust will be deposited by the issuing institution into the standby trust in accordance with instructions from the trustee. The trustee of the standby trust fund must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

5. The wording of the standby trust fund must be identical to the wording specified in 335-14-2-.08(12)(m).

(i) Surety bond for liability coverage.

1. An owner or operator may satisfy the requirements of 335-14-2-.08(8) by obtaining a surety bond that conforms to the requirements of 335-14-2-.08(8)(i) and submitting a copy of the bond to the Department.

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

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

4. A surety bond may be used to satisfy the requirements of 335-14-2-.08(8) only if the Attorneys General or Insurance Commissioners of:

(i) The State in which the surety is incorporated; and

(ii) Each State in which a facility covered by the surety bond is located have submitted a written statement to EPA that a surety bond executed as described in 335-14-2-.08(8) and 335-14-2-.08(12)(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 335-14-2-.08(8) by establishing a trust fund that conforms to the requirements of 335-14-2-.08(8)(j) and submitting an originally signed duplicate of the trust agreement to the Department.

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

3. The trust fund for liability coverage must be funded for the full amount of the liability coverage to be provided by the trust fund before it may be relied upon to satisfy the requirements of 335-14-2-.08(8). If at any time after the trust fund is created the amount of funds in the trust fund is reduced below the full amount of the liability coverage to be provided, the owner or operator, by the anniversary date of the establishment of the Fund, must either add sufficient funds to the trust fund to cause its value to equal the full amount of liability coverage to be provided, or obtain other financial assurance as specified in 335-14-2-.08(8) 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 335-14-2-.08(8), less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

4. The wording of the trust fund must be identical to the wording specified in ADEM Admin. Code r. 335-14-2-.08(12)(l).

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

(a) An owner or operator must notify the Department by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding. A guarantor of a corporate guarantee as specified in ADEM Admin. Code r. 335-14-2-.08(4)(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 ADEM Admin. Code r. 335-14-2-.08(4) or 335-14-2-.08(8) by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The owner or operator must establish other financial assurance or liability coverage within 60 days after such an event.

(10) **[Reserved].**

(11) **[Reserved].**

(12) Wording of the instruments.

(a)1. A trust agreement for a trust fund, as specified in ADEM Admin. Code r. 335-14-2-.08(4)(a) must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Trust Agreement

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

Whereas, the Alabama Department of Environmental Management, "the Department," an agency of the State of Alabama, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a facility regulated under ADEM Admin. Code r. 335-14-5, or 335-14-6, or satisfying the conditions of the exclusion under ADEM Admin. Code r. 335-14-2-.01(4)(a)24. shall provide assurance that funds will be available if needed for care of the facility under ADEM Admin. Code r. 335-14-5-.07 or 335-14-6-.07, 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 the Department in the event that the hazardous secondary materials of the grantor no longer meet the conditions of the exclusion under ADEM Admin. Code r. 335-14-2-.01(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 the Department.

Section 4. Payments from the Fund. The Trustee shall make payments from the Fund as the Department shall direct, in writing, to provide for the payment of the costs of the performance of activities required under ADEM Admin. Code r. 335-14-5-.07 or 335-14-6-.07 for the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the Department 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 Department specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

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

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

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

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

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

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

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

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

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

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

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

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary 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 Department a statement confirming the value of the Trust. Any securities in the Fund

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

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

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

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

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Department to the Trustee shall be in writing, signed by the Department, or his 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 the Department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Depatment, 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 Department, or by the Trustee and the appropriate Department 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 15, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Department, or by the Trustee and the Department, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 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 Department, issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

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

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 ADEM Admin. Code r. 335-14-2-.08(12)(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 ADEM Admin. Code r. 335-14-2-.08(4)(a).

State of_____

County of _____

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

_____
[Signature of Notary Public]

(b) A surety bond guaranteeing payment into a trust fund, as specified in ADEM Admin. Code r. 335-14-2-.08(4)(b), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Financial Guarantee Bond

Date bond executed: _____

Effective date: _____

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

Type 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 Alabama Department of Environmental Management 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 ADEM Admin. Code r. 335-14-2-.01(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 cosureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the Alabama Hazardous Wastes Management and Minimization Act of 1978 (AHWMMA), as amended, to have a permit or interim status in order to own or operate each facility identified above, or to meetconditions under ADEM Admin. Code r. 335-14-2-.01(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 ADEM Admin. Code r. 335-14-2-.01(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 ADEM Admin. Code r. 335-14-2-.01(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 the Department or a U.S. district court or other court of competent jurisdiction,

Or, if the Principal shall provide alternate financial assurance, as specified in ADEM Admin. Code r. 335-14-2-.08, as applicable, and obtain the Department's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the Department from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

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

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

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

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

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

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

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

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in ADEM Admin. Code r. 335-14-2-.08(12)(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 ADEM Admin. Code r. 335-14-2-.08(4)(c), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Irrevocable Standby Letter of Credit

Director

Alabama Department of Environmental Management

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No._____ in your favor, 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 ADEM Admin. Code r. 335-14-2-.01(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 Alabama Hazardous Wastes Management Act of 1978, as amended."

This letter of credit is effective as of [date] and shall expire on [date at least 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 ADEM Admin. Code r. 335-14-2-.08(12)(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 ADEM Admin. Code r. 335-14-2-.08(4)(e), 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 ADEM Admin. Code r. 335-14-2-.08(4)(d) as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

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

I hereby certify that the wording of this certificate is identical to the wording specified in ADEM Admin. Code r. 335-14-2-.08(12)(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 ADEM Admin. Code r. 335-14-2-.08(4)(e), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Letter From Chief Financial Officer

[Address to the Department 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 ADEM Admin. Code r. 335-14-2-.08.

[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 ADEM Admin. Code r. 335-14-2-.08. The current cost estimates covered by the test are shown for each facility: _____.

2. This firm guarantees, through the guarantee specified in ADEM Admin. Code r. 335-14-2-.08, 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 outside of Alabama, where EPA or some designated authority is administering the financial requirements of ADEM Admin. Code r. 335-14-2-.08, 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 ADEM Admin. Code r. 335-14-2-.08. 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 the state through the financial test or any other financial assurance mechanism specified in ADEM Admin. Code r. 335-14-2-.08 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 ADEM Admin. Code r. 335-14-5-.08 and 335-14-6-.08. The current closure and/or postclosure cost estimates covered by the test are shown for each facility: _____.

7. This firm guarantees, through the guarantee specified in ADEM Admin. Code r. 335-14-5-.08 and 335-14-6-.08, 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 postclosure 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 ll, 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 ADEM Admin. Code r. 335-14-5-.08 and 335-14-6-.08, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or postclosure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in ADEM Admin. Code r. 335-14-5-.08 and 335-14-6-.08. The current closure and/or postclosure 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 the Departmente through the financial test or any other financial assurance mechanism specified in ADEM Admin. Code r. 335-14-5-.08 and 335-14-6-.08 or equivalent or substantially equivalent 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 335-14-2-.08(4)(e)1(i). Fill in Alternative II if the criteria of 335-14-2-.08(4)(e)1(ii) 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 asset	$ _____	
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.	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]	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 the 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 ADEM Admin. Code 335-14-2-.08(12)(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 ADEM Admin. Code r. 335-14-2-.08(8)(f), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Letter From Chief Financial Officer

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

I am the chief financial officer of [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 ADEM Admin. Code r. 335-14-2-.08(8)[insert "and costs assured ADEM Admin. Code r. 335-14-2-.08(4)(e)" if applicable] as specified in ADEM Admin. Code r. 335-14-2-.08.

[Fill out the following paragraphs regarding facilities and liability coverage. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number (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 ADEM Admin. Code r. 335-14-2-.08: _____

The firm identified above guarantees, through the guarantee specified in ADEM Admin. Code r. 335-14-2-.08, liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the following: _____.

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

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 ADEM Admin. Code r. 335-14-5-.08 and 335-14-6-.08: _____

The firm identified above guarantees, through the guarantee specified in ADEM Admin. Code r. 335-14-5-.08 and 335-14-6-.08, liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the following: _____. The firm identified above is [insert one or more: (1) The direct or highertier 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 ADEM Admin. Code r. 335-14-2-.08(4)(e) or closure or post-closure care costs under ADEM Admin. Code r. 335-14-5-.08(4),335-14-5-.08(6), 335-14-6-.08(4) or 335-14-6-.08(6), 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 ADEM Admin. Code r. 335-14-2-.08. The current cost estimates covered by the test are shown for each facility: _____.

2. This firm guarantees, through the guarantee specified in ADEM Admin. Code r. 335-14-2-.08, 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 outside of Alabama, where the U.S. EPA or some designated authority is administering the financial requirements, 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 ADEM Admin. Code r. 335-14-2-.08. 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 to the Department through the financial test or any other financial assurance mechanism specified in ADEM Admin. Code r. 335-14-2-.08. 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 ADEM Admin. Code r. 335-14-5-.08 and 335-14-6-.08. The current closure and/or postclosure cost estimates covered by the test are shown for each facility: _____.

7. This firm guarantees, through the guarantee specified in ADEM Admin. Code r. 335-14-5-.08 and 335-14-6-.08, 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 postclosure 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 outside of Alabama, where the U.S. EPA or some designated authority is administering the financial requirements, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or postclosure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in ADEM Admin. Code r. 335-14-5-.08 and 335-14-6-.08. The current closure and/or postclosure 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 to the Department through the financial test or any other financial assurance mechanism specified in ADEM Admin. Code r. 335-14-5-.08 and 335-14-6-.08 or equivalent. 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 specified in 335-14-2-.08(8)(f)1.(i) are used. Fill in Alternative II if the criteria specified in 335-14-2-.08(8)(f)1.(ii) are used.]

ALTERNATIVE I

1.	Amount of annual aggregate liability coverage to be demonstrated	$	_____
2.	Current assets	$	_____
3.	Current liabilities	$	_____
4.	Net working capital [line 2 minus line 3]	$	_____
5.	Tangible net worth	$	_____
6.	If less than 90% of assets are located in the U.S. give total U.S. assets.	$	_____
7.	Is line 5 at least $10 million?	Yes ____	No ____
8.	Is line 4 at least 6 times line 1?	Yes ____	No ____
9.	Is line 5 at least 6 times line 1?	Yes ____	No ____
10.	Are at least 90% of firm's assets located in the U.S.? If not, complete line 11.	Yes ____	No ____
11.	Is line 6 at least 6 times line 1?	Yes ____	No ____

ALTERNATIVE II

1.	Amount of annual aggregate liability coverage to be demonstrated	$	_____
2.	Current bond rating of most recent issuance of this firm and name of rating service	$	_____

3.	Date of issuance of bond	_____
4.	Date of maturity of bond	_____
5.	Tangible net worth	$ _____
6.	Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.)	$ _____
7.	Is line 5 at least $10 million?	____ Yes ____ No
8.	Is line 5 at least 6 times line 1?	____ Yes ____ No
9.	Are at least 90% of the firm's assets located in the U.S.? If not, complete line 10.	____ Yes ____ No
10.	Is line 6 at least 6 times line 1?	____ Yes ____ No

[Fill in part B if you are using the financial test to demonstrate assurance of both liability coverage and costs assured under 335-14-2-.08(4)(e) or closure or post-closure carecosts under ADEM Admin. Code r. 335-14-5-.08(4), 335-14-5-.08(6), 335-14-6-.08(4) or 335-14-6-.08(6).]

Part B. Facility Care and Liability Coverage

[Fill in Alternative I if the criteria of 335-14-2-.08(4)(e)1.(i) and 335-14-2-.08(8)(f)1.(i) are used. Fill in Alternative II if the criteria of 335-14-2-.08(4)(e)1.(ii) and 335-14-2-.08(8)(f)1.(ii) 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 line 1 and 2	$ _____
4.	Total liabilities (if any portion of your 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 the U.S. (required only if less than 90% of firm's 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 firms assets located in the U.S.? If not, complete line 16.	Yes No
16.	Is line 11 at least 6 times line 3?	Yes No
17.	Is line 4 divided by line 6 less than 2.0?	Yes No
18.	Is line 10 divided by line 4 greater than 0.1?	Yes No
19.	Is line 7 divided by line 8 greater than 1.5	Yes No

ALTERNATIVE II

1.	Sum of current 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 bond	_____
6.	Date of maturity 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 firm's assets are located in the U.S.)	$ _____
9.	Is line 7 at least $10 million?	____ Yes ____ No
10.	Is line 7 at least 6 times line 3?	____ Yes ____ No
11.	Are at least 90% of the firm's assets located in the U.S.? If not, complete line 12.	____ Yes ____ No
12.	Is line 8 at least 6 times line 3?	____ Yes ____ No

I hereby certify that the wording of this letter is identical to the wording specified in ADEM Admin. Code 335-14-2-.08(12)(f) as such rules were constituted on the date shown immediately below.

[Signature] _____

[Name] _____

(Title) ____

[Date] _

(g)1. A corporate guarantee, as specified in 335-14-2-.08(4)(e), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Corporate Guarantee for 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 ADEM Admin. Code r. 335-14-5-.08(2)(h) and 335-14-6-.08(2)(h)" to the Alabama Department of Environmental Management.

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in ADEM Admin. Code r. 335-14-2-.08(4)(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 ADEM Admin. Code r. 335-14-2-.08 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 Department 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 ADEM Admin. Code r. 335-14-2-.01(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 ADEM Admin. Code r.335-14-5 or 335-14-6, as applicable, or establish a trust fund as specified in ADEM Admin. Code r.335-14-2-.08(4)(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 Department and to [owner or operator] that he intends to provide alternate financial assurance as specified in ADEM Admin. Code r. 335-14-2-.08, as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [owner or operator] has done so.

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

7. Guarantor agrees that within 30 days after being notified by the Department of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate financial assurance as specified in of ADEM Admin. Code r. 335-14-5, 335-14-6, or 335-14-2-.08, as applicable, in the name of [owner or operator] unless [owner or operator] has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure 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 ADEM Admin. Code r. 335-14-5, 335-14-6, or 335-14-2-.08.

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 ADEM Admin. Code r. 335-14-5 and 335-14-6 or the financial assurance condition of ADEM Admin. Code r. 335-14-2-.01(4)(a)24.(vi) for the above-listed facilities, except as provided in paragraph 10 of this agreement.

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

Guarantor may terminate this guarantee by sending notice by certified mail to the Department and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the Department approves, alternate coverage complying with ADEM Admin. Code r.335-14-2-.08(4).

[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 Department and by [the owner or operator].

11. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance as specified in ADEM Admin. Code r. 335-14-5, 335-14-6, or 335-14-2-.08, as applicable, and obtain written approval of such assurance from the Department within 90 days after a notice of cancellation by the guarantor is received by the Department from guarantor, guarantor shall provide such alternate financial assurance in the name of [owner or operator].

12. Guarantor expressly waives notice of acceptance of this guarantee by the Department or by [owner or operator]. Guarantor also expressly waives notice of amendments or modifications of the closure plan and of amendments or modifications of the applicable requirements of ADEM Admin. Code r. 335-14-5, 335-14-6, or 335-14-2-.08.

I hereby certify that the wording of this guarantee is identical to the wording specified in ADEM Admin. Code r. 335-14-2-.08(12)(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 ADEM Admin. Code r. 335-14-2-.08(8)(g), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Guarantee for Liability Coverage

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

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in ADEM Admin. Code r. 335-14-2-.08(8)(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 Department and to [owner or operator] that he intends to provide alternate liability coverage as specified in

ADEM Admin. Code r. 335-14-2-.08(8), as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless [owner or operator] has done so.

6. The guarantor agrees to notify the Department by certified mail of a voluntary or involuntary proceeding under title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding. Guarantor agrees that within 30 days after being notified by the Department of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate liability coverage as specified in ADEM Admin. Code r. 335-14-2-.08(8) 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 ADEM Admin. Code r. 335-14-2-.08(8), provided that such modification shall become effective only if the Department does not disapprove the modification within 30 days of receipt of notification of the modification.

8. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable requirements of ADEM Admin. Code r. 335-14-2-.08(8) 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 Department and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the Department approves, alternate liability coverage complying with 335-14-2-.08(8).

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

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

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

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

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

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

Certification of Valid Claim

The undersigned, as parties [insert Principal] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Principal's] 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 ADEM Admin. Code r. 335-14-2-.08(12)(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 by ADEM Admin. Code r. 335-14-2-.08(8) must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Hazardous 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 ADEM Admin. Code r. 335-14-2-.08(8). 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 ADEM Admin. Code r. 335-14-2-.08(8)(f).

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

(d) Cancellation of this endorsement, whether by the Insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the 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 Department.

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

Attached to and forming part of policy No. —— issued by [name of Insurer], herein called the Insurer, of [address of Insurer] to [name of insured] of [address] this _____ day of _____, 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 ADEM Admin. Code r. 335-14-2-.08(12)(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 ADEM Admin. Code r. 335-14-2-.08(8) must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Hazardous 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 ADEM Admin. Code r. 335-14-5, 335-14-6, and the financial assurance condition of ADEM Admin. Code r. 335-14-2-.01(4)(a)24.(vi)(VI). 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 ADEM Admin. Code r. 335-14-2-.08(8).

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

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

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

I hereby certify that the wording of this instrument is identical to the wording specified in ADEM Admin. Code r. 335-14-2-.08(12)(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 ADEM Admin. Code r. 335-14-2-.08(8)(h), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Irrevocable Standby Letter of Credit

Name and Address of Issuing Institution _____

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 Alabama Department of Environmental Management, 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 ADEM Admin. Code r. 335-14-2-.08(12)(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 ADEM Admin. Code r. 335-14-2-.08(8)(i), must be worded as follows: except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Payment Bond

Surety Bond No. [Insert number]

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

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

	Sudden accidental occurences	Nonsudden accidental
Penal Sum per Occurence	[insert amount]	[insert amount]
Annual Aggregate	[insert amount]	[insert amount]

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

Governing Provisions:

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

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

Conditions:

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

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

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

(c) Bodily injury to:

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

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

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

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

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

(e) Property damage to:

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

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

(3) Property loaned to [insert Principal];

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

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

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

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

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

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

Certification of Valid Claim

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

[Signature]

Principal

[Notary] Date

[Signature(s)]

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.

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

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

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

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

(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 ADEM Admin. Code r. 335-14-2-.08(12)(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) A trust agreement, as specified in ADEM Admin. Code r. 335-14-2-.08(8)(j), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Trust Agreement

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

Whereas, the Alabama Department of Environmental Management (the 'Department") has established certain 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 the Department.

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

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

Certification of Valid Claim

The undersigned, as parties [insert Grantor] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Grantor's] 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 Department a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the Department shall constitute a conclusively binding assent by the Grantor barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

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

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

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

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Department to the Trustee shall be in writing, signed by the Department, 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 the Department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Department, except as provided for herein.

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

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

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

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

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

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

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in ADEM Admin. Code r. 335-14-2-.08(12)(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 ADEM Admin. Code r. 335-14-2-.08(8)(j).

State of _____

County of _____

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

_____

[Signature of Notary Public]

(m)1. A standby trust agreement, as specified in ADEM Admin. Code r. 335-14-2-.08(8)(h), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Standby Trust Agreement

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

Whereas the Alabama Department of Environmental Management (the "Department," has established certain regulations applicable to the Grantor, requiring that an owner or operator 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 the Department.

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

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

Certification of Valid Claim

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

[Signature] _____

Grantor _____

[Signatures] _____

Claimant(s) _____

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

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of the proceeds from the letter of credit drawn upon by the Trustee in accordance with the requirements of ADEM Admin. Code r. 335-14-2-.08(12)(k) and Section 4 of this Agreement.

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

(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 depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary 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 Department and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 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 Department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Department, except as provided for herein.

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

Section 15. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Department, or by the Trustee and the Department, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be paid to the Grantor. The Department will agree to termination of the Trust when the owner or operator substitutes alternative financial assurance as specified in this section.

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

Section 17. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Alabama.

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

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in ADEM Admin. Code r. 335-14-2-.08(12)(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 ADEM Admin. Code r. 335-14-2-.08(8)(h). 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]

Authors: Bradley N. Curvin; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, §§ 22-30-11
History: April 8, 2016; **Amended:** Effective: March 31, 2017; **Amended:** Filed: February 19, 2019; Effective: April 5, 2019.

335-14-2-.13 Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials

(1) Applicability. The requirements of this subpart apply to those areas of an entity managing hazardous secondary materials excluded under 335-14-2-.01(4)(a)23. and/or 335-14-2-.01(4)(a)24. where hazardous secondary materials are generated or accumulated on site.

(a) A generator of hazardous secondary material, or an intermediate or reclamation facility operating under a verified recycler variance under 335-14-1-.03(11)(d), that accumulates 6000 kg or less of hazardous secondary material at any time must comply with 335-14-2-.13(11) and 335-14-2-.13(12).

(b) A generator of hazardous secondary material, or an intermediate or reclamation facility operating under a verified recycler variance under 335-14-1-.03(11)(d) that accumulates more than 6000 kg of hazardous secondary material at any time must comply with 335-14-2-.13(11) and 335-14-2-.13(21).

(2) through (10) **[Reserved].**

(11) 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 335-14-2-.13(11)(b).

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 335-14-2-.13(11)(b).

(e) Required aisle space. The hazardous secondary material generator or intermediate or reclamation facility operating under a verified recycler variance under 335-14-1-.03(11)(d) 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 operating under a verified recycler variance under 335-14-1-.03(11)(d) 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 operating under a verified recycler variance under 335-14-1-.03(11)(d) must document the refusal in the operating record.

(12) Emergency procedures for facilities generating or accumulating 6000 kg or less of hazardous secondary material. A generator or an intermediate or reclamation facility operating under a verified recycler variance under 335-14-1-.03(11)(d) that generates or accumulates 6000 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 operating under a verified recycler variance under 335-14-1-.03(11)(d) 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 operating under a verified recycler variance under 335-14-1-.03(11)(d) 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 operating under a verified recycler variance under 335-14-1-.03(11)(d) has knowledge that a spill has reached surface water, the generator or an intermediate or reclamation facility operating under a verified recycler variance under

335-14-1-.03(11)(d) 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.

(13) through (20) **[Reserved].**

(21) Contingency planning and emergency procedures for facilities generating or accumulating more than 6000 kg of hazardous secondary material. A generator or an intermediate or reclamation facility operating under a verified recycler variance under 335-14-1-.03(11)(d) that generates or accumulates more than 6000 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 operating under a verified recycler variance under 335-14-1-.03(11)(d) that accumulates more than 6000 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 operating under a verified recycler variance under 335-14-1-.03(11)(d) accumulating more than 6000 kg of hazardous secondary material has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with 40 CFR Part 112, 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 operating under a verified recycler variance under 335-14-1-.03(11)(d) 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 335-14-2-.13(11)(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:

(I) Name and telephone number of reporter;

(II) Name and address of facility;

(III) Time and type of incident (e.g., release, fire);

(IV) Name and quantity of material(s) involved, to the extent known;

(V) The extent of injuries, if any; and

(VI) 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 335-14-2-.01(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 335-14-3, 335-14-4, and 335-14-6.

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 Department. 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.

(g) Personnel training. All employees must be thoroughly familiar with proper waste handling and emergency procedures relevant to their responsibilities during normal facility operations and emergencies.

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335-14-3-.01 **General.**

(1) Purpose, scope, and applicability.

(a) 335-14-3 establishes standards for generators of hazardous waste as defined in 335-14-1-.02 and generators of other waste destined for disposal at commercial hazardous waste disposal facilities located in the State of Alabama.

1. A person who generates a hazardous waste as defined in 335-14-2 is subject to all the applicable independent requirements listed below:

(i) Independent requirements of a very small quantity generator include those found in 335-14-3-.01(2)(a) through (d) and 335-14-3-.01(3);

(ii) Independent requirements of a small quantity generator include those found in:

a. 335-14-3-.01(2) Hazardous waste determination and recordkeeping;

b. 335-14-3-.01(3) Generator category determination;

c. 335-14-3-.01(8) EPA identification numbers and re-notification for small quantity generators and large quantity generators;

d. 335-14-3-.02 Manifest requirements applicable to small and large quantity generators;

e. 335-14-3-.03 Pre-transport requirements applicable to small and large quantity generators;

f. 335-14-3-.04(1) Recordkeeping;

g. 335-14-3-.04(5) Recordkeeping for small quantity generators; and

h. 335-14-3-.09 Transboundary movements of hazardous waste for recovery or disposal.

(iii) Independent requirements of a large quantity generator include those found in:

a. 335-14-3-.01(2) Hazardous waste determination and recordkeeping;

b. 335-14-3-.01(3) Generator category determination;

c. 335-14-3-.01(8) EPA identification numbers and re-notification for small quantity generators and large quantity generators;

d. 335-14-3-.02 Manifest requirements applicable to small and large quantity generators;

e. 335-14-3-.03 Pre-transport requirements applicable to small and large quantity generators;

f. 335-14-3-.04 Recordkeeping and reporting applicable to small and large quantity generators, except 335-14-3-.04(5); and

g. 335-14-3-.09 Transboundary movements of hazardous waste for recovery or disposal.

2. A generator that accumulates hazardous waste on site is a person that stores hazardous waste; such generator is subject to the applicable requirements of 335-14-3 through 8, unless it is one of the following:

(i) A very small quantity generator that meets the conditions for exemption in 335-14-3-.01(4);

(ii) A small quantity generator that meets the conditions for exemption in 335-14-3-.01(5) and (6); or

(iii) A large quantity generator that meets the conditions for exemption in 335-14-3-.01(5) and (7).

3. A generator shall not transport, offer its hazardous waste for transport, or otherwise cause its hazardous waste to be sent to a facility that is not a designated facility, as defined in 335-14-1-.02, or not otherwise authorized to receive the generator's hazardous waste.

(b) A generator must use 335-14-3-.01(3) to determine which provisions of 335-14-3 are applicable to the generator based on the quantity of hazardous waste generated per calendar month.

(c) [Reserved]

(d) Any person who exports or imports hazardous wastes must comply with 335-14-3-.01(8) and 335-14-3-.09.

(e) Any person who imports hazardous waste into the United States must comply with the standards applicable to generators established in 335-14-3.

(f) A farmer who generates waste pesticides which are hazardous waste and who complies with all the requirements of 335-14-3-.07(1) is not required to comply with other standards in 335-14-3 or in Chapters 335-14-5, 335-14-6, 335-14-8, or 335-14-9 with respect to such pesticides.

(g) [Reserved]

(h) An owner or operator who initiates a shipment of hazardous waste from a treatment, storage, or disposal facility must comply with the generator standards established in 335-14-3.

(i) Persons responding to an explosives or munitions emergency in accordance with 335-14-5-.01(1)(g)8.(i)(IV) or (iv) or 335-14-6-.01(1)(c)11.(i)(IV) or (iv), and 335-14-8-.01(1)(c)3. (i)(IV) or (iii) are not required to comply with the standards of 335-14-3.

(j) [Reserved]

(k) [Reserved]

(l) The laboratories owned by an eligible academic entity that chooses to be subject to the requirements of 335-14-3-.12 are not subject to (for purposes of this paragraph, the terms "laboratory" and "eligible academic entity" shall have the meaning as defined in 335-14-1-.02):

1. The independent requirements of 335-14-3-.01(2) or 335-14-3-.01(5), for large quantity generators and small quantity generators, except as provided in 335-14-3-.12, and

2. The conditions of 335-14-3-.01(4), for very small quantity generators, except as provided in 335-14-3-.12.

[**Note**: A generator who treats, stores, or disposes of hazardous waste on-site must comply with the applicable standards and permit requirements set forth in Chapters 335-14-5, 335-14-6, 335-14-7, 335-14-8, and 335-14-9.]

(m) The generators of other waste destined for disposal at commercial hazardous waste disposal facilities located in the State of Alabama must only comply with 335-14-3-.08, Appendix I, and Appendix II.

(2) Hazardous waste determination and recordkeeping. A person who generates a solid waste, as defined in 335-14-2-.01(2), must make an accurate determination as to whether that waste is a hazardous waste in order to ensure wastes are properly managed according to applicable AHWMMA regulations. A hazardous waste determination is made using the following steps:

(a) The hazardous waste determination for each solid waste must be made at the point of waste generation, before any dilution, mixing, or other alteration of the waste occurs, and at any time in the course of its management that it has, or may have, changed its properties as a result of exposure to the environment or other factors that may change the properties of the waste such that the classification of the waste may change.

(b) A person must determine whether the solid waste is excluded from regulation under 335-14-2-.01(4).

(c) If the waste is not excluded under 335-14-2-.01(4), the person must then use knowledge of the waste to determine whether the waste meets any of the listing descriptions under 335-14-2-.04. Acceptable knowledge that may be used in making an accurate determination as to whether the waste is listed may include waste origin,

composition, the process producing the waste, feedstock, and other reliable and relevant information. If the waste is listed, the person may file a petition in accordance with 335-14-1-.03(2) to demonstrate to the Department that the waste from this particular site or operation is not a hazardous waste.

(d) A person must also determine whether the waste exhibits one or more hazardous characteristics as identified in 335-14-2-.03 by following one or both of the following procedures:

1. The person must apply knowledge of the hazard characteristic of the waste in light of the materials or the processes used to generate the waste. Acceptable knowledge may include process knowledge (e.g., information about chemical feedstocks and other inputs to the production process); knowledge of products, by-products, and intermediates produced by the manufacturing process; chemical or physical characterization of wastes; information on the chemical and physical properties of the chemicals used or produced by the process or otherwise contained in the waste; testing that illustrates the properties of the waste; or other reliable and relevant information about the properties of the waste or its constituents. A test other than a test method set forth in 335-14-2-.03, or an equivalent test method approved under 335-14-1-.03, may be used as part of a person's knowledge to determine whether a solid waste exhibits a characteristic of hazardous waste. However, such tests do not, by themselves, provide definitive results. Persons testing their waste must obtain a representative sample of the waste for the testing, as defined in 335-14-1-.02.

2. When available knowledge is inadequate to make an accurate determination, the person must test the waste according to the applicable methods set forth in 335-14-2-.03 or according to an equivalent method approved by the Department under 335-14-1-.03 and in accordance with the following:

(i) Persons testing their waste must obtain a representative sample of the waste for the testing, as defined in 335-14-1-.02.

(ii) Where a test method is specified in 335-14-2-.03, the results of the regulatory test, when properly performed, are definitive for determining the regulatory status of the waste.

(e) If the waste is determined to be hazardous, the generator must refer to Chapters 335-14-2, 335-14-5, 335-14-6, 335-14-7, 335-14-9, and 335-14-11 for possible exclusions or restrictions pertaining to management of his specific waste.

(f) <u>Recordkeeping for small and large quantity generators</u>.

1. A small or large quantity generator must maintain records supporting its hazardous waste determinations, including records that identify whether a solid waste is a hazardous waste under 335-14-2.

2. Records must be maintained for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal. These records must comprise the generator's knowledge of the waste and support the generator's determination in accordance with 335-14-3-.01(2).

3. The records must include, but are not limited to, the following types of information:

(i) The results of any tests, sampling, waste analyses, or other determinations made in accordance with this section;

(ii) Records documenting the tests, sampling, and analytical methods used to demonstrate the validity and relevance of such tests;

(iii) Records consulted in order to determine the process by which the waste was generated, the composition of the waste, and the properties of the waste; and

(iv) Records which explain the knowledge basis for the generator's determination in accordance with 335-14-3-.01(2). The periods of record retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Department.

4. In addition to the records described in 335-14-3-.01(2)(f)1. through 3., a small or large quantity generator must maintain sufficient documentation to demonstrate the quantity of hazardous waste generated each calendar month. This documentation must be retained on-site for at least three years from the date the waste was generated.

(g) Identifying hazardous waste numbers for small and large quantity generators. If the waste is determined to be hazardous, small quantity generators and large quantity generators must identify all applicable EPA hazardous waste numbers (EPA hazardous waste codes) in 335-14-2-.03 and .04. Prior to shipping the waste off site, the generator also must mark its containers with all applicable EPA hazardous waste numbers (EPA hazardous waste codes) according to 335-14-3-.03(3).

(3) Generator Category Determination. A generator must determine its generator category. A generator's category is based on the amount of hazardous waste generated each month and may change from month to month. This section sets forth procedures to determine whether a generator is a very small quantity generator, a small quantity generator, or a large quantity generator for a particular month, as defined in 335-14-1-.02.

(a) Generators of either acute hazardous waste or non-acute hazardous waste. A generator who either generates acute hazardous waste or non-acute hazardous waste in a calendar month shall determine its generator category for that month by doing the following:

1. Counting the total amount of hazardous waste generated in the calendar month;

2. Subtracting from the total any amounts of waste exempt from counting as described in 335-14-3-.01(3)(c) and (d); and

3. Determining the resulting generator category for the hazardous waste generated using Table 1of this rule.

(b) Generators of both acute and non-acute hazardous wastes. A generator who generates both acute hazardous waste and non-acute hazardous waste in the same calendar month shall determine its generator category for that month by doing the following:

1. Counting separately the total amount of acute hazardous waste and the total amount of non-acute hazardous waste generated in the calendar month;

2. Subtracting from each total any amounts of waste exempt from counting as described in 335-14-3-.01(3)(c) and (d);

3. Determining separately the resulting generator categories for the quantities of acute and non-acute hazardous waste generated using Table 1; and

4. Comparing the resulting generator categories from 335-14-3-.01(3)(b)3. and applying the more stringent generator category to the accumulation and management of both non-acute hazardous waste and acute hazardous waste generated for that month.

Table 1
Generator Categories Based on Quantity of Waste Generated in a Calendar Month

Quantity of acute hazardous waste generated in a calendar month	**Quantity of non-acute hazardous waste generated in a calendar month**	**Quantity of residues from a cleanup of acute hazardous waste generated in a calendar month**	**Generator category**
> 1 kg	Any amount	Any amount	Large quantity generator.
Any amount	≥ 1,000 kg	Any amount	Large quantity generator.
Any amount	Any amount	> 100 kg	Large quantity generator.
≤ 1 kg	> 100 kg and < 1,000 kg	≤ 100 kg	Small quantity generator.
≤ 1 kg	≤ 100 kg	≤ 100 kg	Very small quantity generator.

(c) When making the monthly quantity-based determinations required by 335-14-3-.01(3), the generator must include all hazardous waste that it generates, except hazardous waste that:

1. Is exempt from regulation under 335-14-2-.01(4)(c) through (f), 335-14-2-.01(6)(a)3., 335-14-2-.01(7)(a)1., or 335-14-2-.01(8);

2. Is managed immediately upon generation only in on-site elementary neutralization units, wastewater treatment units, or totally enclosed treatment facilities as defined in 335-14-1-.02;

3. Is recycled, without prior storage or accumulation, only in an on-site process subject to regulation under 335-14-2-.01(6(c)2.;

4. Is used oil managed under the requirements of 335-2-.01(6)(a)4. and 335-14-17;

5. Is spent lead-acid batteries managed under the requirements of 335-14-7-.07;

6. Is universal waste managed under 335-14-2-.01(9) and 335-14-11;

7. Is a hazardous waste that is an unused commercial chemical product (listed in 335-14-2-.04 or exhibiting one or more characteristics in 335-14-2-.03) that is generated solely as a result of a laboratory clean-out conducted at an eligible academic entity pursuant to 335-14-3-.12(14); or

8. Is managed as part of an episodic event in compliance with the conditions of 335-14-3-.13.

(d) In determining the quantity of hazardous waste generated in a calendar month, a generator need not include:

1. Hazardous waste when it is removed from on-site accumulation, so long as the hazardous waste was previously counted once;

2. Hazardous waste generated by on-site treatment (including reclamation) of the generator's hazardous waste, so long as the hazardous waste that is treated was previously counted once; and

3. Hazardous waste spent materials that are generated, reclaimed, and subsequently reused on site, so long as such spent materials have been previously counted once.

(e) Based on the generator category as determined under 335-14-3-.01(3), the generator must meet the applicable independent requirements listed in 335-14-3-.01. A generator's category also determines which of the provisions of 335-14-3-.01(4) through (7) must be met to obtain an exemption from the storage facility permit, interim status, and operating requirements when accumulating hazardous waste.

(f) Mixing hazardous wastes with solid wastes.

1. Very small quantity generator wastes.

(i) Hazardous wastes generated by a very small quantity generator may be mixed with solid wastes. Very small quantity generators may mix a portion or all of its hazardous waste with solid waste and remain subject to 335-14-3-.01(4) even though the resultant mixture exceeds the quantity limits identified in the definition of very small quantity generator under 335-14-1-.02, unless the mixture exhibits one or more of the characteristics of hazardous waste identified in 335-14-2-.03.

(ii) If the resulting mixture exhibits a characteristic of hazardous waste, this resultant mixture is a newly-generated hazardous waste. The very small quantity generator must count both the resultant mixture amount plus the other hazardous waste generated in the calendar month to determine whether the total quantity exceeds the very small quantity generator calendar month quantity limits identified in the definition of generator categories under 335-14-1-.02. If so, to remain exempt from the permitting, interim status, and operating standards, the very small quantity generator must meet the conditions for exemption applicable to either a small quantity generator or a large quantity generator. The very small quantity generator must also comply with the applicable independent requirements for either a small quantity generator or a large quantity generator.

(iii) If a very small quantity generator's wastes are mixed with used oil, the mixture is subject to 335-14-17. Any material produced from such a mixture by processing, blending, or other treatment is also subject to the requirements of 335-14-17.

2. Small quantity generator and large quantity generator wastes.

(i) Hazardous wastes generated by a small quantity generator or large quantity generator may be mixed with solid waste. These mixtures are subject to the following: the mixture rule in 335-14-2-.01(3)(a)2.(iv), (b)2. and (b)3., and (g)2.(i); the prohibition of dilution rule at 335-14-9-.01(3); the land disposal restriction requirements of 335-14-9-.04(1) if a characteristic hazardous waste is mixed with a solid waste so that it no longer exhibits the hazardous characteristic; and the hazardous waste determination requirement at 335-14-3-.01(2).

(ii) If the resulting mixture is found to be a hazardous waste, this resultant mixture is a newly-generated hazardous waste. A small quantity generator must count both the resultant mixture amount plus the other hazardous waste generated in the calendar month to determine whether the total quantity exceeds the small quantity generator calendar monthly quantity limits identified in the definition of generator categories under 335-14-1-.02. If so, to remain exempt from the permitting, interim status, and operating standards, the small quantity generator must meet the conditions for exemption applicable to a large quantity generator. The small quantity generator must also comply with the applicable independent requirements for a large quantity generator.

(4) Conditions for exemption for a very small quantity generator.

(a) Provided that the very small quantity generator meets all the conditions for exemption listed in this section, hazardous waste generated by the very small quantity generator is not subject to the requirements of 335-14-3 [except 335-14-3-.01(1) through (4)] through 335-14-9, and the very small quantity generator may accumulate hazardous waste on site without complying with such requirements. The conditions for exemption are as follows:

1. In a calendar month the very small quantity generator generates less than or equal to the amounts specified in the definition of "very small quantity generator" in 335-14-1-.02;

2. The very small quantity generator complies with 335-14-3-.01(2);

3. If the very small quantity generator accumulates at any time greater than 1 kilogram (2.2 lbs) of acute hazardous waste or 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in 335-14-2-.04(2) or 335-14-2-.04(4)(e), all quantities of that acute hazardous waste are subject to the following additional conditions for exemption:

(i) Such waste is held on site for no more than 90 days beginning on the date when the accumulated wastes exceed the amounts provided above; and

(ii) The conditions for exemption in 335-14-3-.01(7)(a)-(g).

4. If the very small quantity generator accumulates at any time 1,000 kilograms (2,200 lbs) or greater of non-acute hazardous waste, all quantities of that hazardous waste are subject to the following additional conditions for exemption:

(i) Such waste is held on site for no more than 180 days, or 270 days, if applicable, beginning on the date when the accumulated waste exceed the amounts provided above;

(ii) The quantity of waste accumulated on site never exceeds 6,000 kilograms (13,200 lbs); and

(iii) The conditions for exemption in 335-14-3-.01(6)(b)2. through (6)(f).

5. A very small quantity generator that accumulates hazardous waste in amounts less than or equal to the limits in 335-14-3-.01(4)(a)3. through 4. must either treat or dispose of its hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage, or disposal facility, either of which, if located in the U.S., is:

(i) Permitted under 335-14-8;

(ii) In interim status under 335-14-6 and 335-14-8;

(iii) Authorized to manage hazardous waste by, either, another state with a hazardous waste management program approved under 40 CFR Part 271, or by EPA

under 40 CFR Part 265 or Part 270, if in a state without a hazardous waste management program approved under 40 CFR Part 271;

(iv) a landfill permitted to manage municipal solid waste under 335-13, or a facility permitted, licensed, or registered by another state to manage municipal solid waste and, if managed in a municipal solid waste landfill is subject to 40 CFR Part 258;

(v) a landfill permitted to manage non-municipal solid waste under 335-13, or a facility permitted, licensed, or registered by another state to manage non-municipal non-hazardous waste and, if managed in a non-municipal non-hazardous waste disposal unit, is subject to the requirements in 40 CFR §§257.5 through 257.30;

(vi) A facility which:

a. Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

b. Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation;

(vii) For universal waste, a universal waste handler or destination facility subject to the requirements 335-14-11;

(viii) A large quantity generator under the control of the same person as the very small quantity generator, provided the following conditions are met:

a. The very small quantity generator and the large quantity generator are under the control of the same person as defined in 335-14-1-.02. "Control," for the purposes of this rule, means the power to direct the policies of the generator, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate generator facilities on behalf of a different person as defined in 335-14-1-.02 shall not be deemed to "control" such generators.

b. The very small quantity generator marks its container(s) of hazardous waste with:

(I) The words "Hazardous Waste" and

(II) An indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (i.e., ignitable, corrosive, reactive, toxic); hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704).

(b) The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

(c) A very small quantity generator experiencing an episodic event may generate and accumulate hazardous waste in accordance with 335-14-3-.13 in lieu of 335-14-3-.01(5)-(7).

(d) A very small quantity generator is not required to have an EPA ID number, but may obtain one if desired by complying with the requirements of 335-14-3-.01(8)(d). A very small quantity generator with an existing and active EPA ID number is required to submit ADEM Form 8700-12 annually or deactivate the number by formally notifying the Department in accordance with the requirements of 335-14-3-.01(8)(d)4.

(5) Satellite accumulation area requirements for small and large quantity generators.

(a) A generator may accumulate as much as 55 gallons of non-acute hazardous waste and/or either one quart of liquid acute hazardous waste listed in 335-14-2-.04(2) or 335-14-2-.04(4)(e) or 1 kg (2.2 lbs) of solid acute hazardous waste listed in 14-2-.04(2) or 335-14-2-.04(4)(e) in containers at or near any point of generation where wastes initially accumulate which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with the requirements of 335-14-5 through 335-14-8, provided that all of the conditions for exemption in this section are met. A generator may comply with the conditions for exemption in this section instead of complying with the conditions for exemption in 335-14-3-.01(6)(b) or (7)(a), except as required in 335-14-3-.01(5)(a)7.through 8. The conditions for exemption for satellite accumulation are:

1. If a container holding hazardous waste is not in good condition, or if it begins to leak, the generator must immediately transfer the hazardous waste from this container to a container that is in good condition and does not leak, or immediately transfer and manage the waste in a central accumulation area operated in compliance with 335-14-3-.01(6)(b) or (7)(a).

2. The generator must use a container made of or lined with materials that will not react with, and are otherwise compatible with, the hazardous waste to be accumulated, so that the ability of the container to contain the waste is not impaired.

3. Special standards for incompatible wastes.

(i) Incompatible wastes, or incompatible wastes and materials, (see 335-14-6 Appendix V) must not be placed in the same container, unless 335-14-6-.02(8)(b) is complied with.

(ii) Hazardous waste must not be placed in an unwashed container that previously held an incompatible waste or material (see 335-14-6 Appendix V for examples), unless 335-14-6-.02(8)(b) is complied with.

(iii) A container holding a hazardous waste that is incompatible with any waste or other materials accumulated nearby in other containers must be separated from the other materials or protected from them by any practical means.

4. A container holding hazardous waste must be closed at all times during accumulation, except:

(i) When adding, removing, or consolidating waste; or

(ii) When temporary venting of a container is necessary for the proper operation of equipment, or to prevent dangerous situations, such as build-up of extreme pressure.

5. A generator must mark or label its container with the following:

(i) The words "Hazardous Waste" and

(ii) An indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (i.e., ignitable, corrosive, reactive, toxic); hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704).

6. A generator who accumulates either acute hazardous waste listed in 335-14-2-.04(2) or 335-14-2-.04(4)(e) or non-acute hazardous waste in excess of the amounts listed in 335-14-3-.01(5)(a) at or near any point of generation must do the following:

(i) Comply within three consecutive calendar days with the applicable central accumulation area regulations in 335-14-3-.01(6)(b) or (7)(a), or

(ii) Remove the excess from the satellite accumulation area within three consecutive calendar days to either a central accumulation area operated in accordance with the applicable requirements in 335-14-3-.01(6)(b) or (7)(a), an on-site interim status or permitted treatment, storage, or disposal facility, or an off-site designated facility; and

(iii) During the three-consecutive-calendar-day period the generator must continue to comply with 335-14-3-.01(5)(a)1.through 5. The generator must mark or label the container(s) holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

7. All satellite accumulation areas operated by a small quantity generator must meet the preparedness and prevention regulations in 335-14-3-.01(6)(b)8. and emergency procedures at 335-14-3-.01(6)(b)9.

8. All satellite accumulation areas operated by a large quantity generator must comply with 335-14-3-.14.

(b) [Reserved]

(6) Conditions for exemption for a small quantity generator that accumulates hazardous waste. A small quantity generator may accumulate hazardous waste on site without a permit or interim status, and without complying with the requirements of 335-14-5 through 335-14-8, provided that all the conditions for exemption listed in this section are met:

(a) Generation. The generator generates in a calendar month no more than the amounts specified in the definition of "small quantity generator" in 335-14-1-.02.

(b) Accumulation. The generator accumulates hazardous waste on site for no more than 180 days, unless in compliance with the conditions for exemption for longer accumulation in 335-14-3-.01(6)(d) and (e). The following accumulation conditions also apply:

1. Accumulation limit. The quantity of hazardous waste accumulated on site never exceeds 6,000 kilograms (13,200 pounds);

2. Accumulation of hazardous waste in containers.

(i) Condition of containers. If a container holding hazardous waste is not in good condition, or if it begins to leak, the small quantity generator must immediately transfer the hazardous waste from this container to a container that is in good condition, or immediately manage the waste in some other way that complies with the conditions for exemption of this section.

(ii) Compatibility of waste with container. The small quantity generator must use a container made of or lined with materials that will not react with, and are otherwise compatible with, the hazardous waste to be accumulated, so that the ability of the container to contain the waste is not impaired.

(iii) Management of containers. A container holding hazardous waste must always be closed during accumulation, except when it is necessary to add or remove waste and must not be opened, handled, or accumulated in a manner that may rupture the container or cause it to leak. Containers having a capacity greater than 30 gallons must not be stacked over two containers high.

(iv) Inspections. At least weekly, the small quantity generator must inspect central accumulation areas. The small quantity generator must look for leaking containers and for deterioration of containers caused by corrosion or other factors, and comply with 335-14-3-.01(6)(b)2.(i) if deterioration or leaks are detected. The small quantity generator must record inspections in an inspection log or summary that, at a minimum, includes the date and time of the inspection, the name of the inspector, a notation of observations made, and the date and nature of any repairs or other remedial actions. These records must be kept for at least three years from the date of inspection.

(v) Special conditions for accumulation of incompatible wastes.

a. Incompatible wastes, or incompatible wastes and materials, (see 335-14-6 Appendix V for examples) must not be placed in the same container, unless 335-14-6-.02(8)(b) is complied with.

b. Hazardous waste must not be placed in an unwashed container that previously held an incompatible waste or material (see 335-14-6 Appendix V for examples), unless 335-14-6-.02(8)(b) is complied with.

c. A container accumulating hazardous waste that is incompatible with any waste or other materials accumulated or stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

3. Accumulation of hazardous waste in tanks.

(i) [Reserved]

(ii) A small quantity generator of hazardous waste must comply with the following general operating conditions:

a. Accumulation of hazardous waste in tanks must comply with 335-14-6-.02(8)(b).

b. Hazardous wastes must not be placed in a tank if they could cause the tank or its inner liner to rupture, leak, corrode, or otherwise fail before the end of its intended life.

c. Uncovered tanks must be operated to ensure at least 60 centimeters (2 feet) of freeboard, unless the tank is equipped with a containment structure (e.g., dike or trench), a drainage control system, or a diversion structure (e.g., standby tank) with a capacity that equals or exceeds the volume of the top 60 centimeters (2 feet) of the tank.

d. Where hazardous waste is continuously fed into a tank, the tank must be equipped with a means to stop this inflow (e.g., waste feed cutoff system or by-pass system to a stand-by tank).

(iii) Except as noted in 335-14-3-.03(6)(b)3.(iv), a small quantity generator that accumulates hazardous waste in tanks must inspect, where present:

a. Discharge control equipment (e.g., waste feed cutoff systems, by-pass systems, and drainage systems) at least once each operating day, to ensure that it is in good working order;

b. Data gathered from monitoring equipment (e.g., pressure and temperature gauges) at least once each operating day to ensure that the tank is being operated according to its design;

c. The level of waste in the tank at least once each operating day to ensure compliance with 335-14-3-.01(6)(b)3.(ii)c.;

d. The construction materials of the tank at least weekly to detect corrosion or leaking of fixtures or seams; and

e. The construction materials of, and the area immediately surrounding, discharge confinement structures (e.g., dikes) at least weekly to detect erosion or obvious signs of leakage (e.g., wet spots or dead vegetation). The generator must remedy any deterioration or malfunction of equipment or structures which the inspection reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard. Where a hazard is imminent or has already occurred, remedial action must be taken immediately.

(iv) A small quantity generator accumulating hazardous waste in tanks or tank systems that have full secondary containment and that either use leak detection equipment to alert personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, must inspect at least weekly, where applicable, the areas identified in 335-14-3-.01(6)(b)3.(iii)a. through e. Use of the alternate inspection schedule must be documented in the generator's operating record. This documentation must include a description of the established workplace practices at the generator.

(v) [Reserved].

(vi) A small quantity generator accumulating hazardous waste in tanks must, upon closure of the facility, remove all hazardous waste from tanks, discharge control equipment, and discharge confinement structures. At closure, as throughout the operating period, unless the small quantity generator can demonstrate, in accordance with 335-14-2-.01(3)(c) or (d), that any solid waste removed from its tank is not a hazardous waste, then it must manage such waste in accordance with all applicable provisions of parts 335-14-3 through 335-14-9.

(vii) A small quantity generator must comply with the following special conditions for accumulation of ignitable or reactive waste:

a. Ignitable or reactive waste must not be placed in a tank, unless 335-14-6-.02(8)(b) is complied with, and the waste is accumulated in such a way that it is protected from any material or conditions that may cause the waste to ignite or react, or the tank is used solely for emergencies.

b. A small quantity generator which accumulates ignitable or reactive waste in covered tanks must comply with the buffer zone requirements for tanks contained in Tables 2-1 through 2-6 of the National Fire Protection Association's "Flammable and Combustible Liquids Code" (1977 or 1981) (incorporated by reference in 335-14-1-.02(2)).

(viii). A small quantity generator must comply with the following special conditions for incompatible wastes:

a. Incompatible wastes, or incompatible wastes and materials, (see 335-14-6 Appendix V for examples) must not be placed in the same tank, unless 335-14-6-.02(8)(b) is complied with.

b. Hazardous waste must not be placed in an unwashed tank that previously held an incompatible waste or material, unless 335-14-6-.02(8)(b) is complied with.

4. Accumulation of hazardous waste on drip pads. If the waste is placed on drip pads, the small quantity generator must comply with the following:

(i) 335-14-6-.23, except 334-14-6-.23(6);

(ii) The small quantity generator must remove all wastes from the drip pad at least once every 90 days. Any hazardous wastes that are removed from the drip pad at least once every 90 days are then subject to the 180-day accumulation limit in 335-14-3-.01(6)(b) and 335-14-3-.01(5) if hazardous wastes are being managed in satellite accumulation areas prior to being moved to the central accumulation area; and

(iii) The small quantity generator must maintain on site at the facility the following records readily available for inspection:

a. A written description of procedures that are followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and

b. Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal.

5. Accumulation of hazardous waste in containment buildings. If the waste is placed in containment buildings, the small quantity generator must comply with 335-14-6-.30. The generator must label its containment buildings with the words "Hazardous Waste" in a conspicuous place easily visible to employees, visitors, emergency responders, waste handlers, or other persons on site and also in a conspicuous place provide an indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (i.e., ignitable, corrosive, reactive, toxic); hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704). The generator must also maintain:

(i) The professional engineer certification that the building complies with the design standards specified in 335-14-6-.30(2). This certification must be in the generator's files prior to operation of the unit; and

(ii) The following records by use of inventory logs, monitoring equipment, or any other effective means:

a. A written description of procedures to ensure that each waste volume remains in the unit for no more than 90 days, a written description of the waste generation and management practices for the facility showing that the generator is consistent with maintaining the 90 day limit, and documentation that the procedures are complied with; or

b. Documentation that the unit is emptied at least once every 90 days.

c. Inventory logs or records with the above information must be maintained on site and readily available for inspection.

6. Labeling and marking of containers and tanks.

(i) Containers. A small quantity generator must mark or label its containers with the following:

a. The words "Hazardous Waste" and the EPA hazardous waste number;

b. An indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (i.e., ignitable, corrosive, reactive, toxic); hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704);

c. The date upon which each period of accumulation begins is clearly visible for inspection on each container; and

d. All appropriate hazardous waste numbers associated with the hazardous waste as specified in 335-14-2-.03 and 335-14-2-.04.

(ii) Tanks. A small quantity generator accumulating hazardous waste in tanks must do the following:

a. Mark or label its tanks with the words "Hazardous Waste" and the EPA hazardous waste number;

b. Mark or label its tanks with an indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (i.e., ignitable, corrosive, reactive, toxic); hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704);

c. Use inventory logs, monitoring equipment, or other records to demonstrate that hazardous waste has been emptied within 180 days of first entering the tank if using a batch process, or in the case of a tank with a continuous flow process, demonstrate that estimated volumes of hazardous waste entering the tank daily exit the tank within 180 days of first entering; and

d. Keep inventory logs or records with the above information on site and readily available for inspection.

7. Land disposal restrictions. A small quantity generator must comply with all the applicable requirements under 335-14-9.

8. Preparedness and prevention.

(i) Maintenance and operation of facility. A small quantity generator must maintain and operate its facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

(ii) Required equipment. All areas where hazardous waste is either generated or accumulated must be equipped with the items in paragraphs 335-14-3-.01(6)(b)8.(ii)a. through d. Upon approval from the Department, a small quantity generator may omit or substitute one or more items listed in 335-14-3-.01(6)(b)8.(ii)a. if none of the hazards posed by waste handled at the facility could require a particular kind of equipment or the actual waste generation or accumulation area does not lend itself for safety reasons to have a particular kind of equipment specified below. A small quantity generator may determine the most appropriate locations to locate equipment necessary to prepare for and respond to emergencies.

a. An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;

b. 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 law enforcement agencies, fire departments, or State or local emergency response teams;

c. 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

d. Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

(iii) Testing and maintenance of equipment. All 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.

(iv) Access to communications or alarm system.

a. Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access (e.g., direct or unimpeded 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 335-14-3-.01(6)(b)8.(ii).

b. In the event there is just one employee on the premises while the facility is operating, the employee must have immediate access (e.g., direct or unimpeded 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 335-14-3-.01(6)(b)8.(ii).

(v) Required aisle space. The small quantity generator 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.

(vi) Arrangements with local authorities.

a. The small quantity generator must attempt to make arrangements with the local law enforcement agency, fire department, other emergency response teams, emergency response contractors, equipment suppliers and local hospitals, taking into account the types and quantities of hazardous wastes handled at the facility. Arrangements may be made with the Local Emergency Planning Committee, if it is determined to be the appropriate organization with which to make arrangements. A small quantity generator attempting to make arrangements with its local fire department must determine the potential need for the services of the local law enforcement agency, other emergency response teams, emergency response contractors, equipment suppliers and local hospitals. As part of this coordination, the small quantity generator shall attempt to make arrangements, as necessary, to familiarize the above organizations with the layout of the facility, the properties of hazardous waste 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 as well as the types of injuries or illnesses that could result from fires, explosions, or releases at the facility. Where more than one law enforcement agency or fire department might respond to an emergency, the small quantity generator shall attempt to make arrangements designating primary emergency authority to a specific fire or law enforcement agency, and arrangements with any others to provide support to the primary emergency authority.

b. A small quantity generator shall maintain records documenting the arrangements with the local fire department as well as any other organization necessary to respond to an emergency. This documentation must include documentation in the operating record that either confirms such arrangements actively exist or, in cases where no arrangements exist, confirms that attempts to make such arrangements were made.

c. A facility possessing 24-hour response capabilities may seek a waiver from the authority having jurisdiction (AHJ) over the fire code within the facility's state or locality from the requirements to make arrangements with the local fire department as well as any other organization necessary to respond to an emergency, provided that the waiver is documented in the operating record.

9. Emergency procedures. The small quantity generator complies with the following conditions for those areas of the generator facility where hazardous waste is generated and accumulated:

(i) 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 335-14-3-.01(6)(b)9.(iv) of this section. This employee is the emergency coordinator.

(ii) The small quantity generator must post the following information next to telephones or in areas directly involved in the generation and accumulation of hazardous waste:

a. The name and emergency telephone number of the emergency coordinator;

b. Location of fire extinguishers and spill control material, and, if present, fire alarm; and

c. The telephone number of the fire department, unless the facility has a direct alarm.

(iii) The small quantity generator 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;

(iv) The emergency coordinator or his designee must respond to any emergencies that arise. The applicable responses are as follows:

a. In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;

b. In the event of a spill, the small quantity generator is responsible for containing the flow of hazardous waste to the extent possible, and as soon as is practicable, cleaning up the hazardous waste and any contaminated materials or soil. Such containment and cleanup can be conducted either by the small quantity generator or by a contractor on behalf of the small quantity generator;

c. In the event of a fire, explosion, or other release that could threaten human health outside the facility or when the small quantity generator has knowledge that a spill has reached surface water, the small quantity generator 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 small quantity generator;

(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.

10. Employee training. Facility personnel whose duties have a direct effect on hazardous waste management and/or hazardous waste accumulation, whether by direct contact with the hazardous waste or through hazardous waste management activities, must receive training.

(i) The training program must consist of classroom instruction or on-the-job training that teaches employees to perform their duties in a way that ensures the facility's compliance with the requirements of 335-14-3 during normal site operations and emergencies;

(ii) The small quantity generator must maintain at the site documentation that the required training has been administered to and completed by required employees. Documentation of training records must be maintained on-site for a period of at least three years from the date the employee last worked for the generator or until the generator closes, whichever comes first.

(iii) The generator must maintain on-site a written description of the training required under 335-14-3-.01(6)(b)10.

(c) Transporting over 200 miles. A small quantity generator who must transport its waste, or offer its waste for transportation, over a distance of 200 miles or more for off-site treatment, storage or disposal may accumulate hazardous waste on site for 270 days or less without a permit or without having interim status provided that the generator complies with the conditions of 335-14-3-.01(6)(b).

(d) Accumulation time limit extension. A small quantity generator who accumulates hazardous waste for more than 180 days (or for more than 270 days if it must transport its waste, or offer its waste for transportation, over a distance of 200 miles or more) is subject to the requirements of 335-14-5 through 335-14-9 unless it has been granted an extension to the 180-day (or 270-day if applicable) period. Such extension may be granted by the Department if hazardous wastes must remain on site for longer than 180 days (or 270 days if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Department on a case-by-case basis.

(e) Rejected load. A small quantity generator who sends a shipment of hazardous waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of 335-14-5-.05(3) or 335-14-6-.05(3) may accumulate the returned waste on site in accordance with 335-14-3-.01(6)(a) - (d). Upon receipt of the returned shipment, the generator must:

1. Sign Item 18c of the manifest, if the transporter returned the shipment using the original manifest; or

2. Sign Item 20 of the manifest, if the transporter returned the shipment using a new manifest.

(f) A small quantity generator experiencing an episodic event may accumulate hazardous waste in accordance with 335-14-3-.13 in lieu of 335-14-3-.01(7).

(7) Conditions for exemption for a large quantity generator that accumulates hazardous waste. A large quantity generator may accumulate hazardous waste on site without a permit or interim status, and without complying with the requirements of 335-14-5 through 335-14-8, provided that all of the following conditions for exemption are met:

(a) Accumulation. A large quantity generator accumulates hazardous waste on site for no more than 90 days, unless in compliance with the accumulation time limit extension or F006 accumulation conditions for exemption in 335-14-3-.01(7)(b) through (e). The following accumulation conditions also apply:

1. Accumulation of hazardous waste in containers. If the hazardous waste is placed in containers, the large quantity generator must comply with the following:

(i) Air emission standards. The applicable requirements of 335-14-6-.27, .28, and .29;

(ii) Condition of containers. If a container holding hazardous waste is not in good condition, or if it begins to leak, the large quantity generator must immediately transfer the hazardous waste from this container to a container that is in good condition, or immediately manage the waste in some other way that complies with the conditions for exemption of this section;

(iii) Compatibility of waste with container. The large quantity generator must use a container made of or lined with materials that will not react with, and are otherwise compatible with, the hazardous waste to be stored, so that the ability of the container to contain the waste is not impaired;

(iv) Management of containers. A container holding hazardous waste must always be closed during accumulation, except when it is necessary to add or remove waste and must not be opened, handled, or stored in a manner that may rupture the container or cause it to leak. Containers having a capacity greater than 30 gallons must not be stacked over two containers high.

(v) Inspections. At least weekly, the large quantity generator must inspect central accumulation areas. The large quantity generator must look for leaking containers and for deterioration of containers caused by corrosion or other factors. The large quantity generator must record inspections in an inspection log or summary. He must keep these records for at least three years from the date of inspection. At a minimum, these records must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions.

(vi) Special conditions for accumulation of ignitable and reactive wastes.

a. Containers holding ignitable or reactive waste must be located at least 15 meters (50 feet) from the facility's property line unless a written approval is obtained from the authority having jurisdiction over the local fire code allowing hazardous waste accumulation to occur within this restricted area. A record of the written approval must be maintained as long as ignitable or reactive hazardous waste is accumulated in this area.

b. The large quantity generator must take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. This waste must be separated and protected from sources of ignition or reaction including but not limited to the following: Open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (e.g., from heat-producing chemical reactions), and radiant heat. While ignitable or reactive waste is being handled, the large quantity generator must confine smoking and open flame to specially designated locations. "No Smoking" signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

(vii) Special conditions for accumulation of incompatible wastes.

a. Incompatible wastes, or incompatible wastes and materials, (see 335-14-6 Appendix V for examples) must not be placed in the same container, unless 335-14-6-.02(8)(b) is complied with.

b. Hazardous waste must not be placed in an unwashed container that previously held an incompatible waste or material (see 335-14-6 Appendix V for examples), unless 335-14-6-.02(8)(b) is complied with.

c. A container holding a hazardous waste that is incompatible with any waste or other materials accumulated or stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

(viii) Containment. Container storage areas must meet the containment requirements of 335-14-6-.09(6).

2. Accumulation of hazardous waste in tanks. If the waste is placed in tanks, the large quantity generator must comply with the applicable requirements of 335-14-6-.10, except 335-14-6-.10(8)(e) and 335-14-6-.10(11), as well as the applicable requirements of 335-14-6-.27, .28, and .29.

3. Accumulation of hazardous waste on drip pads. If the hazardous waste is placed on drip pads, the large quantity generator must comply with the following:

(i) 335-14-6-.23;

(ii) The large quantity generator must remove all wastes from the drip pad at least once every 90 days. Any hazardous wastes that are removed from the drip pad are then subject to the 90-day accumulation limit in 335-14-3-.01(7)(a) and 335-14-3-.01(5), if the hazardous wastes are being managed in satellite accumulation areas prior to being moved to a central accumulation area; and

(iii) The large quantity generator must maintain on site at the facility the following records readily available for inspection:

a. A written description of procedures that are followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and

b. Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal.

4. Accumulation of hazardous waste in containment buildings. If the waste is placed in containment buildings, the large quantity generator must comply with 335-14-6-.30. The generator must label its containment building with the words "Hazardous Waste" in a conspicuous place easily visible to employees, visitors, emergency responders, waste handlers, or other persons on site, and also in a conspicuous place provide an indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (i.e., ignitable, corrosive, reactive, toxic); hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704). The generator must also maintain:

(i) The professional engineer certification that the building complies with the design standards specified in 335-14-6-.30(2). This certification must be in the generator's files prior to operation of the unit; and

(ii) The following records by use of inventory logs, monitoring equipment, or any other effective means:

a. A written description of procedures to ensure that each waste volume remains in the unit for no more than 90 days, a written description of the waste generation and management practices for the facility showing that the generator is consistent with respecting the 90 day limit, and documentation that the procedures are complied with; or

b. Documentation that the unit is emptied at least once every 90 days.

c. Inventory logs or records with the above information must be maintained on site and readily available for inspection.

5. Labeling and marking of containers and tanks.

(i) Containers. A large quantity generator must mark or label its containers with the following:

a. The words "Hazardous Waste" and the EPA hazardous waste number;

b. An indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (i.e., ignitable, corrosive, reactive, toxic); hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704); and

c. The date upon which each period of accumulation begins clearly visible for inspection on each container.

(ii) Tanks. A large quantity generator accumulating hazardous waste in tanks must do the following:

a. Mark or label its tanks with the words "Hazardous Waste" and the EPA hazardous waste number;

b. Mark or label its tanks with an indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (i.e., ignitable, corrosive, reactive, toxic); hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704);

c. Use inventory logs, monitoring equipment or other records to demonstrate that hazardous waste has been emptied within 90 days of first entering the tank if using a batch process, or in the case of a tank with a continuous flow process, demonstrate that estimated volumes of hazardous waste entering the tank daily exit the tank within 90 days of first entering; and

d. Keep inventory logs or records with the above information on site and readily available for inspection.

6. Emergency procedures. The large quantity generator must comply with 335-14-3-.14, Preparedness, Prevention and Emergency Procedures for Large Quantity Generators.

7. Personnel training.

(i) Required program.

a. Facility personnel must successfully complete a program of classroom instruction, online training (e.g., computer-based or electronic), or on-the-job training that teaches them to perform their duties in a way that ensures compliance with 335-14-3. The large quantity generator must ensure that this program includes all the elements described in the document required under 335-14-3-.01(7)(a)7.(iv).

b. This program must be directed by a person trained in hazardous waste management procedures, and must include instruction which teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed.

c. At a minimum, the training program must be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including where applicable:

(I) Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment;

(II) Key parameters for automatic waste feed cut-off systems;

(III) Communications or alarm systems;

(IV) Response to fires or explosions;

(V) Response to ground-water contamination incidents; and

(VI) Shutdown of operations.

d. For facility employees that receive emergency response training pursuant to Occupational Safety and Health Administration regulations 29 CFR 1910.120(p)(8) and 1910.120(q), the large quantity generator is not required to provide separate emergency response training pursuant to this section, provided that the overall facility training meets all the conditions of exemption in this section.

(ii) Facility personnel must successfully complete the program required in 335-14-3-.01(7)(a)7.(i) within six months after the date of their employment or assignment to the facility, or to a new position at the facility, whichever is later. Employees must not work in unsupervised positions until they have completed the training standards of 335-14-3-.01(7)(a)7.(i).

(iii) Annual Review. Facility personnel must take part in an annual review of the initial training required in 335-14-3-.01(7)(a)7.(i).

(iv) Training Records. The large quantity generator must maintain the following documents and records at the facility:

a. The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;

b. A written job description for each position listed under 335-14-3-.01(7)(a)7.(iv)a. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position;

c. A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under 335-14-3-.01(7)(a)7.(iv)a.;

d. Records that document that the training or job experience, required under 335-14-3-.01(7)(a)7.(i) - (iii), has been given to, and completed by, facility personnel.

(v) Training records on current personnel must be kept until closure of the facility. Training records on former employees must be kept for at least three years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company.

8. Closure. A large quantity generator accumulating hazardous wastes in containers, tanks, drip pads, and containment buildings, prior to closing a unit at the facility, or prior to closing the facility, must meet the following conditions:

(i) Notification for closure of the facility.

a. Prior to closure. A large quantity generator who closes a unit, either during the active life of the facility or at closure of the facility, must notify the Department in writing no less than 30 days prior to the expected date of beginning closure. The notification must include:

(I) The generator's name, address, and EPA identification number;

(II) The date closure is expected to begin, and a timeframe for completing closure activities (not to exceed 180 days);

(III) A description of the units to be closed, and a site diagram identifying each unit;

(IV) The procedures to be used for closure;

(V) The type and maximum volume of hazardous wastes stored in the unit at any time and the associated EPA hazardous waste numbers;

(VI) The type and amount of hazardous waste expected to be stored in the unit at the time closure activities are expected to begin;

(VII) The conditions of the unit(s) at the time of the notification; and

(VIII) Plans for hazardous waste determinations on, and proper management and disposal of, stored wastes, unit components, investigation derived wastes, and decontamination wastes.

b. After closure. Within 45 Days after completion of closure, the owner or operator must provide a written report documenting the procedures used to comply with the closure performance standards of 335-14-3-.01(7)(a)8.(ii) or (iii). This report shall not be deemed complete without payment of the fee specified in Chapter 335-1-6 of the

Department's Administrative Code. If the facility cannot meet the closure performance standards of 335-14-3-.01(7)(a)8.(ii) or (iii), the large quantity generator must notify the Department in writing that it will close as a landfill under 335-14-6-.14(11) in the case of a container, tank or containment building unit(s), or for a facility with drip pads, notify that it will close under the standards of 335-14-6-.23(6).

c. A large quantity generator may request additional time to clean close, but it must notify the Department in writing within 75 days after the date provided in 335-14-3-.01(7)(a)8.(i)a. to request an extension and provide an explanation as to why the additional time is required.

(ii) Closure performance standards for container, tank systems, and containment building waste accumulation units.

a. At closure, the generator must close the waste accumulation unit or facility in a manner that:

(I) Minimizes the need for further maintenance by controlling, minimizing, or eliminating, to the extent necessary to protect human health and the environment, the post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere,

(II) Removes or decontaminates all contaminated equipment, structures and soil and any remaining hazardous waste residues from waste accumulation units including containment system components (pads, liners, etc.), contaminated soils and subsoils, bases, and structures and equipment contaminated with waste, unless 335-14-2-.01(3)(d) applies.

(III) Any hazardous waste generated in the process of closing either the generator's facility or unit(s) accumulating hazardous waste must be managed in accordance with all applicable standards of 335-14-3 through 335-14-9, including removing any hazardous waste contained in these units within 90 days of generating it and managing these wastes in a permitted hazardous waste treatment, storage and disposal facility or interim status facility.

(IV) If the generator demonstrates that any contaminated soils and wastes cannot be practicably removed or decontaminated as required in 335-14-3-.01(7)(a)8.(ii)a.(II) of this section, then the waste accumulation unit is considered to be a landfill and the generator must close the waste accumulation unit and perform post-closure care in accordance 335-14-6-.14(11). In addition, for the purposes of closure, post-closure, and financial responsibility, such a waste accumulation unit is then considered to be a landfill, and the generator must meet all of the requirements for landfills specified in 335-14-6-.07 and .08.

(iii) Closure performance standards for drip pad waste accumulation units. At closure, the generator must comply with the closure requirements of 335-14-3-.01(7)(a)8.(i) and 335-14-3-.01(7)(a)8.(ii)a.(I) and (III), and 335-14-6-.23(6)(a) and (b).

(v) The closure requirements of 335-14-3-.01(7)(a)8. do not apply to satellite accumulation areas.

9. Land disposal restrictions. The large quantity generator must comply with all applicable requirements under 335-14-9.

10. Site security. The large quantity generator must prevent the unknowing entry, and minimize the possibility for the unauthorized entry, of persons or livestock into the central accumulation area, unless physical contact with the waste, structures, or equipment will not injure unknowing or unauthorized persons or livestock which may enter the central accumulation area, and disturbance of the waste or equipment, by the unknowing or unauthorized entry of persons or livestock into the central accumulation area will not cause a violation of the requirements of 335-14-3.

(i) Unless exempt under 335-14-3-.01(7)(a)10., a large quantity generator must have:

1. A 24-hour surveillance system (e.g., television monitoring or surveillance by guards or facility personnel) which continuously monitors and controls entry onto the active portion of the facility; or

2. An artificial or natural barrier (e.g., a fence in good repair or a fence combined with a cliff), which completely surrounds the active portion of the facility, and a means to control entry, at all times, through the gates or other entrances to the central accumulation area (e.g., an attendant, television monitors, locked entrance, or controlled roadway access to the facility).

(ii) Unless exempt under 335-14-3-.01(7)(a)10., a sign with the legend, "Danger--Unauthorized Personnel Keep Out", must be posted at each entrance to the central accumulation area, and at other locations, in sufficient numbers to be seen from any approach. The legend must be written in English and in any other language predominant in the workplace and the area surrounding the facility, and must be legible from a distance of at least 25 feet. Existing signs with a legend other than "Danger—Unauthorized Personnel Keep Out" may be used if the legend on the sign indicates that only authorized personnel are allowed to enter the active portion, and that entry onto the active portion can be dangerous.

(b) Accumulation time limit extension. A large quantity generator who accumulates hazardous waste for more than 90 days is subject to the requirements of 335-14-5 through 9, unless it has been granted an extension to the 90-day period. Such extension may be granted by the Department if hazardous wastes must remain on site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Department on a case-by-case basis.

(c) Accumulation of F006. A large quantity generator who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the EPA hazardous waste number F006, may accumulate F006 waste on site for more than 90 days, but not more than 180 days without being subject to 335-

14-5 through 9, provided that it complies with all of the following additional conditions for exemption:

1. The large quantity generator has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants, or contaminants entering F006 or otherwise released to the environment prior to its recycling;

2. The F006 waste is legitimately recycled through metals recovery;

3. No more than 20,000 kilograms of F006 waste is accumulated on site at any one time; and

4. The F006 waste is managed in accordance with the following:

(i) Unit-specific requirements for F006 waste.

a. If the F006 waste is placed in containers, the large quantity generator must comply with the applicable conditions for exemption in 335-14-3-.01(7)(a)1.; and/or

b. If the F006 is placed in tanks, the large quantity generator must comply with the applicable conditions for exemption in 335-14-3-.01(7)(a)2.; and/or

c. If the F006 is placed in containment buildings, the large quantity generator must comply with 335-14-6-.30, and must have placed its professional engineer certification that the building complies with the design standards specified in 335-14-6-.30(2) in the facility's files prior to operation of the unit. The large quantity generator must maintain the following records:

(I) A written description of procedures to ensure that the F006 waste remains in the unit for no more than 180 days, a written description of the waste generation and management practices for the facility showing that they are consistent with the 180-day limit, and documentation that the large quantity generator is complying with the procedures; or

(II) Documentation that the unit is emptied at least once every 180 days.

(ii) The large quantity generator is exempt from all the requirements in 335-14-6-.07 and .08, except for those referenced in 335-14-3-.01(7)(a)8.

(iii) The date upon which each period of accumulation begins is clearly marked and must be clearly visible for inspection on each container;

(iv) While being accumulated on site, each container and tank is labeled or marked clearly with:

a. The words "Hazardous Waste" and the EPA hazardous waste number; and

b. An indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (i.e., ignitable, corrosive, reactive, toxic); hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704).

(v) The large quantity generator complies with the requirements in 335-14-3-.01(7)(a)6. and 7.

(d) F006 transported over 200 miles. A large quantity generator who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the EPA hazardous waste number F006, and who must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more for off-site metals recovery, may accumulate F006 waste on site for more than 90 days, but not more than 270 days without being subject to 335-14-5 through 335-14-8, if the large quantity generator complies with all of the conditions for exemption of 335-14-3-.01(7)(c)1. through 4.

(e) F006 accumulation time extension. A large quantity generator accumulating F006 in accordance with 335-14-3-.01(7)(c) and (d) of this section who accumulates F006 waste on site for more than 180 days (or for more than 270 days if the generator must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more), or who accumulates more than 20,000 kilograms of F006 waste on site is an operator of a storage facility and is subject to the requirements of 335-14-5 through 335-14-8, unless the generator has been granted an extension to the 180-day (or 270-day if applicable) period or an exception to the 20,000 kilogram accumulation limit. Such extensions and exceptions may be granted by the Department if F006 waste must remain on site for longer than 180 days (or 270 days if applicable) or if more than 20,000 kilograms of F006 waste must remain on site due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days or an exception to the accumulation limit may be granted at the discretion of the Department on a case-by-case basis.

(f) Consolidation of hazardous waste received from very small quantity generators. Large quantity generators may accumulate on site hazardous waste received from very small quantity generators under control of the same person (as defined in 335-14-1-.02), without a storage permit or interim status and without complying with the requirements of 335-14-5 through 35-14-8, provided that they comply with the following conditions. "Control," for the purposes of this section, means the power to direct the policies of the generator, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate generator facilities on behalf of a different person shall not be deemed to "control" such generators.

1. The large quantity generator notifies the Department at least thirty (30) days prior to receiving the first shipment from a very small quantity generator(s) using ADEM Form 8700-12; and

(i) Identifies on the form the name(s) and site address(es) for the very small quantity generator(s) as well as the name and business telephone number for a contact person for the very small quantity generator(s); and

(ii) Submits an updated ADEM Form 8700-12 within 30 days after a change in the name or site address for the very small quantity generator.

2. The large quantity generator maintains records of shipments for three years from the date the hazardous waste was received from the very small quantity generator. These records must identify the name, site address, and contact information for the very small quantity generator and include a description of the hazardous waste received, including the quantity and the date the waste was received.

3. The large quantity generator complies with the independent requirements identified in 335-14-3-.01(1)(a)1.(iii) and the conditions for exemption in 335-14-3-.01(7) for all hazardous waste received from a very small quantity generator. For purposes of the labeling and marking regulations in 335-14-3-.01(7)(a)5., the large quantity generator must label the container or unit with the date accumulation started (i.e., the date the hazardous waste was received from the very small quantity generator). If the large quantity generator is consolidating incoming hazardous waste from a very small quantity generator with either its own hazardous waste or with hazardous waste from other very small quantity generators, the large quantity generator must label each container or unit with the earliest date any hazardous waste in the container was accumulated on site.

(g) Rejected load. A large quantity generator who sends a shipment of hazardous waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of 335-14-5-.05(3) or 335-14-6-.05(3) may accumulate the returned waste on site in accordance with 335-14-3-.01(7)(a) and (b). Upon receipt of the returned shipment, the generator must:

1. Sign Item 18c of the manifest, if the transporter returned the shipment using the original manifest; or

2. Sign Item 20 of the manifest, if the transporter returned the shipment using a new manifest.

(8) EPA identification numbers and re-notification for small quantity generators and large quantity generators.

(a) A generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the Department.

(b) A generator who has not received an EPA identification number may obtain one by applying to the Department using the ADEM Form 8700-12. Upon receiving the request, the Department will assign an EPA identification number to the generator. A

generator shall file a new ADEM Form 8700-12 if the generator changes physical location.

[**Note:** EPA identification numbers are location specific and cannot be transferred from one individual generation site to another.]

(c) A generator must not offer his hazardous waste to transporters that have not received an EPA identification number and an Alabama Hazardous Waste Transport Permit or to treatment, storage, or disposal facilities that have not received an EPA identification number and an Alabama Hazardous Waste Facility Permit or interim status pursuant to 335-14-8-.07 (or, in the case of out-of-state facilities, a permit valid in the receiving state).

(d) Annual notification of regulated waste activity and certifications of waste management.

1. A large quantity generator or small quantity generator must submit a correct and complete ADEM Form 8700-12 (including all appropriate attachment pages and fees) reflecting current waste activities to the Department annually. The Department must receive the ADEM Form 8700-12 (including all appropriate attachment pages and fees) no later than the 15th day of the specified month in the specified month schedule located at 335-14-1-.02(1)(a).

2. Except as provided by 335-14-3-.13, generators which anticipate an increase in hazardous waste generation in amounts significant enough to cause a change to a higher generator classification should notify for the higher classification during the annual notification period (i.e., if a generator typically operates as a small quantity generator, but anticipates being a large quantity generator for any period during the year, they should notify as a large quantity generator). However, if a generator chooses not to notify at the higher classification or fails to anticipate an increase in hazardous waste generation that would change their generator status, a notification must be submitted to the Department at the time of the increase.

[**Note:** If a generator notifies at a level higher than their actual generator status, the generator will be required to comply with all the applicable requirements of that higher generator classification. Alternatively, the generator has the option to submit multiple ADEM Form 8700-12 notifications (including all appropriate attachment pages and fees) each time their generator status changes, and comply with the requirements applicable to their actual monthly generator status.]

3. A very small quantity generator is not required to obtain an EPA ID number, but may do so by complying with 335-14-3-.01(8)(b). A very small quantity generator with an existing and active EPA ID number is required to submit ADEM Form 8700-12 annually in accordance with 335-14-3-.01(8)(d)1.

4. A very small quantity generator that has an EPA ID number and wants to stop using it for their site may send a letter to the Department requesting that the ID number be deactivated. The deactivated ID cannot be used by the generator for any purpose after that point.

[**Note:** The ADEM Form 8700-12, Notification of Regulated Waste Activity, is not complete without payment of all the appropriate fees specified in Chapter 335-1-6 of the ADEM Administrative Code. **Authors:** Stephen C. Maurer; William K. Mullins II; Steven O. Jenkins; Amy P. Zachry; C. Edwin Johnston; Michael B. Champion; Bradley N. Curvin; Dustin R. Land; Heather M. Jones; James K. Burgess; Vernon H. Crockett; Linda J. Knickerbocker; Jonah Harris.

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335-14-3-.02 Manifest Requirements Applicable to Small and Large Quantity Generators.

(1) General requirements.

(a) General.

1. A generator who transports, or offers for transportation, hazardous waste for off-site treatment, storage, or disposal, or a treatment, storage, and disposal facility who offers for transportation a rejected hazardous waste load, must prepare a Manifest (OMB control number 2050-0039) on EPA Form 8700-22, and, if necessary, EPA Form 8700-22A.

2. [Reserved].

3. Electronic manifest. In lieu of using the manifest form specified in 335-14-3-.02(1)(a), a person required to prepare a manifest may prepare and use an electronic manifest, provided that the person:

(i) Complies with the requirements of 335-14-3-.02(5).

(ii) Complies with the requirements of 40 CFR § 3.10 for the reporting of electronic documents to EPA.

(b) A generator must designate on the manifest one facility which is permitted to handle the waste described on the manifest.

(c) A generator may also designate on the manifest one alternate facility which is permitted to handle his waste in the event an emergency prevents delivery of the waste to the primary designated facility.

(d) If the transporter is unable to deliver the hazardous waste to the designated facility or the alternate facility, the generator must either designate another facility or instruct the transporter to return the waste to the generator.

(e) The requirements of 335-14-3-.02 do not apply to small quantity generators where:

1. The waste is reclaimed under a contractual agreement pursuant to which:

(i) The type of waste and frequency of shipments are specified in the agreement;

(ii) The vehicle used to transport the waste to the recycling facility and to deliver regenerated material back to the generator is owned and operated by the reclaimer of the waste; and

2. The generator maintains a copy of the reclamation agreement in his files for a period of at least three years after termination or expiration of the agreement.

(f) The requirements of 335-14-3-.02 and 335-14-3-.03(3)(b) do not apply to the transport of hazardous wastes on a public or private right-of-way within or along the border of contiguous property under the control of the same person, even if such contiguous property is divided by a public or private right-of-way. Notwithstanding 335-14-4-.01(1)(a), the generator or transporter must comply with the requirements for transporters set forth in 335-14-4-.03(1) and (2) in the event of a discharge of hazardous waste on a public or private right-of-way.

(2) Manifest tracking numbers, manifest printing, and obtaining manifests.

(a) General.

1. A registrant may not print, or have printed the manifest for use or distribution unless it has received approval from the EPA Director of the Office of Resource Conservation and Recovery to do so under 40 CFR 262.21(c) and 262.21(e).

2. The approved registrant is responsible for ensuring that the organizations identified in its application are in compliance with the procedures of its approved application and the requirements of this section. The registrant is responsible for assigning manifest tracking numbers to its manifests.

(b) [Reserved].

(c) [Reserved].

(d) [Reserved].

(e) [Reserved].

(f) [Reserved].

(g) A generator may use manifests printed by any source so long as the source of the printed form has received approval from the EPA to print the manifest under 40 CFR 262.21(c) and 262.21(e).

1. A registered source may be a:

(i) State agency;

(ii) Commercial printer;

(iii) Hazardous waste generator, transporter or TSDF; or

(iv) Hazardous waste broker or other preparer who prepares or arranges shipments of hazardous waste for transportation.

2. A generator must determine whether the generator state or the consignment state for a shipment regulates any additional wastes (beyond those regulated federally) as hazardous wastes under the states' authorized programs.

Generators also must determine whether the consignment state or generator state requires the generator to submit any copies of the manifest to these states. In cases where the generator must supply copies to either the generator's state or the consignment state, the generator is responsible for supplying legible photocopies of the manifest to these states.

(3) Number of copies. The manifest shall consist of at least the number of copies which will provide the Department (if required), the generator, each transporter, and the owner or operator of the designated facility with one copy each for their records and another copy to be returned to the generator.

(4) Use of the manifest.

(a) The generator must:

1. Sign the manifest certification by hand; and

2. Obtain the handwritten signature of the initial transporter and date of acceptance on the manifest; and

3. Retain one copy of the manifest, in accordance with 335-14-3-.04(1)(a).

(b) The generator must give the transporter the remaining copies of the manifest.

(c) For shipments of hazardous waste within the United States solely by water (bulk shipments only), the generator must send three copies of the manifest dated and signed in accordance with 335-14-3-.02(4) to the owner or operator of the designated facility or the last water (bulk shipment) transporter to handle the waste in the United States if exported by water. Copies of the manifest are not required for each transporter.

(d) For rail shipments of hazardous waste within the United States which originate at the site of generation, the generator must send at least three copies of the manifest dated and signed in accordance with 335-14-3-.02(4) to:

1. The next non-rail transporter, if any; or

2. The designated facility if transported solely by rail; or

3. The last rail transporter to handle the waste in the United States if exported by rail.

(e) For shipments of hazardous waste to a designated facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, the generator must assure that the designated facility agrees to sign and return the manifest to the generator, and that any out-of-state transporter signs and forwards the manifest to the designated facility.

(f) For rejected shipments of hazardous waste or container residues contained in non-empty containers that are returned to the generator by the designated

facility [following the procedures of 335-14-5-.05(3)(f) or 335-14-6-.05(3)(f)], the generator must:

1. Sign either:

(i) Item 20 of the new manifest if a new manifest is used for the returned shipment; or

(ii) Item 18c of the original manifest if the original manifest is used for the returned shipment;

2. Provide the transporter a copy of the manifest;

3. Within thirty (30) days of delivery of the rejected shipment or container residues contained in non-empty containers, send a copy of the manifest to the designated facility that returned the shipment to the generator; and

4. Retain at the generator's site a copy of each manifest for at least three (3) years from the date of delivery.

(5) Use of the electronic manifest.

(a) Legal equivalence to paper manifests. Electronic manifests that are obtained, completed, and transmitted in accordance with 335-14-3-.02(1)(b) and 335-14-3-.02(5), in lieu of EPA Forms 8700-22 and 8700-22A are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these regulations to obtain, complete, sign, provide, use, or retain a manifest.

1. Any requirement to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of 40 CFR § 262.25(a).

2. Any requirement to give, provide, send, forward, or return to another person a copy of the manifest is satisfied when an electronic manifest is transmitted to the other person by submission to the e-Manifest system.

3. Any requirement for a generator to keep or retain a copy of each manifest is satisfied by retention of a signed electronic manifest in the generator's account on the national e-Manifest system, provided that such copies are readily available for viewing and production if requested by the Department.

4. No generator may be held liable for the inability to produce an electronic manifest for inspection under this section if the generator can demonstrate that the inability to produce the electronic manifest is due exclusively to a technical difficulty with the electronic manifest system for which the generator bears no responsibility.

(b) A generator may participate in the electronic manifest system either by accessing the electronic manifest system from its own electronic equipment, or by accessing the electronic manifest system from portable equipment brought to the generator's site by the transporter who accepts the hazardous waste shipment from the generator for offsite transportation.

(c) Restriction on use of electronic manifests. A generator may use an electronic manifest for the tracking of hazardous waste shipments involving any hazardous waste only if it is known at the time the manifest is originated that all waste handlers named on the manifest participate in the electronic manifest system, except that:

1. A generator may sign by hand and retain a paper copy of the electronic manifest signed by hand by the initial transporter, in lieu of executing the generator copy electronically, thereby enabling the transporter and subsequent waste handlers to execute the remainder of the manifest copies electronically.

2. [Reserved]

(d) Requirement for one printed copy. To the extent a paper document is required for compliance with 49 CFR § 177.817, a generator originating an electronic manifest must also provide the initial transporter with one printed copy of the electronic manifest.

(e) Special procedures when electronic manifest is unavailable. If a generator has prepared an electronic manifest for a hazardous waste shipment, but the electronic manifest system becomes unavailable for any reason prior to the time that the initial transporter has signed electronically to acknowledge the receipt of the hazardous waste from the generator, then the generator must obtain and complete a paper manifest, and, if necessary, a continuation sheet (EPA Forms 8700-22 and 8700-22A, if necessary) in accordance with the manifest instructions, and use these paper forms from this point forward in accordance with 335-14-3-.02(4).

(f) Special procedures for electronic signature methods undergoing tests. If a generator has prepared an electronic manifest for a hazardous waste shipment, and signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the generator shall also sign with an ink signature the generator/offeror certification on the printed copy of the manifest provided under 335-14-3-.02(5)(d).

(g) [Reserved].

(h) Post-receipt manifest data corrections. After facilities have certified to the receipt of hazardous wastes by signing Item 20 of the manifest, any post-receipt data corrections may be submitted at any time by any interested person (e.g., waste handler) named on the manifest. Generators may participate electronically in the post-receipt data corrections process by following the process described in 335-14-5-.05(2)(l), which applies to corrections made to either paper or electronic manifest records.

(6) [Reserved].

(7) Waste minimization certification. A generator who initiates a shipment of hazardous waste must certify to one of the following statements in Item 15 of the uniform hazardous waste manifest:

(a) "I am a large quantity generator. I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment."; or

(b) "I am a small quantity generator. I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford."

Authors: Stephen C. Maurer; Michael B. Champion; C. Edwin Johnston; Bradley N. Curvin; Theresa A. Maines; Heather M. Jones; Metz Duites; Vernon H. Crockett.
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History: November 19, 1980. **Amended:** Effective: April 9, 1986; **Amended:** Effective: September 29, 1986; **Amended:** Effective: August 24, 1989; **Amended:** Effective: December 6, 1990; **Amended:** Effective: March 27, 1998; **Amended:** Effective: April 13, 2001; **Amended:** Effective: March 15, 2002; **Amended:** Effective: March 31, 2005; **Amended:** Effective: April 4, 2006; **Amended:** Effective: April 3, 2007; **Amended:** Effective: March 30, 2010; **Amended:** Effective: March 31, 2011; **Amended:** Effective: March 31 2017; **Amended:** Effective: April 6, 2018; **Amended:** Filed: February 19, 2019; Effective: April 5, 2019.

335-14-3-.09 Transboundary Movements of Hazardous Waste for Recovery or Disposal

The Environmental Protection Agency Regulations 40 CFR Part 262 Subpart H as published and amended by EPA on November 28, 2016 and December 26, 2017 (unless otherwise noted) are incorporated herein by reference.

In the event that any Code of Federal Regulations Rule(s) incorporated herein by reference refers to or cites another Code of Federal Regulations Rule(s), other than 40 CFR 262 Subpart H, such reference to the other Code of Federal Regulations Rule(s) is not incorporated in this ADEM Administrative Code and the ADEM Administrative Code rule specifically addressing said issue or circumstance shall take precedence, be applicable and govern.

The materials incorporated by reference are available for purchase and inspection at the Department's offices at 1400 Coliseum Boulevard, Montgomery, Alabama 36110.

(1) 40 CFR 262.80 Applicability.

(2) 40 CFR 262.81 Definitions.

(3) 40 CFR 262.82 General conditions.

(4) 40 CFR 262.83 Exports of hazardous waste.

(5) 40 CFR 262.84 Imports of hazardous waste.

(6) 40 CFR 262.85 [Reserved].

(7) 40 CFR 262.86 [Reserved].

(8) 40 CFR 262.87 [Reserved].

(9) 40 CFR 262.88 [Reserved].

(10) 40 CFR 262.89 [Reserved].

Authors: Amy P. Zachry; Michael B. Champion; Bradley N. Curvin; Theresa A. Maines; Heather M. Jones; Metz Duites; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, §§22-30-11, 22-30-14.
History: March 28, 1997; **Amended:** Effective: March 27, 1998; **Amended:** Effective: April 13, 2001; **Amended:** Effective: April 17, 2003; **Amended:** Effective: March 31, 2005; **Amended:** Effective: April 4, 2006; **Amended:** Effective: April 3, 2007; **Amended:** Effective: March 31, 2009; **Amended:** Effective: March 31, 2011; **Amended:** Effective: March 26, 2013; **Amended:** Effective: March 31, 2017; **Amended:** Effective: April 6, 2018; **Amended:** Filed: February 19, 2019; Effective: April 5, 2019.

335-14-3 Appendix I - Uniform Hazardous Waste Manifest and Instructions (EPA Forms 8700-22 and 8700-22A and their Instructions). (REPEALED)

335-14-4-.02 Compliance with the Manifest System and Recordkeeping.

(1) The manifest system.

(a) Manifest requirement

1. A transporter may not accept hazardous waste from a generator unless the transporter is also provided with a manifest signed in accordance with the requirements of 335-14-3-.02(4) or 335-14-3-.02(5).

2. Exports. In the case of exports other than those subject to 335-14-3-.09, a transporter may not accept such waste from a primary exporter or other person if he knows the shipment does not conform to the EPA Acknowledgement of Consent; and unless, in addition to a manifest signed by the generator as provided in this section, the transporter shall also be provided with an EPA Acknowledgement of Consent which, except for shipments by rail, is attached to the manifest [or shipping paper for exports by water (bulk shipment)]. For exports of hazardous waste subject to 335-14-3-.09, a transporter may not accept hazardous waste without a movement document that includes all information required by 335-14-3-.09(4).

3. Compliance Date for Form Revisions. Compliance with the revisions to the Manifest form and procedures announced in the regulation published by EPA on March 4, 2005 were not required until September 4, 2006. The revised Manifest form and procedures had an effective date of September 5, 2006. The Manifest form and procedures revised as of July 1, 2004, were applicable until September 5, 2006.

4. Use of electronic manifest -- legal equivalence to paper forms for participating transporters. Electronic manifests that are obtained, completed, and transmitted in accordance with 335-14-3-.02(1)(a)3., and used in accordance with 335-14-4-.02(1)(a)4. in lieu of EPA Forms 8700-22 and 8700-22A, are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy any requirement to obtain, complete, sign, carry, provide, give, use, or retain a manifest.

(i) Any requirement to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtain a valid and enforceable electronic signature with the meaning of 40 C.F.R. § 262.25(a).

(ii) Any requirement to give, provide, send, forward, or return to another person a copy of the manifest is satisfied when a copy of an electronic manifest is transmitted to the other person by submission to the electronic manifest system.

(iii) Any requirement for a manifest to accompany a hazardous waste shipment is satisfied when a copy of an electronic manifest is accessible during transportation and forwarded to the person or persons who are scheduled to receive delivery of the waste shipment, except that to the extent that the transporter must carry a paper document to comply with 49 C.F.R. § 177.817, a hazardous waste transporter must carry one printed copy of the electronic manifest on the transport vehicle.

(iv) Any requirement for a transporter to keep or retain a copy of a manifest is satisfied by the retention of an electronic manifest in the transporter's account on the electronic manifest system, provided that such copies are readily available for viewing and production if requested by EPA or the Department.

(v) No transporter may be held liable for the inability to produce an electronic manifest for inspection under this section if that transporter can demonstrate that the inability to produce the electronic manifest is exclusively due to a technical difficulty with the electronic manifest system for which the transporter bears no responsibility.

5. A transporter may participate in the electronic manifest system either by accessing the electronic manifest system from the transporter's own electronic equipment, or by accessing the electronic manifest system from the equipment provided by a participating generator, by another transporter, or by a designated facility.

6. Special procedures when electronic manifest is not available. If after a manifest has been originated electronically and signed electronically by the initial transporter, and the electronic manifest system should become unavailable for any reason, then:

(i) The transporter in possession of the hazardous waste when the electronic manifest becomes unavailable shall reproduce sufficient copies of the printed manifest that is carried on the transport vehicle pursuant to 335-14-4-.02(1)(a)4.(iii), or obtain and complete another paper manifest for this purpose. The transporter shall reproduce sufficient copies to provide the transporter and all subsequent waste handlers with a copy for their files, plus two additional copies that will be delivered to the designated facility with the hazardous waste.

(ii) On each printed copy, the transporter shall include a notation in the Special Handling and Additional Description space (Item 14) that the paper manifest is a replacement manifest for a manifest originated in the electronic manifest system, shall include (if not preprinted on the replacement manifest) the manifest tracking number of the electronic manifest that is replaced by the paper manifest, and shall also include a brief explanation why the electronic manifest was not available for completing the tracking of the shipment electronically.

(iii) A transporter signing a replacement manifest to acknowledge receipt of the hazardous waste must ensure that each paper copy is individually signed and that a legible handwritten signature appears on each copy.

(iv) From the point at which the electronic manifest is no longer available for tracking the waste shipment, the paper replacement manifest copies shall be carried, signed, retained as records, and given to a subsequent transporter or to the designated facility, following the instructions, procedures, and requirements that apply to the use of all other paper manifests. 7.

If a transporter using an electronic manifest signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the transporter shall sign the electronic manifest electronically and also sign with an ink signature the transporter acknowledgement of receipt of materials on the printed copy of the manifest that is carried on the vehicle in accordance with 335-14-4-.02(1)(a)4.(iii). This printed copy bearing the generator's and transporter's ink signatures shall also be presented by the transporter to the designated facility to sign in ink to indicate the receipt of the waste materials or to indicate discrepancies. After the owner/operator of the designated facility has signed this printed manifest copy with its ink signature, the printed manifest copy shall be delivered to the designated facility with the waste materials.

7. Special procedures for electronic signature methods undergoing tests. If a transporter using an electronic manifest signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the transporter shall sign the electronic manifest electronically and also sign with an ink signature the transporter acknowledgement of receipt of materials on the printed copy of the manifest that is carried on the vehicle in accordance with 335-14-4-.02(1)(a)(4)(iii). This printed copy bearing the generator's and transporter's ink signatures shall also be presented by the transporter to the designated facility to sign in ink to indicate the receipt of the waste materials or to indicate discrepancies. After the owner/operator of the designated facility has signed this printed manifest copy with its ink signature, the printed manifest copy shall be delivered to the designated facility with the waste materials.

8. [Reserved].

9. Post-receipt manifest data corrections. After facilities have certified to the receipt of hazardous wastes by signing Item 20 of the manifest, any post-receipt data corrections may be submitted at any time by any interested person (e.g., waste handler) named on the manifest. Transporters may participate electronically in the post-receipt data corrections process by following the process described in 335-14-5-.05(2)(l), which applies to corrections made to either paper or electronic manifest records.

(b) Before transporting the hazardous waste, the transporter must sign and date the manifest acknowledging acceptance of the hazardous waste from the generator. The transporter must return a signed copy to the generator before leaving the generator's property.

(c) The transporter must ensure that the manifest accompanies the hazardous waste. In the case of exports occurring under the terms of a consent issued by EPA to the exporter on or after December 31, 2016, the transporter must ensure that a movement document that includes all information required by 335-14-3-.09(4) also accompanies the hazardous waste. In the case of imports occurring under the terms of a consent issued by EPA to the country of export or the importer on or after December 31, 2016, the transporter must ensure that a movement document that includes all information required by 335-14-3-.09(3) also accompanies the hazardous waste.

(d) A transporter who delivers a hazardous waste to another transporter or to the designated facility must:

1. Obtain the date of delivery and the handwritten signature of that transporter or of the owner or operator of the designated facility on the manifest; and

2. Retain one copy of the manifest in accordance with 335-14-4-.02(3); and

3. Give the remaining copies of the manifest to the accepting transporter or designated facility.

(e) The requirements of 335-14-4-.02(1)(c), (d), and (f) do not apply to water (bulk shipment) transporters if:

1. The hazardous waste is delivered by water (bulk shipment) to the designated facility; and

2. A shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, the state manifest document number, the generator certification and signatures) and, for exports or imports, a movement document that includes all the information required by 335-14-3-.09(4) or (5) accompanies the hazardous waste; and

3. The delivering transporter obtains the date of delivery and handwritten signature of the owner or operator of the designated facility on either the manifest or the shipping paper; and

4. The person delivering the hazardous waste to the initial water (bulk shipment) transporter obtains the date of delivery and signature of the water (bulk shipment) transporter on the manifest and forwards it to the designated facility; and

5. A copy of the shipping paper or manifest is retained by each water (bulk shipment) transporter in accordance with 335-14-4-.02(3).

(f) For shipments involving rail transportation, the requirements of 335-14-4-.02(1)(c), (d), and (e) do not apply and the following requirements do apply:

1. When accepting hazardous waste from a non-rail transporter, the initial rail transporter must:

(i) Sign and date the manifest acknowledging acceptance of the hazardous waste;

(ii) Return a signed copy of the manifest to the non-rail transporter;

(iii) Forward at least three copies of the manifest to:

(I) The next non-rail transporter, if any; or

(II) The designated facility, if the shipment is delivered to that facility by rail; or

(III) The last rail transporter designated to handle the waste in the United States;

(iv) Retain one copy of the manifest and rail shipping paper in accordance with 335-14-4-.02(3).

2. Rail transporters must ensure that a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, the state manifest document number, the state waste numbers, generator certification and signatures) and, for exports or imports, an a movement document that includes all information required by 335-14-3-.09(4) or (5) accompanies the hazardous waste at all times.

[**Note:** Intermediate rail transporters are not required to sign either the manifest, movement document or shipping paper.]

3. When delivering hazardous waste to the designated facility, a rail transporter must:

(i) Obtain the date of delivery and handwritten signature of the owner or operator of the designated facility on the manifest or the shipping paper (if the manifest has not been received by the facility); and

(ii) Retain a copy of the manifest or signed shipping paper in accordance with 335-14-4-.02(3).

4. When delivering hazardous waste to a non-rail transporter a rail transporter must:

(i) Obtain the date of delivery and the handwritten signature of the next non-rail transporter on the manifest; and

(ii) Retain a copy of the manifest in accordance with 335-14-4-.02(3).

5. Before accepting hazardous waste from a rail transporter, a non-rail transporter must sign and date the manifest and provide a copy to the rail transporter.

(g) Transporters who transport hazardous waste out of the United States must:

1. Sign and date the manifest in the International Shipments block to indicate the date that the shipment left the United States;

2. Retain one copy in accordance with 335-14-4-.02(3)(d);

3. Return a signed copy of the manifest to the generator; and

4. For paper manifests only:

(i) Send a copy of the manifest to the e-Manifest system in accordance with the allowable methods specified in 335-14-5-.05(2)(a)1.(v); and

(ii) For shipments initiated prior to the AES filing compliance date, when instructed by the exporter to do so, give a copy of the manifest to a U.S. Customs official at the point of departure from the United States.

(h) A transporter transporting hazardous waste from a small quantity generator need not comply with the requirements of 335-14-4-.02(1), or those of 335-14-4-.02(3), provided that:

1. The waste is being transported pursuant to a reclamation agreement as provided for in 335-14-3-.01(1)(e);

2. The transporter records, on a log or shipping paper, the following information for each shipment:

(i) The name, address, and U.S. EPA Identification Number of the generator of the waste;

(ii) The quantity of waste accepted;

(iii) All DOT-required shipping information;

(iv) The date the waste is accepted; and

3. The transporter carries this record when transporting waste to the reclamation facility; and

4. The transporter retains these records for a period of at least three years after termination or expiration of the agreement.

(2) Compliance with the manifest.

(a) Except as provided in 335-14-4-.02(2)(b), the transporter must deliver the entire quantity of hazardous waste which he has accepted from a generator or a transporter to:

1. The designated facility listed on the manifest; or

2. The alternate designated facility, if the hazardous waste cannot be delivered to the designated facility because an emergency prevents delivery; or

3. The next designated transporter; or

4. The place outside the United States designated by the generator.

(b) If the hazardous waste cannot be delivered in accordance with 335-14-4-.02(2)(a).

1. Emergency condition. If the hazardous waste cannot be delivered in accordance with 335-14-4-.02(2)(a) because of an emergency condition other than rejection of the waste by the designated facility, then the transporter must contact the generator for further directions and must revise the manifest according to the generator's instructions.

2. Transporters without agency authority. Transporters without agency authority. If the hazardous waste is not delivered to the next designated transporter in accordance with 335-14-4-.02(2)(a)3., and the current transporter is without contractual authorization from the generator to act as the generator's agent with respect to transporter additions or substitutions, then the current transporter must contact the generator for further instructions prior to making any revisions to the transporter designations on the manifest. The current transporter may thereafter make such revisions if:

(i) The hazardous waste is not delivered in accordance with 335-14-4-.02(2)(a)3. because of an emergency condition; or

(ii) The current transporter proposes to change the transporter(s) designated on the manifest by the generator, or to add a new

transporter during transportation, to respond to an emergency, or for purposes of transportation efficiency, convenience, or safety; and

(iii) The generator authorizes the revision.

3. Transporters with agency authority. If the hazardous waste is not delivered to the next designated transporter in accordance with 335-14-4-.02(2)(a)3., and the current transporter has authorization from the generator to act as the generator's agent, then the current transporter may change the transporter(s) designated on the manifest, or add a new transporter, during transportation without the generator's prior, explicit approval, provided that:

(i) The current transporter is authorized by a contractual provision that provides explicit agency authority for the transporter to make such transporter changes on behalf of the generator;

(ii) The transporter enters in Item 14 of each manifest for which such a change is made, the following statement of its agency authority: "Contract retained by generator confers agency authority on initial transporter to add or substitute additional transporters on generator's behalf;" and

(iii) The change in designated transporters is necessary to respond to an emergency, or for purposes of transportation efficiency, convenience, or safety.

4. Generator liability. The grant by a generator of authority to a transporter to act as the agent of the generator with respect to changes to transporter designations under 335-14-4-.02(2)(a)3. does not affect the generator's liability or responsibility for complying with any applicable requirement under this chapter, or grant any additional authority to the transporter to act on behalf of the generator.

(c) If hazardous waste is rejected by the designated facility while the transporter is on the facility's premises, then the transporter must obtain the following:

1. For a partial load rejection or for regulated quantities of container residues, a copy of the original manifest that includes the facility's date and signature, and the Manifest Tracking Number of the new manifest that will accompany the shipment, and a description of the partial rejection or container residue in the discrepancy block of the original manifest. The transporter must retain a copy of this manifest in accordance with 335-14-4-.02(3), and give the remaining copies of the original manifest to the rejecting designated facility. If the transporter is forwarding the rejected part of the shipment or a regulated container residue to an alternate facility or returning it to the generator, the transporter must obtain a new manifest to accompany the shipment, and the new manifest must include all of the information required in 335-14-5-.05(3)(e)1. through 6. or 335-14-5-.05(3)(f)1. through 6. or 335-14-6-.05(3)(e)1. through 6. or 335-14-6-.05(3)(f)1. through 6.

2. For a full load rejection that will be taken back by the transporter, a copy of the original manifest that includes the rejecting facility's signature and date attesting to the rejection, the description of the rejection in the discrepancy block of the manifest, and the name, address, phone number, and Identification Number for the alternate facility or generator to whom the shipment must be delivered. The transporter must retain a copy of the manifest in accordance with 335-14-4-.02(3), and give a copy of the manifest containing this information to the rejecting designated facility. If the original manifest is not used, then the transporter must obtain a new manifest for the shipment and comply with 335-14-5-.05(3)(e)1. through 6. or 335-14-6-.05(3)(e)1. through 6.

(3) Recordkeeping.

(a) A transporter of hazardous waste must keep a copy of the manifest signed by the generator, himself, and the next designated transporter or the owner or operator of the designated facility for a period of three years from the date the hazardous waste was accepted by the initial transporter.

(b) For shipments delivered to the designated facility by water (bulk shipment), each water (bulk shipment) transporter must retain a copy of the shipping paper containing all the information required in 335-14-4-.02(1)(e)2. for a period of three years from the date the hazardous waste was accepted by the initial transporter.

(c) For shipments of hazardous waste by rail within the United States:

1. The initial rail transporter must keep a copy of the manifest and shipping paper with all the information required in 335-14-4-.02(1)(f)2. for a period of three years from the date the hazardous waste was accepted by the initial transporter; and

2. The final rail transporter must keep a copy of the signed manifest (or the shipping paper if signed by the designated facility in lieu of the manifest) for a period of three years from the date the hazardous waste was accepted by the initial transporter.

[**Note:** Intermediate rail transporters are not required to keep records pursuant to 335-14-4.].

(d) A transporter who transports hazardous waste out of the United States must keep a copy of the manifest indicating that the hazardous waste left the United States for a period of three years from the date the hazardous waste was accepted by the initial transporter.

(e) The periods of retention referred to in 335-14-4-.02(3) are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Department.

(4) Required Records.

(a) A transporter of hazardous waste must maintain a copy of the current hazardous waste transporter permit with each vehicle actively transporting hazardous wastes.

(b) A transporter of hazardous waste must maintain a copy of the contingency plan required by rule 335-14-8-.09(4)(g) with each vehicle actively transporting hazardous wastes. This plan should be designed in accordance with the applicable United States Department of Transportation regulations under 49 CFR parts 172.602, 172.604, and 172.606.

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335-14-5-.05 **Manifest System, Recordkeeping and Reporting.**

(1) Applicability.

(a) The requirements of 335-14-5-.05 apply to owners and operators of both on-site and off-site facilities, except as 335-14-5-.01(1) provides otherwise. 335-14-5-.05(2), (3), and (7) do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources, or to owners and operators of off-site facilities with respect to waste military munitions exempted from manifest requirements under 335-14-7-.13(4)(a). 335-14-5-.05(4)(b)9. only applies to permittees who treat, store, or dispose of hazardous wastes on-site where such wastes were generated.

(2) Use of manifest system.

(a) [Reserved].

1. If a facility receives hazardous waste accompanied by a manifest, the owner, operator or his/her agent must sign and date the manifest as indicated in 335-14-5-.05(2)(a)2. to certify that the hazardous waste covered by the manifest was received, that the hazardous waste was received except as noted in the discrepancy space of the manifest, or that the hazardous waste was rejected as noted in the manifest discrepancy space.

2. If the facility receives a hazardous waste shipment accompanied by a manifest, the owner, operator or his agent must:

(i) Sign and date each copy of the manifest;

(ii) Note any discrepancies (as defined in 335-14-5-.05(3)) on each copy of the manifest;

(iii) Immediately give the transporter at least one copy of the manifest;

(iv) Within 30 days of delivery, send a copy (Page 2) of the manifest to the generator;

(v) Paper manifest submission requirements are:

(I) Options for compliance on June 30, 2018. Beginning on June 30, 2018, send the top copy (Page 1) of any paper manifest and any paper continuation sheet to the EPA's e-Manifest system for purposes of data entry and processing, or in lieu of submitting the paper copy to EPA, the owner or operator may transmit to the EPA system an image file of Page 1 of the manifest and any continuation sheet, or both a data file and image file corresponding to Page 1 of the manifest and any continuation sheet, within 30 days of the date of delivery. Submissions of copies to the e-Manifest system shall be made at the mailing address or electronic mail/submission address specified at the e-Manifest program website's directory of services. Beginning on June 30, 2021, EPA will not accept mailed paper manifests from facilities for processing in e-Manifest.

(II) Options for compliance on June 30, 2021. Beginning on June 30, 2021, the requirement to submit the top copy (Page 1) of the paper manifest and any paper continuation sheet to the e-Manifest system for purposes of data entry and processing may be met by the owner or operator only by transmitting to the EPA system an image file of Page 1 of the manifest and any continuation sheet, or by transmitting to the EPA system both a data file and the image file corresponding to Page 1 of the manifest and any continuation sheet, within 30 days of the date of delivery. Submissions of copies to the e-Manifest system shall be made to the electronic mail/submission address specified at the e-Manifest program website's directory of services; and

(vi) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

3. The owner or operator of a facility receiving hazardous waste subject to 335-14-3-.09 from a foreign source must:

(i) Additionally list the relevant consent number from consent documentation supplied by EPA to the facility for each waste listed on the manifest, matched to the relevant list number for the waste from block 9b. If additional space is needed, the owner or operator should use a Continuation Sheet(s) (EPA Form 8700-22A); and

(ii) Send a copy of the manifest within thirty (30) days of delivery to EPA using the addresses listed in 335-14-3-.09(3) until the facility can submit such a copy to the e-Manifest system per 335-14-5-.05(2)(a)2.(v).

(b) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator's certification, and signatures), the owner or operator, or his agent, must:

1. Sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste covered by the manifest or shipping paper was received;

2. Note any significant discrepancies (as defined in 335-14-5-.05(3)(a)) in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper.

3. Immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received);

4. Within 30 days after the delivery, send a copy of the signed and dated manifest to the generator; however, if the manifest has not been received within 30 days after delivery, the owner or operator, or his agent, must send a copy of the shipping paper signed and dated to the generator; and

5. Retain at the facility a copy of the manifest and shipping paper (if signed in lieu of the manifest at the time of delivery) for at least three years from the date of delivery.

(c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility must comply with the requirements of 335-14-3.

(d) Within three (3) working days of the receipt of a shipment subject to 335-14-3-.09, the owner or operator of the facility must provide a copy of the movement document bearing all required signatures to the foreign exporter; to the competent authorities of the countries of export and transit that control the shipment as an export and transit of hazardous waste respectively; and on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. The original copy of the movement document must be maintained at the facility for at least three (3) years from the date of signature. The owner or operator of a facility may satisfy this recordkeeping requirement by retaining electronically submitted documents in the facility's account on EPA's Waste Import Export Tracking System (WIETS), or its successor system, provided that copies are readily available for viewing and production if requested by any EPA or authorized state inspector. No owner or operator of a facility may be held liable for the inability to produce the documents for inspection under this section if the owner or operator of a facility can demonstrate that the inability to produce the document is due exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system, for which the owner or operator of a facility bears no responsibility.

(e) A facility must determine whether the consignment state for a shipment regulates any additional wastes (beyond those regulated Federally) as hazardous wastes under its state hazardous waste program. Facilities must also determine whether the consignment state or generator state requires the facility to submit any copies of the manifest to these states.

(f) Legal equivalence to paper manifests. Electronic manifests that are obtained, completed, and transmitted in accordance with 335-14-3-.02(1)(a)3., and used in accordance with this section in lieu of the paper manifest form are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these regulations to obtain, complete, sign, provide, use, or retain a manifest.

1. Any requirement for the owner or operator of a facility to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of 40 C.F.R. § 262.25(a).

2. Any requirement to give, provide, send, forward, or to return to another person a copy of the manifest is satisfied when a copy of an electronic manifest is transmitted to the other person.

3. Any requirement for a manifest to accompany a hazardous waste shipment is satisfied when a copy of an electronic manifest is accessible during transportation and forwarded to the person or persons who are scheduled to receive delivery of the waste shipment.

4. Any requirement for an owner or operator to keep or retain a copy of each manifest is satisfied by the retention of the facility's electronic manifest copies in its account on the electronic manifest system, provided that such copies are readily available for viewing and production if requested by EPA or the Department.

5. No owner or operator may be held liable for the inability to produce an electronic manifest for inspection if the owner or operator can demonstrate that the inability to produce the electronic manifest is due exclusively to a technical difficulty with the electronic manifest system for which the owner or operator bears no responsibility.

(g) An owner or operator may participate in the electronic manifest system either by accessing the electronic manifest system from the owner's or operator's electronic equipment, or by accessing the electronic manifest system from portable equipment brought to the owner's or operator's site by the transporter who delivers the waste shipment to the facility.

(h) Special procedures applicable to replacement manifests. If a facility receives hazardous waste that is accompanied by a paper replacement manifest for a manifest that was originated electronically, the following procedures apply to the delivery of the hazardous waste by the final transporter:

1. Upon delivery of the hazardous waste to the designated facility, the owner or operator must sign and date each copy of the paper replacement manifest by hand in Item 20 (Designated Facility Certification of Receipt) and note any discrepancies in Item 18 (Discrepancy Indication Space) of the paper replacement manifest;

2. The owner or operator of the facility must give back to the final transporter one copy of the paper replacement manifest;

3. Within 30 days of delivery of the waste to the designated facility, the owner or operator of the facility must send one signed and dated copy of the paper replacement manifest to the generator, and send an additional signed and dated copy of the paper replacement manifest to the electronic manifest system; and

4. The owner or operator of the facility must retain at the facility one copy of the paper replacement manifest for at least three years from the date of delivery.

(i) Special procedures applicable to electronic signature methods undergoing tests. If an owner or operator using an electronic manifest signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the owner or operator shall also sign with an ink signature the facility's certification of receipt or discrepancies on the printed copy of the manifest provided by the transporter. Upon executing its ink signature on this printed copy, the owner or operator shall retain this original copy among its records for at least 3 years from the date of delivery of the waste.

(j) Imposition of user fee for manifest submissions.

1. As prescribed in 40 CFR § 264.1311, and determined in 40 CFR § 264.1312, an owner or operator who is a user of the electronic manifest system shall be assessed a user fee by EPA for the submission and processing of each electronic and paper manifest. EPA shall update the schedule of user fees and publish them to the user community, as provided in 40 CFR § 264.1313.

2. An owner or operator subject to user fees under this section shall make user fee payments in accordance with the requirements of 40 CFR § 264.1314, subject to the informal fee dispute resolution process of 40 CFR § 264.1316, and subject to the sanctions for delinquent payments under 40 CFR § 264.1315.

(k) Electronic manifest signatures shall meet the criteria described in 40 C.F.R. § 262.25(a).

(l) Post-receipt manifest data corrections. After facilities have certified to the receipt of hazardous wastes by signing Item 20 of the manifest, any post-receipt data corrections may be submitted at any time by any interested person (e.g., waste handler) shown on the manifest.

1. Interested persons must make all corrections to manifest data by electronic submission, either by directly entering corrected data to the web based service provided in e-Manifest for such corrections, or by an upload of a data file containing data corrections relating to one or more previously submitted manifests.

2. Each correction submission must include the following information:

(i) The Manifest Tracking Number and date of receipt by the facility of the original manifest(s) for which data are being corrected;

(ii) The item number(s) of the original manifest that is the subject of the submitted correction(s); and

(iii) For each item number with corrected data, the data previously entered and the corresponding data as corrected by the correction submission.

3. Each correction submission shall include a statement that the person submitting the corrections certifies that to the best of his or her knowledge or belief, the corrections that are included in the submission will cause the information reported about the previously received hazardous wastes to be true, accurate, and complete:

(i) The certification statement must be executed with a valid electronic signature; and

(ii) A batch upload of data corrections may be submitted under one certification statement.

4. Upon receipt by the system of any correction submission, other interested persons shown on the manifest will be provided electronic notice of the submitter's corrections.

5. Other interested persons shown on the manifest may respond to the submitter's corrections with comments to the submitter, or by submitting another correction to the system, certified by the respondent as specified in 335-14-5-.05(2)(l)(3), and with notice of the corrections to other interested persons shown on the manifest.

(3) Manifest discrepancies.

(a) Manifest discrepancies are:

1. Significant differences (as defined by 335-14-5-.05(3)(b)) between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives;

2. Rejected wastes, which may be a full or partial shipment of hazardous waste that the TSDF cannot accept; or

3. Container residues, which are residues that exceed the quantity limits for "empty" containers set forth in 335-14-2-.01(7)(b).

(b) Significant differences in quantity are: For bulk waste, variations greater than 10 percent by weight; for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload. Significant differences in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.

(c) Upon discovering a significant difference in quantity or type, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator must immediately submit to the Regional Administrator and the Department a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

(d) Upon rejecting the waste or identifying a container residue that exceeds the quantity limits for "empty" containers set forth in 335-14-2-.01(7)(b), the facility must consult with the generator prior to forwarding the waste to another facility that can manage the waste. If it is impossible to locate an alternative facility that can receive the waste, the facility may return the rejected waste or residue to the generator. The facility must send the waste to the alternative facility or to the generator within 60 days of the rejection or the container residue identification.

1. While the facility is making arrangements for forwarding rejected wastes or residues to another facility under 335-14-5-.05(3), it must ensure that either the delivering transporter retains custody of the waste, or, the facility must provide for secure, temporary custody of the waste, pending delivery of the waste to the first transporter designated on the manifest prepared under 335-14-5-.05(3)(e) or (f).

(e) Except as provided in 335-14-5-.05(3)(e)7, for full or partial load rejections and residues that are to be sent off-site to an alternate facility, the facility is required to prepare a new manifest in accordance with 335-14-3-.02(1)(a) and the following instructions:

1. Write the generator's U.S. EPA ID number in Item 1 of the new manifest. Write the generator's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the generator's site address, then write the generator's site address in the designated space for Item 5.

2. Write the name of the alternate designated facility and facility's U.S. EPA ID number in the designated facility block (Item 8) of the new manifest.

3. Copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

4. Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a).

5. Write the DOT description for the rejected load or the residue in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

6. Sign the Generator's/Offeror's Certification to certify, as the offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation, and mail a signed copy of the manifest to the generator indentified in Item 5 of the new manifest.

7. For full load rejections that are made while the transporter remains present at the facility, the facility may forward the rejected shipment to the alternate facility by completing Item 18b of the original manifest and supplying the information on the next destination facility in the Alternate Facility space. The facility must retain a copy of this manifest for its records, and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with 335-14-5-.05(3)(e)1-6.

(f) Except as provided by 335-14-5-.05(3)(f)7 of this section, for rejected wastes and residues that must be sent back to the generator, the facility is required to prepare a new manifest in accordance with 335-14-3-.02(1)(a) and the following instructions:

1. Write the facility's U.S. EPA ID number in Item 1 of the new manifest. Write the facility's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the facility's site address, then write the facility's site address in the designated space for Item 5 of the new manifest.

2. Write the name of the initial generator and the generator's U.S. EPA ID number in the designated facility block (Item 8) of the new manifest.

3. Copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

4. Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a).

5. Write the DOT description for the rejected load or the residue in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

6. Sign the Generator's/Offeror's Certification to certify, as offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation.

7. For full load rejections that are made while the transporter remains at the facility, the facility may return the shipment to the generator with the original manifest by completing Item 18a and 18b of the manifest and supplying the generator's information in the Alternate Facility space. The facility must retain a copy for its records and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with 335-14-5-.05(3)(f)1-6. and 8.

8. For full or partial load rejections and container residues contained in non-empty containers that are returned to the generator, the facility must also comply with the exception reporting requirements in 335-14-3-.04(3).

(g) If a facility rejects a waste or identifies a container residue that exceeds the quantity limits for "empty" containers set forth in 335-14-2-.01(7)(7) after it has signed, dated, and returned a copy of the manifest to the delivering transporter or the generator, the facility must amend its copy of the manifest to indicate the rejected wastes or residues in the discrepancy space of the amended manifest. The facility must also copy the manifest tracking number from Item 4 of the new manifest to the Discrepancy space of the amended manifest, and must re-sign and date the manifest to certify to the information as amended. The facility must retain the amended manifest for at least three years from the date of amendment, and must within 30 days, send a copy of the amended manifest to the transporter and generator that received copies prior to their being amended.

(4) Operating record.

(a) The owner or operator must keep a written operating record at his facility.

(b) The following information must be recorded, as it becomes available, and maintained in the operating record for three years (unless a different retention time is specified below):

1. A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or disposal at the facility as required by 335-14-5 - Appendix I. This information must be maintained in the operating record until closure of the facility;

2. The location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or diagram that shows each cell or disposal area. For all facilities, this information must include cross-references to manifest document numbers if the waste was accompanied by a manifest. This information must be maintained in the operating record until closure of the facility;

3. Records and results of waste analyses performed as specified in 335-14-5-.02(4) and (8), 335-14-5-.14(15), 335-14-5-.15(2), 335-14-5-.27, 335-14-5-.28, 335-14-5-.29, 335-14-9-.01(4), and 335-14-9-.01(7);

4. Summary reports and details of all incidents that require implementing the contingency plan as specified in 335-14-5-.04(7)(i);

5. Records and results of inspections as required by 335-14-5-.02(6)(d) (except these data need be kept only three years);

6. Monitoring, testing, or analytical data, and corrective action where required by 335-14-5-.06, 335-14-5-.02(10), 335-14-5-.10(2), 335-14-5-.10(4), 335-14-5-.10(6), 335-14-5-.11(3), 335-14-5-.11(4), 335-14-5-.11(7), 335-14-5-.12(3), 335-14-5-.12(4), 335-14-5-.12(5), 335-14-5-.13(7), 335-14-5-.13(9), 335-14-5-.13(11), 335-14-5-.14(3), 335-14-5-.14(4), 335-14-5-.14(5), 335-14-5-.14(10), 335-14-5-.24(3), 335-14-5-.27, 335-14-5-.27, 335-14-5-.28, 335-14-5-.28, and 335-14-5-.29. This information must be maintained in the operating record for three years, except for records and results pertaining to groundwater monitoring and cleanup which must be maintained in the operating record until closure of the facility;

7. For off-site facilities, notices to generators as specified in 335-14-5-.02(3)(b);

8. All closure cost estimates under 335-14-5-.08(3), and, for disposal facilities, all post-closure cost estimates under 335-14-5-.08(5). This information must be maintained in the operating record until closure of the facility;

9. A certification by the permittee no less often than annually, that the permittee has a program in place to reduce the volume and toxicity of hazardous waste that he generates to the degree determined by the permittee to be economically practicable; and the proposed method of treatment, storage, or disposal in that practicable method currently available to the permittee which minimizes the present and future threat to human health and the environment;

10. Records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to 335-14-9-.01(5), a petition pursuant to 335-14-9-.01(6), or a certification under 335-14-9-.01(8), and the applicable notice required by a generator under 335-14-9-.01(7). This information must be maintained in the operating record until closure of the facility;

11. For an off-site treatment facility, a copy of the notice, and the certification and demonstration, if applicable, required by the generator or the owner or operator under 335-14-9-.01(7) or 335-14-9-.01(8);

12. For an on-site treatment facility, the information contained in the notice (except the manifest number), and the certification and demonstration, if applicable, required by the generator or the owner or operator under 335-14-9-.01(7) or 335-14-9-.01(8);

13. For an off-site land disposal facility, a copy of the notice, and the certification and demonstration, if applicable, required by the generator or the owner or operator of a treatment facility under 335-14-9-.01(7) and 335-14-9-.01(8), whichever is applicable;

14. For an on-site land disposal facility, the information contained in the notice required by the generator or owner or operator of a treatment facility under 335-14-9-.01(7), except for the manifest number, and the certification and demonstration, if applicable, required under 335-14-9-.01(8), whichever is applicable;

15. For an off-site storage facility, a copy of the notice, and the certification and demonstration, if applicable, required by the generator or the owner or operator under 335-14-9-.01(7) or 335-14-9-.01(8);

16. For an on-site storage facility, the information contained in the notice (except the manifest number), and the certification and demonstration, if applicable, required by the generator or the owner or operator under 335-14-9-.01(7) or 335-14-9-.01(8);

17. Any records required under 335-14-5-.01(1)(j)13;

18. Monitoring, testing or analytical data where required by 335-14-5-.15(8) must be maintained in the operating record for five years; and

19. Certifications as required by 335-14-5-10(7)(f) must be maintained in the operating record until closure of the facility.

(5) Availability, retention, and disposition of records.

(a) All records, including plans, required under 335-14-5 must be furnished upon request, and made available at reasonable times for inspection by any officer, employee, or representative of the Department.

(b) The retention period for all records required under 335-14-5 is extended automatically during the course of any unresolved enforcement action regarding the facility or as requested by the Department.

(c) A copy of records of waste disposal locations and quantities under 335-14-5-.05(4)(b)2. must be submitted to the Department and local land authority upon closure of the facility.

(6) Biennial report. The owner or operator must prepare and submit a single copy of a biennial report to the Department by March 1 of each even numbered year. The biennial report must be submitted on the forms supplied by the Department. The owner or operator must retain copies of each biennial report for, at least, three (3) years from the due date of the report. The report must cover facility activities during the previous calendar year and must include:

(a) The EPA identification number, name, and address of the facility;

(b) The calendar year covered by the report;

(c) For off-site facilities, the EPA identification number, name, and location address of each hazardous waste generator from which the facility received a hazardous waste during the year; for imported shipments, the report must give the name and address of the foreign generator;

(d) A description and the quantity of each hazardous waste the facility received during the year. For off-site facilities, this information must be listed by EPA identification number of each generator;

(e) The method of treatment, storage, or disposal for each hazardous waste;

(f) **[Reserved];**

(g) The most recent closure cost estimate under 335-14-5-.08(3), and, for disposal facilities, the most recent post-closure cost estimate under 335-14-5-.08(5);

(h) For generators who treat, store, or dispose of hazardous waste on-site, a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated;

(i) For generators who treat, store, or dispose of hazardous waste on-site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984; and

(j) The certification signed by the owner or operator of the facility or his authorized representative.

(7) Unmanifested waste report.

(a) If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described in 335-14-4-.02(1)(e)2., and if the waste is not excluded from the manifest requirement, then the owner or operator must prepare and submit a single copy of a report to the Department within 15 days after receiving the waste. The owner or operator must retain a copy of each unmanifested waste report for, at least, three (3) years from the due date of the report. Such report must be designated "Unmanifested Waste Report" and include the following information:

1. The EPA identification number, name, and address of the facility;

2. The date the facility received the waste;

3. The EPA identification number, name, and address of the generator and the transporter, if available;

4. A description and the quantity of each unmanifested hazardous waste the facility received;

5. The method of treatment, storage, or disposal for each hazardous waste;

6. The certification signed by the owner or operator of the facility or his authorized representative; and

7. A brief explanation of why the waste was unmanifested, if known.

(b) **[Reserved].**

(8) Additional reports. In addition to submitting the biennial reports and unmanifested waste reports described in 335-14-5-.05(6) and (7), the owner or operator must also report to the Department:

(a) Releases, fires, and explosions as specified in 335-14-5-.04(7)(j);

(b) Facility closures as specified in 335-14-5-.07(6); and

(c) As otherwise required by 335-14-5-.06, 335-14-5-.11 through 335-14-5-.14, 335-14-5-.27, and 335-14-5-.28.

Authors: Stephen C. Maurer; Amy P. Zachry; C. Edwin Johnston, Michael B. Champion; Bradley N. Curvin; Theresa A. Maines; Heather M. Jones; Jonah Harris; Metz Duites; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, §§22-30-11, 22-30-16, 22-30-18, 22-30-19.
History: July 19, 1982. **Amended:** Effective: April 9, 1986; **Amended:** Effective: September 29, 1986; **Amended:** Effective: February 15, 1988; **Amended:** Effective: August 24, 1989; **Amended:** Effective: December 6, 1990; **Amended:** Effective: January 25, 1992; **Amended:** Effective: January 1, 1993; **Amended:** Effective: January 5, 1995; **Amended:** Effective: January 12, 1996; **Amended:** Effective: March 28, 1997;

Amended: Effective: March 27, 1998; **Amended:** Effective: April 2, 1999; **Amended:** Effective: March 31, 2000; **Amended:** Effective: April 13, 2001; **Amended:** Effective: April 4, 2006; **Amended:** Effective: April 3, 2007; **Amended:** Effective: March 31, 2009; **Amended:** Effective: March 30, 2010; **Amended:** Effective: March 31, 2011; **Amended:** Effective: April 3, 2012; **Amended:** Effective: March 31, 2017. **Amended:** Effective: April 6, 2018; **Amended:** Filed: February 19, 2019; Effective: April 5, 2019.

335-14-5-.29 Subpart CC - Air Emission Standards For Tanks, Surface Impoundments, And Containers.

(a) The Environmental Protection Agency Regulations, set forth in 40 CFR, Part 264, Subpart CC (as published by EPA on December 6, 1994 and as amended on May 19, 1995; September 29, 1995; November 13, 1995; June 5, 1996; November 25, 1996; October 8, 1997; December 8, 1997; March 6, 1998; April 22, 1998; September 15, 1998; October 7, 1998; January 21, 1999; July 14, 2006, and January 3, 2018), are incorporated herein by reference.

(b) In the event that any Code of Federal Regulations Rule(s) incorporated herein by reference refers to or cites another Code of Federal Regulations Rule(s), other than 40 CFR Part 264, Subpart CC, such reference to the other Code of Federal Regulations Rule(s) is not incorporated in this ADEM Administrative Code and the ADEM Administrative Code Rule specifically addressing said issue or circumstance shall take precedence, be applicable and govern. Any provision of 40 CFR Part 264, Subpart CC, which is inconsistent with the provisions of ADEM Administrative Code, Division 335-14, is not incorporated herein by reference.

(c) The materials incorporated by reference are available for purchase and inspection at the Department's offices at 1400 Coliseum Boulevard, Montgomery, Alabama 36110.

Authors: C. Edwin Johnston, Bradley N. Curvin; Vernon H. Crockett
Statutory Authority: Code of Alabama 1975, §§22-30-11 and 22-30-16.
History: March 27, 1998. **Amended:** Effective: April 2, 1999; **Amended:** Effective: March 31, 2000; **Amended:** Effective: April 13, 2001; **Amended:** Effective: March 31, 2005; **Amended:** Effective: April 4, 2006; **Amended:** Effective: March 31, 2017; **Amended:** Filed: February 19, 2019; Effective: April 5, 2019.

335-14-6-.05 Manifest System, Recordkeeping and Reporting.

(1) Applicability.

(a) The requirements of 335-14-6-.05 apply to owners and operators of both on-site and off-site facilities, except as 335-14-6-.01(1) provides otherwise. 335-14-6-.05(2), (3), and (7) do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources, or to owners and operators of off-site facilities with respect to waste military munitions exempted from manifest requirements under 335-14-7-.13(4)(a).

(2) Use of manifest system.

(a) [Reserved]

1. If a facility receives hazardous waste accompanied by a manifest, the owner, operator or his/her agent must sign and date the manifest as indicated in 335-14-6-.05(2)(a)1. to certify that the hazardous waste covered by the manifest was received, that the hazardous waste was received except as noted in the discrepancy space of the manifest, or that the hazardous waste was rejected as noted in the manifest discrepancy space.

2. If a facility receives a hazardous waste shipment accompanied by a manifest, the owner, operator or his agent must:

(i) Sign and date, by hand, each copy of the manifest;

(ii) Note any discrepancies [as defined in 335-14-6-.05(3)] on each copy of the manifest;

(iii) Immediately give the transporter at least one copy of the manifest;

(iv) Within 30 days of delivery, send a copy (Page 2) of the manifest to the generator;

(v) Paper manifest submission requirements are:

(I) Options for compliance on June 30, 2018. Beginning on June 30, 2018, send the top copy (Page 1) of any paper manifest and any paper continuation sheet to the EPA's e-Manifest system for purposes of data entry and processing, or in lieu of submitting the paper copy to EPA, the owner or operator may transmit to the EPA system an image file of Page 1 of the manifest and any continuation sheet, or both a data file and the image file corresponding to Page 1 of the manifest and any continuation sheet, within 30 days of the date of delivery. Submissions of copies to the e-Manifest system shall be made at the mailing address or electronic mail/submission address specified at the e-Manifest program website's directory of services. Beginning on June 30, 2021, EPA will not accept mailed paper manifests from facilities for processing in e-Manifest.

(II) Options for compliance on June 30, 2021. Beginning on June 30, 2021, the requirement to submit the top copy (Page 1) of the paper manifest and any paper continuation sheet to the e-Manifest system for purposes of data entry and processing may be met by the owner or operator only by transmitting to the EPA system an image file of Page 1 of the manifest and any continuation sheet, or by transmitting to the EPA system both a data file and the image file corresponding to Page 1 of the manifest and any continuation sheet, within 30 days of the date of delivery. Submissions of copies to the e-Manifest system shall be made to the electronic mail/submission address specified at the e-Manifest program website's directory of services; and

(vi) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

3. If a facility receives hazardous waste imported from a foreign source, the receiving facility must mail a copy of the manifest and documentation confirming EPA's consent to the import of hazardous waste to the following address within thirty (30) days of delivery: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

4. Within 60 days after the delivery, send a copy of the manifest to the Department.

(b) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest (excluding the EPA or Alabama identification numbers, generator's certification, and signatures), the owner or operator, or his agent, must:

1. Sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste covered by the manifest or shipping paper was received;

2. Note any significant discrepancies [as defined in 335-14-6-.05(3)(a)] in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper;

3. Immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received);

4. Within 30 days after the delivery, send a copy of the signed and dated manifest to the generator; however, if the manifest has not been received within 30 days after delivery, the owner or operator, or his agent, must send a copy of the shipping paper signed and dated to the generator; and

5. Retain at the facility a copy of the manifest and shipping paper (if signed in lieu of the manifest at the time of delivery) for at least three years from the date of delivery.

(c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility must comply with the requirements of 335-14-3.

(d) Within three (3) working days of the receipt of a shipment subject to 335-14-3-.09, the owner or operator of a facility must provide a copy of the movement document bearing all required signatures to the exporter; to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; to the Alabama Department of Environmental Management, Land Division, P. O. Box 301463, Montgomery, AL 36130; and to the competent authorities of all other countries concerned. The original of the movement document must be maintained at the facility for at least three (3) years from the date of signature.

(e) A facility must determine whether the consignment state for a shipment regulates any additional wastes (beyond those regulated federally) as hazardous wastes under its state hazardous waste program. Facilities must also determine whether the consignment state or generator state requires the facility to submit any copies of the manifest to these states.

(f) Legal equivalence to paper manifests. Electronic manifests that are obtained, completed, and transmitted in accordance with 335-14-3-.01(a)(3), and used in accordance with this section in lieu of the paper manifest form are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these regulations to obtain, complete, sign, provide, use, or retain a manifest.

1. Any requirement for the owner or operator of a facility to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of 40 C.F.R. § 262.25(a).

2. Any requirement in these regulations to give, provide, send, forward, or to return to another person a copy of the manifest is satisfied when a copy of an electronic manifest is transmitted to the other person.

3. Any requirement for a manifest to accompany a hazardous waste shipment is satisfied when a copy of an electronic manifest is accessible during transportation and forwarded to the person or persons who are scheduled to receive delivery of the waste shipment.

4. Any requirement in these regulations for an owner or operator to keep or retain a copy of each manifest is satisfied by the retention of the facility's electronic manifest copies in its account on the electronic manifest system,

provided that such copies are readily available for viewing and production if requested by EPA or the Department.

5. No owner or operator may be held liable for the inability to produce an electronic manifest for inspection under this section if the owner or operator can demonstrate that the inability to produce the electronic manifest is due exclusively to a technical difficulty with the electronic manifest system for which the owner or operator bears no responsibility.

(g) An owner or operator may participate in the electronic manifest system either by accessing the electronic manifest system from the owner's or operator's electronic equipment, or by accessing the electronic manifest system from portable equipment brought to the owner's or operator's site by the transporter who delivers the waste shipment to the facility.

(h) Special procedures applicable to replacement manifests. If a facility receives hazardous waste that is accompanied by a paper replacement manifest for a manifest that was originated electronically, the following procedures apply to the delivery of the hazardous waste by the final transporter:

1. Upon delivery of the hazardous waste to the designated facility, the owner or operator must sign and date each copy of the paper replacement manifest by hand in Item 20 (Designated Facility Certification of Receipt) and note any discrepancies in Item 18 (Discrepancy Indication Space) of the paper replacement manifest;

2. The owner or operator of the facility must give back to the final transporter one copy of the paper replacement manifest;

3. Within 30 days of delivery of the waste to the designated facility, the owner or operator of the facility must send one signed and dated copy of the paper replacement manifest to the generator, and send an additional signed and dated copy of the paper replacement manifest to the electronic manifest system; and

4. The owner or operator of the facility must retain at the facility one copy of the paper replacement manifest for at least three years from the date of delivery.

(i) Special procedures applicable to electronic signature methods undergoing tests. If an owner or operator using an electronic manifest signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the owner or operator shall also sign with an ink signature the facility's certification of receipt or discrepancies on the printed copy of the manifest provided by the transporter. Upon executing its ink signature on this printed copy, the owner or operator shall retain this original copy among its records for at least 3 years from the date of delivery of the waste.

(j) Imposition of user fee for electronic manifest use.

1. As prescribed in 40 CFR § 265.1311, and determined in 40 CFR § 265.1312, an owner or operator who is a user of the electronic manifest system shall be assessed a user fee by EPA for the submission and processing of each electronic and paper manifest. EPA shall update the schedule of user fees and publish them to the user community, as provided in 40 CFR § 265.1313.

2. An owner or operator subject to user fees under this section shall make user fee payments in accordance with the requirements of 40 CFR § 265.1314, subject to the informal fee dispute resolution process of 40 CFR § 265.1316, and subject to the sanctions for delinquent payments under 40 CFR § 265.1315.

(k) Electronic manifest signatures shall meet the criteria described in 40 CFR § 262.25(a) of this Chapter.

(l) Post-receipt manifest data corrections. After facilities have certified to the receipt of hazardous wastes by signing Item 20 of the manifest, any post-receipt data corrections may be submitted at any time by any interested person (e.g., waste handler) shown on the manifest.

1. Interested persons must make all corrections to manifest data by electronic submission, either by directly entering corrected data to the web based service provided in e-Manifest for such corrections, or by an upload of a data file containing data corrections relating to one or more previously submitted manifests.

2. Each correction submission must include the following information:

(i) The Manifest Tracking Number and date of receipt by the facility of the original manifest(s) for which data are being corrected;

(ii) The item number(s) of the original manifest that is the subject of the submitted correction(s); and

(iii) For each item number with corrected data, the data previously entered and the corresponding data as corrected by the correction submission.

3. Each correction submission shall include a statement that the person submitting the corrections certifies that to the best of his or her knowledge or belief, the corrections that are included in the submission will cause the information reported about the previously received hazardous wastes to be true, accurate, and complete:

(i) The certification statement must be executed with a valid electronic signature; and

(ii) A batch upload of data corrections may be submitted under one certification statement.

4. Upon receipt by the system of any correction submission, other interested persons shown on the manifest will be provided electronic notice of the submitter's corrections.

5. Other interested persons shown on the manifest may respond to the submitter's corrections with comments to the submitter, or by submitting another correction to the system, certified by the respondent as specified in 335-14-6-.05(2)(l)(3), and with notice of the corrections to other interested persons shown on the manifest.

(3) Manifest discrepancies.

(a) Manifest discrepancies are:

1. Significant differences [as defined by 335-14-6-.05(3)(b)] between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives;

2. Rejected wastes, which may be a full or partial shipment of hazardous waste that the TSDF cannot accept; or

3. Container residues, which are residues that exceed the quantity limits for "empty" containers set forth in 335-14-2-.01(7)(b).

(b) Significant differences in quantity are: For bulk waste, variations greater than 10 percent by weight; for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload. Significant differences in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.

(c) Upon discovering a significant difference in quantity or type, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator must immediately submit to the Regional Administrator and the Department a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

(d) Upon rejecting the waste or identifying a container residue that exceeds the quantity limits for "empty" containers set forth in 335-14-2-.01(7)(b), the facility must consult with the generator prior to forwarding the waste to another facility that can manage the waste. If it is impossible to locate an alternative facility that can receive the waste, the facility may return the rejected waste or residue to the generator. The facility must send the waste to the alternative facility or to the generator within 60 days of the rejection or the container residue identification.

1. While the facility is making arrangements for forwarding rejected wastes or residues to another facility under 335-14-6-.05(3), it must ensure that

either the delivering transporter retains custody of the waste, or, the facility must provide for secure, temporary custody of the waste, pending delivery of the waste to the first transporter designated on the manifest prepared under 335-14-6-.05(3)(e) or (f).

(e) Except as provided in 335-14-6-.05(3)(e)7., for full or partial load rejections and residues that are to be sent off-site to an alternate facility, the facility is required to prepare a new manifest in accordance with 335-14-3-.02(1)(a) and the following instructions:

1. Write the generator's U.S. EPA ID number in Item 1. of the new manifest. Write the generator's name and mailing address in Item 5. of the new manifest. If the mailing address is different from the generator's site address, then write the generator's site address in the designated space for Item 5.

2. Write the name of the alternate designated facility and facility's U.S. EPA ID number in the designated facility block (Item 8.) of the new manifest.

3. Copy the manifest tracking number found in Item 4. of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

4. Copy the manifest tracking number found in Item 4. of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a.).

5. Write the DOT description for the rejected load or the residue in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

6. Sign the Generator's/Offeror's Certification to certify, as the offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation, and mail a signed copy of the manifest to the generator identified in Item 5 of the new manifest.

7. For full load rejections that are made while the transporter remains present at the facility, the facility may forward the rejected shipment to the alternate facility by completing Item 18b of the original manifest and supplying the information on the next destination facility in the Alternate Facility space. The facility must retain a copy of this manifest for its records, and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with 335-14-6-.05(3)(e)1. - 6.

(f) Except as provided by 335-14-6-.05(3)(f)7., for rejected wastes and residues that must be sent back to the generator, the facility is required to prepare a new manifest in accordance with 335-14-3-.02(1)(a) and the following instructions:

1. Write the facility's U.S. EPA ID number in Item 1. of the new manifest. Write the facility's name and mailing address in Item 5. of the new manifest. If the mailing address is different from the facility's site address, then write the facility's site address in the designated space for Item 5. of the new manifest.

2. Write the name of the initial generator and the generator's U.S. EPA ID number in the designated facility block (Item 8.) of the new manifest.

3. Copy the manifest tracking number found in Item 4. of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

4. Copy the manifest tracking number found in Item 4. of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a.).

5. Write the DOT description for the rejected load or the residue in Item 9. (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

6. Sign the Generator's/Offeror's Certification to certify, as offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation.

7. For full load rejections that are made while the transporter remains at the facility, the facility may return the shipment to the generator with the original manifest by completing Item 18a and 18b of the manifest and supplying the generator's information in the Alternate Facility space. The facility must retain a copy for its records and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with 335-14-6-.05(3)(f)1. – 6. and 8.

8. For full or partial load rejections and container residues contained in non-empty containers that are returned to the generator, the facility must also comply with the exception reporting requirements in 335-14-3-.04(3).

(g) If a facility rejects a waste or identifies a container residue that exceeds the quantity limits for "empty" containers set forth in 335-14-2-.01(7)(b) after it has signed, dated, and returned a copy of the manifest to the delivering transporter or the generator, the facility must amend its copy of the manifest to indicate the rejected wastes or residues in the discrepancy space of the amended manifest. The facility must also copy the manifest tracking number from Item 4 of the new manifest to the Discrepancy space of the amended manifest, and must re-sign and date the manifest to certify to the information as amended. The facility must retain the amended manifest for at least three years from the date of amendment, and must within 30 days, send a copy of the amended manifest

to the transporter and generator that received copies prior to their being amended.

(4) Operating record.

(a) The owner or operator must keep a written operating record at his facility.

(b) The following information must be recorded, as it becomes available, and maintained in the operating record for three years (unless a different retention time is specified below):

1. A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or disposal at the facility as required by 335-14-6-Appendix I. This information must be maintained in the operating record until closure of the facility;

2. The location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or diagram of each cell or disposal area. For all facilities, this information must include cross-references to manifest document numbers if the waste was accompanied by a manifest. This information must be maintained in the operating record until closure of the facility;

3. Records and results of waste analyses and trial tests performed as specified in 335-14-6-.02(4), 335-14-6-.10(11), 335-14-6-.11(6), 335-14-6-.12(3), 335-14-6-.13(4), 335-14-6-.14(15), 335-14-6-.15(2), 335-14-6-.16(6), 335-14-6-.17(3), 335-14-6-.27, 335-14-6-.28, 335-14-9-.01(4), and 335-14-9-.01(7).

4. Summary reports and details of all incidents that require implementing the contingency plan as specified in 335-14-6-.04(7)(j);

5. Records and results of inspections as required by 335-14-6-.02(6)(d) (except these data need be kept only three years);

6. Monitoring, testing or analytical data, and corrective action where required by rule 335-14-6-.06 and 335-14-6-.02(10), 335-14-6-.03(4), 335-14-6-.06(1), 335-14-6-.06(5), 335-14-6-.09(5), 335-14-6-.10(2), 335-14-6-.10(4), 335-14-6-.10(6), 335-14-6-.11(3), 335-14-6-.11(4), 335-14-6-.11(5), 335-14-6-.11(7), 335-14-6-.12(6), 335-14-6-.12(10), 335-14-6-.12(11), 335-14-6-.13(7), 335-14-6-.13(9), 335-14-6-.13(11)(d)1., 335-14-6-.14(3) through 335-14-6-.14(5), 335-14-6-.15(8), 335-14-6-.16(8), 335-14-6-.17(4), 335-14-6-.23(2) and (5), 335-14-6-.27(5), 335-14-6-.27, 335-14-6-.28, 335-14-6-.28, 335-14-6-.29, and 335-14-6-.30(2). This information must be maintained in the operating record for three years, except for records and results pertaining to groundwater monitoring and cleanup, and response action plans for surface impoundments, waste piles, and landfills, which must be maintained in the operating record until closure of the facility.

7. All closure cost estimates under 335-14-6-.08(3) and, for disposal facilities, all post-closure cost estimates under 335-14-6-.08(5) must be maintained in the operating record until closure of the facility.

8. Records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to 335-14-9-.01(5), monitoring data required pursuant to a petition under 335-14-9-.01(6), or a certification under 335-14-9-.01(8), and the applicable notice required by a generator under 335-14-9-.01(7). All of this information must be maintained in the operating record until closure of the facility.

9. For an off-site treatment facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator under 335-14-9-.01(7) or 335-14-9-.01(8);

10. For an on-site treatment facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator under 335-14-9-.01(7) or 335-14-9-.01(8);

11. For an off-site land disposal facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator of a treatment facility under 335-14-9-.01(7) or 335-14-9-.01(8);

12. For an on-site land disposal facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator of a treatment facility under 335-14-9-.01(7) or 335-14-9-.01(8).

13. For an off-site storage facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator under 335-14-9-.01(7) or 335-14-9-.01(8); and

14. For an on-site storage facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator of a treatment facility under 335-14-9-.01(7) or 335-14-9-.01(8).

15. Monitoring, testing or analytical data, and corrective action where required by 335-14-6-.06(1), 335-14-6-.06(4)(d)2. and 5., and the certification as required by 335-14-6-.10(7)(f) must be maintained in the operating record until closure of the facility.

(5) <u>Availability, retention, and disposition of records</u>.

(a) All records, including plans, required under 335-14-6 must be furnished upon request, and made available at all reasonable times for

inspection, by any duly designated officer, employee, or representative of the Department.

(b) The retention period for all records required under 335-14-6 is extended automatically during the course of any unresolved enforcement action regarding the facility or as requested by the Department.

(c) A copy of records of waste disposal locations and quantities under 335-14-6-.05(4)(b)2. must be submitted to the Department and local land authority upon closure of the facility [see 335-14-6-.07(10)].

(6) Biennial report.

The owner or operator must prepare and submit a single copy of a biennial report to the Department by March 1 of each even numbered year. The biennial report must be submitted on forms supplied by the Department. The owner or operator must retain copies of each biennial report for, at least, three (3) years from the due date of the report. The report must cover facility activities during the previous calendar year and must include the following information:

(a) The EPA identification number, name, and address of the facility;

(b) The calendar year covered by the report;

(c) For off-site facilities, the EPA identification number, name, and location address of each hazardous waste generator from which the facility received a hazardous waste during the year; for imported shipments, the report must give the name and address of the foreign generator;

(d) A description and the quantity of each hazardous waste the facility received during the year. For off-site facilities, this information must be listed by EPA identification number of each generator;

(e) The method of treatment, storage, or disposal for each hazardous waste;

(f) Monitoring data under 335-14-6-.06(5)(a)2.(ii), (iii) and (b)2. where required;

(g) The most recent closure cost estimate under 335-14-6-.08(3), and, for disposal facilities, the most recent post-closure cost estimate under 335-14-6-.08(5); and

(h) For generators who treat, store, or dispose of hazardous waste on-site, a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated.

(i) For generators who treat, store, or dispose of hazardous waste on-site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984.

(j) The certification signed by the owner or operator of the facility or his authorized representative.

(7) Unmanifested waste report.

(a) If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described in 335-14-4-.02(1)(e), and if the waste is not excluded from the manifest requirement, then the owner or operator must prepare and submit a single copy of a report to the Department within 15 days after receiving the waste. The owner or operator must retain a copy of each unmanifested waste report for, at least, three (3) years from the due date of the report. Such report must be designated "Unmanifested Waste Report" and include the following information:

1. The EPA identification number, name, and address of the facility;

2. The date the facility received the waste;

3. The EPA identification number, name, and address of the generator and the transporter, if available;

4. A description and the quantity of each unmanifested hazardous waste the facility received;

5. The method of treatment, storage, or disposal for each hazardous waste;

6. The certification signed by the owner or operator of the facility or his authorized representative; and

7. A brief explanation of why the waste was unmanifested, if known.

(b) [Reserved]

(8) Additional reports.

In addition to submitting the biennial report and unmanifested waste reports described in 335-14-6-.05(6) and (7), the owner or operator must also report to the Department:

(a) Releases, fires, and explosions as specified in 335-14-6-.04(7)(j);

(b) Groundwater contamination and monitoring data as specified in 335-14-6-.06(4) and (5); and

(c) Facility closure as specified in 335-14-6-.07(6).

(d) As otherwise required by rules 335-14-6-.27 and 335-14-6-.28.

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Statutory Authority: Code of Alabama 1975, §§ 22-30-11, 22-30-16, 22-30-18 and 22-30-19.
History: November 19, 1980. **Amended:** Effective: April 9, 1986; **Amended:** Effective: September 29, 1986; **Amended:** Effective: February 15, 1988; **Amended:** Effective: August 24, 1989; **Amended:** Effective: December 6, 1990; **Amended:** Effective: January 25, 1992; **Amended:** Effective: January 1, 1993; **Amended:** Effective: January 5, 1995; **Amended:** Effective: January 12, 1996; **Amended:** Effective: March 28, 1997; **Amended:** Effective: March 27, 1998; **Amended:** Effective: April 2, 1999; **Amended:** Effective: April 13, 2001; **Amended:** Effective: March 15, 2002; **Amended:** Effective: April 4, 2006; **Amended:** Effective: April 3, 2007; **Amended:** Effective: March 31, 2009; **Amended:** Effective: March 31, 2011; **Amended:** Effective: April 3, 2012; **Amended:** Effective: March 31, 2017; **Amended:** Effective: April 6, 2018; **Amended:** Filed: February 19, 2019; Effective: April 5, 2019.

335-14-6-.29 Subpart CC - Air Emission Standards for Tanks, Surface Impoundments, and Containers.

The Environmental Protection Agency Regulations, as set forth in 40 CFR, Part 265, Subpart CC (as published by EPA on December 6, 1994 and as amended on February 9, 1996; November 25, 1996; December 8, 1997; January 21, 1999; June 14, 2005; July 14, 2006; and January 3, 2018), are incorporated herein by reference.

In the event that any Code of Federal Regulations Rule(s) incorporated herein by reference refers to or cites another Code of Federal Regulations Rule(s), other than 40 CFR Part 265, Subpart CC, such reference to the other Code of Federal Regulations Rule(s) is not incorporated in this ADEM Administrative Code and the ADEM Administrative Code rule specifically addressing said issue or circumstance shall take precedence, be applicable and govern. Any provision of 40 CFR Part 265, Subpart CC, which is inconsistent with the provisions of ADEM Administrative Code, Division 14, is not incorporated herein by reference.

The materials incorporated by reference are available for purchase and inspection at the Department's offices at 1400 Coliseum Boulevard, Montgomery, Alabama 36110.

Author: C. Edwin Johnston; Bradley N. Curvin; Vernon H. Crockett.
Statutory Authority: Code of Alabama, 1975, §§ 22-30-11 and 22-30-16.
History: March 27, 1998. **Amended:** Effective: April 2, 1999; **Amended:** Effective: March 31, 2000; **Amended:** Effective: April 13, 2001; **Amended:** Effective: March 31, 2005; **Amended:** Effective: April 4, 2006; **Amended:** Effective: March 31, 2017; **Amended:** Filed: February 19, 2019; Effective: April 5, 2019.

335-14-17-.05 Standards For Used Oil Transporter and Transfer Facilities.

(1) Applicability.

(a) General. Except as provided in 335-14-17-.05(1)(a)1. through (a)4., 335-14-17-.05 applies to all used oil transporters. Used oil transporters are persons who transport used oil, persons who collect used oil from more than one used oil generator and transport the collected oil, and owners and operators of used oil transfer facilities.

1. 335-14-17-.05 does not apply to on-site transportation.

2. 335-14-17-.05 does not apply to used oil generators who transport shipments of used oil totaling 55 gallons or less from the used oil generator to a used oil collection center as specified in rule 335-14-17-.03(6)(a).

3. 335-14-17-.05 does not apply to used oil generators who transport shipments of used oil totaling 55 gallons or less from the used oil generator to a used oil aggregation point owned or operated by the same used oil generator as specified in rule 335-14-17-.03(6)(b).

4. 335-14-17-.05 does not apply to transportation of used oil generated from household do-it-yourselfers to a regulated used oil generator, collection center, aggregation point, processor/re-refiner, or burner subject to 335-14-17. Except as provided in 335-14-17-.05(1)(a)1. through (a)3., 335-14-17-.05 does, however, apply to transportation of collected household do-it-yourselfer used oil from regulated used oil generators, collection centers, aggregation points, or other facilities where household do-it-yourselfer used oil is collected.

(b) Imports and exports. Transporters who import used oil from abroad or export used oil outside of the United States are subject to the requirements of 335-14-17-.05 from the time the used oil enters and until the time it exits the United States.

(c) Trucks used to transport hazardous waste. Unless trucks previously used to transport hazardous waste are emptied as described in rule 335-14-2-.01(7) prior to transporting used oil, the used oil is considered to have been mixed with the hazardous waste and must be managed as hazardous waste unless, under the provisions of rule 335-14-17-.02(1)(b), the hazardous waste/used oil mixture is determined not to be hazardous waste.

(d) Other applicable provisions. Used oil transporters who conduct the following activities are also subject to other applicable provisions of 335-14-17 as indicated in 335-14-17-.05(1)(d)1. through (d)5.

1. Transporters who generate used oil must also comply with rule 335-14-17-.03.

2. Transporters who process or re-refine used oil, except as provided in rule 335-14-17-.05(2), must also comply with rule 335-14-17-.06;

3. Transporters who burn off-specification used oil for energy recovery must also comply with rule 335-14-17-.07;

4. Transporters who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in rule 335-14-17-.02(2) must also comply with rule 335-14-17-.08; and

5. Transporters who dispose of used oil must also comply with rule 335-14-17-.09.

(2) Restrictions on transporters who are not also processors or re-refiners.

(a) Used oil transporters may consolidate or aggregate loads of used oil for purposes of transportation. However, except as provided in 335-14-17-.05(2)(b), used oil transporters may not process used oil unless they also comply with the requirements for processors/re-refiners in rule 335-14-17-.06.

(b) Transporters may conduct incidental used oil processing operations that occur in the normal course of used oil transportation (e.g., settling and water separation), but that are not designed to produce (or make more amenable for production of) used oil derived products unless they also comply with the processor/re-refiner requirements in rule 335-14-17-.06.

(c) Transporters of used oil that is removed from oil bearing electrical transformers and turbines and filtered by the transporter or at a transfer facility prior to being returned to its original use are not subject to the processor/re-refiner requirements in rule 335-14-17-.06.

(3) EPA Identification Number and Alabama Used Oil Transport Permit.

(a) A transporter must not transport used oil without having received an EPA Identification Number from the Administrator or the authorized State in which the transporter's base of operations is located. If the transporter's base of operations is located within the State of Alabama, such application shall be submitted to the Department.

(b) A transporter who has not received an EPA Identification Number may obtain one by applying to the Administrator or the authorized State in which the base of operations is located using EPA Form 8700-12 or the authorized State's equivalent.

(c) Reserved.

(d) A non-rail transporter must not transport used oil without having received an Alabama Used Oil Transport Permit in compliance with rules 335-14-8-.09 through 335-14-8-.13.

(e) Annual Submission of ADEM Form 8700-12, Notification of Regulated Waste Activity and Certifications of Waste Management. A used oil transporter whose base of operations is located in the State of Alabama must submit a correct and complete ADEM Form 8700-12 (including all appropriate attachment pages and fees) reflecting current used oil activities to the Department annually. The Department must receive the ADEM Form 8700-12 (including all appropriate attachment pages and fees) no later than the 15th day of the specified month in the specified month schedule located at rule 335-14-1-.02(1)(a).

(f) The ADEM Form 8700-12, Notification of Regulated Waste Activity, is not complete without payment of all the appropriate fees specified in Chapter 335-1-6 of the ADEM Administrative Code.

(4) Financial Requirements. Any person proposing to transport used oil shall submit, with their application for an Alabama Used Oil Transport Permit, one of the following:

(a) A surety bond in which the applicant is the principal obligor and the Department is the obligee;

1. 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 or be a corporate surety licensed to do business in the State of Alabama; and

2. The wording of the surety bond must be identical to the following:

SURETY BOND

Date bond executed:	
Effective date:	
Principal:	[legal name, business address and EPA identification number of applicant]
Type of organization:	[insert "individual", "joint venture", "partnership" or "corporation"]
State of incorporation:	
Surety(ies):	[name(s) and business address(es)]
Total penal sum of bond:	$
Surety's bond number:	

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

Whereas said Principal is required, under the Alabama Hazardous Wastes Management and Minimization Act of 1978, as amended (AHWMMA), to have a permit in order to transport used oil, and

Whereas said Principal is required by Code of Alabama 1975, § 22-30-12(c)(4) to provide financial assurance for compliance with the AHWMMA, the regulations promulgated thereunder, the permit issued to the Principal and any orders issued to the Principal by the Department, and for damages to human health and the environment, including the costs of cleanups caused by spills.

Now, Therefore, the conditions of this obligation are such that if the Principal shall faithfully comply with the AHWMMA, the regulations promulgated thereunder, the permit issued to the Principal, any order(s) issued to the Principal by the Department, and correct any damages to human health or the environment, including the cleanup of spills as approved by the Department for

the term of the permit issued to the Principal and the Surety(ies) gives notice of intent not to renew this Performance Bond not less than 90 days prior to the expiration of the permit issued to the Principal,

Or, if the Principal shall provide alternate financial assurance as specified in 335-14-17-.05(4)(b) or (c) of the Alabama Department of Environmental Management Administrative Code and obtain the Department's written approval of such assurance within 90 days after the date notice of cancellation is received by both the Principal and the Department from the Surety(ies) then this obligation shall be null and void, otherwise it is to remain in full force and effect.

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

Upon notification by the Department that the Principal has been found in violation of the AHWMMA, the regulations promulgated thereunder, the permit issued to the Principal or any order(s) issued to the Principal for activities regulated pursuant to the AHWMMA, the Surety(ies) shall correct the violation, including the cost of any remedial action, and pay any penalties assessed by the Department against the Principal or shall within 15 days after notification by the Department, pay to the Department the amount designated as the total penal sum of the bond or such amount as remains if previous violations have been assessed against this bond.

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

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in 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.

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

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in rule 335-14-17-.05(4)(a) of the Alabama Department of Environmental Management Administrative Code as such rule was constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)] _____

_____

[Name(s)] _____

_____

(Title(s)] _____

_____

[Corporate seal]

CORPORATE SURETY(IES)

[Name and address] _____

_____

_____

_____

State of incorporation: _____

Liability limit: $ _____

[Signature(s)] _____

_____

[Name(s) and title(s)] _____

_____

[Corporate seal]

[For every co-surety provide the above required information, signature(s) and corporate seal.]

Bond premium: $ _____

3. The amount of the surety bond for environmental restoration shall be established as follows:

(i) Transporters proposing to transport used oil shall be required to provide a surety bond in an amount equal to $5,000 per vehicle transporting such wastes to a maximum of $100,000 or proof of net worth as provided in 335-14-17-.05(4)(b);

(ii) If the assurance surety bond is drawn upon, the Department may require additional assurance from the permittee and if the permittee fails to provide the assurance as required, the Department may terminate the permit as set out in 335-14-8-.11(2).

(b) Evidence satisfactory to the Department that the person proposing to transport used oil has a net worth equal to ten times the value of the proposed surety bond. Such evidence shall be submitted in the form of a letter from the Chief Financial Officer of the applicant and shall be in a form identical to the following:

DEMONSTRATION OF NET WORTH

Letter From the Chief Financial Officer

(To demonstrate net worth as required by Code of Alabama 1975, § 22-30-12(c)(4) in order to demonstrate financial responsibility for noncompliance with the Alabama Hazardous Wastes Management and Minimization Act of 1978, the regulations promulgated thereunder and any permits or orders issued to the applicant and to demonstrate financial responsibility for damages to human health and the environment, including the costs of cleanups, caused by spills. This demonstration may be used in conjunction with other allowable mechanisms in order to provide the required coverage.)

[Address to the Director, Alabama Department of Environmental Management, 1400 Coliseum Boulevard, Montgomery, Alabama 36110-2059]

I am the chief financial officer of [applicant's name, address and EPA transporter identification number]. This letter is in support of the use of the demonstration of net worth to demonstrate financial responsibility as required by Code of Alabama 1975, § 22-30-12(c)(4) and rule 335-14-17-.05 of the Alabama Department of Environmental Management Administrative Code.

This applicant [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 applicant ends on [month, day]. The figures for the following items marked with an asterisk are derived from a year-end financial statement(s) for the latest completed fiscal year, ended [date], prepared for the applicant by an independent auditor.

Net Worth

1.	Amount of annual aggregate financial responsibility to be demonstrated.....	$ _____
*2.	Total assets	$ _____
*3.	Total liabilities	$ _____
*4.	Net worth (line 2. minus line 3.)	$ _____
*5.	If less than 90% of assets are located in the U.S. give total U.S. assets	$ _____
6.	Is line 4 at least 10 times line 1.?.....	_____ Yes _____ No

I hereby certify that the wording of this letter is identical to that in rule 335-14-17-.05(4)(b) of the Alabama Department of Environmental Management Administrative Code.

[Signature] _____

[Name] _____

[Title] _____

[Date] _____

(c) Proof of insurance in a minimum amount of $100,000 to cover damages to human health or the environment, exclusive of legal defense costs as defined in 335-14-1-.02. Such insurance may not include a pollution exclusion clause. Proof of insurance must be provided on a Certificate of Insurance form naming the Alabama Department of Environmental Management as the certificate holder and giving at least 30 days written Notice of Cancellation to the certificate holder. Nothing in 335-14-17-.05(4)(c) shall be construed to allow a transporter to operate in violation of the United States Department of Transportation rules and regulations governing financial assurance.

(d) A transporter must demonstrate to the satisfaction of the Department that the financial document submitted with their applications as required in 335-14-17-.05 is in force for the duration of the permit. The Department may request a permitted transporter at any time to demonstrate that financial assurance is in force for the duration of the used oil transporter permit.

(5) Used oil transportation.

(a) Deliveries. A used oil transporter must deliver all used oil received to:

1. Another used oil transporter, provided that the transporter has obtained an EPA identification number;

2. A used oil processing/re-refining facility who has obtained an EPA identification number;

3. An off-specification used oil burner facility who has obtained an EPA identification number; or

4. An on-specification used oil burner facility.

(b) DOT Requirements. Used oil transporters must comply with all applicable requirements of the U.S. Department of Transportation regulations in 49 CFR Parts 171 through 180. Persons transporting used oil that meets the definition of a hazardous material in 49 CFR 171.8 must comply with all applicable regulations in 49 CFR 171 through 180.

(c) Used oil discharges.

1. In the event of a discharge of used oil during transportation, the transporter must take appropriate immediate action to protect human health and the environment (e.g., notify local authorities, dike the discharge area).

2. If a discharge of used oil occurs during transportation and the Department or its designee acting within the scope of official responsibilities determines that immediate removal of the used oil is necessary to protect human health or the environment, the Department or its designee may authorize the removal of the used oil by transporters who do not have EPA identification numbers.

3. An air, rail, highway, or water transporter who has discharged used oil must:

(i) Give notice, if required by 49 CFR 171.15, to the Alabama Emergency Management Agency (800/843-0699, 24 hours a day) and to the National Response Center (800/424-8802 or 202/267-2675, 24 hours a day); and

(ii) Report in writing as required by 49 CFR 171.16 to the Director, Office of Hazardous Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, DC 20590. A copy of such report shall be provided to the Land Division, Alabama Department of Environmental Management, P. O. Box 301463 (Zip 36130-1463), or hand delivered to 1400 Coliseum Boulevard, Montgomery, AL 36110-2059, not later than 14 days after any such discharge.

4. A water transporter who has discharged used oil must give notice as required by 33 CFR 153.203 and shall give notice to the Alabama Emergency Management Agency (800/843-0699, 24 hours a day) and the National Response Center (800/424-8802 or 202/267-2675, 24 hours a day).

5. A transporter must clean up any discharge of used oil that occurs during transportation or take such action as may be required or approved by the Department or its designee so that the used oil discharge no longer presents a hazard to human health or the environment.

6. In addition to the reporting requirements of 335-14-17-.05(5)(c)3., a transporter must notify the Department of any discharge of greater than 25 gallons of used oil during transportation no later than 24 hours after any such discharge. The notification must include the following:

(i) The transporter's name and EPA identification number;

(ii) The date and time of the incident;

(iii) The location of the incident;

(iv) The type (refer to 335-14-17-.05(10)) and amount of materials released;

(v) A description of the sequence of events that led to the incident and the actions taken at the time it was discovered; and

(vi) A description of the actions that were taken to clean up and mitigate the effects of the release.

(6) Rebuttable presumption for used oil.

(a) To ensure that used oil is not a hazardous waste under the rebuttable presumption of rule 335-14-17-.02(1)(b)1.(ii), the used oil transporter must determine whether the total halogen content of used oil being transported or stored at a transfer facility is above or below 1,000 ppm.

(b) The transporter must make this determination by:

1. Testing the used oil; or

2. Obtaining certification of the halogen content of the used oil from the used oil generator in light of the materials or processes used.

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in rule 335-14-2-.04. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste [for example, by showing that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in Appendix VIII of Chapter 335-14-2].

1. The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins if they are processed through a tolling arrangement, as described in rule 335-14-17-.03(6)(c), to reclaim metalworking

oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

2. The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units if the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(7) Used oil storage at transfer facilities. Used oil transfer facilities are subject to all applicable Spill Prevention, Control and Countermeasures (40 CFR Part 112) in addition to the requirements of 335-14-17-.05. Used oil transporters are also subject to the Underground Storage Tank (Division 335-6, Volume II) standards for used oil stored in underground used oil tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of 335-14-17-.05.

(a) Applicability. 335-14-17-.05(7) applies to used oil transfer facilities. Used oil transfer facilities are transportation related facilities including loading docks, parking areas, storage areas, and other areas where shipments of used oil are held for more than 24 hours during the normal course of transportation and not longer than 35 days. Transfer facilities that store used oil for more than 35 days are subject to regulation under rule 335-14-17-.06.

(b) Maintenance and operation of facility. Used oil transfer facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of used oil to air, soil, or surface water which could threaten human health or the environment.

(c) Storage units. Owners or operators of used oil transfer facilities may not store used oil in units other than used oil tanks, containers, or units subject to regulation under Chapters 335-14-5 or 335-14-6.

1. A container holding used oil must always be closed during storage, except when it is necessary to add or remove used oil.

2. The owner/operator must use appropriate controls and/or practices to prevent spills and overflows from used oil tanks. These include, but are not limited to:

(i) Spill prevention controls (e.g., check valves, dry disconnect couplings);

(ii) Overflow controls for continuously fed used oil tanks (e.g., level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standing used oil tank); and/or

(iii) Freeboard controls in open used oil tanks designed to maintain sufficient freeboard to prevent overfilling or overtopping by wave action, wind action, or precipitation.

(iv) Standard operating procedures requiring employees to check the oil level in a used oil tank by direct observation or remote sensing prior to placing oil in the used oil tank.

3. Special requirements for the management of ignitable used oil.

(i) Owner/operator must comply with 335-14-5-.02(8);

(ii) Containers holding ignitable used oil must be located at least 15 meters (50 feet) from the facility's property line.

(iii) The owner/operator of a facility where ignitable used oil is stored in a used oil tank must comply with the requirements for the maintenance of protective distances between the used oil management area and any public ways, streets, alleys, or an adjoining property line that can be built upon as required in Tables 2-1 through 2-6 of the National Fire Protection Association's "Flammable and Combustible Liquids Code", (1977 or 1981), [incorporated by reference in rule 335-14-1-.02(2)].

(d) A used oil transfer facility must be able to demonstrate the length of time that the used oil has been accumulated from the date it is received. The handler may make this demonstration by:

1. Labeling each used oil container with the earliest date that the used oil container was received;

2. Maintaining an inventory system on-site that identifies the date the used oil being accumulated was received;

3. Maintaining an inventory system on-site that identifies the earliest date that any used oil container in a group of used oil containers was received;

4. Placing the used oil container in a specific accumulation area and identifying the earliest date that any used oil containers in the area were received; or

5. Any other method which clearly demonstrates the length of time that the used oil has been accumulated on-site from the date received.

(e) Condition of units. Containers and aboveground used oil tanks used to store used oil at transfer facilities must be:

1. In good condition (no severe rusting, apparent structural defects or deterioration); and

2. Not leaking (no visible leaks).

(f) Secondary containment for containers. Containers used to store used oil at transfer facilities must be equipped with a secondary containment system.

1. The secondary containment system must consist of, at a minimum:

(i) Dikes, berms or retaining walls; and

(ii) A floor. The floor must cover the entire area within the dikes, berms, or retaining walls; or

(iii) An equivalent secondary containment system.

2. The entire containment system, including walls and floors, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

3. The floor must be sloped or the containment system must be otherwise designed, constructed and operated to drain and remove liquids resulting from leaks, spills, or precipitation, unless the containers are elevated or otherwise protected from contact with accumulated liquids;

4. The containment system must have sufficient capacity to contain 10% of the volume of the containers or the volume of the largest container, whichever is greater;

5. Run-on, and the entrance of precipitation, into the containment system must be prevented unless the collection system has sufficient excess capacity in addition to that required in 335-14-17-.05(7)(g)4. to contain any run-on or precipitation which might enter the system; and

6. Spilled or leaked used oil and accumulated precipitation must be removed from the sump or collection area in as timely a manner as is necessary to prevent overflow of the collection system.

(g) Secondary containment for existing aboveground used oil tanks. Existing aboveground used oil tanks used to store used oil at transfer facilities must be equipped with a secondary containment system.

1. The secondary containment system must consist of, at a minimum:

(i) Dikes, berms or retaining walls; and

(ii) A floor. The floor must cover the entire area within the dike, berm, or retaining wall except areas where existing portions of the used oil tank meet the ground; or

(iii) An equivalent secondary containment system.

2. The entire containment system, including walls and floors, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

3. The containment system must be designed, constructed and operated to contain 100 percent of the capacity of the largest used oil tank within its boundary;

4. The containment system must be designed, constructed and operated to prevent run-on, or entrance of precipitation, into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or precipitation. Such additional capacity must be sufficient to contain precipitation from a 25-year, 24-hour rainfall event.

5. The containment system must be sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. Spilled or leaked used oil and accumulated precipitation must be removed from the containment system in as timely a manner as necessary to prevent overflow of the system.

(h) Secondary containment for new aboveground used oil tanks. New aboveground used oil tanks used to store used oil at transfer facilities must be equipped with a secondary containment system.

1. The secondary containment system must consist of, at a minimum:

(i) Dikes, berms, or retaining walls; and

(ii) A floor. The floor must cover the entire area within the dike, berm, or retaining wall; or

(iii) An equivalent secondary containment system.

2. The entire containment system, including walls and floors, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

3. The containment system must be designed, constructed and operated to contain 100 percent of the capacity of the largest used oil tank within its boundary;

4. The containment system must be designed, constructed and operated to prevent run-on, or entrance of precipitation, into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or precipitation. Such additional capacity must be sufficient to contain precipitation from a 25-year, 24-hour rainfall event.

5. The containment system must be sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. Spilled or leaked used oil and accumulated precipitation must be removed from the containment system in as timely a manner as necessary to prevent overflow of the system.

(i) Labels. Labels must be legible from a distance of at least 25 feet.

1. Containers and aboveground used oil tanks used to store used oil at transfer facilities must be labeled or marked clearly with the words "Used Oil".

2. Fill pipes used to transfer used oil into underground used oil storage tanks at transfer facilities must be labeled or marked clearly with the words "Used Oil".

(j) Response to releases. Upon detection of a release of used oil to the environment that is not subject to the corrective action requirements of Division 335-6, Volume 2 of the ADEM Administrative Code, which has occurred after the effective date of these rules, the owner/operator of a transfer facility must perform the following cleanup steps:

1. Stop the release;

2. Contain the released used oil;

3. Clean up and manage properly the released used oil and other materials in accordance with all applicable Division 335-13 and 335-14 requirements; and

4. If necessary, repair or replace any leaking used oil storage containers or used oil tanks prior to returning them to service.

(k) Closure.

1. Aboveground used oil tanks. Owners and operators who store used oil in aboveground used oil tanks must comply with the following requirements:

(i) At closure of the used oil tank system, the owner or operator must remove or decontaminate used oil residues in the tanks, contaminated containment system components, contaminated soils, and structures and equipment contaminated with used oil, and manage them as hazardous waste, unless the materials are not hazardous waste under Chapter 335-14-2.

(ii) If the owner or operator cannot demonstrate that all of the soils can be practicably removed or decontaminated as required in 335-14-17-.05(7)(k)1.(i), then the owner or operator must close the used oil tank system and perform post-closure care requirements that apply to hazardous waste landfills under rule 335-14-6-.14(11).

2. Containers. Owners and operators who store used oil in containers must comply with the following requirements:

(i) At closure, containers holding used oil or residues of used oil must be removed from the site;

(ii) The owner or operator must remove or decontaminate used oil residues, contaminated containment systems components, contaminated soils, and structures and equipment contaminated with used oil, and manage them as hazardous waste, unless the materials are not hazardous waste under 335-14-2.

(8) Tracking.

(a) Acceptance. Used oil transporters must keep a record of each used oil shipment accepted for transport. Records for each shipment must include:

1. The name and address of the used oil generator, used oil transporter, or used oil processor/re-refiner who provided the used oil for transport;

2. The EPA identification number (if applicable) of the used oil generator, used oil transporter, or used oil processor/re-refiner who provided the used oil for transport;

3. The quantity of used oil accepted;

4. The date of acceptance; and

5. (i) Except as provided in 335-14-17-.05(8)(a)5.(ii), the signature, dated upon receipt of the used oil, of a representative of the used oil generator, used oil transporter, or used oil processor/re-refiner who provided the used oil for transport.

(ii) Intermediate rail used oil transporters are not required to sign the record of acceptance.

(b) Deliveries. Used oil transporters must keep a record of each shipment of used oil that is delivered to another used oil transporter, or to a used oil burner, used oil processor/re-refiner, or disposal facility. Records of each delivery must include:

1. The name and address of the receiving facility or used oil transporter;

2. The EPA identification number of the receiving facility or used oil transporter;

3. The quantity of used oil delivered;

4. The date of delivery;

(i) Except as provided in 335-14-17-.05(8)(b)5.(ii), the signature, dated upon receipt of the used oil, of a representative of the receiving facility or used oil transporter.

(ii) Intermediate rail used oil transporters are not required to sign the record of delivery.

(c) Exports of used oil. Used oil transporters must maintain the records described in 335-14-17-.05(8)(b)1. through (b)4. for each shipment of used oil exported to any foreign country.

(d) Residues from the Storage or Transport of Used Oil. Used oil transporters must keep a record of each shipment of residues resulting from the storage or transport of used oil that is delivered or offered to another transporter or facility. Records of each shipment must include:

1. The name and address of the receiving facility or transporter;

2. The EPA identification number of the receiving facility or transporter, if applicable;

3. The type (refer to 335-14-17-.05(10)) and quantity of residue delivered or offered;

4. The date of delivery or acceptance;

5. Except as provided in 335-14-17-.05(8)(d), the signature, dated upon receipt of the residue, of a representative of the receiving facility or transporter. (Note: Intermediate rail transporters are not required to sign the record of delivery/acceptance)

(9) Recordkeeping.

(a) Alabama Used Oil Transporter Permit. A transporter of used oil must maintain a copy of the current used oil transporter permit with each vehicle actively transporting used oil.

(b) Contingency Plan. A transporter of used oil must maintain a copy of the contingency plan required by rule 335-14-8-.09(4)(g) with each vehicle actively transporting used oil.

(c) Rebuttable Presumption. Records of analyses conducted or information used to comply with 335-14-17-.05(6)(a), (b), and (c) must be maintained by the used oil transporter for at least 3 years.

(d) Tracking. The records described in 335-14-17-.05(8)(a) through (d) must be maintained for at least 3 years.

(10) Management of residues. Used oil transporters who generate residues from the storage or transport of used oil must manage the residues as specified in rule 335-14-17-.02(1)(e).

(11) Reserved.

Author: James T. Shipman; Lawrence A. Norris; C. Edwin Johnston; Abe Oberkor; Bradley N. Curvin; Clethes Stallworth; Linda J. Knickerbocker; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, §§ 22-22A-4(n), 22-22A-5(3), 22-22A-5(4), 22-22A-5(20), and 22-30-9(5).
History: January 5, 1995. **Amended:** Effective: January 12, 1996; **Amended:** Effective: March 8, 1996; **Amended:** Effective: April 2, 1999; **Amended:** Effective:

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335-14-17-.06 Standards for Used Oil Processors and Re-refiners.

(1) Applicability.

(a) The requirements of 335-14-17-.06(1) apply to owners and operators of facilities that process used oil. Used oil processing means chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, lubricants, or other used oil-derived products. Used oil processing includes, but is not limited to: blending used oil with virgin petroleum products, blending used oils to meet the fuel specification, filtration, simple distillation, chemical or physical separation and re-refining. The requirements of 335-14-17-.06(1) do not apply to:

1. Used oil transporters that conduct incidental used oil processing operations that occur during the normal course of transportation as provided in rule 335-14-17-.05(2); or

2. Burners that conduct incidental used oil processing operations that occur during the normal course of used oil management prior to burning as provided in rule 335-14-17-.07(2)(b)1.

(b) Other applicable provisions. Used oil processors/re-refiners who conduct the following activities are also subject to the requirements of other applicable provisions of 335-14-17 as indicated in 335-14-17-.06(1)(b)1. through (b)5.

1. Used oil processors/re-refiners who generate used oil must also comply with rule 335-14-17-.03;

2. Used oil processors/re-refiners who transport used oil must also comply with rule 335-14-17-.05;

3. Except as provided in 335-14-17-.06(1)(b)3.(i) and (b)3.(ii), used oil processors/re-refiners who burn off-specification used oil for energy recovery must also comply with rule 335-14-17-.07. Used oil processors/re-refiners burning used oil for energy recovery under the following conditions are not subject to rule 335-14-17-.07:

(i) The used oil is burned in an on-site space heater that meets the requirements of rule 335-14-17-.03(5); or

(ii) The used oil is burned for purposes of used oil processing, which is considering burning incidentally to used oil processing;

4. Used oil processors/re-refiners who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in rule 335-14-17-.02(2) must also comply with rule 335-14-17-.08; and

5. Used oil processors/re-refiners who dispose of used oil also must comply with rule 335-14-17-.09.

(2) Notification.

(a) Identification numbers. Used oil processors and re-refiners must obtain an EPA Identification Number within 30 days of the effective date of these rules or prior to processing /re-refining used oil, whichever is later.

(b) Mechanics of notification. A used oil processor or re-refiner must submit a correct and complete ADEM Form 8700-12 (including all appropriate attachment pages and fees) reflecting current used oil activities to the Department annually. The Department must receive the ADEM Form 8700-12 (including all appropriate attachment pages and fees) no later than the 15th day of the specified month in the specified month schedule located at rule 335-14-1-.02(1)(a).

(c) The ADEM Form 8700-12, Notification of Regulated Waste Activity, is not complete without payment of all the appropriate fees specified in Chapter 335-1-6 of the ADEM Administrative Code.

(3) General facility standards.

(a) Preparedness and prevention. Owners and operators of used oil processing and re-refining facilities must comply with the following requirements:

1. Maintenance and operation of facility. Facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of used oil to air, soil, or surface water which could threaten human health or the environment.

2. Required equipment. All facilities must be equipped with the following, unless none of the hazards posed by used oil handled at the facility could require a particular kind of equipment specified in 335-14-17-.06(3)(a)2.(i) through (iv):

(i) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;

(ii) 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 law enforcement, fire departments, or ADEM Field Operations Division or local emergency response teams;

(iii) 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

(iv) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

3. 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.

4. Access to communications or alarm system.

(i) Whenever used oil 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 in 335-14-17-.06(3)(a)2.

(ii) If there is ever just one employee on the premises while the facility is operating, the employee 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 in 335-14-17-.06(3)(a)2.

5. Required aisle space. The owner or operator 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.

6. Arrangements with local authorities.

(i) The owner or operator must attempt to make the following arrangements, as appropriate for the type of used oil handled at the facility and the potential need for the services of these organizations:

(I) Arrangements to familiarize local law enforcement, fire departments, and emergency response teams with the layout of the facility, properties of used oil 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 ADEM Field Operations Division emergency response teams, emergency response contractors, and equipment suppliers; and

(IV) Arrangements to familiarize local hospitals with the properties of used oil handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

(ii) Where State of Alabama or local authorities decline to enter into such arrangements, the owner or operator must document the refusal in the operating record.

(b) Contingency plan and emergency procedures. Owners and operators of used oil processing and re-refining facilities must comply with the following requirements:

1. Purpose and implementation of contingency plan.

(i) Each owner or operator must have a contingency plan for the 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 used oil to air, soil, or surface water.

(ii) The provisions of the plan must be carried out immediately whenever there is a fire, explosion, or release of used oil which could threaten human health or the environment.

2. Content of contingency plan.

(i) The contingency plan must describe the actions facility personnel must take to comply with 335-14-17-.06(3)(b)1. and 6. in response to fires, explosions, or any unplanned sudden or non-sudden release of used oil to air, soil, or surface water at the facility.

(ii) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan or some other emergency or contingency plan, the owner or operator need only amend that plan to incorporate used oil management provisions that are sufficient to comply with the requirements of 335-14-17.

(iii) The plan must describe arrangements agreed to by local law enforcement, fire departments, hospitals, contractors, and ADEM Field Operations Division and local emergency response teams to coordinate emergency services, pursuant to 335-14-17-.06(3)(a)6.

(iv) The plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator [see 335-14-17-.06(3)(b)5.], 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.

(v) 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.

(vi) 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 used oil or fires).

3. Copies of contingency plan. A copy of the contingency plan and all revisions to the plan must be:

(i) Maintained at the facility; and

(ii) Submitted to all local law enforcement, fire departments, hospitals, ADEM Field Operations Division and local emergency response teams that may be called upon to provide emergency services. A record of this submittal should be kept in the operating record of the facility.

4. Amendment of contingency plan. The contingency plan must be reviewed, and immediately amended, if necessary, whenever:

(i) Applicable regulations are revised;

(ii) The plan fails in an emergency;

(iii) The facility changes-in its design, construction, operation, maintenance, or other circumstances-in a way that materially increases the potential fires, explosions, or releases of used oil, or changes the response necessary in an emergency;

(iv) The list of emergency coordinators changes; or

(v) The list of emergency equipment changes.

5. 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 characteristic of used oil handled, the location of all records within the facility, and facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan.

Guidance: The emergency coordinator's responsibilities are more fully spelled out in 335-14-17-.06(3)(b)6. Applicable responsibilities for the emergency coordinator vary, depending on factors such as type and variety of used oil handled by the facility, and type and complexity of the facility.

6. Emergency procedures.

(i) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or the 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 of Alabama or local agencies with designated response roles if their help is needed.

(ii) 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 analyses.

(iii) 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 surface water run-offs contaminated from water or chemical agents used to control fire and heat-induced explosions).

(iv) 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 indicated 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:

1. Either the government official designated as the on-scene coordinator for the geographical area (in the applicable regional contingency plan under Part 1510 of 40 CFR), or the National Response Center [using their 24-hour toll free number 800/424-8802 or 202/267-2675];

2. The Department [334/271-7700 between 8:00 a.m. and 5:00 p.m., Monday through Friday]; and

3. The Alabama Department of Public Safety [334/242-4378, 24 hours a day].

(III) The report required by 335-14-17-.06(3)b)6.(iv)(II) must include:

1. Name and telephone number of reporter;

2. Name and address of facility;

3. Time and type of incident (e.g., release, fire);

4. Name and quantity of material(s) involved, to the extent known;

5. The extent of injuries, if any; and

6. The possible hazards to human health, or the environment, outside the facility.

(v) 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 used oil or hazardous waste at the facility. These measures must include, where applicable, stopping processes and operation, collecting and containing released used oil, and removing or isolating containers.

(vi) If the facility stops operation 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.

(vii) Immediately after an emergency, the emergency coordinator must provide for recycling, storing, or disposing of recovered used oil, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility.

(viii) The emergency coordinator must ensure that, in the affected area(s) of the facility:

(I) No waste or used oil that may be incompatible with the released material is recycled, 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.

(III) The owner or operator must notify the Department and other appropriate State of Alabama and local authorities that the facility is in compliance with 335-14-17-.06(3)(b)6.(viii)(I) and (II) before operations are resumed in the affected area(s) of the facility.

(ix) The owner or operator 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 Department. The report must include:

(I) Name, address, and telephone number of the owner or operator;

(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;

(VII) Estimated quantity and disposition of recovered material that resulted from the incident.

(4) Rebuttable presumption for used oil.

(a) To ensure that used oil managed at a used oil processing/re-refining facility is not hazardous waste under the rebuttable presumption of rule 335-14-17-.02(1)(b)1.(ii), the owner or operator of a used oil processing/re-refining facility must determine whether the total halogen content of used oil managed at the facility is above or below 1,000 ppm.

(b) The owner or operator must make this determination by:

1. Testing the used oil; or

2. Obtaining certification of the halogen content of the used oil from the generator in light of the materials or processes used.

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in rule 335-14-2-.04. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste [for example, by showing that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in 335-14-2-Appendix VIII].

1. The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, to reclaim metalworking oil/fluids. The presumption does apply to metalworking oil/fluids if such oils/fluids are recycled in any other manner, or disposed.

2. The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(5) Used oil management. Used oil processors/re-refiners are subject to all applicable Spill Prevention, Control and Countermeasures (40 CFR Part 112) in addition to the requirements of 335-14-17-.06. Used oil processors/re-refiners are also subject to the Underground Storage Tank (Division 335-6,

Volume 2) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of 335-14-17-.06.

(a) Management units. Used oil processors/re-refiners may not store used oil in units other than used oil tanks, containers, or units subject to regulation under Chapters 335-14-5 or 335-14-6.

1. A container holding used oil must always be closed during storage, except when it is necessary to add or remove used oil.

2. The owner/operator must use appropriate controls and/or practices to prevent spills and overflows from used oil tanks. These include, but are not limited to:

(i) Spill prevention controls (e.g., check valves, dry disconnect couplings);

(ii) Overflow controls for continuously fed used oil tanks (e.g., level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standing used oil tank);

(iii) Freeboard controls in open used oil tanks designed to maintain sufficient freeboard to prevent overfilling or overtopping by wave action, wind action, or precipitation; and/or

(iv) Standard operating procedures requiring employees to check the oil level in a used oil tank by direct observation or remote sensing prior to placing oil in the used oil tank.

3. Special requirements for the management of ignitable used oil.

(i) Owner/operator must comply with 335-14-5-.02(8);

(ii) Containers holding ignitable used oil must be located at least 15 meters (50 feet) from the facility's property line.

(iii) The owner/operator of a facility where ignitable used oil is stored or treated in a used oil tank must comply with the requirements for the maintenance of protective distances between the used oil management area and any public ways, streets, alleys, or an adjoining property line that can be built upon as required in Tables 2-1 through 2-6 of the National Fire Protection Association's "Flammable and Combustible Liquids Code", (1977 or 1981), [incorporated by reference in rule 335-14-1-.02(2)].

(b) Conditions of units. Containers and aboveground used oil tanks used to store or process used oil at processing and re-refining facilities must be:

1. In good condition (no severe rusting, apparent structural defects or deterioration); and

2. Not leaking (no visible leaks).

(c) Secondary containment for containers. Containers used to store or process used oil at processing and re-refining facilities must be equipped with a secondary containment system.

1. The secondary containment system must consist of, at a minimum:

(i) Dikes, berms or retaining walls; and

(ii) A floor. The floor must cover the entire area within the dike, berm, or retaining wall; or

(iii) An equivalent secondary containment system.

2. The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

3. The floor must be sloped or the containment system must be otherwise designed, constructed and operated to drain and remove liquids resulting from leaks, spills, or precipitation, unless the containers are elevated or otherwise protected from contact with accumulated liquids;

4. The containment system must have sufficient capacity to contain 10% of the volume of the containers or the volume of the largest container, whichever is greater;

5. Run-on, and the entrance of precipitation, into the containment system must be prevented unless the collection system has sufficient excess capacity in addition to that required in 335-14-17-.06(5)(d)4. to contain any run-on and precipitation which might enter the system; and

6. Spilled or leaked used oil and accumulated precipitation must be removed from the sump or collection area in as timely a manner as necessary to prevent overflow of the collection system.

(d) Secondary containment for existing aboveground used oil tanks. Existing aboveground used oil tanks used to store or process used oil at processing and re-refining facilities must be equipped with a secondary containment system.

1. The secondary containment system must consist of, at a minimum:

(i) Dikes, berms, or retaining walls; and

(ii) A floor. The floor must cover the entire area within the dike, berm, or retaining wall except areas where existing portions of the used oil tank meet the ground; or

(iii) An equivalent secondary containment system.

2. The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

3. The containment system must be designed, constructed and operated to contain 100 percent of the capacity of the largest used oil tank within its boundary;

4. The containment system must be designed, constructed and operated to prevent run-on, or entrance of precipitation, into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or precipitation. Such additional capacity must be sufficient to contain precipitation from a 25-year, 24-hour, rainfall event.

5. The containment system must be sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. Spilled or leaked used oil and accumulated precipitation must be removed from the containment system in as timely a manner as necessary to prevent overflow of the system.

(e) Secondary containment for new aboveground used oil tanks. New aboveground used oil tanks used to store or process used oil at processing and re-refining facilities must be equipped with a secondary containment system.

1. The secondary containment system must consist of, at a minimum:

(i) Dike, berms or retaining walls; and

(ii) A floor. The floor must cover the entire area within the dike, berm, or retaining wall; or

(iii) An equivalent secondary containment system.

2. The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

3. The containment system must be designed, constructed and operated to contain 100 percent of the capacity of the largest used oil tank within its boundary;

4. The containment system must be designed, constructed and operated to prevent run-on, or entrance of precipitation, into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or precipitation. Such additional capacity must be sufficient to contain precipitation from a 25-year, 24-hour rainfall event.

5. The containment system must be sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. Spilled or leaked used oil and accumulated precipitation must be removed from the containment system in as timely a manner as necessary to prevent overflow of the system.

(f) Labels. Labels must be legible from a distance of at least 25 feet.

1. Containers and aboveground used oil tanks used to store or process used oil at processing and re-refining facilities must be labeled or marked clearly with the words "Used Oil".

2. Fill pipes used to transfer used oil into underground used oil storage tanks at used oil processing and re-refining facilities must be labeled or marked clearly with the words "Used Oil".

(g) Response to releases. Upon detection of a release of used oil to the environment not subject to the requirements of Division 335-6, Volume 2 of the ADEM Administrative Code which has occurred after the effective date of these rules, an owner/operator must perform the following cleanup steps:

1. Stop the release;

2. Contain the released used oil;

3. Clean up and manage properly both the released used oil and other materials in accordance with all applicable Division 335-13 and 335-14 requirements; and

4. If necessary, repair or replace any leaking used oil storage containers or used oil tanks prior to returning them to service.

(h) Closure.

1. Aboveground used oil tanks. Owners and operators who store or process used oil in aboveground used oil tanks must comply with the following requirements:

(i) At closure of used oil tank system, the owner or operator must remove or decontaminate used oil residues in used oil tanks, contaminated containment system components, contaminated soils, and structures and equipment contaminated with used oil, and manage them as hazardous waste, unless the materials are not hazardous waste under Chapter 335-14-2.

(ii) If the owner or operator cannot demonstrate that all contaminated soils can be practicably removed or decontaminated as required in 335-14-17-.06(5)(h)1.(i), then the owner or operator must close the used oil tank system and perform post-closure care requirements that apply to hazardous waste landfills rule 335-14-6-.14(11).

2. Containers. Owners and operators who store used oil in containers must comply with the following requirements:

(i) At closure, containers holding used oil or residues of used oil must be removed from the site;

(ii) The owner or operator must remove or decontaminate used oil residues, contaminated containment system components, contaminated soils, and structures and equipment contaminated with used oil, and manage them as hazardous waste, unless the materials are not hazardous waste under Chapter 335-14-2.

(6) Analysis plan. Owners or operators of used oil processing and re-refining facilities must develop and follow a written analysis plan describing the procedures that will be used to comply with the analysis requirements of rule 335-14-17-.06(4) and, if applicable, rule 335-14-17-.08(3). The owner or operator must keep the plan at the facility.

(a) Rebuttable presumption for used oil in rule 335-14-17-.06(4). At a minimum, the plan must specify the following:

1. Whether sample analyses or knowledge of the halogen content of the used oil will be used to make this determination.

2. If sample analyses are used to make this determination:

(i) The sampling method used to obtain representative samples to be analyzed. A representative sample may be obtained using either:

(I) One of the sampling methods in Chapter 335-14-2-Appendix I; or

(II) A method shown to be equivalent under rule 335-14-1-.03(1);

(ii) The frequency of sampling to be performed, and whether the analysis will be performed on-site or off-site; and

(iii) The methods used to analyze used oil for the parameters specified in rule 335-14-17-.06(4); and

3. The type of information that will be used to determine the halogen content of the used oil.

(b) On-specification used oil fuel in rule 335-14-17-.08(3). At a minimum, the plan must specify the following if rule 335-14-17-.08(3) is applicable:

1. Whether sample analyses or other information will be used to make this determination;

2. If sample analyses are used to make this determination:

(i) The sampling method used to obtain representative samples to be analyzed. A representative sample may be obtained using either:

(I) One of the sampling methods in Chapter 335-14-2-Appendix I; or

(II) A method shown to be equivalent under rule 335-14-1-.03(1).

(ii) Whether used oil will be sampled and analyzed prior to or after any used oil processing/re-refining;

(iii) The frequency of sampling to be performed, and whether the analysis will be performed on-site or off-site; and

(iv) The methods used to analyze used oil for the parameters specified in rule 335-14-17-.08(3); and

3. The type of information that will be used to make the on-specification used oil fuel determination.

(7) Tracking.

(a) Acceptance. Used oil processors/re-refiners must keep a record of each used oil shipment accepted for used oil processing/re-refining. These records may take the form of a log, invoice, manifest, bill of lading or other shipping documents. Records for each shipment must include the following information:

1. The name and address of the transporter who delivered the used oil to the processor/re-refiner;

2. The name and address of the generator or processor/re-refiner from whom the used oil was sent for used oil processing/re-refining:

3. The EPA identification number of the transporter who delivered the used oil to the processor/re-refiner;

4. The EPA identification number (if applicable) of the generator or processor/re-refiner from whom the used oil was sent for used oil processing/re-refining;

5. The quantity of used oil accepted; and

6. The date of acceptance.

(b) Delivery. Used oil processor/re-refiners must keep a record of each shipment of used oil that is shipped to a used oil burner, processor/re-refiner, or disposal facility. These records may take the form of a log, invoice, manifest, bill of lading or other shipping documents. Records for each shipment must include the following information:

1. The name and address of the transporter who delivers the used oil to the burner, processor/re-refiner or disposal facility;

2. The name and address of the burner, processor/re-refiner or disposal facility who will receive the used oil;

3. The EPA identification number of the transporter who delivers the used oil to the burner, processor/re-refiner or disposal facility;

4. The EPA identification number of the burner, processor/re-refiner, or disposal facility who will receive the used oil;

5. The quantity of used oil shipped; and

6. The date of shipment.

(c) Record retention. The records described in 335-14-17-.06(7)(a) and (b) must be maintained for at least three (3) years.

(8) Operating record and reporting.

(a) Operating record.

1. The owner or operator must keep a written operating record at the facility.

2. The following information must be recorded, as it becomes available, and maintained in the operating record until closure of the facility:

(i) Records and results of used oil analyses performed as described in the analysis plan required under 335-14-17-.06(6); and

(ii) Documentation of information used to make the determinations described in the analysis plan required under 335-14-17-.06(6); and

(iii) Summary reports and details of all incidents that require implementation of the contingency plan as specified in 335-14-17-.06(3)(b)6.(ix).

(b) Reporting. A used oil processor/re-refiner must report to the Department, in the form of a letter, on a biennial basis (by March 1 of each even numbered year), the following information concerning used oil activities during the previous calendar year;

1. The EPA identification number, name, and address of the processor/re-refiner;

2. The calendar year covered by the report; and

3. The quantities of used oil accepted for used oil processing/re-refining and the manner in which the used oil is processed/re-refined, including the specific processes employed.

(9) Off-site shipment of used oil. Used oil processors/re-refiners who initiate shipments of used oil off-site must ship the used oil using a used oil transporter who has obtained an EPA identification number.

(10) Management of residues. Owners and operators who generate residues from the storage, used oil processing, or re-refining of used oil must manage the residues as specified in rule 335-14-17-.02(1)(e).

Author: James T. Shipman; C. Edwin Johnston; Bradley N. Curvin; Linda J. Knickerbocker; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, §§ 22-22A-4(n), 22-22A-5(3), 22-22A-5(4), 22-22A-5(20), and 22-30-9(5).
History: January 5, 1995. **Amended:** Effective: January 12, 1996; **Amended:** Effective: March 8, 1996; **Amended:** Effective: April 13, 2001; **Amended:** Effective: March 15, 2002; **Amended:** Effective: March 31, 2005; **Amended:** Effective: April 4, 2006; **Amended:** Effective: April 3, 2007; **Amended:** Effective: May 27, 2008; **Amended:** Effective: March 31, 2009; **Amended:** Effective: April 3, 2012; **Amended:** Filed: February 19, 2019; Effective: April 5, 2019.

Attachment 4

BEFORE THE ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

In the matter of:	)	
	)	
Danny Clements Builder, Inc.,	)	
	)	
Petitioner,	)	
	)	
v.	)	EMC Docket No. 18-07
	)	
Alabama Department of Environmental Management,	)	
	)	
Respondent.	)	

ORDER

Before the Commission in the above matter is the Report of Hearing Officer, which includes Findings of Fact, Conclusions of Law and Recommendation. Based upon the record in the proceeding, including the oral testimony, all documents offered and admitted into evidence, the briefs, arguments and submissions, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:

1. That the Report of Hearing Officer is hereby adopted; and

2. That pursuant to the adoption of the Report of Hearing Officer, the Commission orders that the Administrative Action of ADEM as contained in the Administrative Order in this cause dated June 21, 2018 and (also found in the record as Exhibit 17) is affirmed and approved and is the Order of this Commission; and

3. That this action has been taken and this Order shall be deemed rendered effective as of the date shown below; and

4. That a copy of this Order along with a copy of the Report of Hearing Officer, attached hereto as Exhibit A, and made a part hereof, shall be forthwith served upon each of the parties hereto either personally, or by certified mail, return receipt requested.

ISSUED this 15th day of February 2019.

APPROVED:

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

DISAPPROVED:

Commissioner

Commissioner

Commissioner

ABSTAINED:

Commissioner

This is to certify that this Order is a true and accurate account of the actions taken by the Environmental Management Commission on this 15th day of February 2019.

Samuel L. Miller, Chair
Environmental Management Commission
Certified this 15th day of February 2019

EXHIBIT A

BEFORE THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

DANNY CLEMENT BUILDERS, INC.,	)	
	)	
PETITIONER,	)	
	)	**EMC DOCKET NO. 18-07**
V.	)	
	)	
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT,	)	
	)	
RESPONDENT.	)	

RECEIVED
JAN 18 2019
ENV. MGMT.
COMMISSION

REPORT OF HEARING OFFICER

COMES NOW the undersigned Hearing Officer, duly employed by the Environmental Management Commission (hereafter Commission) to conduct the hearing and all related proceedings pertinent to this matter, and respectfully submits this report which includes Findings of Fact, Conclusions of Law and Recommendation. This report is submitted pursuant to Rule §335-2-1-.27 of ADEM Administrative Code and is submitted along with the entire record of these proceedings including a complete transcript of the hearing, all documents allowed into evidence, and other relevant briefs and submissions of the parties. There are also two documents that were offered but not allowed into evidence. They are ADEM Exhibits 43 and 44 and are sealed in an envelope. The Commission is instructed not to review or consider Exhibits 43 and 44 offered by the Department. This report is submitted to the Commission on the date indicated below.

I. INTRODUCTION AND PROCEDURAL HISTORY OF THIS PROCEEDING

The formal process of this matter began with the Alabama Department of Environmental

Management's (ADEM) issuance of an Administrative Order (18-083- LD on June 21, 2018) to Danny Clements Builders, Inc. (hereinafter Petitioner). That Administrative Order (hereinafter A.O.) found that the Petitioner was required to obtain a NPDES permit for this project and implement permit coverage. Petitioner failed to obtain said permit and failed to implement appropriate coverage for the project and, as a result of such, ADEM imposed a civil penalty on the Petitioner of $15,600.00 and ordered the implementation of various other Best Management Practices (hereinafter BMP).

On January 8, 2018, a Notice of Violation (hereinafter NOV) was sent to the Petitioner as a result of the Petitioner's construction site located at Eastchase Parkway and identified in the NOV as "Facility/Site: Clements Eastchase". That NOV stated generally that NPDES permit coverage had not been applied for as required by ADEM regulations and that Petitioner failed to fully implement and regularly maintain effective BMP to the maximum extent possible (see NOV; ADEM Exhibit 15). Petitioner responded through its agent, Joel Seawell, who indicated in that response (ADEM Exhibit 16) that permit coverage was not required and asked that ADEM "close the NOV."

Following Petitioner's response, ADEM issued A.O. 18-083-LD as referenced above. This A.O. of June 21, 2018 was followed by an answer from Petitioner which was titled "Defendant's Answer and Request for Hearing" filed with the Commission on July 13, 2018. That answer/response included the Petitioner's denial of the allegations of the NOV, and alleged that Petitioner had been wrongfully accused, that Petitioner was wrongfully fined ($15,600), that Petitioner was not required to have an NPDES permit for this site, that the disturbed earth for the project was .79 of one acre, that the project was not part of a common plan of development and that Petitioner had obtained all other applicable permits. Further, Petitioner submitted that no

reasonable person would expect to have to obtain a NPDES permit for the project and further, that the Petitioner is wrongfully accused of not implementing effective BMP and that no irreparable harm has occurred to the environment and no threat to the health or safety of the public ever occurred (this is not intended to be a verbatim statement of the issues mentioned; see "Defendant's Answer and Request for Hearing" filed July 13, 2018).

Notice of appearance by the Honorable Rebecca E. Patty was filed on behalf of ADEM and the Honorable Clay M. Phillips appeared via answer referenced above. The case proceeded through certain pre-trial proceedings including discovery with both parties waiving their rights and obligations of the forty-five (45) day hearing requirement of ADEM Admin. Code R. §335-2-1-.14 (1). The hearing was conducted by the undersigned on August 28, 2018 at the ADEM/Commission Office/Conference Room located at 1400 Coliseum Boulevard, Montgomery, Alabama. Briefs and recommended order(s) were submitted to the undersigned.

II. THE ISSUES

In the Petitioner's "Defendant's Answer and Request For Hearing" referenced above, it identified a number of issues which basically asserted that no permit was required for the project and that BMP were implemented by the Petitioner. ADEM identifies the issues as "I" the burden of proof; "II" the proper entry of the A.O in this case; and "III" the appropriateness of the civil penalty imposed. Reference is made to the "Joint Pre-Trial Order" entered by the undersigned on August 13, 2018, wherein the issues were identified.

III. STANDARD OF REVIEW

Pursuant to ADEM Admin. Code R. §335-2-1-.14(6), the Commission reviews ADEM's action on a *de novo* basis or standard. The burden rests with the Petitioner to show, by a preponderance of the evidence, that the Department's action should be modified or not approved.

The undersigned has considered all the evidence and argument submitted by the parties, observed and judged the demeanor of the witnesses and considered the standard of review in reaching these findings. The issue raised by the Petitioner concerning the burden of proof is addressed below.

IV. FINDINGS OF FACT

1. Mr. Danny Clements is in the commercial construction business and is a seasoned "builder" having been engaged in that industry for more than twenty years. (R.18). He operates an entity, identified by various exhibits offered into evidence, known as Danny Clements Builders, Inc.

2. Petitioner identified this project as an "ABC Strip Center" which was to be built at Eastchase Parkway and was to include space for an "ABC Store" with two "vacant spaces on each side" for rental. This was Petitioner's eighth building in Eastchase. The real property was purchased by Petitioner from "Milo's Hamburgers" (R.21), specifically, "Milo's RE II-Montgomery Eastchase, LLC" (see Petitioner's Exhibit 1).

3. Petitioner obtained a building permit (Petitioner's Exhibit 4) from the City of Montgomery and applied for a grading permit (which did not indicate on its face that a NPDES permit was needed). This was in part based upon Petitioner's discussion with City Engineer Greg Moseley, during which they concluded that the disturbed area was to be less than one acre in size. The total size of Petitioner's lot was 1.3 acres (R.34). Petitioner had an oral agreement (R.89) with the neighboring landowner to use a portion of that lot for a staging type area. (See R.35).

4. Petitioner received a letter from ADEM which was dated January 8, 2018, for which he signed on January 23, 2018. This was the NOV from ADEM (see Petitioner's Exhibit 21 and ADEM's Exhibit 15, which are the same document). As a result of receiving the letter from

ADEM, Petitioner hired Erosion Pros, LLC as a consultant. The principal/agent of Erosion Pros, LLC, who worked this project, was Joel Seawell.

5. Petitioner inquired of John Stanley, a licensed real estate agent in Montgomery, Alabama, as to whether "Boyd Cooper property (is) considered a common plan for development or part of a common plan for development?" (Petitioner's Exhibit 12). In that inquiry dated December 7, 2017, Petitioner acknowledged ADEM's position that this project is part of "common plan of the Eastchase development". (Petitioner's Exhibit 12).

6. Stanley replied by stating the "the Boyd investment property is NOT part of a common plan like Eastchase...". (Petitioner's Exhibit 12). "Each lot stands on its own".

7. Mr. Patrick Moseley is a duly qualified civil engineer, working for Professional Engineering Consultants, which was engaged by Petitioner on this project. Mr. Patrick Moseley advised Petitioner, that in his opinion, Petitioner did not have to have a NPDES permit for that project. This was an oral communication to Petitioner. Mr. Patrick Moseley did not go to the site during construction. Mr. Patrick Moseley was not familiar with ADEM Admin. Code R. §335-6-12. Mr. Patrick Moseley's opinion that Petitioner did not need a NPDES permit was based upon his calculation that this site was less than an acre (R.94). Mr. Patrick Moseley did not include any staging area in his calculation of disturbed space. Mr. Patrick Moseley based his opinion (in part) on the fact that this project/site was not part of a larger development.

8. Mr. Greg Moseley is and was employed by the City of Montgomery Engineering Department (R.118) and stated that he reviewed the grading permit application made by Petitioner for the project. His initial comment was that a NPDES permit was needed (R.121) but after Mr. Patrick Moseley contacted him and said it was "less than an acre", he "backed out of it". After a subsequent meeting with the City Engineer, he has (since that time) concluded that if he reviewed

this today, he would state that it is part of a larger development and therefore, the project would need a NPDES permit. Petitioner's Exhibit 2 (deed) does not tell him that this site is not part of Eastchase Development.

9. Joel Seawell, an employee of Erosion Pros, LLC, was engaged by Petitioner after being contacted by Lee Ann Clements upon Petitioner's receipt of a letter from ADEM. Mr. Seawell went to the site (on January 11, 2018). (R.151). Mr. Seawell sent an e-mail to ADEM and Mr. Quincy Barnhill stating that the project was less than an acre and the City had determined the project did not need an NPDES permit. Lee Ann Clements is the wife of Danny Clements and an employee of Danny Clements Builders, Inc.

10. Mr. Seawell confirmed that he remembered the telephone conversations outlined in ADEM's Exhibit 14. ADEM told him the project would need a permit. As early as December 6, 2017, Ms. Clements was told by ADEM that a permit would be needed at which time Ms. Clements indicated that a statement of intent to submit an application for permit would be e-mailed to ADEM by December 6, 2017. Mr. Seawell told ADEM that application papers for a permit would be filed by Monday, December 11, 2017.

11. On January 3, 2018, no such application for permit or documents showing an intent to apply for a permit had been received by ADEM. Mr. Seawell was told by ADEM if an application was not submitted by January 5, 2018, the Department would pursue an Administrative Order. Essentially, that same information was conveyed to Ms. Clements in a separate call from ADEM on the same date (January 3, 2018).

12. On December 11, 2017, witness Bergquest, an ADEM employee, advised Mr. Seawell (by phone) again that a permit was required and that an application for a permit needed to be submitted by December 12, 2017. Mr. Seawell stated in that telephone conversation that he

had advised Mr. Clements that he (Seawell) believed that a permit was needed. (ADEM Exhibit 14).

13. Mr. Quincy Barnhill also confirmed his telephone conversation with Mr. Seawell and Mr. Clements.

14. No application for a NPDES permit was ever presented by Petitioner.

15. The definition of the pertinent regulation regarding a part of a larger common plan is defined by ADEM Admin. Code R. §335-6-12-.02 (ADEM's Exhibit 2).

> "Plan or Sale" as included in the phrase "larger common plan of development or sale" is broadly defined to mean any announcement or documentation, sales program, permit application, presentation, zoning request, physical demarcation, surveying marks, etc., associated with or indicating construction activities may occur in an area.

16. This site has been the subject of a zoning request and there were advertisements for sale of properties around the Petitioner's site.

17. This site meets the definition of ADEM Admin. Code R. §335-6-12-.02 and is a part of a "larger common plan of development or sale".

19. Jenkins Creek is a state water body that is listed as an "impaired" water body pursuant to the Clean Water Act §303 (d) (see ADEM Exhibit 10 and R.282). This fact requires registration and implemental of additional BMP for the project because the water runs off from this site and flows into an unnamed tributary (UT) to Jenkins Creek.

21. The storm water run off or discharge from this site have/had a reasonable potential to be a significant contributor of pollutants to the water of this state.

22. A NPDES permit was required for this site regardless of its size.

V. CONCLUSIONS OF LAW

1. Petitioner's answer and request for hearing was timely filed pursuant to ADEM Admin Code R. §335-2-1-.04.

2. Petitioner's objection/motion as to the issue and requirements of the burden of proof is noted and the objection and motion are overruled and denied. The law as it exists at the present time is clear that the Petitioner here has the burden, ADEM Admin. Code R. §335-2-1-.27(5), and that burden must be met by a preponderance of the evidence.

3. The pertinent rule concerning the need of Petitioner to obtain NPDES permit coverage is addressed by ADEM Admin. Code R. §335-6-12-.02 (m) which reads:

> "NPDES Construction Site" means construction activities that are Required to obtain NPDES permit coverage under this Chapter. An NPDES Construction Site is construction that disturbs 1 acre or greater or will disturb less than 1 acre but is part of a larger common plan development or sale whose total land disturbing activities total 1 acre or greater. An NPDES construction site also includes construction sites, irrespective of size, whose stormwater discharges have a reasonable potential to be a significant contributor of pollutants to a water of the State, or whose stormwater discharges have a reasonable potential to cause or contribute to a violation of an applicable Alabama Water quality standard as determined by the Department.

(Specific terms contained in the above rule are defined in various subsections that follow). If the Petitioner's project fits under any one of the three criteria set out above then Petitioner was required to obtain the NPDES permit and implement permit coverage.

4. Pursuant to the specifications of ADEM Admin. Code R. §335-6-12-.02 (c), the Petitioner needed permit coverage if its construction site [as defined by ADEM Admin. Code R. §335-6-12-.02 (e)] was greater that one acre. There was significant testimony and documents presented regarding the size of the Petitioner's lot/site, the size of the access road and the size of the staging area, which had been located on a neighbor's property, on the west lot line of the

site. All three of these areas were a part of Petitioner's construction site as defined by ADEM Admin. Code R. §335-6-12-.02 (m).

5. The exact size of Petitioner's "Construction Site" as so defined, is not known and can not be ascertained from the evidence presented. Mr. Danny Clements' testimony that the staging area that he actually used was of a size approximately 80 feet by 80 feet is strong evidence that the disturbed area may have been less than one acre. However, Mrs. Bergquest's testimony, that the disturbed area site was larger than one acre, is also significant. Mrs. Bergquest formed her opinion from looking at the photographs (in particular ADEM's Exhibits 22, 23, 24 and 25). These photographs appear to show an area in use by Petitioner on the west side of the site that was greater than 80 feet by 80. Such could indicate that the construction site was larger than one acre.. The evidence does not establish the size of the disturbed area that allows the undersigned to determine the exact size. There is insufficient evidence to determine the size. Because of the burden of proof, as addressed above, the Petitioner must fail on this issue.

6. The evidence presented established that Petitioner's construction site was part of a larger common plan of development as defined by ADEM Admin. Code R. §335-6-12-.02(0). (See ADEM Exhibit 2). Petitioner's site had been the subject of zoning requests, was a part of advertised property sales in the immediate area and was a part of the larger development of the Boyd/Cooper Business Park. This site was a part of that Boyd/Cooper Development.

7. Petitioner's site of development is adjacent to a concrete waterway, which is a water body of the State of Alabama (see ADEM Exhibit 18). This concrete waterway is an unnamed tributary (UT) to Jenkins Creek and Jenkins Creek is on the ADEM 303(d) list of impaired state waters. Jenkins Creek is impaired due to sediment (R.192). The stormwater run

off from Petitioner's construction site flows into the UT to Jenkins Creek, which therefore, would have a reasonable potential to be a significant contributor of pollutants to a water body of the State. (See ADEM Admin. Code R. §335-6-16-.02 (m).

8. ADEM has assessed a civil penalty pursuant to Code of Alabama, 1975 §22-22A-5 (18) against Petitioner for conduct related to the failure to obtain a NPDES permit and for failure to follow BMP in regard to this the site and the building project. That assessed civil penalty was in the amount of $15,600.00. (See A.O.). ADEM is required to give consideration to the statutory guidelines of Code of Alabama, 1975 §22-22A-5(18)(c). In addition to the civil penalties imposed, that same A.O. requires Petitioner to cease further construction and related activities, other than BMP implementation, maintenance and sediment removal/remediation, which are all specifically addressed in Sections B, C, D and E of the A.O.

9. The Petitioner in this cause relied on certain professionals with whom he came in contact, or in some cases whom he employed, which led him to a determination that a NPDES permit was not required for this project. That fact, if other events had not occurred, would in some way impress the undersigned as to the Plaintiff's intent concerning the NPDES permit. However, the uncontradicted evidence is that the Petitioner was told by ADEM that a permit and permit coverage was required and Petitioner's employees acknowledged that fact (see ADEM Exhibit 14) while there was still time to obtain the permit and meet the permit requirements. Petitioner simply chose not to obtain coverage and gambled that his information was right and ADEM was wrong.

10. Reviewing the A.O. and the appropriate Code requirements of Code of Alabama, 1975 §22-22A-5(18)(c), the assessed penalty is appropriate and is due to be imposed.

11. All other requirements of the A.O. of June 21, 2018, which were imposed in this

case are appropriate.

VI. RECOMMENDATION

Based upon the record in the proceeding, including the oral testimony, all documents offered and admitted into evidence, the briefs, arguments and submissions, the undersigned recommends to the Alabama Environmental Management Commission that it enter an Order as follows:

> The Administrative Action of ADEM as contained in the Administrative Order in this cause dated June 21, 2018 and (also found in the record as Exhibit 17) is affirmed and approved and is the Order of this Commission.

Done this 18th day of January, 2019.

James F. Hampton
Hearing Officer