1/28/26

**DRAFT**

# Minutes
# Environmental Management Commission Meeting
# Alabama Department of Environmental Management Building
# 1400 Coliseum Boulevard
# Montgomery, Alabama 36110-2400
# December 12, 2025

**DRAFT**

**Environmental Management Commission Meeting**
**Alabama Department of Environmental Management Building**
**1400 Coliseum Boulevard**
**Montgomery, Alabama 36110-2400**
**December 12, 2025**

**Convened: 11:00 a.m.**
**Adjourned: 3:26 p.m.**

**Part A**

**Transcript**
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# Part A

MEETING OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

LOCATION: ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT (ADEM) BUILDING
ALABAMA ROOM
1400 COLISEUM BOULEVARD
MONTGOMERY, ALABAMA 36110-2400
DATE: FRIDAY, DECEMBER 12, 2025
TIME: 11:00 A.M.

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REPORTED BY: JEANA S. BOGGS, CCR
ABCR #7
Commissioner for the
State of Alabama at Large



APPEARANCES

COMMISSION MEMBERS PRESENT:
A. FRANK McFADDEN, P.E., CHAIRMAN
RUBY L. PERRY, DVM, MS, PhD, VICE CHAIR
JOHN (JAY) H. MASINGILL, III
J. PATRICK TUCKER, M.D.
MARY J. MERRITT
H. LANIER BROWN, II, ESQ.

NOT PRESENT:
KEVIN MCKINSTRY

ALSO PRESENT:
EDWARD POOLOS, DIRECTOR
ROBERT D. TAMBLING, ESQ., EMC LEGAL COUNSEL
SHAWN SIBLEY, ESQ., EMC LEGAL COUNSEL
DEBI THOMAS, EMC EXECUTIVE ASSISTANT



CHAIRMAN MCFADDEN: Okay. Welcome, everyone, to the December 12th Environmental Management Commission meeting. And we'll call the meeting to order. And the time is about three minutes past 11:00, I believe.

So, we do acknowledge we have a quorum here, so we'll continue with that. And our agenda Item Number One is consideration of the minutes of the meeting held on October 10th.

So, I'll entertain a motion for from the Commission regarding the minutes.

DR. TUCKER: Move to adopt the minutes.

MR. MASINGILL: Second.

CHAIRMAN MCFADDEN: Second. Any discussion about them?

(No response).

CHAIRMAN MCFADDEN: All right.



All those in favor, raise your hand.

(Commission Members raising hands).

CHAIRMAN MCFADDEN: Opposed?

(No response).

CHAIRMAN MCFADDEN: Motion carries.

All right. Agenda Item Number Two: Report from Director Poolos. Come on, Ed.

MR. POOLOS: That's right. Good morning. How are y'all?

CHAIRMAN MCFADDEN: Good morning.

MR. POOLOS: Welcome to the second meeting of the AEMC for FY-2026. So, it's our second one. We had our first one in October. So, it's great seeing you today.

I have a few items that have come up since last Commission meeting that I'm going to brief you on. So, thanks for hearing me out.

The first one is regarding federal budget. As I am sure you are aware, U.S. Congress passed a continuing resolution on November the 12th. This resolution not only ended the federal shutdown, but it also provided federal funding, including grant funding through January 30th of 2026. This approval date and the grant amount is one third of the fiscal year and thus includes one third of our Federal Performance Partnership grants. And we received notice just this week that the 1/3 funding is available for us to draw down. So that's really good news on that.

The next item is good news, as well, and it's regarding the Examiners of Public Accounts. Their legal compliance audit of the Department was just finalized. I am proud to report that there were only



two minor findings that were identified in this audit. The first one was related to the Environmental Management Commission, actually this commission. And it was related to the notices of vacancies for your positions. And it was not -- The vacant positions were not provided to the Secretary of State's Office for their website within the 45 days required. And we will be better at that and do -- and correct that going forward.

The second issue was related to the Department's charging of a bad check fee, which the State law allows us to charge up to $30 for that. We had been doing that, and so -- but we did not have that within our rules, which are required. So, within Division 1 rules, you will see coming before you here in the next few months us adding a bad check fee



to our fee schedule.

So, those were the only two findings that -- so glad to report that.

The next item is one that I am always excited to cover, and that's the recognition of the professional development of our personnel. When they reach significant milestones, we enjoy recognizing their accomplishments. Today, I have the pleasure of introducing to you 15 individuals who have achieved a milestone in their professional development. The Certified Public Manager, CPM-1, and the Advanced Certified Public Manager, CPM-2, programs through Auburn University, they support the development and enhancement of leadership skills of departmental managers.

When I call your name,



please stand and be recognized. For CPM-1 program, the first one is Scott Jackson of the Water Division.

The second one is Mary Kathryn Boucher of the Land Division.

Aaron Peters, Field Operations Division.

Grady Springer, Field Operations Division.

Dustin Stokes, Water Division.

There are also three individuals that completed CPM-1 that are not here today: Richard Jannett of the Land Division, Dody Moseley of Air Division, James Worley of Field Operations Division.

Congratulations to y'all. Thank y'all very much.

(Applause).

MR. POOLOS: For those completing CPM-2: Heather Griffin, Permits and Services; Clay James,

Water Division; Rachel McManus, Land Division; Bobby Rowland, Permits and Services Division; Otis Todd, Land Division; Anna Wood, Water Division.

There's also one individual not here today, and that's Brandy Tiblier from Air Division.

Congratulations to y'all.

(Applause).

MR. POOLOS: We want to thank you for dedicating your time and effort as you prepare to lead the agency into the future in doing this. So, we appreciate their efforts.

Another item is related to the air attainment areas. EPA is responsible for setting primary National Ambient Air Quality Standards, NAAQS, which serves to protect human -- the health of the people. They are required to develop secondary NAAQS standards which serve



to protect the welfare of the environment including visibility, soils, vegetation, aquatic systems and animals.

On December 27, 2024, EPA finalized new secondary SO2 NAAQS numbers at 10 parts per billion annual average over three years. States are required to submit to EPA recommendations for attainment or non-attainment status for all areas of the state. Based on statewide ambient SO2 monitoring results. Alabama has recommended that all areas be designated as attainment for secondary SO2 NAAQS. The highest calculated value of all monitors within the state was 1.58 parts per billion, which is much lower than the 10 parts per billion limit. So, we are proud to report we have submitted that to EPA.

The next item is the



ARPA funding for drinking water and wastewater improvements. This is funding that came through COVID, the CARES Act, and was appropriated for water and wastewater infrastructure projects by the Alabama Legislature. They appropriated $615 million under this program, and all of these funds have been obligated through 492 grant agreements.

As of yesterday, almost $307 million of these funds have been expended. That is right at 50% of the money. As a reminder, these funds must be spent by December of 2026, spent by December 2026, and we ensure that that's going to happen.

The last item I have is prior to the next Commission meeting, the State Legislature will come into session. With this being the last year of the quadrennial and an election year, they come into town



early this year. They come in Tuesday, January 13th. With that, we're already seeing and starting to review and commenting on pieces of draft legislation. And we know it's going to be a busy year.

Our budget request was submitted to the Finance Director and the Governor's Office on October 31st. And we will be diligent in advocating for funding for the Department and stay engaged regarding any legislation related to the Department.

That completes my report. But I hope each of you have a Merry Christmas and have a good holiday season. But I'll be glad to answer any questions if y'all have them.

CHAIRMAN MCFADDEN: Anybody have anything for Ed?

MR. POOLOS: Y'all are easy. I

appreciate it.
CHAIRMAN MCFADDEN: Good report. Thank you, Ed. Appreciate that.
I don't have a report as Chair. I just want to wish everyone a Merry Christmas and happy holidays, and the Department, the great work that they do, and the Commission.
And I want to welcome Dr. Perry as the Vice Chair of this group. And that goes to show you, when you miss a meeting, you get assigned duties maybe that someone else should have done when Dr. Perry and I, both, were not here the last time and got reelected.
So -- and Kevin McKinstry is not here today. I appreciate him sitting here last -- last meeting. So. Thank you-all and thank the Department for all the hard work. As we get into a new fiscal year, I know that started in October,



but this agency always amazes me when I compare them to other agencies. They want to find the right answer and real science to back it up. And we appreciate the hard work you do in doing that. It's not easy. So, thanks so much for that.
Okay. Agenda Item Four is -- I note that we're consideration of a proposed amendments to ADEM Administrative Code Division 335-1, General Administrative Regulations. And I call on the Department for comments.
MR. KELLY: Thank you, Mr. Chairman.
CHAIRMAN MCFADDEN: Yes, sir. Russell.
MR. KELLY: I'm Russell Kelly with the -- Chief of Permits and Services Division.
The Department held a public hearing on October 7th on



revisions to Division 1 of the ADEM Administrative Code. Proposed revisions included modifying forms and fee schedules necessary for the implementation of the Department's rules and regulations.
In total, there were 10 forms and five fee schedules that were modified. The Department is proposing to revise Administrative Code R-335-1-6-.07 by adding visible emission certification fees to the fee schedule G and reformatting the program fees outlined in fee schedules A, C, D, G and H.
During the public hearing, there were no comments received to the proposed regulations. At this time, I'd like to ask for your favor of consideration and answer any questions.
CHAIRMAN MCFADDEN: Any -- any questions for Russell?



(No response).
CHAIRMAN MCFADDEN: Okay.
MR. KELLY: All right.
CHAIRMAN MCFADDEN: Good job. Appreciate it.
Okay. I'll entertain a motion from the Commission regarding the proposed amendments to Division 1, General Administrators -- Administration Regulations.
DR. PERRY: I move to adopt the proposed amendments.
CHAIRMAN MCFADDEN: I have a motion. Do we have a second?
DR. TUCKER: Second the motion.
CHAIRMAN MCFADDEN: Any further discussion on this?
(No response).
CHAIRMAN MCFADDEN: Hearing none, I call for the question. All in favor, raise your hand.
(Commission Members raising hands).

CHAIRMAN MCFADDEN: And those opposed?

(No response).

CHAIRMAN MCFADDEN: Motion carries. Signature time. We should have Christmas carols playing during this interim while you're doing that. We'll do that next year, huh?

Okay. Thank you, Debi.

Okay. Agenda Item Five will be consideration of proposed amendments to ADEM Administrative Code Division 335-14, Hazardous Waste Program Regulations. We'll hear from Mr. Cobb on these.

MR. COBB: Yes. Thank you, Mr. Chairman. And good morning, Commissioners. I'm Stephen Cobb, Chief of the Land Division.

And here today to recommend the Commission adopt amendments to the Department's Division 14, Hazardous Waste Program



Regulations.

These amendments propose changes to Chapters 1 through 8 and 11 of the Division 14 regulations to adopt seven revised federal rules previously promulgated by EPA. The first of these rules excludes carbon dioxide streams from the definition of solid waste that would otherwise be regulated as hazardous provided they're captured from emission sources, injected into Class 6 wells and meet certain other conditions.

The second rule identified waste generated primarily from certain processes that support the combustion of coal and other fossil fuels that when co-disposed with coal combustion residuals are not subject to hazardous waste regulations.

The third rule finalizes editorial and technical revisions to



EPA's Method 23 test method for organic emissions.

The fourth and fifth rules made corrections and clarifications to specific provisions in the existing hazardous waste regulations that were promulgated in the Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the definition of Solid Waste Rule.

The sixth rule established alternative requisite standards for certain ignitable spilt refrigerants being recycled for reuse.

And the seventh rule amended the hazardous waste manifest and e-manifest regulations to increase the utility of the federal e-manifest system and also made changes to the hazardous waste export and import requirements to more



closely link manifest data with the existing international movement documents.

Additionally, revisions were proposed to clarify financial assurance requirements for government owned, state and federal, transporter facilities and the financial requirements during the Post-closure care period and corrective action period.

The proposed revisions to Division 14 were the subject of a public comment period which ran from August 20 to October 7, 2025. A public hearing was held at the Department on October 7. No oral comments were received during the hearing, and one set of written comments were received during the public comment period. No changes were made to the regulations based on the comments.

The Department requests that the Commission adopt the proposed changes to the Division 14 regulations, and I'm happy to answer any questions you that you might have.

CHAIRMAN MCFADDEN: Steve, what was the one comment at the hearing generally concerning; do you remember? If that's back in your file, don't worry about it.

MR. COBB: It was a question regarding the spent refrigerants being recycled and how that impacted the recycling program in the state. The response was, these requirements for recycling and spent refrigerants have been adopted by EPA, and we are required to incorporate those into our rules. So, it doesn't affect our Division 13 recycling program. It's how they're treated in the Division 14 regulations.



CHAIRMAN MCFADDEN: Okay. Good. Thank you.

Anything else for Mr. Cobb on this?

(No response).

CHAIRMAN MCFADDEN: Thank you, Steve. Appreciate it.

Okay. I guess we need to entertain a motion regarding adopting these Division 14 regulations.

MS. MERRITT: I move that we adopt the proposal.

MR. MASINGILL: Move -- second.

CHAIRMAN MCFADDEN: And we have a motion and a second. Any further discussion?

(No response).

CHAIRMAN MCFADDEN: If not, all in favor, raise your hand.

(Commission Members raising hands).

CHAIRMAN MCFADDEN: Okay. All



opposed?

(No response).

CHAIRMAN MCFADDEN: None opposed. Motion carries.

I'm going to go ahead, Debi, if it's okay with you, I'm going to go ahead and start reading some of this information on Agenda Item 6, which involves the Petitioner, Michael Del Vecchio, et al., Petitioners vs ADEM and City of Dothan. Excuse me while I sign. Can't write and talk at the same time.

The Chair notes that this agenda item pertains to Michael Del Vecchio. Hope I'm not butchering that name too badly, et al., versus ADEM and the City of Dothan, Alabama, EMC Docket Number 26-01, in which the Petitioners filed a request for a hearing regarding ADEM's issuance, renewal and modification of solid



waste disposal facility permit number 35-06 on October 24, 2025, to the City of Dothan for the disposal of solid waste at the City of Dothan Sanitary Landfill.

The Chair notes that the Petitioners also filed a motion for stay for this permit which included a request for oral argument on the motion for stay and attached affidavits and exhibits.

Also filed were Respondent ADEM's response to request -- response to requests for stay of administrative action with attached affidavit and copy of solid waste disposal facility permit number 35-06. And intervenor, City of Dothan's opposition to Petitioner's motion of stay with attached exhibits A and B.

The Chair notes that the Petitioners' motion for stay will be

considered by the Commission under this agenda item. So, prior to consideration of the motion for stay, I entertain a motion from the Commission regarding granting or denying the Petitioners' request for oral arguments on the motion for stay.

MR. BROWN: Move to allow oral arguments.

CHAIRMAN MCFADDEN: Motion.

DR. TUCKER: Second.

CHAIRMAN MCFADDEN: And a second. All in favor, raise your hand.

(Commission Members raising hands).

CHAIRMAN MCFADDEN: Any opposed?

(No response).

CHAIRMAN MCFADDEN: Okay. The motion carries.

Okay. The second thing we need to do is suggest a time limit



for this. Maybe 10 minutes for the Petitioners and -- I don't know. Lanier, what do you think? Ten minutes total for the intervenors.

MR. BROWN: Let them talk until they hang themselves.

CHAIRMAN MCFADDEN: All right. Well, unlimited timing. All right. No problem with that. No, let's -- Why don't we do 10 minutes each for all three so the Petitioners, the Intervenors and the Department. Is that okay?

DR. PERRY: Yes.

CHAIRMAN MCFADDEN: So, do I have a motion for that? Do we need a motion?

MR. BROWN: So moved.

DR. PERRY: Second.

CHAIRMAN MCFADDEN: The motion is seconded. All in favor?

(Commission Members raising hands).



CHAIRMAN MCFADDEN: All opposed?

(No response).

CHAIRMAN MCFADDEN: No. Motion carries.

I don't know if we actually needed a motion for that. We have one anyway.

Okay. All right. Is the timer and all that set up ready to go? Just want to -- Got that. Okay. Sorry. We don't have that on video today. There are some technical difficulties. But our staff is keeping that time in the back, and she will gong you after your time is up and, if not, worse. So, let's try to stick to that.

So, I guess first up, we will hear from the Petitioners' attorney, and the Chair asks that the attorneys provide their name and who they represent prior to beginning the argument.



MR. LUDDER: Thank you, Mr. Chairman. My name is David Ludder. I represent the Petitioners in this matter. Ten minutes is going to be hard to keep within, but I will move as fast as I can.

I would suggest that you pull the exhibits out that we filed with our motion, because I would like -- doing that will allow you to visually understand some of my issues.

On a motion for stay, there are five criteria that the Commission must consider, the first of which is whether there is a substantial likelihood that the Petitioners will prevail on the merits.

In this motion, we have presented four alleged errors by the Department in granting the permit. The first of which is that the

Department exceeded its authority in granting this permit. The permit says that ADEM is permitting 506 acres as a permitted area. This map shows that acreage. Now, this is Exhibit A in your Exhibits -- I'm sorry, Exhibit B. And the facility boundary identified in the permit, encompasses 506 acres along that outside line.

The statute that authorizes ADEM to issue a permit says ADEM is authorized to permit a solid waste management facility. Now, you have to ask, what is a solid waste management facility? By statute, that's defined. Also defined in the statute is a term "facility." Now, a facility is a -- all contiguous land, structures and other appurtenances used for the disposal of solid waste. So, not all contiguous land, but only those lands



that are used for the disposal of solid waste. This whole area over here -- it's hundreds of acres -- there is no land in there that is used for disposal of solid waste. In fact, there's a police training facility here which is not used for disposable of solid waste. And over on this side, there are -- there's a facility here that is used for disposable of solid waste, a facility down here which is proposed to be used for solid waste, and a facility here which is proposed to be used for solid waste.

All this other land on this side of the road is not used for disposable of solid waste. That includes wetlands. It includes setbacks and buffer zones and stuff like that that cannot be used for disposable of solid waste.

So, in fact, what the



Department has done is granted a permit for 506 acres, which it cannot do. It can permit these -- these facilities where disposal of solid waste is occurring or structures that are used for the disposal of solid waste, such as sediment ponds or -- over here, there's a scale, a solid waste scale that's used for disposal. There's access roads that are used for disposal. But all the other land, other than those areas I've identified, are not used for disposable of solid waste.

My suggestion is that the 506 acres that's mentioned in the permit is in excess of the Department's authority to put in the permit. And that permit should be revised to exclude those areas that are not used for disposable of solid waste. That's issue number one. And on that point, I think we have a



substantial likelihood of success on the merits.

The second point is -- begins with this introductory remark. There is a rule that applies. It says the Department may not -- the Department may issue a permit if the application complies with Division 13. In a previous case, this Commission said a permit may be issued only if the application demonstrates compliance with Division 13.

Now, we have identified in our motion several things that did not comply with Division 13, which we think are rather obvious and undisputable. The first is that Division 13 requires the applicant to provide to ADEM the names and addresses of all adjacent landowners, identify -- or the addresses identified from county tax records.

ADEM -- or excuse me, the applicant did provide such lists, but five individuals we've identified had an incorrect address that is -- that is not reflected in county tax records. And with respect to that, Exhibits D, E, F, G, H, I and J are the county tax records which reflect what the true addresses are of those individuals.

So, the applicant failed to provide correct addresses from county tax records; and as a result, ADEM sent out notices to these five people at the wrong address and all were returned undeliverable. They didn't get noticed.

That is a really significant oversight. Those people essentially were uninformed about the public hearings that were scheduled on this permit.

Again, we think we will



prevail on that issue. There's been no issue raised that met the exhibits that we -- that I just identified are incorrect or that the addresses provided by the applicant were wrong. Nobody has disputed that.

The next issue is -- has to do with groundwater protection. There is a rule that says the applicant shall measure the groundwater elevation at the location of the proposed cell. This is in the case of a construction and demolition landfill. You do this at the location of the proposed cell rather than at the location of the liner system. In a C and D landfill, there isn't a liner system.

So, the rule says you do this groundwater measurement at the location of the proposed cell. Immediately following that requirement, there's another sentence



that says: Groundwater measurements taken in the area of the proposed cell something has to be done with those measurements.

So, you have two differing statements in the rule. One says, in the location of the proposed cell. The other says, in the area of the proposed cell. How do you reconcile those?

First off, the purpose of this rule is to protect the groundwater beneath the cell, not somewhere distant from the cell. That's the purpose of the rule.

But, secondly, there is a rule of interpretation that applies; and that is, if you have a general standard stated and a specific standard stated, you follow the specific standards. In this case, the general standard is in the area of the proposed cell. The



language that says in the location of the proposed cell. That's the specific standard. That's what has to be followed.

CHAIRMAN MCFADDEN: David, you're at 10 minutes. So, wrap it up.

MR. LUDDER: Okay. Okay. The second item -- I guess this is the third item refers to Exhibits R and S. There is a rule that requires that -- that the elevation of groundwater -- or the separation distance between the bottom of the liner system and the groundwater has to be a certain number of feet. In Exhibits R and S, there are diagrams that show that this separation distance was measured from the top of the liner system rather than what the rule requires at the bottom of the liner system.

So, the applicant has

taken an advantage of including the liner system in that distance measurement, which he should not have done.

All right. There are other issues with respect to irreparable harm. Our affidavits address what harm the Petitioners are suffering -- have suffered in the past during operation, full operation of landfill. Those harms will continue if this permit is allowed. Of course, this stay is only intended to survive for a short period of time until the appeal is finished. If, in fact, we lose on all these issues, the permit remains in place and becomes active. But in the interim, before a final decision is reached, we're asking for a stay to prevent the continuation of harm to the -- Petitioners who live right on the boundary line of this facility.



And finally -- let me just.

CHAIRMAN MCFADDEN: Yeah, real quickly, David. You're well passed limits.

MR. LUDDER: Let me really quickly say that we didn't have -- the only argument ADEM made in its response was that the Petitioners have not suffered irreparable harm. Irreparable harm means harm that can't be compensated for with money. Well, these folks are suffering terrible odors where they have to stay inside. They've gotten ill because of the odors. They have these buzzards that are dropping, you know, their waste all over their property. And there's other issues that the affidavits discuss.

The last issue is one of the criteria says, balancing -- you have to -- the harm to the -- the



benefit to the Petitioners must outweigh the harm to the permittee.

The affidavit that was submitted by the City in that regard is full of conjecture and speculation, not personal knowledge. There's all kinds of language in that affidavit about if this and may that. And if you read that closely, it doesn't satisfy personal knowledge. It doesn't demonstrate what the cost to the City will be. It speculates and offers conjecture about that cost.

CHAIRMAN MCFADDEN: I think we've all read that and appreciate that. But -- but we appreciate your comments, David.

MR. LUDDER: Yeah. And I would lastly point out, for nine years and seven months, this City has transported its waste to another landfill. It can do that again, at



least during this interim time when the stay could be in effect.

Thank you.

CHAIRMAN MCFADDEN: Thank you, Mr. Ludder.

All right. Secondly, if I can find my notes, we'll hear from the Intervenor's attorney.

MR. COX: Oh, we're going to let ADEM go first if that's all right.

CHAIRMAN MCFADDEN: That's okay with us. Yeah, go ahead.

MR. SASSER: May it please the Commission. My name is Chris Sasser. I represent the Department.

This is extraordinary relief that they're asking for. I think we all know this. And correspondingly, the rules require a heavy burden, and we would like to -- well, and all those required elements have to be met or it's fatal. While we stand by our decision, we would

just like to go right to the issue of irreparable harm, because what you didn't hear just now on the record is that it's not just -- the Commission should not take the affidavit just at face value as gospel.

There's two things very important that cuts against their claims of irreparable harm. One is that there was no complaints made while the MSW expansion they complain about area operated between August of 2020 and April 1st of 2022. I think that's important.

And the second thing is, if there was a good inspection record during that time, we were out there no less than seven times. I think that needs to be weighed. And I think when you weigh all the evidence, that these affidavits really shouldn't be given very much weight. As a result, their motion to



stay should be denied.

I'll be glad to answer any questions if you have any.

CHAIRMAN MCFADDEN: Mr. Sasser, do you know how many notifications went out, individual notifications, or -- I'm trying to figure out that there was three or four that were not at the right address. So, how many total notices went out? Do we know, or would the Intervenors maybe know that?

MR. SASSER: The Intervenors may know that. I think there is somewhere around 30 or 40 something addresses that was on that list that we gave, that was given to us and that we sent out notices for. And that happened twice. We had two public meetings -- two public hearings, and actually before one of the public hearings, we had a public engagement session.



Also, we sent out a -- every door delivering a little postcard within, I think it was, about a half a mile radius. And that's in addition to the website notification that we had.

And plus, you know, as you know, Mr. Ludder said this thing is -- you know, he was talking about nine-and-a-half years. Well, that's because there's been controversy and contesting our -- the permit for since 2016 -- 2015, 2016. And, you know, there's been, what, three, four or five public hearings as a result. There's been some court cases. I mean, this thing was not done in a corner.

So, it's a pretty notorious event. And so, you've got that -- got that to consider.

I'll say one other thing just about notice is that we did see



the comments about the -- about the notice. And, you know, Dothan, you know, assured us that what the list they got was from one of the databases that was accessed through the GIS.

And so, you know, that's an issue that needs to be really fleshed out at a full-blown hearing rather than just by trial by affidavit.

CHAIRMAN MCFADDEN: Yeah. Because what I remember Mr. Ludder saying was the requirement for the Department is to go to the tax records. Is that a requirement or just a suggestion?

MR. BROWN: For the applicant?

MR. SASSER: For the applicant to take a thing from the tax record.

CHAIRMAN MCFADDEN: Yeah. I'm sorry.

MR. SASSER: Yes, sir. And then

we take the list, which we did both times, and send them to those addresses.

I think what's probably going to be an issue in the request for a hearing is exactly, you know, was there one or two addresses in the databases? I think that Dothan says that they accessed it through the GIS, and that may have put up a different address and maybe the ones that are on the cards that Mr. Ludder -- we don't know, which is -- but, again, for your purposes today, you really don't have to go there. I think just on the basis of the other elements, and especially irreparable harm and the lack of weight, you really should give the Petitioners' affidavits, I think, is enough to just pass this to the full-blown hearing.

MR. BROWN: What -- what's the



timeline on the full appeal?

MR. SASSER: I'm sorry. The timeline?

MR. BROWN: Timeline on the full appeal.

MR. SASSER: That could be -- Typically these things last months. I mean, I would think eight months to a year is -- would not be unusual, because you know, by the time you have the pre-hearing activities, then you have the hearing, and then the transcript and the sides, you know, brief the issues, and then it returns to you. I think the -- yeah, I think that would -- I think that would be a good estimate.

CHAIRMAN MCFADDEN: Okay. Does anybody have any other questions of Mr. Sasser?

(No response).

CHAIRMAN MCFADDEN: Okay. Thank you very much.



MR. SASSER: Thank you.

CHAIRMAN MCFADDEN: All right. We'll hear from the Intervenor.

MR. COX: Mr. Chairman, thank you very much. I will be brief.

My name is Buddy Cox. I'm from Bradley Arant Boult Cummings, and I represent the City of Dothan. And I'm -- We are looking forward to trying this case on the merits. We think we'll prevail on every issue. But that's not why we're here. We're here on a motion to stay where the Petitioners bear the burden of proof of the four elements that are set forth in the regulations, and they have to prove every single element by preponderance of the evidence.

And the question that we posed to Mr. Wright, who's the public works director and gave the affidavit, was: What happens if this



permit is stayed? Because, remember, the permit was issued and the facility was built, and this Commission affirmed the permit. The Circuit Court affirmed the permit. It was the Court of Civil Appeals that said that the host government approval was invalid, and we had to go back to the drawing board.

So, the landfill was closed, but then when the permit was finally reissued in October, that was allowed it to be reopened. So, we are actively discussing disposing of waste in the landfill facility that was built pursuant to the permit that was issued and now reissued.

So, the question we posed is, what do we have to do if the permit stayed? And that's the basis of Mr. Wright's affidavit. Yes, it's assumed that y'all grant the stay. And so, it's based upon

his knowledge of what would happen to the City and the citizens of Dothan, the cost to them, and the irreparable harm that would be caused to them and the public interest if you basically just put a hold on this permit and we've been actively operating since it was reissued and we've reopened that cell.

So, I would implore you, let's get the hearing. You've got a hearing officer. We've got valid responses to each of the merit arguments. We think the permits are valid. We think the construction has been done in accordance with that permit. And we need to get to the hearing and get a resolution, but don't put a stop on what Dothan is currently doing.

Thank you. And I'm happy to answer any questions. We did -- oh, go ahead, Mr. McFadden.



Sorry.

CHAIRMAN MCFADDEN: So, right now, the -- the solid waste is being transported out of state?

MR. COX: No. The waste is being -- the -- was being transported to the landfill.

CHAIRMAN MCFADDEN: Before that.

MR. COX: Before that, there was a transfer station operated outside the city limits, and the City had a contract with that transfer station. When the permit was issued, the City gave a notice of termination -- and this is in Mr. Wright's affidavit -- notice of termination to that. And Mr. Wright understood that because we were, I guess, the main customer or only customer of that transfer station, that its operations have basically shut down.

So, we don't know what would be involved. The answer is,



you know, we don't know what would be involved in getting that reopened. But in the interim, there's another one, but we don't have any contract with that other one that still exists in the city area.

If we aren't able to use a transfer station, then we would have to haul it out of state, and that would add to the cost of the facilities. And also you've got, I think, eight employees, or it's in this Wright's affidavit. You've got employees that currently work at the landfill. And they would have to -- they would be -- they would lose their job, or they would be put on furlough. And in the interim, we would have to find another place to dispose the garbage.

DR. PERRY: Just for clarity, one more. When was the permit issued? When was it reissued? What



date? What year?

MR. COX: When was it --

DR. PERRY: When was it issued and when was it reissued?

MR. COX: It was issued in 2020. I'm looking at Chris. Issued in 2020 --

MR. SASSER: 2019.

MR. COX: 2019. I'm sorry. The facility was constructed and certified by ADEM and opened in 2020, and it operated from 2020 until 2022. It was closed in 2022 after the court procedure that challenged host government approval. It's important to remember, it didn't challenge the permit itself, although there were challenges to the permit in that appeal. It was strictly the host government approval issue that caused the permit to be vacated.

And so, it sat dormant from 2022 to those new cells that

were constructed under that modified permit. It set dormant from 2022 until the permit was reissued or the modification was granted again in 2025.

DR. PERRY: What was the plan during that time when it was closed?

MR. COX: That was when they were using -- either they were using the transfer station or they were hauling directly to the out-of-state disposal facility.

DR. PERRY: Thank you.

CHAIRMAN MCFADDEN: Anything else?

MR. COX: No, sir. Like I said, I'm happy to answer any other questions.

CHAIRMAN MCFADDEN: Anybody else?

(No response).

CHAIRMAN MCFADDEN: Okay.

MR. COX: Thank you.



CHAIRMAN MCFADDEN: Thank you, Mr. Cox. A legacy name around here, by the way of course.

MR. COX: I understand. We refer to each other as "the other Buddy Cox."

CHAIRMAN MCFADDEN: The other Buddy. Well, he's not going to refer to you that right now, I can assure you. So, yeah. Thank you.

All right. You have the information. You have the presentations. The Chair will entertain a motion to either grant the motion for stay or deny the motion for stay.

So, open for a motion for either. This isn't the top 10 minutes.

MR. BROWN: Move to deny.

CHAIRMAN MCFADDEN: So, I have a motion to deny the stay. Did I hear a second?



MR. MASINGILL: Second.

CHAIRMAN MCFADDEN: I have a second. Any further discussion?

(No response).

CHAIRMAN MCFADDEN: Hearing none. All in favor, raise your hand.

(Commission Members raising hands).

CHAIRMAN MCFADDEN: All opposed.

(No response).

CHAIRMAN MCFADDEN: Motion carries.

Okay. Debi, you're going to have a sign something? Okay.

(Commission Members signing document).

CHAIRMAN MCFADDEN: I'm going to move on to Agenda Item 7, which is "Other Business." Is there any other business for the Commission?

(No response).

CHAIRMAN MCFADDEN: Okay.



Hearing none. Future business sessions note the proposed date for Commission meetings in calendar year 2026 have been circulated, and they are February 13, April 10, June 12, August 14, October 9 and December 11. And I'll entertain a motion from the Commission regarding adopting these meeting dates and location.

MR. BROWN: So move.

DR. PERRY: Second motion.

CHAIRMAN MCFADDEN: And second. Any discussion?

(No response).

CHAIRMAN MCFADDEN: All in favor, raise your hand.

(Commission Members raising hands).

CHAIRMAN MCFADDEN: All opposed?

(No response).

CHAIRMAN MCFADDEN: Motion carries.

Okay. We get to the

public comment period here. Were there any -- Debi, were there any registered to speak?

MS. THOMAS: No, sir.

CHAIRMAN MCFADDEN: Okay. Hearing none. The only thing left is --

MR. BROWN: I move to adjourn.

CHAIRMAN MCFADDEN: As Lanier says, we're --

MR. MASINGILL: Second.

CHAIRMAN MCFADDEN: -- in adjournment. And we have a second motion.

DR. PERRY: Second.

CHAIRMAN MCFADDEN: And a second -- a motion and a second and another second. And sounds like we're ready.

All in favor, raise your hand.

(Commission members raising hands).



CHAIRMAN MCFADDEN: All opposed?

(No response).

CHAIRMAN MCFADDEN: We're adjourned.

Thank y'all.

(WHEREUPON, the Commission meeting was concluded at 3:26 p.m.)



* * * * *

REPORTER'S CERTIFICATE

* * * * *

STATE OF ALABAMA

TALLAPOOSA COUNTY

I, Jeana S. Boggs, Certified Professional Reporter and Notary Public in and for the State of Alabama at Large, do hereby certify on Friday, December 12th, 2025, that I reported the meeting in the matter of:

MEETING OF THE

ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT (ADEM) BUILDING

ALABAMA ROOM

1400 COLISEUM BOULEVARD

MONTGOMERY, ALABAMA 36110-2400

That the foregoing 58 computer-printed Pages contain a true and correct transcript of the meeting set out herein. I further certify that I am neither of relative, employee, attorney or counsel of any of the parties, nor am I a relative or



employee of such attorney or counsel, nor am I financially interested in the results thereof. All rates charged are usual and customary.

I further certify that I am duly licensed by the Alabama Board of Court Reporting as a Certified Court Reporter as evidenced by the ABCR number following my name found below.

This 19th day of January, in the year of our Lord, 2026.

/S/Jeana S. Boggs

Jeana S. Boggs, CCR
ACCR NO. 7, Exp 9/30/2026
Certified Court Reporter and
Notary Public
Commission expires: 8/9/2026

**Part B**

## Attachment Index

| | |
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| **Attachment 1** | **Agenda** |
| **Attachment 2** | **Resolution adopting amendments to ADEM Administrative Code Division 335-1, General Administration Regulations, and Attachment A, Final Proposed Rules (Agenda Item 4)** |
| **Attachment 3** | **Resolution adopting amendments to ADEM Administrative Code Division 335-14, Hazardous Waste Program Regulations, and Attachment A, Final Proposed Rules (Agenda Item 5)** |
| **Attachment 4** | **Order granting Petitioners' Request for Oral Argument (Agenda Item 6)** |
| **Attachment 5** | **Order denying Petitioners' Motion for Stay (Agenda Item 6)** |

**Attachment 1**

Amended 12/5/25

AGENDA*
MEETING OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION
DATE: December 12, 2025
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



* 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 OCTOBER 10, 2025

2. REPORT FROM THE ADEM DIRECTOR

3. REPORT FROM THE COMMISSION CHAIR

4. CONSIDERATION OF PROPOSED AMENDMENTS TO ADEM ADMINISTRATIVE CODE DIVISION 335-1, GENERAL ADMINISTRATION REGULATIONS

The Commission will consider proposed amendments to ADEM Administrative Code Division 335-1, General Administration Regulations. Revisions to Division 1 are being proposed to modify, add, and delete forms required for the implementation of the Department's rules and regulations. Additional modifications are proposed to restructure and reformat the Hazardous Waste Permit fees outlined in Fee Schedule C, to restructure and reformat the Brownfield Redevelopment and Voluntary Cleanup Program fees outlined in Fee Schedule H, and to add Visible Emission Certification fees to Fee Schedule Revisions G – Variances, Certifications, and Licenses. Additional modifications are proposed to reformat the Program Fees outlined in Fee Schedules A, D, and G. The Department held a public hearing on the proposed amendments to Division 1 of the ADEM Code on October 7, 2025.

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

The Commission will consider proposed amendments to ADEM Administrative Code Division 335-14, Hazardous Waste Program Regulations. Revisions to Division 14 are being proposed to adopt seven codified and revised federal rules promulgated by EPA. These rules include: Conditional Exclusion for Carbon Dioxide (CO2) Streams in Geologic Sequestration Activities, Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities, Test Method for Standards to Control Organic Emissions, Technical Corrections for the Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule, Second Technical Corrections for the Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule, Management of Certain Hydrofluorocarbons and Substitutes Under the American Innovation and Manufacturing Act of 2020, and Integrating e-Manifest With Hazardous Waste Exports and Other Manifest Related Reports, PCB Manifest Amendments, and Technical Corrections. Additionally, revisions to Division 14 are proposed to clarify the financial assurance requirements for government owned (state and federal) transporter facilities and the financial requirements during the post-closure care period and corrective action period for owners and operators of hazardous waste treatment, storage, and disposal facilities. The Department held a public hearing on the proposed amendments to Division 14 of the ADEM Code on October 7, 2025.

6. MICHAEL DEL VECCHIO, ET AL., PETITIONERS V. ADEM, RESPONDENT, EMC DOCKET NO. 26-01 [IN THE MATTER OF ADEM'S ISSUANCE (RENEWAL AND MODIFICATION) OF SOLID WASTE DISPOSAL FACILITY PERMIT NO. 35-06 ON OCTOBER 24, 2025, TO THE CITY OF DOTHAN FOR THE DISPOSAL OF SOLID WASTE AT THE CITY OF DOTHAN SANITARY LANDFILL]

The Commission will consider the Petitioners' Motion for Stay of Solid Waste Disposal Facility Permit No. 35-06 and request for oral argument included in the Motion for Stay filed by the Petitioners Michael Del Vecchio, Kara Del Vecchio, David F. Del Vecchio, Peggy R. Del Vecchio, William R. Novack, Tara Novack, Anthony Keith, and Emily Keith in this appeal/request for hearing.

7. OTHER BUSINESS

8. FUTURE BUSINESS SESSIONS

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**

**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 335-1 of the Department's Administrative Division – General Administration Rules 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. §§ 22-22A-5, 22-22A-6, 22-22A-8 (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 335-1 [rules 335-1-1-.07/ Departmental Forms, Instructions, and Procedures (Amend); 335-1-6-.07 / Payment of Fees (Amend)] of the Department's Administrative Division – General Administration Rules, administrative code attached hereto, to become effective forty-five days, unless otherwise indicated, after filing with the Alabama Legislative Services Agency.

**ENVIRONMENTAL MANAGEMENT COMMISSION**
**RESOLUTION**

ADEM Admin. Code division 335-1 – of the Department's Administrative Division – General Administration Rules

IN WITNESS WHEREOF, we have affixed our signatures below on this 12th day of December, 2025.

APPROVED:

Mary J. Merritt, Commissioner

H. Lanier Brown, II, Commissioner

J. Patrick Tucker, Commissioner

Kevin McKinstry, Commissioner

John (Jay) H. Masingill, III, Commissioner

Ruby L. Perry, Commissioner

A. Frank McFadden, Commissioner

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DISAPPROVED:

Mary J. Merritt, Commissioner

H. Lanier Brown, II, Commissioner

J. Patrick Tucker, Commissioner

Kevin McKinstry, Commissioner

John (Jay) H. Masingill, III, Commissioner

Ruby L. Perry, Commissioner

A. Frank McFadden, Commissioner

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**ENVIRONMENTAL MANAGEMENT COMMISSION**
**RESOLUTION**

ABSTAINED:

Mary J. Merritt, Commissioner

H. Lanier Brown, II, Commissioner

J. Patrick Tucker, Commissioner

Kevin McKinstry, Commissioner

John (Jay) H. Masingill, III, Commissioner

Ruby L. Perry, Commissioner

A. Frank McFadden, Commissioner

**This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 12th day of December 2025.**

**A. Frank McFadden, Chair**
**Environmental Management Commission**
**Certified this 12th day of December 2025**

**ATTACHMENT A**

APA-1

**TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION**

| | |
|---|---|
| Control: | 335 |
| Department or Agency: | Alabama Department of Environmental Management<br>General Administration |
| Rule No.: | 335-1-1-.07 |
| Rule Title: | Departmental Forms, Instructions, And Procedures |
| Intended Action | Amend |

| | |
|---|---|
| Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? | No |
| Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? | Yes |
| Is there another, less restrictive method of regulation available that could adequately protect the public? | No |
| Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? | No |

To what degree?: N/A

| | |
|---|---|
| Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? | NA |
| Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? | Yes |
| Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? | No |

| | |
|---|---|
| Does the proposed rule have an economic impact? | No |

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

Certification of Authorized Official

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

Signature of certifying officer: *Jeffery W. Kitchens*
Jeffery W. Kitchens

REC'D & FILED
AUG 19, 2025
LEGISLATIVE SVC AGENCY

Date: Tuesday, August 19, 2025

APA-2

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**
**GENERAL ADMINISTRATION**

**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** Alabama Department of Environmental Management

**RULE NO. & TITLE:** 335-1-1-.07 Departmental Forms, Instructions, And Procedures

**INTENDED ACTION:** Amend

**SUBSTANCE OF PROPOSED ACTION:**
The Department proposes to amend Rule 335-1-1-.07 in order to modify, add, and delete forms required with the implementation of ADEM Program Regulations.

**TIME, PLACE AND MANNER OF PRESENTING VIEWS:**
Comments may be submitted in writing or orally at a public hearing to be held October 7, 2023 at 9:00 a.m. in the Hearing Room at the Alabama Department of Environmental Management, 1400 Coliseum Boulevard, Montgomery, Alabama 36110.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**
Tuesday, October 7, 2025

**CONTACT PERSON AT AGENCY:**
Russell A. Kelly: (334)271-7714

Jeffery W. Kitchens
Jeffery W. Kitchens

(Signature of officer authorized to promulgate and adopt rules or his or her deputy)

335-1-1-.07 **Departmental Forms, Instructions, And Procedures.**

(1) Designation as the State Environmental Control Agency. The Department is the State Environmental Control Agency for the purposes of federal environmental law including the Federal Clean Air Act, 42 U.S.C. 7401 et seq., as amended; the Federal Clean Water Act, 33 U.S.C. 1251 et seq., as amended; the Federal Safe Drinking Water Act, 42 U.S.C. A 201 et seq., as amended. The Department is authorized to take all actions necessary and appropriate to secure the benefits of federal environmental laws. The Department operates in conformity with such federal laws, policies, and procedures, as provided in the Act.

(2) Policies and Procedures. The Commission, through the adoption of rules pursuant to Code of Ala. 1975, §22-22A-7(c)(6), establishes environmental policies and procedures.

(3) Form and Instructions. The Director may require such forms within the rules as he deems necessary. The content of such forms and instructions for their completion may be prescribed by the Director including the changes of such from time to time. Federal forms as published by the Environmental Protection Agency may be used in lieu of state developed forms. Departmental forms prescribed by the Director shall be identified and numbered as follows:

| **Name of Forms** | **Form Number** |
|---|---|
| Title VI Complaint Form | **572** |
| **Air Program** | |
| Specifications for Air Curtain Incinerators **M-1** | **17** |
| MEME Vendor Application | **39** |
| Registration Form for the Construction, Installation, or Modification of an Incinerator **M-3** | **52** |
| Operating Permit Application Facility Identification Form **M-8** | **103** |
| Permit Application for Indirect Heating Equipment **M-4** | **104** |
| Permit Application for Manufacturing or Processing Operation **M-6** | **105** |
| Permit Application for Waste Disposal **M-3** | **106** |

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|---|---|
| Permit Application for Stationary Internal Combustion Engines **M-8** | **107** |
| Permit Application for Loading and Storage of Organic Compounds **M-3** | **108** |
| Permit Application for Volatile Organic Compound Surface Coating Emission Source **M-4** | **109** |
| Permit Application for Air Pollution Control Device **M-5** | **110** |
| Permit Application for Solvent Metal Cleaning **M-2** | **112** |
| Seal Gap Test Form **M-2** | **184** |
| Air Permit Application for Gasoline Dispensing Facilities **M-6** | **197** |
| Gasoline Transport Tank Truck Application **M-4** | **198** |
| Cargo Tank Tightness Test Report **M-1** | **309** |
| Bulk (Gasoline) Plant Application **M-23** | **331** |
| Emissions Statement Reporting Form **M-1** | **372** |
| Excess Emission Monitoring Report | **373** |
| Exemption Claim Form for Cofired Combustors (Appendix H - Division 3) **M-1** | **374** |
| Exemption Claim Form for Incinerators Burning Only Pathological, Low-Level Radioactive, and Chemotherapeutic Waste (Appendix H - Division 3) **M-1** | **375** |
| Gasoline Dispensing Facility Information Survey **M-1** | **378** |
| Open Burning Incident Report | **434** |
| Perc Dry Cleaner Status Update **M-1** | **436** |
| Permit Application for Compliance Schedule **M-2** | **437** |
| Permit Application for Continuous Emission Monitoring Systems (CEMS) **M-1** | **438** |
| Petroleum Solvent Dry Cleaning Questionnaire **M-1** | **440** |
| Remediation Approval Form **M-2** | **448** |
| Remediation Reporting Form **M-2** | **449** |
| 112(j) Part 1 Applicability Notification | **493** |

| | |
|---|---|
| Birmingham Fuel Supplier Report **M-1** | **494** |
| Notice of Demolition and/or Asbestos Removal **M-~~1~~2** | **496** |
| Asbestos Removal Contractor Certification **M-1** | **497** |
| Visible Emission Field Test Sheet | **502** |
| CAIR Permit Application (for sources covered under a CAIR SIP) | **519** |
| | |
| **Coastal Program** | |
| Joint Application and Notification U. S. Department of Army, Corps of Engineers Alabama Department of Environmental Management **M-3** | **166** |
| Alabama Coastal Area Management Program Application for Approval of a Non-Regulated Use ADEM Administrative Code rule 335-8-1-.11 Groundwater Extraction 50 PM or Greater **M-1** | **316** |
| Application for a Permit for the Construction for a Motel, Hotel, or Other Multi-Unit Development on a Property Intersected by the Construction Control Line in the Alabama Coastal Area **M-1** | **327** |
| Application for a Permit for the Construction of Single-Family Dwellings, Duplexes, or Other Similar Structures on Properties Intersected by the Construction Control Line in the Alabama Coastal Area **M-1** | **328** |
| Application for Approval of a Non-Regulated Use in the Alabama Coastal Area<br>Developments and Subdivisions of Property Greater than 5 Acres in Size **M-1** | **329** |
| | |
| **Waste/Remediation Program** | |
| Alabama Recycling Fund Grant Application **M-2** | **9** |
| Solid Waste Landfill Operator Initial Certification Application | **11** |
| Solid Waste Landfill Operator Reciprocal Certification Application | **12** |
| Solid Waste Landfill Operator Certification Renewal | **13** |

| | |
|---|---|
| Processing and Recycling General Information Recycling Registration **M-23** | **15** |
| Annual Recycling Report | **16** |
| Composting Facility Application **M-1** | **18** |
| UST Annual Walkthrough Inspection Checklist Log **M-3** | **19** |
| UST 3 Year Spill Prevention Equipment (Spill Bucket) Integrity Test Report (Hydrostatic and Vacuum Method) **M-3** | **20** |
| UST Alabama Tank Trust Fund Cost Proposal Part I **M-56** | **31** |
| UST Alabama Tank Trust Fund Payment Request Part I **M-57** | **32** |
| Disposal Approval Request **M-1** | **278** |
| UST Notification for Underground Storage Tanks **M-4** | **279** |
| UST Notification for Above Ground Storage Tanks **M-4** | **283** |
| Solid Waste Profile Sheet **M-34** | **300** |
| SARA Title III Section 302: Extremely Hazardous Substance Notification **M-1** | **302** |
| Permit Application Solid Waste Disposal Facility Construction/Demolition Landfill **M-2** | **305** |
| UST Notice of Temporary Closure **M-2** | **310** |
| Alabama Hazardous Waste/Used Oil Transporter Permit Application **M-23** | **317** |
| Alternative Medical Waste Treatment Technology Equipment Approval Application | **323** |
| UST Annual Statistical Inventory Reconciliation (SIR) Report Form **M-2** | **326** |
| Application for Name Change or Transfer of Permit or Exemption **M-5** | **330** |
| UST Cathodic Protection Monitoring Form **M-2** | **332** |
| UST Impressed Current Cathodic Protection System 60-Day Inspection Log **M-1** | **400** |
| UST Interior Lining Inspection Form | **403** |
| UST Interior Lining Report Form | **404** |

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|---|---|
| UST Manual Interstitial Monitoring Monthly Log **M-1** | **406** |
| SARA Title III Section 311: SDS/MSDS Reporting **M-1** | **407** |
| Application for Medical Waste Generator Notification **M-3** | **410** |
| Medical Waste Transporter Permit Application **M-5** | **411** |
| Medical Waste Treatment Permit Application **M-5** | **412** |
| Medical Waste Storage Permit Application | **413** |
| UST 30 Day Statistical Inventory Reconciliation (SIR) Log **M-3** | **414** |
| UST Notice of Intent to Permanently Close Underground Storage Tanks or Piping **M-4** | **422** |
| UST Notice of Proposed UST New Installation or Modification **M-5** | **423** |
| Notification of Election of Coverage under The Alabama Drycleaning Environmental Response Trust Fund Act **M-3** | **425** |
| Permit Application Solid Waste Disposal Facility **M-2** | **439** |
| UST Statistical Inventory Reconciliation SIR 7 Day Release Investigation Report **M-3** | **460** |
| UST Tank Trust Fund Eligibility/Ineligibility Determination Form **M-1** | **462** |
| UST Underground and Above Ground Storage Tank Transfer of Ownership **M-3** | **469** |
| UST ARBCA Tier 1 Report Forms | **471** |
| UST ARBCA Tier 2 Report Forms | **472** |
| UST ARBCA Tier 3 Report Forms | **473** |
| UST Closure Site Assessment Report Form **M-4** | **474** |
| UST Free Product Recovery Report Form | **475** |
| UST Groundwater Monitoring Report Form **M-1** | **476** |
| UST Line Tightness Test Report Form **M-3** | **477** |
| UST Natural Attenuation Monitoring Report Form | **478** |
| UST Release Fact Sheet | **479** |
| UST Release Report Form **M-3** | **480** |

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|---|---|
| UST Site Classification System Checklist | **481** |
| UST System Effectiveness Monitoring Report Form | **482** |
| UST Tracer Tank Tightness Test Report Form **M-2** | **483** |
| UST Ullage Tank Tightness Test Report Form **M-2** | **484** |
| UST Tank Tightness Test (Vacuum) Report **M-3** | **485** |
| UST Volumetric Overfill Tank Tightness Test Report Form **M-2** | **486** |
| UST Volumetric Underfill Tank Tightness Test Report Form **M-1** | **487** |
| UST Closure Total Potential VOC Emissions Calculations | **492** |
| Voluntary Cleanup Program Application **M-3** | **521** |
| Technical Proposal for Qualification as a Large Site Scrap Tire Fund Remediation Center **M-1** | **530** |
| Scrap Tire Manifest **M-4** | **536** |
| Scrap Tire Registration & Exemption Application **M-~~7~~8** | **537** |
| Scrap Tire Transporter Permit Application **M-8** | **538** |
| Scrap Tire Quarterly Report **M-6** | **539** |
| Scrap Tire Processor Permit Application **M-7** | **540** |
| Scrap Tire Site Registration **M-1** | **541** |
| Brownfields State Revolving Fund Pre-Application Form **M-1** | **542** |
| Brownfields State Revolving Fund Application Form **M-1** | **543** |
| Cathodic Protection Monitoring for Galvanic Systems **M-2** | **545** |
| Alabama Hazardous Waste Receipt for Samples and Documents | **546** |
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**Ed. Note:** Forms are available on the ADEM website at www.adem.alabama.gov.
**Author:** Marilyn Elliott, Russell A. Kelly, Aubrey White, David Hutchinson, Brian C. Espy
**Statutory Authority:** Code of Ala. 1975, §§22-22A-5, 22-22A-6, 22-22A-8, 411-22-4, 41-22-5.
**History:** **Amended:** Filed June 26, 2002; effective July 31, 2002. **Amended:** Filed December 19, 2002; effective January 23, 2003. **Amended:** Filed June 30, 2004; effective August 4, 2004. **Amended:** Filed December 6, 2005; effective January 10, 2006. **Amended:** Filed June 6, 2006; effective July 11, 2006. **Amended:** Filed October 10, 2006; effective November 14, 2006. **Amended:** Filed December 18, 2007; effective January 22, 2008. **Amended:** Filed December 15, 2008; effective January 19, 2009. **Amended:** Filed December 15, 2009; effective January 19, 2010. **Amended:** Filed December 14, 2010; effective January 18, 2011. **Amended:** Filed October 25, 2011; effective November 29, 2011. **Amended:** Filed October 23, 2012; effective November 27, 2012. **Amended:** Filed April 15, 2014; effective May 20, 2014. **Amended:** Filed June 23, 2015; effective July 28, 2015. **Amended (Appendix Also):** Filed June 21, 2016; effective August 5, 2016. **Amended (Appendix Also):** Filed June 21, 2016; effective August 5, 2016. **Amended:** Filed August 22, 2017; effective October 6, 2017. **Amended:** Filed April 24, 2018; effective June 8, 2018. **Amended:** Filed October 23, 2018; effective November 7, 2018. **Amended:** Published February 28, 2020; effective April 13, 2020. **Amended:** Published December 31, 2020; effective February 14, 2021. **Amended:** Published April 29, 2022; effective June 13, 2022. **Amended:** Published December 30, 2022; effective February 13, 2023. **Amended:** Published February 29, 2024; effective April 14, 2024. **Amended:** Published ; effective .

APA-1

**TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION**

| | |
|---|---|
| Control: | 335 |
| Department or Agency: | Alabama Department of Environmental Management<br>General Administration |
| Rule No.: | 335-1-6-.07 |
| Rule Title: | Payment Of Fees |
| Intended Action | Amend |

| | |
|---|---|
| Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? | No |
| Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? | Yes |
| Is there another, less restrictive method of regulation available that could adequately protect the public? | No |
| Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? | No |

To what degree?: N/A

| | |
|---|---|
| Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? | NA |
| Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? | Yes |
| Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? | No |

Does the proposed rule have an economic impact? No

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

Certification of Authorized Official

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

Signature of certifying officer: *Jeffery W. Kitchens*
Jeffery W. Kitchens

Date: Tuesday, August 19, 2025

REC'D & FILED
AUG 19, 2025
LEGISLATIVE SVC AGENCY

APA-2

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**
**GENERAL ADMINISTRATION**

**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** Alabama Department of Environmental Management

**RULE NO. & TITLE:** 335-1-6-.07 Payment Of Fees

**INTENDED ACTION:** Amend

**SUBSTANCE OF PROPOSED ACTION:**
The Department proposes to amend Rule 335-1-6-.07 in order to restructure and reformat the Hazardous Waste Permit fees outlined in Fee Schedule C, to restructure and reformat the Brownfield Redevelopment and Voluntary Cleanup Program fees outlined in Fee Schedule H, and to add Visible Emission Certification fees to Fee Schedule G - Variances, Certifications, and Licenses. Additional modifications were made to reformat the Program Fees outlined in Fee Schedules A, D, and G.

**TIME, PLACE AND MANNER OF PRESENTING VIEWS:**
Comments may be submitted in writing or orally at a public hearing to be held October 7, 2023 at 9:00 a.m. in the Hearing Room at the Alabama Department of Environmental Management, 1400 Coliseum Boulevard, Montgomery, Alabama 36110.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**
Tuesday, October 7, 2025

**CONTACT PERSON AT AGENCY:**
Russell A. Kelly: (334)271-7714

Jeffery W. Kitchens
Jeffery W. Kitchens

(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

335-1-6-.07 **Payment Of Fees.**

(1) Payment of permit application/registration fees required under subparagraphs (1)(a) and (1)(b) or paragraph (2) of Rule 335-1-6-.04 shall be included with the permit application/ registration. No permit application shall be processed without payment of such fees.

(2) Any fee required under subparagraph (1)(c) of Rule 335-1-6-. 04 shall be billed to the applicant. Payment of such fee shall be made within thirty days of the invoice date. No final decision regarding the permit application shall be made until after payment of such fee. Failure to make payment as provided herein shall constitute cause for non-processing/denial of the permit application.

(3) Payment of fees required under Rule 1-6-.05 shall be made within thirty days of the date of the invoice which the Department shall send to the person making the application or request or requiring the certificate.

(4) Payment of fees required under Rule 335-1-6-.06 shall be included with the application for such license, variance or certification. No application shall be processed without payment of such fees.

(5) All fees paid pursuant to the requirements of this Chapter shall be non-refundable.

(6) All fees and remittances shall be made payable to the Alabama Department of Environmental Management.

**SCHEDULE A**

**AIR QUALITY PERMITS**

| Type of Activity | Fee |
|---|---|
| Permit Preparation (Per Permit) | $1,465 |
| State Regulations Only (Per Permit) | $575 |
| Public Comment Period (Per Application) | $740 |
| NSPS Review (Per Permit/Per NSPS) | $2,795 |
| NESHAPS Review (Per Permit/Per NESHAP) | $2,795 |
| MACT/112(g) Determination (Per Pollutant/ Per Determination) | $940 |
| PSD Review (Per Application) | $2,410 |

| Type of Activity | Fee |
|---|---|
| BACT Determination (Per Pollutant) | $940 |
| Non-Attainment Review Submittal Fee (Per Application) | $2,410 |
| LAER Determination (Per Permit per Pollutant/Per Determination) | $940 |
| Plantwide ~~Applicablity~~Applicability Limits (PAL) Review (Per Pollutant) | $11,830 |
| Non-Criteria Air Pollutant Review (Per Pollutant) | $1,895 |
| **Modeling Review** | |
| Modeling Protocol Review | $2,575 |
| Modeling Review | $19,060 |
| Class 1 Modeling Review | $2,575 |
| Emission Inventory Preparation | $1,460 + $150/ point/ pollutant |
| Meteorological Data | $1,085 |
| Adequacy Determination of Preconstruction Monitoring Network/Data | $7,435 |
| Soil Remediation Plan Review | $650 |
| Certification and Recertification of Asbestos Removal Contractors | $740 |
| Name Change | $800 + $150 per permit |

**FEE SCHEDULE B**
**COASTAL USE PERMITS STATEWIDE WATER QUALITY CERTIFICATION AND PROJECT REVIEWS**

| Type of Activity | Fee |
|---|---|
| Commercial and/or Residential Development | |

**FEE SCHEDULE B**
**COASTAL USE PERMITS STATEWIDE WATER QUALITY CERTIFICATION AND PROJECT REVIEWS**

| Type of Activity | Fee |
|---|---|
| a) Commercial and Residential Development greater than 5 acres and less than 25 acres in size. | $9,025 |
| b) Commercial and Residential Development 25 acres or greater and less than 100 acres in size. | $19,070 |
| c) Commercial and Residential Development 100 acres or greater in size. | $25,920 |
| Groundwater extraction from a well having capacity of 50 gpm or more (335-8-2-.09). | $3,995 |
| Construction on Beaches and Dunes (335-8-2-.08) | |
| a) 1 single family dwelling or 1 duplex. | $1,330 |
| b) 2 single family dwellings or 2 duplexes. | $1,750 |
| c) Commercial (non-residential) structure, multi-unit residential structure having more than 2 units, or any other combination of living units not covered under a) or b) above. | $17,765 |
| d) Hardened erosion control structure, including retaining walls, seawalls, bulkheads and similar structure, or the placement of rip-rap. | $2,035 |
| Beach Nourishment Projects on Gulf Beaches | |
| a) Gulf Beach Nourishment Project filling less than 1,000 square feet of State waterbottoms. | $1,895 |
| b) Gulf Beach Nourishment Project filling 1,000 square feet to 100,000 square feet of State waterbottoms. | $3,785 |
| c) Gulf Beach Nourishment Project filling greater than 100,000 square feet of State waterbottoms. | $6,985 |
| Projects Impacting Wetlands | |
| a) Project involving the dredging or filling of less than 1,000 square feet of wetlands. | $2,125 |
| b) Project involving the dredging or filling of 1,000 square feet or more of wetlands. | $4,235 |
| | $3,940 |

**FEE SCHEDULE B**
**COASTAL USE PERMITS STATEWIDE WATER QUALITY CERTIFICATION AND PROJECT REVIEWS**

| Type of Activity | Fee |
|---|---|
| c) Pile Supported residential, multifamily or commercial structure (does not include piers, walkways, gazebos). | |
| Projects Impacting Water Bottoms | |
| a) Project involving the filling of less than 1,000 square feet of water bottom. | $2,125 |

**FEE SCHEDULE B**
**COASTAL USE PERMITS STATEWIDE WATER QUALITY CERTIFICATION AND PROJECT REVIEWS**

| Type of Activity | Fee |
|---|---|
| b) Project involving the filling of 1,000 square feet or more of water bottom. | $4,235 |
| c) Project involving the dredging of less than 10,000 cubic yards of material from the water bottom. | $2,125 |
| d) Project involving the dredging of 10,000 cubic yards to 100,000 cubic yards of material from the water bottom. | $4,235 |
| e) Project involving the dredging of greater than 100,000 cubic yards of material from the water bottom. | $7,855 |
| f) Project which involves the construction of coastal or inland marinas, canals, or creek relocation or modification. | $4,235 |
| g) Raised creek crossing. | $800 |
| Shoreline Stabilization of Non Gulf-Fronting Properties | |
| a) Shoreline stabilization project involving less than 200 feet of shoreline stabilization, including bulkhead construction or placement of rip-rap. | $800 |
| b) Shoreline stabilization project involving greater than 200 feet of shoreline stabilization including bulkhead construction or placement of rip-rap. | $1,330 |
| | $1,680 |

**FEE SCHEDULE B**
**COASTAL USE PERMITS STATEWIDE WATER QUALITY CERTIFICATION AND PROJECT REVIEWS**

| Type of Activity | Fee |
|---|---|
| Groin, jetty, and/or other sediment catching shoreline structure. | |
| Construction of pile supported pier, dock, boardwalk, or other similar structure. | $800 |
| Siting, construction and operation of energy facility. | $24,480 |
| Mitigation bank project. | $8,730 |
| State agency permits subject to review, not otherwise specified in Schedule B. | $1,680 |
| Federal license or permits not otherwise specified in Schedule B. | $1,680 |
| Project requiring certification for a Federal Energy Regulatory Commission permit or authorization. | $6,550 |
| All other projects and/or consistency reviews not otherwise specified in Schedule B which are subject to ADEM's Division 8 regulations. | $800 |
| Certification transfer or to change the name of the applicant only. | $800 |
| Modifications, and/or time extension, not requiring public notice. | $800 |
| Modifications and/or time extension, requiring public notice shall be one-half the fee listed in schedule B but in no case less than $800. | ½ or $800 |
| Additive fee for variance request. | $3,275 |

## FEE SCHEDULE C
## HAZARDOUS WASTE PERMITS

| TYPE OF ACTIVITY | INITIAL UNIT (1) | NEW DESIGN/ ADDITIONAL UNIT (2) | MINOR MOD (3) | MAJOR MOD (4) | CLOSURE PLAN (5) |
|---|---|---|---|---|---|
| Permit Type (6) | | | | | |
| Transport-Hazardous Waste/ Used Oil | $2,105 | ------ | $1,138 | $2,105 | ------ |
| Base Application (Non Transporter) (25) | $6,985 | ------ | ------ | ------ | ------ |
| Storage (Container/ Tank/ Containment Building) | $36,475 | $27,520 | $2,320 | $9,025 | $8,154 |
| Drip Pad | $36,475 | $27,520 | $2,320 | $9,025 | $8,154 |
| Treatment (7) | $46,315 | $34,820 | $2,915 | $11,430 | $9,760 |
| Thermal Treatment (8) | $111,550 | $83,740 | $7,205 | $27,740 | $9,760 |
| Land Treatment | $62,550 | $47,035 | $3,940 | $15,515 | $18,590 |
| Waste Pile | $52,795 | $39,760 | $3,275 | $13,030 | $19,590 |
| Surface Impoundment | $85,410 | $64,225 | $5,400 | $21,185 | $19,590 |
| Landfill | $475,000 | $450,000 | $6,860 | $26,585 | $19,590 |
| Post-Closure (9) | $82,135 | $61,760 | $5,110 | $20,395 | ------ |

## FEE SCHEDULE C
## HAZARDOUS WASTE PERMITS

| TYPE OF ACTIVITY | INITIAL UNIT (1) | NEW DESIGN/ ADDITIONAL UNIT (2) | MINOR MOD (3) | MAJOR MOD (4) | CLOSURE PLAN (5) |
|---|---|---|---|---|---|
| SWMU Only (10) | $16,310 | ------ | $1,025 | $4,070 | ------ |
| Miscellaneous Units | $93,780 | $70,475 | $5,820 | $23,300 | ------ |
| Corrective Action Management Unit (17) | $42,380 | $31,825 | $2,770 | $10,640 | Varies (18) |
| Non-Unit Specific Modifications (11) | ------ | ------ | $1,160 | $5,400 | ------ |
| Modifications to Incorporate Final Corrective Measures | ------ | ------ | ------ | $14,550 | ------ |
| ADDITIVE FEES (12) | | | | | |
| Groundwater Contamination (13) | | | | | |
| Plume Undefined | $61,960 | $46,460 | ------ | ------ | ------ |
| Plume Defined | $32,615 | $24,410 | ------ | ------ | ------ |
| Trial Burn (14) | $16,310 | ------ | ------ | ------ | ------ |
| RCRA Facility Assessment (RFA) (24) | $16,310 | ------ | ------ | ------ | ------ |

FEE SCHEDULE C
HAZARDOUS WASTE PERMITS

| TYPE OF ACTIVITY | INITIAL UNIT (1) | NEW DESIGN/ ADDITIONAL UNIT (2) | MINOR MOD (3) | MAJOR MOD (4) | CLOSURE PLAN (5) |
|---|---|---|---|---|---|
| RCRA Facility Investigation (RFI) Certification (15) | $24,470 | $18,790 | ------ | ------ | ------ |
| Corrective Action Program (CAP) or Corrective Measures Implementation (CMI) Plan Certification (16) | $42,390 | $31,825 | $2,780 | $10,640 | ------ |
| Temporary Unit | $35,890 | $26,946 | $2,330 | $8,950 | $8,155 |
| Off-Site Waste Analysis Certification (19) | $8,155 | ------ | $810 | $2,125 | ------ |
| Indirect Risk Assessment (20) | $163,105 | ------ | ------ | ------ | ------ |
| Landfill 5-Year Review Certification (25) | $450,000 | $450,000 | ------ | ------ | ------ |
| Confirmatory Sampling (CS) Work Plan Certification (21) | $20,395 | $15,305 | ------ | ------ | ------ |

## FEE SCHEDULE C
## HAZARDOUS WASTE PERMITS

| TYPE OF ACTIVITY | INITIAL UNIT (1) | NEW DESIGN/ ADDITIONAL UNIT (2) | MINOR MOD (3) | MAJOR MOD (4) | CLOSURE PLAN (5) |
|---|---|---|---|---|---|
| Interim Measures (IM) Work Plan Certification (22) | $20,395 | $15,305 | ------ | ------ | ------ |
| Corrective Measures Study (CMS) Certification (23) | $24,755 | $18,935 | ------ | ------ | ------ |

## FEE SCHEDULE C (Continued)

## EXPLANATORY NOTES

(1) Fee applies to initial unit (design) of a given type at a facility.

(2) Fee applies to additional designs and/or units of the same type unit or process at a given facility.

(3) Refer to rule 335-14-8-.04(3) for classification of minor mods. Each separate mod request requires a separate fee payment. Multiple changes to a permit consolidated in one mod request will be charged a single fee for each applicable unit. (e.g., A facility permitted for container storage and a landfill who requests modifications to both units will be charged the appropriate fee for each unit.)

(4) Refer to rule 335-14-8-.04(2) for classification of major mods. Each separate mod request requires a separate fee payment. Multiple changes to a permit consolidated in one mod request will be charged a single fee for each applicable unit. (e.g., A facility permitted for container storage and a landfill who requests modifications to both units will be charged the appropriate fee for each unit.)

(5) If clean closure is not attained and a post-closure permit is required, then the cost is credited to the post-closure permit fee. Closure plan fees shall be charged per unit to be closed.

(6) Fees for miscellaneous units (rule 335-14-5-.24) and for other units not specifically listed shall be assessed based on the fees established for the permit type most closely analogous to the activity in question. For example, an open burning/open detonation unit would be assessed fees for thermal treatment; a stabilization unit would be assessed fees for treatment; etc.

(7) Fee applies to all treatment units except land treatment units and thermal treatment units.

(8) Fee applies to incinerators, boilers, industrial furnaces, and other thermal treatment units.

(9) Fee applies to each hazardous waste management unit which is subject to post-closure permitting requirements. Multiple units which are closed under a single (common) cap will be charged the fee for a single post-closure unit. Fee also applies to certification of post-closure plans required by order.

(10) Fee applies to permits which include solid waste management unit (SWMU) requirements (pursuant to ADEM Admin. Code rs. 335-14-5-.06(12), 335-14-5-.19, 335-14-8-.02(5)(d), but do not include regulated hazardous waste management unit requirements. This fee applies to facilities which have completed all closure and post-closure requirements for regulated hazardous waste management units, but do not complete all SWMU requirements.

(11) Fee applies to modifications which are not unit specific (i.e., mods not affecting the unit type, design, or configuration). Examples: contingency plan changes, transfer of ownership, personnel training plan changes, changes to groundwater monitoring system, etc.

~~(11)~~(12) Additive fees are levied in addition to base application fees as applicable. Total fees due are sum of base application fees and additive fees applicable to a given facility/application.

~~(12)~~(13) Initial fee applies to the first contaminant plume at a facility. The additional unit fee will be charged for each additional, separate plume at the same facility.

~~(13)~~(14) Fee applies to each trial burn performed.

~~(14)~~(15) Initial fee applies to the first investigation at a facility imposed by the Department under ADEM Admin. Code r. 335-14-5-.06(12). The fee is applicable at the time the investigation is imposed. The additional unit fee will be charged for each

additional, separate investigation at the same facility (e.g. an investigation of a newly discovered area of contamination). This fee is also applicable to any investigation required by statute or order that is designed to assess the extent of contamination at a facility or a single unit within a facility.

~~(15)~~ (16) Fee applies to each separate corrective action program proposal or corrective measures implementation plan submitted. CAPs which integrate multiple technologies (e.g., pump and treat, biological, chemical, physical, etc.) into a single system shall be charged a single fee for the system. Facilities which have multiple separate programs (e.g., two separate groundwater contamination plumes, one remediated using pump and treat and the other using vapor extraction) shall be charged a separate fee for each separate system. This fee is also applicable to passive corrective measures (e.g. land-use restrictions, monitored natural attenuation).

~~(16)~~ (17) Fee applies to each separate corrective action management unit (CAMU) designated/approved at a facility. This fee is in addition to any other fees applicable to any hazardous waste management units included within a CAMU.

~~(17)~~ (18) Fee determined based on type of units (Storage - $4,855; Treatment [except Land Treatment] - $5,820; Disposal/Land Treatment - $11,650).

~~(18)~~ (19) Fee applies to facilities which receive hazardous waste from off-site sources (e.g., commercial facilities).

~~(19)~~ (20) Fee applies to thermal treatment units required to conduct indirect risk assessments.

~~(20)~~ (21) Initial fee applies to the first CS work plan at a facility. The additional unit fee will be charged for each additional, separate CS workplan at the same facility.

~~(21)~~ (22) Initial fee applies to the first IM work plan at a facility. The additional unit fee will be charged for each additional, separate IM workplan at the same facility.

~~(22)~~ (23) Initial fee applies to the first CMS work plan at a facility. The additional unit fee will be charged for each additional, separate CMS workplan at the same facility.

~~(23)~~ (24) Fee is charged per each RFA Report prepared for a given facility.

~~(24)~~ (25) Landfill 5-Year Review Certification fee applies to operating hazardous waste land disposal facilities subject to 335-14-5-.05.

**FEE SCHEDULE D**
**WATER PERMITS**

| Activity | Initial Registration/ Issuance Reissuance or Modification (effluent limit change) Type of injection zone change or of compatibility study) | Modification (no effluent limit change) (no injection zone change or no compatibility study) |
|---|---|---|
| Major Industrial Discharger | $17,990 | $3,940 |
| Minor Industrial Discharger | $5,615 | $3,120 |
| Major Municipal & Private | $7,060 | $3,140 |
| Minor Municipal & Private & Water Treatment | $4,290 | $2,250 |
| Municipal Stormwater **(MS-4)** | $7,060 | $3,275 |
| Mineral/ Resource Extraction Mining, Storage Transloading, Dry Processing | $5,820 | $3,400 |

**FEE SCHEDULE D**
**WATER PERMITS**

| Type of Activity | Initial Registration/ Issuance Reissuance or Modification (effluent limit change) (injection zone change or compatibility study) | Modification (no effluent limit change) (no injection zone change or no compatibility study) |
|---|---|---|
| Wet Preparation, Processing, Beneficiation | $6,860 | $3,940 |
| Coalbed Methane | $6,860 | $3,940 |
| General Permit | $1,385 | $800 |
| Minor NPDES Modifications | | $800 |
| **ADDITIVE FEES** | | |
| Modeling with Data Collection (10 Stations) | $60,390 | $60,390 |
| Modeling with Data Collection (5 Stations) | $49,315 | $49,315 |
| Modeling - desktop | $4,855 | $4,855 |

**FEE SCHEDULE D**
**WATER PERMITS**

| Type of Activity | Initial Registration/ Issuance Reissuance or Modification (effluent limit change) (injection zone change or compatibility study) | Modification (no effluent limit change) (no injection zone change or no compatibility study) |
|---|---|---|
| Review of Model Performed by Others | $2,705 | $2,705 |
| Seasonal Limits | $4,855/ additional season | $4,855/ additional season |
| Biomonitoring & Toxicity Limits | $1,015 | $1,015 |
| 316b Phase I, Phase II, and Phase III Facilities [Permit Issuance/ Re-issuance Modification] | $5,065 | 0 |
| Review of Site Specific Impingement and Entrainment | $40,525[1] | 0 |

## FEE SCHEDULE D
## WATER PERMITS

| Type of Activity | Initial Registration/ Issuance Reissuance or Modification (effluent limit change) (injection zone change or compatibility study) | Modification (no effluent limit change) (no injection zone change or no compatibility study) |
|---|---|---|
| Studies and/ or Comprehensive Demonstration Studies | | |
| **SID** | | |
| Indirect Discharge (SID) | $3,850 | $2,125 |
| Indirect Discharge with EPA Established Categorical Effluent Guidelines | $4,375 | $2,520 |
| **UIC** | | |
| Class III Well | $33,650 | $2,250 |
| Class V Well | $4,290 | $2,250 |
| General Permit | $1,385 | $800 |
| **WATER SUPPLY** | | |
| Surface Water Treatment | $4,595 | $2,250 |

**FEE SCHEDULE D**
**WATER PERMITS**

| Activity | Initial Registration/ Issuance Reissuance or Modification (effluent limit change) Type (injection zone change or of compatibility study) | Modification (no effluent limit change) (no injection zone change or no compatibility study) |
|---|---|---|
| Plant/ System | | |
| Distribution System | $2,995 | ~~$1960~~ $1,960 |
| Groundwater Supply (Well/ System) | $3,715 | ~~$1960~~ $1,960 |
| Name Change/ Permit Minor Mod | ~~———~~ ----- | $800 |
| **AFO/CAFO Individual Permit** | $7,435 | $5,820 |
| **AFO/CAFO Registration** | | |
| AFO | $450 | $150 |
| CAFO: | | |
| 1-999 Animal Units | $725 | $450 |
| 1,000-1,499 Animal Units | $1,390 | $815 |

**FEE SCHEDULE D**
**WATER PERMITS**

| Type of Activity | Initial Registration/ Issuance Reissuance or Modification (effluent limit change) (injection zone change or compatibility study) | Modification (no effluent limit change) (no injection zone change or no compatibility study) |
|---|---|---|
| 1,500-1,999 Animal Units | $2,060 | $1,175 |
| 2,000 or more Animal Units | ~~$725~~ ~~$1,390~~ ~~$2,060~~ $2,725 | ~~$450~~ ~~$815~~ ~~$1,175~~ $1,550 |

[1] Due upon submittal of CDS

**FEE SCHEDULE E**

**SOLID WASTE PERMITS/REGISTRATION**

| Type of Activity | Initial Issuance | Modification | Reissuance |
|---|---|---|---|
| Medical Waste Transfer Facility | $2,035 | $725 | $1,330 |
| New Technology Review | $10,205 | ------ | ------ |
| Commercial Treatment Facility | $16,460 | $7,280 | $9,180 |

| Type of Activity | Initial Issuance | Modification | Reissuance |
|---|---|---|---|
| Commercial Transportation of Medical Waste | $3,490 | $1,460 | $2,035 |
| Storage of Untreated Medical Waste | $2,630 | $665 | $1,960 |
| Municipal Solid Waste Landfill/CCR Unit | $83,880 | ------ | $37,270 |
| Minor Mod. (1)* | ------ | $3,275 | ------ |
| Major Mod. (2)* | ------ | $32,615 | ------ |
| Construction/Demolition Waste Landfill | $7,145 | ------ | $5,400 |
| Minor Mod. (1)* | ------ | $1,460 | ------ |
| Major Mod. (2)* | ------ | $2,915 | ------ |
| Industrial Waste Landfill | $12,670 | ------ | $8,150 |
| Minor Mod. (1)* | ------ | $1,460 | ------ |
| Major Mod. (2)* | ------ | $4,375 | ------ |
| Compost Facility | $4,860 | | $3,670 |
| Minor Mod. | | $1,225 | |
| Major Mod | — | $1,945 | — |
| Additive Fees | | | |
| Geological Review | $4,865 | $3,275 | $3275 |
| Solid Waste Disposal Notification | $215 | $215 | $215 |
| Variance Request | $1,460 | $1,460 | $1,460 |

| Type of Activity | Initial Issuance | Modification | Reissuance |
|---|---|---|---|
| Beneficial Use Facility Registration | | $550 | |
| Beneficial Use Generator | $1,680 | --- | $1,680 |
| Beneficial Use Distributor | $3,360 | --- | $3,360 |
| Beneficial Use FPR Treatment Facility | $5,050 | --- | $5,050 |

*1. These are modifications as included in ADEM Admin. Code rule 335-13-5-.06(2).

*2. These are modifications as included in ADEM Admin. Code rule 335-13-5-.06(1).

FEE SCHEDULE F

[RESERVED]

**(Repealed 10/6/17)**

**FEE SCHEDULE G**
**VARIANCES, CERTIFICATIONS AND LICENSES**

| Type of Activity | Initial Issuance | Reissuance |
|---|---|---|
| Well Driller's License | $200 | $200 |
| **Water and Wastewater Operator Certification** | | |
| Examination Fee | $325 | |

**FEE SCHEDULE G**
**VARIANCES, CERTIFICATIONS AND LICENSES**

| Type of Activity | Initial Issuance | Reissuance |
|---|---|---|
| Water and Wastewater Operator Certification Issuance Fee | $125 | ----- |
| Water and Wastewater Operator Certification Renewal via Internet | ----- | $70 |
| Water and Wastewater Operator Certification Renewal via Mail | ----- | $95 |
| Water and Wastewater Operator Certification Renewal Late Fee | ----- | $215 ~~[2]~~ [2] |
| Water and Wastewater Operator Reciprocal Certification | $180 | ----- |
| **Microbiological lab certification** | $360 | $360 |
| **Chemical ~~laboratory certification~~** | | |

**FEE SCHEDULE G**
**VARIANCES, CERTIFICATIONS AND LICENSES**

| Type of Activity | Initial Issuance | Reissuance |
|---|---|---|
| Metals | $360 | |
| Pesticides | $360 | |
| Herbicides | $360 | |
| Volatile Organic Chemicals | $360 | |
| Synthetic Organic Chemicals | $540 | |
| Disinfection Byproducts | $540 | |
| Inorganics | $360 | |
| Radiologicals | $360 | |
| Asbestos | $360 | |
| Dioxin | $360 | |
| Maximum annual chemical lab certification fee | $1,460 | |

**Coastal Variance See Schedule B**

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~~[2]~~ [2] See ADEM Admin. Code r. 335-10-1-.11(3)

FEE SCHEDULE G
VARIANCES, CERTIFICATIONS AND LICENSES

| Type of Activity | Initial Issuance | Reissuance | Reissuance After Expiration |
|---|---|---|---|
| ~~Well Driller's License~~ | ~~$200~~ | ~~$200~~ | |
| Hazardous Waste | Initial Issuance | Modification | Reissuance |
| ~~Water and Wastewater Operator Certification~~ | – | – | |
| ~~Examination Fee~~ | ~~$325~~ | ~~------~~ | |
| ~~Water and Wastewater Operator Certification Issuance Fee~~ | ~~$125~~ | ~~------~~ | |
| ~~Water and Wastewater Operator Certification Renewal via Internet~~ | ~~------~~ | ~~$70~~ | |
| ~~Water and Wastewater Operator Certification Renewal via Mail~~ | ~~------~~ | ~~$95~~ | |
| ~~Water and Wastewater Operator Certification Renewal Late Fee~~ | ~~------~~ | ~~$215~~[1] | |
| ~~Water and Wastewater Operator Reciprocal Certification~~ | ~~$180~~ | ~~------~~ | |
| ~~Microbiological lab certification~~ | ~~$360~~ | ~~$360~~ | |
| ~~Chemical laboratory certification~~ | – | – | |
| ~~Metals~~ | ~~$360~~ | – | |
| ~~Pesticides~~ | ~~$360~~ | – | |
| ~~Herbicides~~ | ~~$360~~ | – | |
| ~~Volatile Organic Chemicals~~ | ~~$360~~ | – | |
| ~~Synthetic Organic Chemicals~~ | ~~$540~~ | – | |
| ~~Disinfection Byproducts~~ | ~~$540~~ | – | |
| – | – | – | |

## FEE SCHEDULE G
## VARIANCES, CERTIFICATIONS AND LICENSES

| Type of Activity | Initial Issuance | Reissuance | Reissuance After Expiration |
|---|---|---|---|
| ~~Inorganics~~ | ~~$360~~ | | |
| ~~Radiologicals~~ | ~~$360~~ | | |
| ~~Asbestos~~ | ~~$360~~ | | |
| ~~Dioxin~~ | ~~$360~~ | | |
| ~~Maximum annual chemical lab certification fee~~ | ~~$1,460~~ | | |
| ~~Coastal Variance See Schedule B~~ | | | |

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~~[1] See ADEM Admin. Code r. 335-10-1-.11(3)~~

## ~~FEE SCHEDULE G~~
## ~~VARIANCES, CERTIFICATIONS AND LICENSES~~

| ~~Hazardous Waste~~ | | ~~Initial Issuance~~ | ~~Modification~~ | ~~Reissuance~~ |
|---|---|---|---|---|
| Disposal Certification of Waste at a Commercial Hazardous Waste Landfill | | $360 | $360 | $360 |
| Variance from Classification as a Solid Waste Pursuant to ADEM Admin. Code r. 335-14-1-.03(10) | $16,310 | | $16,310 | |
| Delisting Certification Pursuant to ADEM Admin. Code r. 335-14-1-.03(2) | $16,310 | | | |
| Variance from a Hazardous Waste Treatment Standard Pursuant to ADEM Admin. Code r. 335-14-9-.04(5) | $4,375 | | $4,375 | |
| Notification of Regulated Waste Activity | $180 | | $180 | |

~~FEE SCHEDULE G~~

~~VARIANCES, CERTIFICATIONS AND LICENSES~~

| ~~Hazardous Waste~~ | | ~~Initial Issuance~~ | ~~Modification~~ | ~~Reissuance~~ |
|---|---|---|---|---|
| Variance to be classified as a boiler pursuant to ADEM Admin. Code r. 335-14-1-.03(12) | $4,375 | | $4,375 | |
| Variance to extend the effective date of a LDR on a case-by-case basis | $4,375 | | $4,375 | |
| Variance to allow land disposal of a prohibited waste | $4,375 | | $4,375 | |
| Hazardous Waste Generator Closure Certification | $4,375 | | $4,375 | |

| ~~Type of Activity~~ | | ~~Initial Issuance~~ | ~~Reissuance~~ | ~~Reissuance After Expiration~~ |
|---|---|---|---|---|
| **Solid Waste Landfill Operator Certification** | | | | |
| Landfill Operator Certification Issuance Fee | $125 | | | |
| Landfill Operator Certification Renewal Fee | | $95 | | |
| Landfill Operator Certification Late Renewal Fee | | | $310 | |
| Landfill Operator Reciprocal | $180 | | | |

~~Type of Activity~~ ~~Initial Issuance~~ ~~Reissuance~~ ~~Reissuance After Expiration~~

Certification Fee

## FEE SCHEDULE G
## VISIBLE EMISSIONS CERTIFICATIONS

| Type of Activity | Fee |
|---|---|
| Lecture Certification Fee (initially and every 3 years) | $70 |
| Field Certification Fee (every 6 months) | $290 |
| Late Fee (after registration closes) | $100 |
| On-Site Registration Fee (fee assessed in addition to the late fee when registering on the day of the field certification test) | $50 |

## FEE SCHEDULE H

## BROWNFIELD REDEVELOPMENT AND VOLUNTARY CLEANUP PROGRAM

### Non-Responsible Person Applicant

| TYPE OF ACTIVITY | REVIEW FEE | MINOR MODIFICATION | MAJOR MODIFICATION |
|---|---|---|---|
| **Application**[1] | $5,060 | $250 | $500 |
| With Variance | $16,855 | NA | NA |
| **Assessment Review**[2] | $6,740 | $1,680 | $2,570 |
| **Assessment Report** | $4,260 | | |
| **Cleanup Review**[2] | $12,470 | $1,680 | $2,570 |
| **Cleanup Report** | $7,720 | | |
| **Letter of Concurrence** | | | |
| Unconditional | $1,680 | NA | NA |
| Conditional | $4,210 | NA | NA |
| **Property Eligibility Determination**[3] | $670 | NA | NA |

### Responsible Person Applicant

| | | | |
|---|---|---|---|
| **Application**[1] | $5,060 | $250 | $500 |
| With Variance | $16,855 | NA | NA |
| **Assessment Review**[2] | $24,470 | $2,770 | $9,840 |

| TYPE OF ACTIVITY | REVIEW FEE | MINOR MODIFICATION | MAJOR MODIFICATION |
|---|---|---|---|
| **Assessment Report** | $10,520 | | |
| **Cleanup Review** | $43,065 | $2,770 | $9,840 |
| **Cleanup Report** | $17,635 | | |
| **Letter of Concurrence** | | | |
| Unconditional | $1,680 | NA | NA |
| Conditional | $4,210 | NA | NA |
| **Property Eligibility Determination**(2) | $670 | NA | NA |

| | Additive Fees(4) |
|---|---|
| **Public Notice**(5) | $800 |
| **Groundwater Monitoring**(6) | $1,000 |
| **Risk Management RM-1** | $1,700 |
| **Risk Management RM-2** | $4,350 |
| **Operation and Maintenance Plan**(6) (7) | $1,500 |
| **Brownfield Remediation Reserve Fund Contribution** (8) (*) | $500 |

(1) Submittal of the appropriate application fee is required prior to the review of any plans, reports, and, or certifications.

(2) An Assessment and/or Cleanup Review fee is assessed when review of a plan and report is required as determined by the Department.

(3) Property eligibility determinations are valid for a period of one year from date of issuance.

(4) Additive fees are levied on the assessment or cleanup fees as applicable. Total fees due are a sum of assessment and/or cleanup fees and additive fees applicable to a given applicant.

(5) A Public Notice fee is assessed on any Plan or Report which proposes final cleanup remedy recommendations, such as removal of contaminants and/or an Environmental Covenant.

(6) These fees are assessed annually until required activities are complete and/or terminated by the Department.

(7) Fee is added to a Cleanup Review and/or Report fee, when an Operation and Maintenance (OAM) is required as a part of the approved remedy. Modification of OAM activities would require a modification of the Cleanup Report and submittal of required fees.

(8) This fee applies only to Responsible Party Applicants and is assessed **per acre** of each qualifying property in addition to the voluntary cleanup program application and oversight fees.

* This fee is enacted by Act 2023-356 of the 2023 Alabama Legislative Session.

**FEE SCHEDULE I**

**SCRAP TIRE PROGRAM PERMITS/REGISTRATIONS**

| Type of Activity | Initial Issuance | Modification | Reissuance |
|---|---|---|---|
| Class One Processor Permit | $3,040 | $755 | $1,510 |
| Class Two Processor Permit | $2,525 | $635 | $1,260 |
| Class Three Processor Permit | $2,525 | $635 | $1,260 |
| | | | |
| Scrap Tire Transporter Permit | $1,015 | $260 | $510 |
| Limited-use Transporter Permit (see Note 1) | $260 | ------ | $260 |
| Registration as an Exempt Processor | $1,015 | $260 | $510 |
| Registration for Engineered Use of Tire Materials | $1,015 | ------ | ------ |

Note 1: A limited-use transporter permit is available to property owners remediating a scrap tire pile on their own property, and shall be issued for a limited amount of time and under conditions as prescribed by ADEM.

See ADEM Admin. Code r. 335-4-3-.03(b) for definitions of processors

**Fee Schedule J**

**Environmental Covenants Fees**

| Type of Activity | Initial Issuance | Modification |
|---|---|---|
| Processing and Review Fee | | |
| Institutional Controls | $4,285 | $1,070 |
| Engineering Controls | $6,425 | $1,610 |
| Registry Recording Fee | | |
| For Class 1 controls* | $13,705 | $635 |
| For Class 2 controls* | $9,420 | $635 |
| For Class 3 controls* | $5,245 | $635 |

* - For classification of institutional and engineering controls, see ADEM Admin. Code Rule. 335-5-1-.03(i).

Registry Recording Fee also includes costs of performing inspections for a 30-year period.

For sites utilizing both institutional controls and engineering controls, the processing and review fees shall be the greater of the applicable fees.

For sites with more than one classification of institutional or engineering control, the registry recording fee shall be the greater of the applicable fees.

For a property or site containing multiple individually deeded parcels covered by one or more similar covenants, the owner or operator may pay all applicable fees listed in Fee Schedule J or the owner or operator or other responsible party may include a provision in an order or

agreement executed between the owner or operator or other responsible person and the Department to pay fees as provided in 335-5-1-.06(6).
**Author:** Marilyn Elliott, Russell A. Kelly, Brian C. Espy
**Statutory Authority:** Code of Ala. 1975, §22-22A-5.
**History:** Effective February 13, 1985. **Amended:** Filed December 12, 1996; effective January 16, 1997. **Amended:** Filed February 24, 1999; effective March 31, 1999. **Amended:** Filed December 5, 2001; effective January 9, 2002. **Amended (Schedule H only):** Filed April 11, 2002; effective May 16, 2002. **Amended (Schedules B, C, D, E, & F only):** Filed August 29, 2002; effective October 3, 2002. **Amended (Added Schedule I only):** Filed June 30, 2004; effective August 4, 2004. **Amended (Schedules A-H only):** Filed December 6, 2005; effective January 10, 2006. **Amended (Schedules D & G only):** Filed June 6, 2006; effective July 11, 2006. **Amended (Schedules A-I only):** Filed October 10, 2006; effective November 14, 2006. **Amended (Schedules A thru I only):** Filed December 18, 2007; effective January 22, 2008. **Amended (Schedule G only):** Filed December 15, 2009; effective January 19, 2010. **Amended (Text and Schedules A thru J):** Filed October 25, 2011; effective November 29, 2011. **Amended (Schedules A thru J only):** Filed June 25, 2013; effective July 30, 2013. **Amended (Schedules A thru J only):** Filed December 21, 2016, effective January 25, 2017. **Amended (Schedule E only):** Filed April 24, 2018, effective June 8, 2018. **Amended (Schedule E only):** Filed June 25, 2019; effective August 9, 2019. **Amended (Schedules E, H, and J only):** Published February 28, 2020; effective April 13, 2020. **Amended (Schedules C and J only):** Published December 31, 2020; effective February 14, 2021. **Amended (Schedule H only):** Published April 29, 2022; effective June 13, 2022. **Amended (Fee Schedule E only):** Published December 30, 2022; effective February 13, 2023. **Amended:** Published February 29, 2024; effective April 14, 2024. **Amended:** Published ; effective .

**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 – Hazardous Waste Program Rules 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 has reviewed all submissions introduced into the hearing record, and has prepared a concise statement of the principal reasons for and against the adoption of the proposed rules incorporating therein its reasons for the adoption of certain revisions to the proposed rules in response to oral and written submissions, such revisions, where appropriate, having been incorporated into the proposed rules attached hereto; and

WHEREAS, the Environmental Management Commission has considered fully all submissions respecting the proposed amendments and the Reconciliation Statement prepared by the Alabama Department of Environmental Management.

NOW THEREFORE, pursuant to Ala. Code. §§ 22-27-2, 22-27-7, 22-27-9, 22-27-12 (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-.02/Criteria For Identifying The Characteristics Of Hazardous Waste And For Listing Hazardous Waste(Amend); 335-14-2-.04/Lists of Hazardous Wastes (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

**ENVIRONMENTAL MANAGEMENT COMMISSION**
**RESOLUTION**

Response for Management of Excluded Hazardous Secondary Materials (Amend); 335-14-2-.27/ Subpart AA-Air Emission Standards for Process Vents (Amend); 335-14-2-.28/ Subpart BB-Air Emission Standards for Equipment Leaks (Amend); 335-14-2-.29/ Subpart CC - Air Emission Standards for Tanks and Containers (Amend); 335-14-3-.01/General (Amend); 335-14-3-.02/ Manifest Requirements Applicable to Small and Large Quantity Generators (Amend); 335-14-3-.04/Recordkeeping and Reporting Applicable to Small and Large Quantity Generators (Amend); 335-14-3-.09/ Transboundary Movements of Hazardous Waste for Recovery or Disposal (Amend); 335-14-3-.12/ Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities (Amend); 335-14-3-.13/Alternative Standards for Episodic Generation (Amend); 335-14-4-.01/ General (Amend); 335-14-4-.02/ Compliance with the Manifest System and Recordkeeping (Amend); 335-14-4-.04/ Financial Requirements (Amend); 335-14-5-.01/General (Amend); 335-14-5-.02/General Facility Standards (Amend); 335-14-5-.05/ Manifest Systems, Recordkeeping and Reporting (Amend); 335-14-5-.08/ Financial Requirements (Amend); 335-14-5-.27/ Subpart AA – Air Emission Standards for Process Vents (Amend); 335-14-5-.28/ Subpart BB – Air Emission Standards for Equipment Leaks (Amend); 335-14-6-.02/General Facility Standards (Amend); 335-14-6-.05/ Manifest Systems, Recordkeeping and Reporting (Amend); 335-14-6-.08/ Financial Requirements (Amend); 335-14-7-.08/Subpart H - Hazardous Waste Burned In Boilers And Industrial Furnaces(Amend); 335-14-7-.16/ Hazardous Waste Pharmaceuticals (Amend); 335-14-7-.17/ Ignitable Spent Refrigerants Recycled for Reuse(New); 335-14-8-.01/General Information (Amend); 335-14-8-.03/Permit Conditions - Treatment, Storage And Disposal Facilities(Amend); 335-14-11-.07/ Petitions To Include Other Wastes Under Chapter 335-14-11(Amend); 335-14-17-.05/ Standards For Used Oil Transporter And Transfer Facilities(Amend)] of the Department's Land Division – Hazardous Waste Program Rules, administrative code attached hereto, to become effective forty-five days, unless otherwise indicated, after filing with the Alabama Legislative Services 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 12th day of December, 2025.

APPROVED:

Mary J. Merritt, Commissioner

H. Lanier Brown, II, Commissioner

J. Patrick Tucker, Commissioner

Kevin McKinstry, Commissioner

John (Jay) H. Masingill, III, Commissioner

Ruby L. Perry, Commissioner

A. Frank McFadden, Commissioner

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DISAPPROVED:

Mary J. Merritt, Commissioner

H. Lanier Brown, II, Commissioner

J. Patrick Tucker, Commissioner

Kevin McKinstry, Commissioner

John (Jay) H. Masingill, III, Commissioner

Ruby L. Perry, Commissioner

A. Frank McFadden, Commissioner

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**ENVIRONMENTAL MANAGEMENT COMMISSION**
**RESOLUTION**

ABSTAINED:

Mary J. Merritt, Commissioner

H. Lanier Brown, II, Commissioner

J. Patrick Tucker, Commissioner

Kevin McKinstry, Commissioner

John (Jay) H. Masingill, III, Commissioner

Ruby L. Perry, Commissioner

A. Frank McFadden, Commissioner

**This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 12th day of December 2025.**

**A. Frank McFadden, Chair**
**Environmental Management Commission**
**Certified this 12th day of December 2025**

**ATTACHMENT A**

**APA-1**

**TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION**

| | |
|---|---|
| Control: | 335 |
| Department or Agency: | Alabama Department of Environmental Management Land Division - Hazardous Waste Program |
| Rule No.: | 335-14-1-.01 |
| Rule Title: | General |
| Intended Action | Amend |

| | |
|---|---|
| Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? | Yes |
| Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? | Yes |
| Is there another, less restrictive method of regulation available that could adequately protect the public? | No |
| Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? | No |

To what degree?: N/A

| | |
|---|---|
| Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? | NA |
| Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? | Yes |
| Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? | No |

Does the proposed rule have an economic impact? No

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

Certification of Authorized Official

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

Signature of certifying officer: *Jeffery W. Kitchens*
Jeffery W. Kitchens

Date: Tuesday, August 19, 2025

REC'D & FILED
AUG 19, 2025
LEGISLATIVE SVC AGENCY

APA-2

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**
**LAND DIVISION - HAZARDOUS WASTE PROGRAM**

**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** Alabama Department of Environmental Management

**RULE NO. & TITLE:** 335-14-1-.01 General

**INTENDED ACTION:** Amend

**SUBSTANCE OF PROPOSED ACTION:**
The Department proposes to revise Rule 335-14-1-.01 to adopt the Integrating e-Manifest with Hazardous Waste Exports and Other Manifest-Related Reports. These revisions are necessary for the Department to maintain regulations that are at least as stringent as those promulgated federally, a requirement to preserve the State's authorized status.

**TIME, PLACE AND MANNER OF PRESENTING VIEWS:**
Comments may be submitted in writing or orally at a public hearing to be held at 10:00 a.m., October 7, 2025, in the ADEM Main Hearing Room, 1400 Coliseum Boulevard, Montgomery, Alabama 36110. Attendance at the hearing is not necessary to present such data, views, arguments, or comments. All comments should be received by 5:00 p.m., October 7, 2025. Written submissions and other inquiries should be directed to: ADEM Hearing Officer, Office of General Counsel, Alabama Department of
Environmental Management, P.O. Box 301463, Montgomery, AL 36130-1463 (street address: 1400 Coliseum Boulevard, Montgomery, AL 36110-2400) or by e-mail at hearing.officer@adem.alabama.gov.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**
Tuesday, October 7, 2025

**CONTACT PERSON AT AGENCY:**
Lynn T. Roper, 334-271-7728

Jeffery W. Kitchens
Jeffery W. Kitchens

(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

**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 Division 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 Division 335-14.

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

4. 335-14-1-.03 establishes procedures for petitioning ADEM and EPA to amend, modify, or revoke any provision of Division 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 Rules 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 Division 335-14, reports, notices, permit applications and all other submissions required by Division 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 Division 335-14 involve the practice of engineering and/or land surveying, as those terms are defined in Code of Ala. 1975, as amended, §§34-11-1 to 34-11-37; and/or the practice of geology, as that term is defined in Code of Ala. 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 the ADEM Administrative Code 335-1-1-.06.

(b) Except as provided in 335-14-1-.01(2)(c)and (d), any person who submits information to EPA in accordance with 335-14-1 through 335-14-7 and 335-14-9 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 the ADEM Administrative Code 335-1-1-.06.

(c)1. 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 335-14-3-.02(1)(a)3.

2. 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 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.

(d)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 335-14-2-.05(1)(a)5. and 335-14-2-.05(3)(a), and with respect to information contained in hazardous waste export, import, and transit documents prepared, used and submitted under 40 CFR §§262.82 [incorporated by reference in 335-14-3-.09(3)], 262.83 [incorporated by reference in 335-14-3-.09(4)], 262.84 [incorporated by reference in 335-14-3-.09(5)], 335-14-4-.02(1), 335-14-5-.02(3), 335-14-5-.05(2), 335-14-6-.2(3), and 335-14-6-.05(2), whether submitted electronically into EPA's Waste Import Export Tracking System or in paper format. After January 22, 2025, no claim of business confidentiality may be asserted by any person with respect to information contained in hazardous secondary material export documents prepared, used and submitted under 40 CFR § 261.4(a)(25)[incorporated by reference at 335-14-1-.01(4)(a)25.], whether submitted electronically into the 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 335-14-2-.05(1)(a)5. and 335-14-2-.05(3)(a), and any hazardous waste export, import, and transit documents prepared, used and submitted under 40 CFR §§ 262.82 [incorporated by reference in 335-14-3-.09(3)], 262.83 [incorporated by reference in 335-14-3-.09(4)], 262.84 [incorporated by reference in 335-14-3-.09(5)], 335-14-4-.02(1), 335-14-5-.02(3), 335--5-.05(2), 335-14-6-.02(3), and 335-14-6-5(2) 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. After January 22, 2025, the EPA will make available to the public under this section any hazardous secondary material export documents prepared, used and submitted under 40 CFR § 261.4(a)(25)[incorporated by reference at 335-14-1-.01(4)(a)25.] on March 1 of the calendar year after the related hazardous secondary material exports

occur, when these documents are considered by the EPA to be final documents.

(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.

**Author:** Stephen C. Maurer, Michael B. Jones, Amy P. Zachry, Stephen A. Cobb, Vernon H. Crockett, C. Edwin Johnston, Heather M. Jones; Jonah L. Harris.
**Statutory Authority:** Code of Ala. 1975, §22-30-11.
**History:** April 9, 1986. **Amended:** February 15, 1988; August 24, 1989. **Amended:** Filed November 30, 1994; effective January 5, 1995. **Amended:** Filed December 8, 1995; effective January 12, 1996. **Amended:** Filed February 21, 1997; effective March 28, 1997. **Amended:** Filed February 20, 1998; effective March 27, 1998. **Amended:** Filed February 26, 1999; effective April 2, 1999. **Amended:** Filed February 25, 2000, effective March 31, 2000. **Amended:** Filed March 9, 2001; effective April 13, 2001. **Amended:** Filed February 8, 2002; effective March 15, 2002. **Amended:** Filed February 28, 2006; effective April 4, 2006. **Amended:** Filed February 19, 2013; effective March 26, 2013. **Amended:** Filed

February 14, 2017; effective March 31, 2017. **Amended:** Filed February 20, 2018; effective April 7, 2018. **Amended:** Filed February 19, 2019; effective April 6, 2019. **Amended:** Published April 28, 2023; effective June 12, 2023 **Amended:** Published ; effective .

**APA-1**

**TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION**

| | |
|---|---|
| Control: | 335 |
| Department or Agency: | Alabama Department of Environmental Management Land Division - Hazardous Waste Program |
| Rule No.: | 335-14-1-.02 |
| Rule Title: | Definitions And References |
| Intended Action | Amend |

| | |
|---|---|
| Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? | Yes |
| Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? | Yes |
| Is there another, less restrictive method of regulation available that could adequately protect the public? | No |
| Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? | No |

To what degree?: N/A

| | |
|---|---|
| Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? | NA |
| Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? | Yes |
| Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? | No |

Does the proposed rule have an economic impact? No

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

Certification of Authorized Official

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

Signature of certifying officer: Jeffery W. Kitchens

Jeffery W. Kitchens

REC'D & FILED

Date: Tuesday, August 19, 2025

AUG 19, 2025

LEGISLATIVE SVC AGENCY

APA-2

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**
**LAND DIVISION - HAZARDOUS WASTE PROGRAM**

**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** Alabama Department of Environmental Management

**RULE NO. & TITLE:** 335-14-1-.02 Definitions And References

**INTENDED ACTION:** Amend

**SUBSTANCE OF PROPOSED ACTION:**
The Department proposes to revise Rule 335-14-1-.02 to adopt the Technical Corrections for the Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule and the Integrating e-Manifest with Hazardous Waste Exports and Other Manifest-Related Reports. These revisions are necessary for the Department to maintain regulations that are at least as stringent as those promulgated federally, a requirement to preserve the State's authorized status.

**TIME, PLACE AND MANNER OF PRESENTING VIEWS:**
Comments may be submitted in writing or orally at a public hearing to be held at 10:00 a.m., October 7, 2025, in the ADEM Main Hearing Room, 1400 Coliseum Boulevard, Montgomery, Alabama 36110. Attendance at the hearing is not necessary to present such data, views, arguments, or comments. All comments should be received by 5:00 p.m., October 7, 2025. Written submissions and other inquiries should be directed to: ADEM Hearing Officer, Office of General Counsel, Alabama Department of Environmental Management, P.O. Box 301463, Montgomery, AL 36130-1463 (street address: 1400 Coliseum Boulevard, Montgomery, AL 36110-2400) or by e-mail at hearing.officer@adem.alabama.gov.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**
Tuesday, October 7, 2025

**CONTACT PERSON AT AGENCY:**
Lynn T. Roper, 334-271-7728

Jeffery W. Kitchens
Jeffery W. Kitchens

(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

**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 rule 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)(a)2. and therefore are 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 Ala. 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. “Aerosol can” means a non-refillable receptacle containing a gas compressed, liquefied, or dissolved under pressure, the sole purpose of which is to expel a liquid, paste, or powder and fitted with a self-closing release device allowing the contents to be ejected by the gas.

12. "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.

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

14. “Airbag waste” means any hazardous waste airbag modules or hazardous waste airbag inflators.

15. “Airbag waste collection facility” means any facility that receives airbag waste from airbag handlers subject to regulation under 335-14-2-.01(4)(j), and accumulates the waste for more than ten days.

16. “Airbag waste handler” means any person, by site, who generates airbag waste that is subject to regulation under 335-14.

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

18. "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.

19. "Annual" means a calendar year.

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

21. "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).

22. "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.

23. “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.

24. "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.

25. "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.

26. "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).

27. "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).

28. "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.

29. "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.

30. "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.

31. "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).

32. "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.

33. "Carbon dioxide stream" means carbon dioxide that has been captured from an emission source (e.g., power plant), plus incidental associated substances derived from the source materials and the capture process, and any substances added to the stream to enable or improve the injection process.

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

345. "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.

356. "Central accumulation area" means any on-site hazardous waste accumulation area subject to either 335-14-3-.01(7) for large quantity generators; or 335-14-3-.01(6) 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.

367. "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 335-14-3-.08.

378. "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.

3~~8~~9. "Chemical agents and munitions" for the purposes of 335-14-7-.13 are as defined in 50 U.S.C. section 1521(j)(1).

~~39~~40. "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.

4~~0~~1. "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".)

4~~1~~2. "Closure" for the purposes of 335-14-8 means the act of securing a facility pursuant to the requirements of Chapter 335-14-5.

4~~2~~3. "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).

4~~3~~4. "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.

4~~4~~5. "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.

4~~5~~6. "Commission" means the Alabama Environmental Management Commission as established by Code of Ala. 1975, § 2-22A-6.

4~~6~~7. "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).

4~~7~~8. "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 applicable requirement in 335-14 or from any requirement for notification under section 3010 of RCRA for treatment storage, and disposal facilities.

4~~8~~9. "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.

~~49~~50. "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.

5~~0~~1. "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.

5~~1~~2. "Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

5~~2~~3. "Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of rules 335-14-5-.30 or 335-14-6-.30.

5~~3~~4. "Contamination" means the presence of any hazardous constituent in a concentration that exceeds the naturally occurring concentration of that constituent.

5~~4~~5. "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.

5~~5~~6. "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).

5~~6~~7. "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 rules 335-14-5-.06, 335-14-5-.07 and 335-14-5-.08, Chapter 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).]

5~~7~~8. "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).

5~~8~~9. "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.

~~59~~60. "CRT collector" means a person who receives used, intact CRTs for recycling, repair, resale, or donation.

6~~0~~1. "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.

6~~1.~~2 "CRT glass manufacturer" means an operation or part of an operation that uses a furnace to manufacture CRT glass.

6~~2~~3. "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.

6~~3~~4. "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).

6~~4~~5. "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).

6~~5~~6. "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.

6~~6~~7. "Daily" means once during each day of the year.

6~~7~~8. "Day" means a day of the year.

6~~8~~9. "Department" means the Alabama Department of Environmental Management as established by Code of Ala. 1975, §22-22A-4.

~~69~~70. "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;

(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).

7~~0~~1. "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.

7~~1~~2. "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.

7~~2~~3. "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.

7~~3~~4. "Dioxins and furans (D/F)" means tetra, penta, hexa, hepta, and octachlorinated dibenzo dioxins and furans.

7~~4~~5. "Director" means the Director of the Department, appointed pursuant to Code of Ala. 1975, §22-22A-4, or his designee.

7~~5~~6. "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.

7~~6~~7. "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.

7~~7~~8. "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.

7~~8~~9. "Disposal site" means the location where any ultimate disposal of hazardous waste occurs.

~~79~~80. "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.

8~~0~~1. "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

8~~1~~2. "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.

8~~2~~3. "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.

8~~3~~4. "Electronic manifest" or "e-Manifest" means the electronic format of the hazardous waste manifest that is obtained from EPA's national 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).

8~~4~~5. "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.

8~~5~~6. "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.

8~~6~~7. "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.

8~~7~~8. "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-1evel radioactive waste disposal facility (LLRWDF) licensed in accordance with 10 CFR Part 61 or NRC Agreement State equivalent regulations.

8~~8~~9. "Emergency permit" for the purposes of 335-14-8 means a permit issued in accordance with 335-14-8-.06(1).

~~8~~90. "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.

9~~0~~1. "EPA" means the United States Environmental Protection Agency.

9~~1~~2. "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.

9~~2~~3. "EPA identification number" means the number assigned by EPA or the Department to each generator, transporter, and treatment, storage or disposal facility.

9~~3~~4. "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.

9~~4~~5. "Equivalent method" means any testing or analytical method approved by the Department under 335-14-1-.03(1).

9~~5~~6. "Evaluated hazardous waste pharmaceutical" means a prescription hazardous waste pharmaceutical that has been evaluated by a reverse distributor in accordance with 335-14-7-.16(10)(a)3. and will not be sent to another reverse distributor for further evaluation or verification of manufacture credit.

9~~6~~7. "Excluded scrap metal" for the purposes of 335-14-2-.01 is processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal.

9~~7~~8. "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).

9~~8~~9. "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.

~~99~~100. "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.

10~~0~~1. "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.

10~~1~~2. "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.

10~~2~~3. "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.

10~~3~~4. "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.

10~~4~~5. "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.

10~~5~~6. "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.

10~~6~~7. "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 Ala. 1975, (AHWMMA). This definition also applies to facilities implementing corrective action under §22-30-19 et seq., Code of Ala. 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.

10~~7~~8. "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).

10~~8~~9. "Facility owner" means a person who owns a facility. In most cases, this will be the "operator" or the "owner".

11~~0~~9. "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.

11~~0~~1. "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136-136y).

11~~1~~2. "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-.0~~3(5)~~1(6) and 335-14-3-.01(7).

11~~2~~3. "Food-chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

11~~3~~4. "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.

11~~4~~5. "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

11~~5~~6. "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike and the surface of the waste contained therein.

11~~6~~7. "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.

11~~7~~8. "Generator" means:

(i) Any person, by individual generation site, whose act or process produces hazardous waste identified or listed in Chapter 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 conditionally exempt 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.

11~~8~~9. "Geologist" means a person who holds a license as a professional geologist under the Alabama Professional Geologist Licensing Act.

1~~19~~20. "Groundwater" means water below the land surface in a zone of saturation.

12~~0~~1. "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.

12~~1~~2. "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.

12~~2~~3. "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 of 335-14-2-.01(4)(a)23., a facility that collects hazardous secondary materials from other persons is not the hazardous secondary material generator.

12~~3~~4. "Hazardous waste" means a hazardous waste as defined in 335-14-2-.01(3).

12~~4~~5. "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).

12~~5~~6. "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.

12~~6~~7. “Hazardous waste pharmaceutical” means a pharmaceutical that is a solid waste, as defined in 335-14-2-.01(2), and exhibits one or more characteristics identified in 335-14-2-.03 or is listed in 335-14-2-.04. A pharmaceutical is not a solid waste, as defined in 335-14-2-.01(2), and therefore not a hazardous waste pharmaceutical, if it is legitimately used/reused (e.g., lawfully donated for its intended purpose) or reclaimed. An over-the-counter pharmaceutical, dietary supplement, or homeopathic drug is not a solid waste, as defined in 335-14-2-.01(2), and therefore not a hazardous waste pharmaceutical, if it has a reasonable expectation of being legitimately used/reused (e.g., lawfully redistributed for its intended purpose) or reclaimed.

12~~7~~8. “Healthcare facility” means any person that is lawfully authorized to:

(i) Provide preventative, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, and counseling, service, assessment or procedure with respect to the physical or mental condition, or functional status, of a human or animal or that affects the structure or function of the human or animal body; or

(ii) Distribute, sell, or dispense pharmaceuticals, including over-the-counter pharmaceuticals, dietary supplements, homeopathic drugs, or prescription pharmaceuticals. This definition includes, but is

not limited to, wholesale distributors, third-party logistics providers that serve as forward distributors, military medical logistics facilities, hospitals, psychiatric hospitals, ambulatory surgical centers, health clinics, physicians' offices, optical and dental providers, chiropractors, long-term care facilities, ambulance services, pharmacies, long-term care pharmacies, mail-order pharmacies, retailers of pharmaceuticals, veterinary clinics, and veterinary hospitals. This definition does not include pharmaceutical manufacturers, reverse distributors, or reverse logistics centers.

12~~8~~9. "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.

1~~29~~30. "Household waste pharmaceutical" means a pharmaceutical that is a solid waste, as defined in 335-14-2-.01(2), but is excluded from being a hazardous waste under 335-14-2-.01(4)(b)1.

13~~0~~1. In operation" for the purposes of 335-14-8 refers to a facility which is treating, storing, or disposing of hazardous waste.

13~~1~~2. "Inactive portion" means that portion of a facility which is not operated after November 19, 1980. (See also "active portion" and "closed portion".)

13~~2~~3. "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.

13~~3~~4. "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.

13~~4~~5. "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.)

13~~5~~6. “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 335-14-3.

13~~6~~7. "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.

13~~7~~8. "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.

13~~8~~9. "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.

1~~39~~40. "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.

14~~0~~1. "Injection well" means a bored, drilled, or driven shaft or dug hole which is used for the injection of pollutants. (See also "underground injection".)

14~~1~~2. "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.

14~~2~~3. "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.

14~~3~~4. “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.

14~~4~~5. "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

14~~5~~6. “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.

14~~6~~7. “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.

14~~7~~8. "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.

14~~8~~9. "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 infra-red 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.

1~~49~~50. "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.

15~~0~~1. "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.

15~~1~~2. "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).

15~~2~~3. "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.

15~~3~~4. "Land use controls" has the same meaning as in 335-15-1-.02.

15~~4~~5. "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.

15~~5~~6. "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.

15~~6~~7. "Large Quantity Generator (LQG)" is a 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)

15~~7~~8. "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, lamps, or aerosol cans, 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.

15~~8~~9. "Leachate" means any liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste.

15~~9~~60. "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.

16~~0~~1. "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.

16~~1~~2. "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.

16~~2~~3. “Long-term care facility” means a licensed entity that provides assistance with activities of daily living, including managing and administering pharmaceuticals to one or more individuals at the facility. This definition includes, but is not limited to, hospice facilities, nursing facilities, skilled nursing facilities, and the nursing and skilled nursing care portions of continuing care retirement communities. Not included within the scope of this definition are group homes, independent living communities, assisted living facilities, and the independent and assisted living portions of continuing care retirement communities

16~~3~~4. "Low-Level Mixed Waste (LLMW)" for the purposes of 335-14-7-.14 is a waste that contains both low-1evel radioactive waste and RCRA hazardous waste.

16~~4~~5. "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-1evel 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)

16~~5~~6. "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-1evel radioactive waste.

16~~6~~7. "Major facility" for the purposes of 335-14-8 means any facility or activity classed as such by the Department.

16~~7~~8. "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.

16~~8~~9. "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.

1~~69~~70. "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.

17~~0~~1. “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.

17~~1~~2. "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.

17~~2~~3. "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.

17~~3~~4. "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.

17~~4~~5. "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.

17~~5~~6. "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.

17~~6~~7. "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.

17~~7~~8. "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 r. 335-14.

17~~8~~9. "Month" means a month of the year.

1~~79~~80. "Monthly" means once during each month of the year.

18~~0~~1. "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.

18~~1~~2. "Movement" means that hazardous waste transported to a facility in an individual vehicle.

18~~2~~3. "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 Ala. 1975, §§22-22-1 to 22-22-14, as amended, and the regulations in Division 6 of the Department's Administrative Code.

18~~3~~4. "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.]

18~~4~~5. "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.

18~~5~~6. "New hazardous waste management facility" or "new facility" means a facility which began operation, or for which construction commenced after November 19, 1980.

18~~6~~7. "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".)

18~~7~~8. Non-acute hazardous waste means all hazardous wastes that are not acute hazardous waste, as defined 335-14-1-.02(1).

18~~8~~9. "Non-creditable hazardous waste pharmaceutical" means a prescription hazardous waste pharmaceutical that does not have a reasonable expectation to be eligible for manufacturer credit or a nonprescription hazardous waste pharmaceutical that does not have a reasonable expectation to be legitimately used/reused or reclaimed. This includes but is not limited to, investigational drugs, free samples of pharmaceuticals received by healthcare facilities, residues of pharmaceuticals remaining in empty containers, contaminated personal protective equipment, floor sweepings, and clean-up material from the spills of pharmaceuticals.

1~~8~~90. Non-hazardous waste pharmaceutical means a pharmaceutical that is a solid waste, as defined in 335-14-2-.01(2), and is not listed in 335-14-2-.04, and does not exhibit a characteristic identified in 335-14-2-.03.

19~~0~~1. "Non-pharmaceutical hazardous waste" means a solid waste, as defined in 335-14-2-.01(2), that is listed in 335-14-2-.04, or exhibits one or more characteristics identified in 335-14-2-.03, but is not a pharmaceutical, as defined in this 335-14-1-.02.

19~~1~~2. "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).

19~~2~~3. "NRC" for the purposes of 335-14-7-.14 means the U. S. Nuclear Regulatory Commission.

19~~3~~4. "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.

19~~4~~5. "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 outdated commercial chemicals.

19~~5~~6. "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.

19~~6~~7. "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.

19~~7~~8. "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.

19~~8~~9. "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.

~~199~~200. "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.

20~~0~~1. "Operator" means the person responsible for the overall operation of a facility.

20~~1~~2. "Other wastes" are wastes as defined in rule 335-14-1-.02 that are not hazardous waste as defined in rule 335-14-2-.01.

20~~2~~3. "Owner" means the person who owns in fee simple the property on which a facility or part of a facility is sited.

20~~3~~4. "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.

20~~4~~5. "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.

20~~5~~6. "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 rule 335-14-8-.07.

20~~6~~7. "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.

20~~7~~8. "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.

20~~8~~9. "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 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.

(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).

210~~9~~. "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).

21~~0~~1. “Pharmaceutical” means any drug or dietary supplement for use by humans or other animals; any electronic nicotine delivery system (e.g., electronic cigarette or vaping pen); or any liquid nicotine (e-1iquid) packaged for retail sale for use in electronic nicotine delivery systems (e.g., pre-filled cartridges or vials). This definition includes, but is not limited to, dietary supplements, as defined by the Federal Food, Drug and Cosmetic Act; prescription drugs, as defined by 21 CFR 203.3(y); over-the-counter drugs; homeopathic drugs; compounded drugs; investigational new drugs; pharmaceuticals remaining in non-empty containers; personal protective equipment contaminated with pharmaceuticals; and clean-up material from spills of pharmaceuticals. This definition does not include dental amalgam or sharps.

21~~1~~2. "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.

21~~2~~3. "Pile" means any non-containerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

21~~3~~4. “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.

21~~4~~5. "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.

21~~5~~6. "Plastic" means the non-metallic compounds that result from a chemical reaction and are molded or formed into rigid or pliable construction materials.

21~~6~~7. "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.

21~~7~~8. "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.

21~~8~~9. "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.

21~~9~~20. "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.

22~~0~~1. "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).

22~~1~~2. "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.

22~~2~~3. "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).

22~~3~~4. “Potentially creditable hazardous waste pharmaceutical” means a prescription hazardous waste

pharmaceutical that has a reasonable expectation to receive manufacturer credit and is:

(i) In original manufacturer packaging (except pharmaceuticals that were subject to a recall);

(ii) Undispensed; and

(iii) Unexpired or less than one-year past expiration date. The term does not include evaluated hazardous waste pharmaceuticals or nonprescription pharmaceuticals including, but not limited to, over-the-counter drugs, homeopathic drugs, and dietary supplements.

224~~4~~5. "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.

225~~5~~6. "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.].

226~~6~~7. "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.

227~~7~~8. "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) pf the Clean Water Act]. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

22~~8~~9. "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.

2~~29~~30. "Quarter" means a period of three consecutive months.

23~~0~~1. "Quarterly" means once during each period of three consecutive months for a total of four times each calendar year.

23~~1~~2. "RCRA" means the Federal Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. §§6901 et seq.).

23~~2~~3. "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.

23~~3~~4. "Reclaimed" for the purposes of 335-14-2-.01 means a material that is processed to recover a usable product, or one that 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(1), and if the residuals meet the requirements specified in 335-14-7-.08(13)

23~~4~~5. "Recycled" for the purposes of 335-14-2-.01 means a material is used, reused, or reclaimed.

23~~5~~6. "Regional Administrator" means the Regional Administrator for the EPA Region in which the facility is located, or his designee.

23~~6~~7. "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.

23~~7~~8. "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.

23~~8~~9. "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).

23~~39~~40. "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.

24~~0~~1. "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.

24~~1~~2. "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.

24~~2~~3. "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.

24~~3~~4. “Reverse distributor” means any person that receives and accumulates prescription pharmaceuticals that are potentially creditable hazardous waste pharmaceuticals for the purpose of facilitating or verifying manufacturer credit. Any person, including forward distributors, third-party logistics providers, and pharmaceutical manufacturers, that processes prescription pharmaceuticals for the facilitation or verification of manufacturer credit is considered a reverse distributor.

24~~4~~5. "Rubber" means any of numerous synthetic elastic materials of varying chemical composition with properties similar to those of natural rubber.

24~~5~~6. "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.

24~~6~~7. "Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

24~~7~~8. "Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

24~~8~~9. "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-.03(5)(c).

24~~9~~50. "Saturated zone" or "zone of saturation" means that part of the earth's crust in which all voids are filled with water.

25~~0~~1. "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.

25~~1~~2. "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.

2523. "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.

2534. "Semi-annual" means a six-month period.

2545. "Semi-annually" means once during each six-month period for a total of two times each calendar year.

2556. "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.

2567. "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.

2578. "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.

2589. "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).

25960. "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, lamps, or aerosol cans, calculated collectively) at any time.

26~~0~~1. "Solid waste" means a waste as defined by 335-14-2-.01(2).

26~~1~~2. "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).

26~~2~~3. "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 Chapter 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 Chapter 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 at a335-14-2-.01(4)(a)26. and 335-14-2-.01(4)(b)18

26~~3~~4. "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.

26~~4~~5. "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 …** |
|---|---|
| | February |

| 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 | |
| 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 |
| 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 |

26~~5~~6. "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.

26~~6~~7. "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.

26~~7~~8. "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).

26~~8~~9. "State" means any of the United States except the State of Alabama.

2~~69~~70. "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.

27~~0~~1. "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-.03(5).

27~~1~~2. "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.

27~~2~~3. "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.

27~~3~~4. "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.

27~~4~~5. "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.

27~~5~~6. "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.

27~~6~~7. "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.

27~~7~~8. "Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

27~~8~~9. “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.

2~~79~~80. "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.

28~~0~~1. "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.

28~~1~~2. "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 rules 335-14-11-.02(4)(c)2. or 335-14-11-.03(4)(c)2.

28~~2~~3. "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 Chapter 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.

28~~3~~4. "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.

2845. "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)(b)9.(iii) for small quantity generators and very small quantity generators that opt into 335-14-3-.12. 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.

2856. "Transfer facility" means any transportation related facilities including loading docks, parking areas, storage areas, and other 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 Chapters 335-14-5, 335-14-6, 335-14-8, and 335-14-9.

2867. "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.

2878. "Transportation" means the movement of wastes from the point of generation to any intermediate transfer points, and finally to the disposal site. 288.

2889. "Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway, or water.

28890. "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.

29~~0~~1. "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.

29~~1~~2. "Treatment facility" means a location at which wastes are subjected to treatment, and may include a facility where waste has been generated.

29~~2~~3. "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed or immobilized.

29~~3~~4. "Underground injection" means the injection of pollutants through a bored, drilled or driven shaft or dug hole.

29~~4~~5. "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.

29~~5~~6. "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.

29~~6~~7. "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.

29~~7~~8. "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.

29~~8~~9. "Universal waste" means any of the following hazardous wastes that are subject to the universal waste requirements of Chapter 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);

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

(v) Aerosol cans as described in 335-14-11-.01(6).

~~299~~300. "Universal waste handler":

(i) Means:

(I) A generator [as defined in 335-14-1-.02(1)(a)] 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 335-14-11-.02(4)(a) or (c) or 335-14-11-.03(4)(a) or (c)], disposes of, or recycles [except under the provisions of 335-14-11-.02(4)(e) or 335-14-11-.03(4)(e)] 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.

30~~0~~1. "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.

30~~1~~2. "Universal waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

30~~2~~3. "Unsaturated zone" or "zone of aeration" means the zone between the land surface and the water table.

30~~3~~4. “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.

30~~4~~5. “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”.

30~~5~~6. "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.

30~~6~~7. "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).

30~~7~~8. "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.

30~~8~~9. "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.

310~~9~~. "Used oil burner" means a facility where used oil not meeting the specification requirements in rule 335-14-17-.02(2) is burned for energy recovery in devices identified in rule 335-14-17-.07(2)(a).

31~~0~~1. "Used oil collection center" means any site or facility that is recognized by the Department, in accordance with rule 335-14-17-.04(2)(b) and accepts/ aggregates and stores used oil collected from used oil generators regulated under rule 335-14-17-.03 who bring used oil to the collection center in shipments of no more than 55 gallons under the provisions of rule 335-14-17-.03(6). Used oil collection centers may also accept used oil from household do-it-yourselfers.

31~~1~~2. "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 rule 335-14-17-.02(2).

31~~2~~3. "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.

31~~3~~4. "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.

31~~4~~5. "Used oil processor/re-refiner" means a facility that processes used oil.

31~~5~~6. "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.

31~~6~~7. "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 rule 335-14-17-.03(1)(b)2. Transfer facilities that store used oil for more than 35 days are subject to regulation under rule 335-14-17.

31~~7~~8. "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.

31~~8~~9. "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)2.(v). These paper copies are submitted for data exchange purposes only and are not the official copies of record for legal purposes.

3~~19~~20. "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).

32~~0~~1. "Vessel" means every description of watercraft, used or capable of being used as a means of transportation on the water.

32~~1~~2. "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.

32~~2~~3. "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.

32~~3~~4. "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.

32~~4~~5. "Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

32~~5~~6. "Week" means a calendar week (e.g. Sunday-Saturday).

32~~6~~7. "Weekly" means once during each calendar week.

32~~7~~8. "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.

32~~8~~9. "Well injection" means "underground injection".

3~~29~~30. "Wipe" means a woven or non-woven shop towel, rag, pad, or swab made of wood pulp, fabric, cotton, polyester blends, or other material.

33~~0~~1. "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.

33~~1~~2. "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.

33~~2~~3. "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.

33~~3~~4. 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.

3345. 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; May 18, 2012; November 28, 2016; and July 7, 2020) 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.
**Author**: Stephen C. Maurer; Stephen A. Cobb; Steven O. Jenkins; Robert W. Barr; Lynn T. Roper; Edwin C. Johnston; Kelley Lockhart; Vernon H. Crockett; Bradley N. Curvin; Theresa A. Maines; Heather M. Jones; Corey S. Holmes; Metz P. Duites; Linda J. Knickerbocker; Sonja B. Favors; Brent A. Watson; Jonah L. Harris.
**Statutory Authority**: Code of Ala. 1975, §§22-30-3, 22-30-11.
**History**: November 19, 1980. **Amended**: April 9, 1986; September 29, 1986; February 15, 1988; August 24, 1989; December 6, 1990; April 2, 1991; January 25, 1992; January 1, 1993. **Amended**: Filed November 30, 1994; effective January 5, 1995. **Amended**: Filed December 8, 1995; effective January 12, 1996. **Amended**: Filed February 21, 1997; effective March 28, 1997. **Amended**: Filed February 20, 1998; effective March 27, 1998. **Amended**: Filed

February 26, 1999; effective April 2, 1999. **Amended:** Filed February 25, 2000; effective March 31, 2000. **Amended:** Filed March 9, 2001; effective April 13, 2001. **Amended:** Filed February 8, 2002; effective March 15, 2002. **Amended:** Filed March 13, 2003; effective April 17, 2003. **Amended:** Filed April 22, 2004; effective May 27, 2004. **Amended:** Filed February 24, 2005; effective March 31, 2005. **Amended:** Filed February 28, 2006; effective April 4, 2006. **Amended:** Filed February 27, 2007; effective April 3, 2007. **Amended:** Filed April 22, 2008; effective May 27, 2008. **Amended:** Filed February 24, 2009; effective March 31, 2009. **Amended:** Filed February 23, 2010; effective March 30, 2010. **Amended:** Filed February 23, 2011; effective March 30, 2011. **Amended:** Filed February 28, 2012; effective April 3, 2012. **Amended:** Filed February 19, 2013; effective March 26, 2013. **Amended:** Filed February 24, 2015; effective March 31, 2015. **Amended:** Filed February 23, 2016; effective April 8, 2016. **Amended:** Filed February 14, 2017; effective March 31, 2017. **Amended:** Filed February 20, 2018; effective April 7, 2018. **Amended:** Filed February 19, 2019; effective April 6, 2019. **Amended:** Published February 28, 2020; effective April 13, 2020. **Amended:** Published December 31, 2020; effective February 14, 2021. **Amended:** Published April 28, 2023; effective June 12, 2023. **Amended:** Published ; effective .

**APA-1**

**TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION**

| | |
|---|---|
| Control: | 335 |
| Department or Agency: | Alabama Department of Environmental Management Land Division - Hazardous Waste Program |
| Rule No.: | 335-14-1-.03 |
| Rule Title: | Rulemaking Petitions |
| Intended Action | Amend |

| | |
|---|---|
| Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? | Yes |
| Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? | Yes |
| Is there another, less restrictive method of regulation available that could adequately protect the public? | No |
| Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? | No |

To what degree?: N/A

| | |
|---|---|
| Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? | NA |
| Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? | Yes |
| Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? | No |

Does the proposed rule have an economic impact? No

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

Certification of Authorized Official

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

Signature of certifying officer: Jeffery W. Kitchens

Jeffery W. Kitchens

Date: Tuesday, August 19, 2025

REC'D & FILED
AUG 19, 2025
LEGISLATIVE SVC AGENCY

APA-2

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**
**LAND DIVISION - HAZARDOUS WASTE PROGRAM**

**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** Alabama Department of Environmental Management

**RULE NO. & TITLE:** 335-14-1-.03 Rulemaking Petitions

**INTENDED ACTION:** Amend

**SUBSTANCE OF PROPOSED ACTION:**
The Department proposes to revise Rule 335-14-1-.03 to make general clarifications.

**TIME, PLACE AND MANNER OF PRESENTING VIEWS:**
Comments may be submitted in writing or orally at a public hearing to be held at 10:00 a.m., October 7, 2025, in the ADEM Main Hearing Room, 1400 Coliseum Boulevard, Montgomery, Alabama 36110. Attendance at the hearing is not necessary to present such data, views, arguments, or comments. All comments should be received by 5:00 p.m., October 7, 2025. Written submissions and other inquiries should be directed to: ADEM Hearing Officer, Office of General Counsel, Alabama Department of Environmental Management, P.O. Box 301463, Montgomery, AL 36130-1463 (street address: 1400 Coliseum Boulevard, Montgomery, AL 36110-2400) or by e-mail at hearing.officer@adem.alabama.gov.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**
Tuesday, October 7, 2025

**CONTACT PERSON AT AGENCY:**
Lynn T. Roper, 334-271-7728

Jeffery W. Kitchens
Jeffery W. Kitchens

(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

**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 Ala. 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 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 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 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 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 Rule 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 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 at 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 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).

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

(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 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; will improve management practices 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(3));

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

(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-1ike material. A determination that a partially reclaimed material for which

the variance is sought is commodity-1ike will be based on whether the hazardous secondary material is legitimately recycled as specified in 335-14-1-.03(23) 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).

(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), 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).

(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 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 335-14-2-.01(6)(b) and (c), rather than under the provisions of Rule 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-.05. 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 under 335-14-1-.03(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 listed in the "specified month schedule" defined in 335-14-1-.02(1)(a) using ADEM Form 8700-12 or an electronic method used by the Department 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 or an electronic method used by the Department. For purposes of 335-14-1-.03(22)(b), 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; or

(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.

(c) [Reserved]

**Author:** Stephen C. Maurer, C. Lynn Garthright, C. Edwin Johnston, Michael Champion, Bradley N. Curvin, James K. Burgess, Vernon H. Crockett; Sonja B. Favors; Brent A. Watson; Jonah L. Harris.

**Statutory Authority:** Code of Ala. 1975, §§22-30-9, 22-30-10, 22-30-11; 22-30-12.

**History:** November 19, 1980. **Amended:** April 9, 1986; September 29, 1986; February 15, 1988; August 24, 1989; December 6, 1990. **Amended:** Filed November 30, 1994; effective January 5, 1995. **Amended:** Filed March 22, 1995; effective April 26, 1995. **Amended:** Filed December 8, 1995; effective January 12, 1996. **Amended:** Filed February 21, 1997; effective March 28, 1997. **Amended:** Filed February 20, 1998; effective March 27, 1998. **Amended:** Filed March 9, 2001; effective April 13, 2001. **Amended:** Filed February 8, 2002; effective March 15, 2002. **Amended:** Filed March 13, 2003; effective April 17, 2003. **Amended:** Filed February 28, 2006; effective April 4, 2006. **Amended:** Filed February 27, 2007; effective April 3, 2007. **Amended:** Filed April 22, 2008; effective May 27, 2008. **Amended:** Filed February 24, 2009; effective March 31, 2009. **Amended:** Filed February 23, 2011; effective March 30, 2011. **Amended:** Filed February 23, 2016; effective April 8, 2016. **Amended:** Filed February 14, 2017; effective March 31, 2017. **Amended:** Filed February 20, 2018; effective April 7, 2018. **Amended:** Filed February 19, 2019; effective April 6, 2019. **Amended:** Published December 31, 2020; effective February 14, 2021. **Amended:** Published April 28, 2023; effective June 12, 2023. **Amended:** Published _____; effective _____.

**APA-1**

**TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION**

| | |
|---|---|
| Control: | 335 |
| Department or Agency: | Alabama Department of Environmental Management Land Division - Hazardous Waste Program |
| Rule No.: | 335-14-2-.01 |
| Rule Title: | General |
| Intended Action | Amend |

| | |
|---|---|
| Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? | Yes |
| Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? | Yes |
| Is there another, less restrictive method of regulation available that could adequately protect the public? | No |
| Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? | No |

To what degree?: N/A

| | |
|---|---|
| Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? | NA |
| Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? | Yes |
| Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? | No |

Does the proposed rule have an economic impact? No

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

Certification of Authorized Official

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

Signature of certifying officer: Jeffery W. Kitchens

Jeffery W. Kitchens

Date: Tuesday, August 19, 2025

REC'D & FILED
AUG 19, 2025
LEGISLATIVE SVC AGENCY

**APA-2**

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION - HAZARDOUS WASTE PROGRAM**

**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** Alabama Department of Environmental Management

**RULE NO. & TITLE:** 335-14-2-.01 General

**INTENDED ACTION:** Amend

**SUBSTANCE OF PROPOSED ACTION:**
The Department proposes to revise Rule 335-14-2-.01 to adopt the Conditional Exclusion for Carbon Dioxide (CO2) Streams in Geologic Sequestration Activities , the Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals From Electric Utilities, the Technical Corrections for the Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule, Integrating e-Manifest with Hazardous Waste Exports and Other Manifest-Related Reports, the Management of Certain Hydrofluorocarbons and Substitutes and the Second Technical Corrections to Hazardous Waste Generator Improvements, the Hazardous Waste Pharmaceuticals, and the Definition of Solid Waste Rules. These revisions are necessary for the Department to maintain regulations that are at least as stringent as those promulgated federally, a requirement to preserve the State's authorized status.

**TIME, PLACE AND MANNER OF PRESENTING VIEWS:**
Comments may be submitted in writing or orally at a public hearing to be held at 10:00 a.m., October 7, 2025, in the ADEM Main Hearing Room, 1400 Coliseum Boulevard, Montgomery, Alabama 36110. Attendance at the hearing is not necessary to present such data, views, arguments, or comments. All comments should be received by 5:00 p.m., October 7, 2025. Written submissions and other inquiries should be directed to: ADEM Hearing Officer, Office of General Counsel, Alabama Department of Environmental Management, P.O. Box 301463, Montgomery, AL 36130-1463 (street address: 1400 Coliseum Boulevard, Montgomery, AL 36110-2400) or by e-mail at hearing.officer@adem.alabama.gov.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**
Tuesday, October 7, 2025

**CONTACT PERSON AT AGENCY:**
Lynn T. Roper, 334-271-7728

Jeffery W. Kitchens

Jeffery W. Kitchens

(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

**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 Ala. 1975, §22-30-3(11), and a hazardous waste within the meaning of Code of Ala. 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-1ike", 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., or 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 | (*) | (*) | - - - - | (*) |

| | **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.** |
|---|---|---|---|---|
| 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 ~~harazadous~~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-1ine 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 40 CFR 270.2). 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)I. 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 | 1.7 |
| Beryllium | 0.0110 |
| Cadmium | 0.050 |

| Constituent | Maximum for any single composite sample--TCLP (mg/l) |
|---|---|
| ~~Chromum~~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 |
| Generic exclusion levels for F006 nonwastewater HTMR residues | |
| 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 |

II. A one-time notification and certification must be placed in the facility's files and sent to EPA Region 4 and 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) Exclusions.

(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, except as prohibited by 335-14-7-.16(5) and Clean Water Act requirements at 40 CFR 403.5(b);

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(1);

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 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, 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)(a)17., 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-1ocated 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 handler'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~~335-14-2-.01(4) 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**

| **Fertilizer,, Constituent (ppm)** | **Maximum Allowable Total Concentration in per Unit (1%) of Zinc** |
|---|---|
| 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 335-14-2-.01(4)(a)23.(i) and (ii):

(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." "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). "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 335-14-2-.01(4)(a) 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 three factors in 335-14-1-.03(23)(a) and how the factor in 335-14-1-.03(23)(b) was considered. 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, 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. 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) and have they notified the appropriate authorities that the financial assurance condition is satisfied per 335-14-2-.01(4)(a)24.(vi)(VI)? 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 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 an AHWMMA 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 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. 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 amended on May 30, 2018 and August 9, 2023) 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-1eaking, 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-~~contamimated~~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 the ADEM Division 14 Administrative Code; 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, ~~documentationDocumentation~~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) 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) 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), 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), 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 335-14-2-.27 (vents), 335-14-2-.28 (equipment) and 335-14-2-.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 335-14-2-.27

(vents), 335-14-2-.28 (equipment) and 335-14-2-.29 (tank storage); and

(VI) Ensure that no hazardous secondary materials are speculatively accumulated as defined in 335-14-1-.02.

(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.(i) 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 40 CFR § 266.112 [incorporated by reference at 335-14-7-.08(13)] for facilities that burn or process hazardous waste.

(ii) The following wastes generated primarily from processes that support the combustion of coal or other fossil fuels that are co-disposed with the wastes in 335-14-2-.01(4)(b)(4)(i), except as provided by 40 CFR § 266.112 [incorporated by reference at 335-14-7-.08(13)] for facilities that burn or process hazardous waste:

I. Coal pile run-off. For purposes of 335-14-2-.01(4)(b)(4), coal pile run-off means any precipitation that drains off coal piles.

II. Boiler cleaning solutions. For purposes of 335-14-2-.01(4)(b)(4), boiler cleaning solutions means water solutions and chemical solutions used to clean the fire-side and waterside of the boiler.

III. Boiler blowdown. For purposes of 335-14-2-.01(4)(b)(4), boiler blowdown means water purged from boilers used to generate steam.

IV. Process water treatment and demineralizer regeneration wastes. For purposes of 335-14-2-.01(4)(b)(4), process water treatment and demineralizer regeneration wastes means sludges, rinses, and spent resins generated from processes to remove dissolved gases, suspended solids, and dissolved chemical salts from combustion system process water.

V. Cooling tower blowdown. For purposes of 335-14-2-.01(4)(b)(4), cooling tower blowdown means water purged from a closed cycle cooling system. Closed cycle cooling systems include cooling towers, cooling ponds, or spray canals.

VI. Air heater and precipitator washes. For purposes of 335-14-2-.01(4)(b)(4), air heater and precipitator washes means wastes from cleaning air preheaters and electrostatic precipitators.

VII. Effluents from floor and yard drains and sumps. For purposes of 335-14-2-.01(4)(b)(4), effluents from floor and yard drains and sumps means wastewaters, such as wash water, collected by or from floor drains, equipment

drains, and sumps located inside the power plant building; and wastewaters, such as rain runoff, collected by yard drains and sumps located outside the power plant building.

VIII. Wastewater treatment sludges. For purposes of 335-14-2-.01(4)(b)(4), wastewater treatment sludges refers to sludges generated from the treatment of wastewaters specified in 335-14-2-.01(4(b)(4)(ii)(I)through (VI).

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 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 co-processing 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) 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-1eaking, 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-~~contamimated~~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 the ADEM Division 14 Administrative Code 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 Chapters 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 Chapters 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. and 4., a sample of solid waste or a sample of water, soil, or air which is collected for the sole purpose of testing 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. and 4., 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~~quantity determinations of 335-14-3-.01(3) and the accumulation limits of 335-14-3-.01(4)(a)3., 335-14-3-.01(4)(a)4. and 335-14-3-.01(6)(b)1., 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.

4. In order to qualify for the exemption in 335-14-2-.01(4)(e)1.(i), the mass of a sample that will be exported to a foreign laboratory or testing facility, or that will be imported to a U.S. laboratory or testing facility from a foreign source must additionally not exceed 25 kg.

(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 non-hazardous 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 DFR 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 CPR 336.1, 336.2, and 337.6)

(h) ~~[Reserved]~~Carbon Dioxide Stream Injected for Geologic Sequestration. Carbon dioxide streams that are captured and transported for purposes of injection into an underground injection well subject to the requirements for Class VI Underground Injection Control wells, including the requirements in 40 CFR Parts 144 and 146 of the Underground Injection Control Program of the Safe Drinking Water Act, are not a hazardous waste, provided the following conditions are met:

1. Transportation of the carbon dioxide stream must be in compliance with U.S. Department of Transportation requirements, including the pipeline safety laws (49 U.S.C. § 60101 et seq.) and regulations (49 C.F.R. Parts 190-199) of the U.S. Department of Transportation, and pipeline safety regulations adopted and administered by a state authority pursuant to a certification under 49 U.S.C. § 60105, as applicable.

2. Injection of the carbon dioxide stream must be in compliance with the applicable requirements for Class VI Underground Injection Control wells, including the applicable requirements in 40 CFR Parts 144 and 146;

3. No hazardous wastes shall be mixed with, or otherwise co-injected with, the carbon dioxide stream; and

4.(i) Any generator of a carbon dioxide stream, who claims that a carbon dioxide stream is excluded under 335-14-2-.01(4)(h), must have an authorized

representative (as defined in 335-14-1-.02(1)) sign a certification statement worded as follows:

I certify under penalty of law that the carbon dioxide stream that I am claiming to be excluded under 335-14-2-.01(4)(h) has not been mixed with hazardous wastes, and I have transported the carbon dioxide stream in compliance with (or have contracted with a pipeline operator or transporter to transport the carbon dioxide stream in compliance with) Department of Transportation requirements, including the pipeline safety laws (49 U.S.C. § 60101 et seq.) and regulations (49 C.F.R. Parts 190-199) of the U.S. Department of Transportation, and the pipeline safety regulations adopted and administered by a state authority pursuant to a certification under 49 U.S.C. § 60105, as applicable, for injection into a well subject to the requirements for the Class VI Underground Injection Control Program of the Safe Drinking Water Act.

(ii) Any Class VI Underground Injection Control well owner or operator, who claims that a carbon dioxide stream is excluded under 335-14-2-.01(4)(h), must have an authorized representative [as defined in 335-14-1-.02(1)] sign a certification statement worded as follows:

I certify under penalty of law that the carbon dioxide stream that I am claiming to be excluded under 335-14-2-.01(4)(h) has not been mixed with, or otherwise co-injected with, hazardous waste at the Underground Injection Control (UIC) Class VI permitted facility, and that injection of the carbon dioxide stream is in compliance with the applicable requirements for UIC Class VI wells, including the applicable requirements in 40 CFR Parts 144 and 146.

(iii) The signed certification statement must be kept on-site for no less than three years, and must be made available within 72 hours of a written request from the Administrator, Regional Administrator, or the Director, or their designee. The signed certification statement must be renewed every year that the exclusion is claimed, by having an authorized representative (as defined in 335-14-1-.02(1)) annually prepare and sign a new copy of the certification statement within one year of the date of the previous statement. The signed certification statement must also be readily accessible on the facility's publicly-available website (if such website exists) as a public notification with the title of "Carbon Dioxide Stream Certification" at the time the exclusion is claimed.

(i) [Reserved]

(j) Airbag waste.

1. Airbag waste at the airbag waste handler or during transport to an airbag waste collection facility or designated facility is not subject to regulation under 335-14-3 through 335-14-9, and is not subject to the notification requirements of section 3010 of RCRA provided that:

(i) The airbag waste is accumulated in a quantity of no more than 250 airbag modules or airbag inflators, for no longer than 180 days;

(ii) The airbag waste is packaged in a container designed to address the risk posed by the airbag waste and labeled "Airbag Waste – Do Not Reuse;"

(iii) The airbag waste is sent directly to either:

(I) An airbag waste collection facility in the United States under the control of a vehicle manufacturer or their authorized representative, or under the control of an authorized party administering a remedy program in response to a recall under the National Highway Traffic Safety Administration, or

(II) A designated facility as defined in 335-14-1-.02(1);

(iv) The transport of the airbag waste complies with all applicable U.S. Department of Transportation regulations in 49 CFR part 171 through 180 during transit;

(v) The airbag waste handler maintains at the handler facility for no less than three (3) years records of all off-site shipments of airbag waste and all confirmations of receipt from the receiving facility. For each shipment, these records must, at a minimum, contain the name of the transporter and date of the shipment; name and address of receiving facility; and the type and quantity of airbag waste (i.e., airbag modules or airbag inflators) in the shipment. Confirmations of receipt must include the name and address of the receiving facility; the type and quantity of the airbag waste (i.e., airbag modules and airbag inflators) received; and the date

which it was received. Shipping records and confirmations of receipt must be made available for inspection and may be satisfied by routine business records (e.g., electronic or paper financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt).

2. Once the airbag waste arrives at an airbag waste collection facility or designated facility, it becomes subject to all applicable hazardous waste regulations, and the facility receiving airbag waste is considered the hazardous waste generator for the purposes of the hazardous waste regulations and must comply with the requirements of 335-14-3.

3. Reuse in vehicles of defective airbag modules or defective airbag inflators subject to a recall under the National Highway Traffic Safety Administration is considered sham recycling and prohibited under 335-14-2-.01(2)(g).

(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-.147 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).

(v) Ignitable spent refrigerants recycled for reuse (335-14-7-.17).

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) 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) 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~~an exporter in 40 CFR § 262.83 [incorporated by reference in 335-14-3-.0~~5~~9(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~~] with the exception of 40 CFR § 262.83(c);

(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~~or import must comply with the movement document requirements listed in 335-14-4-.02(1)(a)2. and (1)(c).

(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.

(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 Rules 335-14-5-.01 through 335-14-5-.12, 335-14-5-.27, 335-14-5-.28, 335-14-5-.29, 335-14-5-.30, 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 quantity 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) 335-14-6-.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 Rules 335-14-5-.27, 335-14-5-.28, 335-14-6-.27, and 335-14-6-.28.

(7) Residues of hazardous waste in empty containers.

(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.

(c) Containers of hazardous waste pharmaceuticals are subject to 335-14-7-.16(7) for determining when they are considered empty, in lieu of 335-14-2-.01(7), except as provided by 335-14-7-.16(7)(c) and (d).

(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);

(d) Lamps as described in 335-14-11-.01(5), and

(e) Aerosol cans described in 335-14-11-.01(6).

(10) Residues of hazardous waste in empty tanks.

(a) 335-14-2-.01 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.]

**Author:** Stephen C. Maurer; Steven O. Jenkins; Michael B. Jones; Stephen A. Cobb; Ron Shell; Michael Champion; Amy P. Zachry; Lynn

T. Roper; C. Edwin Johnston; Robert W. Barr; Bradley N. Curvin; Jonah L.Harris; Theresa A. Maines; Heather M. Jones; Clethes Stallworth; Metz P. Duites; Vernon H. Crockett; Linda J. Knickerbocker; Brent A. Watson; Sonja B. Favors.
**Statutory Authority:** Code of Ala. 1975, §§22-30-10, 22-30-11, 22-30-14, 22-30-15, 22-30-16.
**History:** November 19, 1980. **Amended:** April 9, 1986; September 29, 1986; February 15, 1988; August 24, 1989; December 6, 1990; January 25, 1992; January 1, 1993. **Amended:** Filed November 30, 1994; effective January 5, 1995. **Amended:** Filed March 22, 1995; effective April 26, 1995. **Amended:** Filed December 8, 1995; effective January 12, 1996. **Amended:** Filed February 2, 1996; effective March 8, 1996. **Amended:** Filed February 21, 1997; effective March 28, 1997. **Amended:** Filed February 20, 1998; effective March 27, 1998. **Amended:** Filed February 26, 1999; effective April 2, 1999. **Amended:** Filed February 25, 2000; effective March 31, 2000. **Amended:** Filed March 9, 2001; effective April 13, 2001. **Amended:** Filed February 8, 2002; effective March 15, 2002. **Amended:** Filed March 13, 2003; effective April 17, 2003. **Amended:** Filed April 22, 2004; effective May 27, 2004. **Amended:** Filed February 24, 2005; effective March 31, 2005. **Amended:** Filed February 28, 2006; effective April 4, 2006. **Amended:** Filed February 27, 2007; April 3, 2007. **Amended:** Filed April 22, 2008; effective May 27, 2008. **Amended:** Filed February 24, 2009; effective March 31, 2009. **Amended:** Filed February 23, 2010; effective March 30, 2010. **Amended:** Filed February 23, 2011; effective March 30, 2011. **Amended:** Filed February 28, 2012; effective April 3, 2012. **Amended:** Filed February 24, 2015; effective March 31, 2015. **Amended:** Filed February 23, 2016; effective April 8, 2016. **Amended:** Filed February 14, 2017; effective March 31, 2017. **Amended:** Filed February 20, 2018; effective April 7, 2018. **Amended:** Filed February 19, 2019; effective April 6, 2019. **Amended:** Published February 28, 2020; effective April 13, 2020. **Amended:** Published December 31, 2020; effective February 14, 2021. **Amended:** Published April 28, 2023; effective June 12, 2023. **Amended:** Published _____; effective _____.

**APA-1**

**TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION**

| | |
|---|---|
| Control: | 335 |
| Department or Agency: | Alabama Department of Environmental Management Land Division - Hazardous Waste Program |
| Rule No.: | 335-14-2-.02 |
| Rule Title: | Criteria For Identifying The Characteristics Of Hazardous Waste And For Listing Hazardous Waste |
| Intended Action | Amend |

| | |
|---|---|
| Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? | Yes |
| Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? | Yes |
| Is there another, less restrictive method of regulation available that could adequately protect the public? | No |
| Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? | No |

To what degree?: N/A

| | |
|---|---|
| Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? | NA |
| Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? | Yes |
| Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? | No |

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|---|---|
| Does the proposed rule have an economic impact? | No |

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

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Certification of Authorized Official

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

Signature of certifying officer: Jeffery W. Kitchens

Jeffery W. Kitchens

Date: Tuesday, August 19, 2025

REC'D & FILED
AUG 19, 2025
LEGISLATIVE SVC AGENCY

**APA-2**

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION - HAZARDOUS WASTE PROGRAM**

**NOTICE OF INTENDED ACTION**

| | |
|---|---|
| **AGENCY NAME:** | Alabama Department of Environmental Management |
| **RULE NO. & TITLE:** | 335-14-2-.02 Criteria For Identifying The Characteristics Of Hazardous Waste And For Listing Hazardous Waste |
| **INTENDED ACTION:** | Amend |

**SUBSTANCE OF PROPOSED ACTION:**

The Department proposes to revise Rule 335-14-1-.02 to adopt the Technical Corrections for the Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste. These revisions are necessary for the Department to maintain regulations that are at least as stringent as those promulgated federally, a requirement to preserve the State's authorized status.

**TIME, PLACE AND MANNER OF PRESENTING VIEWS:**

Comments may be submitted in writing or orally at a public hearing to be held at 10:00 a.m., October 7, 2025, in the ADEM Main Hearing Room, 1400 Coliseum Boulevard, Montgomery, Alabama 36110. Attendance at the hearing is not necessary to present such data, views, arguments, or comments. All comments should be received by 5:00 p.m., October 7, 2025. Written submissions and other inquiries should be directed to: ADEM Hearing Officer, Office of General Counsel, Alabama Department of Environmental Management, P.O. Box 301463, Montgomery, AL 36130-1463 (street address: 1400 Coliseum Boulevard, Montgomery, AL 36110-2400) or by e-mail at hearing.officer@adem.alabama.gov.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**

Tuesday, October 7, 2025

**CONTACT PERSON AT AGENCY:**

Lynn T. Roper, 334-271-7728

Jeffery W. Kitchens

Jeffery W. Kitchens

(Signature of officer authorized to promulgate and adopt rules or his or her deputy)

**335-14-2-.02 Criteria For Identifying The Characteristics Of Hazardous Waste And For Listing Hazardous Waste.**

(1) Criteria for identifying the characteristics of hazardous waste.

(a) The Department shall identify and define a characteristic of hazardous waste in Rule 335-14-2-.03 only upon determining that:

1. A solid waste that exhibits the characteristic may:

(i) Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(ii) Pose a substantial present or potential hazard to human health or the environment when it is improperly treated, stored, transported, disposed of, or otherwise managed; and

2. The characteristic can be:

(i) Measured by an available standardized test method which is reasonably within the capability of generators of solid waste or private sector laboratories that are available to serve generators of solid waste; or

(ii) Reasonably detected by generators of solid waste through their knowledge of their waste.

(2) Criteria for listing hazardous waste.

(a) The Department shall list a solid waste as a hazardous waste only upon determining that the solid waste meets one of the following criteria:

1. It exhibits any of the characteristics of hazardous waste identified in Rule 335-14-2-.03.

2. It has been found to be fatal to humans in low doses or, in the absence of data on human toxicity, it has been shown in studies to have an oral LD 50 toxicity (rat) of less than 50 milligrams per kilogram, an inhalation LC 50 toxicity (rat) of less than 2 milligrams per liter, or a dermal LD 50 toxicity (rabbit) of less than 200 milligrams per kilogram or is otherwise capable of

causing or significantly contributing to an increase in serious irreversible, or incapacitating reversible, illness. (Waste listed in accordance with these criteria will be designated Acute Hazardous Waste.)

3. It contains any of the toxic constituents listed in 335-14-2-Appendix VIII, and after considering the following factors, the Department concludes that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed:

(i) The nature of the toxicity presented by the constituent;

(ii) The concentration of the constituent in the waste;

(iii) The potential of the constituent or any toxic degradation product of the constituent to migrate from the waste into the environment under the types of improper management considered in 335-14-2-.02(a)3.(vii);

(iv) The persistence of the constituent or any toxic degradation product of the constituent;

(v) The potential for the constituent or any toxic degradation product of the constituent to degrade into nonharmful constituents and the rate of degradation;

(vi) The degree to which the constituent or any degradation product of the constituent bioaccumulates in ecosystems;

(vii) The plausible types of improper management to which the waste could be subjected;

(viii) The quantities of the waste generated at individual generation sites or on a regional or national basis;

(ix) The nature and severity of the human health and environmental damage that has occurred as a result of the improper management of wastes containing the constituent;

(x) Action taken by other governmental agencies or regulatory programs based on the health or environmental hazard posed by the waste or waste constituent;

(xi) Such other factors as may be appropriate.

4. Substances will be listed in 335-14-2-Appendix VIII only if they have been shown in scientific studies to have toxic, carcinogenic, mutagenic, or teratogenic effects on humans or other life forms. (Wastes listed in accordance with these criteria will be designated Toxic wastes.)

(b) The Department may list classes or types of solid waste as hazardous waste if it has reason to believe that individual wastes, within the class or type of waste, typically or frequently are hazardous under the definition of hazardous waste found in Section 22-30-3(5) of the AHWMMA.

~~(c) The Department will use the criteria for listing specified in 335-14-2-.02(2) to establish the exclusion limits referred to in 335-14-2-.01(5)(c).~~

**Author:** Stephen C. Maurer; Amy P Zachry
**Statutory Authority:** Code of Ala. 1975, §§22-30-10, 22-30-11.
**History:** November 19, 1980. **Amended:** April 9, 1986; February 15, 1988; August 24, 1989; December 6, 1990. **Amended:** Filed February 20, 1998; effective March 27, 1998. **Amended:** Filed March 9, 2001; effective April 13, 2001. **Amended:** Filed February 28, 2012; effective April 03, 2012. **Amended:** Published ; effective .

**APA-1**

**TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION**

| | |
|---|---|
| Control: | 335 |
| Department or Agency: | Alabama Department of Environmental Management Land Division - Hazardous Waste Program |
| Rule No.: | 335-14-2-.04 |
| Rule Title: | Lists Of Hazardous Wastes |
| Intended Action | Amend |

| | |
|---|---|
| Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? | Yes |
| Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? | Yes |
| Is there another, less restrictive method of regulation available that could adequately protect the public? | No |
| Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? | No |

To what degree?: N/A

| | |
|---|---|
| Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? | NA |
| Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? | Yes |
| Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? | No |

Does the proposed rule have an economic impact? No

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

Certification of Authorized Official

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

Signature of certifying officer: Jeffery W. Kitchens

Jeffery W. Kitchens

Date: Tuesday, August 19, 2025

REC'D & FILED
AUG 19, 2025
LEGISLATIVE SVC AGENCY

**APA-2**

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION - HAZARDOUS WASTE PROGRAM**

**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** Alabama Department of Environmental Management

**RULE NO. & TITLE:** 335-14-2-.04 Lists Of Hazardous Wastes

**INTENDED ACTION:** Amend

**SUBSTANCE OF PROPOSED ACTION:**
The Department proposes to revise Rule 335-14-2-.04 to adopt the Technical Corrections for the Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule. These revisions are necessary for the Department to maintain regulations that are at least as stringent as those promulgated federally, a requirement to preserve the State's authorized status.

**TIME, PLACE AND MANNER OF PRESENTING VIEWS:**
Comments may be submitted in writing or orally at a public hearing to be held at 10:00 a.m., October 7, 2025, in the ADEM Main Hearing Room, 1400 Coliseum Boulevard, Montgomery, Alabama 36110. Attendance at the hearing is not necessary to present such data, views, arguments, or comments. All comments should be received by 5:00 p.m., October 7, 2025. Written submissions and other inquiries should be directed to: ADEM Hearing Officer, Office of General Counsel, Alabama Department of Environmental Management, P.O. Box 301463, Montgomery, AL 36130-1463 (street address: 1400 Coliseum Boulevard, Montgomery, AL 36110-2400) or by e-mail at hearing.officer@adem.alabama.gov.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**
Tuesday, October 7, 2025

**CONTACT PERSON AT AGENCY:**
Lynn T. Roper, 334-271-7728

Jeffery W. Kitchens
Jeffery W. Kitchens

(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

**335-14-2-.04 Lists Of Hazardous Wastes.**

(1) General.

(a) A solid waste is a hazardous waste if it is listed in 335-14-2-.04, unless it has been excluded from this list under 335-14-1-.03(2).

(b) The Department will indicate its basis for listing the classes or types of wastes listed in 335-14-2-.04 by employing one or more of the following Hazard Codes:

Ignitable Waste (I)

Corrosive Waste (C)

Reactive Waste (R)

Toxicity Characteristic Waste (E)

Acute Hazardous Waste (H)

Toxic Waste (T)

335-14-2-Appendix VII identifies the constituent which caused the Department to list the waste as a Toxicity Characteristic Waste (E) or Toxic Waste (T) in 335-14-2-.04(2) and (3).

(c) Each hazardous waste listed in 335-14-2-.04 is assigned an EPA or Alabama Hazardous Waste Number which precedes the name of the waste. This number must be used in complying with the notification requirements of Section 3010 of the RCRA and certain recordkeeping and reporting requirements under Chapters 335-14-3 through 335-14-6, 335-14-8, and 335-14-9.

(d) The following hazardous wastes listed in 335-14-2-.04(2) are subject to the ~~exclusion~~generator category limits for acutely hazardous wastes established in ~~335-14-2~~335-14-3-.01~~(5)~~(3): EPA Hazardous Wastes Nos. F020, F021, F022, F023, F026, and F027.

(2) Hazardous wastes from non-specific sources.

(a) The following solid wastes are listed hazardous waste from non-specific sources unless they are excluded under §260.20 of 40 CFR and 335-14-1-.03(2) and listed in 335-14-2 Appendix IX.

| Hazardous Waste Number | Hazardous Waste | Hazard Code |
|---|---|---|
| Generic: | | |
| F001 | The following spent halogenated solvents used in degreasing: tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride, and chlorinated fluorocarbons; all spent solvent mixtures/ blends used in degreasing containing, before use, a total of ten percent or more (by volume) of one or more of the above halogenated solvents or those solvents listed in F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures. | (T) |
| F002 | The following spent halogenated solvents: tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, ortho-dichlorobenzene, trichlorofluoromethane, and 1,1,2-trichloroethane; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above halogenated solvents or those listed in F001, F004, or F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures. | (T) |
| F003 | The following spent non-halogenated solvents: xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; all spent solvent mixtures/blends containing, before use, only the above spent non-halogenated solvents; and all spent solvent mixtures/blends containing, before use, one or more of the above non-halogenated solvents, and a total of ten percent or more (by volume) of one or more of those solvents listed in F001, F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures. | (I)* |
| F004 | The following spent non-halogenated solvents: cresols and cresylic acid, and | (T) |

| Hazardous Waste Number | Hazardous Waste | Hazard Code |
|---|---|---|
| | nitrobenzene; all spent solvent mixtures/ blends containing, before use, a total of ten percent or more (by volume) of one or more of the above non-halogenated solvents or those solvents listed in F001, F002, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures. | |
| F005 | The following spent non-halogenated solvents: cresols and cresylic acid, and nitrobenzene; all spent solvent mixtures/ blends containing, before use, a total of ten percent or more (by volume) of one or more of the above non-halogenated solvents or those solvents listed in F001, F002, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures. | (I,T) |
| F006 | operations except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/ stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. | (T) |
| F007 | Spent cyanide plating bath solutions from electroplating operations. | (R,T) |
| F008 | Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process | (R,T) |
| F009 | Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process. | (R,T) |
| F010 | Quenching bath residues from oil baths from metal heat treating operations where cyanides are used in the process. | (R,T) |
| F011 | Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations. | (R,T) |
| F012 | Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process. | (T) |

| Hazardous Waste Number | Hazardous Waste | Hazard Code |
|---|---|---|
| F019 | Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process. Wastewater treatment sludges from the manufacturing of motor vehicles using a zinc phosphating process will not be subject to this listing at the point of generation if the wastes are not placed outside on the land prior to shipment to a landfill for disposal and are either: disposed in a Subtitle D municipal or industrial landfill unit that is equipped with a single clay liner and is permitted, licensed or otherwise authorized by the state; or disposed in a landfill unit subject to, or otherwise meeting, the landfill requirements in CFR § 258.40, ADEM Administrative Code r. 335-14-5-.14(2), or 335-14-6-.14(2). For the purposes of this listing, motor vehicle manufacturing as defined in 335-14-1-.02 and 335-14-2-.04(2)(b)4.(i) describes the recordkeeping requirements for motor vehicle manufacturing facilities. | (T) |
| F020 | Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives. (This listing does not include wastes from the production of Hexachlorophene from highly purified 2,4,5-trichlorophenol.) | (H) |
| F021 | Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of pentachlorophenol, or of intermediates used to produce its derivatives. | (H) |
| F022 | Wastes (except wastewater and spent carbon from hydrogen chloride purification) from | (H) |

| Hazardous Waste Number | Hazardous Waste | Hazard Code |
|---|---|---|
| | the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzenes under alkaline conditions. | |
| F023 | Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- and tetrachlorophenols. (This listing does not include wastes from equipment used only for the production or use of Hexachlorophene from highly purified 2,4,5-trichlorophenol.) | (H) |
| F024 | Process wastes, including but not limited to, distillation residues, heavy ends, tars, and reactor clean-out wastes from the production of certain chlorinated aliphatic hydrocarbons by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to, and including, five with varying amounts and positions of chlorine substitution. (This listing does not include wastewaters, wastewater treatment sludges, spent catalysts, and wastes listed in 335-14-2-.04(2) or 335-14-2-.04(3).) | (T) |
| F025 | Condensed light ends, spent filters and filter aids, and spent desiccant wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. | (T) |
| F026 | hydrogen chloride purification) from the production of materials on equipment previously used for the manufacturing use (as a reactant, chemical intermediate or component in a formulating process) of tetra-, penta-, or hexachlorobenzene under alkaline conditions. | (H) |

| Hazardous Waste Number | Hazardous Waste | Hazard Code |
|---|---|---|
| F027 | Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. (This listing does not include formulations containing Hexachlorophene synthesized from prepurified 2,4,5-trichlorophenol as the sole component.) | (H) |
| F028 | Residues resulting from the incineration or thermal treatment of soil contaminated with EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027. | (T) |
| F032 | Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that currently use or have previously used chlorophenolic formulations (except potentially cross-contaminated wastes that have had the F032 waste number deleted in accordance with 335-14-2-.04(6), or potentially cross-contaminated wastes that are otherwise currently regulated as hazardous wastes (i.e., F034 or F035), and where the generator does not resume or initiate use of chlorophenolic formulations). This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol. | (T) |
| F034 | Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use cresote formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol. | (T) |
| F035 | Wastewaters (except those that have not come into contact with process contaminants), process residuals, | (T) |

| Hazardous Waste Number | Hazardous Waste | Hazard Code |
|---|---|---|
| | preservative drippage, and spent formulations from wood preserving processes generated at plants that use inorganic preservatives, containing arsenic or chromium. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/ or pentachlorophenol. | |
| F037 | Petroleum refinery primary oil/water/solids separation sludge - Any sludge generated from the gravitational separation of oil/ water/solids during the storage or treatment of process wastewaters and oil cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in oil/ water/solid separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in 335-14-2-. 04(2)(b)2. (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing. This listing does include residuals generated from processing or recycling oil-bearing hazardous secondary materials excluded under 335-14-2-.01(4)(a)12.(i), if those residuals are to be disposed of. | (T) |
| F038 | Petroleum refinery secondary (emulsified) oil/water/solids separation sludge - Any sludge and/or float generated from the physical and/or chemical separation of oil/ water/ solids in process wastewaters and oily cooling wastewaters from petroleum refineries. Such wastes include, but are not limited to, all sludges and floats | (T) |

| Hazardous Waste Number | Hazardous Waste | Hazard Code |
|---|---|---|
| | generated in: induced air flotation (IAF) units, tanks and impoundments, and all sludges generated in dissolved air flotation (DAF) units. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges and floats generated in aggressive biological treatment units as defined in 335-14-2-.04(2)(b)2. (including sludges and floats generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and F037, K048, and K051 wastes are not included in this listing. | |
| F039 | Leachate (liquids that have percolated through land disposed wastes) resulting from the disposal of more than one restricted waste classified as hazardous under Rule 335-14-2-.04. (Leachate resulting from the disposal of one or more of the following EPA hazardous wastes and no other hazardous wastes retains its hazardous waste number(s): F020, F021, F022, F026, F027, and/or F028.) | (T) |

* (I,T) should be used to specify mixtures that are ignitable and contain toxic constituents.

(b) Listing Specific Definitions:

1. For the purposes of the F037 and F038 listings, oil/water/solids is defined as oil and/or water and or/solids.

2.(i) For the purposes of the F037 and F038 listings, aggressive biological treatment units are defined as units which employ one of the following four treatment methods: activated sludge; trickling filter; rotating biological contractor for the continuous accelerated biological oxidation of wastewaters; or high-rate aeration. High-rate aeration is a system of surface impoundments or tanks in which intense mechanical

aeration is used to completely mix the wastes and enhance biological activity, and

(I) The units employs a minimum of 6 hp per million gallons of treatment volume; and either

(II) The hydraulic retention time of the unit is no longer than 5 days; or

(III) The hydraulic retention time is no longer than 30 days and the unit does not generate a sludge that is a hazardous waste by the Toxicity Characteristic;

(ii) Generators and treatment, storage and disposal facilities have the burden of providing that their sludges are exempt from listings as F037 and F038 wastes under this definition. Generators and treatment, storage and disposal facilities must maintain, in their operating or other on-site records, documents and data sufficient to prove that:

(I) The unit is an aggressive biological treatment unit as defined in 335-14-2-.04(2)(b); and

(II) The sludges sought to be exempted from the definitions of F037 and/or F038 were actually generated in the aggressive biological treatment unit.

3.(i) For the purposes of the F037 listing, sludges are considered to be generated at the moment of deposition in the unit, where deposition is defined as at least a temporary cessation of lateral particle movement.

(ii) For the purposes of the F038 listing,

(I) Sludges are considered to be generated at the moment of deposition in the unit, where deposition is defined as at least a temporary cessation of lateral particle movement, and

(II) Floats are considered to be generated at the moment they are formed in the top of the unit.

4. For the purposes of the F019 listing, the following apply to wastewater treatment sludges from the

manufacturing of motor vehicles using a zinc phosphating process.

(i) Generators must maintain in their on-site records documentation and information sufficient to prove that the wastewater treatment sludges to be exempted from the F019 listing meet the conditions of the listing. These records must include: the volume of waste generated and disposed of off site; documentation showing when the waste volumes were generated and sent off site; the name and address of the receiving facility, and documentation confirming receipt of the waste by the receiving facility. Generators must maintain these documents on site for no less than three years. The retention period for the documentation is automatically extended during the course of any enforcement action or as requested by the Regional Administrator or ADEM.

(3) Hazardous wastes from specific sources.

(a) The following solid wastes are listed hazardous wastes from specific sources unless they are excluded under §260.20 of 40 CFR and 335-14-1-.03(2) and listed in 335-14-2-Appendix IX.

| **Hazardous Waste Number** | **Hazardous Waste** | **Hazard Code** |
|---|---|---|
| Wood preservation: | | |
| K001 | Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or penta-chlorophenol. | (T) |
| Inorganic pigmits: | | |
| K002 | Wastewater treatment sludge from the production of chrome yellow and orange pigments. | (T) |
| K003 | Wastewater treatment sludge from the production of molybdate orange pigments | (T) |
| K004 | Wastewater treatment sludge from the production of zinc yellow pigments. | (T) |
| K005 | Wastewater treatment sludge from the production of chrome green pigments. | (T) |

| Hazardous Waste Number | Hazardous Waste | Hazard Code |
|---|---|---|
| K006 | Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated). | (T) |
| K007 | Wastewater treatment sludge from the production of iron blue pigments. | (T) |
| K008 | Oven residue from the production of chrome oxide green pigments. | (T) |
| Organic chemicals: | | |
| K009 | Distillation bottoms from the production of acetaldehyde from ethylene. | (T) |
| K010 | Distillation side cuts from the production of acetaldehyde from ethylene. | (T) |
| K011 | Bottom stream from the wastewater stripper in the production of acrylonitrile. | (R,T) |
| K013 | Bottom stream from the acetonitrile column in production of acrylonitrile. | (R,T) |
| K014 | Bottoms from the acetonitrile purification column in the production of acrylonitrile. | (T) |
| K015 | Still bottoms from the distillation of benzyl chloride. | (T) |
| K016 | Heavy ends or distillation residues from the production of carbon tetrachloride. | (T) |
| K017 | Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin. | (T) |
| K018 | Heavy ends from the fractionation column in ethyl chloride production. | (T) |
| K019 | Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production. | (T) |
| K020 | Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production. | (T) |

| Hazardous Waste Number | Hazardous Waste | Hazard Code |
|---|---|---|
| K021 | Aqueous spent antimony catalyst waste from fluoromethanes production. | (T) |
| K022 | Distillation bottom tars from the production of phenol/acetone from cumene. | (T) |
| K023 | Distillation light ends from the production of phthalic anhydride from naphthalene. | (T) |
| K024 | Distillation bottoms from the production of phthalic anhydride from naphthalene. | (T) |
| K025 | Distillation bottoms from the production of nitrobenzene by the nitration of benzene. | (T) |
| K026 | Stripping still tails from the production of methyl ethyl pyridines. | (T) |
| K027 | Centrifuge and distillation residues from toluene diisocyanate production. | (R,T) |
| K028 | Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane. | (T) |
| K029 | Waste from the product steam stripper in the production of 1,1,1-trichloroethane. | (T) |
| K030 | Column bottoms or heavy ends from the combined production of trichloroethylene and perchloroethylene. | (T) |
| K083 | Distillation bottoms from aniline production. | (T) |
| K085 | Distillation or fractionation column bottoms from the production of chlorobenzenes. | (T) |
| K093 | Distillation light ends from the production of phthalic anhydride from ortho-xylene. | (T) |
| K094 | Distillation bottoms from the production of phthalic anhydride from ortho-xylene. | (T) |
| K095 | Distillation bottoms from the production of 1,1,1-trichloroethane. | (T) |

| Hazardous Waste Number | Hazardous Waste | Hazard Code |
|---|---|---|
| K096 | Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane. | (T) |
| K103 | Process residues from aniline extraction from the production of aniline. | (T) |
| K104 | Combined wastewater streams generated from nitrobenzene/aniline production. | (T) |
| K105 | Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes. | (T) |
| K107 | Column bottoms from product separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides. | (C,T) |
| K108 | Condensed column overheads from product separation and condensed reactor vent gases from the production of 1-1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides. | (I,T) |
| K109 | Spent filter cartridges from product purification from the production of 1,1-dimethyl-hydrazine (UDMH) from carboxylic acid hydrazides. | (T) |
| K110 | Condensed column overheads from intermediate separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides. | (T) |
| K111 | Product washwaters from the production of dinitrotoluene via nitration of toluene. | (C,T) |
| K112 | Reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene. | (T) |

| Hazardous Waste Number | Hazardous Waste | Hazard Code |
|---|---|---|
| K113 | Condensed liquid light ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene. | (T) |
| K114 | Vicinals from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene. | (T) |
| K115 | Heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene. | (T) |
| K116 | Organic condensate from the solvent recovery column in the production of toluene diisocyanate via phosgenation of toluenediamine. | (T) |
| K117 | Wastewater from the reactor vent gas scrubber in the production of ethylene dibromide via bromination of ethene. | (T) |
| K118 | Spent adsorbent solids from purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene. | (T) |
| K136 | Still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene. | (T) |
| K149 | Distillation bottoms from the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups, (This waste does not include still bottoms from the distillation of benzyl chloride.). | (T) |

| Hazardous Waste Number | Hazardous Waste | Hazard Code |
|---|---|---|
| K150 | Organic residuals, excluding spent carbon adsorbent, from the spent chlorine gas and hydrochloric acid recovery processes associated with the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups. | (T) |
| K151 | Wastewater treatment sludges, excluding neutralization and biological sludges, generated during the treatment of wastewaters from the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups. | (T) |
| K156 | Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes. (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.). | (T) |
| K157 | Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes.(This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.). | (T) |

| Hazardous Waste Number | Hazardous Waste | Hazard Code |
|---|---|---|
| K158 | Bag house dusts and filter/separation solids from the production of carbamates and carbamoyl oximes. (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.). | (T) |
| K159 | Organics from the treatment of thiocarbamate wastes. | (T) |
| K161 | Purification solids (including filtration, evaporation, and centrifugation solids), bag house dust and floor sweepings from the production of dithiocarbamate acids and their salts. (This listing does not include K125 or K126. | (R,T) |

| Hazardous Waste Number | Hazardous Waste | Hazard Code |
|---|---|---|
| K174 | Wastewater treatment sludges from the production of ethylene dichloride or vinyl chloride monomer (including sludges that result from commingled ethylene dichloride or vinyl chloride monomer wastewater and other wastewater), unless the sludges meet the following conditions: (i) they are disposed of in a subtitle C or non-hazardous landfill licensed or permitted by the State of Alabama or federal government; (ii) they are not otherwise placed on the land prior to final disposal; and (iii) the generator maintains documentation demonstrating that the waste was either disposed of in an on-site landfill or consigned to a transporter or disposal facility that provided a written commitment to dispose of the waste in an off-site landfill. Respondents in any action brought to enforce the requirements of Subtitle C must, upon a showing by the government that the respondent managed wastewater treatment sludges from the production of vinyl chloride monomer or ethylene dichloride, demonstrate that they meet the terms of the exclusion set forth above. In doing so, they must provide appropriate documentation (e.g., contracts between the generator and the landfill owner/operator, invoices documenting delivery of waste to landfill, etc.) that the terms of the exclusion were met. | (T) |

| Hazardous Waste Number | Hazardous Waste | Hazard Code |
|---|---|---|
| K175 | Wastewater treatment sludges from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process. | (T) |
| Inorganic chemicals: | | |
| K071 | Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used. | (T) |
| K073 | Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production. | (T) |
| K106 | Wastewater treatment sludge from the mercury cell process in chlorine production. | (T) |
| K176 | Baghouse filters from the production of antimony oxide, including filters from the production of intermediates (e.g., antimony metal or crude antimony oxide). | (E) |
| K177 | Slag from the production of antimony oxide that is speculatively accumulated or disposed, including slag from the production of intermediates (e.g., antimony metal or crude antimony oxide). | (T) |
| K178 | Residues from manufacturing and manufacturing-site storage of ferric chloride from acids formed during the production of titanium dioxide using the chloride-ilemite process. | (T) |

| | | |
|---|---|---|
| K181 | Nonwastewaters from the production of dyes and/or pigments (including nonwastewaters commingled at the point of generation with nonwastewaters from other processes) that, at the point of generation, contain mass loadings of any of the constituents identified in 335-14-2-.04(3)(c) of this section that are equal to or greater than the corresponding 335-14-2-.04(3)(c) levels, as determined on a calendar year basis. These wastes will not be hazardous if the nonwastewaters are: (i) disposed in a Subtitle D landfill unit subject to the design criteria in 335-13-4-.11, (ii) disposed in a Subtitle C landfill unit subject to either 335-14-5-.14(2) or 335-14-6-.14(2), (iii) disposed in other Subtitle D landfill units that meet the design criteria in 335-13-4-.11, 335-14-5-.14(2), or 335-14-6-.14(2), or (iv) treated in a combustion unit that is permitted under Subtitle C, or an on-site combustion unit that is permitted under the Clean Air Act. For the purposes of this listing, dyes and/or pigments production is defined in 335-14-2-.03(3)(b). 335-14-2-.03(3)(d) describes the process for demonstrating that a facility's nonwastewaters are not K181. This listing does not apply to wastes that are otherwise identified as hazardous waste under 335-14-2-.03(2) through 335-14-2-.03(5) and 335-14-2-.04(2) through 335-14-2-.04(4) at the point of generation. Also, the listing does not apply to wastes generated before any annual mass loading limit is met. | (T) |

| Hazardous Waste Number | Hazardous Waste | Hazard Code |
|---|---|---|
| Pesticides: | | |
| K031 | By-product salts generated in the production of MSMA and cacodylic acid. | (T) |
| K032 | Wastewater treatment sludge from the production of chlordane. | (T) |
| K033 | Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane. | (T) |
| K034 | Filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane. | (T) |
| K035 | Wastewater treatment sludges generated in the production of creosote. | (T) |
| K036 | Still bottoms from toluene reclamation distillation in the production of disulfoton. | (T) |
| K037 | Wastewater treatment sludges from the production of disulfoton. | (T) |
| K038 | Wastewater from the washing and stripping of phorate production. | (T) |
| K039 | Filter cake from the filtration of diethylphosphorodithioic acid in the production of phorate. | (T) |
| K040 | Wastewater treatment sludge from the production of phorate. | (T) |
| K041 | Wastewater treatment sludge from the production of toxaphene. | (T) |
| K042 | Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T. | (T) |
| K043 | 2,6-Dichlorophenol waste from the production of 2,4-D. | (T) |

| Hazardous Waste Number | Hazardous Waste | Hazard Code |
|---|---|---|
| K097 | Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane. | (T) |
| K098 | Untreated process wastewater from the production of toxaphene. | (T) |
| K099 | Untreated wastewater from the production of 2,4-D. | (T) |
| K123 | Process wastewater (including supernates, filtrates, and washwaters) from the production of ethylenebisdithiocarbamic acid and its salts. | (T) |
| K124 | Reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts. | (C,T) |
| K125 | Filtration, evaporation, and centrifugation solids from the production of ethylenebisdithiocarbamic acid and its salts. | (T) |
| K126 | Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylenebisdithiocarbamic acid and its salts. | (T) |
| K131 | Wastewater from the reactor and spent sulfuric acid from the acid dryer from the production of methyl bromide. | (C,T) |
| K132 | Spent absorbent and wastewater separator solids from the production of methyl bromide. | (T) |
| Explosives: | | |
| K044 | Wastewater treatment sludges from the manufacturing and processing of explosives. | (R) |
| K045 | Spent carbon from the treatment of wastewater containing explosives. | (R) |

| Hazardous Waste Number | Hazardous Waste | Hazard Code |
|---|---|---|
| K046 | Wastewater treatment sludges from the manufacturing, formulation, and loading of lead-based initiating compounds. | (T) |
| K047 | Pink/red water from TNT operations. | (R) |
| Petroleum refining: | | |
| K048 | Dissolved air flotation (DAF) float from the petroleum refining industry. | (T) |
| K049 | Slop oil emulsion solids from the petroleum refining industry. | (T) |
| K050 | Heat exchanger bundle cleaning sludge from the petroleum refining industry. | (T) |
| K051 | API separator sludge from the petroleum refining industry. | (T) |
| K052 | Tank bottoms (leaded) from the petroleum refining industry. | (T) |
| K169 | Crude oil storage tank sediment from petroleum refining operations | (T) |
| K170 | Clarified slurry oil tank sediment and/or in-line filter/separation solids from petroleum refining operations | (T) |
| K171 | Spent hydrotreating catalyst from petroleum refining operations, including guard beds used to desulfurize feeds to other catalytic reactors (this listing does not include inert support media). | (I,T) |
| K172 | Spent hydrorefining catalyst from petroleum refining operations, including guard beds used to desulfurize feeds to other catalytic reactors (this listing does not include inert support media). | (I,T) |
| Iron and Steel: | | |

| Hazardous Waste Number | Hazardous Waste | Hazard Code |
|---|---|---|
| K061 | Emission control dust/sludge from the primary production of steel in electric furnaces. | (T) |
| K062 | Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332). | (C,T) |
| Primary aluminum: | | |
| K088 | Spent potliners from primary aluminum reduction. | (T) |
| Secondary lead: | | |
| K069 | Emission control dust/sludge from secondary lead smelting. NOTE: This listing does not include sludge generated from secondary acid scrubber systems provided the primary air pollution control system is properly operated and maintained. Exempt sludge must be evaluated to determine if it exhibits a characteristic of a hazardous waste. | (T) |
| K100 | Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting. | (T) |
| Veterinary pharmaceuticals: | | |
| K084 | Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds. | (T) |
| K101 | Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds. | (T) |

| Hazardous Waste Number | Hazardous Waste | Hazard Code |
|---|---|---|
| K102 | Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds. | (T) |
| Ink formulation: | | |
| K086 | Solvent washes and sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead. | (T) |
| Coking: | | |
| K060 | Ammonia still lime sludge from coking operations. | (T) |
| K087 | Decanter tank tar sludge from coking operations. | (T) |
| K141 | Process residues from the recovery of coal tar, including, but not limited to, collecting sump residues from the production of coke from coal or the recovery of coke by-products produced from coal. This listing does not include K087 (decanter tank tar sludges from coking operations). | (T) |
| K142 | Tar storage tank residues from the production of coke from coal or from the recovery of coke by-products produced from coal. | (T) |
| K143 | Process residues from the recovery of light oil, including, but not limited to, those generated in stills, decanters, and wash oil recovery units from the recovery of coke by-products produced from coal. | (T) |

| Hazardous Waste Number | Hazardous Waste | Hazard Code |
|---|---|---|
| K144 | Wastewater sump residues from light oil refining, including, but not limited to, intercepting or contamination sump sludges from the recovery | (T) |
| K145 | Residues from naphthalene collection and recovery operations from the recovery of coke by-products produced from coal. | (T) |
| K147 | Tar storage tank residues from coal tar refining. | (T) |
| K148 | Residues from coal tar distillation, including but not limited to, still bottoms. | (T) |

(b) Listing Specific Definitions:

1. For the purposes of the K181 listing, dyes and/or pigments production is defined to include manufacture of the following product classes: dyes, pigments, or FDA certified colors that are classified as azo, triarylmethane, perylene or anthraquinone classes. Azo products include azo, monoazo, diazo, triazo, polyazo, azoic, benzidine, and pyrazolone products. Triarylmethane products include both triarylmethane and triphenylmethane products. Wastes that are not generated at a dyes and/or pigments manufacturing site, such as wastes from the offsite use, formulation, and packaging of dyes and/or pigments, are not included in the K181 listing.

(c) K181 Listing Levels.

1. Nonwastewaters containing constituents in amounts equal to or exceeding the following levels during any calendar year are subject to the K181 listing, unless the conditions in the K181 listing are met.

| Constituent | Chemcial abstracts No. | Mass levels (kg/yr) |
|---|---|---|
| Aniline …… | 62-53-3 | 9,300 |
| o-Anisidine…… | 90-04-0 | 110 |

| | | |
|---|---|---|
| 4-Chloroaniline…… | 106-47-8 | 4,800 |
| p-Cresidine…… | 120-71-8 | 660 |
| 2,4-Dimethylaniline…… | 95-68-1 | 100 |
| 1,2-Phenylenediamine…… | 95-54-5 | 710 |
| 1,3-Phenylenediamine…… | 108-45-2 | 1,200 |

(d) Procedures for demonstrating that dyes and/or pigment nonwastewaters are not K181. The procedures described in sections 335-14-2-.04(3)(d)1-3 and 5 establish when nonwastewaters from the production of dyes/pigments would not be hazardous (these procedures apply to wastes that are not disposed in landfill units or treated in combustion units as specified in 335-14-2-.04(3)(a). If the nonwastewaters are disposed in landfill units or treated in combustion units as described in 335-14-2-.04(3)(a), then the nonwastewaters are not hazardous. In order to demonstrate that it is meeting the landfill disposal or combustion conditions contained in the K181 listing description, the generator must maintain documentation as described in 335-14-2-.04(3)(d)4. nts

1. Determination based on no K181 constituents. Generators that have knowledge (e.g., knowledge of constituents in wastes based on prior sampling and analysis data and/or information about raw materials used, production processes used, and reaction and degradation products formed) that their wastes contain none of the K181 constituents [see 335-14-2-.04(3)(c)] can use their knowledge to determine that their waste is not K181. The generator must document the basis for all such determinations on an annual basis and keep each annual documentation for three years.

2. Determination for generated quantities of 1,000 MT/yr or less for wastes that contain K181 constituents. If the total annual quantity of dyes and/or pigment nonwastewaters generated is 1,000 metric tons or less, the generator can use knowledge of the wastes (e.g., knowledge of constituents in wastes based on prior analytical data and/or information about raw materials used, production processes used, and reaction and degradation products formed) to conclude that annual mass loadings for the K181 constituents are below the 335-14-2-.04(3)(c) listing levels. To make this determination, the generator must:

(i) Each year document the basis for determining that the annual quantity of nonwastewaters expected to be generated will be less than 1,000 metric tons.

(ii) Track the actual quantity of nonwastewaters generated from January 1 through December 31 of each year. If, at any time within the year, the actual waste quantity exceeds 1,000 metric tons, the generator must comply with the requirements of 335-14-2-.04(3)(d)3 for the remainder of the year.

(iii) Keep a running total of the K181 constituent mass loadings over the course of the calendar year.

(iv) Keep the following records on site for the three most recent calendar years in which the hazardous waste determinations are made:

(I) The quantity of dyes and/or pigment nonwastewaters generated.

(II) The relevant process information used.

(III) The calculations performed to determine annual total mass loadings for each K181 constituent in the nonwastewaters during the year.

3. Determination for generated quantities greater than 1,000 MT/yr for wastes that contain K181 constituents. If the total annual quantity of dyes and/or pigment nonwastewaters generated is greater than 1,000 metric tons, the generator must perform all of the steps described in 335-14-2-.04(3)(d)3(i) through 3(xi) in order to make a determination that its waste is not K181.

(i) Determine which K181 constituents (see 335-14-2-.04(3)(c)) are reasonably expected to be present in the wastes based on knowledge of the wastes (e.g., based on prior sampling and analysis data and/or information about raw materials used, production processes used, and reaction and degradation products formed).

(ii) If 1,2-phenylenediamine is present in the wastes, the generator can use either knowledge or sampling and analysis procedures to determine the level of this constituent in the wastes. For determinations based on use of knowledge, the generator must comply with the procedures for using

knowledge described in 335-14-2-.04(3)(d)2. and keep the records described in 335-14-2-.04(3)(d)2.(iv). For determinations based on sampling and analysis, the generator must comply with the sampling and analysis and recordkeeping requirements described below.

(iii) Develop a waste sampling and analysis plan (or modify an existing plan) to collect and analyze representative waste samples for the K181 constituents reasonably expected to be present in the wastes. At a minimum, the plan must include:

(I) A discussion of the number of samples needed to characterize the wastes fully;

(II) The planned sample collection method to obtain representative waste samples;

(III) A discussion of how the sampling plan accounts for potential temporal and spatial variability of the wastes.

(IV) A detailed description of the test methods to be used, including sample preparation, clean up (if necessary), and determinative methods.

(iv) Collect and analyze samples in accordance with the waste sampling and analysis plan.

(I) The sampling and analysis must be unbiased, precise, and representative of the wastes.

(II) The analytical measurements must be sufficiently sensitive, accurate and precise to support any claim that the constituent mass loadings are below the listing levels of 335-14-2-.04(3)(c).

(v) Record the analytical results.

(vi) Record the waste quantity represented by the sampling and analysis results.

(vii) Calculate constituent-specific mass loadings (product of concentrations and waste quantity).

(viii) Keep a running total of the K181 constituent mass loadings over the course of the calendar year.

(ix) Determine whether the mass of any of the K181 constituents listed in 335-14-2-.04(3)(c) generated between January 1 and December 31 of any year is below the K181 listing levels.

(x) Keep the following records on site for the three most recent calendar years in which the hazardous waste determinations are made:

(I) The sampling and analysis plan.

(II) The sampling and analysis results (including QA/QC data).

(III) The quantity of dyes and/or pigment non-wastewaters generated.

(IV) The calculations performed to determine annual mass loadings.

(xi) Non-hazardous waste determinations must be conducted annually to verify that the wastes remain non-hazardous.

(I) The annual testing requirements are suspended after three consecutive successful annual demonstrations that the wastes are non-hazardous. The generator can then use knowledge of the wastes to support subsequent annual determinations.

(II) The annual testing requirements are reinstated if the manufacturing or waste treatment processes generating the wastes are significantly altered, resulting in an increase of the potential for the wastes to exceed the listing levels.

(III) If the annual testing requirements are suspended, the generator must keep records of the process knowledge information used to support a non-hazardous determination. If testing is reinstated, a description of the process change must be retained.

4. Recordkeeping for the landfill disposal and combustion exemptions. For the purposes of meeting the landfill disposal and combustion condition set out in the K181 listing description, the generator must maintain on site for three years documentation demonstrating that each

shipment of waste was received by a landfill unit that is subject to or meets the landfill design standards set out in the listing description, or was treated in combustion units as specified in the listing description.

5. Waste holding and handling. During the interim period, from the point of generation to completion of the hazardous waste determination, the generator is responsible for storing the wastes appropriately. If the wastes are determined to be hazardous and the generator has not complied with the 335-14 requirements during the interim period, the generator could be subject to an enforcement action for improper management.

(4) Discarded commercial chemical product, off-specification species, container residues, and spill residues thereof. The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded as described in 335-14-2-.01(2)(a)2., when they are mixed with waste oil or used oil or other material and applied to the land for dust suppression or road treatment, when they are otherwise applied to the land in lieu of their original intended use or when they are contained in products that are applied to the land in lieu of their original intended use, or when, in lieu of their original intended use, they are produced for use as (or as a component of) a fuel, distributed for use as a fuel, or burned as a fuel.

(a) Any commercial chemical product, or manufacturing chemical intermediate having the generic name listed in 335-14-2-.04(4)(e) or (f).

(b) Any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in 335-14-2-.04(4)(e) or (f).

(c) Any residue remaining in a container or in an inner liner removed from a container that has held any commercial chemical product or manufacturing chemical intermediate having the generic name listed in 335-14-2-.04(4)(e) or (f) unless the container is empty as defined in 335-14-2-.01(7)(b) or 335-14-7-.16(7).

[Comment: Unless the residue is being beneficially used or reused, or legitimately recycled or reclaimed; or being accumulated, stored, transported or treated prior to such use, re-use, recycling or reclamation, ADEM considers the residue to be intended for discard, and thus, a hazardous waste. An example of a legitimate re-use of the residue would be where the residue remains in the container and the

container is used to hold the same commercial chemical product or manufacturing chemical intermediate it previously held. An example of the discard of the residue would be where the drum is sent to a drum reconditioner who reconditions the drum but discards the residue.]

(d) 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 commercial chemical product or manufacturing chemical intermediate having the generic name listed in 335-14-2-.04(4)(e) or (f), or 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 off-specification chemical product and manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in 335-14-2-.04(4)(e) or (f).

[Comment: The phrase "commercial chemical product or manufacturing chemical intermediate having the generic name listed in..." refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient. It does not refer to a material, such as a manufacturing process waste, that contains any of the substances listed in 335-14-2-.04(4)(e) or (f). Where a manufacturing process waste is deemed to be a hazardous waste because it contains a substance listed in 335-14-2-.04(4)(e) or (f), such waste will be listed in either 335-14-2-.04(2) or 335-14-2-.04(3), or will be identified as a hazardous waste by the characteristics set forth in Rule 335-14-2-.03.]

(e) The commercial chemical products, manufacturing chemical intermediates or off-specification commercial chemical products or manufacturing chemical intermediates referred to in 335-14-2-.04(4)(a) through (d), are identified as acute hazardous wastes (H).

[Comment: For the convenience of the regulated community, the primary hazardous properties of these materials have been indicated by the letters T (Toxicity) and R (Reactivity). Absence of a letter indicates that the compound only is listed for acute toxicity.]

These wastes and their corresponding EPA Hazardous Waste Numbers are:

| Hazardous Waste No. | Chemical Abstracts No. | Substance |
|---|---|---|
| P023 | 107-20-0 | Acetaldehyde, chloro- |
| P002 | 591-08-2 | Acetamide, N-(aminothioxomethyl)- |
| P057 | 640-19-7 | Acetamide, 2-fluoro- |
| P058 | 62-74-8 | Acetic acid, fluoro-, sodium salt |
| P002 | 591-08-2 | 1-Acetyl-2-thiourea |
| P003 | 107-02-8 | Acrolein |
| P070 | 116-06-3 | Aldicarb |
| P203 | 1646-88-4 | Aldicarb sulfone |
| P004 | 309-00-2 | Aldrin |
| P005 | 107-18-6 | Allyl alcohol |
| P006 | 20859-73-8 | Aluminum phosphide (R,T) |
| P007 | 2763-96-4 | 5-(Aminomethyl)-3-isoxazolol |
| P008 | 504-24-5 | 4-Aminopyridine |
| P009 | 131-74-8 | Ammonium picrate (R) |
| P119 | 7803-55-6 | Ammonium vanadate |
| P099 | 506-61-6 | Argentate(1-), bis(cyano-C)-, potassium |
| P010 | 7778-39-4 | Arsenic acid $H_3AsO_4$ |
| P012 | 1327-53-3 | Arsenic oxide $As_2O_3$ |
| P011 | 1303-28-2 | Arsenic oxide $As_2O_5$ |
| P011 | 1303-28-2 | Arsenic pentoxide |
| P012 | 1327-53-3 | Arsenic trioxide |
| P038 | 692-42-2 | Arsine, diethyl- |
| P036 | 696-28-6 | Arsonous dichloride, phenyl- |
| P054 | 151-56-4 | Aziridine |
| P067 | 75-55-8 | Aziridine, 2-methyl- |
| P013 | 542-62-1 | Barium cyanide |
| P024 | 106-47-8 | Benzenamine, 4-chloro- |
| P077 | 100-01-6 | Benzenamine, 4-nitro- |
| P028 | 100-44-7 | Benzene, (chloromethyl)- |

| | | |
|---|---|---|
| P042 | 51-43-4 | 1,2-Benzenediol, 4-[1-hydroxy-2-(methyl-amino)ethyl]-, (R)- |
| P046 | 122-09-8 | Benzeneethanamine, alpha,alpha-dimethyl- |
| P014 | 108-98-5 | Benzenethiol |
| P127 | 1563-66-2 | 7-Benzofuranol,2,3-dihydro-2,2-dimethyl-, methylcarbamate |
| P188 | 57-64-7 | Benzoic acid, 2-hydroxy-, compound with (3aS-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylphyrolo[2,3-b]indol-5-yl methylcarbamate ester (1:1) |
| P001 | [1]81-81-2 | 2H-1-Benzopyran-2-one, 4-hydroxy-3- (3-oso-1-phenylbutyl)-, & salts, when present at concentrations greater than 0.3% |
| P028 | 100-44-7 | Benzyl chloride |
| P015 | 7440-41-7 | Beryllium powder |
| P017 | 598-31-2 | Bromoacetone |
| P018 | 357-57-3 | Brucine |
| P045 | 39196-18-4 | 2-Butanone, 3,3-dimethyl-1-(methylthio)-, 0-[methylamino)carbonyl] oxime |
| P021 | 592-01-8 | Calcium cyanide |
| P021 | 592-01-8 | Calcium cyanide Ca(CN)2 |
| P189 | 55285-14-8 | Carbamic acid, [(dibutylamino)-thio]methyl- 2,3-dihydro-2,2-dimethyl-7-benzofuranyl ester |
| P191 | 644-64-4 | Carbamic acid, dimethyl-,1-[(dimethyl- amino) carbonyl]-5-methyl-1H-pyrozol- 3-yl ester |
| P192 | 119-38-0 | Carbamic acid, dimethyl-, 3-methyl-1(1-methylethyl)-1H-pryrazol-5yl ester |
| P190 | 1129-41-5 | Carbamic acid, methyl-, 3-methylphenyl ester |
| P127 | 1563-66-2 | Carbofuran |
| P022 | 75-15-0 | Carbon disulfide |
| P095 | 75-44-5 | Carbonic dichloride |
| P189 | 55285-14-8 | Carbosulfan |

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|---|---|---|
| P023 | 107-20-0 | Chloroacetaldehyde |
| P024 | 106-47-8 | p-Chloroaniline |
| P026 | 5344-82-1 | 1-(o-Chlorophenyl)thiourea |
| P027 | 542-76-7 | 3-Chloropropionitrile |
| P029 | 544-92-3 | Copper cyanide |
| P029 | 544-92-3 | Copper cyanide Cu(CN) |
| P202 | 64-00-6 | m-Cumenyl methylcarbamate |
| P030 | | Cyanides (soluble cyanide salts), not otherwise specified |
| P031 | 460-19-5 | Cyanogen |
| P033 | 506-77-4 | Cyanogen chloride |
| P033 | 506-77-4 | Cyanogen chloride (CN)Cl |
| P034 | 131-89-5 | 2-Cyclohesyl-4,6-dinitrophenol |
| P016 | 542-88-1 | Dichloromethyl ether |
| P036 | 696-28-6 | Dichlorophenylarsine |
| P037 | 60-57-1 | Dieldrin |
| P038 | 692-42-2 | Diethylarsine |
| P041 | 311-45-5 | Diethyl-p-nitrophenyl phosphate |
| P040 | 297-97-2 | O,O-Diethyl O-pyrazinyl phosphorothioate |
| P043 | 55-91-4 | Diisopropylfluorophosphate (DFP) |
| P004 | 309-00-2 | 1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10, 10-hexachloro-1,4,4a,5,8,8a- hexahydro-,(1alpha, 4alpha,4abeta,5alpha,8alpha,8abeta)- |
| P060 | 465-73-6 | 1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexa-chloro-1,4,4a,5,8,8a- hexahydro-, (lalpha,4alpha, 4abeta,5beta, 8beta,8abeta)- |
| P037 | 60-57-1 | 2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-la,2,2a, 3,6,6a, 7,7a-octahydro-,(1alpha, 2beta,2alpha, 3beta,6beta, 6alpha,7beta,7alpha)- |

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|---|---|---|
| P051 | [1]72-20-8 | 2,7:3,6-Dimethanonaphth [2,3- b]oxirene, 3,4,5,6,9,9- hexachloro-la,2,2a,3,6, 6a,7,7a-octahydro-,(1alpha,2beta, 2beta,3alpha,6alpha, 6beta,7beta, 7alpha)-, & metabolites |
| P044 | 60-51-5 | 60-51-5 |
| P046 | 122-09-8 | alpha, alpha-Dimethylphenethylamine |
| P191 | 644-64-4 | Dimetilan |
| P047 | [1]534-52-1 | 4,6-Dinitro-o-cresol, & salts |
| P048 | 51-28-5 | 2,4-Dinitrophenol |
| P020 | 88-85-7 | Dinoseb |
| P085 | 152-16-9 | Diphosphoramide, octamethyl- |
| P111 | 107-49-3 | Diphosphoric acid, tetraethyl ester |
| P039 | 298-04-4 | Disulfoton |
| P049 | 541-53-7 | Dithiobiuret |
| P185 | 26419-73-8 | 1,3-Dithiolane-2-carboxaldehyde,2,4- dimethyl-,o-[(methylamino)- carbonyl]oxime |
| P050 | 115-29-7 | Endosulfan |
| P088 | 145-73-3 | Endothall |
| P051 | 72-20-8 | Endrin |
| P051 | 72-20-8 | Endrin, & metabolites |
| P042 | 51-43-4 | Epinephrine |
| P031 | 460-19-5 | Ethanedinitrile |
| P194 | 23135-22-0 | Ethanimidothioc acid, 2-(dimethylamino)-N-[[(methylamino) carbonyl]-2-oxo]-, methyl ester |
| P066 | 16752-77-5 | Ethanimidothioic acid, N-[[(methylamino) carbonyl]oxy]-,ethyl ester |
| P101 | 107-12-0 | Ethyl cyanide |
| P054 | 151-56-4 | Ethyleneimine |
| P097 | 52-85-7 | Famphur |
| P056 | 7782-41-4 | Fluorine |
| P057 | 640-19-7 | Fluoroacetamide |
| P058 | 62-74-8 | Fluoroacetic acid, sodium salt |

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|---|---|---|
| P198 | 23422-53-9 | Formetanate hydrochloride |
| P197 | 17702-57-7 | Formparante |
| P065 | 628-86-4 | Fulminic acid, mercury(2+) salt(R,T) |
| P059 | 76-44-8 | Heptachlor |
| P062 | 757-58-4 | Hesaethyl tetraphosphate |
| P116 | 79-19-6 | Hydrazinecarbothioamide |
| P068 | 60-34-4 | Hydrazine, methyl- |
| P063 | 74-90-8 | Hydrocyanic acid |
| P063 | 74-90-8 | Hydrogen cyanide |
| P096 | 7803-51-2 | Hydrogen phosphide |
| P060 | 465-73-6 | Isodrin |
| P192 | 119-38-0 | Isolan |
| P202 | 64-00-6 | 3-Isopropylphenyl N-methylcarbamate |
| P007 | 2763-96-4 | 3(2H)-Isoxazolone, 5-(aminomethyl)- |
| P196 | 15339-36-3 | Manganese, bis(dimethylcarbamodithioato-S,S')-, |
| P196 | 15339-36-3 | Manganese dimethyldithiocarbamate |
| P092 | 62-38-4 | Mercury, (acetato-O)phenyl- |
| P065 | 628-86-4 | Mercury fulminate (R,T) |
| P082 | 62-75-9 | Methanamine,N-methyl-N-nitroso- |
| P064 | 624-83-9 | Methane, isocyanato- |
| P016 | 542-88-1 | Methane, oxybis[chloro- |
| P112 | 509-14-8 | Methane, tetranitro-(R) |
| P118 | 75-70-7 | Methanethiol, trichloro- |
| P198 | 23422-53-9 | Methanimidamide, N,N-dimethyl-N'-[3-[[(methylamino)-cargonyl]oxy]phenyl]-monohydrochloride |
| P197 | 17702-57-7 | Methanimidamide, N,N-dimethyl-N'-[2- methyl-4-[[(methylamino)carbonyl] oxl]phenyl]- |
| P050 | 115-29-7 | 6,9-Methano-2,4,3- benzodioxathiepin, 6,7,8,9,10,10- hexachloro-1,5,5a, 6,9,9a-hexahydro-, 3-oxide |

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|---|---|---|
| P059 | 76-44-8 | 4,7-Methano-lH-indene,1,4,5, 6,7,8, 8-heptachloro-3a,4,7,7a-tetrahydro- |
| P199 | 2032-65-7 | Methiocarb |
| P066 | 16752-77-5 | Methomyl |
| P068 | 60-34-4 | Methyl hydrazine |
| P064 | 624-83-9 | Methyl isocyanate |
| P069 | 75-86-5 | 2-Methyllactonitrile |
| P071 | 298-00-0 | Methyl parathion |
| P190 | 1129-41-5 | Metolcarb |
| P128 | 315-8-4 | Mexacarbate |
| P072 | 86-88-4 | alpha-Naphthylthiourea |
| P073 | 13463-39-3 | Nickel carbonyl |
| P073 | 13463-39-3 | Nickel carbonyl $Ni(C0)_4$, (T-4)- |
| P074 | 557-19-7 | Nickel cyanide |
| P074 | 557-19-7 | Nickel cyanide $Ni(CN)_2$ |
| P075 | [1]54-11-5 | Nicotine, & salts (this listing does not include patches, gums and lozenges that are FDA-approved over-the-counter nicotine replacement therapies) |
| P076 | 10102-43-9 | Nitric oxide |
| P077 | 100-01-6 | p-Nitroaniline |
| P078 | 10102-44-0 | Nitrogen dioxide |
| P076 | 10102-43-9 | Nitrogen oxide NO |
| P078 | 10102-44-0 | Nitrogen oxide $NO_2$ |
| P081 | 55-63-0 | Nitroglycerine(R) |
| P082 | 62-75-9 | N-Nitrosodimethylamine |
| P084 | 4549-40-0 | N-Nitrosomethylvinylamine |
| P085 | 152-16-9 | Octamethylpyrophosphoramide |

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|---|---|---|
| P087 | 20816-12-0 | Osmium oxide OsO4, (T-4)- |
| P087 | 20816-12-0 | Osmium tetroxide |
| P088 | 145-73-3 | 7-Oxabicyclo[2.2.1]heptane-2,3- dicarboxylic acid |
| P194 | 23135-22-0 | Oxamyl |
| P089 | 56-38-2 | Parathion |
| P034 | 131-89-5 | Phenol, 2-cyclohexyl-4,6-dinitro- |
| P048 | 51-28-5 | Phenol, 2,4-dinitro- |
| P047 | [1]534-52-1 | Phenol, 2-methyl-4,6-dinitro, & salts |
| P020 | 88-85-7 | Phenol, 2-(1-methylpropyl)-4,6- dinitro- |
| P009 | 131-74-8 | Phenol, 2,4,6-trinitro-, ammonium salt (R) |
| P128 | 315-18-4 | Phenol, 4-(dimethylamino)-3,5-dimethyl-, methylcarbamate (ester) |
| P199 | 2032-65-7 | Phenol, (3,5-dimethyl-4-(methylthio)-, methylcarbamate |
| P202 | 64-00-6 | Phenol, 3-(1-methylethyl)-,methyl carbamate |
| P201 | 2631-37-0 | Phenol, 3-methyl-5-(1-methylethyl)-,methyl carbamate |
| P092 | 62-38-4 | Phenylmercury acetate |
| P093 | 103-85-5 | Phenylthiourea |
| P094 | 298-02-2 | Phorate |
| P095 | 75-44-5 | Phosgene |
| P096 | 803-51-2 | Phosphine |
| P041 | 311-45-5 | Phosphoric acid, diethyl 4- nitrophenyl ester |
| P039 | 298-04-4 | Phosphorodithioic acid, 0,0-diethyl-S-[2-(ethylthio)ethyl] ester |
| P094 | 298-02-2 | Phosphorodithioic acid, 0,0-diethyl S-[(ethylthio)methyl] ester |
| P044 | 60-51-5 | Phosphorodithioic acid, 0,0- dimethyl S-[2-(methylamino)-2- oxoethyl] ester |

| | | |
|---|---|---|
| P043 | 55-91-4 | Phosphorofluoridic acid, bis(l- methylethyl) ester |
| P089 | 56-38-2 | Phosphorothioic acid, 0,0-diethyl 0-(4-nitrophenyl) ester |
| P040 | 297-97-2 | Phosphorothioic acid, 0,0-diethyl 0-pyrazinyl ester |
| P097 | 52-85-7 | Phosphorothioic acid, 0-[4-[(dimethylamino)sulfonyl] phenyl] 0,0-dimethyl ester |
| P071 | 298-00-0 | Phosphorothioic acid, 0,0,-dimethyl 0-(4-nitrophenyl) ester |
| P204 | 57-47-6 | Physostigmine |
| P188 | 57-64-7 | Physostigmine salicylate |
| P110 | 78-00-2 | Plumbane, tetraethyl- |
| P098 | 151-50-8 | Potassium cyanide |
| P098 | 151-50-8 | Potassium cyanide K(CN) |
| P099 | 506-61-6 | Potassium silver cyanide |
| P201 | 2631-37-0 | Promecarb |
| P070 | 116-06-3 | Propanal, 2-methyl-2-(methylthio)-, O-[(methylamino)carbonyl]oxime |
| P203 | 1646-88-4 | Propanal, 2-, methyl-2-(methyl-sulfonyl)-, O-[(methylamino)carbonyl] oxime |
| P101 | 107-12-0 | Propanenitrile |
| P027 | 542-76-7 | Propanenitrile, 3-chloro- |
| P069 | 75-86-5 | Propanenitrile, 2-hydroxy-2-methyl- |
| P081 | 55-63-0 | 1,2,3-Propanetriol, trinitrate (R) |
| P017 | 598-31-2 | 2-Propanone, l-bromo- |
| P102 | 107-19-7 | Propargyl alcohol |
| P003 | 107-02-8 | 2-Propenal |
| P005 | 107-18-6 | 2-Propen-l-ol |
| P067 | 75-55-8 | 1,2-Propylenimine |
| P102 | 107-19-7 | 2-Propyn-l-ol |
| P008 | 504-24-5 | 4-Pyridinamine |

| | | |
|---|---|---|
| P075 | [1]54-11-5 | Pyridine, 3-(1-methyl-2- pyrrolidinyl)-, (S)-, and salts (this listing does not include patches, gums and lozenges that are FDA-approved over-the-counter nicotine replacement therapies) |
| P204 | 57-47-6 | Pyrrolo[2,3-b]indol-5-ol,1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)- |
| P114 | 12039-52-0 | Selenious acid, dithallium(l+) salt |
| P103 | 630-10-4 | Selenourea |
| P104 | 506-64-9 | Silver cyanide |
| P104 | 506-64-9 | Silver cyanide (Ag(CN) |
| P105 | 26628-22-8 | Sodium azide |
| P106 | 143-33-9 | Sodium cyanide |
| P106 | 143-33-9 | Sodium cyanide Na(CN) |
| P108 | [1]57-24-9 | Strychnidin-10-one, and salts |
| P118 | 357-57-3 | Strychnidin-10-one, 2,3-dimethoxy- |
| P108 | [1]57-24-9 | Strychnine, & salts |
| P115 | 7446-18-6 | Sulfuric acid, dithallium(l+) salt |
| P109 | 3689-24-5 | Tetraethyldithiopyrophosphate |
| P110 | 78-00-2 | Tetraethyl lead |
| P111 | 107-49-3 | Tetraethyl pyrophosphate |
| P112 | 509-14-8 | Tetranitromethane (R) |
| P062 | 757-58-4 | Tetraphosphoric acid, hexaethyl ester |
| P113 | 1314-32-5 | Thallic oxide |
| P113 | 1314-32-5 | Thallium oxide $Tl_2O_3$ |
| P114 | 12039-52-0 | Thallium(l) selenite |
| P115 | 7446-18-6 | Thallium(l) sulfate |
| P109 | 3689-24-5 | Thiodiphosphoric acid, tetraethyl ester |
| P045 | 39196-18-4 | Thiofanox |

| | | |
|---|---|---|
| P049 | 541-53-7 | Thioimidodicarbonic diamide $[(H_2N)C(S)_2NH$ |
| P014 | 108-98-5 | Thiophenol |
| P116 | 79-19-6 | Thiosemicarbazide |
| P026 | 5344-82-1 | Thiourea, (2-chlorophenyl)- |
| P072 | 86-88-4 | Thiourea, 1-naphthalenyl- |
| P093 | 103-85-5 | Thiourea, phenyl- |
| P185 | 26419-73-8 | Tirpate |
| P123 | 8001-35-2 | Toxaphene |
| P118 | 75-70-7 | Trichloromethanethiol |
| P119 | 7803-55-6 | Vanadic acid, ammonium salt |
| P120 | 1314-62-1 | Vanadium oxide $V_2O_5$ |
| P120 | 1314-62-1 | Vanadium pentoxide |
| P084 | 4549-40-0 | Vinylamine, N-methyl-N-nitroso- |
| P001 | [1]81-81-2 | Warfarin, & salts, when present at concentrations greater than 0.3% |
| P205 | 137-30-4 | Zinc, bis(dimethylcarbamodithioato-S,S')-, |
| P121 | 557-21-1 | Zinc cyanide |
| P121 | 557-21-1 | Zinc cyanide $Zn(CN)_2$ |
| P122 | 1314-84-7 | Zinc phosphide $Zn_3P_2$, when present at concentrations greater than 10% (R,T) |
| P205 | 137-30-4 | Ziram |

[1]CAS Number given for parent compound only.

(f) The commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products referred to in 335-14-2-.04(4)(a) through (d), are identified as toxic wastes (T) unless otherwise designated and are subject to the small quantity exclusion defined in 335-14-2-.01(5)(a) and (g).

These wastes and their corresponding EPA Hazardous Waste Numbers are:

| Hazardous Waste No. | Chemical Abstracts No. | Substance |
|---|---|---|
| U394 | 30558-43-1 | A2213 |
| U001 | 75-07-0 | Acetaldehyde(I) |
| U034 | 75-87-6 | Acetaldehyde,trichloro- |
| U187 | 62-44-2 | Acetamide,N-(4-ethoxyphenyl)- |
| U005 | 53-96-3 | Acetamide,N-9H-fluoren-2-yl- |
| U240 | [1] 94-75-7 | Acetic acid,(2,4-dichlorophenoxy)-, salts & esters |
| U112 | 141-78-6 | Acetic acid ethylester(I) |
| U144 | 301-04-2 | Acetic acid, lead(2+)salt |
| U214 | 563-68-8 | Acetic acid,thallium(l+)salt |
| See F027 | 93-76-5 | Acetic acid,(2,4,5-trichlorophenoxy)- |
| U002 | 67-64-1 | Acetone(I) |
| U003 | 75-05-8 | Acetonitrile(I,T) |
| U004 | 98-86-2 | Acetophenone |
| U005 | 53-96-3 | 2-Acetylaminofluorene |
| U006 | 75-36-5 | Acetylchloride(C,R,T) |
| U007 | 79-06-1 | Acrylamide |

| Hazardous Waste No. | Chemical Abstracts No. | Substance |
|---|---|---|
| U008 | 79-10-7 | Acrylic acid(I) |
| U009 | 107-13-1 | Acrylonitrile |
| U011 | 61-82-5 | Amitrole |
| U012 | 62-53-3 | Aniline(I,T) |
| U136 | 75-60-5 | Arsinicacid,dimethyl- |
| U014 | 492-80-8 | Auramine |
| U015 | 115-02-6 | Azaserine |
| U010 | 50-07-7 | Azirino[2,3:3,4]pyrrolo[1,2-a] indole-4,7-dione, 6-amino-8-[[(aminocarb onyl)oxy]methyl]-1,1a,2,8,8a,8b-hexahydro-8a -methoxy-5-methyl-,[1aS-(1aalpha,8beta,8aalpha,8balpha)]- |
| U280 | 101-27-9 | Barban |
| U278 | 22781-23-3 | Bendiocarb |
| U364 | 22961-82-6 | Bendiocarbphenol |
| U271 | 17804-35-2 | Benomyl |
| U157 | 56-49-5 | Benz[j]aceanthrylene,1,2-dihydro-3- methyl- |
| U016 | 225-51-4 | Benz[c]acridine |

| Hazardous Waste No. | Chemical Abstracts No. | Substance |
|---|---|---|
| U017 | 98-87-3 | Benzalchloride |
| U192 | 23950-58-5 | Benzamide,3,5-dichloro-N-(l,l-dimethyl-2-propynyl)- |
| U018 | 56-55-3 | Benz[a]anthracene |
| U094 | 57-97-6 | Benz[a]anthracene,7,12-dimethyl- |
| U012 | 62-53-3 | Benzenamine(I,T) |
| U014 | 492-80-8 | Benzenamine,4,4-carbonimidoylbis[N,N-dimethyl- |
| U049 | 3165-93-3 | Benzenamine,4-chloro-2-methyl-, hydrochloride |
| U093 | 60-11-7 | Benzenamine,N,N-dimethyl-4-(phenylazo)- |
| U328 | 95-53-4 | Benzenamine,2-methyl- |
| U353 | 106-49-0 | Benzenamine,4-methyl- |
| U158 | 101-14-4 | Benzenamine,4,4-methylenebis[2-chloro- |
| U222 | 636-21-5 | Benzenamine,2-methyl-, hydrochloride |
| U181 | 99-55-8 | Benzenamine,2-methyl-5-nitro- |
| U019 | 71-43-2 | Benzene(I,T) |
| U038 | 510-15-6 | Benzeneaceticacid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethylester |

| Hazardous Waste No. | Chemical Abstracts No. | Substance |
|---|---|---|
| U030 | 101-55-3 | Benzene,l-bromo-4-phenoxy- |
| U035 | 305-03-3 | Benzenebutanoic acid,4-[bis(2- chloroethyl)amino]- |
| U037 | 108-90-7 | Benzene, chloro- |
| U221 | 25376-45-8 | Benzenediamine, ar-methyl- |
| U028 | 117-81-7 | 1,2-Benzenedicarboxylic acid,bis(2- ethylhexyl)ester |
| U069 | 84-74-2 | 1,2-Benzenedicarboxylic acid,dibutyl ester |
| U088 | 84-66-2 | 1,2-Benzenedicarboxylic acid,diethyl ester |
| U102 | 131-11-3 | 1,2-Benzenedicarboxylic acid,dimethyl ester |
| U107 | 117-84-0 | 1,2-Benzenedicarboxylic acid,dioctyl ester |
| U070 | 95-50-1 | Benzene, 1,2-dichloro- |
| U071 | 541-73-1 | Benzene, 1,3-dichloro- |
| U072 | 106-46-7 | Benzene, 1,4-dichloro- |
| U060 | 72-54-8 | Benzene, 1,1-(2,2-dichloroethyli- dene)bis[4-chloro- |
| U017 | 98-87-3 | Benzene, (dichloromethyl)- |
| U223 | 26471-62-5 | Benzene, 1,3-diisocyanatomethyl-(R,T) |
| U239 | 1330-20-7 | Benzene, dimethyl-(I,T) |

| Hazardous Waste No. | Chemical Abstracts No. | Substance |
|---|---|---|
| U201 | 108-46-3 | 1,3-Benzenediol |
| U127 | 118-74-1 | Benzene, hexachloro- |
| U056 | 110-82-7 | Benzene, hexahydro-(I) |
| U220 | 108-88-3 | Benzene, methyl- |
| U105 | 121-14-2 | Benzene, l-methyl-2,4-dinitro- |
| U106 | 606-20-2 | Benzene, 2-methyl-1,3-dinitro- |
| U055 | 98-82-8 | Benzene, (l-methylethyl)-(I) |
| U169 | 98-95-3 | Benzene, nitro- |
| U183 | 608-93-5 | Benzene, pentachloro- |
| U185 | 82-68-8 | Benzene, pentachloronitro- |
| U020 | 98-09-9 | Benzenesulfonic acid chloride (C,R) |
| U020 | 98-09-9 | Benzenesulfonyl chloride (C,R) |
| U207 | 95-94-3 | Benzene, 1,2,4,5-tetrachloro- |
| U061 | 50-29-3 | Benzene, 1,1-(2,2,2-trichloro ethylidene)bis[4-chloro- |
| U247 | 72-43-5 | Benzene, 1,1-(2,2,2-trichloro ethylidene)bis[4-methoxy- |
| U023 | 98-07-7 | Benzene, (trichloromethyl)- |

| Hazardous Waste No. | Chemical Abstracts No. | Substance |
|---|---|---|
| U234 | 99-35-4 | Benzene, 1,3,5-trinitro- |
| U021 | 92-87-5 | Benzidine |
| U278 | 22781-23-3 | 1,3-Benzodioxol-4-ol,2,2-dimethyl-,methyl carbamate |
| U364 | 22961-82-6 | 1,3,Benzodioxol-4-ol,2,2-dimethyl-, |
| U203 | 94-59-7 | 1,3-Benzodioxole, 5-(2-propenyl)- |
| U141 | 120-58-1 | 1,3-Benzodioxole, 5-(1-propenyl)- |
| U367 | 1563-38-8 | 7-Benzofuranol, 2,3-dihydro-2,2-dimethyl- |
| U090 | 94-58-6 | 1,3-Benzodioxole, 5-propyl- |
| U064 | 189-55-9 | Benzo[rst]pentaphene |
| U248 | [1] 81-81-2 | 2H-l-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenyl-butyl)-,&salts, when present at concentrations of 0.3% or less |
| U022 | 50-32-8 | Benzo[a]pyrene |
| U197 | 106-51-4 | p-Benzoquinone |
| U023 | 98-07-7 | Benzotrichloride(C,R,T) |
| U085 | 1464-53-5 | 2,2-Bioxirane |
| U021 | 92-87-5 | [l,l'-Biphenyl]-4,4-diamine |

| Hazardous Waste No. | Chemical Abstracts No. | Substance |
|---|---|---|
| U073 | 91-94-1 | [1,1'-Biphenyl]-4,4-diamine,3,3'- dichloro- |
| U091 | 119-90-4 | [1,1'-Biphenyl]-4,4-diamine,3,3'- dimethoxy- |
| U095 | 119-93-7 | [l,l'-Biphenyl]-4,4-diamine,3,3'- dimethyl- |
| U225 | 75-25-2 | Bromoform |
| U030 | 101-55-3 | 4-Bromophenylphenylether |
| U128 | 87-68-3 | 1,3-Butadiene, 1,1,2,3,4,4- hexachloro- |
| U172 | 924-16-3 | l-Butanamine, N-butyl-N-nitroso- |
| U031 | 71-36-3 | l-Butanol(I) |
| U159 | 78-93-3 | 2-Butanone(I,T) |
| U160 | 1338-23-4 | 2-Butanone,peroxide(R,T) |
| U053 | 4170-30-3 | 2-Butenal |
| U074 | 764-41-0 | 2-Butene, 1,4-dichloro-(I,T) |
| U143 | 303-34-4 | 2-Butenoicacid,2-methyl-,7-[[2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-l-oxobutoxy]methyl]-2,3,5,7a-tetrahydro-lH-pyrrolizin-l-yl ester,[lS-[lalpha(Z),7(2S*,3R*),7aalpha]]- |
| U031 | 71-36-3 | n-Butyl alcohol(I) |

| Hazardous Waste No. | Chemical Abstracts No. | Substance |
|---|---|---|
| U136 | 75-60-5 | Cacodylic acid |
| U032 | 13765-19-0 | Calcium chromate |
| U372 | 10605-21-7 | Carbamic acid,1H-benzimidazol-2-yl,methyl ester |
| U271 | 17804-35-2 | Carbamic acid, [1-[butylamino)carbonyl]-1H-benzimidazol-2-yl],methyl ester |
| U280 | 101-27-9 | Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butynyl ester |
| U238 | 51-79-6 | Carbamic acid, ethylester |
| U178 | 615-53-2 | Carbamic acid, methylnitroso-, ethylester |
| U373 | 122-42-9 | Carbamic acid, phenyl-,1-methylethylester |
| U409 | 23564-05-8 | Carbamic acid, [1,2-phenylene bis (iminocarbonothioyl)]bis-, dimethyl ester |
| U097 | 79-44-7 | Carbamic chloride, dimethyl- |
| U389 | 2303-17-5 | Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2-propenyl)ester |
| U387 | 52888-80-9 | Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester |
| U114 | [1] 111-54-6 | Carbamodithioic acid, 1,2-ethane- diylbis-, salts & esters |
| U062 | 2303-16-4 | Carbamothioic acid, bis(1- methylethyl)-, S-(2,3-dichloro-2-propenyl) ester |

| Hazardous Waste No. | Chemical Abstracts No. | Substance |
|---|---|---|
| U279 | 63-25-2 | Carbaryl |
| U372 | 10605-21-7 | Carbendazim |
| U367 | 1563-38-8 | Carbofuranphenol |
| U215 | 6533-73-9 | Carbonicacid, dithallium(1+) salt |
| U033 | 353-50-4 | Carbonic difluoride |
| U156 | 79-22-1 | Carbonochloridicacid, methyl ester (I,T) |
| U033 | 353-50-4 | Carbon oxyfluoride (R,T) |
| U211 | 56-23-5 | Carbon tetrachloride |
| U034 | 75-87-6 | Chloral |
| U035 | 305-03-3 | Chlorambucil |
| U036 | 57-74-9 | Chlordane, alpha & gamma isomers |
| U026 | 494-03-1 | Chlornaphazine |
| U037 | 108-90-7 | Chlorobenzene |
| U038 | 510-15-6 | Chlorobenzilate |
| U039 | 59-50-7 | p-Chloro-m-cresol |
| U042 | 110-75-8 | 2-Chloroethyl vinyl ether |

| Hazardous Waste No. | Chemical Abstracts No. | Substance |
|---|---|---|
| U044 | 67-66-3 | Chloroform |
| U046 | 107-30-2 | Chloromethyl methyl ether |
| U047 | 91-58-7 | beta-Chloronaphthalene |
| U048 | 95-57-8 | o-Chlorophenol |
| U049 | 3165-93-3 | 4-Chloro-o-toluidine, hydrochloride |
| U032 | 13765-19-0 | Chromic acid $H_2CrO_4$, calciumsalt |
| U050 | 218-01-9 | Chrysene |
| U051 | — | Creosote |
| U052 | 1319-77-3 | Cresol (Cresylicacid) |
| U053 | 4170-30-3 | Crotonaldehyde |
| U055 | 98-82-8 | Cumene (I) |
| U246 | 506-68-3 | Cyanogen bromide (CN)Br |
| U197 | 106-51-4 | 2,5-Cyclohexadiene- 1,4-dione |
| U056 | 110-82-7 | Cyclohexane (I) |
| U129 | 58-89-9 | Cyclohexane, 1,2,3,4,5,6-hexa- chloro-, (lalpha,2alpha,3beta, 4alpha,5alpha,6beta)- |

| Hazardous Waste No. | Chemical Abstracts No. | Substance |
|---|---|---|
| U057 | 108-94-1 | Cyclohexanone (I) |
| U130 | 77-47-4 | 1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro- |
| U058 | 50-18-0 | Cyclophosphamide |
| U240 | [1] 94-75-7 | 2,4-D, salts and esters |
| U059 | 20830-81-3 | Daunomycin |
| U060 | 72-54-8 | DDD |
| U061 | 50-29-3 | DDT |
| U062 | 2303-16-4 | Diallate |
| U063 | 53-70-3 | Dibenz[a,h]anthracene |
| U064 | 189-55-9 | Dibenzo[a,i]pyrene |
| U066 | 96-12-8 | 1,2-Dibromo-3-chloropropane |
| U069 | 84-74-2 | Dibutylphthalate |
| U070 | 95-50-1 | o-Dichlorobenzene |
| U071 | 541-73-1 | m-Dichlorobenzene |
| U072 | 106-46-7 | p-Dichlorobenzene |
| U073 | 91-94-1 | 3,3'-Dichlorobenzidine |

| Hazardous Waste No. | Chemical Abstracts No. | Substance |
|---|---|---|
| U074 | 764-41-0 | 1,4-Dichloro-2-butene(I,T) |
| U075 | 75-71-8 | Dichlorodifluoromethane |
| U078 | 75-35-4 | l,l-Dichloroethylene |
| U079 | 156-60-5 | 1,2-Dichloroethylene |
| U025 | 111-44-4 | Dichloroethylether |
| U027 | 108-60-1 | Dichloroisopropylether |
| U024 | 111-91-1 | Dichloromethoxyethane |
| U081 | 120-83-2 | 2,4-Dichlorophenol |
| U082 | 87-65-0 | 2,6-Dichlorophenol |
| U084 | 542-75-6 | 1,3-Dichloropropene |
| U085 | 1464-53-5 | 1,2:3,4-Diepoxybutane(I,T) |
| U108 | 123-91-1 | 1,4-Diethyleneoxide |
| U028 | 117-81-7 | Diethylhexyl phthalate |
| U395 | 5952-26-1 | Diethylene glycol, dicarbamate |
| U086 | 1615-80-1 | N,N'-Diethylhydrazine |
| U087 | 3288-58-2 | O,O-DiethylS-methyl dithiophosphate |

| Hazardous Waste No. | Chemical Abstracts No. | Substance |
|---|---|---|
| U088 | 84-66-2 | Diethyl phthalate |
| U089 | 56-53-1 | Diethylstilbesterol |
| U090 | 94-58-6 | Dihydrosafrole |
| U091 | 119-90-4 | 3,3’-Dimethoxybenzidine |
| U092 | 124-40-3 | Dimethylamine(I) |
| U093 | 60-11-7 | p-Dimethylaminoazobenzene |
| U094 | 57-97-6 | 7,12-Dimethylbenz[a]anthracene |
| U095 | 119-93-7 | 3,3-Dimethylbenzidine |
| U096 | 80-15-9 | alpha,alpha-Dimethylbenzylhydro-peroxide (R) |
| U097 | 79-44-7 | Dimethylcarbamoylchloride |
| U098 | 57-14-7 | 1,1-Dimethylhydrazine |
| U099 | 540-73-8 | 1,2-Dimethylhydrazine |
| U101 | 105-67-9 | 2,4-Dimethylphenol |
| U102 | 131-11-3 | Dimethyl phthalate |
| U103 | 77-78-1 | Dimethyl sulfate |
| U105 | 121-14-2 | 2,4-Dinitrotoluene |

| Hazardous Waste No. | Chemical Abstracts No. | Substance |
|---|---|---|
| U106 | 606-20-2 | 2,6-Dinitrotoluene |
| U107 | 117-84-0 | Di-n-octyl phthalate |
| U108 | 123-91-1 | 1,4-Dioxane |
| U109 | 122-66-7 | 1,2-Diphenylhydrazine |
| Ull0 | 142-84-7 | Dipropylamine (I) |
| Ulll | 621-64-7 | Di-n-propylnitrosamine |
| U041 | 106-89-8 | Epichlorohydrin |
| U001 | 75-07-0 | Ethanal (I) |
| U404 | 121-44-8 | Ethanamine, N,N-diethyl- |
| U174 | 55-18-5 | Ethanamine,N-ethyl-N-nitroso- |
| U155 | 91-80-5 | 1,2,Ethanediamine,N,N-dimethyl-N'-2- |
| — | — | pyridinyl-N'-(2-thienyl-methyl)- |
| U067 | 106-93-4 | Ethane, 1,2-dibromo- |
| U076 | 75-34-3 | Ethane, l,l-dichloro- |
| U077 | 107-06-2 | Ethane, 1,2-dichloro- |
| U131 | 67-72-1 | Ethane,hexachloro- |

| Hazardous Waste No. | Chemical Abstracts No. | Substance |
|---|---|---|
| U024 | 111-91-1 | Ethane,l,l'-[methylenebis(oxy)]<br>bis[2-chloro- |
| U117 | 60-29-7 | Ethane, l,l'-osybis-(I) |
| U025 | 111-44-4 | Ethane, 1,1'-oxybis[2-chloro- |
| U184 | 76-01-7 | Ethane, pentachloro- |
| U208 | 630-20-6 | Ethane, 1,1,1,2-tetrachloro- |
| U209 | 79-34-5 | Ethane, 1,1,2,2-tetrachloro- |
| U218 | 62-55-5 | Ethanethioamide |
| U226 | 71-55-6 | Ethane, l,l,l-trichloro- |
| U227 | 79-00-5 | Ethane, 1,1,2-trichloro- |
| U410 | 59669-26-0 | Ethanimidothioic acid, N,N'-[thiobis[(methylimino) carbonyloxy]]bis-, dimethyl ester |
| U394 | 30558-43-1 | Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester |
| U359 | 110-80-5 | Ethanol, 2-ethoxy- |
| U173 | [1] 116-54-7 | Ethanol, 2,2'-(nitrosoimino)bis- |
| U395 | 5952-26-1 | Ethanol, 2,2'-oxybis-,dicarbamate |

| Hazardous Waste No. | Chemical Abstracts No. | Substance |
|---|---|---|
| U004 | 98-86-2 | Ethanone, l-phenyl- |
| U043 | 75-01-4 | Ethene, chloro- |
| U042 | 110-75-8 | Ethene, (2-chloroethoxy)- |
| U078 | 75-35-4 | Ethene, l,l-dichloro- |
| U079 | 156-60-5 | Ethene, 1,2-dichloro-,(E)- |
| U210 | 127-18-4 | Ethene, tetrachloro- |
| U228 | 79-01-6 | Ethene, trichloro- |
| U112 | 141-78-6 | Ethyl acetate (I) |
| U113 | 140-88-5 | Ethyl acrylate (I) |
| U238 | 51-79-6 | Ethyl carbamate (urethane) |
| U117 | 60-29-7 | Ethyl ether (I) |
| U114 | [1] 111-54-6 | Ethylenebisdithiocarbamic acid, salts & esters |
| U067 | 106-93-4 | Ethylene dibromide |
| U077 | 107-06-2 | Ethylene dichloride |
| U359 | 110-80-5 | Ethylene glycol monoethyl ether |
| U115 | 75-21-8 | Ethylene oxide(I,T) |

| Hazardous Waste No. | Chemical Abstracts No. | Substance |
|---|---|---|
| U116 | 96-45-7 | Ethylenethiourea |
| U076 | 75-34-3 | Ethylidene dichloride |
| U118 | 97-63-2 | Ethyl methacrylate |
| U119 | 62-50-0 | Ethyl methanesulfonate |
| U120 | 206-44-0 | Fluoranthene |
| U122 | 50-00-0 | Formaldehyde |
| U123 | 64-18-6 | Formic acid( C,T) |
| U124 | 110-00-9 | Furan (I) |
| U125 | 98-01-1 | 2-Furancarboxaldehyde (I) |
| U147 | 108-31-6 | 2,5-Furandione |
| U213 | 109-99-9 | Furan, tetrahydro- (I) |
| U125 | 98-01-1 | Furfural (I) |
| U124 | 110-00-9 | Furfuran (I) |
| U206 | 18883-66-4 | Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-, D- |
| U206 | 18883-66-4 | D-Glucose, 2-deoxy-2-[[(methyl-nitrosoamino)-carbonyl] amino]- |
| U126 | 765-34-4 | Glycidylaldehyde |

| Hazardous Waste No. | Chemical Abstracts No. | Substance |
|---|---|---|
| U163 | 70-25-7 | Guanidine, N-methyl-N'-nitro-N-nitroso |
| U127 | 118-74-1 | Hexachlorobenzene |
| U128 | 87-68-3 | Hexachlorobutadiene |
| U130 | 77-47-4 | Hexachlorocyclopentadiene |
| U131 | 67-72-1 | Hexachloroethane |
| U132 | 70-30-4 | Hexachlorophene |
| U243 | 1888-71-7 | Hexachloropropene |
| U133 | 302-01-2 | Hydrazine (R,T) |
| U086 | 1615-80-1 | Hydrazine, 1,2-diethyl- |
| U098 | 57-14-7 | Hydrazine ,l,l-dimethyl- |
| U099 | 540-73-8 | Hydrazine, 1,2-dimethyl- |
| U109 | 122-66-7 | Hydrazine, 1,2-diphenyl- |
| U134 | 7664-39-3 | Hydrofluoric acid (C,T) |
| U134 | 7664-39-3 | Hydrogen fluoride (C,T) |
| U135 | 7783-06-4 | Hydrogen sulfide |
| U135 | 7783-06-4 | Hydrogen sulfide $H_2S$ |

| Hazardous Waste No. | Chemical Abstracts No. | Substance |
|---|---|---|
| U096 | 80-15-9 | Hydroperoxide,1-methyl-1-phenylethyl-(R) |
| U116 | 96-45-7 | 2-Imidazolidinethione |
| U137 | 193-39-5 | Indeno[1,2,3-cd]pyrene |
| U190 | 85-44-9 | 1,3-Isobenzofurandione |
| U140 | 78-83-1 | Isobutyl alcohol(I,T) |
| U141 | 120-58-1 | Isosafrole |
| U142 | 143-50-0 | Kepone |
| U143 | 303-34-4 | Lasiocarpine |
| U144 | 301-04-2 | Lead acetate |
| U146 | 1335-32-6 | Lead, bis(acetato-O)tetrahydroxytri- |
| U145 | 7446-27-7 | Lead phosphate |
| U146 | 1335-32-6 | Lead subacetate |
| U129 | 58-89-9 | Lindane |
| U163 | 70-25-7 | MNNG |
| U147 | 108-31-6 | Maleic anhydride |
| U148 | 123-33-1 | Maleic hydrazide |

| Hazardous Waste No. | Chemical Abstracts No. | Substance |
|---|---|---|
| U149 | 109-77-3 | Malononitrile |
| U150 | 148-82-3 | Melphalan |
| U151 | 7439-97-6 | Mercury |
| U152 | 126-98-7 | Methacrylonitrile(I,T) |
| U092 | 124-40-3 | Methanamine,N-methyl-(I) |
| U029 | 74-83-9 | Methane, bromo- |
| U045 | 74-87-3 | Methane, chloro-(I,T) |
| U046 | 107-30-2 | Methane, chloromethoxy- |
| U068 | 74-95-3 | Methane, dibromo- |
| U080 | 75-09-2 | Methane, dichloro- |
| U075 | 75-71-8 | Methane, dichlorodifluoro- |
| U138 | 74-88-4 | Methane, iodo- |
| U119 | 62-50-0 | Methanesulfonic acid,ethyl ester |
| U211 | 56-23-5 | Methane, tetrachloro- |
| U153 | 74-93-1 | Methanethiol (I,T) |
| U225 | 75-25-2 | Methane, tribromo- |

| Hazardous Waste No. | Chemical Abstracts No. | Substance |
|---|---|---|
| U044 | 67-66-3 | Methane, trichloro- |
| U121 | 75-69-4 | Methane, trichlorofluoro- |
| U036 | 57-74-9 | 4,7-Methano-1H-indene,1,2,4,5,6,7,8,8- octachloro-2,3,3a, 4,7,7a-hexahydro- |
| U154 | 67-56-1 | Methanol (I) |
| U155 | 91-80-5 | Methapyrilene |
| U142 | 143-50-0 | 1,3,4-Metheno-2H-cyclobuta[cd] pentalen-2-one,1,la,3,3a,4,5,5, 5a,5b,6-decachlorooctahydro- |
| U247 | 72-43-5 | Methoxychlor |
| U154 | 67-56-1 | Methyl alcohol (I) |
| U029 | 74-83-9 | Methyl bromide |
| U186 | 504-60-9 | l-Methylbutadiene (I) |
| U045 | 74-87-3 | Methyl chloride (I,T) |
| U156 | 79-22-1 | Methyl chlorocarbonate (I,T) |
| U226 | 71-55-6 | Methyl chloroform |
| U157 | 56-49-5 | 3-Methylcholanthrene |
| U158 | 101-14-4 | 4,4’-Methylenebis(2-chloroaniline) |

| Hazardous Waste No. | Chemical Abstracts No. | Substance |
|---|---|---|
| U068 | 74-95-3 | Methylene bromide |
| U080 | 75-09-2 | Methylene chloride |
| U159 | 78-93-3 | Methyl ethyl ketone (MEK) (I,T) |
| U160 | 1338-23-4 | Methyl ethyl ketone peroxide (R,T) |
| U138 | 74-88-4 | Methyl iodide |
| U161 | 108-10-1 | Methyl isobutyl ketone (I) |
| U162 | 80-62-6 | Methylmethacrylate (I,T) |
| U161 | 108-10-1 | 4-Methyl-2-pentanone (I) |
| U164 | 56-04-2 | Methylthiouracil |
| U010 | 50-07-7 | Mitomycin C |
| U059 | 20830-81-3 | 5,12-Naphthacenedione,8-acetyl-10[(3-amino-2,3,6-trideoxy)-alpha-L-lyxo-hexopyranosyl) oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-l-methoxy-,(8S-cis)- |
| U167 | 134-32-7 | l-Naphthalenamine |
| U168 | 91-59-8 | 2-Naphthalenamine |
| U026 | 494-03-1 | Naphthalenamine,N,N'-bis(2-chloroethyl)- |
| U165 | 91-20-3 | Naphthalene |

| Hazardous Waste No. | Chemical Abstracts No. | Substance |
|---|---|---|
| U047 | 91-58-7 | Naphthalene, 2-chloro- |
| U166 | 130-15-4 | 1,4-Naphthalenedione |
| U236 | 72-57-1 | 2,7-Naphthalenedisulfonic acid, 3,3'-[(3,3'-dimethyl[1,1'-biphenyl]-4,4'-diyl) bis(azo)bis[5-amino-4-hydroxy]-, tetrasodium salt |
| U279 | 63-25-2 | 1-Naphthalenol, methylcarbamate |
| U166 | 130-15-4 | 1,4,Naphthaquinone |
| U167 | 134-32-7 | alpha-Naphthylamine |
| U168 | 91-59-8 | beta-Naphthylamine |
| U217 | 10102-45-1 | Nitric acid, thallium(1+) salt |
| U169 | 98-9-5-3 | Nitrobenzene (I,T) |
| U170 | 100-02-7 | p-Nitrophenol |
| U171 | 79-46-9 | 2-Nitropropane(I,T) |
| U172 | 924-16-3 | N-Nitrosodi-n-butylamine |
| U173 | 1116-54-7 | N-Nitrosodiethanolamine |
| U174 | 55-18-5 | N-Nitrosodiethylamine |
| U176 | 759-73-9 | N-Nitroso-N-ethylurea |

| Hazardous Waste No. | Chemical Abstracts No. | Substance |
|---|---|---|
| U177 | 684-93-5 | N-Nitroso-N-methylurea |
| U178 | 615-53-2 | N-Nitroso-N-methylurethane |
| U179 | 100-75-4 | N-Nitrosopiperidine |
| U180 | 930-55-2 | N-Nitrosopyrrolidine |
| U181 | 99-55-8 | 5-Nitro-o-toluidine |
| U193 | 1120-71-4 | 1,2-Oxathiolane,2,2-dioxide |
| U058 | 50-18-0 | 2H-1,3,2-Oxazaphosphorin-2-amine, N,N-bis(2-chloroethyl) tetrahydro-,2-oxide |
| U115 | 75-21-8 | Oxirane (I,T) |
| U126 | 765-34-4 | Oxiranecarboxyaldehyde |
| U041 | 106-89-8 | Oxirane, (chloromethyl)- |
| U182 | 123-63-7 | Paraldehyde |
| U183 | 608-93-5 | Pentachlorobenzene |
| U184 | 76-01-7 | Pentachloroethane |
| U185 | 82-68-8 | Pentachloronitrobenzene (PCNB) |
| See F027 | 87-86-5 | Pentachlorophenol |

| Hazardous Waste No. | Chemical Abstracts No. | Substance |
|---|---|---|
| U161 | 108-10-1 | Pentanol, 4-methyl- |
| U186 | 504-60-9 | 1,3-Pentadiene (I) |
| U187 | 62-44-2 | Phenacetin |
| U188 | 108-95-2 | Phenol |
| U048 | 95-57-8 | Phenol, 2-chloro- |
| U039 | 59-50-7 | Phenol, 4-chloro-3-methyl- |
| U081 | 120-83-2 | Phenol ,2,4-dichloro- |
| U082 | 87-65-0 | Phenol, 2,6-dichloro- |
| U089 | 56-53-1 | Phenol, 4,4'-(1,2-diethyl-1,2-ethenediyl)bis-,(E)- |
| U101 | 105-67-9 | Phenol, 2,4-dimethyl- |
| U052 | 1319-77-3 | Phenol, methyl- |
| U132 | 70-30-4 | Phenol, 2,2-methylenebis [3,4,6-trichloro- |
| U411 | 114-26-1 | Phenol, 2-(1-methylethoxy)-,methylcarbamate |
| U170 | 100-02-7 | Phenol, 4-nitro- |

| Hazardous Waste No. | Chemical Abstracts No. | Substance |
|---|---|---|
| See F027 | 87-86-5 | Phenol, pentachloro- |
| See F027 | 58-90-2 | Phenol, 2,3,4,6-tetrachloro- |
| See F027 | 95-95-4 | Phenol, 2,4,5-trichloro- |
| See F027 | 88-06-2 | Phenol, 2,4,6-trichloro- |
| U150 | 148-82-3 | L-Phenylalanine,4-[bis(2- chloroethyl)amino]- |
| U145 | 7446-27-7 | Phosphoric acid, lead(2+) salt(2:3) |
| U087 | 3288-58-2 | Phosphorodithioic acid, O,O-diethyl S-methylester |
| U189 | 1314-80-3 | Phosphorous sulfide (R) |
| U190 | 85-44-9 | Phthalic anhydride |
| U191 | 109-06-8 | 2-Picoline |
| U179 | 100-75-4 | Piperidine, l-nitroso- |
| U192 | 23950-58-5 | Pronamide |
| U194 | 107-10-8 | l-Propanamine (I,T) |
| U111 | 621-64-7 | l-Propanamine, N-nitroso-N-propyl- |
| U110 | 142-84-7 | l-Propanamine, N-propyl-(I) |
| U066 | 96-12-8 | Propane, 1,2-dibromo-3-chloro- |

| Hazardous Waste No. | Chemical Abstracts No. | Substance |
|---|---|---|
| U083 | 78-87-5 | Propane, 1,2-dichloro- |
| U149 | 109-77-3 | Propanedinitrile |
| U171 | 79-46-9 | Propane, 2-nitro-(I,T) |
| U027 | 108-60-1 | Propane, 2,2-oxybis[2-chloro- |
| U193 | 1120-71-4 | 1,3-Propanesultone |
| See F027 | 93-72-1 | Propanoic acid, 2-(2,4,5-trichloro- phenoxy)- |
| U235 | 126-72-7 | l-Propanol, 2,3-dibromo-,phosphate (3:1) |
| U140 | 78-83-1 | l-Propanol, 2-methyl-(I,T) |
| U002 | 67-64-1 | 2-Propanone (I) |
| U007 | 79-06-1 | 2-Propenamide |
| U084 | 542-75-6 | l-Propene, 1,3-dichloro- |
| U243 | 1888-71-7 | l-Propene, 1,1,2,3,3,3-hexachloro- |
| U009 | 107-13-1 | 2-Propenenitrile |
| U152 | 126-98-7 | 2-Propenenitrile,2-methyl- (I,T) |
| U008 | 79-10-7 | 2-Propenoic acid (I) |
| U113 | 140-88-5 | 2-Propenoic acid, ethyl ester (I) |

| Hazardous Waste No. | Chemical Abstracts No. | Substance |
|---|---|---|
| U118 | 97-63-2 | 2-Propenoic acid, 2-methyl-, ethyl ester |
| U162 | 80-62-6 | 2-Propenoic acid, 2-methyl-, methyl ester (I,T) |
| U373 | 122-42-9 | Propham |
| U411 | 114-26-1 | Propoxur |
| U387 | 52888-80-9 | Prosulfocarb |
| U194 | 107-10-8 | n-Propylamine (I,T) |
| U083 | 78-87-5 | Propylene dichloride |
| U148 | 123-33-1 | 3,6-Pyridazinedione, 1,2-dihydro- |
| U196 | 110-86-1 | Pyridine |
| Ul91 | 109-06-8 | Pyridine, 2-methyl- |
| U237 | 66-75-1 | 2,4-(lH,3H)-Pyrimidinedione,5-[bis (2-chloroethyl)amino]- |
| U164 | 56-04-2 | 4(1H)-Pyrimidinone,2,3-dihydro-6- methyl-2-thioxo- |
| U180 | 930-55-2 | Pyrrolidine,l-nitroso- |
| U200 | 50-55-5 | Reserpine |
| U201 | 108-46-3 | Resorcinol |

| Hazardous Waste No. | Chemical Abstracts No. | Substance |
|---|---|---|
| U203 | 94-59-7 | Safrole |
| U204 | 7783-00-8 | Selenious acid |
| U204 | 7783-00-8 | Selenium dioxide |
| U205 | 7488-56-4 | Selenium sulfide |
| U205 | 7488-56-4 | Selenium sulfide $SeS_2$ (R,T) |
| U015 | 79-34-5 | L-Serine, diazoacetate(ester) |
| SeeF027 | 115-02-6 | Silves(2,4,5-TP) |
| U206 | 93-72-1 | Streptozotocin |
| U103 | 18883-66-4 | Sulfuric acid, dimethylester |
| U189 | 77-78-1 | Sulfur phosphide (R) |
| SeeF027 | 1314-80-3 | 2,4,5-T |
| U207 | 93-76-5 | 1,2,4,5-Tetrachlorobenzene |
| U208 | 95-94-3 | 1,1,1,2-Tetrachloroethane |
| U209 | 630-20-6 | 1,1,2,2-Tetrachloroethane |
| U210 | 127-18-4 | Tetrachloroethylene |
| SeeF027 | 58-90-2 | 2,3,4,6-Tetrachlorophenol |

| Hazardous Waste No. | Chemical Abstracts No. | Substance |
|---|---|---|
| U213 | 109-99-9 | Tetrahydrofuran(I) |
| U214 | 563-68-8 | Thallium(I) acetate |
| U215 | 6533-73-9 | Thallium(I) carbonate |
| U216 | 7791-12-0 | Thallium(I) chloride |
| U216 | 7791-12-0 | Thallium chloride TlCl |
| U217 | 10102-45-1 | Thallium(I) nitrate |
| U218 | 62-55-5 | Thioacetamide |
| U410 | 59669-26-0 | Thiodicarb |
| U153 | 74-93-1 | Thiomethanol(I,T) |
| U244 | 137-26-8 | Thioperoxydicarbonic diamide[$(H_2N)C(S)]2S2$,tetrameth |
| U409 | 23564-05-8 | Thiophanate-methyl |
| U219 | 62-56-6 | Thiourea |
| U244 | 137-26-8 | Thiram |
| U220 | 108-88-3 | Toluene |
| U221 | 25376-45-8 | Toluenediamine |
| U223 | 26471-62-5 | Toluene diisocyanate(R,T) |

| Hazardous Waste No. | Chemical Abstracts No. | Substance |
|---|---|---|
| U328 | 95-53-4 | o-Toluidine |
| U353 | 106-49-0 | p-Toluidine |
| U222 | 636-21-5 | o-Toluidinehydrochloride |
| U389 | 2303-17-5 | Triallate |
| U011 | 61-82-5 | lH-1,2,4-Triazol-3-amine |
| U227 | 79-00-5 | 1,1,2-Trichloroethane |
| U228 | 79-01-6 | Trichloroethylene |
| U121 | 75-69-4 | Trichloromonofluoromethane |
| See F027 | 95-95-4 | 2,4,5-Trichlorophenol |
| See F027 | 88-06-2 | 2,4,6-Trichlorophenol |
| U404 | 121-44-8 | Triethylamine |
| U234 | 99-35-4 | 1,3,5-Trinitrobenzene(R,T) |
| U182 | 123-63-7 | 1,3,5-Trioxane, 2,4,6-trimethyl- |
| U235 | 126-72-7 | Tris(2,3-dibromopropyl) phosphate |
| U236 | 72-57-1 | Trypan blue |
| U237 | 66-75-1 | Uracil mustard |

| Hazardous Waste No. | Chemical Abstracts No. | Substance |
|---|---|---|
| U176 | 59-73-9 | Urea, N-ethyl-N-nitroso- |
| U177 | 684-93-5 | Urea, N-methyl-N-nitroso- |
| U043 | 75-01-4 | Vinyl chloride |
| U248 | [1] 81-81-2 | Warfarin, & salts, when present at concentrations of 0.3% or less |
| U239 | 1330-20-7 | Xylene(I) |
| U200 | 50-55-5 | Yohimban-16-carboxylicacid,11,17-dimethoxy-18-[(3,4,5-trimethoxy- benzoyl)oxy]-,methylester, (3beta, 16beta,17alpha,18beta,20alpha)- |
| U249 | 1314-84-7 | Zincphosphide,Zn3P2,when present at concentrations of 10% or less |

[1] CAS Number given for parent compound only.

(5) [Reserved]

(6) Deletion of Certain Hazardous Waste Codes Following Equipment Cleaning and Replacement.

(a) Wastes from wood preserving processes at plants that do not resume or initiate use of chlorophenolic preservatives will not meet the listing definition of F032 once the generator has met all of the requirements of 335-14-2-.04(6)(b) and (c). These wastes may, however, continue to meet another hazardous waste listing description or may exhibit one or more of the hazardous waste characteristics.

(b) Generators must either clean or replace all process equipment that may have come into contact with chlorophenolic formulations or constituents thereof, including, but not limited to, treatment cylinders, sumps, tanks, piping systems, drip pads, fork lifts, and trams, in a manner which minimizes or eliminates the escape of hazardous waste or

constituents, leachate, contaminated drippage, or hazardous waste decomposition products to the groundwater, surface water, or atmosphere.

1. Generators shall do one of the following:

(i) Prepare and follow an equipment cleaning plan and clean equipment in accordance with 335-14-2-.04(6);

(ii) Prepare and follow an equipment replacement plan and replace equipment in accordance with 335-14-2-.04(6); or

(iii) Document cleaning and replacement in accordance with 335-14-2-.04(6), carried out after termination of use of chlorophenolic preservatives.

2. Cleaning Requirements.

(i) Prepare and sign a written equipment cleaning plan that describes:

(I) The equipment to be cleaned;

(II) How the equipment will be cleaned;

(III) The solvent to be used in cleaning;

(IV) How solvent rinses will be tested; and

(V) How cleaning residues will be disposed.

(ii) Equipment must be cleaned as follows:

(I) Remove all visible residues from process equipment;

(II) Rinse process equipment with an appropriate solvent until dioxins and dibenzofurans are not detected in the final solvent rinse.

(iii) Analytical requirements.

(I) Rinses must be tested by using an appropriate method.

(II) "Not detected" means at or below the following lower method calibration limits (MCLs): The 2,3,7,8-TCDD-based MCL-0.01 parts

per trillion (ppt), sample weight of 1000g, IS µspiking level of 1 ppt, final extraction volume of 10-50 L. For other congeners - multiply the values by 1 for TCDF/PeCDD/PeCDF, by 2.5 for HxCDD/HxCDF/HpCDD/HpCDF, and by 5 for OCDD/OCDF.

(iv) The generator must manage all residues from the cleaning process as F032 waste.

3. Replacement requirements.

(i) Prepare and sign a written equipment replacement plan that describes:

(I) The equipment to be replaced;

(II) How the equipment will be replaced; and

(III) How the equipment will be disposed.

(ii) The generator must manage the discarded equipment as F032 waste.

4. Documentation requirements.

(i) Document that previous equipment cleaning and/or replacement was performed in accordance with 335-14-2-.04(6) and occurred after cessation of use of chlorophenolic preservatives.

(c) The generator must maintain the following records documenting the cleaning and replacement as part of its operating record:

1. The name and address of the generator;

2. Formulations previously used and the date on which their use ceased in each process at the plant;

3. Formulations currently used in each process at the plant;

4. The equipment cleaning or replacement plan;

5. The name and address of any persons who conducted the cleaning and replacement;

6. The dates on which cleaning and replacement were accomplished;

7. The dates of sampling and testing;

8. A description of the sample handling and preparation techniques, including techniques used for extraction, containerization, preservation, and chain-of-custody of the samples;

9. A description of the tests performed, the date the tests were performed, and the results of the tests;

10. The name and model numbers of the instrument(s) used in performing the tests;

11. QA/QC documentation; and

12. The following statement signed by the generator or his authorized representative:

I certify under penalty of law that all process equipment required to be cleaned or replaced under 335-14-2-.04(6) was cleaned or replaced as represented in the equipment cleaning and replacement plan and accompanying documentation. I am aware that there are significant penalties for providing false information, including the possibility of fine or imprisonment.

(7) [Reserved]

(8) [Reserved]

(9) [Reserved]

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**Statutory Authority**: Code of Ala. 1975, §§22-30-10, 22-30-11.

**History**: November 19, 1980. **Amended**: April 9, 1986; September 29, 1986; February 15, 1988; August 24, 1989; December 6, 1990; January 25, 1992. **Amended**: Filed November 30, 1994; effective January 5, 1995. **Amended**: Filed December 8, 1995; effective January 12, 1996. **Amended**: Filed February 20, 1998; effective March 27, 1998. **Amended**: Filed February 26, 1999; effective April 2, 1999. **Amended**: Filed March 9, 2001; effective April 13, 2001. **Amended**: Filed February 8, 2002; effective March 15, 2002. **Amended**: Filed March 13, 2003; effective April 17, 2003. **Amended**: Filed February 28, 2006; effective April 4, 2006. **Amended**: Filed February 27, 2007; effective April 3, 2007. **Amended**: Filed April 22, 2008; effective May 27, 2008. **Amended**: Filed February 24, 2009; effective March 31, 2009. **Amended**: Filed February 23, 2011; effective March 30, 2011. **Amended**:

Filed February 28, 2012; effective April 3, 2012. **Amended:** Filed February 28, 2012; effective April 03, 2012. **Amended:** Filed February 23, 2016; effective April 8, 2016. **Amended:** Filed February 14, 2017; effective March 31, 2017. **Amended:** Filed February 20, 2018; effective April 7, 2018. **Amended:** Published February 28, 2020; effective April 13, 2020. **Amended:** Published December 31, 2020; effective February 14, 2021. **Amended:** Published April 28, 2023; effective June 12, 2023. **Amended:** Published ____; effective ____.

**APA-1**

**TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION**

| | |
|---|---|
| Control: | 335 |
| Department or Agency: | Alabama Department of Environmental Management Land Division - Hazardous Waste Program |
| Rule No.: | 335-14-2-.05 |
| Rule Title: | Exclusions/Exemptions |
| Intended Action | Amend |

| | |
|---|---|
| Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? | Yes |
| Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? | Yes |
| Is there another, less restrictive method of regulation available that could adequately protect the public? | No |
| Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? | No |

To what degree?: N/A

| | |
|---|---|
| Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? | NA |
| Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? | Yes |
| Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? | No |

| | |
|---|---|
| Does the proposed rule have an economic impact? | No |

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

Certification of Authorized Official

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

Signature of certifying officer: *Jeffery W. Kitchens*

Jeffery W. Kitchens

Date: Tuesday, August 19, 2025

REC'D & FILED

AUG 19, 2025

LEGISLATIVE SVC AGENCY

**APA-2**

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION - HAZARDOUS WASTE PROGRAM**

**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** Alabama Department of Environmental Management

**RULE NO. & TITLE:** 335-14-2-.05 Exclusions/Exemptions

**INTENDED ACTION:** Amend

**SUBSTANCE OF PROPOSED ACTION:**
The Department proposes to revise Rule 335-14-2-.05 to adopt the Integrating e-Manifest with Hazardous Waste Exports and Other Manifest-Related Reports. These revisions are necessary for the Department to maintain regulations that are at least as stringent as those promulgated federally, a requirement to preserve the State's authorized status.

**TIME, PLACE AND MANNER OF PRESENTING VIEWS:**
Comments may be submitted in writing or orally at a public hearing to be held at 10:00 a.m., October 7, 2025, in the ADEM Main Hearing Room, 1400 Coliseum Boulevard, Montgomery, Alabama 36110. Attendance at the hearing is not necessary to present such data, views, arguments, or comments. All comments should be received by 5:00 p.m., October 7, 2025. Written submissions and other inquiries should be directed to: ADEM Hearing Officer, Office of General Counsel, Alabama Department of Environmental Management, P.O. Box 301463, Montgomery, AL 36130-1463 (street address: 1400 Coliseum Boulevard, Montgomery, AL 36110-2400) or by e-mail at hearing.officer@adem.alabama.gov.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**
Tuesday, October 7, 2025

**CONTACT PERSON AT AGENCY:**
Lynn T. Roper, 334-271-7728

Jeffery W. Kitchens

Jeffery W. Kitchens

(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

**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 335-14-2-.05(1).

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~~site 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 site 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 must be submitted electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system.

(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).

(v) The export of CRTs is prohibited unless all of the following occur:

(I) 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.

(II) ~~On or after the AES filing compliance date, the~~The exporter or a U.S. authorized agent must:

A. Submit Electronic Export Information (EEI) for each shipment to the Automated Export System (AES) or its successor system, under the International Trade Data System (ITDS) platform, in accordance with 15 CFR 30.4(b).

B. Include the following items in the EEI, along with the other information required under 15 CFR 30.6:

I. EPA license code;

II. Commodity classification code per 15 CFR 30.6(a)(12);

III. EPA consent number;

IV. Country of ultimate destination per 15 CFR 30.6(a)(5);

V. Date of export per 15 CFR 30.6(a)(2);

VI. Quantity of waste in shipment and units for reported quantity, if required reporting units established by value for the reported commodity classification

number are in units of weight or volume per 15 CFR 30.6(a)(15); or

VII. EPA net quantity reported in units of kilograms, if required reporting units established by value for the reported commodity classification number are not in units of weight or volume.

(vi) When the conditions specified on the original notification change, the exporter must provide EPA with a written renotification of the change using the allowable methods listed in 335-14-2-.05(1)(a)5.(ii), 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. Exporters may satisfy this recordkeeping requirement by retaining electronically submitted notifications or electronically generated Acknowledgements in the CRT exporter's account on EPA's Waste Import Export Tracking System (WIETS), or its successor system, provided that such copies are readily available for viewing and production if requested by any EPA or

authorized state inspector. No CRT exporter may be held liable for the inability to produce a notification or Acknowledgement for inspection under ~~this section~~335-14-2-.05(1) if the CRT exporter can demonstrate that the inability to produce such copies are due exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system for which the CRT exporter bears no responsibility.

(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) ~~Prior to one year after the AES filing compliance date, annual reports must be sent to the following mailing address: Office of Land and Emergency Management, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, International Branch (Mail Code 2255A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460. Hand-delivered annual reports on used CRTs exported during 2016 should be sent to: Office of Land and Emergency Management, Office of Resource~~

~~Conservation and Recovery, Materials Recovery and Waste Management Division, International Branch (Mail Code 2255A), Environmental Protection Agency, William Jefferson Clinton South Building, Room 6144, 1200 Pennsylvania Ave., NW, Washington, DC 20004. Subsequently, annual~~Annual reports must be submitted to the ~~office listed~~EPA using the allowable methods specified in paragraph (a)(5)(ii) of 335-14-2-.05(1) ~~(a)5.(ii)~~. Exporters must keep copies of each annual report for a period of at least three years from the due date of the report. Exporters may satisfy this recordkeeping requirement by retaining electronically submitted annual reports in the CRT ~~exporter's~~exporter's account on ~~EPA's~~the EPA's Waste Import Export Tracking System (WIETS), or its successor system, provided that a copy is readily available for viewing and production if requested by ~~any~~the EPA or any authorized ~~state~~State inspector. No CRT exporter may be held liable for the inability to produce an annual report for inspection under ~~this section~~335-14-2-.05(1) if the CRT exporter can demonstrate that the inability to produce the annual report is due exclusively to technical difficulty with ~~EPA's~~the EPA's Waste Import Export Tracking System (WIETS), or its successor system for which the CRT exporter bears no responsibility.~~—~~

(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 335-14-2-.05(1).

(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 Division 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.

**Author:** Theresa A. Maines, Marlon McMillion, Metz P. Duites~~r~~, Vernon H. Crockett; Jonah L. Harris.
**Statutory Authority:** Code of Ala. 1975, §§22-30-10, 22-30-11.
**History:** **New Rule:** Filed February 27, 2007; effective April 3, 2007. **Amended:** Filed April 22, 2008; effective May 27, 2008.
**Amended:** Filed February 24, 2015; effective March 31, 2015.
**Amended:** Filed February 23, 2016; effective April 8, 2016.
**Amended:** Filed February 14, 2017; effective March 31, 2017.
**Amended:** Filed February 19, 2019; effective April 6, 2019.
**Amended:** Published April 28, 2023; effective June 12, 2023.
**Amended:** Published _____; effective _____.

**APA-1**

**TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION**

| | |
|---|---|
| Control: | 335 |
| Department or Agency: | Alabama Department of Environmental Management Land Division - Hazardous Waste Program |
| Rule No.: | 335-14-2-.08 |
| Rule Title: | Financial Requirements For Management Of Excluded Hazardous Secondary Materials |
| Intended Action | Amend |

| | |
|---|---|
| Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? | Yes |
| Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? | Yes |
| Is there another, less restrictive method of regulation available that could adequately protect the public? | No |
| Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? | No |

To what degree?: N/A

| | |
|---|---|
| Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? | NA |
| Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? | Yes |
| Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? | No |

Does the proposed rule have an economic impact? No

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

Certification of Authorized Official

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

Signature of certifying officer: Jeffery W. Kitchens

Jeffery W. Kitchens

Date: Tuesday, August 19, 2025

REC'D & FILED
AUG 19, 2025
LEGISLATIVE SVC AGENCY

**APA-2**

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION - HAZARDOUS WASTE PROGRAM**

**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** Alabama Department of Environmental Management

**RULE NO. & TITLE:** 335-14-2-.08 Financial Requirements For Management Of Excluded Hazardous Secondary Materials

**INTENDED ACTION:** Amend

**SUBSTANCE OF PROPOSED ACTION:**

The Department proposes to revise Rule 335-14-2-.08 to adopt the Technical Corrections for the Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule. These revisions are necessary for the Department to maintain regulations that are at least as stringent as those promulgated federally, a requirement to preserve the State's authorized status.

**TIME, PLACE AND MANNER OF PRESENTING VIEWS:**

Comments may be submitted in writing or orally at a public hearing to be held at 10:00 a.m., October 7, 2025, in the ADEM Main Hearing Room, 1400 Coliseum Boulevard, Montgomery, Alabama 36110. Attendance at the hearing is not necessary to present such data, views, arguments, or comments. All comments should be received by 5:00 p.m., October 7, 2025. Written submissions and other inquiries should be directed to: ADEM Hearing Officer, Office of General Counsel, Alabama Department of Environmental Management, P.O. Box 301463, Montgomery, AL 36130-1463 (street address: 1400 Coliseum Boulevard, Montgomery, AL 36110-2400) or by e-mail at hearing.officer@adem.alabama.gov.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**

Tuesday, October 7, 2025

**CONTACT PERSON AT AGENCY:**

Lynn T. Roper, 334-271-7728

Jeffery W. Kitchens

Jeffery W. Kitchens

(Signature of officer authorized to promulgate and adopt rules or his or her deputy)

**335-14-2-.08 Financial Requirements For Management Of Excluded Hazardous Secondary Materials.**

(1) Applicability

(a) The requirements of 335-14-2-.08 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~~335-14-2-.08.

(b) States and the Federal government are exempt from the financial assurance requirements of 335-14-2-.08.

(2) Definitions of terms as used in ~~this section~~335-14-2-.08. Some terms used in this section are defined in 335-14-1-.02 and 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 adjustments are made by multiplying the latest adjusted cost estimate by the latest inflation factor.

(c) During the active life of the facility, the owner or operator must revise the cost estimate no later than 30 days after a change in a facility's operating plan or design that would increase the costs of conducting the activities described in 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 by

335-14-2-.01(4)(a)24. He must choose from the options as specified in 335-14-2-.08(4)(a) through (e).

(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 335-14-2-.08.

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 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 335-14-2-.08 in accordance with 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 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), 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 a decision not to extend the expiration date. Under the

terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the Department have received the notice, as evidenced by the return receipts.

6. The letter of credit must be issued in an amount at least equal to the current 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 335-14-2-.08 in accordance with 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 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 335-14-2-.08(4)(f). The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

4. The 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. 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. 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;

(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 finds, 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)(b) 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)(b) 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)(b) 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)(b) 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)(b). 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 non-sudden accidental occurrence arising from the operation of a hazardous secondary material reclamation facility or intermediate facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under 335-14-2-.08(8)(a)1. through 6.

(b) Coverage for non-sudden 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 non-sudden accidental

occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for non-sudden accidental occurrences in the amount of at least $3 million per occurrence with an annual aggregate of at least $6 million, exclusive of legal defense costs. An owner or operator who must meet the requirements of 335-14-2-.08 may combine the required per-occurrence coverage levels for sudden and non-sudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and non-sudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and non-sudden accidental occurrences must maintain liability coverage in the amount of at least $4 million per occurrence and $8 million annual aggregate. This liability coverage may be demonstrated as specified in 335-14-2-.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 non-sudden accidental occurrence arising from the operation of a hazardous secondary material treatment and/or storage facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under 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 that required 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 non-sudden 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, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of the comparison, and the reasons for any difference.

4. The owner or operator may obtain a one-time extension of the time allowed for submission of the documents specified in 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 Department 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 non-sudden 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 the Department 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 the Department 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 the Department 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. "The full amount of the liability coverage to be provided" means the amount of coverage for sudden and/or non-sudden 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 335-14-2-.08. 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. et seq.80a-1 , 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 its 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. 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 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 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 (AHWMMA), as amended, to have a permit or interim status in order to own or operate each facility identified above, or to meet conditions 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 the 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)(d), 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 subpart H of 40 CFR part 261, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in 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 EPA, the Department, or another authorized 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 post-closure 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 post-closure care so guaranteed are shown for each facility: _____. The firm identified above is [insert one or more:

(1) The direct or higher-tier parent corporation of the owner or operator;

(2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee _____; or

(3) engaged in the following substantial business relationship with the owner or operator _____, and receiving the following value in consideration of this guarantee _____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

8. In States where EPA is not administering the financial requirements of subpart H of 40 CFR part 264 or 265, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in ADEM Admin. Code r. 335-14-5-.08 and 335-14-6-.08. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility: _____.

9. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-

closure care, is not demonstrated either to EPA, the Department, or another authorized state through the financial test or any other financial assurance mechanism specified in ADEM Admin. Code r. 335-14-5-.08 and 335-14-6-.08 or equivalent or substantially equivalent 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 assets $_____

6. Current liabilities $_____

7. Net working capital [line 5 minus line 6] $_____

8. The sum of net income plus depreciation, depletion, and amortization $_____

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

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

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

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

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

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

15. Tangible net worth [if any portion of the cost stimates 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 line10. 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 under 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 "non-sudden" 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 "non-sudden" 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 "non-sudden" 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 "non-sudden" or "both sudden and non-sudden"] accidental occurrences at the following facilities owned or operated by the following: _____.

The firm identified above is [insert one or more:

(1) The direct or higher tier parent corporation of the owner or operator;

(2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee _____; or

(3) engaged in the following substantial business relationship with the owner or operator _____, and receiving the following value in consideration of this guarantee _____].

[Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.]

[If you are using the financial test to demonstrate coverage of both liability and costs assured under 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 of subpart H of 40 CFR part 261, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in subpart H of 40 CFR part 261. The current cost estimates covered by such a test are shown for each facility: _____.

4. This firm is the owner or operator of the following hazardous secondary materials management facilities for which financial assurance is not demonstrated to EPA, the Department, or another authorized state through the financial test or any other financial assurance mechanism specified in subpart H of 40 CFR part 261. 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 post-closure 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 post-closure care so guaranteed are shown for each facility: _____. The firm identified above is [insert one or more:

(1) The direct or higher-tier parent corporation of the owner or operator;

(2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee _____; or

(3) engaged in the following substantial business relationship with the owner or operator _____, and receiving the following value in consideration of this guarantee _____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

8. In States 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 post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in subpart H of 40 CFR part 264 and 265. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility: _____.

9. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated 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. $ Yes_____ No_____

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 line10. 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 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).]

**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 lines 1 and 2 $_____

4. Total liabilities (if any portion of your cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6) $_____

5. Tangible net worth $_____

6. Net worth $_____

7. Current assets $_____

8. Current liabilities $_____

9. Net working capital [line 7 minus line 8] $_____

10. The sum of net income plus depreciation, depletion, and amortization $_____

11. Total assets in 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 firm's assets located in the U.S.? If not, complete line 16. Yes_____ No_____

16. Is line 11 at least 6 times line 3? Yes_____ No_____

17. Is line 4 divided by line 6 less than 2.0? Yes_____ No_____

18. Is line 10 divided by line 4 greater than 0.1? Yes_____ No_____

19. Is line 7 divided by line 8 greater than 1.5 Yes_____ No_____

**ALTERNATIVE II**

1. Sum of current cost estimates [total of all cost estimates listed above] $_____

2. Amount of annual aggregate liability coverage to be demonstrated $_____

3. Sum of lines 1 and 2 _____

4. Current bond rating of most recent issuance and name of rating service _____

5. Date of issuance of bond _____

6. Date of maturity of bond _____

7. Tangible net worth (if any portion of the cost estimates is included in "total liabilities" on your financial statements you may add that portion to this line) $_____

8. Total assets in the U.S. (required only if less than 90% of 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 the 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 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-1isted 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 non-sudden] 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 "non-sudden" or "both sudden and non-sudden"] 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 non-sudden] 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 non-sudden] 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-1isted 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 non-sudden] 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 non-sudden 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," "non-sudden accidental occurrences," or "sudden and non-sudden 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 non-sudden 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 _____, 20__. The effective date of said policy is _____ day of _____, 20__.

I hereby certify that the wording of this endorsement is identical to the wording specified in ADEM Admin. Code 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," "non-sudden accidental occurrences," or "sudden and non-sudden 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 non-sudden 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 non-sudden] 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 non-sudden 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 occurrences | Non-sudden accidental |
|---|---|---|
| Penal Sum per Occurrence | [insert amount] | [insert amount] |
| Annual Aggregate | [insert amount] | [insert amount] |

Purpose: This is an agreement between the Surety(ies) and the Principal under which the Surety(ies), its (their) successors and assignees, agree to be responsible for the payment of claims against the Principal for bodily injury and/or property damage to third parties caused by ["sudden" and/or "non-sudden"] 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, 335-14-6, 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 "non-sudden"] 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 non-sudden] accidental

occurrence arising from operating [Principal's] facility should be paid in the amount of $[_____].

[Signature]

Principal

[Notary]

Date

[Signature(s)]

Claimant(s)

[Notary]

Date

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

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

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

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

(8) The Principal may terminate this bond by sending written notice to the Surety(ies) and to the 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 non-sudden 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 non-sudden] 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 non-sudden 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 non-sudden] 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 non-sudden 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)(h).

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 non-sudden 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 non-sudden] 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 non-sudden 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 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 hereto by like order.

_____

[Signature of Notary Public]

**Author:** Bradley N. Curvin, Vernon H. Crockett, Sonja B Favors, Brent A. Watson; Jonah L. Harris.
**Statutory Authority:** Code of Ala. 1975, §§22-30-11.
**History:** **New Rule:** Filed February 23, 20016; effective April 8, 2016. **Amended:** Filed February 14, 2017; effective March 31, 2017. **Amended:** Filed February 19, 2019; effective April 6, 2019. **Amended:** Published February 28, 2020; effective April 13, 2020. **Amended:** Published December 31, 2020; effective February 14, 2021. **Amended:** Published April 28, 2023; effective June 12, 2023. **Amended:** Published ____; effective ____.

**APA-1**

**TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION**

| | |
|---|---|
| Control: | 335 |
| Department or Agency: | Alabama Department of Environmental Management Land Division - Hazardous Waste Program |
| Rule No.: | 335-14-2-.13 |
| Rule Title: | Emergency Preparedness And Response For Management Of Excluded Hazardous Secondary Materials |
| Intended Action | Amend |

| | |
|---|---|
| Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? | Yes |
| Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? | Yes |
| Is there another, less restrictive method of regulation available that could adequately protect the public? | No |
| Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? | No |

To what degree?: N/A

| | |
|---|---|
| Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? | NA |
| Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? | Yes |
| Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? | No |

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| | |
|---|---|
| Does the proposed rule have an economic impact? | No |

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

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Certification of Authorized Official

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

Signature of certifying officer: Jeffery W. Kitchens

Jeffery W. Kitchens

Date: Tuesday, August 19, 2025

REC'D & FILED
AUG 19, 2025
LEGISLATIVE SVC AGENCY

**APA-2**

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION - HAZARDOUS WASTE PROGRAM**

**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** Alabama Department of Environmental Management

**RULE NO. & TITLE:** 335-14-2-.13 Emergency Preparedness And Response For Management Of Excluded Hazardous Secondary Materials

**INTENDED ACTION:** Amend

**SUBSTANCE OF PROPOSED ACTION:**

The Department proposes to revise Rule 335-14-2-.13 to adopt the Technical Corrections for the Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule and the Management of Certain Hydrofluorocarbons and Substitutes. These revisions are necessary for the Department to maintain regulations that are at least as stringent as those promulgated federally, a requirement to preserve the State's authorized status.

**TIME, PLACE AND MANNER OF PRESENTING VIEWS:**

Comments may be submitted in writing or orally at a public hearing to be held at 10:00 a.m., October 7, 2025, in the ADEM Main Hearing Room, 1400 Coliseum Boulevard, Montgomery, Alabama 36110. Attendance at the hearing is not necessary to present such data, views, arguments, or comments. All comments should be received by 5:00 p.m., October 7, 2025. Written submissions and other inquiries should be directed to: ADEM Hearing Officer, Office of General Counsel, Alabama Department of Environmental Management, P.O. Box 301463, Montgomery, AL 36130-1463 (street address: 1400 Coliseum Boulevard, Montgomery, AL 36110-2400) or by e-mail at hearing.officer@adem.alabama.gov.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**

Tuesday, October 7, 2025

**CONTACT PERSON AT AGENCY:**

Lynn T. Roper, 334-271-7728

Jeffery W. Kitchens

Jeffery W. Kitchens

(Signature of officer authorized to promulgate and adopt rules or his or her deputy)

**335-14-2-.13** **Emergency Preparedness And Response For Management Of Excluded Hazardous Secondary Materials.**

(1) Applicability. The requirements of 335-14-2-.13 apply to (1) 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~~such materials are generated or accumulated on site, and (2) facilities regulated under the standards at 335-14-7-.17 that receive ignitable spent refrigerant from off-site and that are not transfer facilities that store the refrigerants for less than ten (10) days.

(a) A generator of hazardous secondary material, or an intermediate or reclamation facility, 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, 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).

(c) Facilities receiving refrigerant from off-site under 335-14-7-.17 that are not transfer facilities that store the refrigerants for less than ten (10) days 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 must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

(f) Arrangements with local authorities

1. The hazardous secondary material generator or an intermediate or reclamation facility must attempt to make the following arrangements, as appropriate for the type of waste handled at his facility and the potential need for the services of these organizations:

(i) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous secondary material handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes;

(ii) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;

(iii) Agreements with state emergency response teams, emergency response contractors, and equipment suppliers; and

(iv) Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

2. Where state or local authorities decline to enter into such arrangements, the hazardous secondary material generator or an intermediate or reclamation facility must document the refusal in the operating record.

(12) Emergency procedures for facilities generating or accumulating 6000 kg or less of hazardous secondary material. A generator or an intermediate or reclamation facility 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 i.e.,either on the premises or on call (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 335-14-2-.13(12)(d). This employee is the emergency coordinator.

(b) The generator or intermediate or reclamation facility must post the following information next to the telephone:

1. The name and telephone number of the emergency coordinator;

2. Location of fire extinguishers and spill control material, and, if present, fire alarm; and

3. The telephone number of the fire department, unless the facility has a direct alarm.

(c) The generator or an intermediate or reclamation facility must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies;

(d) The emergency coordinator or his designee must respond to any emergencies that arise. The applicable responses are as follows:

1. In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;

2. In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil;

3. In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the generator or an intermediate or reclamation facility has knowledge that a spill has reached surface water, the generator or an intermediate or reclamation facility must immediately notify the National Response Center (using their 24-hour toll free number 800/424-8802). The report must include the following information:

(i) The name, address, and U.S. EPA Identification Number of the facility;

(ii) Date, time, and type of incident (e.g., spill or fire);

(iii) Quantity and type of hazardous waste involved in the incident;

(iv) Extent of injuries, if any; and

(v) Estimated quantity and disposition of recovered materials, if any.

(13) through (20) [Reserved].

(21) Contingency planning and emergency procedures for facilities generating or accumulating more than 6,000 kg of hazardous secondary material or receiving ignitable spent refrigerants. A generator or an intermediate or reclamation facility that generates or accumulates more than 6,000 kg of hazardous secondary material, or a facility receiving refrigerant from off-site under 335-14-7-.17, that is not a transfer facility that stores the refrigerants for less than ten (10) days must comply with the following requirements:

(a) Purpose and implementation of contingency plan.

1. Each generator or an intermediate or reclamation facility that accumulates more than 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 335-14-2-.13(21)(a) and 335-14-2-.13(21)(f) in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous secondary material or hazardous secondary material constituents to air, soil, or surface water at the facility.

2. If the generator or an intermediate or reclamation facility accumulating more than 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 335-14-2-.13(21). The hazardous secondary material generator or an intermediate or reclamation facility may develop one contingency plan which meets all regulatory requirements. EPA recommends that the plan be based on the National Response Team's Integrated Contingency Plan Guidance ("One Plan"). When modifications are made to non-RCRA provisions in an integrated contingency plan, the changes do not trigger the need for a RCRA permit modification.

3. The plan must describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, pursuant to 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 335-14-2-.13(21)(e)], 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), 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.

**Author:** Bradley N. Curvin; Vernon H. Crockett; Jonah L. Harris.
**Statutory Authority:** Code of Ala. 1975, §§22-30-11.
**History:** **New Rule:** Filed February 23, 20016; effective April 8, 2016. **Amended:** Filed February 20, 2018; effective April 7, 2018. **Amended:** Filed February 19, 2019; effective April 6, 2019. **Amended:** Published April 28, 2023; effective June 12, 2023. **Amended:** Published ____; effective ____.

**APA-1**

**TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION**

| | |
|---|---|
| Control: | 335 |
| Department or Agency: | Alabama Department of Environmental Management Land Division - Hazardous Waste Program |
| Rule No.: | 335-14-2-.27 |
| Rule Title: | Subpart AA – Air Emission Standards For Process Vents |
| Intended Action | Amend |

| | |
|---|---|
| Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? | Yes |
| Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? | Yes |
| Is there another, less restrictive method of regulation available that could adequately protect the public? | No |
| Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? | No |

To what degree?: N/A

| | |
|---|---|
| Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? | NA |
| Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? | Yes |
| Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? | No |

Does the proposed rule have an economic impact? No

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

Certification of Authorized Official

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

Signature of certifying officer: Jeffery W. Kitchens
Jeffery W. Kitchens

Date: Tuesday, August 19, 2025

REC'D & FILED
AUG 19, 2025
LEGISLATIVE SVC AGENCY

**APA-2**

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION - HAZARDOUS WASTE PROGRAM**

**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** Alabama Department of Environmental Management

**RULE NO. & TITLE:** 335-14-2-.27 Subpart AA – Air Emission Standards For Process Vents

**INTENDED ACTION:** Amend

**SUBSTANCE OF PROPOSED ACTION:**
The Department proposes to revise Rule 335-14-2-.27 to adopt the Technical Corrections for the Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule. These revisions are necessary for the Department to maintain regulations that are at least as stringent as those promulgated federally, a requirement to preserve the State's authorized status.

**TIME, PLACE AND MANNER OF PRESENTING VIEWS:**
Comments may be submitted in writing or orally at a public hearing to be held at 10:00 a.m., October 7, 2025, in the ADEM Main Hearing Room, 1400 Coliseum Boulevard, Montgomery, Alabama 36110. Attendance at the hearing is not necessary to present such data, views, arguments, or comments. All comments should be received by 5:00 p.m., October 7, 2025. Written submissions and other inquiries should be directed to: ADEM Hearing Officer, Office of General Counsel, Alabama Department of Environmental Management, P.O. Box 301463, Montgomery, AL 36130-1463 (street address: 1400 Coliseum Boulevard, Montgomery, AL 36110-2400) or by e-mail at hearing.officer@adem.alabama.gov.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**
Tuesday, October 7, 2025

**CONTACT PERSON AT AGENCY:**
Lynn T. Roper, 334-271-7728

Jeffery W. Kitchens
Jeffery W. Kitchens

(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

**335-14-2-.27 Subpart AA – Air Emission Standards For Process Vents.**

The Environmental Protection Agency Regulations set forth in 40 CFR, Part 261, Subpart AA (as published by EPA on January 13, 2015), 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 261, Subpart AA, such reference to the other Code of Federal Regulations Rule(s) is not incorporated in the 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 261, Subpart AA, 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 36110-2059.

(1) §261.1030 Applicability (as published by EPA on January 13, 2015).

(2) §261.1031 Definitions (as published by EPA on January 13, 2015).

(3) §261.1032 Standards: Process vents (as published by EPA on January 13, 2015).

(4) §261.1033 Standards: Closed-vent systems and control devices (as published by EPA on January 13, 2015 and amended on August 9, 2023).

(5) §261.1034 Test methods and procedures(as published by EPA on January 13, 2015).

(6) §261.1035 Recordkeeping requirements (as published by EPA on January 13, 2015).

(7) through (20) §§261.1036 - 214.1049 **[Reserved]**.

**Author:** Bradley N. Curvin, Vernon H. Crockett, Jonah L. Harris.
**Statutory Authority:** Code of Ala. 1975, §§22-30-11.
**History: New Rule:** Filed February 23, 20016; effective April 8, 2016. **Amended:** Filed February 14, 2017; effective March 31, 2017. **Amended:** Published April 28, 2023; effective June 12, 2023. **Amended:** Published ____; effective ____.

**APA-1**

**TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION**

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| Control: | 335 |
| Department or Agency: | Alabama Department of Environmental Management Land Division - Hazardous Waste Program |
| Rule No.: | 335-14-2-.28 |
| Rule Title: | Subpart BB - Air Emission Standards For Equipment Leaks |
| Intended Action | Amend |

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|---|---|
| Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? | Yes |
| Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? | Yes |
| Is there another, less restrictive method of regulation available that could adequately protect the public? | No |
| Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? | No |

To what degree?: N/A

| | |
|---|---|
| Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? | NA |
| Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? | Yes |
| Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? | Yes |

Does the proposed rule have an economic impact? No

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

Certification of Authorized Official

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

Signature of certifying officer: Jeffery W. Kitchens

Jeffery W. Kitchens

Date: Tuesday, August 19, 2025

REC'D & FILED
AUG 19, 2025
LEGISLATIVE SVC AGENCY

**APA-2**

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION - HAZARDOUS WASTE PROGRAM**

**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** Alabama Department of Environmental Management

**RULE NO. & TITLE:** 335-14-2-.28 Subpart BB - Air Emission Standards For Equipment Leaks

**INTENDED ACTION:** Amend

**SUBSTANCE OF PROPOSED ACTION:**
The Department proposes to revise Rule 335-14-2-.28 to maintain equivalency with federal regulations.

**TIME, PLACE AND MANNER OF PRESENTING VIEWS:**
Comments may be submitted in writing or orally at a public hearing to be held at 10:00 a.m., October 7, 2025, in the ADEM Main Hearing Room, 1400 Coliseum Boulevard, Montgomery, Alabama 36110. Attendance at the hearing is not necessary to present such data, views, arguments, or comments. All comments should be received by 5:00 p.m., October 7, 2025. Written submissions and other inquiries should be directed to: ADEM Hearing Officer, Office of General Counsel, Alabama Department of Environmental Management, P.O. Box 301463, Montgomery, AL 36130-1463 (street address: 1400 Coliseum Boulevard, Montgomery, AL 36110-2400) or by e-mail at hearing.officer@adem.alabama.gov.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**
Tuesday, October 7, 2025

**CONTACT PERSON AT AGENCY:**
Lynn T. Roper, 334-271-7728

Jeffery W. Kitchens

Jeffery W. Kitchens

(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

**335-14-2-.28 Subpart BB - Air Emission Standards For Equipment Leaks.**

The Environmental Protection Agency Regulations, as set forth in 40 CFR, Part 261, Subpart BB (as published by EPA on January 13, 2015), 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 261, Subpart BB, such reference to the other Code of Federal Regulations Rule(s) is not incorporated in the 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 261, Subpart BB, 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 36110-2400.

(1) §261.1050 Applicability (as published by EPA on January 13, 2015).

(2) §261.1051 Definitions (as published by EPA on January 13, 2015).

(3) §261.1052 Standards: Pumps in light liquid service (as published by EPA on January 13, 2015).

(4) §261.1053 Standards: Compressors (as published by EPA on January 13, 2015).

(5) §261.1054 Standards: Pressure relief devices in gas/vapor service (as published by EPA on January 13, 2015).

(6) §261.1055 Standards: Sampling connecting systems (as published by EPA on January 13, 2015).

(7) §261.1056 Standards: Open-ended valves or lines (as published by EPA on January 13, 2015).

(8) §261.1057 Standards: Valves in gas/vapor service or in light liquid service (as published by EPA on January 13, 2015).

(9) §261.1058 Standards: Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors (as published by EPA on January 13, 2015).

(10) §261.1059 Standards: Delay of repair (as published by EPA on January 13, 2015).

(11) §261.1060 Standards: Closed-vent systems and control devices (as published by EPA on January 13, 2015).

(12) §261.1061 Alternative standards for valves in gas/vapor service or in light liquid service: percentage of valves allowed to leak (as published by EPA on January 13, 2015).

(13) §261.1062 Alternative standards for valves in gas/vapor service or in light liquid service: skip period leak detection and repair (as published by EPA on January 13, 2015).

(14) §261.1063 Test methods and procedures (as published by EPA on January 13, 2015).

(15) §261.1064 Recordkeeping requirements (as published by EPA on January 13, 2015).

(16) through (31) **[Reserved]**.

**Author:** Bradley N. Curvin, Vernon H. Crockett, Jonah L. Harris.
**Statutory Authority:** Code of Ala. 1975, §§22-30-11.
**History:** **New Rule:** Filed February 23, 20016; effective April 8, 2016. **Amended:** Filed February 14, 2017; effective March 31, 2017. **Amended:** Published April 28, 2023; effective June 12, 2023. **Amended:** Published ; effective .

**APA-1**

**TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION**

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|---|---|
| Control: | 335 |
| Department or Agency: | Alabama Department of Environmental Management Land Division - Hazardous Waste Program |
| Rule No.: | 335-14-2-.29 |
| Rule Title: | Subpart CC - Air Emission Standards For Tanks And Containers |
| Intended Action | Amend |

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|---|---|
| Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? | Yes |
| Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? | Yes |
| Is there another, less restrictive method of regulation available that could adequately protect the public? | No |
| Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? | No |

To what degree?: N/A

| | |
|---|---|
| Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? | NA |
| Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? | Yes |
| Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? | No |

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|---|---|
| Does the proposed rule have an economic impact? | No |

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

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Certification of Authorized Official

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

Signature of certifying officer: *Jeffery W. Kitchens*

Jeffery W. Kitchens

Date: Tuesday, August 19, 2025

REC'D & FILED
AUG 19, 2025
LEGISLATIVE SVC AGENCY

**APA-2**

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION - HAZARDOUS WASTE PROGRAM**

**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** Alabama Department of Environmental Management

**RULE NO. & TITLE:** 335-14-2-.29 Subpart CC - Air Emission Standards For Tanks And Containers

**INTENDED ACTION:** Amend

**SUBSTANCE OF PROPOSED ACTION:**

The Department proposes to revise Rule 335-14-2-.29 to adopt the Technical Corrections for the Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule. These revisions are necessary for the Department to maintain regulations that are at least as stringent as those promulgated federally, a requirement to preserve the State's authorized status.

**TIME, PLACE AND MANNER OF PRESENTING VIEWS:**

Comments may be submitted in writing or orally at a public hearing to be held at 10:00 a.m., October 7, 2025, in the ADEM Main Hearing Room, 1400 Coliseum Boulevard, Montgomery, Alabama 36110. Attendance at the hearing is not necessary to present such data, views, arguments, or comments. All comments should be received by 5:00 p.m., October 7, 2025. Written submissions and other inquiries should be directed to: ADEM Hearing Officer, Office of General Counsel, Alabama Department of Environmental Management, P.O. Box 301463, Montgomery, AL 36130-1463 (street address: 1400 Coliseum Boulevard, Montgomery, AL 36110-2400) or by e-mail at hearing.officer@adem.alabama.gov.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**

Tuesday, October 7, 2025

**CONTACT PERSON AT AGENCY:**

Lynn T. Roper, 334-271-7728

Jeffery W. Kitchens

Jeffery W. Kitchens

(Signature of officer authorized to promulgate and adopt rules or his or her deputy)

**335-14-2-.29 Subpart CC - Air Emission Standards For Tanks And Containers.**

The Environmental Protection Agency Regulations, as set forth in 40 CFR, Part 261, Subpart CC (as published by EPA on January 13, 2015), 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 261, 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 261, 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 36110-2400.

(1) §261.1080 Applicability (as published by EPA on January 13, 2015).

(2) §261.1081 Definitions (as published by EPA on January 13, 2015).

(3) §261.1082 Standards: General (as published by EPA on January 13, 2015).

(4) §261.1083 Material determination procedures (as published by EPA on January 13, 2015 and amended on August 9, 2023).

(5) §261.1084 Standards: Tanks (as published by EPA on January 13, 2015, and amended August 9, 2023).

(6) **[Reserved].**

(7) §261.1086 Standards: Containers (as published by EPA on January 13, 2015).

(8) §261.1087 Standards: Closed-vent systems and control devices (as published by EPA on January 13, 2015).

(9) §261.1088 Inspection and monitoring requirements (as published by EPA on January 13, 2015).

(10) §261.1089 Recordkeeping requirements (as published by EPA on January 13, 2015, and amended on August 9, 2023).

(11) **[Reserved]**.

**Author:** Bradley N. Curvin, Vernon H. Crockett, Jonah L. Harris.
**Statutory Authority:** Code of Ala. 1975, §§22-30-11.
**History:** **New Rule:** Filed February 23, 20016; effective April 8, 2016. **Amended:** Filed February 14, 2017; effective March 31, 2017. **Amended:** Published April 28, 2023; effective June 12, 2023. **Amended:** Published ; effective .

**APA-1**

**TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION**

| | |
|---|---|
| Control: | 335 |
| Department or Agency: | Alabama Department of Environmental Management Land Division - Hazardous Waste Program |
| Rule No.: | 335-14-3-.01 |
| Rule Title: | General |
| Intended Action | Amend |

| | |
|---|---|
| Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? | Yes |
| Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? | Yes |
| Is there another, less restrictive method of regulation available that could adequately protect the public? | No |
| Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? | No |

To what degree?: N/A

| | |
|---|---|
| Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? | NA |
| Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? | Yes |
| Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? | No |

Does the proposed rule have an economic impact? No

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

Certification of Authorized Official

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

Signature of certifying officer: *Jeffery W. Kitchens*

Jeffery W. Kitchens

Date: Tuesday, August 19, 2025

REC'D & FILED
AUG 19, 2025
LEGISLATIVE SVC AGENCY

**APA-2**

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION - HAZARDOUS WASTE PROGRAM**

**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** Alabama Department of Environmental Management

**RULE NO. & TITLE:** 335-14-3-.01 General

**INTENDED ACTION:** Amend

**SUBSTANCE OF PROPOSED ACTION:**
The Department proposes to revise Rule 335-14-3-.01 to adopt the Technical Corrections for the Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule ,the Management of Certain Hydrofluorocarbons and Substitutes , and the Second Technical Corrections to Hazardous Waste Generator Improvements, the Hazardous Waste Pharmaceuticals, and the Definition of Solid Waste Rules. These revisions are necessary for the Department to maintain regulations that are at least as stringent as those promulgated federally, a requirement to preserve the State's authorized status.

**TIME, PLACE AND MANNER OF PRESENTING VIEWS:**
Comments may be submitted in writing or orally at a public hearing to be held at 10:00 a.m., October 7, 2025, in the ADEM Main Hearing Room, 1400 Coliseum Boulevard, Montgomery, Alabama 36110. Attendance at the hearing is not necessary to present such data, views, arguments, or comments. All comments should be received by 5:00 p.m., October 7, 2025. Written submissions and other inquiries should be directed to: ADEM Hearing Officer, Office of General Counsel, Alabama Department of Environmental Management, P.O. Box 301463, Montgomery, AL 36130-1463 (street address: 1400 Coliseum Boulevard, Montgomery, AL 36110-2400) or by e-mail at hearing.officer@adem.alabama.gov.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**
Tuesday, October 7, 2025

**CONTACT PERSON AT AGENCY:**
Lynn T. Roper, 334-271-7728

Jeffery W. Kitchens

Jeffery W. Kitchens

(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

**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(1) 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:

(I) 335-14-3-.01(2) Hazardous waste determination and recordkeeping;

(II) 335-14-3-.01(3) Generator category determination;

(III) 335-14-3-.01(8) EPA identification numbers and re-notification for small quantity generators and large quantity generators;

(IV) 335-14-3-.02 Manifest requirements applicable to small and large quantity generators;

(V) 335-14-3-.03 Pre-transport requirements applicable to small and large quantity generators;

(VI) 335-14-3-.04(1) Recordkeeping;

(VII) 335-14-3-.04(5) Recordkeeping for small quantity generators; and

(VIII) 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:

(I) 335-14-3-.01(2) Hazardous waste determination and recordkeeping;

(II) 335-14-3-.01(3) Generator category determination;

(III) 335-14-3-.01(8) EPA identification numbers and re-notification for small quantity generators and large quantity generators;

(IV) 335-14-3-.02 Manifest requirements applicable to small and large quantity generators;

(V) 335-14-3-.03 Pre-transport requirements applicable to small and large quantity generators;

(VI) 335-14-3-.04 Recordkeeping and reporting applicable to small and large quantity generators, except 335-14-3-.04(5); and

(VII) 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 and section 3010 of RCRA for treatment, storage, and disposal facilities, 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) Determining generator category. 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) (1) A generator's violation of an independent requirement is subject to penalty and injunctive relief under ~~section~~Section 3008 of RCRA and Code of Alabama 1975, §22-30-19(a).

(2) A generator's noncompliance with a condition for exemption in this part is not subject to penalty or injunctive relief under ~~section~~Section 3008 of RCRA and Code of Alabama 1975 §22-30-19(a), as a violation of a 335-14-3 condition for exemption. Noncompliance by any generator with an applicable condition for exemption from storage permit and operations requirements means that the facility is a storage facility operating without an exemption from the permit, interim status, and operations requirements in 335-14-5 through 335-14-8, and the notification requirements of ~~section~~Section 3010 of RCRA. Without an exemption, any violations of such storage requirements are subject to penalty and injunctive relief under ~~section~~Section 3008 of RCRA.

(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 ("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 1: 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.]

[Note 2: The provisions of 335-14-3-.01(5) through 335-14-3-.01(7) are applicable to the on-site accumulation of hazardous waste by generators. Therefore, the provisions of 335-14-3-.01(5) through 335-14-3-.01(7) only apply to owners or operators who are shipping hazardous waste which they generated at that facility.]

(m) All reverse distributors (as defined in 335-14-1-.02) are subject to 335-14-7-.16 for the management of hazardous waste pharmaceuticals in lieu of 335-14-3.

(n) Each healthcare facility (as defined 335-14-1-.02) must determine whether it is subject to 335-14-7-.16 for the management of hazardous waste pharmaceuticals, based on the total hazardous waste it generates per calendar month (including both hazardous waste pharmaceuticals and non-pharmaceutical hazardous waste). A healthcare facility that generates more than 100 kg (220 pounds) of hazardous waste per calendar month, or more than 1 kg (2.2 pounds) of acute hazardous waste per calendar month, or more than 100 kg (220 pounds) per calendar month of any residue or contaminated soil, water, or other debris, resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in 335-14-2-.04(2) or 335-14-2-.04(4), is subject to 335-14-7-.16 for the management of hazardous waste pharmaceuticals in lieu of 335-14-3. A healthcare facility that is a very small quantity generator when counting all of its hazardous waste, including both its hazardous waste pharmaceuticals and its non-pharmaceutical hazardous waste, remains subject to 335-14-3-.01(4) and is not subject to

335-14-7-.16, except for 335-14-7-.16(5) and (7) and the optional provisions of 335-14-7-.16(4).

(o) 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.

(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 AHWMMA 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 delisting 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 335-14-3-.01(2)(d)1., 335-14-3-.01(2)(d)2., or a combination of both.

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 the specific waste.

(f) Recordkeeping for small and large quantity generators.

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-.01(3).

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)(c) and (d).

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~~335-14-3-.01(2);

(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)(d)(1). The periods of record retention referred to in ~~this section~~335-14-3-.01(3) 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~~335-14-3-.01(3) 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 1.

(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, as defined in 335-14-1-.02(1)(a), pursuant to 335-14-3-.12(14). For the purposes of this provision, the term eligible academic entity shall have the meaning as defined in 335-14-1-.02(1)(a); or

8. Is managed as part of an episodic event in compliance with the conditions of 335-14-3-.13.

9. Is a hazardous waste pharmaceutical, as defined in 335-14-1-.02, that is subject to or managed in accordance with 335-14-7-.16 or is a hazardous waste pharmaceutical that is also a Drug Enforcement Administration controlled substance and is conditionally exempt under 335-14-7-.16(6).

(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(1). 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~~335-14-3-.01(4), 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)(a) through (d);

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 and independent requirements:

(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);

(iii) Notification as a "very small quantity generator" under 335-14-3-.01(8)(a)-(c);

(iv) Preparation and use of the manifest in 335-14-3-.02;

(v) Pre-transport requirements in 335-14-3-.03;

(vi) Recordkeeping and reporting requirements in 335-14-3-.04; and

(vii) Requirements for transboundary movements of hazardous wastes in 335-14-3-.09.

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 and independent requirements:

(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);

(iv) Notification as a "very small quantity generator" under 335-14-3-.01(8)(a)-(c);

(v) Preparation and use of the manifest in 335-14-3-.02;

(vi) Pre-transport requirements in 335-14-3-.03;

(vii) Recordkeeping and reporting requirements in 335-14-3-.04; and

(viii) Requirements for transboundary movements of hazardous wastes in 335-14-3-.09.

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 264, 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:

(I) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(II) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; and

(III) For ignitable spent refrigerants regulated under 335-14-7-.17 and meets the requirements of 335-14-7-.17.

(vii) For universal waste as defined in 335-14-1-.02(1)(a), a universal waste handler or destination facility subject to the requirements 335-14-11, 40 CFR Part 273, or another state universal waste program authorized under 40 CFR Part 271;

(viii) A large quantity generator under the control of the same person as the very small quantity

generator, provided the following conditions are met:

(I) 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.

(II) 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).

(ix) A reverse distributor (as defined in 335-14-1-.02), if the hazardous waste pharmaceutical is a potentially creditable hazardous waste pharmaceutical generated by a healthcare facility (as defined in 335-14-1-.02).

(x) A healthcare facility (as defined in 335-14-1-.02) that meets the conditions in 335-14-7-.16(2)(l) and 335-14-7-.16(3)(b), as applicable, to accept non-creditable hazardous waste pharmaceuticals and potentially creditable hazardous waste pharmaceuticals from an off-site healthcare facility that is a very small quantity generator.

(xi) For airbag waste, an airbag waste collection facility or a designated facility subject to the requirements of 335-14-2-.01(4)(j).

(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 335-14-2-.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~~335-14-3-.01(5) are met. A generator may comply with the conditions for exemption in ~~this section~~335-14-3-.01 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, or the notification requirements of Section 3010 of RCRA for treatment, storage, and disposal facilities, provided that all the conditions for exemption listed in ~~this section~~335-14-3-.01(6) 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)(c), (d) and (e). The following accumulation conditions also apply:

1. Accumulation limit. The quantity of acute hazardous waste accumulated on site never exceeds 1 kilogram (2.2 pounds) and the quantity of non-acute 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 335-14-3-.01(6).

(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.

(I) 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.

(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 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:

(I) Accumulation of hazardous waste in tanks must comply with 335-14-6-.02(8)(b).

(II) 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.

(III) 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.

(IV) 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-.01(6)(b)3.(iv), a small quantity generator that accumulates hazardous waste in tanks must inspect, where present:

(I) 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;

(II) 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;

(III) 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.;

(IV) The construction materials of the tank at least weekly to detect corrosion or leaking of fixtures or seams; and

(V) 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:

(I) 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.

(II) 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:

(I) 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.

(II) 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 335-14-6-.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:

(I) 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

(II) 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:

(I) 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

(II) Documentation that the unit is emptied at least once every 90 days.

(III) 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:

(I) The words “Hazardous Waste”;

(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);

(III) The date upon which each period of accumulation begins is clearly visible for inspection on each container; and

(IV) 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:

(I) Mark or label its tanks with the words "Hazardous Waste" and all appropriate EPA hazardous waste numbers associated with the waste as specified in 335-14-2-.03 and 335-14-2-.04;

(II) 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);

(III) 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

(IV) 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.

(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 agencies, fire departments, or State 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.

(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.

(I) 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).

(II) 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.

(I) 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.

(II) 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.

(III) 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). 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:

(I) The name and emergency telephone number of the emergency coordinator;

(II) Location of fire extinguishers and spill control material, and, if present, fire alarm; and

(III) 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:

(I) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;

(II) 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;

(III) 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, or the notification requirements of Section 3010 of RCRA for treatment, storage, and disposal facilities, 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 335-14-3-.01(7);

(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.

(I) 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.

(II) 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.

(I) 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.

(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 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:

(I) 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

(II) 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:

(I) 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

(II) Documentation that the unit is emptied at least once every 90 days.

(III) 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:

(I) The words "Hazardous Waste";

(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);

(III) The date upon which each period of accumulation begins clearly visible for inspection on each container; and

(IV) All appropriate EPA hazardous waste numbers associated with the hazardous waste as specified in 335-14-2-.03 and 335-14-2-.04.

(ii) Tanks. A large quantity generator accumulating hazardous waste in tanks must do the following:

(I) Mark or label its tanks with the words "Hazardous Waste" and all appropriate EPA hazardous waste numbers associated with the waste as specified in 335-14-2-.03 and 335-14-2-.04;

(II) 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);

(III) 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

(IV) 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.

(I) 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)(III).

(II) 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.

(III) 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.

(IV) 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:

(I) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;

(II) 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;

(III) 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.;

(IV) 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~~.

(I) 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.

(II) 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).

(III) 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.

(I) At closure, the large quantity 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, 335-14-4, 335-14-6 and 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), 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 with the closure and post-closure care requirements that apply to landfills in 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).

(iv) 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, and the notification requirements of Section 3010 of RCRA for treatment, storage, and disposal facilities, 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 8, and the notification requirements of Section 3010 of RCRA for treatment, storage, and disposal facilities, 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.

(I) 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

(II) 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

(III) 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:

(I) The words "Hazardous Waste" and the EPA hazardous waste number; 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).

(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, and the notification requirements of Section 3010 of RCRA for treatment, storage, and disposal facilities, 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) 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, and the notification requirements of Section 3010 of RCRA for treatment, storage, and disposal facilities, 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 335-14-9, and the notification requirements of Section 3010 of RCRA for treatment, storage, and disposal facilities, provided that they comply with the following conditions. "Control" 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 or an electronic method used by the Department; 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 or an electronic method used by the Department. 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) or an electronic method used by the Department 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.]

(e) A recognized trader must not arrange for import or export of hazardous waste without having received an EPA identification number from the Department.

**Author:** Sonja B. Favors; Brent A. Watson; Jonah L. Harris
**Statutory Authority:** Code of Ala. 1975, §§22-30-11, 22-30-13, 22-30-14.
**History:** November 19, 1980. **Amended:** April 9, 1986; August 24, 1989; December 21, 1989; December 6, 1990; January 25, 1992; January 1, 1993. **Amended:** Filed November 30, 1994; effective January 5, 1995. **Amended:** Filed December 8, 1995; effective January 12, 1996. **Amended:** Filed February 2, 1996; effective March 8, 1996. **Amended:** Filed February 21, 1997; effective March 28, 1997. **Amended:** Filed February 20, 1998; effective March 27, 1998. **Amended:** Filed March 9, 2001; effective April 13, 2001. **Amended:** Filed February 8, 2002; effective March 15, 2002. **Amended:** Filed March 13, 2003; effective April 17, 2003. **Amended:** Filed February 24, 2005; effective March 31, 2005. **Amended:** Filed February 28, 2006; effective April 4, 2006. **Amended:** Filed February 23, 2010; effective March 30, 2010. **Amended:** Filed February 23, 2011; effective March 30, 2011. **Amended:** Filed February 28, 2012; effective April 3, 2012. **Amended:** Filed February 14, 2017; effective March 31, 2017. **Amended:** Filed February 20, 2018; effective April 7, 2018. **Amended:** Filed February 19, 2019; effective April 6, 2019. **Amended:** Published February 28, 2020; effective April 13, 2020. **Amended:** Published December 31, 2020; effective February 14, 2021. Effective: Published April 28, 2023; effective June 12, 2023. **Amended:** Published ; effective .

**APA-1**

**TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION**

| | |
|---|---|
| Control: | 335 |
| Department or Agency: | Alabama Department of Environmental Management Land Division - Hazardous Waste Program |
| Rule No.: | 335-14-3-.02 |
| Rule Title: | The Manifest Requirements Applicable To Small And Large Quantity Generators |
| Intended Action | Amend |

| | |
|---|---|
| Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? | Yes |
| Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? | Yes |
| Is there another, less restrictive method of regulation available that could adequately protect the public? | No |
| Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? | No |

To what degree?: N/A

| | |
|---|---|
| Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? | NA |
| Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? | Yes |
| Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? | No |

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|---|---|
| Does the proposed rule have an economic impact? | No |

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

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Certification of Authorized Official

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

Signature of certifying officer: Jeffery W. Kitchens

Jeffery W. Kitchens

Date: Tuesday, August 19, 2025

REC'D & FILED
AUG 19, 2025
LEGISLATIVE SVC AGENCY

**APA-2**

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION - HAZARDOUS WASTE PROGRAM**

**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** Alabama Department of Environmental Management

**RULE NO. & TITLE:** 335-14-3-.02 The Manifest Requirements Applicable To Small And Large Quantity Generators

**INTENDED ACTION:** Amend

**SUBSTANCE OF PROPOSED ACTION:**

The Department proposes to revise Rule 335-14-3-.02 to adopt the Integrating e-Manifest with Hazardous Waste Exports and Other Manifest-Related Reports. These revisions are necessary for the Department to maintain regulations that are at least as stringent as those promulgated federally, a requirement to preserve the State's authorized status.

**TIME, PLACE AND MANNER OF PRESENTING VIEWS:**

omments may be submitted in writing or orally at a public hearing to be held at 10:00 a.m., October 7, 2025, in the ADEM Main Hearing Room, 1400 Coliseum Boulevard, Montgomery, Alabama 36110. Attendance at the hearing is not necessary to present such data, views, arguments, or comments. All comments should be received by 5:00 p.m., October 7, 2025. Written submissions and other inquiries should be directed to: ADEM Hearing Officer, Office of General Counsel, Alabama Department of Environmental Management, P.O. Box 301463, Montgomery, AL 36130-1463 (street address: 1400 Coliseum Boulevard, Montgomery, AL 36110-2400) or by e-mail at hearing.officer@adem.alabama.gov.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**

Tuesday, October 7, 2025

**CONTACT PERSON AT AGENCY:**

Lynn T. Roper, 334-271-7728

Jeffery W. Kitchens

Jeffery W. Kitchens

(Signature of officer authorized to promulgate and adopt rules or his or her deputy)

**335-14-3-.02 The Manifest Requirements Applicable To Small And Large Quantity Generators.**

(1) General requirements.

(a) General.

1. A generator who transports, or offers for ~~transportation~~transport, hazardous waste for off-site treatment, storage, or disposal, or a treatment, storage, or disposal facility who offers for ~~transportation~~transport 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. Large and small quantity generators must register with the EPA's e-Manifest system to obtain signed and dated copies of completed manifests from the EPA e-Manifest system and comply with paragraph (a)(2) of 335-14-3-.02(1).

2. ~~[Reserved]~~Post-receipt manifest data corrections. After facilities have certified that the manifest is complete, by signing it at the time of submission to the EPA e-Manifest system, any post-receipt data corrections may be submitted at any time by any interested person (e.g., waste handler) named on the manifest. If corrections are requested by the Department for portions of the manifest that a generator is required to complete, the generator must address the data correction within 30 days from the date of the request. Data correction submissions must be made electronically via the post-receipt data corrections process as described in 335-14-6-.05(2)(l), which applies to corrections made to either paper or electronic manifests.

3. ~~Electonic~~Electronic Manifest. In lieu of using the manifest form specified in 335-14-3-.02(1)(a)1., a person required to prepare a manifest under 335-14-3-.02(1)(a)1. may prepare and use an electronic manifest, provided that the person:

(i) Complies with the requirements of 335-14-3-.02(5); and

(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 335-14-3-.02(2). The registrant is responsible for assigning manifest tracking numbers to its manifests.

(b) [Reserved].

(c) [Reserved].

(d) [Reserved].

(e) [Reserved].

(f) ~~[Reserved]~~Paper manifests and continuation sheets must be printed according to the following specifications:

1. The manifest and continuation sheet must be printed with the exact format and appearance as EPA Forms 8700-22 and 8700-22A, respectively. However, information required to complete the manifest may be pre-printed on the manifest form.

2. A unique manifest tracking number assigned in accordance with a numbering system approved by EPA must be pre-printed in Item 4 of the manifest. The tracking number must consist of a unique three-letter suffix following nine digits.

3. The manifest and continuation sheet must be printed on 8 1⁄2 × 11-inch white paper, excluding common stubs (e.g., top- or side-bound stubs). The paper must be durable enough to withstand normal use.

4. The manifest and continuation sheet must be printed in black ink that can be legibly photocopied, scanned, or faxed, except that the marginal words indicating copy distribution must be printed with a distinct ink color or with another method (*e.g.*, white text against black background in text box, or, black text against grey background in text box) that clearly distinguishes the copy distribution notations from the other text and data entries on the form.

5. The manifest and continuation sheet must be printed as four-copy forms. Copy-to-copy registration must be exact within 1/32nd of an inch. Handwritten and typed impressions on the form must be legible on all four copies. Copies must be bound together by one or more

common stubs that reasonably ensure that they will not become detached inadvertently during normal use.

6. Each copy of the manifest and continuation sheet must indicate how the copy must be distributed, as follows:

(i) Page 1 (top copy): "U.S. Designated Facility or U.S. Exporter to the EPA's e-Manifest System".

(ii) Page 2: "Designated Facility to Generator";

(iii) Page 3: "Transporter Copy"; and

(iv) Page 4 (bottom copy): "Generator's Initial Copy".

7. The instructions for the manifest form (EPA Form 8700-22) and the manifest continuation sheet (EPA Form 8700-22A) shall be printed in accordance with the content that is currently approved under OMB Control Number 2050-0039. The instructions must appear legibly on the back of the copies of the manifest and continuation sheet as provided in this paragraph (f). The instructions must not be visible through the front of the copies when photocopied or faxed.

(i) Manifest Form 8700-22.

(I) The "Instructions for Generators" on Copy 4;

(II) The "Instructions for Transporters" on Copy 3; and

(III) The "Instructions for Exporters or Owners and Operators of Receiving Facilities Designated on the Manifest" on Top Copy (Page 1).

(ii) Manifest Form 8700-22A.

(I) The "Instructions for Generators" on Copy 4;

(II) The "Instructions for International Shipment Block" and "Instructions for Transporters" on Copy 3; and

(III) The "Instructions for Exporters or Owners and Operators of Receiving Facilities Designated on the Manifest" on Top Copy (Page 1).

8. The designated facility copy of each manifest and continuation sheet must include in the bottom margin the following warning in prominent font: "If you received this manifest, you have responsibilities under the e-Manifest Act. See instructions on reverse side."

(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)(a)3. and used in accordance with 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 in these regulations 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 in these regulations 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 or EPA.

4. No generator may be held liable for the inability to produce an electronic manifest for inspection under ~~this section~~335-14-3-.02(5) 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 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 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.~~[Reserved]

(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."

**Author:** Stephen C. Maurer, Michael B. Champion, C. Edwin Johnston, Bradley N. Curvin, Theresa A. Maines, Heather M. Jones, Metz P. Duites, Vernon H. Crockett, Jonah L. Harris.
**Statutory Authority:** Code of Ala. 1975, §§22-30-11, 22-30-14, 22-30-17.
**History:** November 19, 1980. **Amended:** April 9, 1986; September 29, 1986; August 24, 1989; December 6, 1990. **Amended:** Filed February 20, 1998; effective March 27, 1998. **Amended:** Filed March 9, 2001; effective April 13, 2001. **Amended:** Filed February 8, 2002; effective March 15, 2002. **Amended:** Filed February 24, 2005; effective March 31, 2005. **Amended:** Filed February 28, 2006; effective April 4, 2006. **Amended:** Filed February 27, 2007; effective April 3, 2007. **Amended:** Filed February 23, 2010; effective March 30, 2010. **Amended:** Filed February 23, 2011; effective March 30, 2011. **Amended:** Filed February 14, 2017; effective March 31, 2017. **Amended:** Filed February 20, 2018;

effective April 7, 2018. **Amended:** Filed February 19, 2019; effective April 6, 2019. **Amended:** Published April 28, 2023; effective June 12, 2023 **Amended:** Published _____; effective _____.

**APA-1**

**TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION**

| | |
|---|---|
| Control: | 335 |
| Department or Agency: | Alabama Department of Environmental Management Land Division - Hazardous Waste Program |
| Rule No.: | 335-14-3-.04 |
| Rule Title: | Recordkeeping And Reporting Applicable To Small And Large Quantity Generators |
| Intended Action | Amend |

| | |
|---|---|
| Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? | Yes |
| Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? | Yes |
| Is there another, less restrictive method of regulation available that could adequately protect the public? | No |
| Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? | No |

To what degree?: N/A

| | |
|---|---|
| Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? | NA |
| Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? | Yes |
| Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? | No |

| | |
|---|---|
| Does the proposed rule have an economic impact? | No |

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

Certification of Authorized Official

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

Signature of certifying officer: Jeffery W. Kitchens

Jeffery W. Kitchens

Date: Tuesday, August 19, 2025

REC'D & FILED
AUG 19, 2025
LEGISLATIVE SVC AGENCY

**APA-2**

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION - HAZARDOUS WASTE PROGRAM**

**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** Alabama Department of Environmental Management

**RULE NO. & TITLE:** 335-14-3-.04 Recordkeeping And Reporting Applicable To Small And Large Quantity Generators

**INTENDED ACTION:** Amend

**SUBSTANCE OF PROPOSED ACTION:**

The Department proposes to revise Rule 335-14-3-.04 to adopt the Technical Corrections for the Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule and the Integrating e-Manifest with Hazardous Waste Exports and Other Manifest-Related Reports. These revisions are necessary for the Department to maintain regulations that are at least as stringent as those promulgated federally, a requirement to preserve the State's authorized status.

**TIME, PLACE AND MANNER OF PRESENTING VIEWS:**

Comments may be submitted in writing or orally at a public hearing to be held at 10:00 a.m., October 7, 2025, in the ADEM Main Hearing Room, 1400 Coliseum Boulevard, Montgomery, Alabama 36110. Attendance at the hearing is not necessary to present such data, views, arguments, or comments. All comments should be received by 5:00 p.m., October 7, 2025. Written submissions and other inquiries should be directed to: ADEM Hearing Officer, Office of General Counsel, Alabama Department of Environmental Management, P.O. Box 301463, Montgomery, AL 36130-1463 (street address: 1400 Coliseum Boulevard, Montgomery, AL 36110-2400) or by e-mail at hearing.officer@adem.alabama.gov.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**

Tuesday, October 7, 2025

**CONTACT PERSON AT AGENCY:**

Lynn T. Roper, 334-271-7728

Jeffery W. Kitchens

Jeffery W. Kitchens

(Signature of officer authorized to promulgate and adopt rules or his or her deputy)

**335-14-3-.04 Recordkeeping And Reporting Applicable To Small And Large Quantity Generators.**

(1) Recordkeeping.

(a) A generator must keep a copy of each manifest signed in accordance with 335-14-3-.02(4)(a) for three years or until he receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter.

(b) A generator must keep a copy of each Biennial Report, Exception Report, and Closure Report for a period of at least three years from the due date of the report.

(c) See 335-14-3-.01(2)(f) for recordkeeping requirements for documenting hazardous waste determinations.

(d) The periods of retention referred to in 335-14-3-.04(1) are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Department.

(e) All records, including plans, required under 335-14-3 must be furnished upon request, and made available at reasonable times for inspection by any officer, employee, or representative of the Department.

(2) Biennial report for large quantity generators.

(a) A generator that is a large quantity generator for at least one month of an odd-numbered year (reporting year) who ships any hazardous waste off-site to a treatment, storage, or disposal facility within the United States 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 Hazardous Waste Generator Biennial Report ~~form supplied~~using the method(s) approved by the Department, and must cover generator activities during the previous calendar year and must include the following information:

1. The EPA identification number, name, and address of the generator;

2. The calendar year covered by the report;

3. The EPA identification number, name, and location address for each off-site treatment, storage, or disposal

facility in the United States to which waste was shipped during the year;

4. The name and EPA identification number of each transporter used during the reporting year for shipments to a treatment, storage, or disposal facility within the United States;

5. A description, EPA hazardous waste number, United States Department of Transportation hazard class, and quantity of each hazardous waste shipped off-site for shipments to a treatment, storage, or disposal facility within the United States. This information must be listed by EPA identification number of each such off-site facility to which waste was shipped;

6. A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated.

7. 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 years prior to 1984.

8. The certification signed by the generator or authorized representative; and

9. Any other information requested in the instructions to the Hazardous Waste Generator Biennial Report form.

(b) Any generator that is a large quantity generator for at least one month of an odd-numbered year (reporting year) who treats, stores, or disposes of hazardous waste on-site must submit a biennial report covering those wastes in accordance with the provisions of Chapters 335-14-5, 335-14-6, 335-14-7, and 335-14-8. This requirement also applies to large quantity generators that receive hazardous waste from very small quantity generators pursuant to 335-14-3-.01(7)(f).

(c) Exports of hazardous waste to foreign countries are not required to be reported on the Biennial Report form. A separate annual report requirement is set forth in Rule 335-14-3-.09(4).

(3) Exception reporting.

(a)1. A Large Quantity Generator who does not receive a copy of the manifest with the ~~handwritten~~ signature of the owner or operator of the designated facility within ~~3~~4<u></u>5 days of the

date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste.

2. A Large Quantity Generator must submit an Exception Report to the Department if he has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within ~~45~~60 days of the date the waste was accepted by the initial transporter. The Exception Report must include:

(i) A legible copy of the manifest for which the generator does not have confirmation of delivery; and

(ii) A cover letter signed by the generator or his authorized representative explaining the efforts taken to locate the hazardous waste and the results of those efforts.

3. Beginning on December 1, 2025, the Department will no longer accept mailed paper Exception Reports from large quantity generators. Beginning on December 1, 2025, a large quantity generator must submit an Exception Report to the EPA e-Manifest system if the generator has not received a copy of the manifest with the signature of the owner or operator of the designated facility within 60 days of the date the waste was accepted by the initial transporter. The Exception Report must include:

(i) A legible copy of the manifest for which the generator does not have confirmation of delivery.

(ii)An explanation of the efforts taken to locate the hazardous waste and the results of those efforts

(b) A Small Quantity Generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 60 days of the date the waste was accepted by the initial transporter must:

1. Submit a legible copy of the manifest, with some indication that the generator has not received confirmation of delivery, to the Department.

[Note: The submission to the Department need only be a handwritten or typed note on the manifest itself, or on an attached sheet of paper, stating that the return copy was not received.]

2. Beginning on December 1, 2025, the Department will no longer accept mailed paper Exception Reports from small quantity generators. Beginning on December 1, 2025, a small quantity generator must submit a legible copy of the manifest, with some indication that the generator has not received confirmation of delivery, to the ~~Department~~EPA e-Manifest system. Generators that are normally VSQGs but are subject to the SQG provisions of this paragraph (b) because of an episodic generation event pursuant to 335-14-3-.13(3)(a)5., must submit a legible copy of the manifest, with some indication that the generator has not received confirmation of delivery, to the EPA Regional Administrator for the Region in which the generator is located.

(c) A generator must notify the Department in writing within 15 days after receiving a manifest that was the subject of a previous Exception Report submitted to the Department. This notification must include a legible copy of the manifest returned to the generator by the designated facility.

(d) For rejected shipments of hazardous waste or container residues contained in non-empty containers that are forwarded to an alternate facility by a designated facility using a new manifest [following the procedures of 335-14-5-.05(3)(e)1. through 6. or 335-14-6-.05(3)(e)1. through 6.] the generator must comply with the requirements of 335-14-3-.04(3)(a) or (b), as applicable, for the shipment forwarding the material from the designated facility to the alternate facility instead of for the shipment from the generator to the designated facility. For purposes of 335-14-3-.04(3)(a) or (b) for a shipment forwarding such waste to an alternate facility by a designated facility:

1. The copy of the manifest received by the generator must have the handwritten signature of the owner or operator of the alternate facility in place of the signature of the owner or operator of the designated facility, and

2. The ~~35-, 45-, and~~ /60-day timeframes begin the date the waste was accepted by the initial transporter forwarding the hazardous waste shipment from the designated facility to the alternate facility.

(e) 1. Beginning on December 1, 2025, any requirement in these regulations for a generator to keep or retain a copy of an Exception Report is satisfied by retention of a signed electronic Exception Report in the generator's account on the EPA e-Manifest system, provided that the Exception Report is readily available if requested by the Department or the EPA.

2. Beginning on December 1, 2025, no generator may be held liable for the inability to produce an electronic Exception Report for inspection under 335-14-3-.04(3) if the generator can demonstrate that the inability to produce the electronic Exception Report is due exclusively to a technical difficulty with the e-Manifest system for which the generator bears no responsibility.

(4) Additional reporting. The Department, as it deems necessary, may require generators to furnish additional reports concerning the quantities and disposition of wastes identified or listed in Chapter 335-14-2.

(5) Recordkeeping for Small Quantity Generators. A small quantity generator is subject only to the following independent requirements in 335-14-3-.04:

(a) 335-14-3-.04(1)(a), (c), (d) and (e), recordkeeping;

(b) 335-14-3-.04(3)(b), exception reporting; and

(c) 335-14-3-.04(4), additional reporting.

**Author:** Stephen C. Maurer; Michael B. Champion, C. Edwin Johnston; Bradley N. Curvin; Theresa A. Maines; Heather M. Jones; Metz P. Duites; Vernon H. Crockett; Sonja B. Favors; Brent A. Watson; Jonah L. Harris; Kelley Hartley

**Statutory Authority:** Code of Ala. 1975, §§22-30-11, 22-30-14, 22-30-17, 22-30-18.

**History:** November 19, 1980. **Amended:** April 9, 1986; September 29, 1986; August 24, 1989; December 6, 1990. **Amended:** Filed February 21, 1997; effective March 28, 1997. **Amended:** Filed March 9, 2001; effective April 13, 2001. **Amended:** Filed February 24, 2005; effective March 31, 2005. **Amended:** Filed February 28, 2006; effective April 4, 2006. **Amended:** Filed February 27, 2007; effective April 3, 2007. **Amended:** Filed April 22, 2008; effective May 27, 2008. **Amended:** Filed February 24, 2009; effective March 31, 2009. **Amended:** Filed February 23, 2011; effective March 30, 2011. **Amended:** Filed February 14, 2017; effective March 31, 2017. **Amended:** Filed February 20, 2018; effective April 7, 2018. **Amended:** Published December 31, 2020; effective February 14, 2021. **Amended:** Published April 28, 2023; effective June 12, 2023. **Amended:** Published _____; effective _____.

**APA-1**

**TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION**

| | |
|---|---|
| Control: | 335 |
| Department or Agency: | Alabama Department of Environmental Management Land Division - Hazardous Waste Program |
| Rule No.: | 335-14-3-.09 |
| Rule Title: | Transboundary Movements Of Hazardous Waste For Recovery Or Disposal |
| Intended Action | Amend |

| | |
|---|---|
| Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? | Yes |
| Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? | Yes |
| Is there another, less restrictive method of regulation available that could adequately protect the public? | No |
| Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? | No |

To what degree?: N/A

| | |
|---|---|
| Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? | NA |
| Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? | Yes |
| Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? | No |

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|---|---|
| Does the proposed rule have an economic impact? | No |

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

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Certification of Authorized Official

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

Signature of certifying officer: *Jeffery W. Kitchens*

Jeffery W. Kitchens

Date: Tuesday, August 19, 2025

REC'D & FILED
AUG 19, 2025
LEGISLATIVE SVC AGENCY

**APA-2**

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION - HAZARDOUS WASTE PROGRAM**

**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** Alabama Department of Environmental Management

**RULE NO. & TITLE:** 335-14-3-.09 Transboundary Movements Of Hazardous Waste For Recovery Or Disposal

**INTENDED ACTION:** Amend

**SUBSTANCE OF PROPOSED ACTION:**

The Department proposes to revise Rule 335-14-3-.09 to adopt the Integrating e-Manifest with Hazardous Waste Exports and Other Manifest-Related Reports. These revisions are necessary for the Department to maintain regulations that are at least as stringent as those promulgated federally, a requirement to preserve the State's authorized status.

**TIME, PLACE AND MANNER OF PRESENTING VIEWS:**

Comments may be submitted in writing or orally at a public hearing to be held at 10:00 a.m., October 7, 2025, in the ADEM Main Hearing Room, 1400 Coliseum Boulevard, Montgomery, Alabama 36110. Attendance at the hearing is not necessary to present such data, views, arguments, or comments. All comments should be received by 5:00 p.m., October 7, 2025. Written submissions and other inquiries should be directed to: ADEM Hearing Officer, Office of General Counsel, Alabama Department of Environmental Management, P.O. Box 301463, Montgomery, AL 36130-1463 (street address: 1400 Coliseum Boulevard, Montgomery, AL 36110-2400) or by e-mail at hearing.officer@adem.alabama.gov.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**

Tuesday, October 7, 2025

**CONTACT PERSON AT AGENCY:**

Lynn T. Roper, 334-271-7728

Jeffery W. Kitchens

Jeffery W. Kitchens

(Signature of officer authorized to promulgate and adopt rules or his or her deputy)

**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, December 26, 2017, August 6, 2018, ~~and~~ October 1, 2021, August 9, 2023, July 26, 2024, and October 31, 2024 (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].

**Author:** Amy P. Zachry; Michael B. Champion; Bradley N. Curvin; Theresa A. Maines; Heather M. Jones; Metz P. Duites; Vernon H. Crockett, Jonah L. Harris.
**Statutory Authority:** Code of Ala. 1975, §§22-30-11, 22-30-14.
**History: New Rule:** Filed February 21, 1997; effective March 28, 1997. **Amended:** Filed February 20, 1998; effective March 27, 1998. **Amended:** Filed March 9, 2001; effective April 13, 2001. **Amended:** Filed March 13, 2003; effective April 17, 2003. **Amended:** Filed February 24, 2005; effective March 31, 2005. **Amended:** Filed February 28, 2006; effective April 4, 2006. **Amended:** Filed February 27, 2007; effective April 3, 2007. **Amended:** Filed February 24, 2009; effective March 31, 2009.

**Amended:** Filed February 23, 2011; effective March 30, 2011. **Amended (Title Only):** Filed February 19, 2013; effective March 26, 2013. **Amended:** Filed February 14, 2017; effective March 31, 2017. **Amended:** Filed February 20, 2018; effective April 7, 2018. **Amended:** Filed February 19, 2019; effective April 6, 2019. **Amended:** Published April 28, 2023; effective June 12, 2023. **Amended:** Published _____; effective _____.

**APA-1**

**TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION**

| | |
|---|---|
| Control: | 335 |
| Department or Agency: | Alabama Department of Environmental Management Land Division - Hazardous Waste Program |
| Rule No.: | 335-14-3-.12 |
| Rule Title: | Alternative Requirements For Hazardous Waste Determination And Accumulation Of Unwanted Material For Laboratories Owned By Eligible Academic Entities |
| Intended Action | Amend |

| | |
|---|---|
| Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? | Yes |
| Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? | Yes |
| Is there another, less restrictive method of regulation available that could adequately protect the public? | No |
| Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? | No |

To what degree?: N/A

| | |
|---|---|
| Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? | NA |
| Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? | Yes |
| Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? | No |
| Does the proposed rule have an economic impact? | No |

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

Certification of Authorized Official

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

Signature of certifying officer: Jeffery W. Kitchens

Jeffery W. Kitchens

Date: Tuesday, August 19, 2025

REC'D & FILED
AUG 19, 2025
LEGISLATIVE SVC AGENCY

**APA-2**

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION - HAZARDOUS WASTE PROGRAM**

**NOTICE OF INTENDED ACTION**

| | |
|---|---|
| **AGENCY NAME:** | Alabama Department of Environmental Management |
| **RULE NO. & TITLE:** | 335-14-3-.12 Alternative Requirements For Hazardous Waste Determination And Accumulation Of Unwanted Material For Laboratories Owned By Eligible Academic Entities |
| **INTENDED ACTION:** | Amend |

**SUBSTANCE OF PROPOSED ACTION:**

The Department proposes to revise Rule 335-14-3-.12 to adopt the Technical Corrections for the Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule. These revisions are necessary for the Department to maintain regulations that are at least as stringent as those promulgated federally, a requirement to preserve the State's authorized status.

**TIME, PLACE AND MANNER OF PRESENTING VIEWS:**

Comments may be submitted in writing or orally at a public hearing to be held at 10:00 a.m., October 7, 2025, in the ADEM Main Hearing Room, 1400 Coliseum Boulevard, Montgomery, Alabama 36110. Attendance at the hearing is not necessary to present such data, views, arguments, or comments. All comments should be received by 5:00 p.m., October 7, 2025. Written submissions and other inquiries should be directed to: ADEM Hearing Officer, Office of General Counsel, Alabama Department of Environmental Management, P.O. Box 301463, Montgomery, AL 36130-1463 (street address: 1400 Coliseum Boulevard, Montgomery, AL 36110-2400) or by e-mail at hearing.officer@adem.alabama.gov.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**

Tuesday, October 7, 2025

**CONTACT PERSON AT AGENCY:**

Lynn T. Roper, 334-271-7728

Jeffery W. Kitchens

Jeffery W. Kitchens

(Signature of officer authorized to promulgate and adopt rules or his or her deputy)

**335-14-3-.12 Alternative Requirements For Hazardous Waste Determination And Accumulation Of Unwanted Material For Laboratories Owned By Eligible Academic Entities.**

(1) **[Reserved]**

(2) Applicability.

(a) Large quantity generators and small quantity generators. 335-14-3-.12 provides alternative requirements to the requirements in 335-14-3-.01(2) and 335-14-3-.01(5) for the hazardous waste determination and accumulation of hazardous waste in laboratories owned by eligible academic entities that choose to be subject to 335-14-3-.12, provided that they complete the notification requirements of 335-14-3-.12(4).

(b) Very small quantity generators. 335-14-3-.12 provides alternative requirements to the conditional exemption in 335-14-3-.01(4) for the accumulation of hazardous waste in laboratories owned by eligible academic entities that choose to be subject to 335-14-3-.12, provided that they complete the notification requirements of 335-14-3-.12(4).

(3) 335-14-3-.12 is optional.

(a) Large quantity generators and small quantity generators. Eligible academic entities have the option of complying with 335-14-3-.12 with respect to their laboratories, as an alternative to complying with the requirements of 335-14-3-.01(2) and 335-14-3-.01(5).

(b) Very small quantity generators. Eligible academic entities have the option of complying with 335-14-3-.12 with respect to their laboratories, as an alternative to complying with the conditional exemption of 335-14-3-.01(4).

(4) How an eligible academic entity indicates it will be subject to the requirements of 335-14-3-.12.

(a) An eligible academic entity must notify the Department in writing, using the ADEM Form 8700-12 or an electronic method used by the Department, that it is electing to be subject to the requirements of 335-14-3-.12 for all the laboratories owned by the eligible academic entity under the same EPA identification number. An eligible academic entity that is a very small quantity generator and does not have an EPA identification number must notify that it is electing to be subject to the requirements of 335-14-3-.12 for all the laboratories owned by the eligible academic entity that are

on-site as defined in 335-14-1-.02. An eligible academic entity must submit a separate notification (ADEM Form 8700-12) for each EPA identification number (or site, for very small quantity generators) that is electing to be subject to the requirements of 335-14-3-.12, and must submit ADEM Form 8700-12 before it begins operating under 335-14-3-.12.

(b) When submitting ADEM Form 8700-12, the eligible academic entity must, at a minimum, fill out the following fields on the form:

1. Notification Class.

2. Facility's EPA identification number (except for very small quantity generators).

3. Operating Name of Facility.

4. Location of Facility.

5. Facility Contact.

6. Facility Mailing Address.

7. North American Industry Classification System (NAICS) Code(s).

8. Ownership.

9. Land Type.

10. Certification Status.

11. Certification.

(c) An eligible academic entity must keep a copy of the notification on file at the eligible academic entity for as long as its laboratories are subject to 335-14-3-.12.

(d) A teaching hospital that is not owned by a college or university must keep a copy of its formal written affiliation agreement with a college or university on file at the teaching hospital for as long as its laboratories are subject to 335-14-3-.12.

(e) A non-profit research institute that is not owned by a college or university must keep a copy of its formal written affiliation agreement with a college or university on file at

the non-profit research institute for as long as its laboratories are subject to 335-14-3-.12.

(5) How an eligible academic entity indicates it will withdraw from the requirements of 335-14-3.12.

(a) An eligible academic entity must notify the Department in writing, using ADEM Form 8700-12 or an electronic method used by the Department, that it is electing to no longer be subject to the requirements of 335-14-3-.12 for all the laboratories owned by the eligible academic entity under the same EPA identification number and that it will comply with the requirements of 335-14-3-.01(2) and 335-14-3-.01(5) for small quantity generators and large quantity generators. An eligible academic entity that is a very small quantity generator and does not have an EPA identification number must notify that it is withdrawing from the requirements of 335-14-3-.12 for all the laboratories owned by the eligible academic entity that are on-site and that it will comply with the conditional exemption in 335-14-3-.01(4). An eligible academic entity must submit a separate notification (ADEM Form 8700-12) for each EPA identification number (or site, for very small quantity generators) that is withdrawing from the requirements of 335-14-3-.12 and must submit ADEM Form 8700-12 before it begins operating under the requirements of 335-14-3-.01(2) and 335-14-3-.01(5) for small quantity generators and large quantity generators, or 335-14-3-.01(4) for very small quantity generators.

(b) When submitting ADEM Form 8700-12, the eligible academic entity must, at a minimum, fill out the following fields on the form:

1. Notification class.

2. Facility's EPA identification number (except for very small quantity generators).

3. Operating name of facility.

4. Location of facility.

5. Facility contact.

6. Facility mailing address.

7. North American Industry Classification System (NAICS) code(s).

8. Ownership.

9. Land type.

10. Certification status.

11. Certification.

(c) An eligible academic entity must keep a copy of the withdrawal notice on file at the eligible academic entity for three years from the date of the notification.

(6) Summary of the requirements of 335-14-3-.12. An eligible academic entity that chooses to be subject to 335-14-3-.12 is not required to have interim status or a RCRA Part B permit for the accumulation of unwanted material and hazardous waste in its laboratories, provided the laboratories comply with the provisions of 335-14-3-.12 and the eligible academic entity has a Laboratory Management Plan (LMP) in accordance with 335-14-3-.12(15) that describes how the laboratories owned by the eligible academic entity will comply with the requirements of 335-14-3-.12.

(7) Labeling and management standards for containers of unwanted material in the laboratory. An eligible academic entity must manage containers of unwanted material while in the laboratory in accordance with the requirements in this section.

(a) Labeling. Label unwanted material as follows:

1. The following information must be affixed or attached to the container:

(i) The words "unwanted material" or another equally effective term that is to be used consistently by the eligible academic entity and that is identified in Part I of the Laboratory Management Plan, and

(ii) Sufficient information to alert emergency responders to the contents of the container. Examples of information that would be sufficient to alert emergency responders to the contents of the container include, but are not limited to:

(I) The name of the chemical(s),

(II) The type or class of chemical, such as organic solvents or halogenated organic solvents.

2. The following information may be affixed or attached to the container, but must at a minimum be associated with the container:

(i) The date that the unwanted material first began accumulating in the container, and

(ii) Information sufficient to allow a trained professional to properly identify whether an unwanted material is a solid and hazardous waste and to assign the proper hazardous waste code(s), pursuant to 335-14-3-.01(2). Examples of information that would allow a trained professional to properly identify whether an unwanted material is a solid or hazardous waste include, but are not limited to:

(I) The name and/or description of the chemical contents or composition of the unwanted material, or, if known, the product of the chemical reaction,

(II) Whether the unwanted material has been used or is unused,

(III) A description of the manner in which the chemical was produced or processed, if applicable.

(b) Management of containers in a laboratory. An eligible academic entity must properly manage containers of unwanted material in the laboratory to assure safe storage of the unwanted material, to prevent leaks, spills, emissions to the air, adverse chemical reactions, and dangerous situations that may result in harm to human health or the environment. Proper container management must include the following:

1. Containers are maintained and kept in good condition and damaged containers are replaced, overpacked, or repaired, and

2. Containers are compatible with their contents to avoid reactions between the contents and the container; and are made of, or lined with, material that is compatible with the unwanted material so that the container's integrity is not impaired, and

3. Containers must be kept closed at all times, except:

(i) When adding, removing, or bulking unwanted material, or

(ii) A working container may be open until the end of the procedure or work shift, or until it is full, whichever comes first, at which time the working container must either be closed or the contents emptied into a separate container that is then closed, or

(iii) When venting of a container is necessary:

(I) For the proper operation of laboratory equipment, such as with inline collection of unwanted materials from high performance liquid chromatographs, or

(II) To prevent dangerous situations, such as build-up of extreme pressure.

(8) Training. An eligible academic entity must provide training to all individuals working in a laboratory at the eligible academic entity, as follows:

(a) Training for laboratory workers and students must be commensurate with their duties so they understand the requirements of 335-14-3-.12 and can implement them.

(b) An eligible academic entity can provide training for laboratory workers and students in a variety of ways, including, but not limited to:

1. Instruction by the professor or laboratory manager before or during an experiment; or

2. Formal classroom training; or

3. Electronic/written training; or

4. On-the-job training; or

5. Written or oral exams.

(c) An eligible academic entity that is a large quantity generator must maintain documentation for the durations specified in 335-14-6-.02(7)(e) demonstrating training for all laboratory workers that is sufficient to determine whether laboratory workers have been trained. Examples of documentation demonstrating training can include, but are not limited to, the following:

1. Sign-in/attendance sheet(s) for training session(s); or

2. Syllabus for training session; or

3. Certificate of training completion; or

4. Test results.

(d) A trained professional must:

1. Accompany the transfer of unwanted material and hazardous waste when the unwanted material and hazardous waste is removed from the laboratory, and

2. Make the hazardous waste determination, pursuant to 335-14-3-.01(2)(a) through (d) for unwanted material.

(9) Removing containers of unwanted material from the laboratory.

(a) Removing containers of unwanted material on a regular schedule. An eligible academic entity must either:

1. Remove all containers of unwanted material from each laboratory on a regular interval, not to exceed 12 months; or

2. Remove containers of unwanted material from each laboratory within 12 months of each container's accumulation start date.

(b) The eligible academic entity must specify in Part I of its Laboratory Management Plan whether it will comply with 335-14-3-.12(9)(a)1. or 2. for the regular removal of unwanted material from its laboratories.

(c) The eligible academic entity must specify in Part II of its Laboratory Management Plan how it will comply with 335-14-3-.12(9)(a)1. or 2. and develop a schedule for regular removals of unwanted material from its laboratories.

(d) Removing containers of unwanted material when volumes are exceeded.

1. If a laboratory accumulates a total volume of unwanted material (including reactive acutely hazardous unwanted material) in excess of 55 gallons before the regularly scheduled removal, the eligible academic entity must ensure that all containers of unwanted material in the laboratory (including reactive acutely hazardous unwanted material):

(i) Are marked on the label that is associated with the container (or on the label that is affixed or attached to the container, if that is preferred) with the date that 55 gallons is exceeded; and

(ii) Are removed from the laboratory within 10 calendar days of the date that 55 gallons was exceeded, or at the next regularly scheduled removal, whichever comes first.

2. If a laboratory accumulates more than 1 quart of liquid reactive acutely hazardous unwanted material or more than 1 kg (2.2 pounds) of solid reactive acutely hazardous unwanted material before the regularly scheduled removal, then the eligible academic entity must ensure that all containers of reactive acutely hazardous unwanted material:

(i) Are marked on the label that is associated with the container (or on the label that is affixed or attached to the container, if that is preferred) with the date that 1 quart or 1 kg is exceeded; and

(ii) Are removed from the laboratory within 10 calendar days of the date that 1 quart or 1 kg was exceeded, or at the next regularly scheduled removal, whichever comes first.

(10) Where and when to make the hazardous waste determination and where to send containers of unwanted material upon removal from the laboratory.

(a) Large quantity generators and small quantity generators. An eligible academic entity must ensure that a trained professional makes a hazardous waste determination, pursuant to 335-14-3-.01(2), for unwanted material in any of the following areas:

1. In the laboratory before the unwanted material is removed from the laboratory, in accordance with 335-14-3-.12(11);

2. Within 4 calendar days of arriving at an on-site central accumulation area, in accordance with 335-14-3-.12(12); and

3. Within 4 calendar days of arriving at an on-site interim status or permitted treatment, storage, or disposal facility, in accordance with 335-14-3-.12(13).

(b) Very small quantity generators. An eligible academic entity must ensure that a trained professional makes a hazardous waste determination, pursuant to 335-14-3-.01(2)(a) through (d), for unwanted material in the laboratory before the unwanted material is removed from the laboratory, in accordance with 335-14-3-.12(11).

(11) Making the hazardous waste determination in the laboratory before the unwanted material is removed from the laboratory. If an eligible academic entity makes the hazardous waste determination, pursuant to 335-14-3-.01(2), for unwanted material in the laboratory, it must comply with the following:

(a) A trained professional must make the hazardous waste determination, pursuant to 335-14-3-.01(2)(a) through (d), before the unwanted material is removed from the laboratory.

(b) If an unwanted material is a hazardous waste, the eligible academic entity must:

1. Write the words "hazardous waste" on the container label that is affixed or attached to the container, before the hazardous waste may be removed from the laboratory; and

2. Write the appropriate hazardous waste code(s) on the label that is associated with the container (or on the label that is affixed or attached to the container, if that is preferred) before the hazardous waste is transported off-site.

3. Count the hazardous waste toward the eligible academic entity's generator status, pursuant to 335-14-2-.01(5)(c) and (d), in the calendar month that the hazardous waste determination was made.

(c) A trained professional must accompany all hazardous waste that is transferred from the laboratory(ies) to an on-site central accumulation area or on-site interim status or permitted treatment, storage, or disposal facility.

(d) When hazardous waste is removed from the laboratory:

1. Large quantity generators and small quantity generators must ensure it is taken directly from the laboratory(ies) to an on-site central accumulation area, or on-site interim status or permitted treatment, storage, or disposal facility, or transported off-site.

2. Very small quantity generators must ensure it is taken directly from the laboratory(ies) to any of the types of facilities listed in 335-14-3-.01(4).

(e) An unwanted material that is a hazardous waste is subject to all applicable hazardous waste regulations when it is removed from the laboratory.

(12) Making the hazardous waste determination at an on-site central accumulation area. If an eligible academic entity makes the hazardous waste determination, pursuant to 335-14-3-.01(2), for unwanted material at an on-site central accumulation area, it must comply with the following:

(a) A trained professional must accompany all unwanted material that is transferred from the laboratory(ies) to an on-site central accumulation area.

(b) All unwanted material removed from the laboratory(ies) must be taken directly from the laboratory(ies) to the on-site central accumulation area.

(c) The unwanted material becomes subject to the generator accumulation regulations of 335-14-3-.01(7) for large quantity generators or 335-14-3-.01(6) for small quantity generators as soon as it arrives in the central accumulation area, except for the “hazardous waste” labeling requirements of 335-14-3-.01(6)(b)6. and (7)(a)5.

(d) A trained professional must determine, pursuant to 335-14-3-.01(2)(a) through (d), if the unwanted material is a hazardous waste within 4 calendar days of the unwanted materials' arrival at the on-site central accumulation area.

(e) If the unwanted material is a hazardous waste, the eligible academic entity must:

1. Write the words ``hazardous waste'' on the container label that is affixed or attached to the container, within 4 calendar days of arriving at the on-site central accumulation area and before the hazardous waste may be removed from the on-site central accumulation area, and

2. Write the appropriate hazardous waste code(s) on the container label that is associated with the container (or on the label that is affixed or attached to the container, if that is preferred) before the hazardous waste may be treated or disposed of on-site or transported off-site, and

3. Count the hazardous waste toward the eligible academic entity's generator status, pursuant to 335-14-3-.01(3) in the calendar month that the hazardous waste determination was made, and

4. Manage the hazardous waste according to all applicable hazardous waste regulations.

(13) Making the hazardous waste determination at an on-site interim status or permitted treatment, storage, or disposal facility. If an eligible academic entity makes the hazardous waste determination, pursuant to 335-14-3-.01(2), for unwanted material at an on-site interim status or permitted treatment, storage, or disposal facility, it must comply with the following:

(a) A trained professional must accompany all unwanted material that is transferred from the laboratory(ies) to an on-site interim status or permitted treatment, storage, or disposal facility.

(b) All unwanted material removed from the laboratory(ies) must be taken directly from the laboratory(ies) to the on-site interim status or permitted treatment, storage, or disposal facility.

(c) The unwanted material becomes subject to the terms of the eligible academic entity's hazardous waste permit or interim status as soon as it arrives in the on-site treatment, storage, or disposal facility.

(d) A trained professional must determine, pursuant to 335-14-3-.01(2)(a) through (d), if the unwanted material is a hazardous waste within 4 calendar days of the unwanted material’s arrival at an on-site interim status or permitted treatment, storage, or disposal facility.

(e) If the unwanted material is a hazardous waste, the eligible academic entity must:

1. Write the words ``hazardous waste'' on the container label that is affixed or attached to the container within 4 calendar days of arriving at the on-site interim status or permitted treatment, storage, or disposal facility and before the hazardous waste may be removed from the on-site interim status or permitted treatment, storage, or disposal facility, and

2. Write the appropriate hazardous waste code(s) on the container label that is associated with the container (or on the label that is affixed or attached to the

container, if that is preferred) before the hazardous waste may be treated or disposed on-site or transported off-site, and

3. Count the hazardous waste toward the eligible academic entity's generator status, pursuant to 335-14-3-.01(3) in the calendar month that the hazardous waste determination was made, and

4. Manage the hazardous waste according to all applicable hazardous waste regulations.

(14) Laboratory clean-outs.

(a) One time per 12-month period for each laboratory, an eligible academic entity may opt to conduct a laboratory clean-out that is subject to all the applicable requirements of 335-14-3-.12, except that:

1. If the volume of unwanted material in the laboratory exceeds 55 gallons (or 1 quart of liquid reactive acutely hazardous unwanted material or 1 kg of solid reactive acutely hazardous unwanted material), the eligible academic entity is not required to remove all unwanted materials from the laboratory within 10 calendar days of exceeding 55 gallons (or 1 quart of liquid reactive acutely hazardous unwanted material or 1 kg of solid reactive acutely hazardous unwanted material), as required by 335-14-3-.12(9). Instead, the eligible academic entity must remove all unwanted materials from the laboratory within 30 calendar days from the start of the laboratory clean-out; and

2. For the purposes of on-site accumulation, an eligible academic entity is not required to count 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) generated solely during the laboratory clean-out toward its hazardous waste generator category, pursuant to 335-14-3-.01(3). An unwanted material that is generated prior to the beginning of the laboratory clean-out and is still in the laboratory at the time the laboratory clean-out commences must be counted toward hazardous waste generator category, pursuant to 335-14-3-.01(3), if it is determined to be hazardous waste; and

3. For the purposes of off-site management, an eligible academic entity must count all its hazardous waste, regardless of whether the hazardous waste was counted

toward generator status under 335-14-3-.12(14)(a)2., and if it generates more than 1 kg/month of acute hazardous waste or more than 100 kg/month of hazardous waste [i.e., the very small quantity generator limits as defined 335-14-1-.02], the hazardous waste is subject to all applicable hazardous waste regulations when it is transported off-site; and

4. An eligible academic entity must document the activities of the laboratory clean-out. The documentation must, at a minimum, identify the laboratory being cleaned out, the date the laboratory clean-out begins and ends, and the volume of hazardous waste generated during the laboratory clean-out. The eligible academic entity must maintain the records for a period of three years from the date the clean-out ends.

(b) For all other laboratory clean-outs conducted during the same 12-month period, an eligible academic entity is subject to all the applicable requirements of 335-14-3-.12, including, but not limited to:

1. The requirement to remove all unwanted materials from the laboratory within 10 calendar days of exceeding 55 gallons (or 1 quart of reactive acutely hazardous unwanted material), as required by 335-14-3-.12(9); and

2. The requirement to count all hazardous waste, including unused hazardous waste, generated during the laboratory clean-out toward its hazardous waste generator category, pursuant to 335-14-3-.01(3).

(15) Laboratory management plan. An eligible academic entity must develop and retain a written Laboratory Management Plan, or revise an existing written plan. The Laboratory Management Plan is a site-specific document that describes how the eligible academic entity will manage unwanted materials in compliance with 335-14-3-.12. An eligible academic entity may write one Laboratory Management Plan for all the laboratories owned by the eligible academic entity that have opted into 335-14-3-.12, even if the laboratories are located at sites with different EPA identification numbers. The Laboratory Management Plan must contain two parts with a total of nine elements identified in 335-14-3-.12(15)(a) and (b). In Part I of its Laboratory Management Plan, an eligible academic entity must describe its procedures for each of the elements listed in 335-14-3-.12(15)(a). An eligible academic entity must implement and comply with the specific provisions that it develops to address the elements in Part I of the Laboratory Management Plan. In Part II of its Laboratory Management Plan, an eligible academic entity must

describe its best management practices for each of the elements listed in 335-14-3-12(15)(b). The specific actions taken by an eligible academic entity to implement each element in Part II of its Laboratory Management Plan may vary from the procedures described in the eligible academic entity's Laboratory Management Plan, without constituting a violation of 335-14-3-.12. An eligible academic entity may include additional elements and best management practices in Part II of its Laboratory Management Plan if it chooses.

(a) The eligible academic entity must implement and comply with the specific provisions of Part I of its Laboratory Management Plan. In Part I of its Laboratory Management Plan, an eligible academic entity must:

1. Describe procedures for container labeling in accordance with 335-14-3-.12(7)(a), as follows:

(i) Identifying whether the eligible academic entity will use the term “unwanted material” on the containers in the laboratory. If not, identify an equally effective term that will be used in lieu of “unwanted material” and consistently by the eligible academic entity. The equally effective term, if used, has the same meaning and is subject to the same requirements as “unwanted material.”

(ii) Identifying the manner in which information that is “associated with the container” will be imparted.

2. Identify whether the eligible academic entity will comply with 335-14-3-.12(9)(a)1. or (a)2. for regularly scheduled removals of unwanted material from the laboratory.

(b) In Part II of its Laboratory Management Plan, an eligible academic entity must:

1. Describe its intended best practices for container labeling and management, (see the required standards at 335-14-3-.12(7)).

2. Describe its intended best practices for providing training for laboratory workers and students commensurate with their duties (see the required standards at 335-14-3-.12(8)(a)).

3. Describe its intended best practices for providing training to ensure safe on-site transfers of unwanted

material and hazardous waste by trained professionals (see the required standards at 335-14-3-.12(8)(d)1.).

4. Describe its intended best practices for removing unwanted material from the laboratory, including:

(i) For regularly scheduled removals. Develop a regular schedule for identifying and removing unwanted materials from its laboratories (see the required standards at 335-14-3-.12(9)(a)1. and (a)2.).

(ii) For removals when maximum volumes are exceeded:

(I) Describe its intended best practices for removing unwanted materials from the laboratory within 10 calendar days when unwanted materials have exceeded their maximum volumes (see the required standards at 335-14-3-.12(9)(d)).

(II) Describe its intended best practices for communicating that unwanted materials have exceeded their maximum volumes.

5. Describe its intended best practices for making hazardous waste determinations, including specifying the duties of the individuals involved in the process (see the required standards at 335-14-3-.01(2)(a) through (d) and 335-14-3-.12(10) through 335-14-3-.12(13)).

6. Describe its intended best practices for laboratory clean-outs, if the eligible academic entity plans to use the incentives for laboratory clean-outs provided in 335-14-3-.12(14), including:

(i) Procedures for conducting laboratory clean-outs (see the required standards at 335-14-3-.12(14)(a)1. through 3.); and

(ii) Procedures for documenting laboratory clean-outs (see the required standards at 335-14-3-.12(14)(a)4.).

7. Describe its intended best practices for emergency prevention, including:

(i) Procedures for emergency prevention, notification, and response, appropriate to the hazards in the laboratory; and

(ii) A list of chemicals that the eligible academic entity has, or is likely to have, that become more dangerous when they exceed their expiration date and/or as they degrade; and

(iii) Procedures to safely dispose of chemicals that become more dangerous when they exceed their expiration date and/or as they degrade; and

(iv) Procedures for the timely characterization of unknown chemicals.

(c) An eligible academic entity must make its Laboratory Management Plan available to laboratory workers, students, or any others at the eligible academic entity who request it.

(d) An eligible academic entity must review and revise its Laboratory Management Plan, as needed.

(16) Unwanted material that is not solid or hazardous waste.

(a) If an unwanted material does not meet the definition of solid waste in 335-14-2-.01(2), it is no longer subject to 335-14-3-.12 or to the RCRA hazardous waste regulations.

(b) If an unwanted material does not meet the definition of hazardous waste in 335-14-2-.01(3), it is no longer subject to 335-14-3-.12 or to the RCRA hazardous waste regulations, but must be managed in compliance with any other applicable regulations and/or conditions.

(17) Non-1aboratory hazardous waste generated at an eligible academic entity. An eligible academic entity that generates hazardous waste outside of a laboratory is not eligible to manage that hazardous waste under 335-14-3-.12; and

(a) Remains subject to the generator requirements of 335-14-3-.01(2) and 335-14-3-.01(5) for large quantity generators and small quantity generators (if the hazardous waste is managed in a satellite accumulation area), and all other applicable generator requirements of 335-14-3, with respect to that hazardous waste; or

(b) Remains subject to the conditional exemption of 335-14-3-.01(4) for very small quantity generators, with respect to that hazardous waste.

**Author**: Heather M. Jones; Metz P. Duites; Vernon H. Crockett; Jonah L. Harris

**Statutory Authority**: Code of Ala. 1975, §§22-30-11, 22-30-14.

**History: New Rule:** Filed February 23, 2010; effective March 30, 2010. **Amended:** Filed February 28, 2012; effective April 3, 2012.
**Amended:** Filed February 14, 2017; effective March 31, 2017.
**Amended:** Filed February 20, 2018; effective April 7, 2018.
**Amended:** Published April 28, 2023; effective June 12, 2023.
**Amended:** Published ____; effective ____.

**APA-1**

**TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION**

| | |
|---|---|
| Control: | 335 |
| Department or Agency: | Alabama Department of Environmental Management Land Division - Hazardous Waste Program |
| Rule No.: | 335-14-3-.13 |
| Rule Title: | Alternative Standards For Episodic Generation |
| Intended Action | Amend |

| | |
|---|---|
| Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? | Yes |
| Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? | Yes |
| Is there another, less restrictive method of regulation available that could adequately protect the public? | No |
| Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? | No |

To what degree?: N/A

| | |
|---|---|
| Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? | NA |
| Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? | Yes |
| Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? | No |

Does the proposed rule have an economic impact? No

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

Certification of Authorized Official

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

Signature of certifying officer: Jeffery W. Kitchens

Jeffery W. Kitchens

Date: Tuesday, August 19, 2025

REC'D & FILED
AUG 19, 2025
LEGISLATIVE SVC AGENCY

**APA-2**

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION - HAZARDOUS WASTE PROGRAM**

**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** Alabama Department of Environmental Management

**RULE NO. & TITLE:** 335-14-3-.13 Alternative Standards For Episodic Generation

**INTENDED ACTION:** Amend

**SUBSTANCE OF PROPOSED ACTION:**
The Department proposes to revise Rule 335-14-3-.13 to adopt the Technical Corrections for the Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule. These revisions are necessary for the Department to maintain regulations that are at least as stringent as those promulgated federally, a requirement to preserve the State's authorized status.

**TIME, PLACE AND MANNER OF PRESENTING VIEWS:**
Comments may be submitted in writing or orally at a public hearing to be held at 10:00 a.m., October 7, 2025, in the ADEM Main Hearing Room, 1400 Coliseum Boulevard, Montgomery, Alabama 36110. Attendance at the hearing is not necessary to present such data, views, arguments, or comments. All comments should be received by 5:00 p.m., October 7, 2025. Written submissions and other inquiries should be directed to: ADEM Hearing Officer, Office of General Counsel, Alabama Department of Environmental Management, P.O. Box 301463, Montgomery, AL 36130-1463 (street address: 1400 Coliseum Boulevard, Montgomery, AL 36110-2400) or by e-mail at hearing.officer@adem.alabama.gov.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**
Tuesday, October 7, 2025

**CONTACT PERSON AT AGENCY:**
Lynn T. Roper, 334-271-7728

Jeffery W. Kitchens

Jeffery W. Kitchens

(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

**335-14-3-.13 Alternative Standards For Episodic Generation.**

(1) Applicability. 335-14-3-.13 is applicable to very small quantity generators and small quantity generators as defined in 335-14-1-.02.

(2) [Reserved].

(3) Conditions for a generator managing hazardous waste from an episodic event.

(a) Very small quantity generator. A very small quantity generator may maintain its existing generator category for hazardous waste generated during an episodic event provided that the generator complies with the following conditions:

1. The very small quantity generator is limited to one episodic event per calendar year, unless a petition is granted under 335-14-3-.13(4);

2. Notification. The very small quantity generator must notify the Department no later than thirty (30) calendar days prior to initiating a planned episodic event using ADEM Form 8700-12 or an electronic method used by the Department. In the event of an unplanned episodic event, the generator must notify the Department within 72 hours of the unplanned event via phone, email, or fax and submit ADEM Form 8700-12 no later than thirty (30) calendar days following the unplanned event. The generator shall include the start date and end date of the episodic event, the reason(s) for the event, types and estimated quantities of hazardous waste expected to be generated as a result of the episodic event, and shall identify a facility contact and emergency coordinator with 24-hour telephone access to discuss the notification submittal or respond to an emergency in compliance with 335-14-3-.01(6)(b)9.(i);

3. EPA ID Number. The very small quantity generator must have an EPA identification number or obtain an EPA identification number using ADEM Form 8700-12 or an electronic method used by the Department;

4. Accumulation. A very small quantity generator is prohibited from accumulating hazardous waste generated from an episodic event on drip pads and in containment buildings. When accumulating hazardous waste in containers and tanks the following conditions apply:

(i) Containers. A very small quantity generator accumulating in episodic hazardous waste in containers must mark or label its containers with the following:

(I) The words "Episodic Hazardous Waste" and all appropriate EPA hazardous waste numbers associated with the waste as specified in 335-14-2-.03 and 335-14-2-.04;

(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); and

(III) The date upon which the episodic event began, clearly visible for inspection on each container.

(ii) Tanks. A very small quantity generator accumulating episodic hazardous waste in tanks must do the following:

(I) Mark or label the tank with the words "Episodic Hazardous Waste" and all appropriate EPA hazardous waste numbers associated with the waste as specified in 335-14-2-.03 and 335-14-2-.04;

(II) 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);

(III) Use inventory logs, monitoring equipment or other records to identify the date upon which each episodic event begins; and

(IV) Keep inventory logs or records with the above information on site and readily available for inspection.

(iii) Hazardous waste must be managed in a manner that minimizes the possibility of a fire, explosion, or release of hazardous waste or hazardous waste constituents to the air, soil, or water;

(I) Containers must be in good condition and compatible with the hazardous waste being accumulated therein. Containers must be kept closed except to add or remove waste; and

(II) Tanks must be in good condition and compatible with the hazardous waste accumulated therein. Tanks must have procedures in place to prevent the overflow (e.g., be equipped with a means to stop inflow with systems such as a waste feed cutoff system or bypass system to a standby tank when hazardous waste is continuously fed into the tank). Tanks must be inspected at least once each operating day to ensure all applicable discharge control equipment, such as waste feed cutoff systems, bypass systems, and drainage systems are in good working order and to ensure the tank is operated according to its design by reviewing the data gathered from monitoring equipment such as pressure and temperature gauges from the inspection.

5. The very small quantity generator must comply with the hazardous waste manifest provisions of 335-14-3-.13(3) and the recordkeeping provisions for small quantity generators in 335-14-3-.0~~2~~4(5) when it sends its episodic event hazardous waste off site to a designated facility, as defined in 335-14-1-.02.

6. The very small quantity generator has up to sixty (60) calendar days from the start of the episodic event to manifest and send its hazardous waste generated from the

episodic event to a designated facility, as defined in 335-14-1-.02.

7. Very small quantity generators must maintain the following records for three (3) years from the end date of the episodic event:

(i) Beginning and end dates of the episodic event;

(ii) A description of the episodic event;

(iii) A description of the types and quantities of hazardous wastes generated during the event;

(iv) A description of how the hazardous waste was managed as well as the name of the RCRA-designated facility that received the hazardous waste;

(v) Name(s) of hazardous waste transporters; and

(vi) An approval letter from the Department if the generator petitioned to conduct one additional episodic event per calendar year.

(b) Small quantity generators. A small quantity generator may maintain its existing generator category during an episodic event provided that the generator complies with the following conditions:

1. The small quantity generator is limited to one episodic event per calendar year unless a petition is granted under 335-14-3-.13(4);

2. Notification. The small quantity generator must notify the Department no later than thirty (30) calendar days prior to initiating a planned episodic event using ADEM Form 8700-12 or an electronic method used by the Department. In the event of an unplanned episodic event, the small quantity generator must notify the Department within 72 hours of the unplanned event via phone, email, or fax, and submit ADEM Form 8700-12 no later than thirty (30) calendar days following the unplanned event. The small quantity generator shall include the start date and end date of the episodic event and the reason(s) for the event, types and estimated quantities of hazardous wastes expected to be generated as a result of the episodic event, and identify a facility contact and emergency coordinator with 24-hour telephone access to discuss the notification submittal or respond to emergency;

3. EPA ID Number. The small quantity generator must have an EPA identification number or obtain an EPA identification number using ADEM Form 8700-12 or an electronic method used by the Department; and

4. Accumulation by small quantity generators. A small quantity generator is prohibited from accumulating hazardous wastes generated from an episodic event waste on drip pads and in containment buildings. When accumulating hazardous waste generated from an episodic event in containers and tanks, the following conditions apply:

(i) Containers. A small quantity generator accumulating episodic hazardous waste in containers must meet the standards at 335-14-3-.01(6)(b)2. and must mark or label its containers with the following:

(I) The words "Episodic Hazardous Waste" and all appropriate EPA hazardous waste numbers associated with the waste as specified in 335-14-2-.03 and 335-14-2-.04;

(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); and

(III) The date upon which the episodic event began, clearly visible for inspection on each container.

(ii) Tanks. A small quantity generator accumulating episodic hazardous waste in tanks must meet the standards at 335-14-3-.01(6)(b)3. and must do the following:

(I) Mark or label its tank with the words "Episodic Hazardous Waste" and all appropriate

EPA hazardous waste numbers associated with the waste as specified in 335-14-2-.03 and 335-14-2-.04;

(II) 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);

(III) Use inventory logs, monitoring equipment or other records to identify the date upon which each ~~period of accumulation~~episodic event begins ~~and ends~~; and

(IV) Keep inventory logs or records with the above information on site and available for inspection.

5. The small quantity generator must manifest and ship hazardous waste generated from an episodic event off site to a designated facility (as defined in 335-14-1-.02) within sixty (60) calendar days from the start of the episodic event.

6. The small quantity generator must maintain the following records for three (3) years from the end date of the episodic event:

(i) Beginning and end dates of the episodic event;

(ii) A description of the episodic event;

(iii) A description of the types and quantities of hazardous wastes generated during the event;

(iv) A description of how the hazardous waste was managed as well as the name of the designated facility (as defined in 335-14-1-.02) that received the hazardous waste;

(v) Name(s) of hazardous waste transporters; and

(vi) An approval letter from the Department if the generator petitioned to conduct one additional episodic event per calendar year.

(4) Petition to manage one additional episodic event per calendar year.

(a) A generator may petition the Department for a second episodic event in a calendar year without impacting its generator category under the following conditions:

1. If a very small quantity generator or small quantity generator has already held a planned episodic event in a calendar year, the generator may petition the Department for an additional unplanned episodic event in that calendar year within 72 hours of the unplanned event.

2. If a very small quantity generator or small quantity generator has already held an unplanned episodic event in a calendar year, the generator may petition the Department for an additional planned episodic event in that calendar year.

(b) The petition must include the following:

1. The reason(s) why an additional episodic event is needed and the nature of the episodic event;

2. The estimated amount of hazardous waste to be managed from the event;

3. How the hazardous waste is to be managed;

4. The estimated length of time needed to complete management of the hazardous waste generated from the episodic event—not to exceed sixty (60) days; and

5. Information regarding the previous episodic event managed by the generator, including the nature of the event, whether it was a planned or unplanned event, and how the generator complied with the conditions.

(c) The petition must be made to the Department in writing either on paper or electronically.

(d) The generator must retain written approval in its records for three (3) years from the date the episodic event ended.

**Author:** Vernon H. Crockett; Sonja B. Favors; Brent A. Watson; Jonah L. Harris
**Statutory Authority:** Code of Ala. 1975, §§22-30-11, 22-30-14.
**History:** **New Rule:** Filed February 20, 2018; effective April 7, 2018. **Amended:** Published December 31, 2020; effective February 14, 2021. **Amended:** Published April 28, 2023; effective June 12, 2023. **Amended:** Published _____; effective _____.

**APA-1**

**TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION**

| | |
|---|---|
| Control: | 335 |
| Department or Agency: | Alabama Department of Environmental Management Land Division - Hazardous Waste Program |
| Rule No.: | 335-14-4-.01 |
| Rule Title: | General |
| Intended Action | Amend |

| | |
|---|---|
| Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? | Yes |
| Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? | Yes |
| Is there another, less restrictive method of regulation available that could adequately protect the public? | No |
| Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? | No |

To what degree?: N/A

| | |
|---|---|
| Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? | NA |
| Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? | Yes |
| Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? | No |

| | |
|---|---|
| Does the proposed rule have an economic impact? | No |

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

Certification of Authorized Official

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

Signature of certifying officer: Jeffery W. Kitchens

Jeffery W. Kitchens

Date: Tuesday, August 19, 2025

REC'D & FILED
AUG 19, 2025
LEGISLATIVE SVC AGENCY

**APA-2**

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION - HAZARDOUS WASTE PROGRAM**

**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** Alabama Department of Environmental Management

**RULE NO. & TITLE:** 335-14-4-.01 General

**INTENDED ACTION:** Amend

**SUBSTANCE OF PROPOSED ACTION:**
The Department proposes to revise Rule 335-14-4-.01 to make general clarifications, correct typographical or grammatical errors, and maintain equivalency with federal regulations.

**TIME, PLACE AND MANNER OF PRESENTING VIEWS:**
Comments may be submitted in writing or orally at a public hearing to be held at 10:00 a.m., October 7, 2025, in the ADEM Main Hearing Room, 1400 Coliseum Boulevard, Montgomery, Alabama 36110. Attendance at the hearing is not necessary to present such data, views, arguments, or comments. All comments should be received by 5:00 p.m., October 7, 2025. Written submissions and other inquiries should be directed to: ADEM Hearing Officer, Office of General Counsel, Alabama Department of Environmental Management, P.O. Box 301463, Montgomery, AL 36130-1463 (street address: 1400 Coliseum Boulevard, Montgomery, AL 36110-2400) or by e-mail at hearing.officer@adem.alabama.gov.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**
Tuesday, October 7, 2025

**CONTACT PERSON AT AGENCY:**
Lynn T. Roper, 334-271-7728

Jeffery W. Kitchens

Jeffery W. Kitchens

(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

**335-14-4-.01 General.**

(1) Scope.

(a) 335-14-4 establishes standards which apply to persons transporting hazardous waste within the State of Alabama if the transportation requires a manifest under Chapter 335-14-3 and except as provided otherwise in Code of Ala. 1975, §22-30-21, as amended.

(b) 335-14-4 does not apply to on-site transportation of hazardous waste by generators or by owners or operators of permitted hazardous waste management facilities.

(c) A transporter of hazardous waste must also comply with Chapter 335-14-3, Standards Applicable to Generators of Hazardous Waste, if he:

1. Transports hazardous waste into the United States from abroad; or

2. Mixes hazardous wastes of different DOT shipping descriptions by placing them into a single container.

(d) A transporter of hazardous waste that is being imported from or exported to any other country for purposes of recovery or disposal is subject to 335-14-4-.01 and to all other relevant requirements of 335-14-3-.09, including, but not limited to, the requirements for movement documents in 335-14-3-.09(4) and 335-14-3-.09(5).

(e) The regulations in 335-14-4-.01 do not apply to transportation during an explosives or munitions emergency response, conducted 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).

(f) 335-14-7-.13(4) identifies how the requirements of 335-14-4-.01 apply to military munitions classified as solid waste under 335-14-7-.13(3).

(2) EPA identification number and Alabama Hazardous Waste Transport Permit.

(a) A transporter must not transport hazardous wastes without having received an EPA identification number from the Administrator or the authorized State in which the 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) A non-rail transporter must not transport hazardous wastes without having received an Alabama Hazardous Waste Transport Permit in compliance with Rules 335-14-8-.09 through 335-14-8-.13.

(3) [Reserved].

(4) Annual Submission of ADEM Form 8700-12, Notification of Regulated Waste Activity and Certifications of Waste Management.

(a) A transporter whose base of operations is located within the State of Alabama must submit a correct and complete ADEM Form 8700-12 (including all appropriate attachment pages and fees) or an electronic method used by the Department 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 rule 335-14-1-.02(1)(a).

(b) 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.

**Author:** Stephen C. Maurer; Amy P. Zachry, Michael B. Champion, C. Edwin Johnston, Bradley N. Curvin, Heather M. Jones, James K. Burgess, Vernon H. Crockett; Jonah L. Harris.
**Statutory Authority:** Code of Ala. 1975, §§22-30-11, 22-30-12, 22-30-15, 22-30-21.
**History:** November 19, 1980. **Amended:** April 9, 1986; February 15, 1988; August 24, 1989; January 1, 1993. **Amended:** Filed February 21, 1997; effective March 28, 1997. **Amended:** Filed February 20, 1998; effective March 27, 1998. **Amended:** Filed March 9, 2001; effective April 13, 2001. **Amended:** Filed February 8, 2002; effective March 15, 2002. **Amended:** Filed February 24, 2005; effective March 31, 2005. **Amended:** Filed February 23, 2011; effective March 30, 2011. **Amended:** Filed February 28, 2012; effective April 3, 2012. **Amended:** Filed February 20, 2018; effective April 7, 2018. **Amended:** Published April 28, 2023; effective June 12, 2023. **Amended:** Published ; effective .

**APA-1**

**TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION**

| | |
|---|---|
| Control: | 335 |
| Department or Agency: | Alabama Department of Environmental Management Land Division - Hazardous Waste Program |
| Rule No.: | 335-14-4-.02 |
| Rule Title: | Compliance With The Manifest System And Recordkeeping |
| Intended Action | Amend |

| | |
|---|---|
| Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? | Yes |
| Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? | Yes |
| Is there another, less restrictive method of regulation available that could adequately protect the public? | No |
| Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? | No |

To what degree?: N/A

| | |
|---|---|
| Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? | NA |
| Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? | Yes |
| Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? | No |

Does the proposed rule have an economic impact? No

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

Certification of Authorized Official

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

Signature of certifying officer: *Jeffery W. Kitchens*

Jeffery W. Kitchens

Date: Tuesday, August 19, 2025

REC'D & FILED
AUG 19, 2025
LEGISLATIVE SVC AGENCY

**APA-2**

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION - HAZARDOUS WASTE PROGRAM**

**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** Alabama Department of Environmental Management

**RULE NO. & TITLE:** 335-14-4-.02 Compliance With The Manifest System And Recordkeeping

**INTENDED ACTION:** Amend

**SUBSTANCE OF PROPOSED ACTION:**

The Department proposes to revise Rule 335-14-4-.02 to adopt the Integrating e-Manifest with Hazardous Waste Exports and Other Manifest-Related Reports. These revisions are necessary for the Department to maintain regulations that are at least as stringent as those promulgated federally, a requirement to preserve the State's authorized status.

**TIME, PLACE AND MANNER OF PRESENTING VIEWS:**

Comments may be submitted in writing or orally at a public hearing to be held at 10:00 a.m., October 7, 2025, in the ADEM Main Hearing Room, 1400 Coliseum Boulevard, Montgomery, Alabama 36110. Attendance at the hearing is not necessary to present such data, views, arguments, or comments. All comments should be received by 5:00 p.m., October 7, 2025. Written submissions and other inquiries should be directed to: ADEM Hearing Officer, Office of General Counsel, Alabama Department of Environmental Management, P.O. Box 301463, Montgomery, AL 36130-1463 (street address: 1400 Coliseum Boulevard, Montgomery, AL 36110-2400) or by e-mail at hearing.officer@adem.alabama.gov.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**

Tuesday, October 7, 2025

**CONTACT PERSON AT AGENCY:**

Lynn T. Roper, 334-271-7728

Jeffery W. Kitchens

Jeffery W. Kitchens

(Signature of officer authorized to promulgate and adopt rules or his or her deputy)

**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 334-14-3-.02(5).

2. Exports. For exports of hazardous waste subject to the requirements of subpart H of 40 CFR part 262 [incorporated by reference at 335-14-3-.09], a transporter may not accept hazardous waste without a manifest signed by the generator in accordance with 335-14-4-.02, as appropriate, and ~~for exports occurring under the terms of a consent issued by EPA on or after December 31, 2016,~~ a movement document that included all information required by 40 CFR 262.83(d) [incorporated by reference at 335-14-3-.09~~(5)~~(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 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 obtaining 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~~335-14-4-.02(1) 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. 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~~that the manifest is complete, by signing ~~Item 20 of the manifest~~it at the time of submission to the EPA e-Manifest system, 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~~If corrections are requested by the Department for portions of the manifest that a transporter is required to complete, the transporter must address the data correction within 30 days from the date of the request. Data correction submissions must be made electronically ~~in~~via 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~~manifests.

(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~~For 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 40 CFR 262.83(d) [incorporated by reference at 335-14-3-.09(4)] also accompanies the hazardous waste. ~~In the case of~~For 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 40 CFR 262.84(d) [incorporated by reference at 335-14-3-.09(5) 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, generator certification, and signatures) and, for exports or imports occurring under the terms of a consent issued by EPA on or after December 31, 2016, a movement document that includes all the information required by 40 CFR 262.83(d) [incorporated by reference at 335-14-3-.09(4)] or 40 CFR 262.84(d) [incorporated by reference at 335-14-3-.09(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(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, generator certification, and signatures) and, for exports or imports occurring under the terms of a consent issued by EPA on or after December 31, 2016, a movement document that includes all information required by 40 CFR 262.83(d) [incorporated by reference at 335-14-3-.09(4)] or 40 CFR 262.84(d) [incorporated by reference at 335-14-3-.09(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 on the Continuation Sheet (EPA Form 8700-22A) to indicate the date that the shipment left the United States or has been delivered to a seaport of exit for loading onto an international carrier;

2. Retain one copy in accordance with 335-14-4-.02(3)(d);

3. ~~Return a~~Compliance date for manifest returns on January 22, 2025. Beginning on January 22, 2025, return signed ~~copy~~, top copies of the manifest and continuation sheet to the generator~~; and~~. On December 1, 2025, 335-14-4-.02(1)(g)3. no longer applies, and 335-14-4-.02(1)(g)4. applies instead.

4. ~~For paper manifests only:~~

~~(i) Send a copy~~Compliance date for manifest returns on December 1, 2025. Beginning on December 1, 2025, return signed, top copies of the manifest ~~to the e-Manifest system in accordance with the allowable methods specified in 335-14-5-.05(2)(a)2.(v); and~~

~~(ii) For shipments initiated prior to the AES filing compliance date, when instructed by the~~ and continuation sheet to 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)1., 2., or 4., 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. 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)(b)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:

(i) 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

(ii) 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.

**Author:** Stephen C. Maurer; Amy P. Zachry; Bradley N. Curvin; Jonah L. Harris; Linda J. Knickerbocker; Vernon H. Crockett

**Statutory Authority:** Code of Ala. 1975, §§22-30-11, 22-30-15, 22-30-17, 22-30-18, 22-30-21.

**History:** November 19, 1980. **Amended:** September 29, 1986; February 15, 1988; August 24, 1989. **Amended:** Filed November 30, 1994; effective January 5, 1995. **Amended:** Filed February 21, 1997; effective March 28, 1997. **Amended:** Filed February 20, 1998; effective March 27, 1998. **Amended:** Filed March 9, 2001; effective April 13, 2001. **Amended:** Filed February 24, 2005; effective March 31, 2005. **Amended:** Filed February 28, 2006; effective April 4, 2006. **Amended:** Filed February 27, 2007; effective April 3, 2007. **Amended:** Filed February 23, 2011; effective March 30, 2011. **Amended:** Filed February 14, 2017; effective March 31, 2017. **Amended:** Filed February 20, 2018; effective April 7, 2018. **Amended:** Filed February 19, 2019; effective April 6, 2019. **Amended:** April 28, 2023; effective June 12, 2023. **Amended:** Published _____; effective _____.

**APA-1**

**TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION**

| | |
|---|---|
| Control: | 335 |
| Department or Agency: | Alabama Department of Environmental Management Land Division - Hazardous Waste Program |
| Rule No.: | 335-14-4-.04 |
| Rule Title: | Financial Requirements |
| Intended Action | Amend |

| | |
|---|---|
| Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? | Yes |
| Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? | Yes |
| Is there another, less restrictive method of regulation available that could adequately protect the public? | No |
| Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? | No |

To what degree?: N/A

| | |
|---|---|
| Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? | NA |
| Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? | Yes |
| Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? | No |

| | |
|---|---|
| Does the proposed rule have an economic impact? | No |

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

Certification of Authorized Official

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

Signature of certifying officer: *Jeffery W. Kitchens*
Jeffery W. Kitchens

Date: Tuesday, August 19, 2025

REC'D & FILED
AUG 19, 2025
LEGISLATIVE SVC AGENCY

**APA-2**

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION - HAZARDOUS WASTE PROGRAM**

**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** Alabama Department of Environmental Management

**RULE NO. & TITLE:** 335-14-4-.04 Financial Requirements

**INTENDED ACTION:** Amend

**SUBSTANCE OF PROPOSED ACTION:**
The Department proposes to revise Rule 335-14-4-.04 to clarify the financial assurance requirements for government owned (state and federal) transporter facilities to be consistent with the treatment, storage, and disposal (TSD) facility requirements. TSD facilities owned by the State of Alabama and the Federal government are exempt from the financial requirements of ADEM Admin. Code r. 335-14-5-.08.

**TIME, PLACE AND MANNER OF PRESENTING VIEWS:**
Comments may be submitted in writing or orally at a public hearing to be held at 10:00 a.m., October 7, 2025, in the ADEM Main Hearing Room, 1400 Coliseum Boulevard, Montgomery, Alabama 36110. Attendance at the hearing is not necessary to present such data, views, arguments, or comments. All comments should be received by 5:00 p.m., October 7, 2025. Written submissions and other inquiries should be directed to: ADEM Hearing Officer, Office of General Counsel, Alabama Department of Environmental Management, P.O. Box 301463, Montgomery, AL 36130-1463 (street address: 1400 Coliseum Boulevard, Montgomery, AL 36110-2400) or by e-mail at hearing.officer@adem.alabama.gov.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**
Tuesday, October 7, 2025

**CONTACT PERSON AT AGENCY:**
Lynn T. Roper, 334-271-7728

Jeffery W. Kitchens

Jeffery W. Kitchens

(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

**335-14-4-.04 Financial Requirements.**

(1) Any person, except for the State of Alabama and Federal government, proposing to transport hazardous waste shall submit, with their application for an Alabama Hazardous Waste 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: _____
[name(s) and business address(es)]

Surety(ies):_____

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 hazardous waste, and

Whereas said Principal is required by Code of Ala. 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 Rule 335-14-4-.04(1)-(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 335-14-4-.04(1)(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 liquid or flammable solid hazardous wastes shall be required to provide a surety bond in an amount equal to $50,000 per vehicle transporting such wastes to a maximum of $1,000,000 or proof of net worth as provided in 335-14-4-.04(1)(b);

(ii) Transporters proposing to transport nonflammable solid hazardous wastes shall be required to provide a surety bond in an amount equal to $25,000 per vehicle transporting such wastes to a maximum of $1,000,000 or proof of net worth as provided in 335-14-4-.04(1)(b); and

(iii) 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 hazardous waste 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 Ala. 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, P.O. Box 301463, Montgomery, Alabama 36130-1463]

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 Ala. 1975, §22-30-12(c)(4) and Rule 335-14-4-.04 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 335-14-4-.04(1)(b) of the Alabama Department of Environmental Management Administrative Code.

[Signature] _____

[Name] _____

[Title] _____

[Date] _____

(c) Proof of insurance in a minimum amount of $1,000,000 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 335-14-4-.04(1)(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.

(2) A transporter must demonstrate to the satisfaction of the Department that the financial document submitted with their application as required in 335-14-4-.04 is in force for the entire 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 hazardous waste transporter permit.

**Author:** Stephen C. Maurer, James T. Shipman, Lawrence A. Norris. Jonah L. Harris.

**Statutory Authority:** Code of Ala. 1975, §§22-30-11, 22-30-12(f).

**History:** November 19, 1980. **Amended:** April 9, 1986; September 29, 1986; February 15, 1988; August 24, 1989; January 5, 1994. **Amended:** Filed March 9, 2001; effective April 13, 2001. **Amended:** Filed February 8, 2002; effective March 15, 2002. **Amended:** Filed February 24, 2009; effective March 31, 2009. **Amended:** Filed February 28, 2012; effective April 3, 2012. **Amended:** Filed February 19, 2013; effective March 26, 2013. **Amended:** Published April 28, 2023; effective June 12, 2023. **Amended:** Published ; effective .

**APA-1**

**TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION**

| | |
|---|---|
| Control: | 335 |
| Department or Agency: | Alabama Department of Environmental Management Land Division - Hazardous Waste Program |
| Rule No.: | 335-14-5-.01 |
| Rule Title: | General |
| Intended Action | Amend |

| | |
|---|---|
| Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? | Yes |
| Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? | Yes |
| Is there another, less restrictive method of regulation available that could adequately protect the public? | No |
| Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? | No |

To what degree?: N/A

| | |
|---|---|
| Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? | NA |
| Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? | Yes |
| Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? | No |

Does the proposed rule have an economic impact? No

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

Certification of Authorized Official

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

Signature of certifying officer: *Jeffery W. Kitchens*
Jeffery W. Kitchens

Date: Tuesday, August 19, 2025

REC'D & FILED
AUG 19, 2025
LEGISLATIVE SVC AGENCY

**APA-2**

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION - HAZARDOUS WASTE PROGRAM**

**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** Alabama Department of Environmental Management

**RULE NO. & TITLE:** 335-14-5-.01 General

**INTENDED ACTION:** Amend

**SUBSTANCE OF PROPOSED ACTION:**
The Department proposes to revise Rule 335-14-5-.01 to adopt the Technical Corrections for the Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule. These revisions are necessary for the Department to maintain regulations that are at least as stringent as those promulgated federally, a requirement to preserve the State's authorized status.

**TIME, PLACE AND MANNER OF PRESENTING VIEWS:**
Comments may be submitted in writing or orally at a public hearing to be held at 10:00 a.m., October 7, 2025, in the ADEM Main Hearing Room, 1400 Coliseum Boulevard, Montgomery, Alabama 36110. Attendance at the hearing is not necessary to present such data, views, arguments, or comments. All comments should be received by 5:00 p.m., October 7, 2025. Written submissions and other inquiries should be directed to: ADEM Hearing Officer, Office of General Counsel, Alabama Department of Environmental Management, P.O. Box 301463, Montgomery, AL 36130-1463 (street address: 1400 Coliseum Boulevard, Montgomery, AL 36110-2400) or by e-mail at hearing.officer@adem.alabama.gov.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**
Tuesday, October 7, 2025

**CONTACT PERSON AT AGENCY:**
Lynn T. Roper, 334-271-7728

Jeffery W. Kitchens

Jeffery W. Kitchens

(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

**335-14-5-.01 General.**

(1) Purpose, scope and applicability.

(a) The purpose of 335-14-5 is to establish minimum standards which define the acceptable management of hazardous waste.

(b) The standards in 335-14-5 apply to owners and operators of all facilities which treat, store, or dispose of hazardous waste, except as specifically provided otherwise in 335-14-5 or 335-14-2.

(c) [Reserved]

(d) [Reserved]

(e) [Reserved]

(f) [Reserved]

(g) The requirements of 335-14-5 do not apply to:

1. The owner or operator of a facility permitted by the Department to manage municipal or industrial solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under 335-14-5 by 335-14-3-.01(4);

2. The owner or operator of a facility managing recyclable materials described in 335-14-2-.01(6)(a)2., 3. and 4. (except to the extent that requirements of 335-14-5 are referred to in 335-14-17 or Rules 335-14-7-.03, 335-14-7-.06, 335-14-7-.07 or 335-14-7-.08);

3. A generator accumulating waste on-site in compliance with 335-14-3-.01, ~~except as otherwise provided in Rule~~335-14-3-.12 or 335-14-3-.~~0~~1~~(4) - (7);~~3

4. A farmer disposing of waste pesticides from his own use in compliance with 335-14-3-.07(1);

5. The owner or operator of a totally enclosed treatment facility, as defined in 335-14-1-.02;

6. The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in 335-14-1-.02, provided that if the owner or operator is treating hazardous ignitable (D001) wastes [other than the D001 High TOC Subcategory defined in 335-14-9-.04(1), Table "Treatment Standards for Hazardous Wastes"], or

reactive (D003) waste, to remove the characteristic before land disposal, the owner/operator must comply with the requirements set out in 335-14-5-.02(8)(b).

7. [Reserved]

8.(i) Except as provided in 335-14-5-.01(1)(g)8.(ii), a person engaged in treatment or containment activities during immediate response to any of the following situations:

(I) A discharge of a hazardous waste;

(II) An imminent and substantial threat of a discharge of hazardous waste;

(III) A discharge of a material which, when discharged, becomes a hazardous waste;

(IV) An immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in 335-14-1-.02.

(ii) An owner or operator of a facility otherwise regulated by Division 335-14 must comply with all applicable requirements of Rules 335-14-5-.03 and 335-14-5-.04;

(iii) Any person who is covered by 335-14-5-.01(1)(g)8.(i) and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of 335-14-5 and 335-14-8;

(iv) In the case of an explosives or munitions emergency response, if a Federal, State of Alabama, Tribal or local official acting within the scope of his or her official responsibilities, or an explosives or munitions emergency response specialist, determines that immediate removal of the material or waste is necessary to protect human health or the environment, that official or specialist may authorize the removal of the material or waste by transporters who do not have EPA Identification numbers or Alabama Hazardous Waste Transport Permits and without the preparation of a

manifest. In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

9. [Reserved]

10. The addition of sorbent material to waste in a container or the addition of waste to sorbent material in a container, provided that these activities occur at the time waste is first placed in the container, and 335-14-5-.02(8)(b) and 335-14-5-.09(2) and (3) are complied with.

11. A generator treating hazardous wastes, generated on-site, by evaporation in tanks or containers, provided such treatment complies with Rule 335-14-8-.01(1)(c)2.(viii).

12. ~~Universal waste handlers and universal waste transporters [as defined in 335-14-1-.02] handling the wastes listed below. These handlers are subject to regulation under 335-14-11, when handling the below listed universal wastes:~~

~~(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);~~

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

~~(v) Aerosol cans as described in 335-14-11-.01(6).~~Reserved

13. Reverse distributors accumulating potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals, as defined in 335-14-1-.02. Reverse distributors are subject to regulation under 335-14-7-.16 in lieu of 335-14-5 for the accumulation of potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals.

(h) The requirements of 335-14-5 apply to owners or operators of all facilities which treat, store, or dispose of hazardous waste referred to in 335-14-9.

(i) 335-14-7-.13(6) identifies when the requirements of 335-14-5-.01 apply to the storage of military munitions classified as solid waste under 335-14-7-.13(3). The treatment and disposal of hazardous waste military munitions are subject to the applicable permitting, procedural, and technical standards in 335-14-1 through 335-14-9.

(j) The requirements of 335-14-5-.02, 335-14-5-.03, 335-14-5-.04 and 335-14-5-.06(12) do not apply to remediation waste management sites. (However, some remediation waste management sites may be a part of a facility that is subject to a traditional RCRA permit because the facility is also treating, storing or disposing of hazardous wastes that are not remediation wastes. In these cases, 335-14-5-.02, 335-14-5-.03, 335-14-5-.04 and 335-14-5-.06(12) do apply to the facility subject to the traditional RCRA permit.) Instead of the requirements of 335-14-5-.02, 335-14-5-.03, and 335-14-5-.04 owners or operators of remediation waste management sites must:

1. Obtain an EPA identification number by applying to ADEM using ADEM Form 8700-12 or an electronic method used by the Department;

2. Obtain a detailed chemical and physical analysis of a representative sample of the hazardous remediation wastes to be managed at the site. At a minimum, the analysis must contain all of the information which must be known to treat, store or dispose of the waste according to 335-14-5 and 335-14-9, and must be kept accurate and up to date;

3. Prevent people who are unaware of the danger from entering, and minimize the possibility for unauthorized people or livestock to enter onto the active portion of the remediation waste management site, unless the owner or operator can demonstrate to the Department that:

(i) Physical contact with the waste, structures, or equipment within the active portion of the remediation waste management site will not injure people or livestock who may enter the active portion of the remediation waste management site; and

(ii) Disturbance of the waste or equipment by people or livestock who enter unto the active portion of

the remediation waste management site, will not cause a violation of 335-14-5;

4. Inspect the remediation waste management site for malfunctions, deterioration, operator errors, and discharges that may be causing, or may lead to, a release of hazardous waste constituents to the environment, or a threat to human health. The owner or operator must conduct these inspections often enough to identify problems in time to correct them before it leads to a human health or environmental hazard. Where a hazard is imminent or has already occurred, the owner/operator must take remedial action immediately;

5. Provide personnel with classroom or on-the-job training on how to perform their duties in a way that ensures the remediation waste management site complies with the requirements of 335-14-5, and on how to respond effectively to emergencies;

6. Take precautions to prevent accidental ignition or reaction of ignitable or reactive waste, and prevent threats to human health and the environment from ignitable, reactive and incompatible waste;

7. For remediation waste management sites subject to regulation under 335-14-5-.09 through 335-14-5-.15 and 335-1-5-.24, the owner/operator must design, construct, operate, and maintain a unit within a 100-year floodplain to prevent washout of any hazardous waste by a 100-year flood, unless the owner/operator can meet the demonstration of 335-14-5-.02(9)(b);

8. Not place any non-containerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine or cave;

9. Develop and maintain a construction quality assurance program for all surface impoundments, waste piles and landfill units that are required to comply with 335-14-5-.11(2)(c) and (d), 335-14-5-.12(2)(c) and (d), and 335-14-5-.14(2)(c)and (d) at the remediation waste management site, according to the requirements of 335-14-5-.02(10);

10. Develop and maintain procedures to prevent accidents and a contingency and emergency plan to control accidents that occur. These procedures must address proper design, construction, maintenance, and operation of remediation waste management units at the site. The goal of the plan

must be to minimize the possibility of, and the hazards from, a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment. The plan must explain specifically how to treat, store and dispose of the hazardous remediation waste in question, and must be implemented immediately in the event of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment;

11. Designate at least one employee, either on the facility premises or on call (that is, available to respond to an emergency by reaching the facility quickly), to coordinate all emergency response measures. The 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;

12. Develop, maintain and implement a plan to meet the requirements in 335-14-5-.01(1)(j)2. through (j)6. and (j)9. through (j)10.; and

13. Maintain records documenting compliance with 335-14-5-.01(1)(j)1. through (j)12.

(2) [Reserved]

(3) Relationship to interim status standards. A facility owner or operator who has fully complied with the requirements for interim status must comply with the Rules specified in 335-14-6 in lieu of the Rules in 335-14-5, until final administrative disposition of his Hazardous Waste Facility Permit is made; except as provided under Rule 335-14-5-.19.

(4) Imminent hazard action. Notwithstanding any other provisions of these Rules, enforcement actions may be brought pursuant to Section 7003 of RCRA and the AHWMMA.

**Author**: Stephen C. Maurer, Lynn T. Roper, C. Edwin Johnston, Michael Champion, Bradley N. Curvin, Theresa A. Maines, Jonah L. Harris, Vernon H. Crockett, Sonja B. Favors, Brent A. Watson, Jonah L. Harris.

**Statutory Authority**: Code of Ala. 1975, §§22-30-11, 22-30-16.

**History**: November 19, 1980. **Amended**: April 9, 1986; August 24, 1989. **Amended**: Filed November 30, 1994; effective January 5,

1995. **Amended:** Filed March 22, 1995; effective April 26, 1995. **Amended:** Filed December 8, 1995; effective January 12, 1996. **Amended:** Filed February 20, 1998; effective March 27, 1998. **Amended:** Filed February 25, 2000; effective March 31, 2000. **Amended:** Filed March 9, 2001; effective April 13, 2001. **Amended:** Filed February 8, 2002; effective March 15, 2002. **Amended:** Filed March 13, 2003; effective April 17, 2003. **Amended:** Filed February 24, 2005; effective March 31, 2005. **Amended:** February 28, 2006; effective April 4, 2006. **Amended:** Filed February 27, 2007; effective April 3, 2007. **Amended:** Filed February 28, 2012; effective April 3, 2012. **Amended:** Filed February 20, 2018; effective April 7, 2018. **Amended:** Published February 28, 2020; effective April 13, 2020. **Amended:** Published December 31, 2020; effective February 14, 2021. **Amended:** Published April 28, 2023; effective June 12, 2023. **Amended:** Published _____; effective _____.

**APA-1**

**TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION**

| | |
|---|---|
| Control: | 335 |
| Department or Agency: | Alabama Department of Environmental Management Land Division - Hazardous Waste Program |
| Rule No.: | 335-14-5-.02 |
| Rule Title: | General Facility Standards |
| Intended Action | Amend |

| | |
|---|---|
| Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? | Yes |
| Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? | Yes |
| Is there another, less restrictive method of regulation available that could adequately protect the public? | No |
| Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? | No |

To what degree?: N/A

| | |
|---|---|
| Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? | NA |
| Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? | Yes |
| Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? | No |

Does the proposed rule have an economic impact? No

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

Certification of Authorized Official

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

Signature of certifying officer: Jeffery W. Kitchens

Jeffery W. Kitchens

Date: Tuesday, August 19, 2025

REC'D & FILED
AUG 19, 2025
LEGISLATIVE SVC AGENCY

**APA-2**

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION - HAZARDOUS WASTE PROGRAM**

**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** Alabama Department of Environmental Management

**RULE NO. & TITLE:** 335-14-5-.02 General Facility Standards

**INTENDED ACTION:** Amend

**SUBSTANCE OF PROPOSED ACTION:**
The Department proposes to revise Rule 335-14-5-.02 to adopt the Integrating e-Manifest with Hazardous Waste Exports and Other Manifest-Related Reports. These revisions are necessary for the Department to maintain regulations that are at least as stringent as those promulgated federally, a requirement to preserve the State's authorized status.

**TIME, PLACE AND MANNER OF PRESENTING VIEWS:**
Comments may be submitted in writing or orally at a public hearing to be held at 10:00 a.m., October 7, 2025, in the ADEM Main Hearing Room, 1400 Coliseum Boulevard, Montgomery, Alabama 36110. Attendance at the hearing is not necessary to present such data, views, arguments, or comments. All comments should be received by 5:00 p.m., October 7, 2025. Written submissions and other inquiries should be directed to: ADEM Hearing Officer, Office of General Counsel, Alabama Department of Environmental Management, P.O. Box 301463, Montgomery, AL 36130-1463 (street address: 1400 Coliseum Boulevard, Montgomery, AL 36110-2400) or by e-mail at hearing.officer@adem.alabama.gov.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**
Tuesday, October 7, 2025

**CONTACT PERSON AT AGENCY:**
Lynn T. Roper, 334-271-7728

Jeffery W. Kitchens

Jeffery W. Kitchens

(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

**335-14-5-.02 General Facility Standards.**

(1) Applicability.

(a) The requirements of 335-14-5-.02 apply to owners and operators of all hazardous waste facilities, except as provided in 335-14-5-.01(1).

(b) [Reserved]

(2) Identification number. Every facility owner or operator must obtain an EPA identification number by submitting a correct and complete ADEM Form 8700-12 to the Department, along with the appropriate fees specified in Chapter 335-1-6 of the ADEM Administrative Code.

(3) Required notices.

(a) The owner or operator of a facility that is arranging or has arranged to receive hazardous waste subject to 40 CFR 262 subpart H [incorporated by reference in 335-14-3-.09] from a foreign source must submit the following required notices:

1. As per 40 CFR 262.84(b) [incorporated by reference in 335-14-3-.09(5)], or imports where the competent authority of the country of export does not require the foreign exporter to submit to it a notification proposing export and obtain consent from EPA and the competent authorities for the countries of transit, such owner or operator of the facility, if acting as the importer, must provide notification of the proposed transboundary movement in English to EPA using the allowable methods listed in 40 CFR 262.84(b)(1) [incorporated by reference in 335-14-3-.09(5)] at least 60 days before the first shipment is expected to depart the country of export. The notification may cover up to one year of shipments of wastes having similar physical and chemical characteristics, the same United Nations classification, the same RCRA waste codes and OECD waste codes, and being sent from the same foreign exporter.

2. As per 40 CFR 262.84(d)(2)(xv) [incorporated by reference in 335-14-3-.09(5)], a copy of the movement document bearing all required signatures within three (3) working days of receipt of the shipment to the foreign exporter~~;~~ and to the competent authorities of the countries of export and transit that control the shipment as an export and transit shipment of hazardous waste respectively~~; and~~. For shipments received on or after the electronic import-export reporting compliance date, ~~to~~

~~EPA electronically~~the receiving facility must close out the movement document to confirm receipt within three (3) working days of shipment delivery using the EPA's Waste Import Export Tracking System (WIETS), or its successor system. For shipments sent from a country with which the EPA has established an electronic exchange of movement document tracking data, the receiving facility may use WIETS or its successor system to send movement document confirmation data back through the electronic exchange to the foreign exporter and the country of export. The original of the signed movement document must be maintained at the facility for at least three (3) years. 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~~335-14-5-.02(3) 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.

3. As per 40 CFR 262.84(f)(4) [incorporated by reference in 335-14-3-.09(5)], if the facility has physical control of the waste and it must be sent to an alternate facility or returned to the country of export, such owner or operator of the facility must inform EPA, using the allowable methods listed in 40 CFR 262.84(b)(1) [incorporated by reference in 335-14-.09(5)] of the need to return or arrange alternate management of the shipment.

4. As per 40 CFR 262.84(g) [incorporated by reference in 335-14-3-.09(5)], such owner or operator shall:

> (i) Send copies of the signed and dated confirmation of recovery or disposal, as soon as possible, but no later than thirty days after completing recovery or disposal on the waste in the shipment and no later than one calendar year following receipt of the waste, to the foreign exporter, to the competent authority of the country of export that controls the shipment as an export of hazardous waste, and for

shipments recycled or disposed of 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. For shipments sent from a country with which the EPA has established an electronic exchange of movement document tracking data, the receiving facility may use WIETS or its successor system to send confirmation of recovery or disposal data back through the electronic exchange to the foreign exporter and the country of export.

(ii) If the facility performed any of recovery operations R12, R13, or RC3, or disposal operations D13 through D15, promptly send copies of the confirmation of recovery or disposal that it receives from the final recovery or disposal facility within one year of shipment delivery to the final recovery or disposal facility that performed one of recovery operations R1 through R11, or RC1, or one of disposal operations D1 through D12, or DC1 to DC2, to the competent authority of the country of export that controls the shipment as an export of hazardous waste, 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 recovery and disposal operations in this paragraph are defined in 40 CFR 262.81 [incorporated by reference in 335-14-3-.09(2)]. For shipments sent from a country with which the EPA has established an electronic exchange of movement document tracking data, the receiving facility may use WIETS or its successor system to send confirmation of recovery or disposal data back through the electronic exchange to the country of export.

(b) The owner or operator of a facility that receives hazardous waste from an off-site source (except where the owner or operator is also the generator) must inform the generator in writing that he has the appropriate permit(s) for, and will accept, the waste the generator is shipping. The owner or operator must keep a copy of this written notice as part of the operating record.

(c) Before transferring ownership or operation of a facility during its operating life, or of a disposal facility during the post-closure care period, the owner or operator must notify the new owner or operator in writing of the

requirements of 335-14-5 and 335-14-8. (An owner's or operator's failure to notify the new owner or operator of the requirements of 335-14-5 in no way relieves the new owner or operator of his obligation to comply with all applicable requirements.)

(d)1. A facility owner or operator 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 rule 335-14-1-.02(1)(a).

2. In order to eliminate the need for multiple Notifications during the reporting year, facilities which anticipate periodically switching between generator classifications should notify for the higher classification (i.e., if a facility 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); and

3. 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) General waste analysis.

(a)1. Before an owner or operator treats, stores, or disposes of any hazardous wastes, or non-hazardous wastes if applicable under 335-14-5-.07(4)(d), he must obtain a detailed chemical and physical analysis of a representative sample of the wastes. At a minimum, this analysis must contain all the information which must be known to treat, store, or dispose of the waste in accordance with the requirements of 335-14-5, 335-14-7, and 335-14-9 and with the conditions of a permit issued under 335-14-8.

2. The analysis may include data developed under 335-14-2 and existing published or documented data on the hazardous waste or on hazardous waste generated from similar processes.

3. The analysis must be repeated as necessary to ensure that it is accurate and up to date. At a minimum, the analysis must be repeated:

(i) When the owner or operator is notified, or has reason to believe, that the process or operation generating the hazardous wastes, or non-hazardous wastes if applicable under 335-14-5-.07(4)(d), has changed; and

(ii) For off-site facilities, when the results of the inspection or analysis required in 335-14-5-.02(4)(a)4. indicate that the hazardous waste received at the facility does not match the waste described on the accompanying manifest or shipping paper.

4. The owner or operator of an off-site facility must inspect and analyze each hazardous waste movement received at the facility to determine whether it matches the identity of the waste specified on the accompanying manifest or shipping paper.

(b) The owner or operator must develop and follow a written waste analysis plan which describes the procedures which he will carry out to comply with 335-14-5-.02(4)(a). He must keep this plan at the facility. At a minimum, the plan must specify:

1. The parameters for which each hazardous waste, or non-hazardous waste if applicable under 335-14-5-.07(4)(d), will be analyzed and the rationale for the selection of these parameters (i.e., how analysis for these parameters will provide sufficient information on the waste's properties to comply with 335-14-5-.02(4)(a));

2. The test methods which will be used to test for these parameters;

3. The sampling method which will be used to obtain a representative sample of the waste to be analyzed. A representative sample may be obtained using either:

(i) One of the sampling methods described in 335-14-2 - Appendix I; or

(ii) An equivalent sampling method approved by the Department;

4. The frequency, approved by the Department, with which the initial analysis of the waste will be reviewed or repeated to ensure that the analysis is accurate and up to date; and

5. For off-site facilities, the waste analyses that hazardous waste generators have agreed to supply; and

6. Where applicable, the methods which will be used to meet the additional waste analysis requirements for specific waste management methods as specified in 335-14-5-.02(8), 335-14-5-.14(15), 335-14-5-.15(2), 335-14-5-.27, 335-14-5-.28, 335-14-5-.29, 335-14-7-.08(3), and 335-14-9-.01(7).

7. For surface impoundments exempted from land disposal restrictions under 335-14-9-.01(4), the procedures and schedules for:

(i) The sampling of impoundment contents;

(ii) The analysis of test data; and

(iii) The annual removal of residues which are not delisted under 335-14-1-.03(2) or which exhibit a characteristic of hazardous waste and either:

(I) Do not meet applicable treatment standards of Rule 335-14-9-.04; or

(II) Where no treatment standards have been established; I. Such residues are prohibited from land disposal under 335-14-9-.03(13) or RCRA Section 3004(d); or II. Such residues are prohibited from land disposal under 335-14-9-.03(14).

8. For owners and operators seeking an exemption to the air emission standards of 335-14-5-.29:

(i) The procedures and schedules for waste sampling and analysis, and the analysis of test data to verify the exemption.

(ii) Each generator's notice and certification of the volatile organic concentration in the waste if the waste is received from off site.

(c) For off-site facilities, the waste analysis plan required in 335-14-5-.02(4)(b) must also specify the procedures which will be used to inspect and analyze each movement of hazardous waste received at the facility to ensure that it matches the identity of the waste designated on the accompanying manifest or shipping paper. At a minimum, the plan must describe and justify:

1. The procedures which will be used to determine the identity of each movement of waste managed at the facility and shall include collection of representative samples which will be obtained from each waste stream from each shipment of waste received from each generator and analyzed in accordance with the requirements of 335-14-5-.02(4) to accurately identify each movement of hazardous waste received at the facility;

2. The sampling method and number of samples which will be used to obtain a representative sample of the waste stream to be identified;

3. The method(s) which will be used to analyze the sample(s); and

4. The procedures that the owner or operator of an off-site landfill receiving containerized hazardous waste will use to determine whether a hazardous waste generator or treater has added a biodegradable sorbent to the waste in the container.

(d) For off-site facilities, samples of waste(s) from each generator collected in accordance with the requirements of 335-14-5-.02(4)(c) may be composited prior to analysis provided that:

1. No more than ten individual samples are composited into any one sample for analysis;

2. Only compatible wastes from the same generator and waste stream are composited into any one sample which is to be analyzed; and

3. In the event that the analytical results of sample(s) obtained in compliance with the requirements 335-14-5-.02(4) indicate that the hazardous waste received at the facility does not match the waste described on the accompanying manifest or shipping paper, the facility owner or operator shall:

(i) Collect and analyze a representative sample from each container;

(ii) Identify the container(s) holding the waste(s) which cause the discrepancy to occur; and

(iii) Comply with the requirements of 335-14-5-.05(3)(c).

(e) Upon receipt of a satisfactory demonstration based on the types of waste received and treated, stored or disposed of at the facility, processes utilized to manage the waste, and any other reasonable factors, the Department may grant a partial or full exemption from the requirements for the sampling and analysis of each shipment of waste as required by 335-14-5-.02(4)(c).

[**NOTE:** The term "movement" as used in 335-14-5-.02(4) refers to individual truckloads, batches, shipments, etc., of wastes received at the facility. It is not intended to impose requirements for additional waste analyses for internal movements of wastes within the facility unless otherwise required by Division 335-14.]

(5) Security.

(a) The owner or operator must prevent the unknowing entry, and minimize the possibility for unauthorized entry, of persons or livestock onto the active portion of his facility, unless he can demonstrate to the Department that:

1. Physical contact with the waste, structures, or equipment within the active portion of the facility will not injure unknowing or unauthorized persons or livestock which may enter the active portion of the facility; and

2. Disturbance of the waste or equipment, by the unknowing or unauthorized entry of persons or livestock onto the active portion of the facility, will not cause a violation of 335-14-5.

(b) Unless the owner or operator has made a successful demonstration under 335-14-5-.02(5)(a)1. and (a)2., a facility 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.(i) 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

(ii) A means to control entry, at all times, through the gates or other entrances to the active portion of the facility (e.g., an attendant, television

monitors, locked entrance, or controlled roadway access to the facility).

(c) Unless the owner or operator has made a successful demonstration under 335-14-5-.02(5)(a)1. and (a)2., a sign with the legend "Danger-Unauthorized Personnel Keep Out" must be posted at each entrance to the active portion of the facility, and at other locations, in sufficient numbers to be seen from any approach to the active portion. 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.

(6) General inspection requirements.

(a) The owner or operator must inspect his facility for malfunctions and deterioration, operator errors, and discharges which may be causing, or may lead to, the release of hazardous waste constituents to the environment or a threat to human health. The owner or operator must conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment.

(b)1. The owner or operator must develop and follow a written schedule for inspecting monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment that are important to preventing, detecting, or responding to environmental or health hazards.

2. He must keep the schedule at the facility.

3. The schedule must identify the types of problems which are to be looked for during the inspection.

4. The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies called for in 335-14-5-.09(5), 335-14-5-.10(4), 335-14-5-.10(6),

335-14-5-.11(7), 335-14-5-.12(5), 335-14-5-.13(9), 335-14-5-.14(4), 335-14-5-.15(8), 335-14-5-.24(3), 335-14-5-.27, 335-14-5-.28, and 335-14-5-.29 where applicable.

(c) The owner or operator 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.

(d) The owner or operator 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.

(7) Personnel training.

(a) 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.

1. Facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of 335-14-5. The owner or operator must ensure that this program includes all the elements described in the document required under 335-14-5-.02(7)(d)3.

2. 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.

3. 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 groundwater contamination incidents; and

(vi) Shutdown of operations.

4. For facility employees that receive emergency response training pursuant to Occupational Safety and Health Administration (OSHA) regulations 29 CFR 1910.120(p)(8) and 1910.120(q), the facility is not required to provide separate emergency response training pursuant to 335-14-5-.02(7), provided that the overall facility training meets all the requirements of 335-14-5-.02(7).

(b) Facility personnel must successfully complete the program required in 335-14-5-.02(7)(a) within six months after the effective date of these rules or six months after the date of their employment or assignment to a facility, or to a new position at a facility, whichever is later. Employees hired after the effective date of these rules must not work in unsupervised positions until they have completed the training requirements of 335-14-5-.02(7)(a).

(c) Facility personnel must take part in an annual review of the initial training required in 335-14-5-.02(7)(a).

(d) The owner or operator must maintain the following documents and records at the facility:

1. The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;

2. A written job description for each position listed under 335-14-5-.02(7)(d)1. 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 employees assigned to each position;

3. 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 335-14-5-.02(7)(d)1.; and

4. Records that document that the training or job experience required under 335-14-5-.02(7)(a), (b), and (c) has been given to, and completed by, facility personnel.

(e) 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) General requirements for ignitable, reactive, or incompatible wastes.

(a) The owner or operator 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: 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 owner or operator 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.

(b) Where specifically required by other paragraphs of 335-14-5, the owner or operator of a facility that treats, stores, or disposes ignitable or reactive waste, or mixes incompatible waste or incompatible wastes and other materials, must take precautions to prevent reactions which:

1. Generate extreme heat or pressure, fire or explosions, or violent reactions;

2. Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health or the environment;

3. Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions;

4. Damage the structural integrity of the device or facility;

5. Through other like means threaten human health or the environment.

(c) When required to comply with 335-14-5-.02(8)(a) or (b), the owner or operator must document that compliance. This documentation may be based on references to published scientific or engineering literature, data from trial tests (e.g., bench scale or pilot scale tests), waste analyses (as specified in 335-14-5-.02(4)), or the results of the treatment of similar wastes by similar treatment processes and under similar operating conditions.

(9) Location standards.

(a) [Reserved]

(b)1. Floodplains. A facility located in a 100-year floodplain must be designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood, unless the owner or operator can demonstrate to the Department's satisfaction that:

(i) Procedures are in effect which will cause the waste to be removed safely, before flood waters can reach the facility, to a location where the wastes will not be vulnerable to flood waters; or

(ii) For existing surface impoundments, waste piles, land treatment units, landfills, and miscellaneous units, no adverse effects on human health or the environment will result if washout occurs, considering:

(I) The volume and physical and chemical characteristics of the waste in the facility;

(II) The concentration of hazardous constituents that would potentially affect surface waters as a result of washout;

(III) The impact of such concentrations on the current or potential uses of and water quality standards established for the affected surface waters; and

(IV) The impact of hazardous constituents on the sediments of affected surface waters or the

soils of the 100-year floodplain that could result from washout.

2. As used in 335-14-5-.02(9)(b)1.:

(i) "100-year floodplain" means any land area which is subject to a one percent or greater chance of flooding in any given year from any source.

(ii) "Washout" means the movement of hazardous waste from the active portion of the facility as a result of flooding.

(iii) "100-year flood" means a flood that has a one percent chance of being equaled or exceeded in any given year.

(c) Salt dome formations, salt bed formations, underground mines, and caves. The placement of any noncontainerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine or cave is prohibited.

(10) Construction quality assurance program.

(a) CQA program.

1. A construction quality assurance (CQA) program is required for all surface impoundment, waste pile and landfill units that are required to comply with 335-14-5-.11(2)(c) and (d), 335-14-5-.12(2)(c) and (d), and 335-14-5-.14(2)(b). The program must ensure that the constructed unit meets or exceeds all design criteria and specifications in the permit. The program must be developed and implemented under the direction of a CQA officer who is a registered professional engineer.

2. The CQA program must address the following physical components, where applicable:

(i) Foundations;

(ii) Dikes;

(iii) Low-permeability soil liners;

(iv) Geomembranes (flexible membrane liners);

(v) Leachate collection and removal systems and leak detection systems; and

(vi) Final cover systems.

(b) Written CQA plan. The owner or operator of units subject to the CQA program under 335-14-5-.02(10)(a) of must develop and implement a written CQA plan. The plan must identify steps that will be used to monitor and document the quality of materials and the condition and manner of their installation. The CQA plan must include:

1. Identification of applicable units and a description of how they will be constructed.

2. Identification of key personnel in the development and implementation of the CQA plan and CQA officer qualifications.

3. A description of inspection and sampling activities for all unit components identified in 335-14-5-.02(10)(a)2., including observations and tests that will be used before, during, and after construction to ensure that the construction materials and the installed unit components meet the design specifications. The description must cover: sampling size and locations; frequency of testing; data evaluation procedures; acceptance and rejection criteria for construction materials; plans for implementing corrective measures; and data or other information to be recorded and retained in the operating record under 335-14-5-.05(4).

(c) Contents of program.

1. The CQA program must include observations, inspections, tests, and measurements sufficient to ensure:

(i) Structural stability and integrity of all components of the unit identified in 335-14-5-.02(10)(a)2.;

(ii) Proper construction of all components of the liners, leachate collection and removal system, leak detection system, and final cover system, according to permit specifications and good engineering practices, and proper installation of all components (e.g., pipes) according to design specifications; and

(iii) Conformity of all materials used with design and other material specifications under 335-14-5-.11(2), 335-14-5-.12(2), and 335-14-5-.14(2).

2. The CQA program shall include test fills for compacted soil liners, using the same compaction methods as in the full scale unit, to ensure that the liners are constructed to meet the hydraulic conductivity requirements of 335-14-5-.11(2)(c)1.(i)(II), 335-14-5-.12(2)(c)1.(i)(II), and 335-14-5-.14(2)(b)1.(i)(II) in the field. Compliance with the hydraulic conductivity requirements must be verified by using in-situ testing on the constructed test fill. The Department may accept an alternative demonstration, in lieu of a test fill, where data are sufficient to show that a constructed soil liner will meet the hydraulic conductivity requirements of 335-14-5-.11(2)(c)1.(i)(II), 335-14-5-.12(2)(c)1.(i)(II), and 335-14-5-.14(2)(b)1.(i)(II) in the field.

(d) Certification. Waste shall not be received in a unit subject to 335-14-5-.02(10) until the owner or operator has submitted to the Department by certified mail or hand delivery a certification signed by the CQA officer that the approved CQA plan has been successfully carried out and that the unit meets the requirements of 335-14-5-.11(2)(c) or (d), 335-14-5-.12(2)(c) or (d), or 335-14-5-.14(2)(b); and the procedure in 335-14-8-.03(1)(l)2.(ii) has been completed. Documentation supporting the CQA officer's certification must be furnished to the Department upon request.

**Author**: Stephen C. Maurer; Steven O. Jenkins; Stephen A. Cobb; Amy P. Zachry; Michael B. Champion; Bradley N. Curvin; Theresa A. Maines; Clethes Stallworth; Jonah L. Harris; Vernon H. Crockett; Sonja B. Favors; Brent A. Watson.

**Statutory Authority**: Code of Ala. 1975, §§22-30-11, 22-30-16.

**History**: July 19, 1982. **Amended**: 1988; August 24, 1989; December 6, 1990; January 25, 1992; January 1, 1993. **Amended**: Filed November 30, 1994; effective January 5, 1995. **Amended**: Filed February 21, 1997; effective March 28, 1997. **Amended**: Filed February 20, 1998; effective March 27, 1998. **Amended**: Filed February 26, 1999; effective April 2, 1999. **Amended**: Filed February 25, 2000; effective March 31, 2000. **Amended**: Filed March 9, 2001; effective April 13, 2001. **Amended**: Filed February 8, 2002; effective March 15, 2002. **Amended**: Filed March 13, 2003; effective April 17, 2003. **Amended**: Filed February 24, 2005; effective March 31, 2005. **Amended**: February 28, 2006; effective April 4, 2006. **Amended**: Filed February 27, 2007; effective April 3, 2007. **Amended**: Filed February 23, 2010; effective March 30, 2010. **Amended**: Filed February 23, 2011; effective March 30, 2011. **Amended**: Filed February 28, 2012; effective April 3, 2012. **Amended**: Filed February 14, 2017; effective March 31, 2017. **Amended**: Filed February 20, 2018; effective April 7, 2018. **Amended**: Published February 28, 2020; effective April 13, 2020. **Amended**: Published December 31, 2020;

effective February 14, 2021. **Amended:** Published April 28, 2023; effective June 12, 2023. **Amended:** Published ____; effective ____.

**APA-1**

**TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION**

| | |
|---|---|
| Control: | 335 |
| Department or Agency: | Alabama Department of Environmental Management Land Division - Hazardous Waste Program |
| Rule No.: | 335-14-5-.05 |
| Rule Title: | Manifest System, Recordkeeping And Reporting |
| Intended Action | Amend |

| | |
|---|---|
| Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? | Yes |
| Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? | Yes |
| Is there another, less restrictive method of regulation available that could adequately protect the public? | No |
| Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? | No |

To what degree?: N/A

| | |
|---|---|
| Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? | NA |
| Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? | Yes |
| Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? | No |

| | |
|---|---|
| Does the proposed rule have an economic impact? | No |

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

Certification of Authorized Official

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

Signature of certifying officer: Jeffery W. Kitchens

Jeffery W. Kitchens

Date: Tuesday, August 19, 2025

REC'D & FILED
AUG 19, 2025
LEGISLATIVE SVC AGENCY

**APA-2**

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION - HAZARDOUS WASTE PROGRAM**

**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** Alabama Department of Environmental Management

**RULE NO. & TITLE:** 335-14-5-.05 Manifest System, Recordkeeping And Reporting

**INTENDED ACTION:** Amend

**SUBSTANCE OF PROPOSED ACTION:**

The Department proposes to revise Rule 335-14-5-.05 to adopt the Technical Corrections for the Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule and the Integrating e-Manifest with Hazardous Waste Exports and Other Manifest-Related Reports. These revisions are necessary for the Department to maintain regulations that are at least as stringent as those promulgated federally, a requirement to preserve the State's authorized status.

**TIME, PLACE AND MANNER OF PRESENTING VIEWS:**

Comments may be submitted in writing or orally at a public hearing to be held at 10:00 a.m., October 7, 2025, in the ADEM Main Hearing Room, 1400 Coliseum Boulevard, Montgomery, Alabama 36110. Attendance at the hearing is not necessary to present such data, views, arguments, or comments. All comments should be received by 5:00 p.m., October 7, 2025. Written submissions and other inquiries should be directed to: ADEM Hearing Officer, Office of General Counsel, Alabama Department of Environmental Management, P.O. Box 301463, Montgomery, AL 36130-1463 (street address: 1400 Coliseum Boulevard, Montgomery, AL 36110-2400) or by e-mail at hearing.officer@adem.alabama.gov.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**

Tuesday, October 7, 2025

**CONTACT PERSON AT AGENCY:**

Lynn T. Roper, 334-271-7728

Jeffery W. Kitchens

Jeffery W. Kitchens

(Signature of officer authorized to promulgate and adopt rules or his or her deputy)

**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, by hand, each copy of the manifest;

(ii) Note any discrepancies [as defined in 335-14-5-.05(3)(a)] 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;~~ [Reserved]

(v) Paper manifest submission requirements are:

(I) [Reserved]

(II) Options for compliance on June 30, 2021~~8. Beginning on June 30, 2018, send~~. Send to the EPA e-Manifest system an image file of 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~~send to the EPA ~~system an image file of Page 1 of the manifest and any continuation sheet, or by transmitting to the EPA~~e-Manifest 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 40 CFR 262, subpart H [incorporated by reference at 335-14-3-.09] from a foreign source must:

(i) Additionally list the relevant waste stream consent number from consent documentation supplied by EPA to the facility for each waste listed on the

manifest in the International Shipments block on the Continuation Sheet (EPA Form 8700-22A), matched to the relevant list number for the waste from block 9b. If additional space is needed, the owner or operator should use ~~a~~an additional 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 40 CFR 262.82(e) [incorporated by reference at 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~~of the delivery, send a copy (Page 1) 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~~EPA e-Manifest system; 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 applicable requirements of 335-14-3. The

provisions of 335-14-3-.01(5), 335-14-2-.01(6), and 335-14-3-.01(7) are applicable to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of 335-14-3-.01(5), 335-14-2-.01(6), and 335-14-3-.01(7) only apply to owners or operators who are shipping hazardous waste which they generated at that facility or operating as a large quantity generator consolidating hazardous waste from very small quantity generators under 335-14-3-.01(7)(f).

(d) As per 40 CFR 262.84(d)(2)(xv) [incorporated by reference at 335-14-3-.09(5), within three (3) working days of the receipt of a shipment subject to 40 CFR part 262, subpart H [incorporated by reference at 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~~. For shipments received on or after the electronic import-export reporting compliance date, ~~to EPA electronically~~the receiving facility must close out the movement document to confirm receipt within three working days of shipment delivery using EPA's Waste Import Export Tracking System (WIETS), or its successor system. For shipments sent from a country with which EPA has established an electronic exchange of movement document tracking data, the receiving facility may use WIETS or its successor system to send movement document confirmation data back through the electronic exchange to the foreign exporter and the country of export. 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~~facility's account on ~~EPA's Waste Import Export Tracking System (WIETS)~~WIETS, or its successor system, provided that copies are readily available for viewing and production if requested by any EPA or authorized ~~state~~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~~335-14-5-.05(2) 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)~~WIETS, or its successor system, for which the owner or operator of a facility bears no responsibility.

1. Post-receipt manifest data corrections. After facilities have certified that the manifest is complete, by signing it at the time of submission to the EPA e-

Manifest system, any post-receipt data corrections may be submitted at any time by any interested person (e.g., waste handler) named on the manifest. If corrections are requested by the Department for portions of the manifest that a designated facility is required to complete, the facility must make the data correction within 30 days from the date of the request.

(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~~335-14-5-.05(2) 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~~335-14-5-.05(2) 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) and 335-14-7-.16(7).

(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~~20 days after receiving the waste, the owner or operator must ~~immediately~~:

1. 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.

2. Beginning on December 1, 2025, immediately submit a Discrepancy Report to the EPA e-Manifest system describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue. Beginning on December 1, 2025, the Department will no longer accept mailed paper Discrepancy Reports from facilities.

(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 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 335-14-5-.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 to 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. Facilities are not required to send the amended manifest to any transporter who is registered in the EPA's e-Manifest system. Registered transporters may obtain the signed and dated copy of a completed manifest from the EPA e-Manifest system in lieu of receiving the manifest through U.S. postal mail.

(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-.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~~using the ~~forms supplied~~method(s) approved 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]~~Beginning on December 1, 2025, 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 by § 263.20(e) of this chapter, and if the waste is not excluded from the manifest requirement by this chapter, then the owner or operator must prepare an electronic Unmanifested Waste Report in the EPA e-Manifest system for submission to the EPA within 15 days after receiving the waste. The Unmanifested Waste Report must contain 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.

(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 rules 335-14-5-.06, 335-14-5-.11 through 335-14-5-.14, 335-14-5-.27, and 335-14-5-.28.

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Heather M. Jones; Jonah Harris; Metz Duites; Vernon H. Crockett; Kelley Hartley
**Statutory Authority:** Code of Ala. 1975, §§22-30-11, 22-30-16, 22-30-18, 22-30-19.
**History:** July 19, 1982. **Amended:** April 9, 1986; September 29, 1986; February 15, 1988; August 24, 1989; December 6, 1990; January 25, 1992; January 1, 1993. **Amended:** Filed November 30, 1994; effective January 5, 1995. **Amended:** Filed December 8, 1995; effective January 12, 1996. **Amended:** Filed February 21, 1997. **Amended:** Filed February 20, 1998; effective March 27, 1998. **Amended:** Filed February 26, 1999; effective April 2, 1999. **Amended:** Filed February 25, 2000; effective March 31, 2000. **Amended:** Filed March 9, 2001; effective April 13, 2001. **Amended:** February 28, 2006; effective April 4, 2006. **Amended:** Filed February 27, 2007; effective April 3, 2007. **Amended:** Filed February 24, 2009; effective March 31, 2009. **Amended:** Filed February 23, 2010; effective March 30, 2010. **Amended:** Filed February 23, 2011; effective March 30, 2011. **Amended:** Filed February 28, 2012; effective April 3, 2012. **Amended:** Filed February 14, 2017; effective March 31, 2017. **Amended:** Filed February 20, 2018; effective April 7, 2018. **Amended:** Filed February 19, 2019; effective April 6, 2019. **Amended:** April 28, 2023; effective June 12, 2023. **Amended:** Published ; effective .

**APA-1**

**TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION**

Control: 335

Department or Agency: Alabama Department of Environmental Management Land Division - Hazardous Waste Program

Rule No.: 335-14-5-.08

Rule Title: Financial Requirements

Intended Action: Amend

| | |
|---|---|
| Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? | Yes |
| Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? | Yes |
| Is there another, less restrictive method of regulation available that could adequately protect the public? | No |
| Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? | No |

To what degree?: N/A

| | |
|---|---|
| Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? | NA |
| Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? | Yes |
| Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? | No |

Does the proposed rule have an economic impact? No

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

Certification of Authorized Official

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

Signature of certifying officer: Jeffery W. Kitchens

Jeffery W. Kitchens

Date: Tuesday, August 19, 2025

REC'D & FILED
AUG 19, 2025
LEGISLATIVE SVC AGENCY

**APA-2**

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION - HAZARDOUS WASTE PROGRAM**

**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** Alabama Department of Environmental Management

**RULE NO. & TITLE:** 335-14-5-.08 Financial Requirements

**INTENDED ACTION:** Amend

**SUBSTANCE OF PROPOSED ACTION:**
The Department proposes to revise Rule 335-14-5-.08 to clarify the financial requirements during the post-closure care period and corrective action period for owners and operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.

**TIME, PLACE AND MANNER OF PRESENTING VIEWS:**
Comments may be submitted in writing or orally at a public hearing to be held at 10:00 a.m., October 7, 2025, in the ADEM Main Hearing Room, 1400 Coliseum Boulevard, Montgomery, Alabama 36110. Attendance at the hearing is not necessary to present such data, views, arguments, or comments. All comments should be received by 5:00 p.m., October 7, 2025. Written submissions and other inquiries should be directed to: ADEM Hearing Officer, Office of General Counsel, Alabama Department of Environmental Management, P.O. Box 301463, Montgomery, AL 36130-1463 (street address: 1400 Coliseum Boulevard, Montgomery, AL 36110-2400) or by e-mail at hearing.officer@adem.alabama.gov.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**
Tuesday, October 7, 2025

**CONTACT PERSON AT AGENCY:**
Lynn T. Roper, 334-271-7728

Jeffery W. Kitchens

Jeffery W. Kitchens

(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

**335-14-5-.08 Financial Requirements.**

(1) Applicability.

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

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

1. Disposal facilities;

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

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

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

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

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

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

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

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

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

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

(2) [Reserved]

(3) Cost estimate for closure.

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

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

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

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

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

(b) During the active life of the facility, the owner or operator must adjust the closure-cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with 335-14-5-.08(4). For owners and operators using the

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

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

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

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

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

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

(a) Closure trust fund.

1. An owner or operator may satisfy the requirements of 335-14-5-.08(4) by establishing a closure trust fund which conforms to the requirements of 335-14-5-.08(4)(a) and submitting an originally signed duplicate of the trust agreement to the Department. An owner or operator of a new facility must submit the originally signed

duplicate of the trust agreement to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

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

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

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

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

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

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

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

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

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

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

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

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

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

4. The owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the

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

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

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

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

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

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

10. After beginning partial or final closure, an owner or operator or another person authorized to conduct partial or final closure may request reimbursements for partial or final closure expenditures by submitting itemized bills to the Department. The owner or operator may

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) Provide alternate financial assurance as specified in 335-14-5-.08(4) and obtain the

Department's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the bond from the surety.

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

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

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

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

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

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

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

(c) Surety bond guaranteeing performance of closure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Closure letter of credit.

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

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

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

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

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

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

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

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

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

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

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

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

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

8. Following a final administrative determination pursuant to Sections 22-30-19 and 22-22A-7, Code of

Alabama 1975, that the owner or operator has failed to perform final closure in accordance with the closure plan and other permit requirements when required to do so, the Department may draw on the letter of credit.

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

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

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

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

(e) Closure insurance.

1. An owner or operator may satisfy the requirements of 335-14-5-.08(4) by obtaining closure insurance which conforms to the requirements of 335-14-5-.08(4)(e) and submitting an originally signed certificate of such insurance to the Department. An owner or operator of a new facility must submit the certificate of insurance to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The insurance must be effective before this initial receipt of hazardous waste. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in the State of Alabama, and must not be captive insurance as defined in 335-14-51-.02 unless the requirements of 335-14-5-.08(4)(e)1.(ii) are met.

(i) The use of insurance to demonstrate financial assurance for closure and post-closure care pertains exclusively to those insurance policies underwritten by commercial property and casualty insurers (primary or excess and surplus lines), through which, in the insurance contract, the financial burden for closure and post-closure care is transferred to the third-party insurer. Except as provided in 335-14-5-.08(4)(e)1.(ii), the third-party insurer must assume financial responsibility for this accepted risk, using its own pool of resources that is independent, separate, and unrelated to that of the insured (owner or operator). The use of insurance policies underwritten by captive insurers therefore is prohibited unless the owner/operator can demonstrate compliance with condition 335-14-5-.08(4)(e)1.(ii) for each year captive insurance is used.

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

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

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

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

5. After beginning partial or final closure, an owner or operator or any other person authorized to conduct closure may request reimbursements for closure

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

6. The owner or operator must maintain the policy in full force and effect until the Department consents to termination of the policy by the owner or operator as specified in 335-14-5-.08(4)10. Failure to pay the premium, without substitution of alternate financial assurance as specified in 335-14-5-.08(4), will constitute a significant violation of these regulations, warranting such remedy as the Department deems necessary. Such violation will be deemed to begin upon receipt by the Department of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

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

8. The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the

insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the Department. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Department and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:

(i) The Department deems the facility abandoned; or

(ii) The permit is terminated or revoked or a new permit is denied; or

(iii) Closure is ordered by the Department or a court of competent jurisdiction; or

(iv) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or

(v) The premium due is paid.

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

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

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

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

(f) Financial test and corporate guarantee for closure.

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

(i) The owner or operator must have:

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

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

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

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

(ii) The owner or operator must have:

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

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

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

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

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

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

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

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

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

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

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

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

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

6. If the owner or operator no longer meets the requirements of 335-14-5-.08(4)(f)1., he must send notice to the Department of intent to establish alternate

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

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

8. The Department may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see 335-14-5-.08(4)(f)3.(ii)). An adverse opinion or a disclaimer of opinion will be caused for disallowance. The Department will evaluate other qualifications on an individual basis. The owner or operator must provide alternate financial assurance as specified in 335-14-5-.08(4) within 30 days after notification of the disallowance.

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

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

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

10. An owner or operator may meet the requirements of 335-14-5-.08(4) by obtaining a written guarantee, hereinafter referred to as “corporate guarantee”. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a “substantial business

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

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

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

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

(g) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of 335-14-5-.08(4) by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds

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

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

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

(5) Cost estimate for post-closure care.

(a) The owner or operator of a disposal surface impoundment, disposal miscellaneous unit, land treatment unit, landfill unit, other hazardous waste management unit or CAMU which cannot demonstrate closure by removal, or surface impoundment

or waste pile required under Rules 335-14-5-.11(9) and 335-14-5-.12(9) to prepare a contingent closure and post-closure plan must have a detailed written estimate in a format specified by the Department, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure requirements in 335-14-5-.07(8) through (11), 335-14-5-.11(9), 335-14-5-.12(9), 335-14-5-.13(11), 335-14-5-.14(11), and 335-14-5-.24(4).

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

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

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

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

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

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

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

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

(a) Post-closure trust fund.

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

2. The wording of the trust agreement must be identical to the wording specified in 335-14-5-.08(12)(a)1. and the trust agreement must be accompanied by a formal certification of acknowledgment (for example, see 335-14-5-.08(12)(a)2.). Schedule A of the trust agreement must be updated, and an originally signed duplicate must

be submitted to the Department, within 60 days after a change in the amount of the current post-closure cost estimate covered by the agreement.

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

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

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

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

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

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

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

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

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

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

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

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

4. The owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the

current post-closure cost estimate at the time the fund is established. However he must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in 335-14-5-.08(6)(a)3.

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

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

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

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

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

release to the owner or operator such funds as the Department specifies in writing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) Provide alternate financial assurance as specified in this section, and obtain the

Department's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Department of notice of cancellation of the bond from the surety.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

action cost estimate following written approval by the Department.

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

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

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

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

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

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

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

1. An owner or operator may satisfy the requirements of 335-14-5-.08(6) and 335-14-5-.08(11) by obtaining an irrevocable standby letter of credit which conforms to the requirements of 335-14-5-.08(6)(d) and submitting the letter to the Department. An owner or operator of a new facility must submit the letter of credit to the Department at least 60 days before the date on which hazardous waste is first received for disposal. The owner or operator of a post-closure or SWMU corrective action facility must submit the letter of credit to the Department at least 60 days following the issuance to the initial post-closure permit or enforceable document (as

defined in 335-14-8-.01(1)(c)7.). The letter of credit must be effective before this initial receipt of hazardous waste. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or State agency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Post-closure insurance.

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

(i) The use of insurance to demonstrate financial assurance for closure and post-closure care pertains exclusively to those insurance policies underwritten by commercial property and casualty insurers

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

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

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

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

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

5. An owner or operator or any other person authorized to conduct post-closure care may request reimbursements for post-closure care expenditures by submitting itemized bills to the Department. Within 60 days after receiving bills for post-closure care activities, the Department will instruct the insurer to make reimbursements in those amounts as the Department specifies in writing, if the

Department determines that the post-closure care expenditures are in accordance with the approved post-closure plan or otherwise justified. If the Department does not instruct the insurer to make such reimbursements, he will provide the owner or operator with a detailed written statement of reasons.

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

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

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

(i) The Department deems the facility abandoned; or

(ii) The permit is terminated or revoked or a new permit is denied; or

(iii) Closure is ordered by the Department or a court of competent jurisdiction; or

(iv) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or

(v) The premium due is paid.

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

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

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

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

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

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

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

(i) The owner or operator must have:

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

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

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

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

(ii) The owner or operator must have:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. The Department may, based on a reasonable belief that the owner or operator may no longer meet the requirements

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

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

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

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

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

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

11. An owner or operator may meet the requirements of 335-14-5-.08(6) by obtaining a written guarantee, hereinafter referred to as “corporate guarantee”. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a “substantial business relationship” with the owner or operator. The guarantor must meet the requirements for owners or operators in 335-14-5-.08(6)(f)1. through 9. and must comply with the

terms of the guarantee. The wording of the guarantee must be identical to the wording specified in 335-14-5-.08(12)(h). A certified copy of the guarantee must accompany the items sent to the Department as specified in 335-14-5-.08(6)(f)3. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee must provide that:

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

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

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

(g) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of 335-14-5-.08(6) by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, and insurance. The mechanisms must be as specified in 335-14-5-.08(6)(a), (b), (d), and (e), respectively, except that it is the combination of mechanisms, rather than the

single mechanism, which must provide financial assurance for an amount at least equal to the current post-closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The Department may use any or all of the mechanisms to provide for post-closure care of the facility.

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

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

(7) Use of a mechanism for multiple financial responsibilities. An owner or operator may satisfy the requirements for financial assurance for both closure and post-closure care for one or more facilities by using a trust fund, surety bond, letter of credit, insurance, financial test, or corporate guarantee that meets the specifications for the mechanism in both 335-14-5-.08(4) and (6).

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

(8) Liability requirements.

(a) Coverage for sudden accidental occurrences. An owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least $1 million per occurrence with an annual aggregate of at least $2 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in 335-14-5-.08(8)(a)1., 2., 3., 4., 5., or 6.:

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

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

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

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

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

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

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

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

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

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

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or

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

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

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

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

(i) Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement must be identical to the wording specified in

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

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

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

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

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

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

6. An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amount required by 335-14-5-.

08(8). If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under 335-14-5-.08(8)(b), the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

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

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

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

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

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

variance to provide such technical and engineering information as is deemed necessary by the Department to determine a level of financial responsibility other than that required by 335-14-5-.08(8)(a) or (b). Any request for a variance for a permitted facility will be treated as a request for a permit modification under 335-14-8-.04(2)(a)5. and 335-14-8-.08(3).

(d) Adjustments by the Department. If the Department determines that the levels of financial responsibility required by 335-14-5-.08(8)(a) or (b) are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the Department may adjust the level of financial responsibility required under 335-14-5-.08(8)(a) or (b) as may be necessary to protect human health and the environment. This adjusted level will be based on the Department's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the Department determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operations of a facility that is not a surface impoundment, landfill, or land treatment facility, he may require that an owner or operator of the facility comply with 335-14-5-.08(8)(b). An owner or operator must furnish to the Department within a reasonable time, any information which the Department requests to determine whether cause exists for such adjustments of level or type of coverage. Any adjustment of the level or type of coverage for a facility that has a permit will be treated as a permit modification under 335-14-8-.04(2)(a)5. and 335-14-8-.08(3).

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

(f) Financial test for liability coverage.

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

(i) The owner or operator must have:

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

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

(III) Assets in the United States amounting to either: I. at least 90 percent of his total assets; or II. at least six times the amount of liability coverage to be demonstrated by this test.

(ii) The owner or operator must have:

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

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

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

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

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

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

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

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

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in

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

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

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

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

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

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

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

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

7. If the owner or operator no longer meets the requirements of 335-14-5-.08(8)(f)1., he must obtain insurance, a letter of credit, a surety bond, a trust fund, or a guarantee for the entire amount of required liability coverage as specified in 335-14-5-.08(8). Evidence of liability coverage must be submitted to the Department within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.

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

(g) Guarantee for liability coverage.

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

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

(ii) [Reserved]

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

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

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

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

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

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

(h) Letter of credit for liability coverage.

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

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

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

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

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

(i) Surety bond for liability coverage

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

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

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

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

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

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

(j) Trust fund for liability coverage.

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

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

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

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

(k) [Reserved]

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

(a) An owner or operator must notify the Department by certified mail of the commencement of a voluntary or

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

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

(10) Cost estimate for corrective action.

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

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

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

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

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

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

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

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

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

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

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

(a) Corrective action trust fund.

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

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

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

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

where

CE is the most recent corrective action cost estimate in accordance with 335-14-5-.08(10), at the time of the payment;

CV is the current value of the trust fund, at the time of the payment; and

Y is the number of remaining years in the pay-in-period, at the time of the payment.

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

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

6. After the pay-in period is completed, whenever the current corrective action cost estimate changes during the operating life of the facility, the post-closure care period, or the corrective action period, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, must either deposit and amount into the fund so that its value after this deposit at least equals the amount of the current corrective action cost estimate, or obtain other financial assurance as specified in 335-14-5-.08(11) to cover the difference.

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

8. If an owner or operator substitutes other financial assurance as specified in 335-14-5-.08(11) for all or part of the trust fund, he may submit a written request

to the Department for release of the amount in excess of the current corrective action cost estimate covered by the trust fund.

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

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

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

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

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

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

(b) Surety bond guaranteeing performance of corrective action. An owner or operator may satisfy the requirements of 335-14-5-.08(11) by obtaining a surety bond which conforms to

the requirements of 335-14-5-.08(6)(c) and submitting the bond to the Department.

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

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

(e) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in 335-14-5-.08(11) to meet the requirements of 35-14-5-.08(11) for more than one facility. Evidence of financial assurance submitted to the Department must include a list showing, for each facility, the EPA or Alabama Identification Number, name, address, and the amount of funds for corrective action by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for corrective action any of the facilities covered by the mechanism, the Department may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

(f) Release of the owner or operator from the requirements of 335-14-5-.08(11). Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that corrective action has been completed for a hazardous waste disposal unit or solid waste management units in accordance with the approved plan,

the Department will notify the owner or operator that he is no longer required to maintain financial assurance for corrective action of that unit, unless the Department has reason to believe that corrective action has not been in accordance with the approved plan, permit, or corrective action order requirements. The Department shall provide the owner or operator with a detailed written statement of any such reason to believe that corrective action has not been in accordance with the approved plan, permit, or order

(12) Wording of the instruments.

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

**TRUST AGREEMENT**

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

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

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

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

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

Section 1. Definitions. As used in this Agreement:

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

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

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

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

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

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

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 10. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the Department a

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

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

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

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

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

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

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

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

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

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

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

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include

the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written: The parties below certify that the wording of this Agreement is identical to the wording specified in ADEM Administrative Code subparagraph 335-14-5-.08(12)(a)1. as such rules were constituted on the date first above written.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

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

State of

County of _____

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

[Signature of Notary Public]

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

**FINANCIAL GUARANTEE BOND**

Date bond executed: _____

Effective date: _____

Principal: _____

[legal name and business address of owner or operator]

Type or organization: _____

[insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation: _____

Surety(ies): _____

[name(s) and business address(es)]

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

Total penal sum of bond: $_____

Surety's bond number: _____

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

indicated, the limit of liability shall be the full amount of the penal sum.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Principal

[Signature(s)]

[Name(s)]

(Title(s)]

[Corporate seal]

Corporate Surety(ies)

[Name and address] _____

State of incorporation: _____

Liability limit: $_____

[Signature(s)] _____

[Name(s) and title(s)] _____

[Corporate seal] _____

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

Bond premium: $_____

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

**PERFORMANCE BOND**

Date bond executed: _____

Effective date: _____

Principal: _____

[legal name and business address of owner or operator]

Type of organization: _____

[insert "individual," "joint venture," partnership," or "corporation"]

State of incorporation: _____

Surety(ies): _____

[name(s) and business address(es)]

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

Total penal sum of bond: $_____

Surety's bond number: _____

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Department, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the Department, as evidenced by the return receipts. The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond from the Department.

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

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

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

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

Principal

[Signature(s)]

[Name(s)]

(Title(s)]

[Corporate seal]

Corporate Surety(ies)

[Name and address] _____

State of incorporation: _____

Liability limit: $_____

[Signature(s)] [Name(s) and title(s)]

[Corporate seal]

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

Bond premium: $_____

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

**IRREVOCABLE STANDBY LETTER OF CREDIT**

Director

Alabama Department of Environmental Management Dear

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

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

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

This letter of credit is effective as of [date] and shall expire on [date at least one year later], but such expiration date shall

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

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

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

_____ _____

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

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

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

**CERTIFICATE OF INSURANCE FOR CLOSURE OR POST-CLOSURE CARE**

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

_____

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

_____

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

Face Amount:

_____

Policy Number:

_____

Effective Date:

_____

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

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

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

[Authorized signature for Insurer]

[Name of person signing]

[Title of person signing]

Signature of witness or notary: _____

[Date]

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

**LETTER FROM THE CHIEF FINANCIAL OFFICER**

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

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance, as specified in ADEM Admin. Code R. 335-14-5-.08 and 335-14-6-.08. [Fill out the following five paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, address, and current cost estimates. Identify each cost estimate as to whether it is for one or more of the following: closure, post-closure, and plugging and abandonment.]

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

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

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

3. In states outside of Alabama, where U.S. EPA or some designated authority is administering financial responsibility requirements, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the [identify one or more of the following:

closure, post-closure, and plugging and abandonment] cost(s) at the following facilities through a financial test and/or corporate guarantee substantially equivalent to the ones specified in ADEM Admin. Code R. 335-14-5-.08 and 335-14-6-.08. The current cost estimates covered by such a test or guarantee are shown for each facility:

_____

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

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

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

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date]. [Fill in Alternative I if the criteria of 335-14-5-.08(4)(f)1.(i) or (6)(f)1.(i) of or 335-14-5-.08(4)(e)1.(i) or (6)(e)1.(i) are used. Fill in Alternative II if the criteria of 335-14-5-.08(4)(f)1.(ii) or (6)(f)1.(ii) or 335-14-6-.08(4)(e)1.(ii) or (6)(e)1.(ii) are used.]

**ALTERNATIVE I**

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

*2. Total liabilities [if any portion of the cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4]
$_____

*3. Tangible net worth $_____

*4. Net worth $_____

*5. Current assets $_____

*6. Current liabilities $_____

7. Net working capital [line 5 minus line 6]
$_____

*8. The sum of net income plus depreciation, depletion, and amortization $_____

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

_____

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

11. Is line 3 at least 6 times line 1? ____Yes ____ No

12. Is line 7 at least 6 times line 1? ____Yes ____ No

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

14. Is line 9 at least 6 times line 1? ____Yes ____ No

15. Is line 2 divided by line 4 less than 2.0? ____Yes ____ No

16. Is line 8 divided by line 2 greater than 0.1? ____Yes ____ No

17. Is line 5 divided by line 6 greater than 1.5? ____Yes ____ No

_____

**ALTERNATIVE II**

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

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

3. Date of issuance of bond _____

4. Date of maturity of bond _____

*5. Tangible net worth [if any portion of the cost estimates is included in “total liabilities” on your firm's financial

statements, you may add the amount of that portion to this line] $_____

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

_____

7. Is line 5 at least $10 million? ____Yes ____ No

8. Is line 5 at least 6 times line 1? ____Yes ____ No

*9. Are at least 90% of the firm's assets located in the U.S? If not, complete line 10. ____Yes ____ No

10. Is line 6 at least 6 times line 1? ____Yes ____ No

_____

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

[Signature]

_____

[Name]

_____

[Title]

_____

[Date]

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

**LETTER FROM THE CHIEF FINANCIAL OFFICER**

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

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

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

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified in ADEM Admin. Code R. 335-14-5-.08 and 335-14-6-.08: _____

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

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

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

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

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

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

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

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

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

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

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

**Part A**. Liability Coverage for Accidental Occurrences

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

**ALTERNATIVE I**

1. Amount of annual aggregate liability coverage to be demonstrated $_____

*2. Current assets $_____

*3. Current liabilities $_____

4. Net working capital (line 2 minus line 3). $_____

*5. Tangible net worth $_____

*6. If less than 90% of assets are located in the U.S., give total U.S. assets $_____

---

7. Is line 5 at least $10 million? ____Yes ____ No

8. Is line 4 at least 6 times line 1? ____Yes ____ No

9. Is line 5 at least 6 times line 1? ____Yes ____ No

*10. Are at least 90% of 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 and name of rating service $_____

3. Date of issuance of bond _____

4. Date of maturity of bond _____

*5. Tangible net worth $_____

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

_____

7. Is line 5 at least $10 million? _____Yes _____ No

8. Is line 5 at least 6 times line 1? _____Yes _____ No

*9. Are at least 90% of assets located in the U.S.? If not, complete line 10 _____Yes _____ No

10. Is line 6 at least 6 times line 1? _____Yes _____ No

_____

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

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

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

**ALTERNATIVE I**

1. Sum of current closure and post-closure cost estimates (total of all cost estimates listed above) $_____

2. Amount of annual aggregate liability coverage to be demonstrated $_____

3. Sum of lines 1 and 2 $_____

*4. Total liabilities (if any portion of your closure or post-closure cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6) $_____

*5. Tangible net worth $_____

*6. Net worth $_____

*7. Current assets $_____

*8. Current liabilities $_____

9. Net working capital (line 7 minus line 8) $_____

*10. The sum of net income plus depreciation, depletion, and amortization $_____

*11. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.) $_____

---

12. Is line 5 at least $10 million? _____Yes _____ No

13. Is line 5 at least 6 times line 3? _____Yes _____ No

14. Is line 9 at least 6 times line 3? _____Yes _____ No

*15. Are at least 90% of assets located in the U.S.? If not, complete line 16. _____Yes _____ No

16. Is line 11 at least 6 times line 3?. _____Yes _____ No

17. Is line 4 divided by line 6 less than 2.0? _____Yes _____ No

18. Is line 10 divided by line 4 greater than 0.1?. _____Yes _____ No

19. Is line 7 divided by line 8 greater than 1.5? _____Yes _____ No

---

**ALTERNATIVE II**

1. Sum of current closure and post-closure cost estimates (total of all cost estimates listed above) $_____

2. Amount of annual aggregate liability coverage to be demonstrated $_____

3. Sum of lines 1 and 2 $_____

4. Current bond rating of most recent issuance and name of rating service $_____

5. Date of issuance of bond _____

6. Date of maturity of bond _____

*7. Tangible net worth (if any portion of the closure or post-closure cost estimates is included in “total liabilities” on your

financial statements you may add that portion to this line) $_____

*8. Total assets in the U.S. (required only if less than 90% of assets are located in the U.S.) $_____

_____

9. Is line 7 at least $10 million?. _____Yes _____ No

10. Is line 7 at least 6 times line 3? _____Yes _____ No

*11. Are at least 90% of assets located in the U.S.? 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 subparagraph 335-14-5-.08(12)(g) as such rules were constituted on the date shown immediately below.

[Signature]

_____

[Name]

_____

[Title]

_____

[Date]

_____

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

**CORPORATE GUARANTEE FOR CLOSURE OR POST-CLOSURE CARE**

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

defined in 335-14-1-.02 to the Alabama Department of Environmental Management (the "Department"). Recitals

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

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

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

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

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

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

7. Guarantor agrees that within 30 days after being notified by the Department of a determination that guarantor no longer meets

the financial test criteria or that he is disallowed from continuing as a guarantor of closure or post-closure care, he shall establish alternate financial assurance as specified in ADEM Admin. Code R. 335-14-5-.08 or 335-14-6-.08, as applicable, in the name of [owner or operator] unless [owner or operator] has done so.

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

9. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial assurance requirements of ADEM Admin. Code R. 335-14-5-.08 and 335-335-14-6-.08 for the above-1isted facilities, except as provided in paragraph 10. of this agreement.

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

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

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its “substantial business relationship” with its owner or operator]: Guarantor may terminate this guarantee 120 days following the receipt of notification, through certified mail, by the Department and by [the owner or operator].

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

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

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

Effective date:

_____

[Name of guarantor]

_____

[Authorized signature for guarantor]

_____

[Name of person signing] _____

[Title of person signing] _____

Signature of witness or notary:

_____

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

**Guarantee for Liability Coverage**

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

[335-14-1-.02]", to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

**Recitals**

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

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

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

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

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

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

(c) Bodily injury to:

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

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

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

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

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

(e) Property damage to:

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

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

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

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

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

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by

certified mail, notice to the Alabama Department of Environmental Management ("the Department") and to [owner or operator] that he intends to provide alternate liability coverage as specified in ADEM Admin. Code paragraphs 335-14-5-.08(8) and 335-14-6-.08(8), as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless [owner or operator] has done so.

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

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

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

9. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable requirements of ADEM Admin. Code paragraphs 335-14-5-.08(8) and 335-14-6-.08(8) for the above-1isted facility(ies), except as provided in paragraph 10. of this agreement.

10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]: Guarantor may terminate this guarantee by sending notice by certified mail to the Department and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the Department approves alternate liability coverage complying with ADEM Admin. Code paragraphs 335-14-5-.08(8) and/or 335-14-6-.08(8). [Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator: Guarantor may terminate this guarantee 120 days following receipt of notification,

through certified mail, by the Department and by [the owner or operator].

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

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

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

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

**Certification of Valid Claim**

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

[Signatures]

Principal

[Notary]
Date

[Signatures]

Claimant(s)

[Notary]
Date

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

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

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

Effective date: _____

[Name of guarantor] _____

[Authorized signature for guarantor] _____

[Name of person signing] _____

[Title of person signing] _____

Signature of witness or notary: _____

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

**HAZARDOUS WASTE FACILITY LIABILITY ENDORSEMENT**

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

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

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

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

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

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

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

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

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

[Signature of Authorized Representative of Insurer]

[Type name]

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

[Address of Representative]

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

**HAZARDOUS WASTE FACILITY CERTIFICATE OF LIABILITY INSURANCE**

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

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

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

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

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

(d) Cancellation of the insurance, whether by the Insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of

the owner or operator of the hazardous waste management facility, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the Department.

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

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

[Signature of authorized representative of Insurer]

[Type name]

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

[Address of Representative]

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

Irrevocable Standby Letter of Credit

Name and address of Issuing Institution

Department

Alabama Department of Environmental Management

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

draft, bearing reference to this letter of credit No. _____, and (1) a signed certificate reading as follows:

**Certification of Valid Claim**

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

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

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

(c) Bodily injury to:

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

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

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

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

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

(e) Property damage to:

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

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

(3) Property loaned to [insert grantor];

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

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

[Signatures]

Grantor

[Signatures]

Claimant(s)

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

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

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

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

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

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

[Date]

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

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

**Payment Bond**

Surety Bond No. [Insert number]

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

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

| | **Sudden accidental occurances** | **Nonsudden accidental occurances** |
|---|---|---|
| Penal Sum Per Occurance | (insert amount] | (insert amount] |
| Annual Aggregate | (insert amount] | (insert amount] |

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

**Governing Provisions:**

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

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

**Conditions:**

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

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

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

(c) Bodily injury to:

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

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

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

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

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

(e) Property damage to:

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

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

(3) Property loaned to [insert principal];

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

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

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

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

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

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

**Certification of Valid Claim**

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

[Signature]

Principal

[Notary]

Date

[Signature(s)]

Claimant(s)

[Notary]

Date

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

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

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

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

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

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

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

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

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

**PRINCIPAL**

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate Seal]

CORPORATE SURETY(IES)

[Name and address]

State of incorporation: _____

Liability Limit: $_____

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

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

Bond premium: $_____

(m)1. A trust agreement, as specified in 335-14-5-.08(12)(j) or 335-14-6-.08(12)(j) must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**Trust Agreement**

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

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

accidental occurrences arising from operations of the facility or group of facilities.

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

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

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

Section 1. Definitions. As used in this Agreement:

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

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

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

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

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

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

(c) Bodily injury to:

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

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

**This exclusion applies:**

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

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

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

(e) Property damage to:

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

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

(3) Property loaned to [insert Grantor];

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

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

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

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

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

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

**Certification of Valid Claim**

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

[Signatures]

Grantor

[Signature(s)]

Claimant(s)

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

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

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

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

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

(c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.
Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

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

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

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

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

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

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

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

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

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

Section 10. Annual Valuations. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the Department a

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

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

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

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

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

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

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

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

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

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Department issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from

the Trust fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

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

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

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 335-14-5-.08(12)(m) as such Rules were constituted on the date first above written.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

2. The following is an example of the certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in 335-14-5-.08(8)(j) Rule or 335-14-6-.08(8)(j).

State of _____

County of _____

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

[Signature of Notary Public]

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

**Standby Trust Agreement**

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

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

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

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

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

Section 1. Definitions. As used in this Agreement:

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

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

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

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

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

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

(c) Bodily injury to:

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

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

This exclusion applies:

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

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

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

(e) Property damage to:

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

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

(3) Property loaned by [insert Grantor];

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

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

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

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

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

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

**Certification of Valid Claim**

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

[Signature]

Grantor

[Signatures]

Claimant(s)

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

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of the proceeds from the letter of credit drawn upon by the Trustee in accordance with the requirements of 335-14-5-.08(12)(k) and Section 4. of this Agreement.

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

(a) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940,

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

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

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

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

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

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

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

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

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

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or

to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

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

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

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

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

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

Section 12. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the

funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Department of the Alabama Department of Environmental Management and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

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

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

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

The Department will agree to termination of the Trust, all remaining trust property, less final trust administration expenses, shall be paid to the Grantor.

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

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

Section 17. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Alabama.

Section 18. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation of the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in ADEM Admin. Code subparagraph 335-14-5-.08(12)(n) as such regulations were constituted on the date first above written.

_____

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

_____

[Signature of Trustee]

Attest:

[Title]

[Seal]

2. The following is an example of the certification of acknowledgment which must accompany the trust agreement for a standby trust fund as specified in 335-14-5-.08(8)(h) or 335-14-6-.08(8)(h). State requirements may differ on the proper content of this acknowledgment.

State of _____

County of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

**Author:** Stephen C. Maurer; Vernon C. Crockett; Amy P. Zachry; Justin Martindale; C. Edwin Johnston; James L. Bryant; Vernon H. Crockett, Bradley N. Curvin, Theresa A. Maines; Brian C. Espy; Heather M. Jones; Gary L. Ellis; Sonja B. Favors; Brent A. Wilson; Jonah L. Harris.

**Statutory Authority:** Code of Ala. 1975, §§22-30-11, 22-30-12, 22-30-16.

**History:** February 9, 1983. **Amended:** April 9, 1986; September 29, 1986; February 15, 1988; August 24, 1989; December 6, 1990; January 25, 1992. **Amended:** Filed November 30, 1994; effective January 5, 1995. **Amended:** Filed February 21, 1997; effective March 28, 1997. **Amended:** Filed February 20, 1998; effective March 27, 1998. **Amended:** Filed February 26, 1999; effective April 2, 1999. **Amended:** Filed February 25, 2000; effective March 31, 2000. **Amended:** Filed March 9, 2001; effective April 13, 2001. **Amended:** Filed February 8, 2002; effective March 15, 2002. **Amended:** Filed March 13, 2003; effective April 17, 2003. **Amended:** Filed April 22, 2004; effective May 27, 2004. **Amended:** Filed February 24, 2005; effective March 31, 2005. **Amended:** Filed February 27, 2007; effective April 3, 2007. **Amended:** Filed February 24, 2009; effective March 31, 2009. **Amended:** Filed February 23, 2010; effective March 30, 2010. **Amended:** Filed February 19, 2013; effective March 26, 2013. **Amended:** Filed February 14, 2017; effective March 31, 2017. **Amended:** Filed February 20, 2018; effective April 7, 2018. **Amended:** Published April 28, 2023; effective June 12, 2023. **Amended:** Published _____; effective _____.

**APA-1**

**TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION**

Control: 335

Department or Agency: Alabama Department of Environmental Management Land Division - Hazardous Waste Program

Rule No.: 335-14-5-.08

Rule Title: Financial Requirements

Intended Action: Amend

| | |
|---|---|
| Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? | Yes |
| Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? | Yes |
| Is there another, less restrictive method of regulation available that could adequately protect the public? | No |
| Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? | No |

To what degree?: N/A

| | |
|---|---|
| Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? | NA |
| Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? | Yes |
| Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? | No |

Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of certifying officer: Jeffery W. Kitchens

Jeffery W. Kitchens

Date: Tuesday, August 19, 2025

REC'D & FILED
AUG 19, 2025
LEGISLATIVE SVC AGENCY

**APA-2**

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION - HAZARDOUS WASTE PROGRAM**

**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** Alabama Department of Environmental Management

**RULE NO. & TITLE:** 335-14-5-.08 Financial Requirements

**INTENDED ACTION:** Amend

**SUBSTANCE OF PROPOSED ACTION:**
The Department proposes to revise Rule 335-14-5-.08 to clarify the financial requirements during the post-closure care period and corrective action period for owners and operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.

**TIME, PLACE AND MANNER OF PRESENTING VIEWS:**
Comments may be submitted in writing or orally at a public hearing to be held at 10:00 a.m., October 7, 2025, in the ADEM Main Hearing Room, 1400 Coliseum Boulevard, Montgomery, Alabama 36110. Attendance at the hearing is not necessary to present such data, views, arguments, or comments. All comments should be received by 5:00 p.m., October 7, 2025. Written submissions and other inquiries should be directed to: ADEM Hearing Officer, Office of General Counsel, Alabama Department of Environmental Management, P.O. Box 301463, Montgomery, AL 36130-1463 (street address: 1400 Coliseum Boulevard, Montgomery, AL 36110-2400) or by e-mail at hearing.officer@adem.alabama.gov.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**
Tuesday, October 7, 2025

**CONTACT PERSON AT AGENCY:**
Lynn T. Roper, 334-271-7728

Jeffery W. Kitchens

Jeffery W. Kitchens

(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

**335-14-5-.08 Financial Requirements.**

(1) Applicability.

(a) The requirements of 335-14-5-.08(3), (4), and (8) through (12) apply to owners and operators of all hazardous waste facilities and CAMUs, except as provided otherwise in 335-14-5-.08(1) or 335-14-5-.01(1).

(b) The requirements of 335-14-5-.08(5), (6), and (7) apply only to owners and operators of:

1. Disposal facilities;

2. Piles and surface impoundments from which the owner or operator intends to remove the wastes at closure, to the extent that these paragraphs are made applicable to such facilities in 335-14-5-.11(9) and 335-14-5-.12(9);

3. Tank systems that are required under 335-14-5-.10(8) to meet the requirements for landfills;

4. Containment buildings that are required under 335-14-5-.30(3) to meet the requirements for landfills;

5. Corrective action management units in which wastes remain after closure; and

6. Other hazardous waste management units which are unable to demonstrate closure by removal.

(c) The requirements of 335-14-5-.08(10) and (11) apply to owners and operators of all facilities required to perform corrective actions pursuant to 335-14-5-.06(11) or (12), section 3008(h) or RCRA, as applicable.

(d) Except for the requirements to provide and update cost estimates, as described in 335-14-5-.08(3), 335-14-5-.08(5), and 335-14-5-.08(10), the State of Alabama and the Federal government are exempt from the requirements of 335-14-5-.08.

(e) The Department may replace all or part of the requirements of 335-14-5-.08 applying to a regulated unit with alternative requirements for financial assurance set out in the permit or in an enforceable document [as defined in 335-14-8-.01(1)(c)7.], where the Department:

1. Prescribes alternative requirements for the regulated unit under 335-14-5-.06(1)(f) and/or 335-14-5-.07(1)(c); and

2. Determines that it is not necessary to apply the requirements of 335-14-5-.08 because the alternative financial assurance requirements will protect human health and the environment.

(2) [Reserved]

(3) Cost estimate for closure.

(a) The owner or operator must have a detailed written estimate, in a format specified by the Department, in current dollars, of the cost of closing the facility in accordance with the requirements in 335-14-5-.07(2) through (6) and applicable closure requirements in 335-14-5-.09(9), 335-14-5-.10(8), 335-14-5-.11(9), 335-14-5-.12(9), 335-14-5-.13(11), 335-14-5-.14(11), 335-14-5-.15(12), 335-14-5-.19(1) through (3), 335-14-5-.23(6), 335-14-5-.24(2) through (4), and 335-14-5-.30(3).

1. The estimate must equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan; and

2. The closure-cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in 335-14-1-.02.) The owner or operator may use costs for on-site disposal if he can demonstrate that on-site disposal capacity will exist at all times over the life of the facility.

3. The closure-cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, or non-hazardous wastes if applicable under 335-14-5-.07(4)(d), facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

4. The owner or operator may not incorporate a zero cost for hazardous wastes, or non-hazardous wastes if applicable under 335-14-5-.07(4)(d), that might have economic value.

(b) During the active life of the facility, the owner or operator must adjust the closure-cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with 335-14-5-.08(4). For owners and operators using the

financial test or corporate guarantee, the closure-cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Department as specified in 335-14-5-.08(4)(f)5. The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business, as specified in 335-14-5-.08(3)(b)1. and 2. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

1. The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.

2. Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

(c) During the active life of the facility, the owner or operator must revise the closure-cost estimate no later than 30 days after the Department has approved the request to modify the closure plan, if the change in the closure plan increases the cost of closure. The revised closure-cost estimate must be adjusted for inflation as specified in 335-14-5-.08(3).

(d) The owner or operator must keep the following at the facility during the operating life of the facility: the latest closure cost estimate prepared in accordance with 335-14-5-.08(3)(a) and (3)(c) and, when this estimate has been adjusted in accordance with 335-14-5-.08(3)(b), the latest adjusted closure cost estimate.

(4) Financial assurance for closure. An owner or operator of each facility must establish financial assurance for closure of the facility. He must choose from the options as specified in 335-14-5-.08(4)(a) through (f).

(a) Closure trust fund.

1. An owner or operator may satisfy the requirements of 335-14-5-.08(4) by establishing a closure trust fund which conforms to the requirements of 335-14-5-.08(4)(a) and submitting an originally signed duplicate of the trust agreement to the Department. An owner or operator of a new facility must submit the originally signed

duplicate of the trust agreement to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

2. The wording of the trust agreement must be identical to the wording specified in 335-14-5-.08(12)(a)1. and the trust agreement must be accompanied by a formal certification of acknowledgment (for example, see 335-14-5-.08(12)(a)2.). Schedule A of the trust agreement must be updated and an originally signed duplicate must be submitted to the Department, within 60 days after a change in the amount of the current closure cost estimate covered by the agreement.

3. Payments into the trust fund must be made annually by the owner or operator over the term of the initial Hazardous Waste Facility Permit, over the remaining operating life of the facility as estimated in the closure plan, or eight years, whichever period is shorter. The payments into the closure trust fund must be made as follows:

(i) For a new facility, the first payment must be made before the initial receipt of hazardous waste for treatment, storage, or disposal. A receipt from the trustee for this payment must be submitted by the owner or operator to the Department before the initial receipt of hazardous waste. Subsequent payments must be made no later than 30 days after the anniversary date of the first payment. Payments must be made according to the following schedule:

(I) If the initial permit is for a term of one year, 100% of the current closure cost estimate must be paid initially;

(II) If the initial permit is for a term of two years, 50% of the current closure cost estimate must be paid each of the two years;

(III) If the initial permit is for a term of three years, 34% of the current closure cost estimate must be paid initially and 33% of the current closure cost estimate must be paid each of the two subsequent years;

(IV) If the initial permit is for a term of four years, 25% of the current closure cost estimate must be paid each of the four years;

(V) If the initial permit is for a term of five years, 20% of the current closure cost estimate must be paid each of the five years;

(VI) If the initial permit is for a term of six years, 20% of the current closure cost estimate must be paid each of the first four years and 10% of the current closure cost estimate must be paid each of the two subsequent years;

(VII) If the initial permit is for a term of seven years, 20% of the current closure cost estimate must be paid each of the first three years and 10% of the current closure cost estimate must be paid each of the four subsequent years; and

(VIII) If the initial permit is for a term of eight years or longer, 20% of the current closure cost estimate must be paid each of the first two years and 10% of the current closure cost estimate must be paid each of the six subsequent years;

(ii) Following the initial payment, all subsequent annual payments must reconcile any difference between the actual value of the trust fund and the required value of the trust fund. The required value of the trust fund accounts for adjustments to the closure-cost estimate made in accordance with 335-14-5-.08(3), and may be calculated by determining the value of the trust fund if the current payment and all previous payments were made using the current closure-cost estimate.

(iii) If an owner or operator of an existing facility establishes a trust fund as specified in 335-14-6-.08(4)(a), and the value of the trust fund is less than the current closure cost estimate when a permit is issued for the facility, the amount of the current closure cost estimate still to be paid into the trust fund must be paid according to the schedule set out in 335-14-5-.08(4)(a)3.(i).

4. The owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the

current closure cost estimate at the time the fund is established. However, he must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in 335-14-5-.08(4)(a)3.

5. If the owner or operator establishes a closure trust fund after having used one or more alternate mechanisms specified in 335-14-5-.08(4) or 335-14-6-.08(4), his first payment must be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to specifications of 335-14-5-.08(4)(a) and 335-14-6-.08(4)(a), as applicable.

6. After the pay-in period is completed, whenever the current closure cost estimate changes, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance as specified in 335-14-5-.08(4) to cover the difference.

7. If the value of the trust fund is greater than the total amount of the current closure cost estimate, the owner or operator may submit a written request to the Department for release of the amount in excess of the current closure cost estimate.

8. If an owner or operator substitutes other financial assurance as specified in 335-14-5-.08(4) for all or part of the trust fund, he may submit a written request to the Department for release of the amount in excess of the current closure cost estimate covered by the trust fund.

9. Within 60 days after receiving a request from the owner or operator for release of funds as specified in 335-14-5-.08(4)(a)7. or (a)8., the Department will instruct the trustee to release to the owner or operator such funds as the Department specifies in writing.

10. After beginning partial or final closure, an owner or operator or another person authorized to conduct partial or final closure may request reimbursements for partial or final closure expenditures by submitting itemized bills to the Department. The owner or operator may

request reimbursements for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for partial or final closure activities, the Department will instruct the trustee to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the Department has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, he may withhold reimbursements of such amounts as he deems prudent until he determines, in accordance with 335-14-5-.08(4)(i), that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Department does not instruct the trustee to make such reimbursements, he will provide the owner or operator with a detailed written statement of reasons.

11. The Department will agree to termination of the trust when:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-5-.08(4); or

(ii) The Department releases the owner or operator from the requirements of 335-14-5-.08(4) in accordance with 335-14-5-.08(4)(i).

(b) Surety bond guaranteeing payment into a closure trust fund.

1. An owner or operator may satisfy the requirements of 335-14-5-.08(4) by obtaining a surety bond which conforms to the requirements of 335-14-5-.08(4)(b) and submitting the bond to the Department. An owner or operator of a new facility must submit the bond to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

2. The wording of the surety bond must be identical to the wording specified in 335-14-5-.08(12)(b).

3. The owner or operator who uses a surety bond to satisfy the requirements of 335-14-5-.08(4) must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund must meet the requirements specified in 335-14-5-.08(4)(a), except that:

(i) An originally signed duplicate of the trust agreement must be submitted to the Department with the surety bond; and

(ii) Until the standby trust fund is funded pursuant to the requirements of 335-14-5-.08(4), the following are not required by these regulations:

(I) Payments into the trust fund as specified in 335-14-5-.08(4)(a);

(II) Updating of Schedule A of the trust agreement (see 335-14-5-.08(12)(a)) to show current closure cost estimates;

(III) Annual valuations as required by the trust agreement; and

(IV) Notices of nonpayment as required by the trust agreement.

4. The bond must guarantee that the owner or operator will:

(i) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility; or

(ii) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin final closure issued by the Department becomes final, or within 15 days after an order to begin final closure is issued by a U.S. district court or other court of competent jurisdiction; or

(iii) Provide alternate financial assurance as specified in 335-14-5-.08(4) and obtain the

Department's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the bond from the surety.

5. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

6. The penal sum of the bond must be in an amount at least equal to the current closure cost estimate, except as provided in 335-14-5-.08(4)(g).

7. Whenever the current closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in 335-14-5-.08(4) to cover the increase. Whenever the current closure cost estimate decreases the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the Department.

8. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts.

9. The owner or operator may cancel the bond if the Department has given prior written consent. The Department will provide such written consent when:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-5-.08(4); or

(ii) The Department releases the owner or operator from the requirements of 335-14-5-.08(4) in accordance with 335-14-5-.08(4)(i).

(c) Surety bond guaranteeing performance of closure.

1. An owner or operator may satisfy the requirements of 335-14-5-.08(4) by obtaining a surety bond which conforms to the requirements of 335-14-5-.08(4)(c) and submitting

the bond to the Department. An owner or operator of a new facility must submit the bond to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

2. The wording of the surety bond must be identical to the wording specified in 335-14-5-.08(12)(c).

3. The owner or operator who uses a surety bond to satisfy the requirements of 335-14-5-.08(4) must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Department. This standby trust must meet the requirements specified in 335-14-5-.08(4)(a), except that:

(i) An originally signed duplicate of the trust agreement must be submitted to the Department with the surety bond; and

(ii) Unless the standby trust fund is funded pursuant to the requirements of 335-14-5-.08, the following are not required by these regulations:

(I) Payments into the trust fund as specified in 335-14-5-.08(4)(a);

(II) Updating of Schedule A of the trust agreement (see 335-14-5-.08(12)(a)) to show current closure cost estimates;

(III) Annual valuations as required by the trust agreement; and

(IV) Notices of nonpayment as required by the trust agreement.

4. The bond must guarantee that the owner or operator will:

(i) Perform final closure in accordance with the closure plan and other requirements of the permit for the facility whenever required to do so; or

(ii) Provide alternate financial assurance as specified in 335-14-5-.08, and obtain the Department's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the bond from the surety.

5. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final administrative determination pursuant to Sections 22-30-19 and 22-22A-7, Code of Alabama 1975, that the owner or operator has failed to perform final closure in accordance with the approved closure plan and other permit requirements when required to do so, under the terms of the bond the surety will perform final closure as guaranteed by the bond or will deposit the amount of the penal sum into the standby trust fund.

6. The penal sum of the bond must be in an amount at least equal to the current closure cost estimate.

7. Whenever the current closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in 335-14-5-.08(4). Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the Department.

8. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts.

9. The owner or operator may cancel the bond if the Department has given prior written consent. The Department will provide such written consent when:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-5-.08(4); or

(ii) The Department releases the owner or operator from the requirements of 335-14-5-.08(4) in accordance with 335-14-5-.08(4)(i).

10. The surety will not be liable for deficiencies in the performance of closure by the owner or operator after the Department releases the owner or operator from the requirements of 335-14-5-.08(4) in accordance with 335-14-5-.08(4)(i).

(d) Closure letter of credit.

1. An owner or operator may satisfy the requirements of 335-14-5-.08(4) by obtaining an irrevocable standby letter of credit which conforms to the requirements of 335-14-5-.08(4)(d) and submitting the letter to the Department. An owner or operator of a new facility must submit the letter of credit to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The letter of credit must be effective before this initial receipt of hazardous waste. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or State agency.

2. The wording of the letter of credit must be identical to the wording specified in 335-14-5-.08(12)(d).

3. An owner or operator who uses a letter of credit to satisfy the requirements of 335-14-5-.08(4) must also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Department will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund must meet the requirements of the trust fund specified in 335-14-5-.08(4)(a), except that:

(i) An originally signed duplicate of the trust agreement must be submitted to the Department with the letter of credit; and

(ii) Unless the standby trust fund is funded pursuant to the requirements of 335-14-5-.08(4), the following are not required by these regulations:

(I) Payments into the trust fund as specified in 335-14-5-.08(4)(a);

(II) Updating of Schedule A of the trust agreement (see 335-14-5-.08(12)(a)) to show current closure cost estimates;

(III) Annual valuations as required by the trust agreement; and

(IV) Notices of nonpayment as required by the trust agreement.

4. The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: the EPA Identification Number, name, and address of the facility, and the amount of funds assured for closure of the facility by the letter of credit.

5. The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Department by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the Department have received the notice, as evidenced by the return receipts.

6. The letter of credit must be issued in an amount at least equal to the current closure cost estimate, except as provided in 335-14-5-.08(4)(g).

7. Whenever the current closure cost estimate increases to an amount greater than the amount of the credit, the owner or operator, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in 335-14-5-.08(4) to cover the increase. Whenever the current closure cost estimate decreases, the amount of the credit may be reduced to the amount of the current closure cost estimate following written approval by the Department.

8. Following a final administrative determination pursuant to Sections 22-30-19 and 22-22A-7, Code of

Alabama 1975, that the owner or operator has failed to perform final closure in accordance with the closure plan and other permit requirements when required to do so, the Department may draw on the letter of credit.

9. If the owner or operator does not establish alternate financial assurance as specified in 335-14-5-.08(4) and obtain written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice from issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Department will draw on the letter of credit. The Department may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the Department will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in 335-14-5-.08(4) and obtain written approval of such assurance from the Department.

10. The Department will return the letter of credit to the issuing institution for termination when:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-5-.08(4); or

(ii) The Department releases the owner or operator from the requirements of 335-14-5-.08(4) in accordance with 335-14-5-.08(4)(i).

(e) Closure insurance.

1. An owner or operator may satisfy the requirements of 335-14-5-.08(4) by obtaining closure insurance which conforms to the requirements of 335-14-5-.08(4)(e) and submitting an originally signed certificate of such insurance to the Department. An owner or operator of a new facility must submit the certificate of insurance to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The insurance must be effective before this initial receipt of hazardous waste. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in the State of Alabama, and must not be captive insurance as defined in 335-14-51-.02 unless the requirements of 335-14-5-.08(4)(e)1.(ii) are met.

(i) The use of insurance to demonstrate financial assurance for closure and post-closure care pertains exclusively to those insurance policies underwritten by commercial property and casualty insurers (primary or excess and surplus lines), through which, in the insurance contract, the financial burden for closure and post-closure care is transferred to the third-party insurer. Except as provided in 335-14-5-.08(4)(e)1.(ii), the third-party insurer must assume financial responsibility for this accepted risk, using its own pool of resources that is independent, separate, and unrelated to that of the insured (owner or operator). The use of insurance policies underwritten by captive insurers therefore is prohibited unless the owner/operator can demonstrate compliance with condition 335-14-5-.08(4)(e)1.(ii) for each year captive insurance is used.

(ii) Captive insurance may be used for closure insurance only when the facility provides annual documentation to the Department that the owner or operator is in compliance with the requirements of Rule 335-14-5-.08(4)(f).

2. The wording of the certificate of insurance must be identical to the wording specified in 335-14-5-.08(12)(e).

3. The closure insurance policy must be issued for a face amount at least equal to the current closure cost estimate, except as provided in 335-14-5-.08(4)(g). The term “face amount” means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

4. The closure insurance policy must guarantee that funds will be available to close the facility whenever final closure occurs. The policy must also guarantee that once final closure begins, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Department, to such party or parties as the Department specifies.

5. After beginning partial or final closure, an owner or operator or any other person authorized to conduct closure may request reimbursements for closure

expenditures by submitting itemized bills to the Department. The owner or operator may request reimbursements for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for closure activities, the Department will instruct the insurer to make reimbursements in such amounts as the Department specifies, in writing, if the Department determines that the partial or final closure expenditures are in accordance with the approved closure plan or otherwise justified. If the Department has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the face amount of the policy, he may withhold reimbursements of such amounts as he deems prudent until he determines, in accordance with 335-14-5-.08(4)(i), that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Department does not instruct the insurer to make such reimbursements, he will provide the owner or operator with a detailed written statement of reasons.

6. The owner or operator must maintain the policy in full force and effect until the Department consents to termination of the policy by the owner or operator as specified in 335-14-5-.08(4)10. Failure to pay the premium, without substitution of alternate financial assurance as specified in 335-14-5-.08(4), will constitute a significant violation of these regulations, warranting such remedy as the Department deems necessary. Such violation will be deemed to begin upon receipt by the Department of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

7. Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

8. The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the

insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the Department. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Department and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:

(i) The Department deems the facility abandoned; or

(ii) The permit is terminated or revoked or a new permit is denied; or

(iii) Closure is ordered by the Department or a court of competent jurisdiction; or

(iv) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or

(v) The premium due is paid.

9. Whenever the current closure cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in 335-14-5-.08(4) to cover the increase. Whenever the current closure cost estimate decreases, the face amount may be reduced to the amount of the current closure cost estimate following written approval by the Department.

10. The Department will give written consent to the owner or operator that it may terminate the insurance policy when:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-5-.08(4); or

(ii) The Department releases the owner or operator from the requirements of 335-14-5-.08(4) in accordance with 335-14-5-.08(4)(i).

(f) Financial test and corporate guarantee for closure.

1. An owner or operator may satisfy the requirements of 335-14-5-.08(4) by demonstrating that he passes a financial test as specified in 335-14-5-.08(4). To pass this test the owner or operator must meet the criteria of either 335-14-5-.08(4)(f)1.(i) or (f)1.(ii):

(i) The owner or operator must have:

(I) Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

(II) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates; and

(III) Tangible net worth of at least $10 million; and

(IV) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates.

(ii) The owner or operator must have:

(I) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

(II) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates; and

(III) Tangible net worth of at least $10 million; and

(IV) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates.

2. The phrase “current closure and post-closure cost estimates” as used in 335-14-5-.08(4)(f)1. refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer (335-14-5-.08(12)).

3. To demonstrate that he meets this test, the owner or operator must submit the following items to the Department:

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in 335-14-5-.08(12)(f);

(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(iii) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(I) He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(II) In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

4. An owner or operator of a new facility must submit the items specified in 335-14-5-.08(4)(f)3. to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal.

5. After the initial submission of items specified in 335-14-5-.08(4)(f)3., the owner or operator must send updated information to the Department within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in 335-14-5-.08(4)(f)3.

6. If the owner or operator no longer meets the requirements of 335-14-5-.08(4)(f)1., he must send notice to the Department of intent to establish alternate

financial assurance as specified in 335-14-5-.08(4). The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide the alternate financial assurance within 120 days after the end of such fiscal year.

7. The Department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of 335-14-5-.08(4)(f)1., require reports of financial condition at any time from the owner or operator in addition to those specified in 335-14-5-.08(4)(f)3. If the Department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of 335-14-5-.08(4)(f)1., the owner or operator must provide alternate financial assurance as specified in 335-14-5-.08(4) within 30 days after notification of such a finding.

8. The Department may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see 335-14-5-.08(4)(f)3.(ii)). An adverse opinion or a disclaimer of opinion will be caused for disallowance. The Department will evaluate other qualifications on an individual basis. The owner or operator must provide alternate financial assurance as specified in 335-14-5-.08(4) within 30 days after notification of the disallowance.

9. The owner or operator is no longer required to submit the items specified in 335-14-5-.08(4)(f)3. when:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-5-.08(4); or

(ii) The Department releases the owner or operator from the requirements of 335-14-5-.08(4) in accordance with 335-14-5-.08(4)(i).

10. An owner or operator may meet the requirements of 335-14-5-.08(4) by obtaining a written guarantee, hereinafter referred to as “corporate guarantee”. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a “substantial business

relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in 335-14-5-.08(4)(f)1. through 8. and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in 335-14-5-.08(12)(h). The certified copy of the guarantee must accompany the items sent to the Department as specified in 335-14-5-.08(4)(f)3. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee must provide that:

(i) If the owner or operator fails to perform final closure of a facility covered by the corporate guarantee in accordance with the closure plan and other permit requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in 335-14-5-.08(4)(a) in the name of the owner or operator.

(ii) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts.

(iii) If the owner or operator fails to provide alternate financial assurance as specified in 335-14-5-.08(4) and obtain the written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the owner or operator.

(g) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of 335-14-5-.08(4) by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds

guaranteeing payment into a trust fund, letters of credit, and insurance. The mechanisms must be as specified in 335-14-5-.08(4)(a), (b), (d), and (e), respectively, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The Department may use any or all of the mechanisms to provide for closure of the facility.

(h) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in 335-14-5-.08(4) to meet the requirements of 335-14-5-.08(4) for more than one facility. Evidence of financial assurance submitted to the Department must include a list showing, for each facility, the EPA or Alabama Identification Number, name, address, and the amount of funds for closure assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for closure of any of the facilities covered by the mechanism, the Department may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

(i) Release of the owner or operator from the requirements of 335-14-5-.08(4). Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Department will notify the owner or operator in writing that he is no longer required by 335-14-5-.08(4) to maintain financial assurance for final closure of the facility, unless the Department has reason to believe that final closure has not been in accordance with the approved closure plan. The Department shall provide the owner or operator a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan.

(5) Cost estimate for post-closure care.

(a) The owner or operator of a disposal surface impoundment, disposal miscellaneous unit, land treatment unit, landfill unit, other hazardous waste management unit or CAMU which cannot demonstrate closure by removal, or surface impoundment

or waste pile required under Rules 335-14-5-.11(9) and 335-14-5-.12(9) to prepare a contingent closure and post-closure plan must have a detailed written estimate in a format specified by the Department, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure requirements in 335-14-5-.07(8) through (11), 335-14-5-.11(9), 335-14-5-.12(9), 335-14-5-.13(11), 335-14-5-.14(11), and 335-14-5-.24(4).

1. The post-closure cost estimate must be based on the costs to the owner or operator of hiring a third party to conduct post-closure care activities. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in 335-14-1-.02.)

2. The post-closure cost estimate is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required under 335-14-5-.07(8). Unless expressly extended or shortened by the Department in writing, the post-closure care period shall be assumed to be thirty years for the purposes of calculating the post-closure cost estimate.

(b) During the active life of the facility and the post-closure care period, the owner or operator must adjust the post-closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with 335-14-5-.08(6). For owners or operators using the financial test or corporate guarantee, the post-closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before the submission of updated information to the Department as specified in 335-14-5-.08(6)(f)5. The adjustment may be made by recalculating the post-closure cost estimate in current dollars or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business as specified in 335-14-5-.08(5)(b)1. and 2. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

1. The first adjustment is made by multiplying the post-closure cost estimate by the inflation factor. The result is the adjusted post-closure cost estimate.

2. Subsequent adjustments are made by multiplying the latest adjusted post-closure cost estimate by the latest inflation factor.

(c) During the active life of the facility and the post-closure care period, the owner or operator must revise the post-closure cost estimate within 30 days after the Department has approved the request to modify the post-closure plan, if the change in the post- closure plan increases the cost of the post-closure care. The revised post-closure cost estimate must be adjusted for inflation as specified in 335-14-5-.08(5)(b).

(d) The owner or operator must keep the following at the facility during the operating life of the facility and throughout the post-closure care period: the latest post-closure cost estimate prepared in accordance with 335-14-5-.08(5)(a) and (5)(c) and, when this estimate has been adjusted in accordance with 335-14-5-.08(5)(b), the latest adjusted post-closure cost estimate.

(6) Financial assurance for post-closure. The owner or operator of a hazardous waste management unit subject to the requirements of 335-14-5-.08(5) must establish financial assurance for post-closure care in accordance with the approved post-closure plan for the facility 60 days prior to the initial receipt of hazardous waste or the effective date of the requirement, whichever is later. He must choose from the following options:

(a) Post-closure trust fund.

1. An owner or operator may satisfy the requirements of 335-14-5-.08(6) by establishing a post-closure trust fund which conforms to the requirements of 335-14-5-.08(6)(a) and submitting an originally signed duplicate of the trust agreement to the Department. An owner or operator of a new facility must submit the originally signed duplicate of the trust agreement to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

2. The wording of the trust agreement must be identical to the wording specified in 335-14-5-.08(12)(a)1. and the trust agreement must be accompanied by a formal certification of acknowledgment (for example, see 335-14-5-.08(12)(a)2.). Schedule A of the trust agreement must be updated, and an originally signed duplicate must

be submitted to the Department, within 60 days after a change in the amount of the current post-closure cost estimate covered by the agreement.

3. The owner or operator of an operating facility must make annual payments into the fund over the term of the initial Hazardous Waste Facility Permit, over the remaining operating life of the facility as estimated in the closure plan, or eight years, whichever period is shorter. The owner or operator of a post-closure or SWMU corrective action facility must make payments into the fund over a term of eight years beginning on the effective date of the initial post-closure permit or enforceable document (as defined in 335-14-8-.01(1)(c)7.). The payments into the post-closure trust fund must be made as follows:

(i) For a new or existing operating facility, the first payment must be made before the initial receipt of hazardous waste for treatment, storage or disposal. A receipt from the trustee for this payment must be submitted by the owner or operator to the Department before the initial receipt of hazardous waste. For a post-closure facility or SWMU CA facility, the first payment must be made no later than 60 days following the effective date of the initial post-closure permit. A receipt from the trustee for this payment must be submitted by the owner or operator to the Department no later than 30 days following the payment date. Subsequent payments must be made no later than 30 days after the anniversary date of the first payment. Payments must be made according to the following schedule:

(I) If the initial permit is for a term of one year, 100% of the current post-closure cost estimate must be paid initially;

(II) If the initial permit is for a term of two years, 50% of the current post-closure cost estimate must be paid each of the two years;

(III) If the initial permit is for a term of three years, 34% of the current post-closure cost estimate must be paid initially and 33% of the current post-closure cost estimate must be paid each of the two subsequent years.

(IV) If the initial permit is for a term of four years, 25% of the current post-closure cost estimate must be paid each of the four years;

(V) If the initial permit is for a term of five years, 20% of the current post-closure cost estimate must be paid each of the five years;

(VI) If the initial permit is for a term of six years, 20% of the current post-closure cost estimate must be paid each of the first four years and 10% of the current cost estimate must be paid each of the two subsequent years;

(VII) If the initial permit is for a term of seven years, 20% of the current post-closure cost estimate must be paid each of the first three years and 10% of the current post-closure cost estimate must be paid each of the four subsequent years; and

(VIII) If the initial permit is for a term of eight years or longer, 20% of the current post-closure cost estimate must be paid each of the first two years and 10% of the current post-closure cost estimate must be paid each of the six subsequent years;

(ii) Following the initial payment, all subsequent annual payments must reconcile any difference between the actual value of the trust fund and the required value of the trust fund. The required value of the trust fund accounts for adjustments to the post-closure cost estimate made in accordance with 335-14-5-.08(5), and may be calculated by determining the value of the trust fund if the current payment and all previous payments were made using the current post-closure cost estimate.

(iii) If an owner or operator of an existing facility establishes a trust fund as specified in 335-14-6-.08(6)(a), and the value of the trust fund is less than the current post-closure cost estimate when a permit is issued for the facility, the amount of the current post-closure cost estimate still to be paid into the trust fund must be paid according to the schedule set out in 335-14-5-.08(6)3.(i).

4. The owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the

current post-closure cost estimate at the time the fund is established. However he must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in 335-14-5-.08(6)(a)3.

5. If the owner or operator establishes a post-closure trust fund after having used one or more alternate mechanisms specified in 335-14-5-.08(6) or in 335-14-6-.08(6), his first payment must be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to specifications of 335-14-5-.08(6)(a) and 335-14-6-.08(6)(a), as applicable.

6. After the pay-in period is completed, whenever the current post-closure cost estimate changes during the operating life of the facility and the post-closure care period, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current post-closure cost estimate, or obtain other financial assurance as specified in 335-14-5-.08(6) to cover the difference.

7. During the operating life of the facility and throughout the post-closure care period, if the value of the trust fund is greater than the total amount of the current post-closure cost estimate, the owner or operator may submit a written request to the Department for release of the amount in excess of the current post-closure cost estimate.

8. If an owner or operator substitutes other financial assurance as specified in 335-14-5-.08(6) for all or part of the trust fund, the owner or operator may submit a written request to the Department for release of the amount in excess of the current post-closure cost estimate covered by the trust fund.

9. Within 60 days after receiving a request from the owner or operator for release of funds as specified in 335-14-5-.08(6)(a)7. or (a)8., the Department will approve or disapprove the request for release. If the Department approves the owner or operator’s request for release, the Department will instruct the trustee to

release to the owner or operator such funds as the Department specifies in writing.

10. Following the completion of the pay-in-period, the Department may approve a release of funds if the owner or operator demonstrates to the Department that the value of the trust fund exceeds the remaining cost of post-closure care.

11. Following the completion of the pay-in-period, an owner or operator or any other person authorized to conduct post-closure care may request reimbursements for post-closure care expenditures by submitting itemized bills to the Department. Within 60 days after receiving bills for post-closure care activities, the Department will instruct the trustee to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the post-closure care expenditures are in accordance with the approved post-closure plan or otherwise justified. If the Department does not instruct the trustee to make such reimbursements, it will provide the owner or operator with a detailed written statement of reasons.

12. The Department will agree to termination of the trust when:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-5-.08(6) and approve by the Department; or

(ii) The Department releases the owner or operator from the requirements of 335-14-5-.08(6) in accordance with 335-14-5-.08(6)(i).

(b) Surety bond guaranteeing payment into a post-closure trust fund.

1. An owner or operator may satisfy the requirements of 335-14-5-.08(6) by obtaining a surety bond which conforms to the requirements of 335-14-5-.08(6)(b) and submitting the bond to the Department. An owner or operator of a new facility must submit the bond to the Department at least 60 days before the date on which hazardous waste is first received for disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

2. The wording of the surety bond must be identical to the wording specified in 335-14-5-.08(12)(b).

3. The owner or operator who uses a surety bond to satisfy the requirements of 335-14-5-.08(6) must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund must meet the requirements specified in 335-14-5-.08(6)(a), except that:

(i) An originally signed duplicate of the trust agreement must be submitted to the Department with the surety bond; and

(ii) Until the standby trust fund is funded pursuant to the requirements of 335-14-5-.08(6), the following are not required by these regulations:

(I) Payments into the trust fund as specified in 335-14-5-.08(6)(a);

(II) Updating of Schedule A of the trust agreement (see 335-14-5-.08(12)(a)) to show current post-closure cost estimates;

(III) Annual valuations as required by the trust agreement; and

(IV) Notices of nonpayment as required by the trust agreement.

4. The bond must guarantee that the owner or operator will:

(i) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility; or

(ii) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin final closure issued by the Department becomes final, or within 15 days after an order to begin final closure is issued by a U.S. district court or other court of competent jurisdiction; or

(iii) Provide alternate financial assurance as specified in this section, and obtain the

Department's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Department of notice of cancellation of the bond from the surety.

5. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

6. The penal sum of the bond must be in an amount at least equal to the current post-closure cost estimate except as provided in 335-14-5-.08(6)(g).

7. Whenever the current post-closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in 335-14-5-.08(6) to cover the increase. Whenever the current post-closure cost estimate decreases, the penal sum may be reduced to the amount of the current post-closure cost estimate following written approval by the Department.

8. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts.

9. The owner or operator may cancel the bond if the Department has given prior written consent. The Department will provide such written consent when:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-5-.08(6); or

(ii) The Department releases the owner or operator from the requirements of 335-14-5-.08(6) in accordance with 335-14-5-.08(6)(i).

(c) Surety bond guaranteeing performance of post-closure care and/or corrective action.

1. An owner or operator may satisfy the requirements of 335-14-5-.08(6) and 335-14-5-.08(11) by obtaining a surety bond which conforms to the requirements of 335-14-5-.08(6)(c) and submitting the bond to the Department. An owner or operator of a new or existing operating facility must submit the bond to the Department at least 60 days before the date on which hazardous waste is first received for disposal. The owner or operator of a post-closure or SWMU corrective action facility must submit the bond to the Department at least 60 days following the issuance to the initial post-closure permit or enforceable document (as defined in 335-14-8-.01(1)(c)7.). The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

2. The wording of the surety bond must be identical to the wording specified in 335-14-5-.08(12)(c).

3. The owner or operator who uses a surety bond to satisfy the requirements of 335-14-5-.08(6) must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund must meet the requirements specified in 335-14-5-.08(6)(a), except that:

(i) An originally signed duplicate of the trust agreement must be submitted to the Department with the surety bond; and

(ii) Unless the standby trust fund is funded pursuant to the requirements of 335-14-5-.08(6), the following are not required by these regulations:

(I) Payments into the trust fund as specified in 335-14-5-.08(6)(a);

(II) Updating of Schedule A of the trust agreement (see 335-14-5-.08(12)(a)) to show current post-closure cost estimates;

(III) Annual valuations as required by the trust agreement; and

(IV) Notices of nonpayment as required by the trust agreement.

4. The bond must guarantee that the owner or operator will:

(i) Perform post-closure care and/or corrective action in accordance with the post-closure plan, corrective action plan, and other requirements of the permit for the facility; or

(ii) Provide alternate financial assurance as specified in 335-14-5-.08(6), and obtain the Department's written approval of the assurance provided, within 90 days of receipt by both the owner or operator and the Department of a notice of cancellation of the bond from the surety.

5. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final administrative determination pursuant to Sections 22-30-19 and 22-22A-7, Code of Alabama 1975, that the owner or operator has failed to perform post-closure care and/or corrective action in accordance with the approved post-closure plan, corrective action plan, and other permit or enforceable document (as defined in 335-14-8-.01(1)(c)7.) requirements under the terms of the bond the surety will perform post-closure care and/or corrective action in accordance with the post-closure plan, corrective action plan, and other permit or enforceable document (as defined in 335-14-8-.01(1)(c)7.) requirements or will deposit the amount of the penal sum into the standby trust fund.

6. The penal sum of the bond must be in an amount at least equal to the current post-closure and/or corrective action cost estimate.

7. Whenever the current post-closure and/or corrective action cost estimate increases to an amount greater than the penal sum during the operating life of the facility or the post-closure care period, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current post-closure and/or corrective action cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in 335-14-5-.08(6). Whenever the current post-closure and/or corrective action cost estimate decreases during the operating life of the facility or the post-closure care period, the penal sum may be reduced to the amount of the current post-closure and/or corrective

action cost estimate following written approval by the Department.

8. During the period of post-closure care and/or corrective action, the Department may approve a decrease in the penal sum if the owner or operator demonstrates to the Department that the amount exceeds the remaining cost of post-closure care and/or corrective action.

9. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts.

10. The owner or operator may cancel the bond if the Department has given prior written consent. The Department will provide such written consent when:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-5-.08(6) and approved by the Department; or

(ii) The Department releases the owner or operator from the requirements of 335-14-5-.08(6) in accordance with 335-14-5-.08(6)(i) or 335-14-5-.08(11).

11. The surety will not be liable for deficiencies in the performance of post-closure care by the owner or operator after the Department releases the owner or operator from the requirements of 335-14-5-.08(6) in accordance with 335-14-5-.08(6)(i) or 335-14-5-.08(11)(f).

(d) Post-closure and/or corrective action letter of credit.

1. An owner or operator may satisfy the requirements of 335-14-5-.08(6) and 335-14-5-.08(11) by obtaining an irrevocable standby letter of credit which conforms to the requirements of 335-14-5-.08(6)(d) and submitting the letter to the Department. An owner or operator of a new facility must submit the letter of credit to the Department at least 60 days before the date on which hazardous waste is first received for disposal. The owner or operator of a post-closure or SWMU corrective action facility must submit the letter of credit to the Department at least 60 days following the issuance to the initial post-closure permit or enforceable document (as

defined in 335-14-8-.01(1)(c)7.). The letter of credit must be effective before this initial receipt of hazardous waste. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or State agency.

2. The wording of the letter of credit must be identical to the wording specified in 335-14-5-.08(12)(d).

3. An owner or operator who uses a letter of credit to satisfy the requirements of 335-14-5-.08(6) must also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Department will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund must meet the requirements of the trust fund specified in 335-14-5-.08(6)(a), except that:

(i) An originally signed duplicate of the trust agreement must be submitted to the Department with the letter of credit; and

(ii) Unless the standby trust fund is funded pursuant to the requirements of 335-14-5-.08(6), the following are not required by these regulations:

(I) Payments into the trust fund as required in 335-14-5-.08(6)(a);

(II) Updating of Schedule A of the trust agreement (see 335-14-5-.08(12)(a)) to show current post-closure and/or corrective action cost estimates;

(III) Annual valuations as required by the trust agreement; and

(IV) Notices of nonpayment as required by the trust agreement.

4. The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: the EPA Identification Number, name, and address of the facility, and the amount of funds assured for post-closure care and/or corrective action of the facility by the letter of credit.

5. The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Department by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the Department have received the notice, as evidenced by the return receipts.

6. The letter of credit must be issued in an amount at least equal to the current post-closure and/or corrective action cost estimate, except as provided in 335-14-5-.08(6)(g).

7. Whenever the current post-closure and/or corrective action cost estimate increases to an amount greater than the amount of the credit during the operating life of the facility or the post-closure care period, the owner or operator, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current post-closure and/or corrective action cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in 335-14-5-.08(6) or 335-14-5-.08(11) to cover the increase. Whenever the current post-closure and/or corrective action cost estimate decreases during the operating life of the facility or the post-closure care period, the amount of the credit may be reduced to the amount of the current post-closure and/or corrective action cost estimate following written approval by the Department.

8. During the period of post-closure care and/or corrective action, the Department may approve a decrease in the amount of the letter of credit if the owner or operator demonstrates to the Department that the amount exceeds the remaining cost of post-closure care and/or corrective action.

9. Following a final administrative determination pursuant to Sections 22-30-19 and 22-22A-7, Code of Alabama 1975, that the owner or operator has failed to perform post-closure care and/or corrective action in accordance with the approved post-closure plan and other permit or correction action order requirements, the Department may draw on the letter of credit.

10. If the owner or operator does not establish alternate financial assurance as specified in 335-14-5-.08(6) and obtain written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Department will draw on the letter of credit. The Department may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the Department will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in 335-14-5-.08(6) and obtain written approval of such assurance from the Department.

11. The Department will return the letter of credit to the issuing institution for termination when:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-5-.08(6) and approved by the Department; or

(ii) The Department releases the owner or operator from the requirements of 335-14-5-.08(6) in accordance with 335-14-5-.08(6)(i) or 335-14-5-.08(11)(f).

(e) Post-closure insurance.

1. An owner or operator may satisfy the requirements of 335-14-5-.08(6) by obtaining post-closure insurance which conforms to the requirements of 335-14-5-.08(6)(e) and submitting an originally signed certificate of such insurance to the Department. An owner or operator of a new facility must submit the certificate of insurance to the Department at least 60 days before the date on which hazardous waste is first received for disposal. The insurance must be effective before this initial receipt of hazardous waste. The insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess of surplus lines insurer in the State of Alabama, and must not be captive insurance as defined in 335-14-1-.02 unless the requirements of 335-14-5-.08(6)(e)1.(ii) are met.

(i) The use of insurance to demonstrate financial assurance for closure and post-closure care pertains exclusively to those insurance policies underwritten by commercial property and casualty insurers

(primary or excess and surplus lines), through which, in the insurance contract, the financial burden for closure and post-closure care is transferred to the third-party insurer. Except as provided in 335-14-5-.08(6)(e)1.(ii), the third-party insurer must assume financial responsibility for this accepted risk, using its own pool of resources that is independent, separate, and unrelated to that of the insured (owner or operator). The use of insurance policies underwritten by captive insurers therefore is prohibited unless the owner/operator can demonstrate compliance with condition 335-14-5-.08(6)(e)1.(ii) for each year captive insurance is used.

(ii) Captive insurance may be used for post-closure insurance only when the facility provides annual documentation to the Department that the owner or operator is in compliance with the requirements of Rule 335-14-5-.08(6)(f).

2. The wording of the certificate of insurance must be identical to the wording specified in 335-14-5-.08(12)(e).

3. The post-closure insurance policy must be issued for a face amount at least equal to the current post-closure cost estimate, except as provided in 335-14-5-.08(6)(g). The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

4. The post-closure insurance policy must guarantee that funds will be available to provide post-closure care of the facility whenever the post-closure period begins. The policy must also guarantee that once post-closure care begins, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Department, to such party or parties as the Department specifies.

5. An owner or operator or any other person authorized to conduct post-closure care may request reimbursements for post-closure care expenditures by submitting itemized bills to the Department. Within 60 days after receiving bills for post-closure care activities, the Department will instruct the insurer to make reimbursements in those amounts as the Department specifies in writing, if the

Department determines that the post-closure care expenditures are in accordance with the approved post-closure plan or otherwise justified. If the Department does not instruct the insurer to make such reimbursements, he will provide the owner or operator with a detailed written statement of reasons.

6. The owner or operator must maintain the policy in full force and effect until the Department consents to termination of the policy by the owner or operator as specified in 335-14-5-.08(6)(e)11. Failure to pay the premium, without substitution of alternate financial assurance as specified in 335-14-5-.08(6), will constitute a significant violation of these regulations, warranting such remedy as the Department deems necessary. Such violation will be deemed to begin upon receipt by the Department of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

7. Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

8. The policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the Department. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Department and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:

(i) The Department deems the facility abandoned; or

(ii) The permit is terminated or revoked or a new permit is denied; or

(iii) Closure is ordered by the Department or a court of competent jurisdiction; or

(iv) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or

(v) The premium due is paid.

9. Whenever the current post-closure cost estimate increases to an amount greater than the face amount of the policy during the operating life of the facility or the post-closure care period, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in 335-14-5-.08(6) to cover the increase. Whenever the current post-closure cost estimate decreases during the operating life of the facility or the post-closure care period, the face amount may be reduced to the amount of the current post-closure cost estimate following written approval by the Department.

10. Commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week Treasury securities.

11. The Department will give written consent to the owner or operator that he may terminate the insurance policy when:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-5-.08(6); or

(ii) The Department releases the owner or operator from the requirements of 335-14-5-.08(6) in accordance with 335-14-5-.08(6)(i).

(f) Financial test and corporate guarantee for post-closure care.

1. An owner or operator may satisfy the requirements of 335-14-5-.08(6) by demonstrating that he passes a financial test as specified in 335-14-5-.08(6)(f). To pass this test the owner or operator must meet the criteria of either 335-14-5-.08(6)(f)1.(i) or (f)1.(ii):

(i) The owner or operator must have:

(I) Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

(II) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates; and

(III) Tangible net worth of at least $10 million; and

(IV) Assets in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates.

(ii) The owner or operator must have:

(I) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

(II) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates; and

(III) Tangible net worth of at least $10 million; and

(IV) Assets in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates.

2. The phrase “current closure and post-closure cost estimates” as used in 335-14-5-.08(6)(f)1. refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer (335-14-5-.08(12)(f)).

3. To demonstrate that he meets this test, the owner or operator must submit the following items to the Department:

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in 335-14-5-.08(12)(f); and

(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(iii) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(I) He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(II) In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

4. An owner or operator of a new facility must submit the items specified in 335-14-5-.08(6)(f)3. at least 60 days before the date on which hazardous waste is first received for disposal.

5. After the initial submission of items specified in 335-14-5-.08(6)(f)3., the owner or operator must send updated information to the Department within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in 335-14-5-.08(6)(f)3.

6. If the owner or operator no longer meets the requirements of 335-14-5-.08(6)(f)1., he must send notice to the Department of intent to establish alternate financial assurance as specified in 335-14-5-.08(6). The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide the alternate financial assurance within 120 days after the end of such fiscal year.

7. The Department may, based on a reasonable belief that the owner or operator may no longer meet the requirements

of 335-14-5-.08(6)(f)1., require reports of financial condition at any time from the owner or operator in addition to those specified in 335-14-5-.08(6)(f)3. If the Department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of 335-14-5-.08(6)(f)1., the owner or operator must provide alternate financial assurance as specified in 335-14-5-.08(6) within 30 days after notification of such a finding.

8. The Department may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements [see 335-14-5-.08(6)(f)3.(ii)]. An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Department will evaluate other qualifications on an individual basis. The owner or operator must provide alternate financial assurance as specified in 335-14-5-.08(6) within 30 days after notification of the disallowance.

9. During the period of post-closure care, the Department may approve a decrease in the current post-closure cost estimate for which this test demonstrates financial assurance if the owner or operator demonstrates to the Department that the amount of the cost estimate exceeds the remaining cost of post-closure care.

10. The owner or operator is no longer required to submit the items specified in 335-14-5-.08(6)(f)3. of when:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-5-.08(6); or

(ii) The Department releases the owner or operator from the requirements of 335-14-5-.08(6) in accordance with 335-14-5-.08(6)(i).

11. An owner or operator may meet the requirements of 335-14-5-.08(6) by obtaining a written guarantee, hereinafter referred to as “corporate guarantee”. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a “substantial business relationship” with the owner or operator. The guarantor must meet the requirements for owners or operators in 335-14-5-.08(6)(f)1. through 9. and must comply with the

terms of the guarantee. The wording of the guarantee must be identical to the wording specified in 335-14-5-.08(12)(h). A certified copy of the guarantee must accompany the items sent to the Department as specified in 335-14-5-.08(6)(f)3. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee must provide that:

(i) If the owner or operator fails to perform post-closure care of a facility covered by the corporate guarantee in accordance with the post-closure plan and other permit requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in 335-14-5-.08(6)(a) in the name of the owner or operator.

(ii) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts.

(iii) If the owner or operator fails to provide alternate financial assurance as specified in 335-14-5-.08(6) and obtain the written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternate financial assurance in the name of the owner or operator.

(g) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of 335-14-5-.08(6) by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, and insurance. The mechanisms must be as specified in 335-14-5-.08(6)(a), (b), (d), and (e), respectively, except that it is the combination of mechanisms, rather than the

single mechanism, which must provide financial assurance for an amount at least equal to the current post-closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The Department may use any or all of the mechanisms to provide for post-closure care of the facility.

(h) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in 335-14-5-.08(6) to meet the requirements of 335-14-5-.08(6) for more than one facility. Evidence of financial assurance submitted to the Department must include a list showing, for each facility, the EPA or Alabama Identification Number, name, address, and the amount of funds for post-closure care assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for post-closure care of any of the facilities covered by the mechanism, the Department may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

(i) Release of the owner or operator from the requirements of 335-14-5-.08(6). Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that the post-closure care period has been completed for a hazardous waste disposal unit in accordance with the approved plan, the Department will notify the owner or operator that he is no longer required to maintain financial assurance for post-closure of that unit, unless the Department has reason to believe that post-closure care has not been in accordance with the approved post-closure plan. The Department shall provide the owner or operator a detailed written statement of any such reason to believe that post-closure care has not been in accordance with the approved post-closure plan.

(7) Use of a mechanism for multiple financial responsibilities. An owner or operator may satisfy the requirements for financial assurance for both closure and post-closure care for one or more facilities by using a trust fund, surety bond, letter of credit, insurance, financial test, or corporate guarantee that meets the specifications for the mechanism in both 335-14-5-.08(4) and (6).

For corrective action at one or more facilities, an owner or operator may satisfy the requirements for financial assurance by using a trust fund, surety bond, or letter of credit that meets the specifications of the mechanism in 335-14-5-.08(11). The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for financial assurance of closure, post-closure care, and corrective action.

(8) Liability requirements.

(a) Coverage for sudden accidental occurrences. An owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least $1 million per occurrence with an annual aggregate of at least $2 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in 335-14-5-.08(8)(a)1., 2., 3., 4., 5., or 6.:

1. An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in 335-14-5-.08(8)(a).

(i) Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidence by a Certificate of Liability Insurance. The wording of the endorsement must be identical to the wording specified in 335-14-5-.08(12)(i). The wording of the certificate of insurance must be identical to the wording specified in 335-14-5-.08(12)(j). The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Department. If requested by the Department, the owner or operator must provide a signed duplicate original of the insurance policy. An owner or operator of a new facility must submit the signed duplicate original of the Hazardous Waste Facility Liability Endorsement or the Certificate of Liability Insurance to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage or disposal. The insurance must be effective before this initial receipt of hazardous waste.

(ii) Each insurance policy must be issued by an insurer which is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer in the State of Alabama.

2. An owner or operator may meet the requirements of 335-14-5-.08(8) by passing a financial test or using the guarantee for liability coverage as specified in 335-14-5-.08(8)(f) and (g).

3. An owner or operator may meet the requirements of 335-14-5-.08(8) by obtaining a letter of credit for liability coverage as specified in 335-14-5-.08(8)(h).

4. An owner or operator may meet the requirements of 335-14-5-.08(8) by obtaining a surety bond for liability coverage as specified in 335-14-5-.08(8)(i).

5. An owner or operator may meet the requirements of 335-14-5-.08(8) by obtaining a trust fund for liability coverage as specified in 335-14-5-.08(8)(j).

6. An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amounts required by 335-14-5-.08(8). If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under 335-14-5-.08(8)(a), the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

7. An owner or operator shall notify the Department in writing within 30 days whenever:

(i) A Claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in 335-14-5-.08(8)(a)1. through (a)6.; or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or

non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under 335-14-5-.08(8)(a)1. through (a)6.; or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under 335-14-5-.08(8)(a)1. through (a)6.

(b) Coverage for nonsudden accidental occurrences. An owner or operator of a surface impoundment, landfill, land treatment facility, or disposal miscellaneous unit that is used to manage hazardous waste, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least $3 million per occurrence with an annual aggregate of at least $6 million, exclusive of legal defense costs. An owner or operator who must meet the requirements of 335-14-5-.08(8) may combine the required per-occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences must maintain liability coverage in the amount of at least $4 million per occurrence and $8 million annual aggregate. This liability coverage may be demonstrated as specified in 335-14-5-.08(8)(b)1., 2., 3., 4., 5., or 6.:

1. An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in 335-14-5-.08(8)(b).

(i) Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement must be identical to the wording specified in

335-14-5-.08(12)(i). The wording of the certificate of insurance must be identical to the wording specified in 335-14-5-.08(12)(j). The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Department. If requested by the Department, the owner or operator must provide a signed duplicate original of the insurance policy. An owner or operator of a new facility must submit the signed duplicate original of the Hazardous Waste Facility Liability Endorsement or the Certificate of Liability Insurance to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The insurance must be effective before this initial receipt of hazardous waste.

(ii) Each insurance policy must be issued by an insurer which is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer in the State of Alabama.

2. An owner or operator may meet the requirements of 335-14-5-.08(8) by passing a financial test or using the guarantee for liability coverage as specified in 335-14-5-.08(8)(f) and (g).

3. An owner or operator may meet the requirements of 335-14-5-.08(8) by obtaining a letter of credit for liability coverage as specified in 335-14-5-.08(8)(h).

4. An owner or operator may meet the requirements of 335-14-5-.08(8) by obtaining a surety bond for liability coverage as specified in 335-14-5-.08(8)(i).

5. An owner or operator may meet the requirements of 335-14-5-.08(8) by obtaining a trust fund for liability coverage as specified in 335-14-5-.08(8)(j).

6. An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amount required by 335-14-5-.

08(8). If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under 335-14-5-.08(8)(b), the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

7. An owner or operator shall notify the Department in writing within 30 days whenever:

(i) A Claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in 335-14-5-.08(8)(b)1. through (b)6.; or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under 335-14-5-.08(8)(b)1. through (b)6.; or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under 335-14-5-.08(8)(b)1. through (b)6.

(c) Request for variance. If an owner or operator can demonstrate to the satisfaction of the Department that the levels of financial responsibility required by 335-14-5-.08(8)(a) or (b) are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the owner or operator may obtain a variance from the Department. The request for a variance must be submitted to the Department as part of the application under 335-14-8-.02(5) for a facility that does not have a permit, or pursuant to the procedures for permit modification under 335-14-8-.08(3) for a facility that has a permit. If granted, the variance will take the form of an adjusted level of required liability coverage, such level to be based on the Department's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. The Department may require an owner or operator who requests a

variance to provide such technical and engineering information as is deemed necessary by the Department to determine a level of financial responsibility other than that required by 335-14-5-.08(8)(a) or (b). Any request for a variance for a permitted facility will be treated as a request for a permit modification under 335-14-8-.04(2)(a)5. and 335-14-8-.08(3).

(d) Adjustments by the Department. If the Department determines that the levels of financial responsibility required by 335-14-5-.08(8)(a) or (b) are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the Department may adjust the level of financial responsibility required under 335-14-5-.08(8)(a) or (b) as may be necessary to protect human health and the environment. This adjusted level will be based on the Department's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the Department determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operations of a facility that is not a surface impoundment, landfill, or land treatment facility, he may require that an owner or operator of the facility comply with 335-14-5-.08(8)(b). An owner or operator must furnish to the Department within a reasonable time, any information which the Department requests to determine whether cause exists for such adjustments of level or type of coverage. Any adjustment of the level or type of coverage for a facility that has a permit will be treated as a permit modification under 335-14-8-.04(2)(a)5. and 335-14-8-.08(3).

(e) Period of coverage. Within 60 days after receiving certifications from the owner or operator and a qualified professional engineer that final closure has been completed in accordance with the approved closure plan, the Department will notify the owner or operator in writing that he is no longer required by 335-14-5-.08(8) to maintain liability coverage for that facility, unless the Department has reason to believe that closure has not been in accordance with the approved closure plan.

(f) Financial test for liability coverage.

1. An owner or operator may satisfy the requirements of 335-14-5-.08(8) by demonstrating that he passes a financial test as specified in 335-14-5-.08(8)(f). To pass this test the owner or operator must meet the criteria of 335-14-5-.08(8)(f)1.(i) or (ii):

(i) The owner or operator must have:

(I) Net working capital and tangible net worth each at least six times the amount of liability coverage to be demonstrated by this test; and

(II) Tangible net worth of at least $10 million; and

(III) Assets in the United States amounting to either: I. at least 90 percent of his total assets; or II. at least six times the amount of liability coverage to be demonstrated by this test.

(ii) The owner or operator must have:

(I) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's, or Aaa, Aa, A, or Baa as issued by Moody's; and

(II) Tangible net worth at least $10 million; and

(III) Tangible net worth at least six times the amount of liability coverage to be demonstrated by this test; and

(IV) Assets in the United States amounting to either:

I. at least 90 percent of his total assets; or

II. at least six times the amount of liability coverage to be demonstrated by this test.

2. The phrase “amount of liability coverage” as used in 335-14-5-.08(8)(f)1. refers to the annual aggregate amounts for which coverage is required under 335-14-5-.08(8)(a) and (b).

3. To demonstrate that he meets this test, the owner or operator must submit the following three items to the Department:

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in

335-14-5-.08(12)(g). If an owner or operator is using the financial test to demonstrate both assurance for closure or post-closure care, as specified by 335-14-5-.08(4)(f) and 335-14-5-.08(6)(f), and liability coverage, he must submit the letter specified in 335-14-5-.08(12)(g) to cover both forms of financial responsibility; a separate letter as specified in 335-14-5-.08(12)(f) is not required.

(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year.

(iii) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(I) He has compared the data which the letter from the chief financial officer specified as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(II) In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

4. An owner or operator of a new facility must submit the items specified in 335-14-5-.08(8)(f)3. to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal.

5. After the initial submission of items specified in 335-14-5-.08(8)(f)3., the owner or operator must send updated information to the Department within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in 335-14-5-.08(8)(f)3.

6. The Department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of 335-14-5-.08(8)(f)1., require from the owner or operator at any time current updates of reports of financial condition specified in 335-14-5-.08(8)(f)3.

7. If the owner or operator no longer meets the requirements of 335-14-5-.08(8)(f)1., he must obtain insurance, a letter of credit, a surety bond, a trust fund, or a guarantee for the entire amount of required liability coverage as specified in 335-14-5-.08(8). Evidence of liability coverage must be submitted to the Department within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.

8. The Department may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see 335-14-5-.08(8)(f)3.(ii)). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Department will evaluate other qualifications on an individual basis. The owner or operator must provide evidence of insurance for the entire amount of required liability coverage as specified in this section within 30 days after notification of disallowance.

(g) Guarantee for liability coverage.

1. Subject to 335-14-5-.08(8)(g)2., an owner or operator may meet the requirements of 335-14-5-.08(8) by obtaining a written guarantee, hereinafter referred to as "guarantee". The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in 335-14-5-.08(8)(f)1. through (f)7. The wording of the guarantee must be identical to the wording specified in 335-14-5-.08(12)(h)2. A certified copy of the guarantee must accompany the items sent to the Department as specified in 335-14-5-.08(8)(f)3. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee.

(i) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden or nonsudden accidental occurrences (or both as the case may be), arising from the operation of facilities covered by this guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor will do so up to the limits of coverage.

(ii) [Reserved]

2.(i) In the case of corporations incorporated in the United States, a guarantee may be used to satisfy the requirements of 335-14-5-.08(8) only if the Attorneys General or Insurance Commissioners of

(I) the State in which the guarantor is incorporated, and

(II) each State in which a facility covered by the guarantee is located have submitted a written statement to the Department that a guarantee executed as described in 335-14-5-.08(8) and 335-14-5-.08(12)(h)2. is a legally valid and enforceable obligation in that State.

(ii) In the case of corporations incorporated outside the United States, a guarantee may be used to satisfy the requirements of 335-14-5-.08(8) only if

(I) the non-U.S. corporation has identified a registered agent for service of process in each State in which a facility covered by the guarantee is located and in the State in which it has its principal place of business, and

(II) the Attorney General or Insurance Commissioner of each State in which a facility covered by the guarantee is located and the State in which the guarantor corporation has its principal place of business has submitted a written statement to the Department that a guarantee executed as described in 335-14-5-.08(8), and 335-14-5-.08(12)(h)2. is a legally valid and enforceable obligation in that State.

(h) Letter of credit for liability coverage.

1. An owner or operator may satisfy the requirements of 335-14-5-.08(8) by obtaining an irrevocable standby letter of credit that conforms to the requirements of 335-14-5-.08(8)(h) and submitting a copy of the letter of credit to the Department.

2. The financial institution issuing the letter of credit must be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency.

3. The wording of the letter of credit must be identical to the wording specified in 335-14-5-.08(12)(k).

4. An owner or operator who uses a letter of credit to satisfy the requirements of 335-14-5-.08(8) may also establish a standby trust fund. Under the terms of such a letter of credit, all amounts paid pursuant to a draft by the trustee of the standby trust will be deposited by the issuing institution into the standby trust in accordance with instructions from the trustee. The trustee of the standby trust fund must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

5. The wording of the standby trust fund must be identical to the wording specified in 335-14-5-.08(12)(n).

(i) Surety bond for liability coverage

1. An owner or operator may satisfy the requirements of 335-14-5-.08(8) by obtaining a surety bond that conforms to the requirements of 335-14-5-.08(8)(i) and submitting a copy of the bond to the Department.

2. The surety company issuing the bond must be among those listed as acceptable sureties on Federal bonds in the most recent Circular 570 of the U.S. Department of the Treasury.

3. The wording of the surety bond must be identical to the wording specified in 335-14-5-.08(12)(l).

4. A surety bond may be used to satisfy the requirements of 335-14-5-.08(8) only if the Attorneys General or Insurance Commissioners of

(i) the State in which the surety is incorporated, and

(ii) each State in which a facility covered by the surety bond is located have submitted a written statement to the Department that a surety bond executed as described in 335-14-5-.08(8)(i) and 335-14-5-.08(12)(l) is a legally valid and enforceable obligation in that State.

(j) Trust fund for liability coverage.

1. An owner or operator may satisfy the requirements of 335-14-5-.08(8) by establishing a trust fund that conforms to the requirements of 335-14-5-.08(8)(j) and submitting an originally signed duplicate of the trust agreement to the Department.

2. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

3. The trust fund for liability coverage must be funded for the full amount of the liability coverage to be provided by the trust fund before it may be relied upon to satisfy the requirements of 335-14-5-.08(8). If at any time after the trust fund is created the amount of funds in the trust fund is reduced below the full amount of the liability coverage to be provided, the owner or operator, by the anniversary date of the establishment of the fund, must either add sufficient funds to the trust fund to cause its value to equal the full amount of liability coverage to be provided, or obtain other financial assurance as specified in 335-14-5-.08(8) to cover the difference. For purposes of 335-14-5-.08(8)(j), "the full amount of the liability coverage to be provided" means the amount of coverage for sudden and/or nonsudden occurrences required to be provided by the owner or operator by 335-14-5-.08(8), less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

4. The wording of the trust fund must be identical to the wording specified in 335-14-5-.08(12)(m).

(k) [Reserved]

(9) Incapacity of owners or operators, guarantors, or financial institutions.

(a) An owner or operator must notify the Department by certified mail of the commencement of a voluntary or

involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding. A guarantor of a corporate guarantee as specified in 335-14-5-.08(4)(f) and 335-14-5-.08(6)(f) must make such a notification if he is named as debtor, as required under the terms of the corporate guarantee (335-14-5-.08(12)(h)).

(b) An owner or operator who fulfills the requirements of 335-14-5-.08(4), (6), and (8) by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee or of the institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The owner or operator must establish other financial assurance or liability coverage within 60 days after such an event.

(10) Cost estimate for corrective action.

(a) The owner or operator of a facility at which corrective action is required pursuant to 335-14-5-.06(11 or (12) must have a detailed written estimate in a format specified by the Department, in current dollars, of the annual cost of corrective action.

1. The corrective action cost estimate must be based on the cost to the owner or operator of hiring a third party to conduct all corrective actions required by the facility permit or enforceable document (as defined in 335-14-8-.01(1)(c)7.), the corrective action plan, the corrective action order, and the applicable requirements of 335-14-5-.06(11 and (12). A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in 335-14-1-.02).

2. The corrective action cost estimate is calculated by multiplying the annual corrective action cost estimate by the total number of years in the corrective action period. Estimation of the required corrective action period shall be made on case-by-case basis, shall be based on the corrective action methods specified in the corrective action plan, and shall be certified by an independent registered professional engineer and/or independent licensed professional geologist.

3. The corrective action cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, non-hazardous wastes, facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

4. The owner or operator may not incorporate a zero cost for hazardous wastes, or non-hazardous wastes that might have economic value.

(b) During the corrective action period, the owner or operator must adjust the corrective action cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with 335-14-5-.08(11). The adjustment may be made by recalculating the corrective action cost estimate in current dollars or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business as specified in 335-14-5-.08(10)(b)1. and 2. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

1. The first adjustment is made by multiplying the corrective action cost estimate by the inflation factor. The result is the adjusted corrective action cost estimate.

2. Subsequent adjustments are made by multiplying the latest adjusted corrective action cost estimate by the latest inflation factor.

(c) During the corrective action period, the owner or operator must revise the corrective action cost estimate within 30 days after the Department has approved a request to modify the corrective action plan, if the change in the corrective action plan increases the cost of the corrective action. The revised corrective action cost estimate must be adjusted for inflation as specified in 335-14-5-.08(10)(b).

(d) The owner or operator must keep the following at the facility during the operating life of the facility and throughout the post-closure care period: The latest corrective action cost estimate prepared in accordance with 335-14-5-.08(10)(a) and (10)(c) and, when this estimate has been adjusted in accordance with 335-14-5-.08(10)(b), the latest adjusted corrective action cost estimate.

(11) Financial assurance for corrective action. The owner or operator of a facility at which corrective action is required pursuant to 335-14-5-.06(11) or (12) must establish financial assurance for corrective action in accordance with the approved corrective action plan for the facility 60 days following the specification of the corrective actions in the facility permit or enforceable document (as defined in 335-14-8-.01(1)(c)7.). He must choose from the following options:

(a) Corrective action trust fund.

1. An owner or operator may specify the requirements of 335-14-5-.08(11) by establishing a corrective action trust fund which conforms to the requirements of 335-14-5-.08(11)(a) and submitting an originally signed duplicate of the trust agreement to the Department. An owner or operator of a new facility must submit the originally signed duplicate of the trust agreement to the Department no later than 30 days following establishment of the trust fund. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

2. The wording of the trust agreement must be identical to the wording specified in 335-14-5-.08(12)(a)1. and the trust agreement must be accompanied by a formal certification of acknowledgment (for example, see 335-14-5-.08(12)(a)2.). Schedule A of the trust agreement must be updated, and an originally signed duplicate must be submitted to the Department, within 60 days after a change in the amount of the current corrective action cost estimate covered by the agreement.

3. Payments into the fund must be made annually by the owner or operator over the pay-in-period, which is the term equal to one-half of the estimated corrective action period. The first payment must be made at the time the trust fund is established. A receipt from the trustee for this payment must be submitted by the owner or operator of the Department no later than 30 days following the payment date. Subsequent payments must be made no later than 30 days after the anniversary date of the first payment. The amount of each payment shall be determined by the following formula:

$$\text{Payment amount} = \frac{CE - CV}{y}$$

where

CE is the most recent corrective action cost estimate in accordance with 335-14-5-.08(10), at the time of the payment;

CV is the current value of the trust fund, at the time of the payment; and

Y is the number of remaining years in the pay-in-period, at the time of the payment.

4. The owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the current corrective action cost estimate at the time the fund is established. However he must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in 335-14-5-.08(11)(a)3.

5. If the owner or operator establishes a corrective action trust fund after having used one or more alternate mechanisms specified in 335-14-5-.08(11), his first payment must be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to specifications of 335-14-5-.08(11)(a), as applicable.

6. After the pay-in period is completed, whenever the current corrective action cost estimate changes during the operating life of the facility, the post-closure care period, or the corrective action period, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, must either deposit and amount into the fund so that its value after this deposit at least equals the amount of the current corrective action cost estimate, or obtain other financial assurance as specified in 335-14-5-.08(11) to cover the difference.

7. During the corrective action period, if the value of the trust fund is greater than the total amount of the current corrective action cost estimate, the owner or operator may submit a written request to the Department for release of the amount in excess of the current corrective action cost estimate.

8. If an owner or operator substitutes other financial assurance as specified in 335-14-5-.08(11) for all or part of the trust fund, he may submit a written request

to the Department for release of the amount in excess of the current corrective action cost estimate covered by the trust fund.

9. Within 60 days after receiving a request from the owner or operator for release of funds as specified in 335-14-5-.08(11)(a)7. or (a)8., the Department shall approve or disapprove the request for release. If the Department approves the owner or operator's request for release the Department will instruct the trustee to release to the owner or operator such funds as the Department specifies in writing.

10. After the pay-in-period is completed, the Department may approve a release of funds during the corrective action period, if the owner or operator demonstrates to the Department that the value of the trust fund exceeds the remaining cost of corrective action.

11. After the pay-in-period is completed, an owner or operator or any other person authorized to conduct corrective action may request reimbursements for corrective action expenditures by submitting itemized bills to the Department. Within 60 days after receiving bills for corrective action care activities, the Department will instruct the trustee to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the corrective action expenditures are in accordance with the approved corrective action plan or otherwise justified. If the Department does not instruct the trustee to make such reimbursements, he will provide the owner or operator with a detailed written statement of reasons.

12. The Department will agree to termination of the trust when:

(i) The owner or operator substitutes alternate financial assurance as specified in 335-14-5-.08(11) and approved by the Department; or

(ii) The Department releases the owner or operator from the requirements of 335-14-5-.08(11) in accordance with 335-14-5-.08(11)(f).

(b) Surety bond guaranteeing performance of corrective action. An owner or operator may satisfy the requirements of 335-14-5-.08(11) by obtaining a surety bond which conforms to

the requirements of 335-14-5-.08(6)(c) and submitting the bond to the Department.

(c) Corrective action letter of credit. An owner or operator may satisfy the requirements of 335-14-5-.08(11) by obtaining an irrevocable standby letter of credit which conforms to the requirements of 335-14-5-.08(6)(d) and submitting the letter to the Department.

(d) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of 335-14-5-.08(11) by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing performance of corrective action, and letters of credit. The mechanisms must be as specified in 335-14-5-.08(11)(a), (b), and (c), respectively, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current corrective action cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The Department may use any or all of the mechanisms to provide for corrective action of the facility.

(e) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in 335-14-5-.08(11) to meet the requirements of 35-14-5-.08(11) for more than one facility. Evidence of financial assurance submitted to the Department must include a list showing, for each facility, the EPA or Alabama Identification Number, name, address, and the amount of funds for corrective action by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for corrective action any of the facilities covered by the mechanism, the Department may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

(f) Release of the owner or operator from the requirements of 335-14-5-.08(11). Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that corrective action has been completed for a hazardous waste disposal unit or solid waste management units in accordance with the approved plan,

the Department will notify the owner or operator that he is no longer required to maintain financial assurance for corrective action of that unit, unless the Department has reason to believe that corrective action has not been in accordance with the approved plan, permit, or corrective action order requirements. The Department shall provide the owner or operator with a detailed written statement of any such reason to believe that corrective action has not been in accordance with the approved plan, permit, or order

(12) Wording of the instruments.

(a)1. A Trust agreement for a trust fund, as specified in 335-14-5-.08(4)(a), 335-14-5-.08(6)(a), or 335-14-5-.08(11)(a), or 335-14-6-.08(4)(a) or 335-14-6-.08(6)(a), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**TRUST AGREEMENT**

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the State of _____" or "a national bank"], the "Trustee."

Whereas, the Alabama Department of Environmental Management (the "Department") an agency of the State of Alabama, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility shall provide assurance that funds will be available when needed for closure and/or post-closure care, and/or corrective action of the facility,

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, Therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term “Grantor” means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term “Trustee” means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and cost estimates identified on attached Schedule A [on Schedule A, for each facility list the EPA Identification Number, name, address, and the current closure, post-closure, and/or corrective action cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the “Fund,” for the benefit of the Department. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Department.

Section 4. Payment for Closure and Post-Closure Care. The Trustee shall make payments from the Fund as the Department shall direct, in writing, to provide for the payment of the costs of closure, post-closure, and/or corrective action care of the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the Department from the Fund for closure and post-closure expenditures in such amounts as the Department shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Department specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund

invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees or legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the Department a

statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the Department shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with the counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor, the Department, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Department to the Trustee shall be in writing, signed by the Department or his designee, and the

Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Department, except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor and the Department by certified mail within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Department or his designee, or by the Trustee and the Department or his designee, if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Department, or by the Trustee and the Department, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Department, issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Alabama.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include

the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written: The parties below certify that the wording of this Agreement is identical to the wording specified in ADEM Administrative Code subparagraph 335-14-5-.08(12)(a)1. as such rules were constituted on the date first above written.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

2. The following is an example of the certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in 335-14-5-.08(4)(a) and (6)(a) or 335-14-6-.08(4)(a) and (6)(a).

State of

County of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

(b) A surety bond guaranteeing payment into a trust fund, as specified in 335-14-5-.08(4)(b) or 335-14-5-.08(6)(b) or 335-14-6-.08(4)(b) or 335-14-6-.08(6)(b), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**FINANCIAL GUARANTEE BOND**

Date bond executed: _____

Effective date: _____

Principal: _____

[legal name and business address of owner or operator]

Type or organization: _____

[insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation: _____

Surety(ies): _____

[name(s) and business address(es)]

EPA Identification Number, name, address and closure, post-closure, and/or corrective action amounts(s) for each facility guaranteed by this bond [indicate closure and post-closure amounts separately]:

Total penal sum of bond: $_____

Surety's bond number: _____

Know All Persons By These Presents, That we the Principal and Surety(ies) hereto are firmly bound to the Alabama Department of Environmental Management (the Department), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal for the payment of such sum only as is set forth opposite the name of such Surety but if no limit of liability is

indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the Alabama Hazardous Wastes Management and Minimization Act of 1978 (AHWMMA), as amended, to have a permit or interim status in order to own or operate each hazardous waste management facility identified above, and

Whereas said Principal is required to provide financial assurance for closure, or closure and post-closure care, as a condition of the permit or interim status, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of each facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

Or, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after a final order to begin closure is issued by the Department or a U.S. district court or other court of competent jurisdiction,

Or, if the Principal shall provide alternate financial assurance, as specified in ADEM Administrative Code rule 335-14-5-.08 or 335-14-6-.08, as applicable, and obtain the Department's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the Department from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the Department that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the Department.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the Department, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the Department, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the Department.

[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure, post-closure, and/or corrective action amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the Department.

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in ADEM Administrative Code subparagraph 335-14-5-.08(12)(b) as such rules were constituted on the date this bond was executed.

Principal

[Signature(s)]

[Name(s)]

(Title(s)]

[Corporate seal]

Corporate Surety(ies)

[Name and address] _____

State of incorporation: _____

Liability limit: $_____

[Signature(s)] _____

[Name(s) and title(s)] _____

[Corporate seal] _____

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: $_____

(c) A surety bond guaranteeing performance closure, post-closure, and/or corrective action, as specified in 335-14-5-.08(4)(c), 335-14-5-.08(6)(c), or 335-14-5-.08(11)(b) must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**PERFORMANCE BOND**

Date bond executed: _____

Effective date: _____

Principal: _____

[legal name and business address of owner or operator]

Type of organization: _____

[insert "individual," "joint venture," partnership," or "corporation"]

State of incorporation: _____

Surety(ies): _____

[name(s) and business address(es)]

EPA Identification Number, name and address, and closure, post-closure, and/or corrective action amount(s) for each facility guaranteed by this bond [indicate closure, post-closure and corrective action amounts separately]:

Total penal sum of bond: $_____

Surety's bond number: _____

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the Alabama Department of Environmental Management (the "Department"), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joining action or actions against any or all of us, and for all other purposes each Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the Alabama Hazardous Wastes Management and Minimization Act of 1978 (AHWMMA), as amended, to have a permit in order to own or operate each hazardous waste management facility identified above, and

Whereas said Principal is required to provide financial assurance for closure, or closure and post-closure care, as a condition of the permit, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of each facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

And, if the Principal shall faithfully perform post-closure care of each facility for which this bond guarantees post-closure care, in accordance with the post-closure plan and other requirements of the permit, as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

And, if the Principal shall faithfully perform corrective action at each facility for which this bond guarantees corrective action, in accordance with the corrective action plan and other requirements of the permit or correction action order, as such plan, permit, and/or order may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended.

Or, if the Principal shall provide alternate financial assurance as specified in ADEM Administrative Code Rule 335-14-5-.08, and obtain the Department's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the Department from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the Department that the Principal has been found in violation of the closure requirements of ADEM Administrative Code 335-14-5, for a facility for which this bond guarantees performance of closure, the Surety(ies) shall either perform closure in accordance with the closure plan and other permit requirements or place the closure amount guaranteed for the facility into the standby trust fund as directed by the Department.

Upon notification by the Department that the Principal has been found in violation of the post-closure requirements of ADEM Administrative Code 335-14-5, for a facility for which this bond guarantees performance of post-closure care, the Surety(ies) shall either perform post-closure care in accordance with the post-closure plan and other permit requirements or place the post-closure amount guaranteed for the facility into the standby trust fund as directed by the Department.

Upon notification by the Department that the Principal has failed to provide alternate financial assurance as specified in ADEM Administrative Code 335-14-5-.08, and obtain written approval of such assurance from the Department during the 90 days following receipt by both the Principal and the Department of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the Department.

Upon notification by the Department that the Principal has been found in violation of the corrective action requirements of ADEM Administrative Code 335-14-5, for a facility for which the bond guarantees performance of corrective action, the Surety(ies) shall either perform corrective action in accordance with the corrective action plan and other permit or corrective action order requirements or place the corrective action amount guaranteed for the facility into the standby trust fund as directed by the Department.

The surety(ies) hereby waive(s) notification of amendments to closure, post-closure, and/or corrective action plans, permits, orders, applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Department, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the Department, as evidenced by the return receipts. The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond from the Department.

[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure, post-closure, and/or corrective action amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the Department.

In Witness Whereof, the Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in ADEM Administrative Code 335-14-5-.08(12)(c) as such rule was constituted on the date this bond was executed.

Principal

[Signature(s)]

[Name(s)]

(Title(s)]

[Corporate seal]

Corporate Surety(ies)

[Name and address] _____

State of incorporation: _____

Liability limit: $_____

[Signature(s)] [Name(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: $_____

(d) A letter of credit, as specified in 335-14-5-.08(4)(d), 335-14-5-.08(6)(d), or 335-14-5-.08(11)(c) or 335-14-6-.08(4)(c) or 335-14-6-.08(6)(c), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**IRREVOCABLE STANDBY LETTER OF CREDIT**

Director

Alabama Department of Environmental Management Dear

Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. _____ in your favor, at the request and for the account of [owner's or operator's name and address] up to the aggregate amount of [in words] U.S. dollars $_____, available upon presentation of

(1) your sight draft, bearing reference to this letter of credit No. _____, and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the Alabama Hazardous Wastes Management Act of 1978, as amended."

This letter of credit is effective as of [date] and shall expire on [date at least one year later], but such expiration date shall

be automatically extended for a period of [at least one year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and [owner's or operator's name], as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner's or operator's name] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in ADEM Administrative Code subparagraph 335-14-5-.08(12)(d) as such rules were constituted on the date shown immediately below.

_____ _____

[Signature(s) and title(s) of official(s) of issuing institution] [Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code"].

(e) A certificate of insurance as specified in 335-14-5-.08(4)(e), 335-14-5-.08(6)(e) or 335-14-6-.08(4)(d) or 335-14-6-.08(6)(d), must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**CERTIFICATE OF INSURANCE FOR CLOSURE OR POST-CLOSURE CARE**

Name and Address of Insurer (herein called the "Insurer"):

_____

Name and Address of Insured (herein called the "Insured"):

_____

Facilities Covered: [List for each facility: The EPA Identification Number, name, address, and the amount of insurance for closure and/or the amount for post-closure care (these amounts for all facilities covered must total the face amount shown below).]

Face Amount:

_____

Policy Number:

_____

Effective Date:

_____

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for [insert "closure" or "closure and post-closure care" or "post-closure care"] for the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of ADEM Admin. Code subparagraphs 335-14-5-.08(4)(e), 335-14-5-.08(6)(e), 335-14-6-.08(4)(d), and 335-14-6-.08(6)(d), as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the Department, the Insurer agrees to furnish to the Department a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in ADEM Admin. Code subparagraphs 335-14-5-.08(12)(e) as such rules were constituted on the date shown immediately below.

[Authorized signature for Insurer]

[Name of person signing]

[Title of person signing]

Signature of witness or notary: _____

[Date]

(f) A letter from the chief financial officer, as specified in 335-14-5-.08(4)(f) or 335-14-5-.08(6)(f) or 335-14-6-.08(4)(e) or 335-14-6-.08(6)(e), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**LETTER FROM THE CHIEF FINANCIAL OFFICER**

[Address to the Director, Alabama Department of Environmental Management, P.O. Box 301463, Montgomery, Alabama 36130-1463.]

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance, as specified in ADEM Admin. Code R. 335-14-5-.08 and 335-14-6-.08. [Fill out the following five paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, address, and current cost estimates. Identify each cost estimate as to whether it is for one or more of the following: closure, post-closure, and plugging and abandonment.]

1. This firm is the owner or operator of the following facilities for which financial assurance for [identify one or more of the following: closure, and post-closure] care is demonstrated through the financial test specified in ADEM Admin. Code R. 335-14-5-.08 and 335-14-6-.08. The current closure, and post-closure cost estimates covered by the test are shown for each facility: _____.

2. This firm guarantees, through the corporate guarantee specified in ADEM Admin. Code R. 335-14-5-.08 and 335-14-6-.08, the [identify one or more of the following: closure, and post-closure] cost(s) at the following facilities owned or operated by subsidiaries of this firm. The current cost estimates for the care so guaranteed are shown for each facility: _____

The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee _____; or (3) engaged in the following substantial business relationship with the owner or operator _____, and receiving the following value in consideration of this guarantee _____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

3. In states outside of Alabama, where U.S. EPA or some designated authority is administering financial responsibility requirements, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the [identify one or more of the following:

closure, post-closure, and plugging and abandonment] cost(s) at the following facilities through a financial test and/or corporate guarantee substantially equivalent to the ones specified in ADEM Admin. Code R. 335-14-5-.08 and 335-14-6-.08. The current cost estimates covered by such a test or guarantee are shown for each facility:

_____

4. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for [identify one or more of the following: closure, post-closure, and plugging and abandonment] cost(s) is not demonstrated to the state through the financial test or any other financial assurance mechanism specified in ADEM Admin. Code R. 335-14-5-.08 and 335-14-6-.08 or equivalent or substantially equivalent Federal or State mechanism. The current cost estimates not covered by such financial assurance are shown for each facility: _____

5. This firm is the owner or operator of the following UIC facilities for which financial assurance for plugging and abandonment is required under Part 144. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility: _____

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date]. [Fill in Alternative I if the criteria of 335-14-5-.08(4)(f)1.(i) or (6)(f)1.(i) of or 335-14-5-.08(4)(e)1.(i) or (6)(e)1.(i) are used. Fill in Alternative II if the criteria of 335-14-5-.08(4)(f)1.(ii) or (6)(f)1.(ii) or 335-14-6-.08(4)(e)1.(ii) or (6)(e)1.(ii) are used.]

**ALTERNATIVE I**

1. Sum of current cost estimates [total of all cost estimates shown in the five paragraphs above]
$_____

*2. Total liabilities [if any portion of the cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4]
$_____

*3. Tangible net worth $_____

*4. Net worth $_____

*5. Current assets $_____

*6. Current liabilities $_____

7. Net working capital [line 5 minus line 6]
$_____

*8. The sum of net income plus depreciation, depletion, and amortization $_____

*9. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) $_____

_____

10. Is line 3 at least $10 million? _____ Yes ____ No

11. Is line 3 at least 6 times line 1? ____Yes ____ No

12. Is line 7 at least 6 times line 1? ____Yes ____ No

*13. Are at least 90% of firm's assets located in the U.S.? If not, complete line 14 ____Yes ____ No

14. Is line 9 at least 6 times line 1? ____Yes ____ No

15. Is line 2 divided by line 4 less than 2.0? ____Yes ____ No

16. Is line 8 divided by line 2 greater than 0.1? ____Yes ____ No

17. Is line 5 divided by line 6 greater than 1.5? ____Yes ____ No

_____

**ALTERNATIVE II**

1. Sum of current cost estimates [total of all cost estimates shown in the five paragraphs above] $_____

*2. Current bond rating of most recent issuance of this firm and name of rating service $_____

3. Date of issuance of bond _____

4. Date of maturity of bond _____

*5. Tangible net worth [if any portion of the cost estimates is included in “total liabilities” on your firm's financial

statements, you may add the amount of that portion to this line] $_____

*6. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) $_____

_____

7. Is line 5 at least $10 million? ____Yes ____ No

8. Is line 5 at least 6 times line 1? ____Yes ____ No

*9. Are at least 90% of the firm's assets located in the U.S? If not, complete line 10. ____Yes ____ No

10. Is line 6 at least 6 times line 1? ____Yes ____ No

_____

I hereby certify that the wording of this letter is identical to the wording specified in ADEM Admin. Code subparagraph 335-14-5-.08(12)(f) as such rules were constituted on the date shown immediately below.

[Signature]

_____

[Name]

_____

[Title]

_____

[Date]

(g) A letter from the chief financial officer, as specified in 335-14-5-.08(8)(f) or 335-14-6-.08(8)(f), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**LETTER FROM THE CHIEF FINANCIAL OFFICER**

[Address to the Director, Alabama Department of Environmental Management, P.O. Box 301463, Montgomery, Alabama 36130-1463]

I am the chief financial officer of [firm's name and address]. This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage [insert "and closure, and/or post-closure care" if applicable] as specified in ADEM Admin. Code R. 335-14-5-.08 and 335-14-6-.08.

[Fill out the following paragraphs regarding facilities and liability coverage. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, and address.]

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified in ADEM Admin. Code R. 335-14-5-.08 and 335-14-6-.08: _____

The firm identified above guarantees, through the guarantee specified in ADEM Admin. Code R. 335-14-5-.08 and 335-14-6-.08, liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the following: _____.

The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee _____; or (3) engaged in the following substantial business relationship with the owner or operator _____, and receiving the following value in consideration of this guarantee _____.][Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.]

[If you are using the financial test to demonstrate coverage of both liability and closure and post-closure care, fill in the following five paragraphs regarding facilities and associated closure and post-closure cost estimates. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, address, and current closure, and/or post-closure cost estimates. Identify each cost estimate as to whether it is for closure or post-closure care.]

1. The firm identified above owns or operates the following facilities for which financial assurance for closure or post-closure care or liability coverage is demonstrated through the financial test specified in ADEM Admin. Code R. 335-14-5-.08 and 335-14-6-.08. The current closure, and/or post-closure cost estimate covered by the test are shown for each facility: _____.

2. The firm identified above guarantees, through the guarantee specified in ADEM Admin. Code R. 335-14-5-.08 and 335-14-6-.08, the closure and post-closure care or liability coverage of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: _____.

3. In States outside of Alabama, where the U.S. EPA or some designated authority is administering the financial requirements, this firm is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in ADEM Admin. Code R. 335-14-5-.08 and 335-14-6-.08. The current closure or post-closure cost estimates covered by such a test are shown for each facility: _____.

4. The firm identified above owns or operates the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated to the state through the financial test or any other financial assurance mechanisms specified in ADEM Admin. Code R. 335-14-5-.08 and 335-14-6-.08 or equivalent or substantially equivalent Federal or State mechanisms. The current closure, and/or post-closure cost estimates not covered by such financial assurance are shown for each facility:

5. This firm is the owner or operator or guarantor of the following UIC facilities for which financial assurance for plugging and abandonment is required under Part 144 and is assured through a financial test. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility:

This firm [insert “is required” or “is not required”] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Part A if you are using the financial test to demonstrate coverage only for the liability requirements.]

**Part A**. Liability Coverage for Accidental Occurrences

[Fill in Alternative I if the criteria of 335-14-5-.08(8)(f)1.(i) 335-14-6-.08(8)(f)1.(i) of the Department Administrative Code are used. Fill in Alternative II if the criteria of 335-14-5-.08(8)(f)1.(ii) or 335-14-6-.08(8)(f)1.(ii) of the Department Administrative Code are used.]

**ALTERNATIVE I**

1. Amount of annual aggregate liability coverage to be demonstrated $_____

*2. Current assets $_____

*3. Current liabilities $_____

4. Net working capital (line 2 minus line 3). $_____

*5. Tangible net worth $_____

*6. If less than 90% of assets are located in the U.S., give total U.S. assets $_____

---

7. Is line 5 at least $10 million? ____Yes ____ No

8. Is line 4 at least 6 times line 1? ____Yes ____ No

9. Is line 5 at least 6 times line 1? ____Yes ____ No

*10. Are at least 90% of 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 and name of rating service $_____

3. Date of issuance of bond _____

4. Date of maturity of bond _____

*5. Tangible net worth $_____

*6. Total assets in U.S. (required only if less than 90% of assets are located in the U.S. $_____

_____

7. Is line 5 at least $10 million? _____Yes _____ No

8. Is line 5 at least 6 times line 1? _____Yes _____ No

*9. Are at least 90% of assets located in the U.S.? If not, complete line 10 _____Yes _____ No

10. Is line 6 at least 6 times line 1? _____Yes _____ No

_____

[Fill in Part B if you are using the financial test to demonstrate assurance of both liability coverage and closure or post-closure care.]

**Part B. Closure or Post-Closure Care and Liability Coverage**

[Fill in Alternative I if the criteria of 335-14-5-.08(4)(f)1.(i) or 335-14-5-.08(6)(f)1.(i) and 335-14-5-.08(8)(f)1.(i) are used or if the criteria of 335-14-6-.08(4)(e)1.(i) or 335-14-6-.08(6)(e)1.(i) and 335-14-6-.08(8)(f)1.(i) are used. Fill in Alternative II if the criteria of 335-14-5-.08(4)(f)1.(ii) or 335-14-5-.08(6)(f)1.(ii) and 335-14-5-.08(8)(f)1.(ii) are used or if the criteria of 335-14-6-.08(4)(e)1.(ii) or 335-14-6-.08(6)(e)1.(ii) and 335-14-6-.08(8)(f)1.(ii) are used.]

**ALTERNATIVE I**

1. Sum of current closure and post-closure cost estimates (total of all cost estimates listed above) $_____

2. Amount of annual aggregate liability coverage to be demonstrated $_____

3. Sum of lines 1 and 2 $_____

*4. Total liabilities (if any portion of your closure or post-closure cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6) $_____

*5. Tangible net worth $_____

*6. Net worth $_____

*7. Current assets $_____

*8. Current liabilities $_____

9. Net working capital (line 7 minus line 8) $_____

*10. The sum of net income plus depreciation, depletion, and amortization $_____

*11. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.) $_____

---

12. Is line 5 at least $10 million? _____Yes _____ No

13. Is line 5 at least 6 times line 3? _____Yes _____ No

14. Is line 9 at least 6 times line 3? _____Yes _____ No

*15. Are at least 90% of assets located in the U.S.? If not, complete line 16. _____Yes _____ No

16. Is line 11 at least 6 times line 3?. _____Yes _____ No

17. Is line 4 divided by line 6 less than 2.0? _____Yes _____ No

18. Is line 10 divided by line 4 greater than 0.1?. _____Yes _____ No

19. Is line 7 divided by line 8 greater than 1.5? _____Yes _____ No

---

**ALTERNATIVE II**

1. Sum of current closure and post-closure cost estimates (total of all cost estimates listed above) $_____

2. Amount of annual aggregate liability coverage to be demonstrated $_____

3. Sum of lines 1 and 2 $_____

4. Current bond rating of most recent issuance and name of rating service $_____

5. Date of issuance of bond _____

6. Date of maturity of bond _____

*7. Tangible net worth (if any portion of the closure or post-closure cost estimates is included in “total liabilities” on your

financial statements you may add that portion to this line) $_____

*8. Total assets in the U.S. (required only if less than 90% of assets are located in the U.S.) $_____

_____

9. Is line 7 at least $10 million?. _____Yes _____ No

10. Is line 7 at least 6 times line 3? _____Yes _____ No

*11. Are at least 90% of assets located in the U.S.? 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 subparagraph 335-14-5-.08(12)(g) as such rules were constituted on the date shown immediately below.

[Signature]

_____

[Name]

_____

[Title]

_____

[Date]

_____

(h)1. A corporate guarantee, as specified in 335-14-5-.08(4)(f) or 335-14-5-.08(6)(f) or 335-14-6-.08(4)(e) or 335-14-6-.08(6)(e), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**CORPORATE GUARANTEE FOR CLOSURE OR POST-CLOSURE CARE**

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the State of [insert name of State], herein referred to as guarantor. This guarantee is made on behalf of the [owner or operator] of [business address], which is [one of the following: "our subsidiary"; "a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary"; or "an entity with which guarantor has a substantial business relationship, as

defined in 335-14-1-.02 to the Alabama Department of Environmental Management (the "Department"). Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in ADEM Admin. Code subparagraphs 335-14-5-.08(4)(f), 335-14-5-.08(6)(f), 335-14-6-.08(4)(e) and 335-14-6-.08(6)(e).

2. [Owner or operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee: [List for each facility: EPA Identification Number, name, and address. Indicate for each whether guarantee is for closure, post-closure care, or both.]

3. "Closure plans" and "post-closure plans" as used below refer to the plans maintained as required by ADEM Admin. Code R. 335-14-5-.08 and 335-14-6-.08 for the closure and post-closure care of facilities as identified above.

4. For value received from [owner or operator], guarantor guarantees to the Department that in the event that [owner or operator] fails to perform [insert "closure," "post-closure" or "closure and post-closure care"] of the above facility(ies) in accordance with the closure or post-closure plans and other permit requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in ADEM Admin. Code R. 335-14-5-.08 or 335-14-6-.08, as applicable, in the name of the [owner or operator] in the amount of the current closure or post-closure cost estimates as specified in ADEM Admin. Code R. 335-14-5-.08 or 335-14-6-.08.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the Department and to [owner or operator] that he intends to provide alternate financial assurance as specified in ADEM Admin. Code R. 335-14-5-.08 or 335-14-6-.08, as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [owner or operator] has done so.

6. The guarantor agrees to notify the Department by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the Department of a determination that guarantor no longer meets

the financial test criteria or that he is disallowed from continuing as a guarantor of closure or post-closure care, he shall establish alternate financial assurance as specified in ADEM Admin. Code R. 335-14-5-.08 or 335-14-6-.08, as applicable, in the name of [owner or operator] unless [owner or operator] has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure or post-closure plan, amendment or modification of the permit, the extension or reduction of the time of performance of closure or post-closure, or any other modification or alteration of an obligation of the owner or operator pursuant to ADEM Admin. Code 335-14-5 or 335-14-6.

9. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial assurance requirements of ADEM Admin. Code R. 335-14-5-.08 and 335-335-14-6-.08 for the above-1isted facilities, except as provided in paragraph 10. of this agreement.

10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:

Guarantor may terminate this guarantee by sending notice by certified mail to the Department and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the Department approves, alternate closure, and/or post-closure care coverage complying with ADEM Admin. Code paragraphs 335-14-5-.08 and/or 335-14-6-.08.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its “substantial business relationship” with its owner or operator]: Guarantor may terminate this guarantee 120 days following the receipt of notification, through certified mail, by the Department and by [the owner or operator].

11. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance as specified in ADEM Admin. Code R. 335-14-5-.08 or 335-14-6-.08, as applicable, and obtain written approval of such assurance from the Department within 90 days after a notice of cancellation by the guarantor is received by the Department from guarantor, guarantor shall provide such alternate financial assurance in the name of [owner or operator].

12. Guarantor expressly waives notice of acceptance of this guarantee by the Department or by [owner of operator]. Guarantor also expressly waives notice of amendments or modifications of the closure, and/or post-closure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in ADEM Admin. Code subparagraph 335-14-5-.08(12)(h) as such rules were constituted on the date first above written.

Effective date:

_____

[Name of guarantor]

_____

[Authorized signature for guarantor]

_____

[Name of person signing] _____

[Title of person signing] _____

Signature of witness or notary:

_____

2. A guarantee, as specified in 335-14-5-.08(8)(g) or 335-14-6-.08(8)(g), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**Guarantee for Liability Coverage**

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of [if incorporated within the United States insert "the State of _____" and insert name of State; if incorporated outside the United States, insert the name of the country in which incorporated, the principal place of business within the United States, and the name and address of the registered agent in the State of the principal place of business], herein referred to as guarantor. This guarantee is made on behalf of [owner or operator] of [business address], which is one of the following: "our subsidiary", "a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary"; or "an entity with which guarantor has a substantial business relationship, as defined in

[335-14-1-.02]", to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

**Recitals**

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in ADEM Admin. Code R. 335-14-5-.08(8)(g) and 335-14-6-.08(8)(g).

2. [Owner or operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee: [List for each facility: EPA Identification Number, name and address; and if guarantor is incorporated outside the United States, list the name and address of the guarantor's registered agent in each State.] This corporate guarantee satisfies the ADEM Administrative Code third-party liability requirements for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences in above-named owner or operator facilities for coverage in the amount of [insert dollar amount] for each occurrence and [insert dollar amount] annual aggregate.

3. For value received from [owner or operator], guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operations of the facility(ies) covered by this guarantee that in the event that [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [sudden and/or nonsudden] accidental occurrences, arising from the operation of the above-named facilities, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage identified above.

4. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert owner or operator] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator]; or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert owner or operator]. This exclusion applies:

(A) Whether [insert owner or operator] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert owner or operator];

(2) Premises that are sold, given away or abandoned by [insert owner or operator] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert owner or operator];

(4) Personal property in the care, custody or control of [insert owner or operator];

(5) That particular part of real property on which [insert owner or operator] or any contractors or subcontractors working directly or indirectly on behalf of [insert owner or operator] are performing operations, if the property damage arises out of these operations.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by

certified mail, notice to the Alabama Department of Environmental Management ("the Department") and to [owner or operator] that he intends to provide alternate liability coverage as specified in ADEM Admin. Code paragraphs 335-14-5-.08(8) and 335-14-6-.08(8), as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless [owner or operator] has done so.

6. The guarantor agrees to notify the Department, by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the Department of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate liability coverage, as specified in ADEM Admin. Code paragraph 335-14-5-.08(8) or 335-14-6-.08(8), in the name of [owner or operator], unless [owner or operator] has done so.

8. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability requirements set by ADEM Admin. Code paragraphs 335-14-5-.08(8) and 335-14-6-.08(8), provided that such modification shall become effective only if the Department does not disapprove the modification within 30 days of receipt of notification of the modification.

9. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable requirements of ADEM Admin. Code paragraphs 335-14-5-.08(8) and 335-14-6-.08(8) for the above-1isted facility(ies), except as provided in paragraph 10. of this agreement.

10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]: Guarantor may terminate this guarantee by sending notice by certified mail to the Department and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the Department approves alternate liability coverage complying with ADEM Admin. Code paragraphs 335-14-5-.08(8) and/or 335-14-6-.08(8). [Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator: Guarantor may terminate this guarantee 120 days following receipt of notification,

through certified mail, by the Department and by [the owner or operator].

11. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.

12. Guarantor agrees that this guarantee is in addition to and does not affect any other responsibility or liability of the guarantor with respect to the covered facilities.

13. The Guarantor shall satisfy a third-party liability claim only on receipt of one of the following documents:

(a) Certification from the Principal and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**Certification of Valid Claim**

The undersigned, as parties [insert Principal] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Principal's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $[_____].

[Signatures]

Principal

[Notary]
Date

[Signatures]

Claimant(s)

[Notary]
Date

(b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

14. In the event of combination of this guarantee with another mechanism to meet liability requirements, this guarantee will be considered [insert “primary” or “excess”] coverage.

I hereby certify that the wording of the guarantee is identical to the wording specified in 335-14-5-.08(12)(h)2. as such Rules were constituted on the date shown immediately below.

Effective date: _____

[Name of guarantor] _____

[Authorized signature for guarantor] _____

[Name of person signing] _____

[Title of person signing] _____

Signature of witness or notary: _____

(i) A hazardous waste facility liability endorsement as required in 335-14-5-.08(8) or 335-14-6-.08(8) must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**HAZARDOUS WASTE FACILITY LIABILITY ENDORSEMENT**

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with the insured's obligation to demonstrate financial responsibility under ADEM Admin. Code paragraph 335-14-5-.08(8) or 335-14-6-.08(8). The coverage applies at [list EPA Identification Number, name, and address for each facility] for [insert "sudden accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs.

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy to which this endorsement is attached.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in ADEM Admin. Code subparagraph 335-14-5-.08(8)(f) or 335-14-6-.08(8)(f).

(c) Whenever requested by the Alabama Department of Environmental Management (the Department), the Insurer agrees to furnish to the Department a signed duplicate original of the policy and all endorsements.

(d) Cancellation of this endorsement, whether by the Insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the Department.

(e) Any other termination of this endorsement will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the Department.

Attached to and forming part of policy No. issued by [name of Insurer], herein called the Insurer, of [address of Insurer] to [name of insured] of [address] this_____ day of 20____. The effective date of said policy is _____ day of _____ 20_____.

I hereby certify that the wording of this endorsement is identical to the wording specified in ADEM Admin. Code subparagraph 335-14-5-.08(12)(i) as such rule was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in the State of Alabama.

[Signature of Authorized Representative of Insurer]

[Type name]

[Title], Authorized Representative of [name of Insurer]

[Address of Representative]

(j) A certificate of liability insurance as required in 335-14-5-.08(8) or 335-14-6-.08(8) must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**HAZARDOUS WASTE FACILITY CERTIFICATE OF LIABILITY INSURANCE**

1. [Name of Insurer], (the "Insurer"), of [address of Insurer] hereby certifies that it has issued liability insurance covering bodily injury and property damage to [name of insured], (the "insured"), of [address of insured] in connection with the insured's obligation to demonstrate financial responsibility under ADEM Admin. Code paragraph 335-14-5-.08(8) or 335-14-6-.08(8). The coverage applies at [list EPA Identification Number, name, and address for each facility] for [insert "sudden accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs. The coverage is provided under policy number , issued on [date]. The effective date of said policy is [date].

2. The Insurer further certifies the following with respect to the insurance described in Paragraph 1:

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in ADEM Admin. Code subparagraph 335-14-5-.08(8)(f) or 335-14-6-.08(8)(f).

(c) Whenever requested by the Alabama Department of Environmental Management ("the Department"), the Insurer agrees to furnish to the Department a signed duplicate original of the policy and all endorsements.

(d) Cancellation of the insurance, whether by the Insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of

the owner or operator of the hazardous waste management facility, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the Department.

(e) Any other termination of the insurance will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the Department.

I hereby certify that the wording of this instrument is identical to the wording specified in ADEM Admin. Code subparagraph 335-14-5-.08(12)(j) as such rule was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in the State of Alabama.

[Signature of authorized representative of Insurer]

[Type name]

[Title], Authorized Representative of [name of Insurer]

[Address of Representative]

(k) A letter of credit, as specified in 335-14-5-.08(8)(h), or 335-14-6-.08(8)(h), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Irrevocable Standby Letter of Credit

Name and address of Issuing Institution

Department

Alabama Department of Environmental Management

Dear Sir or Madam: We hereby establish our Irrevocable Letter of Credit No. _____ in the favor of ["any and all third-party liability claimants" or insert name of trustee of the standby trust fund"], at the request and for the account of [owner's or operator's name and address] for third-party liability awards or settlements up to [in words] U.S. dollars $ per occurrences and the annual aggregate amount of [in words] U.S. dollars $ , for sudden accidental occurrences and/or for third-party liability awards or settlements up to the amount of [in words] U.S. dollars $ per occurrence, and the annual aggregate amounts of [in words] U.S. dollars $ , for nonsudden accidental occurrences available upon presentation of a sight

draft, bearing reference to this letter of credit No. _____, and (1) a signed certificate reading as follows:

**Certification of Valid Claim**

The undersigned, as parties [insert grantor] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operations of [grantor's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $ . We hereby certify that the claim does not apply to any of the following:

(a) Bodily injury or property damage for which [insert grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert grantor] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert grantor] arising from, and in the course of, employment by [insert grantor); or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert grantor]. This exclusion applies:

(A) Whether [insert grantor] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert grantor];

(2) Premises that are sold, given away or abandoned by [insert grantor] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert grantor];

(4) Personal property in the care, custody or control of [insert grantor];

(5) That particular part of real property on which [insert principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert grantor] are performing operations, if the property damage arises out of these operations.

[Signatures]

Grantor

[Signatures]

Claimant(s)

or (2) a valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from operation of the Grantor's facility or group of facilities.

This letter of credit is effective as of [date] and shall expire on [date at least one year later], but such expiration date shall be automatically extended for a period of [at least one year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you, the Department, and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us.

[Insert the following language if a standby trust fund is not being used: “In the event that this letter of credit is used in combination with another mechanism for liability coverage, this letter of credit shall be considered [insert “primary” or “excess” coverage].”

We certify that the wording of this letter of credit is identical to the wording specified in 335-14-5-.08(12)(k) as such Rules were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce" or "the Uniform Commercial Code"].

(l) A surety bond, as specified in 335-14-5-.08(8)(i) or 335-14-6-.08(8)(i) must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**Payment Bond**

Surety Bond No. [Insert number]

Parties [insert name and address of owner or operator], Principal, incorporated in [insert State of Incorporation] of [insert city and State of principal place of business] and [insert name and address of surety company(ies), Surety Company(ies), of [insert surety(ies) place of business].

EPA Identification Number, name, and address for each facility guaranteed by this bond:

| | **Sudden accidental occurances** | **Nonsudden accidental occurances** |
|---|---|---|
| Penal Sum Per Occurance | (insert amount] | (insert amount] |
| Annual Aggregate | (insert amount] | (insert amount] |

Purpose: This is an agreement between the Surety(ies) and the Principal under which the Surety(ies), its (their) successors and assignees, agree to be responsible for the payment of claims against the Principal for bodily injury and/or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental occurrences arising from operations of the facility or group of facilities in the sums prescribed herein; subject to the governing provisions and the following conditions.

**Governing Provisions:**

(1) Section 22-30-16 of the Alabama Hazardous Wastes Management and Minimization Act of 1978, as amended.

(2) Rules of the Alabama Department of Environmental Management Administrative Code, Division 335-14, particularly Rules 335-14-5-.08(8) and 335-14-6-.08(8), if applicable.

**Conditions:**

(1) The Principal is subject to the applicable governing provisions that require the Principal to have and maintain liability coverage for bodily injury and property damage to third parties caused by [“sudden” and/or “nonsudden”] accidental occurrences arising from operations of the facility or group of facilities. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which [insert principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert principal] under a workers' compensation, disability benefits, or unemployment compensation law or similar law.

(c) Bodily injury to:

(1) An employee of [insert principal] arising from, and in the course of, employment by [insert principal]; or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal]. This exclusion applies:

(A) Whether [insert principal] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert principal];

(2) Premises that are sold, given away or abandoned by [insert principal] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert principal];

(4) Personal property in the care, custody or control of [insert principal];

(5) That particular part of real property on which [insert principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert principal] are performing operations, if the property damage arises out of these operations.

(2) This bond assures that the Principal will satisfy valid third party liability claims, as described in condition 1.

(3) If the Principal fails to satisfy a valid third party liability claim, as described above, the Surety(ies) becomes liable on this bond obligation.

(4) The Surety(ies) shall satisfy a third party liability claim only upon the receipt of one of the following documents:

(a) Certification from the Principal and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**Certification of Valid Claim**

The undersigned, as parties [insert name of Principal] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Principal's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $[ ].

[Signature]

Principal

[Notary]

Date

[Signature(s)]

Claimant(s)

[Notary]

Date

or (b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

(5) In the event of combination of this bond with another mechanism for liability coverage, this bond will be considered [insert "primary" or "excess"] coverage.

(6) The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum, provided that the Surety(ies) furnish(es) notice to the Department forthwith of all claims filed and payments made by the Surety(ies) under this bond.

(7) The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and the Department, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal and the Department as evidenced by the return receipt.

(8) The Principal may terminate this bond by sending written notice to the Surety(ies) and to the Department.

(9) The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules and regulations and agree(s) that no such amendment shall in any way alleviate its [their] obligation on this bond.

(10) This bond is effective from [insert date] [12:01 a.m., standard time, at the address of the Principal as stated herein] and shall continue in force until terminated as described above.

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 335-14-5-.08(12)(l), as such Rules were constituted on the date this bond was executed.

**PRINCIPAL**

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate Seal]

CORPORATE SURETY(IES)

[Name and address]

State of incorporation: _____

Liability Limit: $_____

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: $_____

(m)1. A trust agreement, as specified in 335-14-5-.08(12)(j) or 335-14-6-.08(12)(j) must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**Trust Agreement**

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator] a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert, "incorporated in the State of " or "a national bank"], the "trustee".

Whereas the Alabama Department of Environmental Management (the "Department") has established certain Rules applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility or group of facilities must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden

accidental occurrences arising from operations of the facility or group of facilities.

Whereas the Grantor has elected to establish a trust to assure all or part of such financial responsibility for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) Section 2. Identification of Facilities. This agreement pertains to the facilities identified on attached schedule A (on schedule A, for each facility list the EPA Identification Number, name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, hereinafter the "Fund," for the benefit of any and all third parties injured or damaged by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of _____ [up to $1 million] per occurrence and _____ [up to $2 million] annual aggregate for sudden accidental occurrences and (up to $3 million] per occurrence and [up to $6 million] annual aggregate for nonsudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert Grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Grantor] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert Grantor] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert Grantor] arising from, and in the course of, employment by [insert Grantor]; or

(2) the spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Grantor].

**This exclusion applies:**

(A) Whether [insert Grantor] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert Grantor];

(2) Premises that are sold, given away, or abandoned by [insert Grantor] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert Grantor];

(4) Personal property in the care, custody, or control of [insert Grantor];

(5) That particular part of real property on which [insert Grantor] or any contractors or subcontractors working directly or indirectly on behalf of [insert Grantor] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the fund shall be considered [insert “primary” or “excess”] coverage.

The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Department.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by making payments from the Fund only upon receipt of one of the following documents:

(a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**Certification of Valid Claim**

The undersigned, as parties [insert Grantor] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Grantor's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $[ ].

[Signatures]

Grantor

[Signature(s)]

Claimant(s)

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstance then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(a) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held unless they are securities or other obligations of the Federal or a State government;

(b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.
Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common commingled, or collective trust fund created by the Trustee in which the fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trust participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 81a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuations. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the Department a

statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the Department shall constitute a conclusively binding assent by the Grantor barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Department and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Department to the Trustee shall be in writing, signed by the Department, and the Trustee shall act and

shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Department except as provided for herein.

Section 15. Notice of Nonpayment. If a payment for bodily injury or property damage is made under Section 4 of this trust, the Trustee shall notify the Grantor of such payment and the amount(s) thereof within five (5) working days. The Grantor shall, on or before the anniversary date of the establishment of the Fund following such notice, either make payments to the Trustee in amounts sufficient to cause the trust to return to its value immediately prior to the payment of claims under Section 4, or shall provide written proof to the Trustee that other financial assurance for liability coverage has been obtained equaling the amount necessary to return the trust to its value prior to the payment of claims. If the Grantor does not either make payments to the Trustee or provide the Trustee with such proof, the Trustee shall within 10 working days after the anniversary date of the establishment of the fund provide a written notice of nonpayment to the Department.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Department, or by the Trustee and the Department if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Department, or by the Trustee and the Department if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor. The Department will agree to termination of the Trust when the owner or operator substitutes alternate financial assurance as specified in this section.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Department issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from

the Trust fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of [enter name of State].

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 335-14-5-.08(12)(m) as such Rules were constituted on the date first above written.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

2. The following is an example of the certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in 335-14-5-.08(8)(j) Rule or 335-14-6-.08(8)(j).

State of _____

County of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

(n)1. A standby trust agreement as specified in 335-14-5-.08(8)(h) or 335-14-6-.08(8)(h) must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**Standby Trust Agreement**

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator] a [name of a State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert, "incorporated in the State of " or "a national bank"], the "trustee".

Whereas the Alabama Department of Environmental Management (the "Department"), has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility or group of facilities must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the Grantor has elected to establish a standby trust into which the proceeds from a letter of credit may be deposited to assure all or part of such financial responsibility for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term Grantor means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term Trustee means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities. This agreement pertains to the facilities identified on attached schedule A [on schedule A, for each facility list the EPA Identification Number, name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a standby trust fund, hereafter the "Fund," for the benefit of any and all third parties injured or damaged by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of _____ [up to $1 million] per occurrence and _____ [up to $2 million] annual aggregate for sudden accidental occurrences and [up to $6 million] annual aggregate for nonsudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert Grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Grantor] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert Grantor] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert Grantor] arising from, and in the course of, employment by [insert Grantor]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Grantor].

This exclusion applies:

(A) Whether [insert Grantor] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert Grantor];

(2) Premises that are sold, given away or abandoned by [insert Grantor] if the property damage arises out of any part of those premises;

(3) Property loaned by [insert Grantor];

(4) Personal property in the care, custody or control of [insert Grantor];

(5) That particular part of real property on which [insert Grantor] or any contractors or subcontractors working directly or indirectly on behalf of [insert Grantor] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the fund shall be considered [insert "primary" or "excess"] coverage.

The Fund is established initially as consisting of the proceeds of the letter of credit deposited into the Fund. Such proceeds and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Department.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by drawing on the letter of credit described in Schedule B and by making payments from the Fund only upon receipt of one of the following documents:

(a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**Certification of Valid Claim**

The undersigned, as parties [insert Grantor] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Grantor's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $_____ .

[Signature]

Grantor

[Signatures]

Claimant(s)

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of the proceeds from the letter of credit drawn upon by the Trustee in accordance with the requirements of 335-14-5-.08(12)(k) and Section 4. of this Agreement.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(a) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940,

as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or a State government; and

(c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or

to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institutions affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements to the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the

funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Department of the Alabama Department of Environmental Management and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee. All orders, requests, certifications of valid claims, and instructions to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's order, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Director hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Department except as provided for herein.

Section 14. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Department, or by the Trustee and the Department if the Grantor ceases to exist.

Section 15. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 14., this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Department, or by the Trustee and the Department, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be paid to the Grantor.

The Department will agree to termination of the Trust, all remaining trust property, less final trust administration expenses, shall be paid to the Grantor.

The Department will agree to termination of the Trust when the owner or operator substitutes alternative financial assurance as specified in this section.

Section 16. Immunity and indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor and the Department issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Alabama.

Section 18. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation of the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in ADEM Admin. Code subparagraph 335-14-5-.08(12)(n) as such regulations were constituted on the date first above written.

_____

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

_____

[Signature of Trustee]

Attest:

[Title]

[Seal]

2. The following is an example of the certification of acknowledgment which must accompany the trust agreement for a standby trust fund as specified in 335-14-5-.08(8)(h) or 335-14-6-.08(8)(h). State requirements may differ on the proper content of this acknowledgment.

State of _____

County of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

**Author:** Stephen C. Maurer; Vernon C. Crockett; Amy P. Zachry; Justin Martindale; C. Edwin Johnston; James L. Bryant; Vernon H. Crockett, Bradley N. Curvin, Theresa A. Maines; Brian C. Espy; Heather M. Jones; Gary L. Ellis; Sonja B. Favors; Brent A. Wilson; Jonah L. Harris.

**Statutory Authority:** Code of Ala. 1975, §§22-30-11, 22-30-12, 22-30-16.

**History:** February 9, 1983. **Amended:** April 9, 1986; September 29, 1986; February 15, 1988; August 24, 1989; December 6, 1990; January 25, 1992. **Amended:** Filed November 30, 1994; effective January 5, 1995. **Amended:** Filed February 21, 1997; effective March 28, 1997. **Amended:** Filed February 20, 1998; effective March 27, 1998. **Amended:** Filed February 26, 1999; effective April 2, 1999. **Amended:** Filed February 25, 2000; effective March 31, 2000. **Amended:** Filed March 9, 2001; effective April 13, 2001. **Amended:** Filed February 8, 2002; effective March 15, 2002. **Amended:** Filed March 13, 2003; effective April 17, 2003. **Amended:** Filed April 22, 2004; effective May 27, 2004. **Amended:** Filed February 24, 2005; effective March 31, 2005. **Amended:** Filed February 27, 2007; effective April 3, 2007. **Amended:** Filed February 24, 2009; effective March 31, 2009. **Amended:** Filed February 23, 2010; effective March 30, 2010. **Amended:** Filed February 19, 2013; effective March 26, 2013. **Amended:** Filed February 14, 2017; effective March 31, 2017. **Amended:** Filed February 20, 2018; effective April 7, 2018. **Amended:** Published April 28, 2023; effective June 12, 2023. **Amended:** Published _____; effective _____.

**APA-1**

**TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION**

| | |
|---|---|
| Control: | 335 |
| Department or Agency: | Alabama Department of Environmental Management Land Division - Hazardous Waste Program |
| Rule No.: | 335-14-5-.27 |
| Rule Title: | Subpart AA - Air Emission Standards For Process Vents |
| Intended Action | Amend |

| | |
|---|---|
| Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? | Yes |
| Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? | Yes |
| Is there another, less restrictive method of regulation available that could adequately protect the public? | No |
| Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? | No |

To what degree?: N/A

| | |
|---|---|
| Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? | NA |
| Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? | Yes |
| Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? | No |

Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of certifying officer: Jeffery W. Kitchens

Jeffery W. Kitchens

Date: Tuesday, August 19, 2025

REC'D & FILED
AUG 19, 2025
LEGISLATIVE SVC AGENCY

**APA-2**

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION - HAZARDOUS WASTE PROGRAM**

**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** Alabama Department of Environmental Management

**RULE NO. & TITLE:** 335-14-5-.27 Subpart AA - Air Emission Standards For Process Vents

**INTENDED ACTION:** Amend

**SUBSTANCE OF PROPOSED ACTION:**
The Department proposes to revise Rule 335-14-5-.27 to adopt the Technical Corrections for the Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule. These revisions are necessary for the Department to maintain regulations that are at least as stringent as those promulgated federally, a requirement to preserve the State's authorized status.

**TIME, PLACE AND MANNER OF PRESENTING VIEWS:**
Comments may be submitted in writing or orally at a public hearing to be held at 10:00 a.m., October 7, 2025, in the ADEM Main Hearing Room, 1400 Coliseum Boulevard, Montgomery, Alabama 36110. Attendance at the hearing is not necessary to present such data, views, arguments, or comments. All comments should be received by 5:00 p.m., October 7, 2025. Written submissions and other inquiries should be directed to: ADEM Hearing Officer, Office of General Counsel, Alabama Department of Environmental Management, P.O. Box 301463, Montgomery, AL 36130-1463 (street address: 1400 Coliseum Boulevard, Montgomery, AL 36110-2400) or by e-mail at hearing.officer@adem.alabama.gov.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**
Tuesday, October 7, 2025

**CONTACT PERSON AT AGENCY:**
Lynn T. Roper, 334-271-7728

Jeffery W. Kitchens
Jeffery W. Kitchens

(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

**335-14-5-.27 Subpart AA - Air Emission Standards For Process Vents.**

(a) The Environmental Protection Agency Regulations set forth in 40 CFR, Part 264, Subpart AA (as published by EPA on June 21, 1990, and amended on April 26, 1991; December 6, 1994; February 9, 1996; November 25, 1996; June 13, 1997; October 8, 1997; December 8, 1997; January 21, 1999; June 14, 2005; July 14, 2006; ~~and~~ November 28, 2016; and August 9, 2023), 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 AA, 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 AA, 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 Blvd, Montgomery, Alabama 36110.

**Author:** Stephen C. Maurer; C. Edwin Johnston; Bradley N. Curvin; Vernon H. Crockett; Jonah L. Harris.

**Statutory Authority:** Code of Ala. 1975, §§22-30-11, 22-30-16.

**History:** January 25, 1992. **Amended:** January 1, 1993. **Amended:** Filed November 30, 1995; effective January 5, 1995. **Amended:** Filed December 8, 1995; effective January 12, 1996. **Amended:** Filed February 20, 1998; effective Mach 27, 1998. **Amended:** Filed February 26, 1999; effective April 2, 1999. **Amended:** Filed February 25, 2000; effective March 31, 2000. **Amended:** Filed March 9, 2001; effective April 13, 2001. **Amended:** Filed February 24, 2005; effective March 31, 2005. **Amended:** Filed February 28, 2006; effective April 4, 2006. **Amended:** Filed February 14, 2017; effective March 31, 2017. **Amended:** Published April 28, 2023; effective June 12, 2023. **Amended:** Published _____; effective _____.

**APA-1**

**TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION**

| | |
|---|---|
| Control: | 335 |
| Department or Agency: | Alabama Department of Environmental Management Land Division - Hazardous Waste Program |
| Rule No.: | 335-14-5-.28 |
| Rule Title: | Subpart BB - Air Emission Standards For Equipment Leaks |
| Intended Action | Amend |

| | |
|---|---|
| Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? | Yes |
| Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? | Yes |
| Is there another, less restrictive method of regulation available that could adequately protect the public? | No |
| Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? | No |

To what degree?: N/A

| | |
|---|---|
| Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? | NA |
| Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? | Yes |
| Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? | No |

| | |
|---|---|
| Does the proposed rule have an economic impact? | No |

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of certifying officer: Jeffery W. Kitchens

Jeffery W. Kitchens

Date: Tuesday, August 19, 2025

REC'D & FILED
AUG 19, 2025
LEGISLATIVE SVC AGENCY

**APA-2**

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION - HAZARDOUS WASTE PROGRAM**

**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** Alabama Department of Environmental Management

**RULE NO. & TITLE:** 335-14-5-.28 Subpart BB - Air Emission Standards For Equipment Leaks

**INTENDED ACTION:** Amend

**SUBSTANCE OF PROPOSED ACTION:**

The Department proposes to revise Rule 335-14-5-.28 to adopt the Technical Corrections for the Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule. These revisions are necessary for the Department to maintain regulations that are at least as stringent as those promulgated federally, a requirement to preserve the State's authorized status.

**TIME, PLACE AND MANNER OF PRESENTING VIEWS:**

Comments may be submitted in writing or orally at a public hearing to be held at 10:00 a.m., October 7, 2025, in the ADEM Main Hearing Room, 1400 Coliseum Boulevard, Montgomery, Alabama 36110. Attendance at the hearing is not necessary to present such data, views, arguments, or comments. All comments should be received by 5:00 p.m., October 7, 2025. Written submissions and other inquiries should be directed to: ADEM Hearing Officer, Office of General Counsel, Alabama Department of Environmental Management, P.O. Box 301463, Montgomery, AL 36130-1463 (street address: 1400 Coliseum Boulevard, Montgomery, AL 36110-2400) or by e-mail at hearing.officer@adem.alabama.gov.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**

Tuesday, October 7, 2025

**CONTACT PERSON AT AGENCY:**

Lynn T. Roper, 334-271-7728

Jeffery W. Kitchens

Jeffery W. Kitchens

(Signature of officer authorized to promulgate and adopt rules or his or her deputy)

**335-14-5-.28 Subpart BB - Air Emission Standards For Equipment Leaks.**

(a) The Environmental Protection Agency Regulations, set forth in 40 CFR, Part 264, Subpart BB (as published by EPA on June 21, 1990, and amended on April 26, 1991; November 25, 1996; June 13, 1997; October 8, 1997; December 8, 1997; April 26, 2004; June 14, 2005; April 4, 2006; July 14, 2006; ~~and~~ November 28, 2016; and August 9, 2023), 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 BB, 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 BB, 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.

**Author:** Stephen C. Maurer; C. Edwin Johnston; Bradley N. Curvin; Vernon H. Crockett; Jonah L. Harris.

**Statutory Authority:** Code of Ala. 1975, §§22-30-11, 22-30-16.

**History:** January 25, 1992. **Amended:** January 1, 1993. **Amended:** Filed November 30, 1994; effective January 5, 1995. **Amended:** Filed December 8, 1995; effective January 12, 1996. **Amended:** Filed February 20, 1998; effective March 27, 1998. **Amended:** Filed February 26, 1999; effective April 2, 1999. **Amended:** Filed March 9, 2001; effective April 13, 2001. **Amended:** Filed February 24, 2005; effective March 31, 2005. **Amended:** Filed February 28, 2006; effective April 4, 2006. **Amended:** Filed February 14, 2017; effective March 31, 2017. **Amended:** Published April 28, 2023; effective June 12, 2023. **Amended:** Published _____; effective _____.

**APA-1**

**TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION**

| | |
|---|---|
| Control: | 335 |
| Department or Agency: | Alabama Department of Environmental Management Land Division - Hazardous Waste Program |
| Rule No.: | 335-14-6-.02 |
| Rule Title: | General Facility Standards |
| Intended Action | Amend |

| | |
|---|---|
| Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? | Yes |
| Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? | Yes |
| Is there another, less restrictive method of regulation available that could adequately protect the public? | No |
| Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? | No |

To what degree?: N/A

| | |
|---|---|
| Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? | NA |
| Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? | Yes |
| Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? | No |

Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of certifying officer: Jeffery W. Kitchens

Jeffery W. Kitchens

Date: Tuesday, August 19, 2025

REC'D & FILED
AUG 19, 2025
LEGISLATIVE SVC AGENCY

**APA-2**

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION - HAZARDOUS WASTE PROGRAM**

**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** Alabama Department of Environmental Management

**RULE NO. & TITLE:** 335-14-6-.02 General Facility Standards

**INTENDED ACTION:** Amend

**SUBSTANCE OF PROPOSED ACTION:**
The Department proposes to revise Rule 335-14-6-.02 to adopt the Integrating e-Manifest with Hazardous Waste Exports and Other Manifest-Related Reports. These revisions are necessary for the Department to maintain regulations that are at least as stringent as those promulgated federally, a requirement to preserve the State's authorized status.

**TIME, PLACE AND MANNER OF PRESENTING VIEWS:**
Comments may be submitted in writing or orally at a public hearing to be held at 10:00 a.m., October 7, 2025, in the ADEM Main Hearing Room, 1400 Coliseum Boulevard, Montgomery, Alabama 36110. Attendance at the hearing is not necessary to present such data, views, arguments, or comments. All comments should be received by 5:00 p.m., October 7, 2025. Written submissions and other inquiries should be directed to: ADEM Hearing Officer, Office of General Counsel, Alabama Department of Environmental Management, P.O. Box 301463, Montgomery, AL 36130-1463 (street address: 1400 Coliseum Boulevard, Montgomery, AL 36110-2400) or by e-mail at hearing.officer@adem.alabama.gov.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**
Tuesday, October 7, 2025

**CONTACT PERSON AT AGENCY:**
Lynn T. Roper, 334-271-7728

Jeffery W. Kitchens

Jeffery W. Kitchens

(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

**335-14-6-.02 General Facility Standards.**

(1) Applicability. The requirements of 335-14-6-.02 apply to owners and operators of all hazardous waste facilities except as 335-14-6-.01(1) provides otherwise.

(2) Identification number. Every facility owner or operator must obtain an EPA identification number by submitting a completed Notification of Regulated Waste Activity, ADEM Form 8700-12, to the Department, along with the appropriate fees specified in Chapter 335-1-6 of the ADEM Administrative Code.

(3) Required notices.

(a) The owner or operator of a facility that is arranging or has arranged to receive hazardous waste subject to 40 CFR 262, subpart H [incorporated by reference at 335-14-3-.09] from a foreign source must submit the following required notices:

1. As per 335-14-3-.09(5), for imports where the competent authority of the country of export does not require the foreign exporter to submit to it a notification proposing export and obtain consent from EPA and the competent authorities for the countries of transit, such owner or operator of the facility, if acting as the importer, must provide notification of the proposed transboundary movement in English to EPA using the allowable methods listed in 40 CFR 262, subpart H [incorporated by reference at 335-14-3-.09(5)] at least 60 days before the first shipment is expected to depart the country of export. The notification may cover up to one year of shipments of wastes having similar physical and chemical characteristics, the same United Nations classification, the same RCRA waste codes and OECD waste codes, and being sent from the same foreign exporter.

2. ~~AS~~As per 335-14-3-.09(5), a copy of the movement document bearing all required signatures within three (3) working days of receipt of the shipment to the foreign exporter~~,~~ and to the competent authorities of the countries of export and transit that control the shipment as an export and transit shipment of hazardous waste respectively~~; and~~. For shipments received on or after the electronic import-export reporting compliance date, ~~to EPA electronically~~the receiving facility must close out the movement document to confirm receipt within three working days of shipment delivery using ~~EPA's~~the EPA's Waste Import Export Tracking System (WIETS), or its

successor system. For shipments sent from a country with which the EPA has established an electronic exchange of movement document tracking data, the receiving facility may use WIETS or its successor system to send movement document confirmation data back through the electronic exchange to the foreign exporter and the country of export. The original of the signed movement document must be maintained at the facility for at least three (3) years. 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)~~WIETS, or its successor system, provided that copies are readily available for viewing and production if requested by any EPA or authorized ~~state~~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~~335-14-6-.02(3) 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)~~WIETS, or its successor system, for which the owner or operator of a facility bears no responsibility.

3. ~~AS~~As per 335-14-3-.09(5), if the facility has physical control of the waste and it must be sent to an alternate facility or returned to the country of export, such owner or operator of the facility must inform EPA, using the allowable methods listed in 40 CFR 262, subpart H [incorporated by reference at 335-14-3-.09(5)] of the need to return or arrange alternate management of the shipment.

4. As per 335-14-3-.09(5), such owner or operator shall:

(i) Send copies of the signed and dated confirmation of recovery or disposal, as soon as possible, but no later than thirty days after completing recovery or disposal on the waste in the shipment and no later ~~the~~than one calendar year following receipt of the waste, to the foreign exporter, to the competent authority of the country of export that controls the shipment as an export of hazardous waste, and ~~for shipments recycled or disposed of~~ on or after the electronic import-export reporting compliance date, to the EPA electronically using ~~EPA's Waste Import Export Tracking System (WIETS)~~WIETS, or its successor system. For shipments sent from a country with which the EPA has established an

electronic exchange of movement document tracking data, the receiving facility may use WIETS or its successor system to send confirmation of recovery or disposal data back through the electronic exchange to the foreign exporter and the country of export.

(ii) If the facility performed any of ~~the~~ recovery operations R12, R13, or RC3, or disposal operations D13 through D15, promptly send copies of the confirmation of recovery or disposal that it receives from the final recovery or disposal facility within one year of shipment delivery to the final recovery or disposal facility that performed one of recovery operations R1 through R11, or RC1, or one of disposal operations D1 through D12, or DC1 to DC2, to the competent authority of the country of export that controls the shipment as an export of hazardous waste, and on or after the electronic import-export reporting compliance date, to the EPA electronically using ~~EPA's Waste Import Export Tracking System (WIETS)~~WIETS, or its successor system. The recovery and disposal operations in this paragraph are defined in 40 CFR 262.81 [incorporated by reference in 335-14-3-.09(2)]. For shipments sent from a country with which the EPA has established an electronic exchange of movement document tracking data, the receiving facility may use WIETS or its successor system to send confirmation of recovery or disposal data back through the electronic exchange to the country of export.

(b) Before transferring ownership or operation of a facility during its operating life, or of a disposal facility during the post-closure care period, the owner or operator must notify the new owner or operator in writing of the requirements of 335-14-6 and 335-14-8. However, an owner's or operator's failure to notify the new owner or operator as required by 335-14-6-.02(3)(b) in no way relieves the new owner or operator of his obligation to comply with all applicable requirements of Division 335-14.

(c)1. A facility owner or operator 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 rule 335-14-1-.02(1)(a).

2. In order to eliminate the need for multiple Notifications during the reporting year, facilities which

anticipate periodically switching between generator classifications should notify for the higher classification (i.e., if a facility typically operates as small quantity generator, but anticipates being a large quantity generator for any period during the year, they should notify as a large quantity generator); and

3. 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) General waste analysis.

(a) Before an owner or operator treats, stores, or disposes of any hazardous waste, or non-hazardous wastes if applicable under 335-14-6-.07(4)(d), he must obtain a detailed chemical and physical analysis of a representative sample of the wastes. At a minimum, this analysis must contain all the information which must be known to treat, store, or dispose of the waste in accordance with the requirements of 335-14-6, 335-14-7, and 335-14-9.

2. The analysis may include data developed under 335-14-2, and existing published or documented data on the hazardous waste or on waste generated from similar processes.

3. The analysis must be repeated as necessary to ensure that it is accurate and up to date. At a minimum, the analysis must be repeated:

(i) When the owner or operator is notified, or has reason to believe, that the process or operation generating the hazardous wastes or non-hazardous waste, if applicable, under 335-14-6-.07(4)(d) has changed; and

(ii) For off-site facilities, when the results of the inspection or analysis required in 335-14-6-.02(4)(a)3. indicate that the hazardous waste received at the facility does not match the waste designated on the accompanying manifest or shipping paper.

4. The owner or operator of an off-site facility must inspect and analyze each hazardous waste movement received at the facility to determine whether it matches the identity of the waste specified on the accompanying manifest or shipping paper.

(b) The owner or operator must develop and follow a written waste analysis plan which describes the procedures which he will carry out to comply with 335-14-6-.02(4)(a). He must keep this plan at the facility. At a minimum, the plan must specify:

1. The parameters for which each hazardous waste, or non-hazardous waste if applicable under 335-14-6-.07(4)(d), will be analyzed and the rationale for the selection of these parameters (i.e., how analysis for these parameters will provide sufficient information on the waste's properties to comply with 335-14-6-.02(4)(a));

2. The test methods which will be used to test for these parameters;

3. The sampling method which will be used to obtain a representative sample of the waste to be analyzed. A representative sample may be obtained using either:

(i) One of the sampling methods described in 335-14-2-Appendix I; or

(ii) An equivalent sampling method approved by the Department.

4. The frequency with which the initial analysis of the waste will be reviewed or repeated to ensure that the analysis is accurate and up to date.

5. For off-site facilities, the waste analyses that hazardous waste generators have agreed to supply; and

6. Where applicable, the methods that will be used to meet the additional waste analysis requirements for specific waste management methods as specified in 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, 335-14-6-.29, 335-14-7-.08(4), and 335-14-9-.01(7).

7. For surface impoundments exempted from land disposal restrictions under 335-14-9-.01(4), the procedures and schedule for:

(i) The sampling of impoundment contents;

(ii) The analysis of test data; and

(iii) The annual removal of residues which are not delisted under 335-14-1-.03(2) or which exhibit a characteristic of hazardous waste and either:

(I) Do not meet applicable treatment standards of Rule 335-14-9-.04; or

(II) Where no treatment standards have been established;

I. Such residues are prohibited from land disposal under 335-14-9-.03(13) or RCRA Section 3004(d); or

II. Such residues are prohibited from land disposal under 335-14-9-.03(14).

8. For owners and operators seeking an exemption to the air emission standards of 335-14-6-.29;

(i) The procedures and schedules for waste sampling and analysis, and the analysis of test data to verify the exemption.

(ii) Each generator's notice and certification of the volatile organic concentration in the waste if the waste is received from off site.

(c) For off-site facilities, the waste analysis plan required in 335-14-6-.02(4)(b) must also specify the procedures which will be used to inspect and analyze each movement of hazardous waste received at the facility to ensure that it matches the identity of the waste designated on the accompanying manifest or shipping paper. At a minimum, the plan must describe and justify:

1. The procedures which will be used to determine the identity of each movement of waste managed at the facility and shall include collection of representative samples which will be obtained from each waste stream from each shipment of waste received from each generator and analyzed in accordance with the requirements of 335-14-6-.02(4) to accurately identify each movement of hazardous waste received at the facility;

2. The sampling method and number of samples which will be used to obtain a representative sample of the waste stream to be identified; and

3. The method(s) which will be used to analyze the sample(s).

4. The procedures that the owner or operator of an off-site landfill receiving containerized hazardous waste will use to determine whether a hazardous waste generator or treater has added a biodegradable sorbent to the waste in the container.

(d) For off-site facilities, samples of waste(s) from each generator collected in accordance with the requirements of 335-14-6-.02(4)(c) may be composited prior to analysis provided that:

1. No more than ten individual samples are composited into any one sample for analysis; and

2. Only compatible wastes from the same generator and waste stream are composited into any one sample which is to be analyzed.

3. In the event that the analytical results of sample(s) obtained in compliance with the requirements of 35-14-6-.02(4) indicate that the hazardous waste received at the facility does not match the waste described on the accompanying manifest or shipping paper, the facility owner or operator shall:

(i) Collect and analyze a representative sample from each container;

(ii) Identify the container(s) holding the waste(s) which cause the discrepancy to occur; and

(iii) Comply with the requirements of 335-14-6-.05(3)(b).

(e) Upon receipt of a satisfactory demonstration based on the types of waste received and treated, stored or disposed of at the facility, processes utilized to manage the waste, and any other reasonable factors, the Department may grant a partial or full exemption from the requirements for the sampling and analysis of each shipment of waste as required by 335-14-6-.02(4)(c).

[NOTE: The term "movement" as used in 335-14-6-.02(4) refers to individual truckloads, batches, shipments, etc., of wastes received at the facility. It is not intended to impose requirements for additional waste analyses for internal

movements of wastes within the facility unless otherwise required by Division 335-14.]

(5) Security.

(a) The owner or operator must prevent the unknowing entry, and minimize the possibility for the unauthorized entry, of persons or livestock onto the active portion of his facility, unless:

1. Physical contact with the waste, structures, or equipment within the active portion of the facility will not injure unknowing or unauthorized persons or livestock which may enter the active portion of a facility, and

2. Disturbance of the waste or equipment, by the unknowing or unauthorized entry of persons or livestock onto the active portion of a facility, will not cause a violation of the requirements of 335-14-6.

(b) Unless exempt under 335-14-6-.02(5)(a)1. and (a)2., a facility 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.(i) 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

(ii) A means to control entry, at all times, through the gates or other entrances to the active portion of the facility (e.g., an attendant, television monitors, locked entrance, or controlled roadway access to the facility).

(c) Unless exempt under 335-14-6-.02(5)(a)1. and (a)2., a sign with the legend, "Danger--Unauthorized Personnel Keep Out", must be posted at each entrance to the active portion of a facility, and at other locations, in sufficient numbers to be seen from any approach to this active portion. 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.

(6) General inspection requirements.

(a) The owner or operator must inspect his facility for malfunctions and deterioration, operator errors, and discharges which may be causing or may lead to:

1. Release of hazardous waste constituents to the environment; or

2. A threat to human health. The owner or operator must conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment.

(b)1. The owner or operator must develop and follow a written schedule for inspecting all monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment (such as dikes and sump pumps) that are important to preventing, detecting, or responding to environmental or human health hazards.

2. He must keep this schedule at the facility.

3. The schedule must identify the types of problems (e.g., malfunctions or deterioration) which are to be looked for during the inspection (e.g., inoperative sump pump, leaking fitting, eroding dike, etc.).

4. The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies called for in 335-14-6-.09(5), 335-14-6-.10(4), 335-14-6-.10(6), 335-14-6-.11(7), 335-14-6-.12(11), 335-14-6-.13(9), 335-14-6-.14(5), 335-14-6-.15(8), 335-14-6-.16(8), 335-14-6-.17(4), 335-14-6-.27, 335-14-6-.28, and 335-14-6-.29, where applicable.

(c) The owner or operator 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.

(d) The owner or operator 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.

(7) Personnel training.

(a) 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.

1. Facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of 335-14-6. The owner or operator must ensure that this program includes all the elements described in the document required under 335-14-6-.02(7)(d)3.

2. 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.

3. 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 groundwater contamination incidents; and

(vi) Shutdown of operations.

4. For facility employees that receive emergency response training pursuant to Occupational Safety and Health Administration (OSHA) regulations 29 CFR 1910.120(p)(8) and 1910.120(q), the facility is not required to provide separate emergency response training pursuant 335-14-6-.02(7), provided that the overall facility training meets all the requirements of 335-14-6-.02(7).

(b) Facility personnel must successfully complete the program required in 335-14-6-.02(7)(a) within six months after the effective date of these regulations or six months after the date of their employment or assignment to a facility, or to a new position at a facility, whichever is later. Employees hired after the effective date of these regulations must not work in unsupervised positions until they have completed the training requirements of 335-14-6-.02(7)(a).

(c) Facility personnel must take part in an annual review of the initial training required in 335-14-6-.02(7)(a).

(d) The owner or operator must maintain the following documents and records at the facility:

1. The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;

2. A written job description for each position listed under 335-14-6-.02(7)(d)1. 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;

3. 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 335-14-6-.02(7)(d)1;

4. Records that document that the training or job experience required under 335-14-6-.02(7)(a), (b), and (c) have been given to, and completed by, facility personnel.

(e) 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) General requirements for ignitable, reactive, or incompatible wastes.

(a) The owner or operator 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: 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 owner or operator 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.

(b) Where specifically required by other paragraphs of 335-14-6, the treatment, storage, or disposal of ignitable or reactive waste, and the mixture or commingling of incompatible wastes, or incompatible wastes and materials, must be conducted so that it does not:

1. Generate extreme heat or pressure, fire or explosion, or violent reaction;

2. Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health;

3. Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions;

4. Damage the structural integrity of the device or facility containing the waste; or

5. Through other like means threaten human health or the environment.

(9) Location standards. The placement of any hazardous waste in a salt dome, salt bed formation, underground mine, or cave is prohibited.

(10) Construction quality assurance program.

(a) CQA program.

1. A construction quality assurance (CQA) program is required for all surface impoundment, waste pile and landfill units that are required to comply with 335-14-6-.11(2)(a), 335-14-6-.12(5), and 335-14-6-.14(2)(a). The program must ensure that the constructed unit meets or exceeds all design criteria and specifications in the permit. The program must be developed and implemented under the direction of a CQA officer who is a registered professional engineer.

2. The CQA program must address the following physical components, where applicable:

(i) Foundations;

(ii) Dikes;

(iii) Low-permeability soil liners;

(iv) Geomembranes (flexible membrane liners);

(v) Leachate collection and removal systems and leak detection systems; and

(vi) Final cover systems.

(b) Written CQA plan. Before construction begins on a unit subject to the CQA program under 335-14-6-.02(10)(a), the owner or operator must develop and implement a written CQA plan. The plan must identify steps that will be used to monitor and document the quality of materials and the condition and manner of their installation. The CQA plan must include:

1. Identification of applicable units and a description of how they will be constructed.

2. Identification of key personnel in the development and implementation of the CQA plan, and CQA officer qualifications.

3. A description of inspection and sampling activities for all unit components identified in 335-14-6-.02(10)(a)2., including observations and tests that will be used before, during, and after construction to ensure that the construction materials and the installed unit components meet the design specifications. The description must cover: sampling size and locations; frequency of testing;

data evaluation procedures; acceptance and rejection criteria for construction materials; plans for implementing corrective measures; and data or other information to be recorded and retained in the operating record under 335-14-6-.05(4).

(c) Contents of program.

1. The CQA program must include observations, inspections, tests, and measurements sufficient to ensure:

(i) Structural stability and integrity of all components of the unit identified in 335-14-6-.02(10)(a)2.;

(ii) Proper construction of all components of the liners, leachate collection and removal system, leak detection system, and final cover system, according to permit specifications and good engineering practices, and proper installation of all components (e.g., pipes) according to design specifications;

(iii) Conformity of all materials used with design and other material specifications under 335-14-5-.11(2), 335-14-5-.12(2), and 335-14-5-.14(2).

2. The CQA program shall include test fills for compacted soil liners, using the same compaction methods as in the full-scale unit, to ensure that the liners are constructed to meet the hydraulic conductivity requirements of 335-14-5-.11(2)(c)1., 335-14-5-.12(2)(c)1., and 335-14-5-.14(2)(b)1. in the field. Compliance with the hydraulic conductivity requirements must be verified by using in-situ testing on the constructed test fill. The test fill requirement is waived where data are sufficient to show that a constructed soil liner meets the hydraulic conductivity requirements of 335-14-5-.11(2)(c)1., 335-14-5-.12(2)(c)1., and 335-14-5-.14(2)(b)1. in the field.

(d) Certification. The owner or operator of units subject to 335-14-6-.02(10) must submit to the Director by certified mail or hand delivery, at least 30 days prior to receiving waste, a certification signed by the CQA officer that the approved CQA plan has been successfully carried out and that the unit meets the requirements of 335-14-6-.11(2)(a), 335-14-6-.12(5), or 335-14-6-.14(2)(a). The owner or operator may receive waste in the unit after 30 days from the Director's receipt of the CQA certification unless the

Director determines in writing that the construction is not acceptable, or extends the review period for a maximum of 30 more days, or seeks additional information from the owner or operator during this period. Documentation supporting the CQA officer's certification must be furnished to the Director upon request.

**Author:** Stephen C. Maurer; Steven O. Jenkins; Amy P. Zachry; Michael B. Champion; Kelley Lockhart; Bradley N. Curvin; Theresa A. Maines; Heather M. Jones; Jonah L. Harris; Vernon H. Crockett; Sonja B. Favors; Brent A. Watson

**Statutory Authority:** Code of Ala. 1975, §§22-30-11, 22-30-16.

**History:** November 19, 1980. **Amended:** April 9, 1986; September 29, 1986; February 15, 1988; August 24, 1989; December 6, 1990; January 25, 1992; January 1, 1993. **Amended:** Filed November 30, 1994; effective January 5, 1995. **Amended:** Filed February 21, 1997; effective March 28, 1997. **Amended:** Filed February 20, 1998; effective March 27, 1998. **Amended:** Filed February 26, 1999; effective April 2, 1999. **Amended:** Filed March 9, 2001; effective April 13, 2001. **Amended:** Filed February 8, 2002; effective March 15, 2002. **Amended:** Filed February 24, 2005; effective March 31, 2005. **Amended:** February 28, 2006; effective April 4, 2006. **Amended:** February 27, 2007; effective April 3, 2007. **Amended:** Filed April 22, 20098; effective May 27, 2008. **Amended:** Filed February 24, 2009; effective March 31, 2009. **Amended:** Filed February 23, 2011; effective March 30, 2011. **Amended:** Filed February 28, 2012; effective April 3, 2012. **Amended:** Filed February 14, 2017; effective March 31, 2017. **Amended:** Published December 31, 2020; effective February 14, 2021. **Amended:** Published April 28, 2023; effective June 12, 2023. **Amended:** Published ; effective .

**APA-1**

**TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION**

| | |
|---|---|
| Control: | 335 |
| Department or Agency: | Alabama Department of Environmental Management Land Division - Hazardous Waste Program |
| Rule No.: | 335-14-6-.05 |
| Rule Title: | Manifest System, Recordkeeping, And Reporting |
| Intended Action | Amend |

| | |
|---|---|
| Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? | Yes |
| Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? | Yes |
| Is there another, less restrictive method of regulation available that could adequately protect the public? | No |
| Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? | No |

To what degree?: N/A

| | |
|---|---|
| Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? | NA |
| Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? | Yes |
| Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? | No |

Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of certifying officer: Jeffery W. Kitchens

Jeffery W. Kitchens

Date: Tuesday, August 19, 2025

REC'D & FILED
AUG 19, 2025
LEGISLATIVE SVC AGENCY

**APA-2**

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION - HAZARDOUS WASTE PROGRAM**

**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** Alabama Department of Environmental Management

**RULE NO. & TITLE:** 335-14-6-.05 Manifest System, Recordkeeping, And Reporting

**INTENDED ACTION:** Amend

**SUBSTANCE OF PROPOSED ACTION:**

The Department proposes to revise Rule 335-14-6-.05 to adopt the Technical Corrections for the Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule and the Integrating e-Manifest with Hazardous Waste Exports and Other Manifest-Related Reports. These revisions are necessary for the Department to maintain regulations that are at least as stringent as those promulgated federally, a requirement to preserve the State's authorized status.

**TIME, PLACE AND MANNER OF PRESENTING VIEWS:**

Comments may be submitted in writing or orally at a public hearing to be held at 10:00 a.m., October 7, 2025, in the ADEM Main Hearing Room, 1400 Coliseum Boulevard, Montgomery, Alabama 36110. Attendance at the hearing is not necessary to present such data, views, arguments, or comments. All comments should be received by 5:00 p.m., October 7, 2025. Written submissions and other inquiries should be directed to: ADEM Hearing Officer, Office of General Counsel, Alabama Department of Environmental Management, P.O. Box 301463, Montgomery, AL 36130-1463 (street address: 1400 Coliseum Boulevard, Montgomery, AL 36110-2400) or by e-mail at hearing.officer@adem.alabama.gov.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**

Tuesday, October 7, 2025

**CONTACT PERSON AT AGENCY:**

Lynn T. Roper, 334-271-7728

Jeffery W. Kitchens

Jeffery W. Kitchens

(Signature of officer authorized to promulgate and adopt rules or his or her deputy)

**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) 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)(a)] 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~~[Reserved];

(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.~~ [Reserved]

(II) Options for compliance on June 30, 2021. ~~Beginning on June 30, 2021, the requirement to submit~~Send to the EPA e-Manifest system an image file of 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~~send to the EPA e-Manifest 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 that receives hazardous waste subject to CFR part 262, subpart H [incorporated by reference at 335-14-3-.09] from a foreign source must:

(i) Additionally, list the relevant waste stream consent number from consent documentation supplied by the EPA to the facility for each waste listed on the manifest in the International Shipments block on the Continuation Sheet (EPA Form 8700-22A), matched to the relevant list number for the waste from block 9b. If additional space is needed, the owner or operator should use ~~a~~an additional Continuation Sheet(s) (EPA Form 8700-22A) ~~÷~~; and

(ii) Send a copy of the manifest to EPA ~~using the addresses listed in 40 CFR 262.82(e) [incorporated by reference at 335-14-3-.09(3)] within thirty (30) days of delivery until the facility can submit such a copy to the~~ e-Manifest system per 335-14-6-.05(2)(a)2.(v)~~.~~

~~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~~of delivery, send a copy (Page 1) 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~~EPA e-Manifest system.

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 applicable requirements of 335-14-3. The provisions of 335-14-3-.01(5), 335-14-3-.01(6), and 335-14-3-.01(17) are applicable to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of 335-14-3-.01(5), ~~335-14-2~~335-14-3-.01(6), and 335-14-3-.

01(7) only apply to owners or operators who are shipping hazardous waste which they generated at that facility or operating as a large quantity generator consolidating hazardous waste from very small quantity generators under 335-14-3-.01(7)(f).

(d) As per 40 CFR 262.84(d)(2)(xv) [incorporated by reference in 335-14-3-.09(5)], within three (3) working days of the receipt of a shipment subject to 40 CFR part 262, subpart H ~~[incorporated by reference at 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 foreign exporter~~;~~ and to the competent authorities of the countries of export and transit that control the shipment as an export and transit shipment of hazardous waste respectively~~; and~~. For shipments received on or after the electronic import-export reporting compliance date, ~~to EPA electronically~~the receiving facility must close out the movement document to confirm receipt within three working days of shipment delivery using ~~EPA's Waste Import Export Tracking System (WIETS)~~WIETS, or its successor system. For shipments sent from a country with which the EPA has established an electronic exchange of movement document tracking data, the receiving facility may use WIETS or its successor system to send movement document confirmation data back through the electronic exchange to the foreign exporter and the country of export. 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)~~WIETS, or its successor system, provided that copies are readily available for viewing and production if requested by any EPA or authorized ~~state~~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~~335-14-6-.05(2) if the owner or operator of a facility can ~~demonstate~~demonstrate that the inability to produce the document is due exclusively to technical difficulty with ~~EPA's~~the 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 335-14-6-.05(2)(f) 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 in these regulations 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 CFR. §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 in these regulations 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 hazardous 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~~335-14-6-.05(2) 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 §65.1313.

2. An owner or operator subject to user fees ~~under this section~~335-14-6-.05(2) 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).

(l) Post-receipt manifest data corrections. After facilities have certified ~~to the receipt of hazardous wastes~~that the manifest is complete, by signing ~~Item 20 of the manifest~~it at the time of submission to the EPA e-Manifest system, any post-receipt data corrections may be submitted at any time by any interested person (e.g., waste handler) ~~shown~~named on the manifest. If corrections are requested by the Department for portions of the manifest that a designated facility is required to complete, the facility must address the data correction within 30 days from the date of the request.

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) and 335-14-7-.16(7).

(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~~20 days after receiving the waste, the owner or operator must ~~immediately~~:

1. 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.

2. Beginning on December 1, 2025, immediately submit a Discrepancy Report to the EPA e-Manifest system describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue. Beginning on December 1, 2025, the Department will no longer accept mailed paper Discrepancy Reports from facilities.

(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 to 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. Facilities are not required to send the amended manifest to any transporter who is registered in the EPA's e-Manifest system. Registered transporters may obtain the signed and dated copy of a completed manifest from the EPA e-Manifest system in lieu of receiving the manifest through U.S. postal mail.

(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 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-.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) Availability, retention, and disposition of records.

(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~~using the method(s) approved 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]~~Beginning on December 1, 2025, 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 335-14-4-.02(1)(e), and if the waste is not excluded from the manifest requirement by 335-14-5, then the owner or operator must prepare an electronic Unmanifested

Waste Report in the EPA e-Manifest system within 15 days after receiving the waste. The Unmanifested Waste Report must contain 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.

(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.

**Author:** Stephen C. Maurer; Amy P. Zachry; Michael B. Champion; Bradley N Curvin; Theresa A. Maines; McHeartland Sasser; Heather M. Jones; Vernon H. Crockett, Jonah L. Harris, Kelley Hartley.
**Statutory Authority:** Code of Ala. 1975, §§22-30-11, 22-30-16, 22-30-18 and 22-30-19.
**History:** November 19, 1980. **Amended:** April 9, 1986; September 29, 1986; February 15, 1988; August 24, 1989; December 6, 1990; January 25, 1992; January 1, 1993. **Amended:** Filed November 30, 1994; effective January 5, 1995. **Amended:** Filed February 21, 1997; effective March 28, 1997. **Amended:** Filed February 20, 1998; effective March 27, 1998. **Amended:** Filed February 26,

1999; effective April 2, 1999. **Amended:** Filed March 9, 2001; effective April 13, 2001. **Amended:** Filed February 8, 2002; effective March 15, 2002. **Amended:** Filed February 28, 2006; effective April 4, 2006. **Amended:** February 27, 2007; effective April 3, 2007. **Amended:** February 24, 2009; effective March 31, 2009. **Amended:** Filed February 23, 2011; effective March 30, 2011. **Amended:** Filed February 28, 2012; effective April 3, 2012. **Amended:** Filed February 14, 2017; effective March 31, 2017. **Amended:** Filed February 20, 2018; effective April 7, 2018. **Amended:** Filed February 19, 2019; effective April 6, 2019. **Amended:** Published April 28, 2023; effective June 12, 2023. **Amended:** Published _____; effective _____.

**APA-1**

**TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION**

| | |
|---|---|
| Control: | 335 |
| Department or Agency: | Alabama Department of Environmental Management Land Division - Hazardous Waste Program |
| Rule No.: | 335-14-6-.08 |
| Rule Title: | Financial Requirements |
| Intended Action | Amend |

| | |
|---|---|
| Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? | Yes |
| Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? | Yes |
| Is there another, less restrictive method of regulation available that could adequately protect the public? | No |
| Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? | No |

To what degree?: N/A

| | |
|---|---|
| Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? | NA |
| Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? | Yes |
| Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? | No |

Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of certifying officer: *Jeffery W. Kitchens*
Jeffery W. Kitchens

Date: Tuesday, August 19, 2025

REC'D & FILED
AUG 19, 2025
LEGISLATIVE SVC AGENCY

**APA-2**

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION - HAZARDOUS WASTE PROGRAM**

**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** Alabama Department of Environmental Management

**RULE NO. & TITLE:** 335-14-6-.08 Financial Requirements

**INTENDED ACTION:** Amend

**SUBSTANCE OF PROPOSED ACTION:**
The Department proposes to revise Rule 335-14-6-.08 to clarify the financial requirements during interim status for the post-closure care period for owners and operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.

**TIME, PLACE AND MANNER OF PRESENTING VIEWS:**
Comments may be submitted in writing or orally at a public hearing to be held at 10:00 a.m., October 7, 2025, in the ADEM Main Hearing Room, 1400 Coliseum Boulevard, Montgomery, Alabama 36110. Attendance at the hearing is not necessary to present such data, views, arguments, or comments. All comments should be received by 5:00 p.m., October 7, 2025. Written submissions and other inquiries should be directed to: ADEM Hearing Officer, Office of General Counsel, Alabama Department of Environmental Management, P.O. Box 301463, Montgomery, AL 36130-1463 (street address: 1400 Coliseum Boulevard, Montgomery, AL 36110-2400) or by e-mail at hearing.officer@adem.alabama.gov.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**
Tuesday, October 7, 2025

**CONTACT PERSON AT AGENCY:**
Lynn T. Roper, 334-271-7728

Jeffery W. Kitchens

Jeffery W. Kitchens

(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

**335-14-6-.08 Financial Requirements.**

(1) Applicability.

(a) The requirements of 335-14-6-.08(3), (4), (8), and (9) apply to owners and operators of all hazardous waste facilities, except as provided otherwise in 335-14-6-.08(1) or in 335-14-6-.01(1).

(b) The requirements of 335-14-6-.08(5) and (7) apply only to owners and operators of:

1. Disposal facilities;

2. Tank systems that are required under 335-14-6-.10(8) to meet the requirements for landfills; and

3. Containment buildings that are required under Rule 335-15-6-.30(3) to meet the requirements for landfills; and

4. Other hazardous waste management units which are unable to demonstrate closure by removal.

(c) Except for the requirements to provide and update cost estimates, as described in 335-14-6-.08(3), 335-14-6-.08(5), the State of Alabama and the Federal government are exempt from the requirements of 335-14-6-.08.

(2) [Reserved]

(3) Cost estimate for closure.

(a) The owner or operator must have a detailed written estimate in a format specified by the Department, in current dollars, of the cost of closing the facility in accordance with the requirements in 335-14-6-.07(2) through 335-14-6-.07(6) and applicable closure requirements of 335-14-6-.09(9), 335-14-6-.10(8), 335-14-6-.11(9), 335-14-6-.12(9), 335-14-6-.13(11), 335-14-6-.14(11), 335-14-6-.15(12), 335-14-6-.16(12), 335-14-6-.17(5), 335-14-6-.23(6), and 335-14-6-.30(3).

1. The estimate must equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (see 335-14-6-.07(3)(b)); and

2. The closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close

the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in 335-14-1-.02.) The owner or operator may use costs for on-site disposal if he can demonstrate that on-site disposal capacity will exist at all times over the life of the facility.

3. The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, or non-hazardous wastes if applicable under 335-14-6-.07(4)(d), facility structures or equipment, land or other facility assets associated with the facility at the time of partial or final closure.

4. The owner or operator may not incorporate a zero cost for hazardous wastes, or non-hazardous wastes if applicable under 335-14-6-.07(4)(d), that might have economic value.

(b) During the active life of the facility, the owner or operator must adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with 335-14-6-.08(4). For owners and operators using the financial test or corporate guarantee, the closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Department as specified in 335-14-6-.08(4)(e)5. The adjustment may be made by recalculating the closure cost estimate in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business, as specified in 335-14-6-.08(3)(b)1. and (b)2. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

1. The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.

2. Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

(c) During the active life of the facility, the owner or operator must revise the closure cost estimate no later than 30 days after a revision has been made to the closure plan which increases the cost of closure. If the owner or operator

has an approved closure plan, the closure cost estimate must be revised no later than 30 days after the Department has approved the request to modify the closure plan, if the change in the closure plan increases the cost of closure. The revised closure cost estimate must be adjusted for inflation as specified in 335-14-6-.08(3)(b).

(d) The owner or operator must keep the following at the facility during the operating life of the facility: The latest closure cost estimate prepared in accordance with 335-14-6-.08(3)(a) and (c) and, when this estimate has been adjusted in accordance with 335-14-6-.08(3)(b), the latest adjusted closure cost estimate.

(4) Financial assurance for closure. By the effective date of these regulations, an owner or operator of each facility must establish financial assurance for closure of the facility. He must choose from the options as specified in 335-14-6-.08(4)(a) through (e).

(a) Closure trust fund.

1. An owner or operator may satisfy the requirements of 335-14-6-.08(4) by establishing a closure trust fund which conforms to the requirements of 335-14-6-.08(4)(a) and submitting an originally signed duplicate of the trust agreement to the Department. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

2. The wording of the trust agreement must be identical to the wording specified in 335-14-5-.08(12)(a), and the trust agreement must be accompanied by a formal certification of acknowledgment (for example, see 335-14-5-.08(12)(a)2.). Schedule A of the trust agreement must be updated and an originally signed duplicate must be submitted to the Department within 60 days after a change in the amount of the current closure cost estimate covered by the agreement.

3. Payments into the trust fund must be made annually by the owner or operator over the 8 years beginning with the effective date of these regulations or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereafter referred to as the "pay-in period". The payments into the closure trust fund must be made as follows:

(i) The first payment must be made by the effective date of these regulations, except as provided in 335-14-6-.08(4)(a)5. The initial payment must be at least equal to the amount determined according to the schedule set out in 335-14-6-.08(4)(a)3.(ii)(I) through (a)3.(ii)(VIII).

(ii) Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. Payments must be made according to the following schedule:

(I) If the remaining operating life of the facility is one year, 100% of the current closure cost estimate must be paid initially;

(II) If the remaining operating life of the facility is two years, 50% of the current closure cost estimate must be paid each of the two years;

(III) If the remaining operating life of the facility is three years, 34% of the current closure cost estimate must be paid initially and 33% of the current closure cost estimate must be paid each of the two subsequent years;

(IV) If the remaining operating life of the facility is four years, 25% of the current closure cost estimate must be paid each of the four years;

(V) If the remaining operating life of the facility is five years, 20% of the current closure cost estimate must be paid each of the five years;

(VI) If the remaining operating life of the facility is six years, 20% of the current closure cost estimate must be paid each of the first four years and 10% of the current closure cost estimate must be paid each of the two subsequent years;

(VII) If the remaining operating life of the facility is seven years, 20% of the current closure cost estimate must be paid each of the first three years and 10% of the current closure cost estimate must be paid each of the four subsequent years; and

(VIII) If the remaining operating life of the facility is eight years or longer, 20% of the current closure cost estimate must be paid each of the first two years and 10% of the current closure cost estimate must be paid each of the six subsequent years;

(iii) Following the initial payment, all subsequent annual payments must reconcile any difference between the actual value of the trust fund and the required value of the trust fund. The required value of the trust fund accounts for adjustments to the closure-cost estimate made in accordance with 335-14-6-.08(3), and may be calculated by determining the value of the trust fund if the current payment and all previous payments were made using the current closure-cost estimate.

4. The owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the current closure cost estimate at the time the fund is established. However, he must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in 335-14-6-.08(4)(a)3.

5. If the owner or operator establishes a closure trust fund after having used one or more alternate mechanisms specified in 335-14-6-.08(4), his first payment must be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made as specified in 335-14-6-.08(4)(a)3.

6. After the pay-in period is completed, whenever the current closure cost estimate changes, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance as specified in 335-14-6-.08(4) to cover the difference.

7. If the value of the trust fund is greater than the total amount of the current closure cost estimate, the owner or operator may submit a written request to the Department for release of the amount in excess of the current closure cost estimate.

8. If an owner or operator substitutes other financial assurance as specified in 335-14-6-.08(4) for all or part of the trust fund, he may submit a written request to the Department for release of the amount in excess of the current closure cost estimate covered by the trust fund.

9. Within 60 days after receiving a request from the owner or operator for release of funds as specified in 335-14-6-.08(4)(a)7. or (a)8., the Department will instruct the trustee to release to the owner or operator such funds as the Department specifies in writing.

10. After beginning partial or final closure, an owner or operator or another person authorized to conduct partial or final closure may request reimbursements for partial or final closure expenditures by submitting itemized bills to the Department. The owner or operator may request reimbursements for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. No later than 60 days after receiving bills for partial or final closure activities, the Department will instruct the trustee to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the Department has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, he may withhold reimbursements of such amounts as he deems prudent until he determines, in accordance with 335-14-6-.08(4)(h), that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Department does not instruct the trustee to make such reimbursements, he will provide to the owner or operator a detailed written statement of reasons.

11. The Department will agree to termination of the trust when:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-6-.08(4); or

(ii) The Department releases the owner or operator from the requirements of 335-14-6-.08(4) in accordance with 335-14-6-.08(4)(h).

(b) Surety bond guaranteeing payment into a closure trust fund.

1. An owner or operator may satisfy the requirements of 335-14-6-.08(4) by obtaining a surety bond which conforms to the requirements of 335-14-6-.08(4)(b) and submitting the bond to the Department. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

2. The wording of the surety bond must be identical to the wording specified in 335-14-5-.08(12)(b).

3. The owner or operator who uses a surety bond to satisfy the requirements of 335-14-6-.08(4) must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund must meet the requirements specified in 335-14-6-.08(4)(a), except that:

(i) An originally signed duplicate of the trust agreement must be submitted to the Department with the surety bond; and

(ii) Until the standby trust fund is funded pursuant to the requirements of 335-14-6-.08(4), the following are not required by these regulations:

(I) Payments into the trust fund as specified in 335-14-6-.08(4)(a).

(II) Updating of Schedule A of the trust agreement (see 335-14-5-.08(12)(a)) to show current closure cost estimates;

(III) Annual valuations as required by the trust agreement; and

(IV) Notices of nonpayment as required by the trust agreement.

4. The bond must guarantee that the owner or operator will:

(i) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility; or

(ii) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin final closure issued by the Department becomes final, or within 15 days after an order to begin final closure is issued by a court of competent jurisdiction; or

(iii) Provide alternate financial assurance as specified in 335-14-6-.08(4), and obtain the Department's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the bond from the surety.

5. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

6. The penal sum of the bond must be in an amount at least equal to the current closure cost estimate, except as provided in 335-14-6-.08(4)(f).

7. Whenever the current closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in 335-14-6-.08(4) to cover the increase. Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the Department.

8. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts.

9. The owner or operator may cancel the bond if the Department has given prior written consent. The Department will provide such written consent when:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-6-.08(4); or

(ii) The Department releases the owner or operator from the requirements of 335-14-6-.08(4) in accordance with 335-14-6-.08(4)(h).

(c) Closure letter of credit.

1. An owner or operator may satisfy the requirements of 335-14-6-.08(4) by obtaining an irrevocable standby letter of credit which conforms to the requirements of 335-14-6-.08(4)(c) and submitting the letter to the Department. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or State agency.

2. The wording of the letter of credit must be identical to the wording specified in 335-14-5-.08(12)(d).

3. An owner or operator who uses a letter of credit to satisfy the requirements of 335-14-6-.08(4) must also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Department will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund must meet the requirements of the trust fund specified in 335-14-6-.08(4)(a), except that:

(i) An originally signed duplicate of the trust agreement must be submitted to the Department with the letter of credit; and

(ii) Unless the standby trust fund is funded pursuant to the requirements of 335-14-6-.08(4), the following are not required by these regulations:

(I) Payments into the trust fund as specified in 335-14-6-.08(4)(a);

(II) Updating of Schedule A of the trust agreement (see 335-14-5-.08(12)(a)) to show current closure cost estimates;

(III) Annual valuations as required by the trust agreement; and

(IV) Notices of nonpayment as required by the trust agreement.

4. The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: the EPA or Alabama Identification Number, name, and address of the facility, and the amount of funds assured for closure of the facility by the letter of credit.

5. The letter of credit must be irrevocable and issued for a period of at least 1 year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least 1 year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Department by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the Department have received the notice, as evidenced by the return receipts.

6. The letter of credit must be issued in an amount at least equal to the current closure cost estimate, except as provided in 335-14-6-.08(4)(f).

7. Whenever the current closure cost estimate increases to an amount greater than the amount of the credit, the owner or operator, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in 335-14-6-.08(4) to cover the increase. Whenever the current closure cost estimate decreases, the amount of the credit may be reduced to the amount of the current closure cost estimate following written approval by the Department.

8. Following a final administrative determination pursuant to the AHWMMA that the owner or operator has failed to perform final closure in accordance with the approved closure plan when required to do so, the Department may draw on the letter of credit.

9. If the owner or operator does not establish alternate financial assurance as specified in 335-14-6-.08(4) and obtain written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice from the issuing institution that it has decided not to extend the

letter of credit beyond the current expiration date, the Department will draw on the letter of credit. The Department may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the Department will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in 335-14-6-.08(4) and obtain written approval of such assurance from the Department.

10. The Department will return the letter of credit to the issuing institution for termination when:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-6-.08(4); or

(ii) The Department releases the owner or operator from the requirements of 335-14-6-.08(4) in accordance with 335-14-6-.08(4)(h).

(d) Closure insurance.

1. An owner or operator may satisfy the requirements of 335-14-6-.08(4) by obtaining closure insurance which conforms to the requirements of 335-14-6-.08(4)(d) and submitting an originally signed certificate of such insurance to the Department. By the effective date of these regulations, the owner or operator must submit the certificate of insurance to the Department or establish other financial assurance as specified in 335-14-6-.08(4). At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in the State of Alabama, and must not be captive insurance as defined in 335-14-1-.02 unless the requirements of 335-14-6-.08(4)(d)1.(ii) are met.

(i) The use of insurance to demonstrate financial assurance for closure and post-closure care pertains exclusively to those insurance policies underwritten by commercial property and casualty insurers (primary or excess and surplus lines), through which, in the insurance contract, the financial burden for closure and post-closure care is transferred to the third-party insurer. Except as provided in 335-14-6-.08(4)(d)1.(ii), the third-party insurer must assume financial responsibility for this accepted risk, using its own pool of resources that is independent, separate, and

unrelated to that of the insured (owner or operator). The use of insurance policies underwritten by captive insurers therefore is prohibited.

(ii) Captive insurance may be used for closure insurance only when the facility provides annual documentation to the Department that the owner or operator is in compliance with the requirements of Rule 335-14-6-.08(4)(e).

2. The wording of the certificate of insurance must be identical to the wording specified in 335-14-6-.08(6)(e).

3. The closure insurance policy must be issued for a face amount at least equal to the current closure cost estimate, except as provided in 335-14-6-.08(4)(f). The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

4. The closure insurance policy must guarantee that funds will be available to close the facility whenever final closure occurs. The policy must also guarantee that once final closure begins, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Department, to such party or parties as the Department specifies.

5. After beginning partial or final closure, an owner or operator or any other person authorized to conduct closure may request reimbursements for closure expenditures by submitting itemized bills to the Department. The owner or operator may request reimbursements for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for closure activities, the Department will instruct the insurer to make reimbursements in such amounts as the Department specifies in writing if the Department determines that the partial or final closure expenditures are in accordance with the approved closure plan or otherwise justified. If the Department has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the face amount of the policy, he may

withhold reimbursement of such amounts as he deems prudent until he determines, in accordance with 335-14-6-.08(4)(h), that the owner or operator is no longer required to maintain financial assurance for final closure of the particular facility. If the Department does not instruct the insurer to make such reimbursements, he will provide to the owner or operator a detailed written statement of reasons.

6. The owner or operator must maintain the policy in full force and effect until the Department consents to termination of the policy by the owner or operator as specified in 335-14-6-.08(4)(d)10. Failure to pay the premium, without substitution of alternate financial assurance as specified in 335-14-6-.08(4), will constitute a significant violation of these regulations, warranting such remedy as the Department deems necessary. Such violation will be deemed to begin upon receipt by the Department of a notice of future cancellation, termination or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

7. Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

8. The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate or fail to renew the policy by sending notice by certified mail to the owner or operator and the Department. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Department and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:

(i) The Department deems the facility abandoned; or

(ii) Interim status is terminated or revoked; or

(iii) Closure is ordered by the Department or a court of competent jurisdiction; or

(iv) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or

(v) The premium due is paid.

9. Whenever the current closure cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in 335-14-6-.08(4) to cover the increase. Whenever the current closure cost estimate decreases, the face amount may be reduced to the amount of the current closure cost estimate following written approval by the Department.

10. The Department will give written consent to the owner or operator that he may terminate the insurance policy when:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-6-.08(4); or

(ii) The Department releases the owner or operator from the requirements of 335-14-6-.08(4) in accordance with 335-14-6-.08(4)(h).

(e) Financial test and corporate guarantee for closure.

1. An owner or operator may satisfy the requirements of 335-14-6-.08(4) by demonstrating that he passes a financial test as specified in 335-14-6-.08(4)(e). To pass this test the owner or operator must meet the criteria of either 335-14-6-.08(4)(e)1.(i) or (e)1.(ii):

(i) The owner or operator must have:

(I) Two of the following three ratios: A ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio

of current assets to current liabilities greater than 1.5; and

(II) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates; and

(III) Tangible net worth of at least $10 million; and

(IV) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates.

(ii) The owner or operator must have:

(I) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

(II) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates; and

(III) Tangible net worth of at least $10 million; and

(IV) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates.

2. The phrase "current closure and post-closure cost estimates" as used in 335-14-6-.08(4)(e)1. refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer [335-14-5-.08(12)(f) and (g)].

3. To demonstrate that he meets this test, the owner or operator must submit the following items to the Department:

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in 335-14-5-.08(12)(f); and

(ii) A copy of the independent certified public accountant's report on examination of the owner's or

operator's financial statements for the latest completed fiscal year; and

(iii) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(I) He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(II) In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

4. The owner or operator may obtain an extension of the time allowed for submission of the documents specified in 335-14-6-.08(4)(e)3. if the fiscal year of the owner or operator ends during the 90 days prior to the effective date of these regulations and if the year-end financial statements for that fiscal year will be audited by an independent certified public accountant. The extension will end no later than 90 days after the end of the owner's or operator's fiscal year. To obtain the extension, the owner's or operator's chief financial officer must send, by the effective date of these regulations, a letter to the Department. This letter from the chief financial officer must:

(i) Request the extension;

(ii) Certify that he has grounds to believe that the owner or operator meets the criteria of the financial test;

(iii) Specify for each facility to be covered by the test the EPA Identification Number, name, address, and current cost estimates to be covered by the test;

(iv) Specify the date ending the owner's or operator's last complete fiscal year before the effective date of these regulations;

(v) Specify the date, no later than 90 days after the end of such fiscal year, when he will submit the documents specified in 335-14-6-.08(4)(e)3.; and

(vi) Certify that the year-end financial statements of the owner or operator for such fiscal year will be audited by an independent certified public accountant.

5. After the initial submission of items specified in 335-14-6-.08(4)(e)3., the owner or operator must send updated information to the Department within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in 335-14-6-.08(4)(e)3.

6. If the owner or operator no longer meets the requirements of 335-14-6-.08(4)(e)1., he must send notice to the Department of intent to establish alternate financial assurance as specified in 335-14-6-.08(4). The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide the alternate financial assurance within 120 days after the end of such fiscal year.

7. The Department, based on a reasonable belief that the owner or operator may no longer meet the requirements of 335-14-6-.08(4)(e)1., require reports of financial condition at any time from the owner or operator in addition to those specified in 335-14-6-.08(4)(e)3. If the Department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of 335-14-6-.08(4)(e)1., the owner or operator must provide alternate financial assurance as specified in 335-14-6-.08(4) within 30 days after notification of such a finding.

8. The Department may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see 335-14-6-.08(4)(e)3.(ii)). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Department will evaluate other qualifications on an individual basis. The owner or operator must provide alternate financial assurance as specified in 335-14-6-.08(4) within 30 days after notification of the disallowance.

9. The owner or operator is no longer required to submit the items specified in 335-14-6-.08(4)(e)3. when:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-6-.08(4); or

(ii) The Department releases the owner or operator from the requirements of 335-14-6-.08(4) in accordance with 335-14-6-.08(4)(h).

10. An owner or operator may meet the requirements of 335-14-6-.08(4) by obtaining a written guarantee, hereafter referred to as "corporate guarantee". The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in 335-14-6-.08(4)(e)1. through 8. and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in Rule 335-14-5-.08(12)(h). The certified copy of the guarantee must accompany the items sent to the Department as specified in 335-14-6-.08(4)(e)3. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee must provide that:

(i) If the owner or operator fails to perform final closure of a facility covered by the corporate guarantee in accordance with the closure plan and other interim status permit requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in 335-14-6-.08(4)(a) in the name of the owner or operator.

(ii) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt

of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts.

(iii) If the owner or operator fails to provide alternate financial assurance as specified in 335-14-6-.08(4) and obtain the written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternate financial assurance in the name of the owner or operator.

(f) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of 335-14-6-.08(4) by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds, letters of credit and insurance. The mechanisms must be as specified in 335-14-6-.08(4)(a) through (d), except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as a standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The Department may use any or all of the mechanisms to provide for closure of the facility.

(g) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in 335-14-6-.08(4) to meet the requirements of 335-14-6-.08(4) for more than one facility. Evidence of financial assurance submitted to the Department must include a list showing, for each facility, the EPA or Alabama Identification Number, name, address and the amount of funds for closure assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for closure of any of the facilities covered by the mechanism, the Department may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

(h) Release of the owner or operator from the requirements of 335-14-6-.08(4). Within 60 days after receiving certification from the owner or operator and an independent registered

professional engineer that final closure has been completed in accordance with the approved closure plan, the Department will notify the owner or operator in writing that he is no longer required by 335-14-6-.08(4) to maintain financial assurance for final closure of the facility, unless the Department has reason to believe that final closure has not been in accordance with the approved closure plan. The Department shall provide the owner or operator a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan.

(5) Cost estimate for post-closure care.

(a) The owner or operator of a hazardous waste disposal unit or other hazardous waste management unit which is unable to demonstrate closure by removal must have a detailed written estimate in a format specified by the Department, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure requirements of 335-14-6-.07(8) through 335-14-6-.07(11), 335-14-6-.11(9), 335-14-6-.12(9), 335-14-6-.13(11), and 335-14-6-.14(11).

1. The post-closure cost estimate must be based on the costs to the owner or operator of hiring a third party to conduct post-closure care activities. A third party is a party who is neither a parent nor subsidiary of the owner or operator. (See definition of parent corporation in 335-14-1-.02.)

2. The post-closure cost estimate is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required under 335-14-6-.07(8). Unless expressly extended or shortened by the Department in writing, the post-closure care period will be assumed to be thirty years for the purposes of calculating the post-closure cost estimate.

(b) During the active life of the facility and the post-closure care period, the owner or operator must adjust the post-closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with 335-14-6-.08(6). For owners or operators using the financial test or corporate guarantee, the post-closure care cost estimate must be updated for inflation no later than 30 days after the close of the firm's fiscal year and before submission of updated information to the Department as specified in 335-14-6-.08(6)(e)5. The adjustment may be made by recalculating the post-closure cost estimate in current dollars or by using an inflation factor

derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business as specified in 335-14-6-.08(5)(b)1. and (5)(b)2. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

1. The first adjustment is made by multiplying the post-closure cost estimate by the inflation factor. The result is the adjusted post-closure cost estimate.

2. Subsequent adjustments are made by multiplying the latest adjusted post-closure cost estimate by the latest inflation factor.

(c) During the active life of the facility and the post-closure care period, the owner or operator must revise the post-closure cost estimate no later than 30 days after a revision to the post-closure plan which increases the cost of post-closure care. If the owner or operator has an approved post-closure plan, the post-closure cost estimate must be revised no later than 30 days after the Department has approved the request to modify the plan, if the change in the post-closure plan increases the cost of post-closure care. The revised post-closure cost estimate must be adjusted for inflation as specified in 335-14-6-.08(5)(b).

(d) The owner or operator must keep the following at the facility during the operating life of the facility and throughout the post-closure care period: the latest post-closure cost estimate prepared in accordance with 335-14-6-.08(5)(a) and 335-14-6-.08(5)(c) and, when this estimate has been adjusted in accordance with 335-14-6-.08(5)(b), the latest adjusted post-closure cost estimate.

(6) Financial assurance for post-closure care. By the effective date of these regulations, an owner or operator of a facility with a hazardous waste disposal unit must establish financial assurance for post-closure care of the disposal unit(s).

(a) Post-closure trust fund.

1. An owner or operator may satisfy the requirements of 335-14-6-.08(6) by establishing a post-closure trust fund which conforms to the requirements of 335-14-6-.08(6)(a) and submitting an originally signed duplicate of the trust agreement to the Department. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

2. The wording of the trust agreement must be identical to the wording specified in 335-14-5-.08(12)(a), and the trust agreement must be accompanied by a formal certification of acknowledgment (for example, see 335-14-5-.08(12)(a)2.). Schedule A of the trust agreement must be updated, and an originally signed duplicate must be submitted to the Department, within 60 days after a change in the amount of the current post-closure cost estimate covered by the agreement.

3. Payments into the trust fund must be made annually by the owner or operator over the 8 years beginning with the effective date of these regulations or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter. The owner or operator of a post-closure facility must make annual payments into the fund over a term of eight years beginning on the effective date of these regulations. This period is hereafter referred to as the "pay-in period". The payments into the post-closure trust fund must be made as follows:

(i) The first payment must be made by the effective date of these regulations, except as provided in 335-14-6-.08(6)(a)5. The first payment must be at least equal to the amount determined according to the schedule set out in 335-14-6-.08(6)(a)3.(ii)(I) through (a)3.(ii)(VIII).

(ii) Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. Payments must be made according to the following schedule:

(I) If the remaining operating life of the facility is one year, 100% of the current post-closure cost estimate must be paid initially;

(II) If the remaining operating life of the facility is two years, 50% of the current post-closure cost estimate must be paid each of the two years;

(III) If the remaining operating life of the facility is three years, 34% of the current post-closure cost estimate must be paid initially and 33% of the current post-closure cost estimate must be paid each of the two subsequent years.

(IV) If the remaining operating life of the facility is four years, 25% of the current post-closure cost estimate must be paid each of the four years;

(V) If the remaining operating life of the facility is five years, 20% of the current post-closure estimate must be paid each of the five years;

(VI) If the remaining operating life of the facility is six years, 20% of the current post-closure cost estimate must be paid each of the first four years and 10% of the current cost estimate must be paid each of the two subsequent years;

(VII) If the remaining operating life of the facility is seven years, 20% of the current post-closure cost estimate must be paid each of the first three years and 10% of the current post-closure cost estimate must be paid each of the four subsequent years; and

(VIII) If the remaining operating life of the facility is eight years or longer, 20% of the current post-closure cost estimate must be paid each of the first two years and 10% of the current post-closure estimate must be paid each of the six subsequent years;

(IX) For post-closure facilities, 20% of the current post-closure cost estimate must be paid the first year and 10% of the current post-closure cost estimate must be paid each of the seven subsequent years;

(iii) Following the initial payment, all subsequent annual payments must reconcile any difference between the actual value of the trust fund and the required value of the trust fund. The required value of the trust fund accounts for adjustments to the post-closure cost estimate made in accordance with 335-14-6-.08(5), and may be calculated by determining the value of the trust fund if the current payment and all previous payments were made using the current post-closure cost estimate.

4. The owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the

current post-closure cost estimate at the time the fund is established. However, he must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in 335-14-6-.08(6)(a)3.

5. If the owner or operator establishes a post-closure trust fund after having used one or more alternate mechanisms specified in 335-14-6-.08(6), his first payment must be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made as specified in 335-14-6-.08(6)(a)3.

6. After the pay-in period is completed, whenever the current post-closure cost estimate changes during the operating life of the facility and throughout the post-closure period, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current post-closure cost estimate, or obtain other financial assurance as specified in 335-14-6-.08(6) to cover the difference.

7. During the operating life of the facility and throughout the post-closure period, if the value of the trust fund is greater than the total amount of the current post-closure cost estimate, the owner or operator may submit a written request to the Department for release of the amount in excess of the current post-closure cost estimate.

8. If an owner or operator substitutes other financial assurance as specified in 335-14-6-.08(6) for all or part of the trust fund, he may submit a written request to the Department for release of the amount in excess of the current post-closure cost estimate covered by the trust fund.

9. Within 60 days after receiving a request from the owner or operator for release of funds as specified in 335-14-6-.08(6)(a)7. or (a)8., the Department will approve or disapprove the request for release. If the Department approves the release of fund, it will instruct the trustee to release to the owner or operator such funds as the Department specifies in writing.

10. Following the completion of the pay-in period, the Department may approve a release of funds if the owner or operator demonstrates to the Department that the value of the trust fund exceeds the remaining cost of post-closure care.

11. Following the completion of the pay-in period, an owner or operator or any other person authorized to conduct post-closure care may request reimbursements for post-closure expenditures by submitting itemized bills to the Department. Within 60 days after receiving bills for post-closure care activities, the Department will instruct the trustee to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the post-closure expenditures are in accordance with the approved post-closure plan or otherwise justified. If the Department does not instruct the trustee to make such reimbursements, he will provide the owner or operator with a detailed written statement of reasons.

12. The Department will agree to termination of the trust when:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-6-.08(6) and approved by the Department; or

(ii) The Department releases the owner or operator from the requirements of 335-14-6-.08(6) in accordance with 335-14-6-.08(6)(h).

(b) Surety bond guaranteeing payment into a post-closure trust fund.

1. An owner or operator may satisfy the requirements of 335-14-6-.08(6) by obtaining a surety bond which conforms to the requirements of 335-14-6-.08(6)(b) and submitting the bond to the Department. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

2. The wording of the surety bond must be identical to the wording specified in 335-14-5-.08(12)(b).

3. The owner or operator who uses a surety bond to satisfy the requirements of 335-14-6-.08(6) must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by

the surety directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund must meet the requirements specified in 335-14-6-.08(6)(a), except that:

(i) An originally signed duplicate of the trust agreement must be submitted to the Department with the surety bond; and

(ii) Until the standby trust fund is funded pursuant to the requirements of 335-14-6-.08(6), the following are not required by these regulations:

(I) Payments into the trust fund as specified in 335-14-6-.08(6)(a).

(II) Updating of Schedule A of the trust agreement (see 335-14-5-.08(12)(a)) to show current post-closure cost estimates;

(III) Annual valuations as required by the trust agreement; and

(IV) Notices of nonpayment as required by the trust agreement.

4. The bond must guarantee that the owner or operator will:

(i) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility; or

(ii) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin final closure issued by the Department becomes final, or within 15 days after an order to begin final closure is issued by a court of competent jurisdiction; or

(iii) Provide alternate financial assurance as specified in 335-14-6-.08(6) and obtain the Department's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the bond from the surety.

5. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

6. The penal sum of the bond must be in an amount at least equal to the current post-closure cost estimate, except as provided in 335-14-6-.08(6)(f).

7. Whenever the current post-closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in 335-14-6-.08(6) to cover the increase. Whenever the current post-closure cost estimate decreases, the penal sum may be reduced to the amount of the current post-closure cost estimate following written approval by the Department.

8. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts.

9. The owner or operator may cancel the bond if the Department has given prior written consent. The Department will provide such written consent when:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-6-.08(6) and approved by the Department; or

(ii) The Department releases the owner or operator from the requirements of 335-14-6-.08(6) in accordance with 335-14-6-.08(6)(h) .

(c) Post-closure letter of credit.

1. An owner or operator may satisfy the requirements of 335-14-6-.08(6) by obtaining an irrevocable standby letter of credit which conforms to the requirements of 335-14-6-.08(6)(c) and submitting the letter to the Department. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or State agency.

2. The wording of the letter of credit must be identical to the wording specified in 335-14-5-.08(12)(d).

3. An owner or operator who uses a letter of credit to satisfy the requirements of 335-14-6-.08(6) must also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Department will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund must meet the requirements of the trust fund specified in 335-14-6-.08(6)(a), except that:

(i) An originally signed duplicate of the trust agreement must be submitted to the Department with the letter of credit; and

(ii) Unless the standby trust fund is funded pursuant to the requirements of 335-14-6-.08(6), the following are not required by these regulations:

(I) Payments into the trust fund as specified in 335-14-6-.08(6)(a);

(II) Updating of Schedule A of the trust agreement (see 335-14-5-.08(12)(a)) to show current post-closure cost estimates;

(III) Annual valuations as required by the trust agreement; and

(IV) Notices of nonpayment as required by the trust agreement.

4. The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution and date, and providing the following information: the EPA Identification Number, name, and address of the facility, and the amount of funds assured for post-closure care of the facility by the letter of credit.

5. The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Department by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the

Department have received the notice, as evidenced by the return receipts.

6. The letter of credit must be issued in an amount at least equal to the current post-closure cost estimate, except as provided in 335-14-6-.08(6)(f).

7. Whenever the current post-closure cost estimate increases to an amount greater than the amount of the credit during the operating life of the facility and throughout the post-closure care period, the owner or operator, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current post-closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in 335-14-6-.08(6) to cover the increase. Whenever the current post-closure cost estimate decreases during the operating life of the facility or during the post-closure care period, the amount of the credit may be reduced to the amount of the current post-closure cost estimate following written approval by the Department.

8. During the period of post-closure care, the Department may approve a decrease in the amount of the letter of credit if the owner or operator demonstrates to the Department that the amount exceeds the remaining cost of post-closure care.

9. Following a final administrative determination pursuant to the AHWMMA that the owner or operator has failed to perform post-closure care in accordance with the approved post-closure plan and other permit requirements, the Department may draw on the letter of credit.

10. If the owner or operator does not establish alternate financial assurance as specified in 335-14-6-.08(6) and obtain written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Department will draw on the letter of credit. The Department may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension, the Department will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in 335-14-6-.08(6) and

obtain written approval of such assurance from the Department.

11. The Department will return the letter of credit to the issuing institution for termination when:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-6-.08(6) and approved by the Department; or

(ii) The Department releases the owner or operator from the requirements of 335-14-6-.08(6) in accordance with 335-14-6-.08(6)(h).

(d) Post-closure insurance.

1. An owner or operator may satisfy the requirements of 335-14-6-.08(6) by obtaining post-closure insurance which conforms to the requirements of 335-14-6-.08(6)(d) and submitting an originally signed certificate of such insurance to the Department. By the effective date of these regulations the owner or operator must submit to the Department the certificate of insurance or establish other financial assurance as specified in 335-14-6-.08(6). At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in the State of Alabama, and must not be captive insurance as defined in 335-14-6-.08(2)(a) unless the requirements of 335-14-6-.08(6)(d)1.(ii) are met.

(i) The use of insurance to demonstrate financial assurance for closure and post-closure care pertains exclusively to those insurance policies underwritten by commercial property and casualty insurers (primary or excess and surplus lines), through which, in the insurance contract, the financial burden for closure and post-closure care is transferred to the third-party insurer. Except as provided in 335-14-6-.08(6)(d)1.(ii), the third-party insurer must assume financial responsibility for this accepted risk, using its own pool of resources that is independent, separate, and unrelated to that of the insured (owner or operator). The use of insurance policies underwritten by captive insurers therefore is prohibited.

(ii) Captive insurance may be used for post-closure insurance only when the facility provides annual

documentation to the Department that the owner or operator is in compliance with the requirements of Rule 335-14-6-.08(6)(e).

2. The wording of the certificate of insurance must be identical to the wording specified in 335-14-6-.08(6)(e).

3. The post-closure insurance policy must be issued for a face amount at least equal to the current post-closure cost estimate, except as provided in 335-14-6-.08(6)(f). The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

4. The post-closure insurance policy must guarantee that funds will be available to provide post-closure care of the facility whenever the post-closure period begins. The policy must also guarantee that once post-closure care begins the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Department, to such party or parties as the Department specifies.

5. An owner or operator or any other person authorized to perform post-closure care may request reimbursement for post-closure care expenditures by submitting itemized bills to the Department. Within 60 days after receiving bills for post-closure care activities, the Department will instruct the insurer to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the post-closure expenditures are in accordance with the approved post-closure plan or otherwise justified. If the Department does not instruct the insurer to make such reimbursements, he will provide a detailed written statement of reasons.

6. The owner or operator must maintain the policy in full force and effect until the Department consents to termination of the policy by the owner or operator as specified in 335-14-6-.08(6)(d)11. Failure to pay the premium, without substitution of alternate financial assurance as specified in the paragraph, will constitute a significant violation of these regulations, warranting such remedy as the Department deems necessary. Such violation will be deemed to begin upon receipt by the Department of notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

7. Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

8. The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate or fail to renew the policy by sending notice by certified mail to the owner or operator and the Department. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Department and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:

(i) The Department deems the facility abandoned; or

(ii) The facility's interim status permit is terminated or revoked; or

(iii) Closure is ordered by the Department or a court of competent jurisdiction; or

(iv) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or

(v) The premium due is paid.

9. Whenever the current post-closure cost estimate increases to an amount greater than the face amount of the policy during the operating life of the facility or during the post-closure care period, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in 335-14-6-.08(6) to cover the increase. Whenever the current post-closure cost estimate decreases during the operating life of the facility or during the post-closure care period, the face amount may be reduced to the amount

of the current post-closure cost estimate following written approval by the Department.

10. Commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amounts of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week Treasury securities.

11. The Department will give written consent to the owner or operator that he may terminate the insurance policy when:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-6-.08(6) and approved by the Department; or

(ii) The Department releases the owner or operator from the requirements of 335-14-6-.08(6) in accordance with 335-14-6-.08(6)(h).

(e) Financial test and corporate guarantee for post-closure care.

1. An owner or operator may satisfy requirements of 335-14-6-.08(6) by demonstrating that he passes a financial test as specified in 335-14-6-.08(6)(e). To pass this test the owner or operator must meet the criteria either of 335-14-6-.08(6)(e)1.(i) or (ii):

(i) The owner or operator must have:

(I) Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

(II) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates; and

(III) Tangible net worth of at least $10 million; and

(IV) Assets in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates.

(ii) The owner or operator must have:

(I) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

(II) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates; and

(III) Tangible net worth of at least $10 million; and

(IV) Assets in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates.

2. The phrase "current closure and post-closure cost estimates" as used in 335-14-6-.08(6)(e)1. refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer [335-14-5-.08(12)(f)].

3. To demonstrate that he meets this test, the owner or operator must submit the following items to the Department.

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in 335-14-5-.08(12)(f); and

(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(iii) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(I) He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently

audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(II) In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

4. The owner or operator may obtain an extension of the time allowed for submission of the documents specified in 335-14-6-.08(6)(e)3. if the fiscal year of the owner or operator ends during the 90 days prior to the effective date of these regulations and if the year-end financial statements for that fiscal year will be audited by an independent certified public accountant. The extension will end no later than 90 days after the end of the owner's or operator's fiscal year. To obtain the extension, the owner's or operator's chief financial officer must send, by the effective date of these regulations, a letter to the Department. This letter from the chief financial officer must:

(i) Request the extension;

(ii) Certify that he has grounds to believe that the owner or operator meets the criteria of the financial test;

(iii) Specify for each facility to be covered by the test the EPA Identification Number, name, address and the current cost estimates to be covered by the test;

(iv) Specify the date ending the owner's or operator's latest complete fiscal year before the effective date of these regulations;

(v) Specify the date, no later than 90 days after the end of such fiscal year, when he will submit the documents specified in 335-14-6-.08(6)(e)3.; and

(vi) Certify that the year-end financial statements of the owner or operator for such fiscal year will be audited by an independent certified public accountant.

5. After the initial submission of items specified in 335-14-6-.08(6)(e)3., the owner or operator must send updated information to the Department within 90 days

after the close of each succeeding fiscal year. This information must consist of all three items specified in 335-14-6-.08(6)(e)3.

6. If the owner or operator no longer meets the requirements of 335-14-6-.08(6)(e)1., he must send notice to the Department of intent to establish alternate financial assurance as specified in 335-14-6-.08(6). The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide the alternate financial assurance within 120 days after the end of such fiscal year.

7. The Department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of 335-14-6-.08(6)(e)1., require reports of financial condition at any time from the owner or operator in addition to those specified in 335-14-6-.08(6)(e)3. If the Department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of 335-14-6-.08(6)(e)1., the owner or operator must provide alternate financial assurance as specified in 335-14-6-.08(6) within 30 days after notification of such a finding.

8. The Department may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see 335-14-6-.08(6)(e)3.(ii)). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Department will evaluate other qualifications on an individual basis. The owner or operator must provide alternate financial assurance as specified in 335-14-6-.08(6) within 30 days after notification of the disallowance.

9. During the period of post-closure care, the Department may approve a decrease in the current post-closure cost estimate for which this test demonstrates financial assurance if the owner or operator demonstrates to the Department that the amount of the cost estimate exceeds the remaining cost of post-closure care.

10. The owner or operator is no longer required to submit the items specified in 335-14-6-.08(6)(e)3. when:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-6-.08(6); or

(ii) The Department releases the owner or operator from the requirements of 335-14-6-.08(6) in accordance with 335-14-6-.08(6)(h).

11. An owner or operator may meet the requirements of 335-14-6-.08(6) by obtaining a written guarantee, hereafter referred to as "corporate guarantee". The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in 335-14-6-.08(6)(e)1. through 9. and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in Rule 335-14-5-.08(12)(h). A certified copy of the guarantee must accompany the items sent to the Department as specified in 335-14-6-.08(6)(e)3. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee must provide that:

(i) If the owner or operator fails to perform post-closure care of a facility covered by the corporate guarantee in accordance with the post-closure plan and other interim status requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in 335-14-6-.08(6)(a) in the name of the owner or operator.

(ii) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts.

(iii) If the owner or operator fails to provide alternate financial assurance as specified in 335-14-6-.08(6) and obtain the written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternate financial assurance in the name of the owner or operator.

(f) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of 335-14-6-.08(6) by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds, letters of credit and insurance. The mechanisms must be as specified in 335-14-6-.08(6)(a) through (d), except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current post-closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The Department may use any or all of the mechanisms to provide for post-closure care of the facility.

(g) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in 335-14-6-.08(6) to meet the requirements of 335-14-6-.08(6) for more than one facility. Evidence of financial assurance submitted to the Department must include a list showing, for each facility, the EPA Identification Number, name, address, and the amount of funds for post-closure care assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for post-closure care of any of the facilities covered by the mechanism, the Department may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

(h) Release of the owner or operator from the requirements of 335-14-6. Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that the post-closure care period has

been completed for a hazardous waste disposal unit in accordance with the approved plan, the Department will notify the owner or operator in writing that he is no longer required to maintain financial assurance for post-closure care of that unit, unless the Department has reason to believe that post-closure care has not been in accordance with the approved post-closure plan. The Department shall provide the owner or operator a detailed written statement of any such reason to believe that post-closure care has not been in accordance with the approved post-closure plan.

(7) Use of a mechanism for financial assurance of both closure and post-closure care. An owner or operator may satisfy the requirements for financial assurance for both closure and post-closure care for one or more facilities by using a trust fund, surety bond, letter of credit, insurance, financial test or corporate guarantee that meets the specifications for the mechanism in both 335-14-6-.08(4) and (6). The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for financial assurance of closure and of post-closure care.

(8) Liability requirements.

(a) Coverage for sudden accidental occurrences. An owner or operator of a treatment, storage, or disposal facility, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least $1 million per occurrence with an annual aggregate of at least $2 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in 335-14-6-.08(8)(a)1., 2., 3., 4., 5., or 6.:

1. An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in 335-14-6-.08(8)(a).

(i) Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement must be identical to the wording specified in 335-14-5-.08(12)(i). The wording of the certificate of insurance must be identical to the wording specified in 335-14-5-.08(12)(j). The owner or

operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Department. If requested by the Department, the owner or operator must provide a signed duplicate original of the insurance policy.

(ii) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in the State of Alabama.

2. An owner or operator may meet the requirements of 335-14-6-.08(8) by passing a financial test or using the guarantee for liability coverage as specified in 335-14-6-.08(8)(f) and (g).

3. An owner or operator may meet the requirements of 335-14-6-.08(8) by obtaining a letter of credit for liability coverage as specified in 335-14-6-.08(8)(h).

4. An owner or operator may meet the requirements of 335-14-6-.08(8) by obtaining a surety bond for liability coverage as specified in 335-14-6-.08(8)(i).

5. An owner or operator may meet the requirements of 335-14-6-.08(8) by obtaining a trust fund for liability coverage as specified in 335-14-6-.08(8)(j).

6. An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amounts required by 335-14-6-.08(8). If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under 335-14-6-.08(8)(a), the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

7. An owner or operator shall notify the Department in writing within 30 days whenever:

(i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in 335-14-6-.08(8)(a)1. through (a)6.; or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under 335-14-6-.08(8)(a)1. through (a)6.; or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under 335-14-6-.08(8)(a)1. through (a)6.

(b) Coverage for nonsudden accidental occurrences. An owner or operator of a surface impoundment, landfill, or land treatment facility or disposal miscellaneous unit that is used to manage hazardous waste, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least $3 million per occurrence with an annual aggregate of at least $6 million, exclusive of legal defense costs. An owner or operator who must meet the requirements of 335-14-6-.08(8) may combine the required per-occurrence coverage levels for sudden and non-sudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and non-sudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and non-sudden accidental occurrences must maintain liability coverage in the amount of at least $4 million per occurrence and $8 million annual aggregate. This liability coverage may be demonstrated as specified in 335-14-6-.08(8)(b)1., 2., 3., 4., 5., or 6.:

1. An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in 335-14-6-.08(8)(b).

(i) Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement must be identical to the wording specified in 335-14-5-.08(12)(i). The wording of the certificate of insurance must be identical to the wording specified in 335-14-5-.08(12)(j). The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Department. If requested by the Department, the owner or operator must provide a signed duplicate original of the insurance policy.

(ii) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in the State of Alabama.

2. An owner or operator may meet the requirements of 335-14-6-.08(8) by passing a financial test or using the guarantee for liability coverage as specified in 335-14-6-.08(8)(f) and (g).

3. An owner or operator may meet the requirements of 335-14-6-.08(8) by obtaining a letter of credit for liability coverage as specified in 335-14-6-.08(8)(h).

4. An owner or operator may meet the requirements of 335-14-6-.08(8) obtaining a surety bond for liability coverage as specified in 335-14-6-.08(8)(i).

5. An owner or operator may meet the requirements of 335-14-6-.08(8) by obtaining a trust fund for liability coverage as specified in 335-14-6-.08(8)(j).

6. An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must

total at least the minimum amounts required by 335-14-6-.08(8). If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under 335-14-6-.08(8)(b), the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

7. An owner or operator shall notify the Department in writing within 30 days whenever:

(i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in 335-14-6-.08(8)(b)1. through (b)6.; or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under 335-14-6-.08(8)(b)1. through (b)6.; or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under 335-14-6-.08(8)(b)1. through (b)6.

(c) Request for variance. If an owner or operator can demonstrate to the satisfaction of the Department that the levels of financial responsibility required by 335-14-6-.08(8)(a) or (b) are not consistent with the degree and duration of risk associated with treatment, storage or disposal at the facility or group of facilities, the owner or operator may obtain a variance from the Department. The request for a variance must be submitted in writing to the Department. If granted, the variance will take the form of an adjusted level of required liability coverage, such level to be based on the Department's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. The Department may require an owner or operator who requests a variance to provide such technical and engineering information as is deemed necessary by the Department to determine a level of

financial responsibility other than that required by 335-14-6-.08(8)(a) or (b). The Department will process a variance request as if it were a permit modification request under 335-14-8-.04(2)(a)5. and subject to the procedures of 335-14-8-.08(3). Notwithstanding any other provision, the Department may hold a public hearing at its discretion or whenever it finds, on the basis of requests for a public hearing, a significant degree of public interest in a tentative decision to grant a variance.

(d) Adjustments by the Department. If the Department determines that the levels of financial responsibility required by 335-14-6-.08(8)(a) or (b) are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the Department may adjust the level of financial responsibility required under 335-14-6-.08(8)(a) or (b) as may be necessary to protect human health and the environment. This adjusted level will be based on the Department's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the Department determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operations of a facility that is not a surface impoundment, landfill, or land treatment facility, it may require that an owner or operator of the facility comply with 335-14-6-.08(8)(b). An owner or operator must furnish to the Department within a reasonable time, any information which the Department requests to determine whether cause exists for such adjustments of level or type of coverage. The Department will process an adjustment of the level of required coverage as if it were a permit modification under 335-14-8-.04(2)(a)5. and subject to the procedures of 335-14-8-.08(3). Notwithstanding any other provision, the Department may hold a public hearing at its discretion or whenever it finds, on the basis of requests for a public hearing, a significant degree of public interest in a tentative decision to adjust the level or type of required coverage.

(e) Period of coverage. Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Department will notify the owner or operator in writing that he is no longer required by 335-14-6 to maintain liability coverage for that facility, unless the Department has reason to believe that closure has not been in accordance with the approved closure plan.

(f) Financial test for liability coverage.

1. An owner or operator may satisfy the requirements of 335-14-6-.08(8) by demonstrating that he passes a financial test as specified in 335-14-6-.08(8)(f). To pass this test the owner or operator must meet the criteria of 335-14-6-.08(8)(f)1.(i) or (ii):

(i) The owner or operator must have:

(I) Net working capital and tangible net worth each at least six times the amount of liability coverage to be demonstrated by this test; and

(II) Tangible net worth of at least $10 million; and

(III) Assets in the United States amounting to either: I. At least 90 percent of his total assets; or II. At least six times the amount of liability coverage to be demonstrated by this test.

(ii) The owner or operator must have:

(I) A current rating for his most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's, or Aaa, Aa, A or Baa as issued by Moody's; and

(II) Tangible net worth of at least $10 million; and

(III) Tangible net worth at least six times the amount of liability coverage to be demonstrated by this test; and

(IV) Assets in the United States amounting to either: I. At least 90 percent of his total assets; or II. At least six times the amount of liability coverage to be demonstrated by this test.

2. The phrase “amount of liability coverage” as used in 335-14-6-.08(8)(f)1. refers to the annual aggregate amounts for which coverage is required under 335-14-6-.08(8)(a) and (b).

3. To demonstrate that he meets this test, the owner or operator must submit the following three items to the Department:

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in 335-14-5-.08(12)(g). If an owner or operator is using the financial test to demonstrate both assurance for closure or post-closure care, as specified by 335-14-5-.08(4)(f), 335-14-5-.08(6)(f), 335-14-6-.08(4)(e), and 335-14-6-.08(6)(e), and liability coverage, he must submit the letter specified in 335-14-5-.08(12)(g) to cover both forms of financial responsibility; a separate letter as specified in 335-14-5-.08(12)(f) is not required;

(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(iii) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(I) He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(II) In connection with that procedure, no matters came to his attention which caused him to believe that the specific data should be adjusted.

4. After the initial submission of items specified in 335-14-6-.08(8)(f)3., the owner or operator must send updated information to the Department within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in 335-14-6-.08(8)(f)3.

5. The Department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of 335-14-6-.08(8)(f)1., require from the owner or operator at any time current updates of reports of financial condition specified in 335-14-6-.08(8)(f)3.

6. If the owner or operator no longer meets the requirements of 335-14-6-.08(8)(f)1., he must obtain insurance, a letter of credit, a surety bond, a trust fund, or a guarantee for the entire amount of required liability coverage as specified in 335-14-6-.08(8). Evidence of a liability coverage must be submitted to the Department within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.

7. The Department may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see 335-14-6-.08(8)(f)3.(ii)). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Department will evaluate other qualifications on an individual basis. The owner or operator must provide evidence of insurance for the entire amount of required liability coverage as specified in 335-14-6-.08(8) within 30 days after notification of disallowance.

(g) Guarantee for liability coverage.

1. Subject to 335-14-6-.08(8)(g)2., an owner or operator may meet the requirements of 335-14-6-.08(8) by obtaining a written guarantee, hereinafter referred to as "guarantee". The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in 335-14-6-.08(8)(f)1. through (f)6. The wording of the guarantee must be identical to the wording specified in 335-14-5-.08(12)(h)2. A certified copy of the guarantee must accompany the items sent to the Department as specified in 335-14-6-.08(8)(f)3. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee.

(i) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden or nonsudden accidental occurrences (or both as the case may be), arising from the operation of facilities covered by this guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor will do so up to the limits of coverage.

(ii) [Reserved]

2. A guarantee may be used to satisfy the requirements of 335-14-6-.08(8) only if the Attorney General(s) or insurance commissioner(s) of the State in which the guarantor is incorporated and the State(s) in which the facility(ies) covered by the guarantee is (are) located has (have) submitted a written statement to the Department that a guarantee executed as described in 335-14-6-.08(8) and 335-14-5-.08(12)(h)2. is a legally valid and enforceable obligation in that State.

(i) In the case of corporations incorporated in the United States, a guarantee may be used to satisfy the requirements of 335-14-6-.08(8) only if the Attorneys General or Insurance Commissioners of

(I) The State in which the guarantor is incorporated, and

(II) Each State in which a facility covered by the guarantee is located have submitted a written statement to EPA that a guarantee executed as described in 335-14-6-.08(8) and 335-14-5-.08(12)(h)2. is a legally valid and enforceable obligation in that State.

(ii) In the case of corporations incorporated outside the United States, a guarantee may be used to satisfy the requirements of 335-14-6-.08(8) only if

(I) The non-U.S. corporation has identified a registered agent for service of process in each State in which a facility covered by the guarantee is located and in the State in which it has its principal place of business, and if

(II) The Attorney General or Insurance Commissioner of each State in which a facility covered by the guarantee is located and the State in which the guarantor corporation has its principal place of business, has submitted a written statement to the Department that a guarantee executed as described in 335-14-6-.08(8) and 335-14-5-.08(12)(h)2. is a legally valid and enforceable obligation in that State.

(h) Letter of credit for liability coverage.

1. An owner or operator may satisfy the requirements of 335-14-6-.08(8) by obtaining an irrevocable standby letter of credit that conforms to the requirements of 335-14-6-.08(8)(h) and submitting a copy of the letter of credit to the Department.

2. The financial institution issuing the letter of credit must be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency.

3. The wording of the letter of credit must be identical to the wording specified in Rule 335-14-5-.08(12)(k).

4. An owner or operator who uses a letter of credit to satisfy the requirements of 335-14-6-.08(8) may also establish a standby trust fund. Under the terms of such a letter of credit, all amounts paid pursuant to a draft by the trustee of the standby trust will be deposited by the issuing institution into the standby trust in accordance with instructions from the trustee. The trustee of the standby trust fund must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

5. The wording of the standby trust fund must be identical to the wording specified in Rule 335-14-5-.08(12)(n).

(i) Surety bond for liability coverage.

1. An owner or operator may satisfy the requirements of 335-14-6-.08(8) by obtaining a surety bond that conforms to the requirements of 335-14-6-.08(8)(i) and submitting a copy of the bond to the Department.

2. The surety company issuing the bond must be among those listed as acceptable sureties on Federal bonds in

the most recent Circular 570 of the U.S. Department of the Treasury.

3. The wording of the surety bond must be identical to the wording specified in 335-14-5-.08(12)(l).

4. A surety bond may be used to satisfy the requirements of 335-14-6-.08(8) only if the Attorneys General or Insurance Commissioners of

(i) The State in which the surety is incorporated, and

(ii) Each State in which a facility covered by the surety bond is located have submitted a written statement to the Department that a surety bond executed as described in 335-14-6-.08(8) and 335-14-5-.08(12)(l) is a legally valid and enforceable obligation in that State.

(j) Trust fund for liability coverage.

1. An owner or operator may satisfy the requirements of 335-14-6-.08(8) by establishing a trust fund that conforms to the requirements of 335-14-6-.08(8)(j) and submitting an originally signed duplicate of the trust agreement to the Department.

2. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

3. The trust fund for liability coverage must be funded for the full amount of the liability coverage to be provided by the trust fund before it may be relied upon to satisfy the requirements of 335-14-6-.08(8). If at any time after the trust fund is created the amount of funds in the trust fund is reduced below the full amount of the liability coverage to be provided, the owner or operator, by the anniversary date of the establishment of the Fund, must either add sufficient funds to the trust fund to cause its value to equal the full amount of liability coverage to be provided, or obtain other financial assurance as specified in 335-14-6-.08(8) to cover the difference. For purposes of 335-14-6-.08(8)(j), "the full amount of the liability coverage to be provided" means the amount of coverage for sudden and/or nonsudden occurrences required to be provided by the owner or operator by 335-14-6-.08(8), less the amount of financial assurance for liability coverage that is being provided

by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

4. The wording of the trust fund must be identical to the wording specified in 335-14-5-.08(12)(m).

(k) [Reserved]

(9) Incapacity of owners or operators, guarantors or financial institutions.

(a) An owner or operator must notify the Department by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding. A guarantor of a corporate guarantee as specified in 335-14-6-.08(4)(e) and 335-14-6-.08(6)(e) must make such a notification if he is named as debtor, as required under the terms of the corporate guarantee (335-14-5-.08(12)(h)).

(b) An owner or operator who fulfills the requirements of 335-14-6-.08(4), (6), or (8) by obtaining a trust fund, surety bond, letter of credit or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The owner or operator must establish other financial assurance or liability coverage within 60 days after such an event.

**Author:** Stephen C. Maurer; Vernon H. Crockett; C. Edwin Johnston; Bradley Curvin; Theresa A. Maines; Heather M. Jones
**Statutory Authority:** Code of Ala. 1975, §§22-30-11, 22-30-12, 22-30-16.
**History:** February 9, 1983. **Amended:** April 9, 1986; September 29, 1986; August 24, 1989; December 6, 1990; January 25, 1992; January 1, 1993. **Amended:** Filed November 30, 1994; effective January 5, 1995. **Amended:** Filed February 21, 1997; effective March 28, 1997. **Amended:** Filed February 20, 1998; effective March 27, 1998. **Amended:** Filed February 26, 1999; effective April 2, 1999. **Amended:** Filed February 25, 2000; effective March 31, 2000. **Amended:** Filed March 9, 2001; effective April 13, 2001. **Amended:** Filed February 8, 2002; effective March 15, 2002. **Amended:** Filed April 22, 2004; effective May 27, 2004. **Amended:** Filed February 24, 2005; effective March 31, 2005. **Amended:** Filed February 27, 2007; effective April 3, 2007. **Amended:** February 24, 2009; effective March 31, 2009. **Amended:** Filed February 28, 2012; effective April 3, 2012. **Amended:** Filed

February 14, 2017; effective March 31, 2017. **Amended:** Published ; effective .

**APA-1**

**TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION**

| | |
|---|---|
| Control: | 335 |
| Department or Agency: | Alabama Department of Environmental Management Land Division Hazardous Waste Program |
| Rule No.: | 335-14-7-.08 |
| Rule Title: | Subpart H - Hazardous Waste Burned In Boilers And Industrial Furnaces |
| Intended Action | Amend |

| | |
|---|---|
| Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? | Yes |
| Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? | Yes |
| Is there another, less restrictive method of regulation available that could adequately protect the public? | No |
| Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? | No |

To what degree?: N/A

| | |
|---|---|
| Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? | NA |
| Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? | Yes |
| Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? | No |

Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of certifying officer: Jeffery W. Kitchens

Jeffery W. Kitchens

Date: Tuesday, August 19, 2025

REC'D & FILED
AUG 19, 2025
LEGISLATIVE SVC AGENCY

APA-2

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION HAZARDOUS WASTE PROGRAM**

**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** Alabama Department of Environmental Management

**RULE NO. & TITLE:** 335-14-7-.08 Subpart H - Hazardous Waste Burned In Boilers And Industrial Furnaces

**INTENDED ACTION:** Amend

**SUBSTANCE OF PROPOSED ACTION:**

The Department proposes to revise Rule 335-14-7-.08 to adopt the Test Method for Standards to Control Organic Emissions and the Technical Corrections for the Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule. These revisions are necessary for the Department to maintain regulations that are at least as stringent as those promulgated federally, a requirement to preserve the State's authorized status.

**TIME, PLACE AND MANNER OF PRESENTING VIEWS:**

Comments may be submitted in writing or orally at a public hearing to be held at 10:00 a.m., October 7, 2025, in the ADEM Main Hearing Room, 1400 Coliseum Boulevard, Montgomery, Alabama 36110. Attendance at the hearing is not necessary to present such data, views, arguments, or comments. All comments should be received by 5:00 p.m., October 7, 2025. Written submissions and other inquiries should be directed to: ADEM Hearing Officer, Office of General Counsel, Alabama Department of Environmental Management, P.O. Box 301463, Montgomery, AL 36130-1463 (street address: 1400 Coliseum Boulevard, Montgomery, AL 36110-2400) or by e-mail at hearing.officer@adem.alabama.gov.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**

Tuesday, October 7, 2025

**CONTACT PERSON AT AGENCY:**

Lynn T. Roper, 334-271-7728

Jeffery W. Kitchens

Jeffery W. Kitchens

(Signature of officer authorized to promulgate and adopt rules or his or her deputy)

**335-14-7-.08 Subpart H - Hazardous Waste Burned In Boilers And Industrial Furnaces.**

The Environmental Protection Agency Regulations 40 CFR Part 266, Subpart H (as published by EPA on January 4, 1985 and February 21, 1991, and as amended on July 17, 1991; August 27, 1991; August 25, 1992; September 30, 1992; November 9, 1993; July 20, 1993; June 29, 1995; June 13, 1997; September 30, 1999; June 14; 2005; April 4, 2006; July 14, 2006; ~~and~~ March 18, 2010; March 20, 2023; and August 9, 2023) except §266.108, designated in Rules 335-14-7-.08(1) through 335-14-7-.08(8) and Rules 335-14-7-.08(10) through 335-14-7-.08(13), are incorporated herein by reference as set forth in 40 CFR, Part 266~~.~~

~~Any provisions of 40 CFR Part 266, Subpart H and Appendices I through XIII which are inconsistent with other provisions of the ADEM Administrative Code are not 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 264, Subpart BB, such reference to the other Code of Federal Regulations Rule(s) is not incorporated herein and the ADEM Administration 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) §266.100 Applicability (as published by EPA on February 21, 1991 and amended August 9, 2023).

(2) §266.101 Management prior to burning (as published by EPA on February 21, 1991 and amended on August 25, 1992; September 30; 1999; and March 18, 2010).

(3) §266.102 Permit standards for burners (as published by EPA on February 21, 1991 and amended on July 17, 1991; August 27, 1991; June 14, 2005; April 4, 2006; and July 14; 2006).

(4) §266.103 Interim status standards for burners (as published by EPA on February 21, 1991 and amended on July 17, 1991; August 27, 1991; August 25, 1992; September 30, 1992; June 29, 1995; April 4, 2006; and July 14, 2006).

(5) §266.104 Standards to control organic emissions (as published by EPA on February 21, 1991 and as amended on July

17, 1991; August 25, 1992; July 20, 1993; June 29, 1995; ~~and~~ June 13, 1997; and March 20, 2023).

(6) §266.105 Standards to control particulate matter (as published by EPA on February 21, 1991 and amended on September 30, 1999).

(7) §266.106 Standards to control metals emissions (as published by EPA on February 21, 1991 and amended on July 17, 1991; August 25, 1992; July 20, 1993; June 13, 1997; June 14, 2005; and July 14, 2006).

(8) §266.107 Standards to control hydrogen chloride (HCl) and chlorine gas (Cl2) emissions (as published by EPA on February 21, 1991 and amended on July 17, 1991; August 25, 1992; and June 13, 1997).

(9) Small Quantity on-site burner exemption.

(a) Exempt quantities. Owners and operators of facilities that burn hazardous waste generated on-site in an on-site boiler or industrial furnace are exempt from the requirements of 335-14-7-.08 provided that:

1. The quantity of hazardous waste burned in a device for a calendar month does not exceed the limits provided in the following table based on the terrain adjusted effective stack height as defined in §266.106(b)(3) of 40 CFR:

**EXEMPT QUANTITIES FOR SMALL QUANTITY BURNER EXEMPTION**

| Terrain-adjusted effective stack height of device (meters) | Allowable hazardous waste burning rate (gallons/Month) | Terrain-Adjusted effective stack height of device (meters) | Allowable hazardous waste burning rate (gallons/Month) |
|---|---|---|---|
| 0 to 3.9 | 0 | 40.0 to 44.9 | 210 |
| 4.0 to 5.9 | 13 | 45.0 to 49.9 | 260 |
| 6.0 to 7.9 | 18 | 50.0 to 54.9 | 330 |
| 8.0 to 9.9 | 27 | 55.0 to 59.9 | 400 |
| 10.0 to 11.9 | 40 | 60.0 to 64.9 | 490 |
| 12.0 to 13.9 | 48 | 65.0 to 69.9 | 610 |
| 14.0 to 15.9 | 59 | 70.0 to 74.9 | 680 |
| 16.0 to 17.9 | 69 | 75.0 to 79.9 | 760 |
| 18.0 to 19.9 | 76 | 80.0 to 84.9 | 850 |
| 20.0 to 21.9 | 84 | 85.0 to 89.9 | 960 |
| 22.0 to 23.9 | 93 | 90.0 to 94.9 | 1,100 |
| 24.0 to 25.9 | 100 | 95.0 to 99.9 | 1,200 |
| 26.0 to 27.9 | 110 | 100.0 to 104.9 | 1,300 |
| 28.0 to 29.9 | 130 | 105.0 to 109.9 | 1,500 |

| | | | |
|---|---|---|---|
| 30.0 to 34.9 | 140 | 110.0 to 114.9 | 1,700 |
| 35.0 to 39.9 | 170 | 115.0 or greater | 1,900 |

2. The maximum hazardous waste firing rate does not exceed at any time one percent of the total fuel requirements for the device (hazardous waste plus other fuel) on a total heat input, or mass input basis, whichever results in the lower mass feed rate of hazardous waste.

3. The hazardous waste has a minimum heating value of 5,000 Btu/lb, as generated; and

4. The hazardous waste fuel does not contain (and is not derived from) EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, or F027.

(b) Mixing with nonhazardous fuels. If hazardous waste fuel is mixed with a nonhazardous fuel, the quantity of hazardous waste before such mixing is used to comply with 335-14-7-.08(9)(a)

(c) Multiple stacks. If an owner or operator burns hazardous waste in more than one on-site boiler or industrial furnace exempt under 335-14-7-.08(9), the quantity limits provided by 335-14-7-.08(9)(a)1. are implemented according to the following equation:

*[Removed:]*

$$\sum_{i=1}^{n} \frac{Actual\ Quantity\ Burned(i)}{Allowable\ Quantity\ Burned(i)} < 1.0$$

where:

n means the number of stacks;

Actual Quantity Burned means the waste quantity burned per month in device "i";

Allowable Quantity Burned means the maximum allowable exempt quantity for stack "i" from the table in 335-14-7-.08(9)(a)1.

Note 1: This exemption does not relieve the facility from the necessity of obtaining appropriate Air Permits from the Department which would authorize the use of alternate feed streams.

Note 2: Hazardous wastes that are subject to the conditions for exemption for very small quantity generators under 335-14-3-.01(4) may be burned in an off-site device under the exemption provided by 335-14-7-.08(9) but must be included in the quantity determination for the exemption.

(d) Notification requirements. The owner or operator of facilities qualifying for the small quantity burner exemption under 335-14-7-.08(9) must provide a one-time signed, written notice to EPA and ADEM indicating the following:

1. The combustion unit is operating as a small quantity burner of hazardous waste;

2. The owner and operator are in compliance with the requirements of 335-14-7-.08(9); and

3. The maximum quantity of hazardous waste that the facility may burn per month as provided by 335-14-7-.08(9)(a)1.

(e) Recordkeeping requirements. The owner or operator must maintain at the facility for at least three years sufficient records documenting compliance with the hazardous waste quantity, firing rate, and heating value limits of 335-14-7-.08(9) and any other parameters deemed necessary by the Department. At a minimum, these records must indicate the quantity of hazardous waste and other fuel burned in each unit per calendar month, and the heating value of the hazardous waste.

(f) Monitoring requirements.

1. The combustion device shall be operated in conformance with the carbon monoxide controls provided by §266.104(b)(1) and (b)(2). Devices subject to the exemption provided by 335-14-7-.08(9) are not eligible for the alternative carbon monoxide controls provided by §266.104(c).

2. Additional or alternative monitoring techniques may be required on a case-by-case basis by the Director.

(g) Automatic waste feed cutoff. A boiler or industrial furnace must be operated with a functioning system that automatically cuts off the hazardous waste feed when

operating conditions specified in 335-14-7-.08(9)(f) are exceeded.

(h) Start-up and shut-down. Hazardous waste must not be fed into the device during start-up and shut-down of the boiler or industrial furnace unless the device is operating within the conditions of operation specified in the Air Permit.

(10) §266.109 Low risk waste exemption (as published by EPA on February 21, 1991 and amended on July 17, 1991; August 27, 1991; and July 14, 2006).

(11) §266.110 Waiver of DRE trial burn for boilers (as published by EPA on February 21, 1991 and amended on July 17 1991; and August 27, 1991).

(12) §266.111 Standards for direct transfer (as published by EPA on January 4, 1985 and amended on August 27, 1991).

(13) §266.112 Regulation of residues (as published by EPA on January 4, 1985 and amended on August 27, 1991; August 25, 1992; November 9, 1993; September 30, 1999; and June 14, 2005).

**Author:** Stephen C. Maurer; Kristy Bowling; C. Edwin Johnston; Bradley N. Curvin; Vernon H. Crockett

**Statutory Authority:** Code of Ala. 1975, §§22-30-4, 22-30-6, 22-30-11.

**History:** January 25, 1992. **Amended:** January 1, 1993. **Amended:** Filed: November 30, 1994 effective January 5, 1995. **Amended:** Filed December 8, 1995; effective January 12, 1996. **Amended:** Filed February 20, 1998; effective March 27, 1998. **Amended:** Filed February 26, 1999; effective April 2, 1999. **Amended:** Filed March 9, 2001; effective April 13, 2001. **Amended:** Filed March 13, 2003; effective April 17, 2003. **Amended:** Filed February 24, 2005; effective March 31, 2005. **Amended:** Filed February 28, 2006; effective April 4, 2006. **Amended:** Filed February 14, 2017; effective March 31, 2017. **Amended:** Published _____; effective _____.

**APA-1**

**TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION**

Control: 335

Department or Agency: Alabama Department of Environmental Management Land Division Hazardous Waste Program

Rule No.: 335-14-7-.16

Rule Title: Hazardous Waste Pharmaceuticals

Intended Action: Amend

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? Yes

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? Yes

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? No

To what degree?: N/A

Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? NA

Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? No

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Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

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Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of certifying officer: Jeffery W. Kitchens

Jeffery W. Kitchens

Date: Tuesday, August 19, 2025

REC'D & FILED
AUG 19, 2025
LEGISLATIVE SVC AGENCY

APA-2

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION HAZARDOUS WASTE PROGRAM**

**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** Alabama Department of Environmental Management

**RULE NO. & TITLE:** 335-14-7-.16 Hazardous Waste Pharmaceuticals

**INTENDED ACTION:** Amend

**SUBSTANCE OF PROPOSED ACTION:**
The Department proposed to revise Rule 335-14-7-.16 to adopt the Technical Corrections for the Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule and the Second Technical Corrections to Hazardous Waste Generator Improvements, the Hazardous Waste Pharmaceuticals, and the Definition of Solid Waste Rules. These revisions are necessary for the Department to maintain regulations that are at least as stringent as those promulgated federally, a requirement to preserve the State's authorized status.

**TIME, PLACE AND MANNER OF PRESENTING VIEWS:**
Comments may be submitted in writing or orally at a public hearing to be held at 10:00 a.m., October 7, 2025, in the ADEM Main Hearing Room, 1400 Coliseum Boulevard, Montgomery, Alabama 36110. Attendance at the hearing is not necessary to present such data, views, arguments, or comments. All comments should be received by 5:00 p.m., October 7, 2025. Written submissions and other inquiries should be directed to: ADEM Hearing Officer, Office of General Counsel, Alabama Department of Environmental Management, P.O. Box 301463, Montgomery, AL 36130-1463 (street address: 1400 Coliseum Boulevard, Montgomery, AL 36110-2400) or by e-mail at hearing.officer@adem.alabama.gov.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**
Tuesday, October 7, 2025

**CONTACT PERSON AT AGENCY:**
Lynn T. Roper, 334-271-7728

Jeffery W. Kitchens

Jeffery W. Kitchens

(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

**335-14-7-.16 Hazardous Waste Pharmaceuticals.**

(1) Applicability

(a) A healthcare facility that is a very small quantity generator when counting all of its hazardous waste, including both its hazardous waste pharmaceuticals and its non-pharmaceutical hazardous waste, remains subject to 335-14-3-.01(4) and is not subject to 335-14-7-.16, except for 335-14-7-.16(5) and 335-14-7-.16(7) and the optional provisions of 335-14-7-.16(4).

(b) A healthcare facility that is a very small quantity generator when counting all of its hazardous waste, including both its hazardous waste pharmaceuticals and its non-pharmaceutical hazardous waste, has the option of complying with ~~335-141-7~~335-14-7-.16(1)(d) for the management of its hazardous waste pharmaceuticals as an alternative to complying with 335-14-3-.01(4) and the optional provisions of 335-14-7-.16(4).

(c) A healthcare facility or reverse distributor remains subject to all applicable hazardous waste regulations with respect to the management of its non-pharmaceutical hazardous waste.

(d) With the exception of healthcare facilities identified in 335-14-7-.16(1)(a), a healthcare facility is subject to the following in lieu of 335-14-3 through 335-14-6:

1. Sections 335-14-7-.16(2) and 335-14-7-.16(5) through 335-14-7-.16(8) with respect to the management of:

(i) Non-creditable hazardous waste pharmaceuticals, and

(ii) Potentially creditable hazardous waste pharmaceuticals if they are not destined for a reverse distributor.

2. 335-14-7-.16(2)(a), 335-14-7-.16(3), 335-14-7-.16(5) through 335-14-7-.16(7) and 335-14-7-.16(9) with respect to the management of potentially creditable hazardous waste pharmaceuticals that are prescription pharmaceuticals and are destined for a reverse distributor.

(e) A reverse distributor is subject to 335-14-7-.16(5) through 335-14-7-.16(10) in lieu of 335-14-3 through 335-14-6

with respect to the management of hazardous waste pharmaceuticals.

(f) Hazardous waste pharmaceuticals generated or managed by entities other than healthcare facilities and reverse distributors (e.g., pharmaceutical manufacturers and reverse logistics centers) are not subject to ~~this subpart~~335-14-7-.16. Other generators are subject to 335-14-3 for the generation and accumulation of hazardous wastes, including hazardous waste pharmaceuticals.

(g) The following are not subject to 335-14-1 through 335-14-11, except as specified:

1. Pharmaceuticals that are not solid waste, as defined by 335-14-2-.01(2) because they are legitimately used/ reused (e.g., lawfully donated for their intended purpose) or reclaimed.

2. Over-the-counter pharmaceuticals, dietary supplements, or homeopathic drugs that are not solid wastes, as defined by 335-14-2-.01(2), because they have a reasonable expectation of being legitimately used/reused (e.g., lawfully redistributed for their intended purpose) or reclaimed.

3. Pharmaceuticals being managed in accordance with a recall strategy that has been approved by the Food and Drug Administration in accordance with 21 CFR part 7 subpart C. ~~This subpart~~335-14-7-.16 does apply to the management of the recalled hazardous waste pharmaceuticals after the Food and Drug Administration approves the destruction of the recalled items.

4. Pharmaceuticals being managed in accordance with a recall corrective action plan that has been accepted by the Consumer Product Safety Commission in accordance with 16 CFR part 1115. ~~This subpart~~335-14-7-.16 does apply to the management of the recalled hazardous waste pharmaceuticals after the Consumer Product Safety Commission approves the destruction of the recalled items.

5. Pharmaceuticals stored according to a preservation order, or during an investigation or judicial proceeding until after the preservation order, investigation, or judicial proceeding has concluded and/or a decision is made to discard the pharmaceuticals.

6. Investigational new drugs for which an investigational new drug application is in effect in accordance with the Food and Drug Administration's regulations in 21 CFR part 312. ~~This subpart~~335-14-7-.16 does apply to the management of the investigational new drug after the decision is made to discard the investigational new drug or the Food and Drug Administration approves the destruction of the investigational new drug, if the investigational new drug is a hazardous waste.

7. Household waste pharmaceuticals, including those that have been collected by an authorized collector (as defined by the Drug Enforcement Administration), provided the authorized collector complies with the conditional exemption in 335-14-7-.16(6)(a)2. and 335-14-7-.16(6)(b).

(2) Standards for healthcare facilities managing non-creditable hazardous waste pharmaceuticals

(a) Notification and withdrawal for healthcare facilities managing hazardous waste pharmaceuticals

1. Notification. A healthcare facility must notify the Department, using ADEM Form 8700-12 (Notification of Regulated Waste Activity) or an electronic method used by the Department, that it is a healthcare facility operating under ~~this subpart~~335-14-7-.16. A healthcare facility is not required to fill out Schedule A part II.B (Characteristics of Nonlisted Hazardous Waste) and II.C (Listed Hazardous Wastes) of the Notification of Regulated Waste Activity with respect to its hazardous waste pharmaceuticals. A healthcare facility must submit a separate notification (Notification of Regulated Waste Activity) for each site or EPA identification number.

(i) A healthcare facility that already has an EPA identification number must notify the Department that it is a healthcare facility as part of its next Notification of Regulated Waste Activity, if it is required to submit one; or if not required to submit a Notification of Regulated Waste Activity, within 60 days of the effective date of 335-14-7-.16, or within 60 days of becoming subject to 335-14-7-.16.

(ii) A healthcare facility that does not have an EPA identification number must obtain one by notifying the Department that it is a healthcare facility as part of its next Notification of Regulated Waste Activity, if it is required to submit one; or if not required to submit a Notification of Regulated Waste

Activity, within 60 days of the effective date of 335-14-7-.16, or within 60 days of becoming subject to 335-14-7-.16.

(iii) A healthcare facility must keep a copy of its notification on file for as long as the healthcare facility is subject to 335-14-7-.16.

2. Withdrawal. A healthcare facility that operated under 335-14-7-.16 but is no longer subject to 335-14-7-.16, because it is a very small quantity generator under 335-14-3-.01(4), and elects to withdraw from 335-14-7-.16, must notify the Department using ADEM Form 8700-12 (Notification of Regulated Waste Activity) that it is no longer operating under 335-14-7-.16. A healthcare facility is not required to fill out Schedule A part II.B (Characteristics of Nonlisted Hazardous Waste) and II.C (Listed Hazardous Wastes) of the Notification of Regulated Waste Activity with respect to its hazardous waste pharmaceuticals. A healthcare facility must submit a separate notification (Notification of Regulated Waste Activity) for each EPA identification number.

(i) A healthcare facility must submit the Notification of Regulated Waste Activity notifying that it no longer intends to operate subject to 335-14-7-.16 before it begins operating under the conditional exemption of 335-14-3-.01(4).

(ii) A healthcare facility must keep a copy of its withdrawal on file for three years from the date of signature on the notification of its withdrawal.

(b) Training of personnel managing non-creditable hazardous waste pharmaceuticals at healthcare facilities. A healthcare facility must ensure that all personnel that manage non-creditable hazardous waste pharmaceuticals are thoroughly familiar with proper waste handling and emergency procedures relevant to their responsibilities during normal facility operations and emergencies.

(c) Hazardous waste determination for non-creditable pharmaceuticals. A healthcare facility that generates a solid waste that is a non-creditable pharmaceutical must determine whether that pharmaceutical is a hazardous waste pharmaceutical (i.e., it exhibits a characteristic identified in 335-14-2-.03 or is listed in 335-14-2-.04) in order to determine whether the waste is subject to 335-14-7-.16. A healthcare facility may choose to manage its non-hazardous

waste pharmaceuticals as non-creditable hazardous waste pharmaceuticals under 335-14-7-.16.

(d) Standards for containers used to accumulate non-creditable hazardous waste pharmaceuticals at healthcare facilities.

1. A healthcare facility must place non-creditable hazardous waste pharmaceuticals in a container that is structurally sound, compatible with its contents, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

2. A healthcare facility that manages ignitable or reactive non-creditable hazardous waste pharmaceuticals, or that mixes or commingles incompatible non-creditable hazardous waste pharmaceuticals must manage the container so that it does not have the potential to:

(i) Generate extreme heat or pressure, fire or explosion, or violent reaction;

(ii) Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health;

(iii) Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions;

(iv) Damage the structural integrity of the container of non-creditable hazardous waste pharmaceuticals; or

(v) Through other like means threaten human health or the environment.

3. A healthcare facility must keep containers of non-creditable hazardous waste pharmaceuticals closed and secured in a manner that prevents unauthorized access to its contents.

4. A healthcare facility may accumulate non-creditable hazardous waste pharmaceuticals and non-hazardous non-creditable waste pharmaceuticals in the same container, except that non-creditable hazardous waste pharmaceuticals prohibited from being combusted because of the dilution prohibition of 40 CFR §268.3(c) [incorporated by reference in 335-14-9-.01(3)] (i.e.,

metal-bearing waste codes listed in appendix XI of 40 CFR part 268, unless one or more criteria in 40 CFR §268.3(c)(1)through (6)[incorporated by reference at 335-14-9-.01(1)-(6)]are met), or because it is prohibited from being lab packed due to 40 CFR §268.4(c) [incorporated by reference at 335-14-9-.04(3)] (i.e., waste codes listed in appendix XI of 40 CFR part 268), must be accumulated in separate containers and labeled with all applicable EPA hazardous waste numbers (i.e., hazardous waste codes).

(e) Labeling containers used to accumulate non-creditable hazardous waste pharmaceuticals at healthcare facilities. A healthcare facility must label or clearly mark each container of non-creditable hazardous waste pharmaceuticals with the phrase "Hazardous Waste Pharmaceuticals."

(f) Maximum accumulation time for non-creditable hazardous waste pharmaceuticals at healthcare facilities

1. A healthcare facility may accumulate non-creditable hazardous waste pharmaceuticals on site for one year or less without a permit or having interim status.

2. A healthcare facility that accumulates non-creditable hazardous waste pharmaceuticals on-site must demonstrate the length of time that the non-creditable hazardous waste pharmaceuticals have been accumulating, starting from the date it first becomes a waste. A healthcare facility may make this demonstration by any of the following methods:

(i) Marking or labeling the container of non-creditable hazardous waste pharmaceuticals with the date that the non-creditable hazardous waste pharmaceuticals became a waste;

(ii) Maintaining an inventory system that identifies the date the non-creditable hazardous waste pharmaceuticals being accumulated first became a waste;

(iii) Placing the non-creditable hazardous waste pharmaceuticals in a specific area and identifying the earliest date that any of the non-creditable hazardous waste pharmaceuticals in the area became a waste.

(g) Land disposal restrictions for non-creditable hazardous waste pharmaceuticals. The non-creditable hazardous waste

pharmaceuticals generated by a healthcare facility are subject to 335-14-9. A healthcare facility that generates non-creditable hazardous waste pharmaceuticals must comply with 335-14-9-.01(7), except that it is not required to identify the hazardous waste numbers (i.e., hazardous waste codes) on the land disposal restrictions notification.

(h) Procedures for healthcare facilities for managing rejected shipments of non-creditable hazardous waste pharmaceuticals. A healthcare facility that sends a shipment of non-creditable hazardous waste pharmaceuticals 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 in accordance with the manifest discrepancy provisions of 335-14-5-.05(3) or 335-14-6-.05(3) may accumulate the ~~returned~~rejected non-creditable hazardous waste pharmaceuticals on site for up to an additional 90 calendar days provided the rejected ~~or returned~~ shipment is managed in accordance with 335-14-7-.16(2)(d) and (e). Upon receipt of the ~~returned~~rejected shipment, the healthcare facility must:

1. Sign either:

(i) Item 18c of the original manifest, if the original manifest was used for the returned shipment; or

(ii) Item 20 of the new manifest, if a new manifest was used for the returned shipment;

2. Provide the transporter a copy of the manifest;

3. Within 30 calendar days of receipt of the rejected shipment, send a copy of the manifest to the designated facility that returned the shipment to the healthcare facility; and

4. Within 90 calendar days of receipt of the rejected shipment, transport or offer for transport the returned shipment in accordance with the shipping standards of 335-14-7-.16(8)(a).

(i) Reporting by healthcare facilities for non-creditable hazardous waste pharmaceuticals

1. Biennial reporting by healthcare facilities. Healthcare facilities are not subject to biennial reporting requirements under 335-14-3-.04(2), with

respect to non-creditable hazardous waste pharmaceuticals managed under ~~this subpart~~335-14-7-.16.

2. Exception reporting by healthcare facilities for a missing copy of the manifest.

(i) For shipments from a healthcare facility to a designated facility:

(I) If a healthcare facility does not receive a copy of the manifest with the signature of the owner or operator of the designated facility within 60 calendar days of the date the non-creditable hazardous waste pharmaceuticals were accepted by the initial transporter, the healthcare facility must submit:

I. A legible copy of the original manifest, indicating that the healthcare facility has not received confirmation of delivery, to the Department; and

II. A handwritten or typed note on the manifest itself, or on an attached sheet of paper, stating that the return copy was not received and explaining the efforts taken to locate the non-creditable hazardous waste pharmaceuticals and the results of those efforts.

(II) [Reserved]

(ii) For shipments rejected by the designated facility and shipped to an alternate facility.

(I) If a healthcare facility does not receive a copy of the manifest for a rejected shipment of the non-creditable hazardous waste pharmaceuticals that is forwarded by the designated facility to an alternate facility (using appropriate manifest procedures), with the signature of the owner or operator of the alternate facility, within 60 calendar days of the date the non-creditable hazardous waste was accepted by the initial transporter forwarding the shipment of non-creditable hazardous waste pharmaceuticals from the designated facility to the alternate facility, the healthcare facility must submit:

I. A legible copy of the original manifest, indicating that the healthcare facility has not received confirmation of delivery, to the Department; and

II. A handwritten or typed note on the manifest itself, or on an attached sheet of paper, stating that the return copy was not received and explaining the efforts taken to locate the non-creditable hazardous waste pharmaceuticals and the results of those efforts.

(II) [Reserved]

3. Additional reports. The Department may require healthcare facilities to furnish additional reports concerning the quantities and disposition of non-creditable hazardous waste pharmaceuticals.

(j) Recordkeeping by healthcare facilities for non-creditable hazardous waste pharmaceuticals.

1. A healthcare facility must keep a copy of each manifest signed in accordance with 335-14-3-.02(4)(a) for three years or until it receives a signed copy from the designated facility which received the non-creditable hazardous waste pharmaceuticals. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter.

2. A healthcare facility must keep a copy of each exception report for a period of at least three years from the date of the report.

3. A healthcare facility must keep records of any test results, waste analyses, or other determinations made to support its hazardous waste determination(s) consistent with 335-14-3-.01(2), for at least three years from the date the waste was last sent to on-site or off-site treatment, storage or disposal. A healthcare facility that manages all of its non-creditable non-hazardous waste pharmaceuticals as non-creditable hazardous waste pharmaceuticals is not required to keep documentation of hazardous waste determinations.

4. The periods of retention referred to in ~~this section~~335-14-7-.16(2) are extended automatically during the course of any unresolved enforcement action regarding

the regulated activity, or as requested by the Department.

5. All records must be readily available upon request by an inspector.

(k) Response to spills of non-creditable hazardous waste pharmaceuticals at healthcare facilities. A healthcare facility must immediately contain all spills of non-creditable hazardous waste pharmaceuticals and manage the spill clean-up materials as non-creditable hazardous waste pharmaceuticals in accordance with the applicable requirements of 335-14-7-.16.

(l) Accepting non-creditable hazardous waste pharmaceuticals from an off-site healthcare facility that is a very small quantity generator. A healthcare facility may accept non-creditable hazardous waste pharmaceuticals from an off-site healthcare facility that is a very small quantity generator under 335-14-3-.01(4), without a permit or without having interim status, provided the receiving healthcare facility:

1. Is under the control of the same person (as defined in 335-14-1-.02) as the very small quantity generator healthcare facility that is sending the non-creditable hazardous waste pharmaceuticals off-site ("control" means the power to direct the policies of the healthcare facility, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate healthcare facilities on behalf of a different person as defined in 335-14-1-.01(2) shall not be deemed to "control" such healthcare facilities) or has a contractual or other documented business relationship whereby the receiving healthcare facility supplies pharmaceuticals to the very small quantity generator healthcare facility;

2. Is operating under 335-14-7-.16 for the management of its non-creditable hazardous waste pharmaceuticals;

3. Manages the non-creditable hazardous waste pharmaceuticals that it receives from off site in compliance with 335-14-7-.16; and

4. Keeps records of the non-creditable hazardous waste pharmaceuticals shipments it receives from off site for three years from the date that the shipment is received.

(3) Standards for healthcare facilities managing potentially creditable hazardous waste pharmaceuticals.

(a) Hazardous waste determination for potentially creditable pharmaceuticals. A healthcare facility that generates a solid waste that is a potentially creditable pharmaceutical must determine whether the potentially creditable pharmaceutical is a potentially creditable hazardous waste pharmaceutical (i.e., it is listed in 335-14-2-.04 or exhibits a characteristic identified in 335-14-2-.03). A healthcare facility may choose to manage its potentially creditable non-hazardous waste pharmaceuticals as potentially creditable hazardous waste pharmaceuticals under 335-14-7-.16.

(b) Accepting potentially creditable hazardous waste pharmaceuticals from an off-site healthcare facility that is a very small quantity generator. A healthcare facility may accept potentially creditable hazardous waste pharmaceuticals from an off-site healthcare facility that is a very small quantity generator under 335-14-3-.01(4), without a permit or without having interim status, provided the receiving healthcare facility:

1. Is under the control of the same person, as defined in 335-14-1-.01(2), as the very small quantity generator healthcare facility that is sending the potentially creditable hazardous waste pharmaceuticals off site, or has a contractual or other documented business relationship whereby the receiving healthcare facility supplies pharmaceuticals to the very small quantity generator healthcare facility;

2. Is operating under 335-14-7-.16 for the management of its potentially creditable hazardous waste pharmaceuticals;

3. Manages the potentially creditable hazardous waste pharmaceuticals that it receives from off site in compliance with 335-14-7-.16; and

4. Keeps records of the potentially creditable hazardous waste pharmaceuticals shipments it receives from off site for three years from the date that the shipment is received.

(c) Prohibition. Healthcare facilities are prohibited from sending hazardous wastes other than potentially creditable hazardous waste pharmaceuticals to a reverse distributor.

(d) Biennial Reporting by healthcare facilities. Healthcare facilities are not subject to biennial reporting requirements under 335-14-3-.04(2) with respect to potentially creditable

hazardous waste pharmaceuticals managed under ~~this subpart~~335-14-7-.16.

(e) Recordkeeping by healthcare facilities.

1. A healthcare facility that initiates a shipment of potentially creditable hazardous waste pharmaceuticals to a reverse distributor must keep the following records (paper or electronic) for each shipment of potentially creditable hazardous waste pharmaceuticals for three years from the date of shipment:

(i) The confirmation of delivery; and

(ii) The shipping papers prepared in accordance with 49 CFR part 172 subpart C, if applicable.

2. The periods of retention referred to in this rule are extended automatically during the course of any unresolved enforcement action regarding the regulated activity, or as requested by the Department.

3. All records must be readily available upon request by an inspector.

(f) Response to spills of potentially creditable hazardous waste pharmaceuticals at healthcare facilities. A healthcare facility must immediately contain all spills of potentially creditable hazardous waste pharmaceuticals and manage the spill clean-up materials as non-creditable hazardous waste pharmaceuticals in accordance with 335-14-7-.16.

(4) Healthcare facilities that are very small quantity generators for both hazardous waste pharmaceuticals and non-pharmaceutical hazardous waste that are not operating under 335-14-7-.16.~~.~~

(a) Potentially creditable hazardous waste pharmaceuticals. A healthcare facility that is a very small quantity generator for both hazardous waste pharmaceuticals and non-pharmaceutical hazardous waste may send its potentially creditable hazardous waste pharmaceuticals to a reverse distributor.

(b) Off-site collection of hazardous waste pharmaceuticals generated by a healthcare facility that is a very small quantity generator. A healthcare facility that is a very small quantity generator for both hazardous waste pharmaceuticals and non-pharmaceutical hazardous waste may send its hazardous waste pharmaceuticals off~~-~~ site to another ~~healthcare facility~~generator, provided:

1. The receiving healthcare facility meets the conditions in 335-14-7-.16(2)(l) and 335-14-7-.16(3)(b), as applicable, or

2. The very small quantity generator healthcare facility meets the conditions in 335-14-3-.01(4)(a)5.(viii) and the receiving large quantity generator meets the conditions in 335-14-3-.01(7)(f).

(c) Long-term care facilities that are very small quantity generators. A long-term care facility that is a very small quantity generator for both hazardous waste pharmaceuticals and non-pharmaceutical hazardous waste may dispose of its hazardous waste pharmaceuticals (excluding contaminated personal protective equipment or clean-up materials) in an on-site collection receptacle of an authorized collector (as defined by the Drug Enforcement Administration) that is registered with the Drug Enforcement Administration provided the contents are collected, stored, transported, destroyed and disposed of in compliance with all applicable Drug Enforcement Administration regulations for controlled substances.

(d) Long-term care facilities with 20 beds or fewer. A long-term care facility with 20 beds or fewer is presumed to be a very small quantity generator subject to 335-14-3-.01(4) for both hazardous waste pharmaceuticals and non-pharmaceutical hazardous waste and not subject to 335-14-7-.16, except for 335-14-7-.16(5) and 335-14-7-.16(7) and the other optional provisions of 335-14-7-.16(4). The Department has the responsibility to demonstrate that a long-term care facility with 20 beds or fewer generates quantities of hazardous waste that are in excess of the very small quantity generator limits as defined in 335-14-1-.02(1). A long-term care facility with more than 20 beds that operates as a very small quantity generator under 335-14-3-.01(4) must demonstrate that it generates quantities of hazardous waste that are within the very small quantity generator limits as defined by 335-14-1-.02(1).

(5) Prohibition of sewering hazardous waste pharmaceuticals. All healthcare facilities—including very small quantity generators operating under 335-14-3-.01(4) in lieu of 335-14-7-.16—and reverse distributors are prohibited from discharging hazardous waste pharmaceuticals to a sewer system that passes through to a publicly-owned treatment works. Healthcare facilities and reverse distributors remain subject to the prohibitions in 40 CFR 403.5(b)~~(1)~~.

(6) Conditional exemptions for hazardous waste pharmaceuticals that are also controlled substances and household waste pharmaceuticals collected ~~in a take-back event or program~~by an authorized collector.

(a) Conditional exemptions. Provided the conditions of 335-14-7-.16(6)(b) are met, the following are exempt from 335-14-3 through 335-14-11:

1. Hazardous waste pharmaceuticals that are also listed on a schedule of controlled substances by the Drug Enforcement Administration in 21 CFR part 1308, and

2. Household waste pharmaceuticals~~ that are collected in a take-back event or program, including those~~ that are collected by an authorized collector (as defined by the Drug Enforcement Administration) registered with the Drug Enforcement Administration that commingles the household waste pharmaceuticals with controlled substances from an ultimate user (as defined by the Drug Enforcement Administration).

(b) Conditions for exemption. The hazardous waste pharmaceuticals must be:

1. Managed in compliance with the sewer prohibition of 335-14-7-.16(5); and

2. Collected, stored, transported, and disposed of in compliance with all applicable Drug Enforcement Administration regulations for controlled substances; and

3. Destroyed by a method that Drug Enforcement Administration has publicly deemed in writing to meet their non-retrievable standard of destruction or combusted at one of the following:

(i) A permitted large municipal waste combustor, subject to 40 CFR part 62 subpart FFF or applicable state plan for existing large municipal waste combustors, or 40 CFR part 60 subparts Eb for new large municipal waste combustors; or

(ii) A permitted small municipal waste combustor, subject to 40 CFR part 62 subpart JJJ or applicable state plan for existing small municipal waste combustors, or 40 CFR part 60 subparts AAAA for new small municipal waste combustors; or

(iii) A permitted hospital, medical and infectious waste incinerator, subject to 40 CFR part 62 subpart HHH or applicable state plan for existing hospital, medical and infectious waste incinerators, or 40 CFR part 60 subpart Ec for new hospital, medical and infectious waste incinerators~~.~~; or

(iv) A permitted commercial and industrial solid waste incinerator, subject to 40 CFR part 62 subpart III or applicable state plan for existing commercial and industrial solid waste incinerators, or 335-3-3-.05 for new commercial and industrial solid waste incinerators~~.~~; or

(v) A permitted hazardous waste combustor subject to 40 CFR part 63 subpart EEE.

(7) Residues of hazardous waste pharmaceuticals in empty containers.

(a) Stock, dispensing and unit-dose containers. A stock bottle, dispensing bottle, vial, or ampule (not to exceed 1 liter or 10,000 pills); or a unit-dose container (e.g., a unit-dose packet, cup, wrapper, blister pack, or delivery device) is considered empty and the residues are not regulated as hazardous waste provided the pharmaceuticals have been removed from the stock bottle, dispensing bottle, vial, ampule, or the unit-dose container using the practices commonly employed to remove materials from that type of container.

(b) Syringes. A syringe is considered empty and the residues are not regulated as hazardous waste under ~~this subpart~~335-14-7-.16 provided the contents have been removed by fully depressing the plunger of the syringe. ~~If~~At healthcare facilities operating under 335-14-7-.16, if a syringe is not empty, the syringe must be placed with its remaining hazardous waste pharmaceuticals into a container that is managed and disposed of as a non-creditable hazardous waste pharmaceutical ~~under this subpart~~335-14-7-.16 and any applicable federal, state, and local requirements for sharps containers and medical waste.

(c) Intravenous (IV) bags. An IV bag is considered empty and the residues are not regulated as hazardous waste provided the pharmaceuticals in the IV bag have been fully administered to a patient~~. If~~, or if the IV bag held non-acute hazardous waste pharmaceuticals and is empty as defined in 335-14-2-.01(7). At healthcare facilities operating under 335-14-7-.16, if an IV bag is not empty, the IV bag must be

placed with its remaining hazardous waste pharmaceuticals into a container that is managed and disposed of as a non-creditable hazardous waste pharmaceutical under ~~this subpart, unless the IV bag held non-acute hazardous waste pharmaceuticals and is empty as defined in 335-14-2-.0~~335-14-7-.1~~(7)(b)1~~6.

(d) Other containers, including delivery devices. ~~Hazardous~~At healthcare facilities operating under 335-14-7-.16, hazardous waste pharmaceuticals remaining in all other types of unused, partially administered, or fully administered containers must be managed as non-creditable hazardous waste pharmaceuticals under ~~this subpart~~335-14-7-.16, unless the container held non-acute hazardous waste pharmaceuticals and is empty as defined in 335-14-2-.01(7)(b)1. or 2. This includes, but is not limited to, residues in inhalers, aerosol cans, nebulizers, tubes of ointments, gels, or creams.

(8) Shipping non-creditable hazardous waste pharmaceuticals from a healthcare facility or evaluated hazardous waste pharmaceuticals from a reverse distributor.

(a) Shipping non-creditable hazardous waste pharmaceuticals or evaluated hazardous waste pharmaceuticals. A healthcare facility must ship non-creditable hazardous waste pharmaceuticals and a reverse distributor must ship evaluated hazardous waste pharmaceuticals off-site to a designated facility (such as a permitted or interim status treatment, storage, or disposal facility) in compliance with:

1. The following pre-transport requirements, before transporting or offering for transport off-site:

(i) Packaging. Package the waste in accordance with the applicable Department of Transportation regulations on hazardous materials under 49 CFR parts 173, 178, and 180.

(ii) Labeling. Label each package in accordance with the applicable Department of Transportation regulations on hazardous materials under 49 CFR part 172 subpart E.

(iii) Marking.

(I) Mark each package of hazardous waste pharmaceuticals in accordance with the applicable Department of Transportation (DOT) regulations on hazardous materials under 49 CFR part 172 subpart D;

(II) Mark each container of 119 gallons or less used in such transportation with the following words and information in accordance with the requirements of 49 CFR 172.304:

***HAZARDOUS WASTE—Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.***

***Healthcare Facility's or Reverse distributor's Name and Address*** _____
_____.

***Healthcare Facility's or Reverse distributor's EPA Identification Number***_____.

***Manifest Tracking Number*** _____.

(III) Lab packs that will be incinerated in compliance with 335-14-9-.04(3) are not required to be marked with EPA Hazardous Waste Number(s) (i.e. hazardous waste codes), except D004, D005, D006, D007, D008, D010, and D011, where applicable. A nationally recognized electronic system, such as bar coding or radio frequency identification, may be used to identify the EPA Hazardous Waste Number(s).

(iv) Placarding. Placard or offer the initial transporter the appropriate placards according to Department of Transportation regulations for hazardous materials under 49 CFR part 172 subpart F.

2. The manifest requirements of 335-14-3-.02, except that:

(i) A healthcare facility shipping non-creditable hazardous waste pharmaceuticals is not required to list all applicable hazardous waste numbers (i.e., hazardous waste codes) in Item 13 of EPA Form 8700-22 (Uniform Hazardous Waste Manifest).

(ii) A healthcare facility shipping non-creditable hazardous waste pharmaceuticals must write the word "PHRM" or "PHARMS" in Item 13 of EPA Form 8700-22 (Uniform Hazardous Waste Manifest). A healthcare facility may also include the applicable EPA hazardous waste numbers (i.e., hazardous waste codes) in Item 13 of EPA Form 8700-22.

(b) Exporting non-creditable hazardous waste pharmaceuticals or evaluated hazardous waste pharmaceuticals. A healthcare facility or reverse distributor that exports non-creditable hazardous waste pharmaceuticals or evaluated hazardous waste pharmaceuticals is subject to 335-14-3-.09.

(c) Importing non-creditable hazardous waste pharmaceuticals or evaluated hazardous waste pharmaceuticals. Any person that imports non-creditable hazardous waste pharmaceuticals or evaluated hazardous waste pharmaceuticals is subject to 335-14-3-.09. A healthcare facility or reverse distributor may not accept imported non-creditable hazardous waste pharmaceuticals or evaluated hazardous waste pharmaceuticals unless they have a permit or interim status that allows them to accept hazardous waste from off site.

(9) Shipping potentially creditable hazardous waste pharmaceuticals from a healthcare facility or a reverse distributor to a reverse distributor.

(a) Shipping potentially creditable hazardous waste pharmaceuticals. A healthcare facility or a reverse distributor who transports or offers for transport potentially creditable hazardous waste pharmaceuticals off-site to a reverse distributor must comply with all applicable U.S. Department of Transportation regulations in 49 CFR part 171 through 180 for any potentially creditable hazardous waste pharmaceutical that meets the definition of hazardous material in 49 CFR 171.8. For purposes of the Department of Transportation regulations, a material is considered a hazardous waste if it is subject to the Hazardous Waste Manifest Requirements of 335-14-3. Because a potentially creditable hazardous waste pharmaceutical does not require a manifest, it is not considered hazardous waste under the Department of Transportation regulations.

(b) Delivery confirmation. Upon receipt of each shipment of potentially creditable hazardous waste pharmaceuticals, the receiving reverse distributor must provide confirmation (paper or electronic) to the healthcare facility or reverse distributor that initiated the shipment that the shipment of potentially creditable hazardous waste pharmaceuticals has arrived at its destination and is under the custody and control of the reverse distributor.

(c) Procedures for when delivery confirmation is not received within 35 days. If a healthcare facility or reverse distributor initiates a shipment of potentially creditable hazardous waste pharmaceuticals to a reverse distributor and does not receive delivery confirmation within 35 calendar

days from the date that the shipment of potentially creditable hazardous waste pharmaceuticals was sent, the healthcare facility or reverse distributor that initiated the shipment must contact the carrier and the intended recipient (i.e., the reverse distributor) promptly to report that the delivery confirmation was not received and to determine the status of the potentially creditable hazardous waste pharmaceuticals.

(d) Exporting potentially creditable hazardous waste pharmaceuticals. A healthcare facility or reverse distributor that sends potentially creditable hazardous waste pharmaceuticals to a foreign destination must comply with the applicable sections of 335-14-3-.09, except the manifesting requirement of 335-14-3-.09(4), in addition to 335-14-7-.16(9)(a) through (c).

(e) Importing potentially creditable hazardous waste pharmaceuticals. Any person that imports potentially creditable hazardous waste pharmaceuticals into Alabama from outside the United States is subject to 335-14-7-.16(9)(a) through (c) in lieu of 335-14-3-.09. Immediately after the potentially creditable hazardous waste pharmaceuticals enter Alabama from outside the United States, they are subject to all applicable requirements of 335-14-7-.16.

(10) Standards for the management of potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals at reverse distributors. A reverse distributor may accept potentially creditable hazardous waste pharmaceuticals from off site and accumulate potentially creditable hazardous waste pharmaceuticals or evaluated hazardous waste pharmaceuticals on site without a hazardous waste permit or without having interim status, provided that it complies with the following conditions:

(a) Standards for reverse distributors managing potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals.

1. Notification. A reverse distributor must notify the Department, using ADEM Form 8700-12 (Notification of Regulated Waste Activity) or an electronic method used by the Department, that it is a reverse distributor operating under 335-14-7-.16.

(i) A reverse distributor that already has an EPA identification number must notify the Department, using ADEM Form 8700-12 or an electronic method used by the Department, that it is a reverse distributor,

as defined in 335-14-1-.02(1), within 60 days of the effective date of 335-14-7-.16, or within 60 days of becoming subject to 335-14-7-.16.

(ii) A reverse distributor that does not have an EPA identification number must obtain one by notifying the Department, using ADEM Form 8700-12 or an electronic method used by the Department, that it is a reverse distributor, as defined in 335-14-1-.02(1), within 60 days of the effective date of 335-14-7-.16, or within 60 days of becoming subject to 335-14-7-.16.

2. Inventory by the reverse distributor. A reverse distributor must maintain a current inventory of all the potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals that are accumulated on site.

(i) A reverse distributor must inventory each potentially creditable hazardous waste pharmaceutical within 30 calendar days of each waste arriving at the reverse distributor.

(ii) The inventory must include the identity (e.g., name or national drug code) and quantity of each potentially creditable hazardous waste pharmaceutical and evaluated hazardous waste pharmaceutical.

(iii) If the reverse distributor already meets the inventory requirements of 335-14-7-.16(10)(a)2. because of other regulatory requirements, such as Alabama Board of Pharmacy rules, the facility is not required to provide a separate inventory pursuant to this rule.

3. Evaluation by a reverse distributor that is not a manufacturer. A reverse distributor that is not a pharmaceutical manufacturer must evaluate a potentially creditable hazardous waste pharmaceutical within 30 calendar days of the waste arriving at the reverse distributor to establish whether it is destined for another reverse distributor for further evaluation or verification of manufacturer credit or for a permitted or interim status treatment, storage, or disposal facility.

(i) A potentially creditable hazardous waste pharmaceutical that is destined for another reverse distributor is still considered a potentially

creditable hazardous waste pharmaceutical and must be managed in accordance with 335-14-7-.16(10)(b).

(ii) A potentially creditable hazardous waste pharmaceutical that is destined for a permitted or interim status treatment, storage or disposal facility is considered an "evaluated hazardous waste pharmaceutical" and must be managed in accordance with 335-14-7-.16(10)(c).

4. Evaluation by a reverse distributor that is a manufacturer. A reverse distributor that is a pharmaceutical manufacturer must evaluate a potentially creditable hazardous waste pharmaceutical to verify manufacturer credit within 30 calendar days of the waste arriving at the facility and following the evaluation must manage the evaluated hazardous waste pharmaceuticals in accordance with 335-14-7-.16(10)(c).

5. Maximum accumulation time for hazardous waste pharmaceuticals at a reverse distributor.

(i) A reverse distributor may accumulate potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals on site for 180 calendar days or less. The 180 days start after the potentially creditable hazardous waste pharmaceutical has been evaluated and applies to all hazardous waste pharmaceuticals accumulated on site, regardless of whether they are destined for another reverse distributor (i.e., potentially creditable hazardous waste pharmaceuticals) or a permitted or interim status treatment, storage, or disposal facility (i.e., evaluated hazardous waste pharmaceuticals).

(ii) Aging pharmaceuticals. Unexpired pharmaceuticals that are otherwise creditable but are awaiting their expiration date (i.e., aging in a holding morgue) can be accumulated for up to 180 days after the expiration date, provided that the unexpired pharmaceuticals are managed in accordance with 335-14-7-.16(10)(a) and the container labeling and management standards in 335-14-7-.16(10)(c)4.(i) through (vi).

6. Security at the reverse distributor facility. A reverse distributor must prevent unknowing entry and minimize the possibility for the unauthorized entry into the portion of the facility where potentially creditable

hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals are kept.

(i) Examples of methods that may be used to prevent unknowing entry and minimize the possibility for unauthorized entry include, but are not limited to:

(I) A 24-hour continuous monitoring surveillance system;

(II) An artificial barrier such as a fence; or

(III) A means to control entry, such as keycard access.

(ii) If the reverse distributor already meets the security requirements of 335-14-7-.16(10)(a)6. because of other regulatory requirements, such as Drug Enforcement Administration or Alabama Board of Pharmacy rules, the facility is not required to provide separate security measures pursuant to ~~this section~~335-14-7-.16(10).

7. Contingency plan and emergency procedures at a reverse distributor. A reverse distributor that accepts potentially creditable hazardous waste pharmaceuticals from off-site must prepare a contingency plan and comply with the other requirements of 335-14-3-.14.

8. Closure of a reverse distributor. When closing an area where a reverse distributor accumulates potentially creditable hazardous waste pharmaceuticals or evaluated hazardous waste pharmaceuticals, the reverse distributor must comply with 335-14-3-.01(7)(a)8.(ii) and (iii).

9. Reporting by a reverse distributor.

(i) Unauthorized waste report. A reverse distributor must submit an unauthorized waste report if the reverse distributor receives waste from off site that it is not authorized to receive (e.g., non-pharmaceutical hazardous waste, regulated medical waste). The reverse distributor must prepare and submit an unauthorized waste report to the Department within 45 calendar days after the unauthorized waste arrives at the reverse distributor and must send a copy of the unauthorized waste report to the healthcare facility (or other entity) that sent the unauthorized waste. The reverse distributor must manage the unauthorized

waste in accordance with all applicable regulations. The unauthorized waste report must be signed by the owner or operator of the reverse distributor, or its authorized representative, and contain the following information:

(I) The EPA identification number, name and address of the ~~reverse distributor~~healthcare facility (or other entity) that shipped the unauthorized waste, if available;

(II) The date the reverse distributor received the unauthorized waste;

(III) The EPA identification number, name, and address of the healthcare facility that shipped the unauthorized waste, if available;

(IV) A description and the quantity of each unauthorized waste the reverse distributor received;

(V) The method of treatment, storage, or disposal for each unauthorized waste; and

(VI) A brief explanation of why the waste was unauthorized, if known.

(ii) Additional reports. The Department may require reverse distributors to furnish additional reports concerning the quantities and disposition of potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals.

10. Recordkeeping by reverse distributors. A reverse distributor must keep the following records (paper or electronic) readily available upon request by an inspector. The periods of retention referred to in ~~this section~~335-14-7-.16(10) are extended automatically during the course of any unresolved enforcement action regarding the regulated activity, or as requested by the Department.

(i) A copy of its notification on file for as long as the facility is subject to ~~this subpart~~335-14-7-.16;

(ii) A copy of the delivery confirmation and the shipping papers for each shipment of potentially

creditable hazardous waste pharmaceuticals that it receives, and a copy of each unauthorized waste report, for at least three years from the date the shipment arrives at the reverse distributor;

(iii) A copy of its current inventory for as long as the facility is subject to ~~this subpart~~335-14-7-.16.

(b) Additional standards for reverse distributors managing potentially creditable hazardous waste pharmaceuticals destined for another reverse distributor. A reverse distributor that does not have a permit or interim status must comply with the following conditions, in addition to the requirements in 335-14-7-.16(10)(a), for the management of potentially creditable hazardous waste pharmaceuticals that are destined for another reverse distributor for further evaluation or verification of manufacturer credit:

1. A reverse distributor that receives potentially creditable hazardous waste pharmaceuticals from a healthcare facility must send those potentially creditable hazardous waste pharmaceuticals to another reverse distributor within 180 calendar days after the potentially creditable hazardous waste pharmaceuticals have been evaluated or follow 335-14-7-.16(10)(c) for evaluated hazardous waste pharmaceuticals.

2. A reverse distributor that receives potentially creditable hazardous waste pharmaceuticals from another reverse distributor must send those potentially creditable hazardous waste pharmaceuticals to a reverse distributor that is a pharmaceutical manufacturer within 180 calendar days after the potentially creditable hazardous waste pharmaceuticals have been evaluated or follow 335-14-7-.16(10)(c) for evaluated hazardous waste pharmaceuticals.

3. A reverse distributor must ship potentially creditable hazardous waste pharmaceuticals destined for another reverse distributor in accordance with 335-14-7-.16(9).

4. Recordkeeping by reverse distributors. A reverse distributor must keep the following records (paper or electronic) readily available upon request by an inspector for each shipment of potentially creditable hazardous waste pharmaceuticals that it initiates to another reverse distributor, for at least three years from the date of shipment. The periods of retention referred to in this rule are extended automatically during the course of any unresolved enforcement action

regarding the regulated activity, or as requested by the Department.

(i) The confirmation of delivery; and

(ii) The DOT shipping papers prepared in accordance with 49 CFR part 172 subpart C, if applicable.

(c) Additional standards for reverse distributors managing evaluated hazardous waste pharmaceuticals. A reverse distributor that does not have a permit or interim status must comply with the following conditions, in addition to the requirements of 335-14-7-.16(10)(a), for the management of evaluated hazardous waste pharmaceuticals:

1. Accumulation area at the reverse distributor. A reverse distributor must designate an on-site accumulation area where it will accumulate evaluated hazardous waste pharmaceuticals.

2. Inspections of on-site accumulation area. A reverse distributor must inspect its on-site accumulation area at least once every seven calendar days, looking at containers for leaks and for deterioration caused by corrosion or other factors, as well as for signs of diversion.

3. Personnel training at a reverse distributor. Personnel at a reverse distributor that handle evaluated hazardous waste pharmaceuticals are subject to the training requirements of 335-14-3-.01(7)(a)7.

4. Labeling and management of containers at on-site accumulation areas. A reverse distributor accumulating evaluated hazardous waste pharmaceuticals in containers in an on-site accumulation area must:

(i) Label the containers with the words, "hazardous waste pharmaceuticals";

(ii) Ensure the containers are in good condition and managed to prevent leaks;

(iii) Use containers that are made of or lined with materials which will not react with, and are otherwise compatible with, the evaluated hazardous waste pharmaceuticals, so that the ability of the container to contain the waste is not impaired;

(iv) Keep containers closed, if holding liquid or gel evaluated hazardous waste pharmaceuticals. If the liquid or gel evaluated hazardous waste pharmaceuticals are in their original, intact, sealed packaging; or repackaged, intact, sealed packaging, they are considered to meet the closed container standard;

(v) Manage any container of ignitable or reactive evaluated hazardous waste pharmaceuticals, or any container of commingled incompatible evaluated hazardous waste pharmaceuticals so that the container does not have the potential to:

(I) Generate extreme heat or pressure, fire or explosion, or violent reaction;

(II) Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health;

(III) Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions;

(IV) Damage the structural integrity of the container of hazardous waste pharmaceuticals; or

(V) Through other like means threaten human health or the environment; and

(vi) Accumulate evaluated hazardous waste pharmaceuticals that are prohibited from being combusted because of the dilution prohibition of 335-14-9-.01(3) ~~((~~(i.e~~.g., arsenic trioxide (P012))~~., metal-bearing waste codes listed in appendix XI of 40 CFR part 268, unless one or more criteria in 40 CFR § 268.3(c)(1) through (6) are met), or because it is prohibited from being lab packed due to 40 CFR § 268.42(c)[incorporated by reference at 335-14-9-.04(3)] (i.e., waste codes listed in appendix IV of 40 CFR part 268), in separate containers from other evaluated hazardous waste pharmaceuticals at the reverse distributor.

5. Hazardous waste numbers. Prior to shipping evaluated hazardous waste pharmaceuticals off site, all containers must be marked with the applicable hazardous waste numbers (i.e., hazardous waste codes)), except as provided in 335-14-7-.16(8)(a)1.(iii)(III). A nationally

recognized electronic system, such as bar coding or radio frequency identification, may be used to identify the EPA Hazardous Waste Number(s) (i.e., hazardous waste codes).

6. Shipments. A reverse distributor must ship evaluated hazardous waste pharmaceuticals that are destined for a permitted or interim status treatment, storage or disposal facility in accordance with the applicable shipping standards in 335-14-7-.16(8)(a) or (b).

7. Procedures for a reverse distributor for managing rejected shipments. A reverse distributor that sends a shipment of evaluated hazardous waste pharmaceuticals 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 in accordance with the manifest discrepancy provisions of 335-14-5-.05(3) or 335-14-6-.05(3), may accumulate the returned evaluated hazardous waste pharmaceuticals on site for up to an additional 90 calendar days in the on-site accumulation area provided the rejected ~~or returned~~ shipment is managed in accordance with 335-14-7-.16(10)(a) and (c). Upon receipt of the ~~returned~~rejected shipment, the reverse distributor must:

(i) Sign either:

(I) Item 18c of the original manifest, if the original manifest was used for the returned shipment; or

(II) Item 20 of the new manifest, if a new manifest was used for the returned shipment;

(ii) Provide the transporter a copy of the manifest;

(iii) Within 30 calendar days of receipt of the rejected shipment of the evaluated hazardous waste pharmaceuticals, send a copy of the manifest to the designated facility that returned the shipment to the reverse distributor; and

(iv) Within 90 calendar days of receipt of the rejected shipment, transport or offer for transport the returned shipment of evaluated hazardous waste pharmaceuticals in accordance with the applicable shipping standards of 335-14-7-.16(8)(a) or (b).

8. Land disposal restrictions. Evaluated hazardous waste pharmaceuticals are subject to the land disposal

restrictions of 335-14-9. A reverse distributor that accepts potentially creditable hazardous waste pharmaceuticals from off-site must comply with the land disposal restrictions in accordance with 335-14-9-.01(7).

9. Reporting by a reverse distributor for evaluated hazardous waste pharmaceuticals.

(i) Biennial reporting by a reverse distributor. A reverse distributor that ships evaluated hazardous waste pharmaceuticals off-site must prepare and submit a single copy of a biennial report to the Department by March 1 of each even numbered year in accordance with 335-14-3-.04(2).

(ii) Exception reporting by a reverse distributor for a missing copy of the manifest.

(I) For shipments from a reverse distributor to a designated facility,

I. If a reverse distributor does not receive a copy of the manifest with the signature of the owner or operator of the designated facility within 35 calendar days of the date the evaluated hazardous waste pharmaceuticals were accepted by the initial transporter, the reverse distributor must contact the transporter or the owner or operator of the designated facility to determine the status of the evaluated hazardous waste pharmaceuticals.

II. A reverse distributor must submit an exception report to the Department if it has not received a copy of the manifest with the signature of the owner or operator of the designated facility within 45 calendar days of the date the evaluated hazardous waste pharmaceutical was accepted by the initial transporter. The exception report must include:

a. A legible copy of the manifest for which the reverse distributor does not have confirmation of delivery; and

b. A cover letter signed by the reverse distributor, or its authorized representative, explaining the efforts

taken to locate the evaluated hazardous waste pharmaceuticals and the results of those efforts.

(II) For shipments rejected by the designated facility and shipped to an alternate facility,

I. A reverse distributor that does not receive a copy of the manifest with the signature of the owner or operator of the alternate facility within 35 calendar days of the date the evaluated hazardous waste pharmaceuticals were accepted by the initial transporter must contact the transporter or the owner or operator of the alternate facility to determine the status of the hazardous waste. The 35-day time frame begins the date the evaluated hazardous waste pharmaceuticals are accepted by the transporter forwarding the hazardous waste shipment from the designated facility to the alternate facility.

II. A reverse distributor must submit an Exception Report to the Department if it has not received a copy of the manifest with the signature of the owner or operator of the alternate facility within 45 calendar days of the date the evaluated hazardous waste pharmaceuticals were accepted by the initial transporter. The 45-day timeframe begins the date the evaluated hazardous waste pharmaceuticals are accepted by the transporter forwarding the hazardous waste pharmaceutical shipment from the designated facility to the alternate facility. The Exception Report must include:

(A) A legible copy of the manifest for which the generator does not have confirmation of delivery; and

(B) A cover letter signed by the reverse distributor, or its authorized representative, explaining the efforts taken to locate the evaluated hazardous waste pharmaceuticals and the results of those efforts.

10. Recordkeeping by a reverse distributor for evaluated hazardous waste pharmaceuticals.

(i) A reverse distributor must keep a log (written or electronic) of the inspections of the on-site accumulation area, required 335-14-7-.16(10)(c)2. This log must be retained as a record for at least three years from the date of the inspection.

(ii) A reverse distributor must keep a copy of each manifest signed in accordance with 335-14-3-.02(4)(a) for three years or until it receives a signed copy from the designated facility that received the evaluated hazardous waste pharmaceutical. This signed copy must be retained as a record for at least three years from the date the evaluated hazardous waste pharmaceutical was accepted by the initial transporter.

(iii) A reverse distributor must keep a copy of each biennial report for at least three years from the due date of the report.

(iv) A reverse distributor must keep a copy of each exception report for at least three years from the submission of the report.

(v) A reverse distributor must keep records to document personnel training, in accordance with 335-14-3-.01(7)(a)7.(iv).

(vi) All records must be readily available upon request by an inspector. The periods of retention referred to in ~~this section~~335-14-7-.16(10) are extended automatically during the course of any unresolved enforcement action regarding the regulated activity, or as requested by the Department.

(d) When a reverse distributor must have a permit. A reverse distributor is an operator of a hazardous waste treatment, storage, or disposal facility and is subject to the requirements of 335-14-5, 335-14-6, and the permit requirements of 335-14-8, if the reverse distributor:

1. Does not meet the conditions 335-14-7-.16;

2. Accepts manifested hazardous waste from off site; or

3. Treats or disposes of hazardous waste pharmaceuticals on site.

**Author:** Sonja B. Favors; Brent A. Watson; Jonah L. Harris

**Statutory Authority:** Code of Ala. 1975, §§22-30-10, 22-30-11, 22-30-12, 22-30-14, 22-30-15, 22-30-16, 22-30-19, 22-30-20.

**History:** **New Rule:** Published February 28, 2020; effective April 13, 2020. **Amended:** Published November 30, 2022; effective June 12, 2023. **Amended:** Published _____; effective _____.

**APA-1**

**TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION**

| | |
|---|---|
| Control: | 335 |
| Department or Agency: | Alabama Department of Environmental Management Land Division Hazardous Waste Program |
| Rule No.: | 335-14-7-.17 |
| Rule Title: | Ignitable Spent Refrigerants Recycled for Reuse |
| Intended Action | New |

| | |
|---|---|
| Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? | Yes |
| Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? | Yes |
| Is there another, less restrictive method of regulation available that could adequately protect the public? | No |
| Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? | No |

To what degree?: N/A

| | |
|---|---|
| Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? | NA |
| Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? | Yes |
| Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? | No |

Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of certifying officer: Jeffery W. Kitchens

Jeffery W. Kitchens

Date: Tuesday, August 19, 2025

REC'D & FILED
AUG 19, 2025
LEGISLATIVE SVC AGENCY

APA-2

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION HAZARDOUS WASTE PROGRAM**

**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** Alabama Department of Environmental Management

**RULE NO. & TITLE:** 335-14-7-.17 Ignitable Spent Refrigerants Recycled for Reuse

**INTENDED ACTION:** New

**SUBSTANCE OF PROPOSED ACTION:**
The Department proposes to add this new Rule 335-14-7-.17 to adopt Management of Certain Hydrofluorocarbons and Substitutes. These additions are necessary to maintain regulations that are at least as stringent as those promulgated federally, a requirement to preserve the State's authorized status.

**TIME, PLACE AND MANNER OF PRESENTING VIEWS:**
Comments may be submitted in writing or orally at a public hearing to be held at 10:00 a.m., October 7, 2025, in the ADEM Main Hearing Room, 1400 Coliseum Boulevard, Montgomery, Alabama 36110. Attendance at the hearing is not necessary to present such data, views, arguments, or comments. All comments should be received by 5:00 p.m., October 7, 2025. Written submissions and other inquiries should be directed to: ADEM Hearing Officer, Office of General Counsel, Alabama Department of Environmental Management, P.O. Box 301463, Montgomery, AL 36130-1463 (street address: 1400 Coliseum Boulevard, Montgomery, AL 36110-2400) or by e-mail at hearing.officer@adem.alabama.gov.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**
Tuesday, October 7, 2025

**CONTACT PERSON AT AGENCY:**
Lynn T. Roper, 334-271-7728

Jeffery W. Kitchens

Jeffery W. Kitchens

(Signature of officer authorized to promulgate and adopt rules or his or her deputy)

**335-14-7-.17 Ignitable Spent Refrigerants Recycled for Reuse.**

(1) Purpose and applicability

(a) The purpose of 335-17-7-.17 is to reduce emissions of ignitable spent refrigerants to the lowest achievable level by maximizing the recovery and safe recycling for reuse of such refrigerants during the service, repair, and disposal of appliances.

(b) The requirements of 335-17-7-.17 operate in lieu of 335-14-1 through 335-14-9 and apply to lower flammability spent refrigerants, as defined in 335-14-7-.17(2), where the refrigerant exhibits the hazardous waste characteristic of ignitability per 335-14-2-.03(2) and is being recycled for reuse in the United States.

(c) These requirements do not apply to other ignitable spent refrigerants. Ignitable spent refrigerants not subject to 335-17-7-.17 are subject to all applicable requirements of 335-14-1 through 335-14-9 when recovered (i.e., removed from an appliance and stored in an external container) and/or disposed of.

(2) Definitions for 335-17-7-.17. For the purposes of 335-17-7-.17, the following terms have the meanings given below:

*(a) Refrigerant* has the same meaning as defined in 40 CFR 82.152.

(b) *Ignitable spent refrigerant* is a used refrigerant that cannot be reused without first being processed, and that exhibits the hazardous characteristic of ignitability per 335-14-2-.03(2). Used refrigerants that can be legitimately reused without processing are not spent refrigerant.

(c) *Recycle for reuse,* when referring to an ignitable spent refrigerant, means to process the refrigerant to remove contamination and prepare it to be used again. "Recycle for reuse" does not include recycling that involves burning for energy recovery or use in a manner constituting disposal as defined in 335-14-2-.01(2)(c), or sham recycling as defined in 335-14-2-.01(2)(g).

(d) *Lower flammability spent refrigerant* means a spent refrigerant that is not considered highly flammable. Highly flammable refrigerants include but are not limited to the following chemicals: butane, isobutane, methane, propane, and/or propylene.

(3) Standards for ignitable spent refrigerant recycled for reuse under 335-17-7-.17.

(a) Persons who recover (*i.e.*, remove from an appliance and store in an external container) and/or recycle ignitable spent refrigerants for reuse either for further use in equipment of the same owner, or in compliance with motor vehicle air conditioner (MVAC) standards in 40 CFR part 82, subpart B, or who send recovered refrigerant off-site to be recycled for reuse must:

1. Recover and/or recycle for reuse the ignitable spent refrigerant using equipment that is certified for that type of refrigerant and appliance under 40 CFR §§ 82.36 and/or §§ 82.158;and

2. Not speculatively accumulate the ignitable spent refrigerant per 335-14-1-.02(1)(a).

(b) Persons who receive ignitable spent refrigerants from off-site, and are not a transfer facility that stores the refrigerants for less than ten (10) days before sending the refrigerant to another site to be recycled for reuse, must:

1. If recovering the refrigerant, recover the ignitable spent refrigerant using equipment that is certified for that type of refrigerant and appliance under 40 CFR § 82.36;

2. Meet the applicable emergency preparedness and response requirements of 335-14-2-.13; and

3. Not speculatively accumulate the ignitable spent refrigerant per 335-14-1-.02(1)(a).

(c) Persons receiving ignitable spent refrigerant from off-site to be recycled for reuse under 335-17-7-.17 must:

1. Maintain certification by EPA under 40 CFR §82.164;

2. Meet the applicable emergency preparedness and response requirements of 335-14-2-.13; and

3. Starting with the calendar year beginning January 1, 2029, not speculatively accumulate the ignitable spent refrigerant per 335-14-1-.02(1)(a).

**Author:** Jonah Harris
**Statutory Authority:** Code of Alabama 1975, §§ 22-30-11, 22-30-14, 22-30-15 and 22-30-16
**History:** **New Rule:** Published _____; effective _____.

**APA-1**

**TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION**

| | |
|---|---|
| Control: | 335 |
| Department or Agency: | Alabama Department of Environmental Management Land Division - Hazardous Waste Program |
| Rule No.: | 335-14-8-.01 |
| Rule Title: | General Information |
| Intended Action | Amend |

| | |
|---|---|
| Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? | Yes |
| Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? | Yes |
| Is there another, less restrictive method of regulation available that could adequately protect the public? | No |
| Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? | No |

To what degree?: N/A

| | |
|---|---|
| Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? | NA |
| Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? | Yes |
| Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? | No |

Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of certifying officer: Jeffery W. Kitchens

Jeffery W. Kitchens

REC'D & FILED

Date: Tuesday, August 19, 2025

AUG 19, 2025

LEGISLATIVE SVC AGENCY

**APA-2**

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION - HAZARDOUS WASTE PROGRAM**

**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** Alabama Department of Environmental Management

**RULE NO. & TITLE:** 335-14-8-.01 General Information

**INTENDED ACTION:** Amend

**SUBSTANCE OF PROPOSED ACTION:**
The Department proposes to revise Rule 335-14-8-.01 to adopt the Management of Certain Hydrofluorocarbons and Substitutes. These revisions are necessary for the Department to maintain regulations that are at least as stringent as those promulgated federally, a requirement to preserve the State's authorized status.

**TIME, PLACE AND MANNER OF PRESENTING VIEWS:**
Comments may be submitted in writing or orally at a public hearing to be held at 10:00 a.m., October 7, 2025, in the ADEM Main Hearing Room, 1400 Coliseum Boulevard, Montgomery, Alabama 36110. Attendance at the hearing is not necessary to present such data, views, arguments, or comments. All comments should be received by 5:00 p.m., October 7, 2025. Written submissions and other inquiries should be directed to: ADEM Hearing Officer, Office of General Counsel, Alabama Department of Environmental Management, P.O. Box 301463, Montgomery, AL 36130-1463 (street address: 1400 Coliseum Boulevard, Montgomery, AL 36110-2400) or by e-mail at hearing.officer@adem.alabama.gov.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**
Tuesday, October 7, 2025

**CONTACT PERSON AT AGENCY:**
Lynn T. Roper, 334-271-7728

Jeffery W. Kitchens

Jeffery W. Kitchens

(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

**335-14-8-.01 General Information.**

(1) Purpose and scope.

(a) Coverage.

1. These permit regulations establish the procedures for obtaining a permit to transport, store, treat, or dispose of hazardous waste in compliance with the AHWMMA. The technical standards used to determine the requirements of any permit are set out in 335-14-3, 335-14-4, 335-14-5 and 335-14-7. These permit regulations also apply to the denial of a permit for the active life of an AHWMMA hazardous waste management facility or unit under 335-14-8-.02(20).

2. Unless they qualify for interim status under 335-14-8-.07, all owners and operators of hazardous waste treatment, storage, and disposal facilities and all transporters of hazardous waste must apply for and receive a permit from the Department before the construction of any facility or the transportation of any hazardous waste.

(b) [Reserved]

(c) Scope of the AHWMMA permit requirement. AHWMMA requires a permit for the "treatment", "storage", and "disposal" of any "hazardous waste" as identified or listed in 335-14-2. The terms "treatment", "storage", "disposal", and "hazardous waste" are defined in 335-14-1-.02. Owners and operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit. Owners or operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure (according to 335-14-6-.07(6)) after January 26, 1983, must have post-closure permits, unless they demonstrate closure by removal as provided under 335-14-8-.01(1)(c)5. and 6., or obtain an enforceable post-closure document, as provided under 335-14-8-.01(1)(c)7. If a post-closure permit is required, the permit must address applicable 335-14-5 requirements (Groundwater Monitoring, Unsaturated Zone Monitoring, Corrective Action, and Post-Closure Care). The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a post-closure permit under 335-14-8-.01(1).

1. [Reserved]

2. Specific exclusions and exemptions. The following persons are among those who are not required to obtain an AHWMMA permit:

(i) Generators who accumulate hazardous waste on-site in compliance with all of the conditions for exemption provided in 335-14-3-.01(4) through (7);

(ii) Farmers who dispose of hazardous waste pesticides from their own use as provided in 335-14-3-.07(1);

(iii) Persons who own or operate facilities solely for the treatment, storage or disposal of hazardous waste excluded from regulation under 335-14-8 by 335-14-2-.01(4) or 335-14-3-.01(4) (very small quantity generator exemption);

(iv) Owners or operators of totally enclosed treatment facilities as defined in 335-14-1-.02;

(v) Owners and operators of elementary neutralization units or wastewater treatment units as defined in 335-14-1-.02 which manage only wastes and/or wastewaters generated on-site, or which are POTWs or privatized municipal wastewater treatment facilities;

[Note: Commercial treatment, or treatment except by the generator, of wastes and/or wastewaters in elementary neutralization or wastewater treatment units are not exempt from the requirement to obtain an AHWMMA permit.]

(vi) Transporters storing manifested shipments of hazardous waste in containers meeting the requirements of 335-14-3-.03(1) at a transfer facility for a period of ten days or less are not required to obtain a storage facility permit but must have a transporter permit;

(vii) Persons adding absorbent material to waste in a container and persons adding waste to absorbent material in a container, provided that these actions occur at the time waste is first placed in the container, and 335-14-6-.02(8)(b) and 335-14-6-.09(2) and (3) are complied with;

(viii) Generators treating on-site generated hazardous wastes by evaporation in tanks or containers provided that:

(I) The generator complies with the applicable requirements of 335-14-3,

(II) Such treatment does not result in the emission or discharge of hazardous wastes or hazardous constituents into the environment in excess of any standard(s) promulgated by the Department or the Environmental Protection Agency,

(III) With respect to treatment, the generator complies with the applicable requirements of 335-14-6-.02(5), 335-14-6-.02(6), 335-14-6-.02(7), 335-14-6-.02(8), 335-14-6-.03, 335-14-6-.04, 335-14-6-.07(2), 335-14-6-.07(5), 335-14-6-.09 and 335-14-6-.10,

(IV) Such treatment minimizes the amount of hazardous wastes which are subsequently generated, treated, and/or disposed, and

(V) The generator provides the Department with written notice of intent to treat such hazardous wastes on or before the effective date of 335-14-8-.01 or at least 60 days prior to the initiation of waste treatment, which ever date occurs last. This notice must provide documentation of compliance with the requirements of 335-14-8-.01(1)(c)2.(viii) (II), (III), and (IV), and must be maintained for the life of the facility and be available for inspection;

(ix) Universal waste handlers and universal waste transporters [as defined in 335-14-1-.02] managing the wastes listed below. These handlers are subject to regulation under 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),

(IV) Lamps as described in 335-14-11-.01(5), and

(V) Aerosol cans as described in 335-14-11-.01(6).

(x) Generators treating on-site generated hazardous wastes in tanks or containers by physical or mechanical processes (e.g., compacting rags, crushing fluorescent lamps) solely for the purpose of reducing the bulk volume of the waste which must be subsequently managed as a hazardous waste provided that:

(I) The generator complies with the applicable requirements of 335-14-3;

(II) The treatment process does not result in a change in the chemical composition of the waste(s) treated;

(III) No mixing of different waste streams occurs;

(IV) No free liquids are included in the waste(s) to be treated or generated by the treatment process;

(V) The potential for ignition and/or reaction of the waste during treatment and/or as the result of treatment does not exist;

(VI) The treatment reduces the volume of hazardous waste which must be subsequently managed;

(VII) Such treatment does not result in the emission or discharge of hazardous wastes or hazardous constituents into the environment in excess of any standard(s) promulgated by the Department, the Environmental Protection Agency, or the Occupational Safety and Health Administration (OSHA). Generators treating on-site generated hazardous wastes in fluorescent bulb/lamp units must maintain the following documents on-site: I. A copy of the manufacturer’s equipment operations manual and specifications; II. A copy of all applicable equipment operation and maintenance records; III. A copy of all applicable OSHA compliance

demonstrations and records: and IV. Documents/ records demonstrating emissions compliance.

(VIII) With respect to treatment, the generator complies with the applicable requirements of 335-14-6-.02(5), 335-14-6-.02(6), 335-14-6-.02(7), 335-14-6-.02(8), 335-14-6-.03, 335-14-6-.04, 335-14-6-.07(2), 335-14-6-.07(5), 335-14-6-.09, 335-14-6-.10; and

(IX) The generator provides the Department with written notice of intent to treat such hazardous wastes on or before the effective date of 335-14-8-.01 or at least 60 days prior to the initiation of waste treatment, whichever date occurs last. This notice must provide documentation of compliance with the requirements of 335-14-8-.01(1)(c)2.(x) (II), (III), (IV), (V), (VI), (VII), and (VIII), and must be maintained for the life of the facility and be available for inspection.

(xi) Persons deploying intact airbag modules and seatbelt pretensioners provided that:

(I) Prior to treatment, the items are managed in accordance with all applicable requirements of Division 335-14; and

(II) The items are deployed using a method approved by the automotive industry or the manufacturer.

(xii) Reverse distributors accumulating potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals, as defined 335-14-1-.02(1). Reverse distributors are subject to regulation under 335-14-7-.16 for the accumulation of potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals.

(xiii) Recyclers of ignitable spent refrigerants subject to regulation under 335-14-7-.17.

3. Further exclusions.

(i) A person is not required to obtain a permit under 335-14-8 for treatment or containment

activities taken during immediate response to any of the following situations:

(I) A discharge of a hazardous waste;

(II) An imminent and substantial threat of a discharge of hazardous waste;

(III) A discharge of a material which, when discharged, becomes a hazardous waste; or

(IV) An immediate threat to human health, public safety, property, or the environment from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in 335-14-1-.02.

(ii) Transporters are not required to obtain a permit in accordance with 335-14-8 in order to provide emergency transportation from cleanup of a discharge under 335-14-8-.01(1)(c)3(i).

(iii) In the case of emergency responses involving military munitions, the responding military emergency response specialist's organizational unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

(iv) Any person who continues or initiates hazardous waste treatment, containment or transportation activities after the immediate response is over is subject to all applicable requirements of 335-14-8 for those activities.

(v) A person who receives hazardous waste from off-site for the purpose of reclamation/recycling in a unit or process which is exempted from regulation pursuant to 335-14-2-.01(6) is not required to obtain a permit under 335-14-8 for storage of the waste prior to introduction into the exempt reclamation/recycling process provided that:

(I) The hazardous waste is introduced into the exempt process within three days of receipt at the facility; and

(II) The hazardous waste is managed in containers, tanks, or containment buildings and the owner/operator complies with all applicable requirements of 335-14-6-.02, 335-14-6-.03, 335-14-6-.04, 335-14-6-.05, 335-14-6-.07(2), 335-14-6-.07(5), 335-14-6-.09, 335-14-6-.10, 335-14-6-.27, 335-14-6-.28, 335-14-6-.29, and 335-14-6-.30.

4. Permits for less than an entire facility. The Department may issue or deny a permit for one or more units at a facility without simultaneously issuing or denying a permit to all of the units at the facility. The Department may issue or deny a permit for a particular unit(s) at a facility without affecting the interim status permit(s) for other units at the facility.

5. Closure by removal. Owners/operators of surface impoundments, land treatment units, and waste piles closing by removal or decontamination under 335-14-6 standards must obtain a post-closure permit unless they can demonstrate to the Department that the closure met the standards for closure by removal or decontamination in 335-14-5-.11(9), 335-14-5-.13(11)(e), or 335-14-5-.12(9), respectively. The demonstration may be made in the following ways:

(i) If the owner/operator has submitted a Part B application for a post-closure permit, the owner/operator may request a determination, based on information contained in the application, that 335-14-5 closure by removal standards were met. If the Department believes that 335-14-5 standards were met, the Department will notify the public of this proposed decision, allow for public comment, and reach a final determination according to the procedures in 335-14-8-.01(1)(c)6.

(ii) If the owner/operator has not submitted a Part B application for a post-closure permit, the owner/operator may petition the Department for a determination that a post-closure permit is not required because the closure met the applicable 335-14-5 closure standards.

(I) The petition must include data demonstrating that closure by removal or decontamination standards were met or exceeded under the applicable 335-14-5 closure-by-removal standard.

(II) The Department shall approve or deny the petition according to the procedures outlined in 335-14-8-.01(1)(c)6.

6. Procedures for closure equivalency determination.

(i) If a facility owner/operator seeks an equivalency demonstration under 335-14-8-.01(1)(c)5., the Department will provide the public, through a newspaper notice, the opportunity to submit written comments on the information submitted by the owner/operator within 30 days from the date of the notice. The Department will also, in response to a request or at its own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the equivalence of the 335-14-6 closure to a 335-14-5 closure. 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.)

(ii) The Department will determine whether the Chapter 335-14-6 closure met 335-14-5 closure by removal or decontamination requirements within 90 days of its receipt. If the Department finds that the closure did not meet the applicable 335-14-5 standards, it will provide the owner/operator with a written statement of the reasons why the closure failed to meet 335-14-5 standards. The owner/operator may submit additional information in support of an equivalency demonstration within 30 days after receiving such written statement. The Department will review any additional information submitted and make a final determination within 60 days.

(iii) If the Department determines that the facility did not close in accordance with 335-14-5 closure by removal standards, the facility is subject to post-closure permitting requirements.

7. Enforceable documents for post-closure care. At the Department's discretion, an owner or operator may obtain, an enforceable document for post-closure care imposing the requirements of 335-14-6-.07(12). "Enforceable document" means an order, a plan, or other document issued, or approved, by EPA or the Department under an authority that meets the requirements of 40 CFR 271.16(e)

including, but not limited to, a corrective action order issued by EPA or the Department under ~~section~~Section 3008(h) of RCRA, a CERCLA remedial action, or a closure or post-closure plan.

(2) [Reserved]

(3) Considerations under federal law. The following is a list of Federal laws that may apply to the issuance of permits under these Rules. When any of these laws is applicable, its procedures must be followed. When the applicable law requires consideration or adoption of particular permit conditions or requires the denial of a permit, those requirements also must be followed:

(a) The Wild and Scenic Rivers Act, 16 U.S.C. 1273 et seq.

(b) The National Historic Preservation Act of 1966, 16 U.S.C. 470 et seq.

(c) The Endangered Species Act, 16 U.S.C. 1531 et seq.

(d) The Coastal Zone Management Act, 16 U.S.C. 661 et seq.

(4) Effect of permit.

(a)1. Compliance with an AHWMMA permit during its term constitutes compliance, for purposes of enforcement, with Subtitle C of RCRA except for those requirements not included in the permit which:

(i) Become effective by statute;

(ii) Are promulgated under 335-14-9 restricting the placement of hazardous wastes in or on the land;

(iii) Are promulgated under 335-14-5 regarding leak detection systems for new and replacement surface impoundment, waste pile, and landfill units and lateral expansions of surface impoundment, waste pile, and landfill units. The leak detection system requirements include double liners, CQA programs, monitoring, action leakage rates, and response action plans, and will be implemented through the procedures of 335-14-8-.04; or

(iv) Are promulgated under 335-14-6-.27 or 335-14-6-.28 limiting air emissions.

2. A permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in

335-14-8-.04(2) and 335-14-8-.04(4), or the permit may be modified up on the request of the permittee as set forth in 335-14-8-.04(2)(a)3.(ii).

(b) The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

(c) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of Federal, State of Alabama or local laws or regulations.

(5) Effect of non-compliance.

(a) Substantial non-compliance, as determined by the Department, of another facility within the State of Alabama owned or operated by the permittee requesting reissuance of a permit, will be grounds for denial of permit reissuance until such non-compliance is corrected.

(b) A determination may be made by the Department to deny a permit application if the applicant operates other permitted facilities within the State of Alabama which are in substantial non-compliance, as determined by the Department, until such non-compliance is corrected or if the Department determines that a permit that results in compliance with applicable hazardous waste standards could not be issued or, if issued, could not be complied with.

**Author**: Stephen C. Maurer; Stephen A. Cobb; Michael B. Jones; Michael Champion; Amy P. Zachry, C. Edwin Johnston, Vernon C. Crockett, Bradley N. Curvin, Heather M. Jones, Jonah L. Harris, Theresa A. Maines, Heather M. Jones, James K. Burgess, Sonja B. Favors, Brent A. Watson; Brent A. Watson

**Statutory Authority**: Code of Ala. 1975, §§22-30-11, 22-30-12.

**History**: July 19, 1982. **Amended**: April 9, 1986; September 29, 1986; August 24, 1989; December 6, 1990; January 25, 1992; January 1, 1993. **Amended**: Filed: November 30, 1994; effective January 5, 1995. **Amended**: Filed December 8, 1995; effective January 12, 1996. **Amended**: Filed February 2, 1996; effective March 8, 1996. **Amended**: Filed February 21, 1997; effective March 28, 1997. **Amended**: Filed February 20, 1998; effective March 27, 1998. **Amended**: Filed February 25, 2000; effective March 31, 2000. **Amended**: Filed March 9, 2001; effective April 13, 2001. **Amended**: Filed February 8, 2002; effective March 15, 2002. **Amended**: Filed March 13, 2003; effective April 17, 2003. **Amended**: Filed February 24, 2005; effective March 31, 2005. **Amended**: Filed February 28, 2006; effective April 4, 2006. **Amended**: Filed February 27, 2007; effective April 3, 2007. **Amended**: Filed April 22, 2008; effective May 27, 2008. **Amended**: Filed February 23, 2011; effective March 30, 2011. **Amended**:

Filed February 28, 2012; effective April 3, 2012. **Amended:** Filed February 20, 2018; effective April 7, 2018. **Amended:** Published February 28, 2020; effective April 13, 2020. **Amended:** Published December 31, 2020; effective February 14, 2021. **Amended:** Published November 30, 2022; effective June 15, 2023. **Amended:** Published _____; effective _____.

**APA-1**

**TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION**

| | |
|---|---|
| Control: | 335 |
| Department or Agency: | Alabama Department of Environmental Management Land Division - Hazardous Waste Program |
| Rule No.: | 335-14-8-.03 |
| Rule Title: | Permit Conditions - Treatment, Storage And Disposal Facilities |
| Intended Action | Amend |

| | |
|---|---|
| Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? | Yes |
| Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? | Yes |
| Is there another, less restrictive method of regulation available that could adequately protect the public? | No |
| Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? | No |

To what degree?: N/A

| | |
|---|---|
| Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? | NA |
| Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? | Yes |
| Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? | No |

Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of certifying officer: *Jeffery W. Kitchens*
Jeffery W. Kitchens

Date: Tuesday, August 19, 2025

REC'D & FILED
AUG 19, 2025
LEGISLATIVE SVC AGENCY

**APA-2**

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION - HAZARDOUS WASTE PROGRAM**

**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** Alabama Department of Environmental Management

**RULE NO. & TITLE:** 335-14-8-.03 Permit Conditions - Treatment, Storage And Disposal Facilities

**INTENDED ACTION:** Amend

**SUBSTANCE OF PROPOSED ACTION:**

The Department proposes to revise Rule 335-14-8-.03 to adopt the Integrating e-Manifest with Hazardous Waste Exports and Other Manifest-Related Reports. These revisions are necessary for the Department to maintain regulations that are at least as stringent as those promulgated federally, a requirement to preserve the State's authorized status. In addition, clarification is provided for changes in ownership requirements for notification and requirement for a permit modification request.The Department proposes to revise Rule 335-14-8-.03 to adopt the Integrating e-Manifest with Hazardous Waste Exports and Other Manifest-Related Reports. These revisions are necessary for the Department to maintain regulations that are at least as stringent as those promulgated federally, a requirement to preserve the State's authorized status. In addition, clarification is provided for changes in ownership requirements for notification and requirement for a permit modification request.

**TIME, PLACE AND MANNER OF PRESENTING VIEWS:**

Comments may be submitted in writing or orally at a public hearing to be held at 10:00 a.m., October 7, 2025, in the ADEM Main Hearing Room, 1400 Coliseum Boulevard, Montgomery, Alabama 36110. Attendance at the hearing is not necessary to present such data, views, arguments, or comments. All comments should be received by 5:00 p.m., October 7, 2025. Written submissions and other inquiries should be directed to: ADEM Hearing Officer, Office of General Counsel, Alabama Department of
Environmental Management, P.O. Box 301463, Montgomery, AL 36130-1463 (street address: 1400 Coliseum Boulevard, Montgomery, AL 36110-2400) or by e-mail at hearing.officer@adem.alabama.gov.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**

Tuesday, October 7, 2025

**CONTACT PERSON AT AGENCY:**

Lynn T. Roper, 334-271-7728

Jeffery W. Kitchens

Jeffery W. Kitchens

(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

**335-14-8-.03 Permit Conditions - Treatment, Storage And Disposal Facilities.**

(1) Conditions applicable to all permits. The following conditions apply to all permits, and shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations must be given in the permit.

(a) Duty to comply. The permittee must comply with all conditions of this permit, except that the permittee need not comply with the conditions of this permit to the extent and for the duration such noncompliance is authorized in an emergency permit. [See 335-14-8-.06(1).]

Any permit noncompliance, except under the terms of an emergency permit, constitutes a violation of the AHWMMA and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

(b) Duty to reapply.

1. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

2. The Permittee must submit an application for a new permit for both post-closure and solid waste management unit corrective action at least 180 calendar days before the expiration of this permit. The Permittee must reapply in order to fulfill the 30-year post-closure care period required by 335-14-5-.07(8)(a)1. The Department may shorten or extend the post-closure care period applicable to the hazardous waste facility in accordance with 335-14-5-.07(8)(a)2. and 335-14-8-.03(1)(b).

(c) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(d) In the event of noncompliance with the permit, the permittee shall take all reasonable steps to minimize releases to the environment, and shall carry out such measures as are reasonable to prevent significant adverse impacts on human health or the environment.

(e) Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

(f) Permit actions. This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(g) Property rights. The permit does not convey any property rights of any sort, or any exclusive privilege.

(h) Duty to provide information. The permittee shall furnish to the Department, within a reasonable time, any relevant information which the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Department, upon request, copies of records required to be kept by this permit.

(i) Inspection and entry. The permittee shall allow duly designated officers and employees of the Department or their authorized representative, upon the presentation of credentials and other documents as may be required by law to:

1. Enter at reasonable times upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the AHWMMA, any substances or parameters at any location.

(j) Monitoring and records.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

2. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, the certification required by 335-14-5-.05(4)(b)9., and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report, certification, or application. This period may be extended by request of the Department at any time. The permittee shall maintain records from all groundwater monitoring wells and associated groundwater surface elevations, for the active life of the facility, and for disposal facilities for the post-closure care period as well.

3. Records for monitoring information shall include:

(i) The date, exact place, and times of sampling or measurements;

(ii) The individual(s) who performed the sampling or measurements;

(iii) The date(s) analyses were performed;

(iv) The individual(s) who performed the analyses;

(v) The analytical techniques or methods used; and

(vi) The results of such analyses.

(k) Signatory requirements. All applications, reports, or information submitted to the Department shall be signed and certified. (See 335-14-8-.02(2).)

(l) Reporting requirements.

1. Planned changes. The permittee shall ~~give notice to~~notify the Department~~ as soon as possible of any planned physical alterations or additions to the permitted facility~~, in writing, within 15 days of discovery, of any additional AOC(s) or SWMU(s)~~.

2. Anticipated noncompliance. The permittee shall give advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements. For a new facility, the permittee may not treat, store, or dispose of hazardous wastes; and for a facility being modified, the permittee may not treat, store, or dispose of hazardous waste in the modified portion of the facility, until:

(i) The permittee has submitted to the Department by certified mail or hand delivery a letter signed by the permittee and a registered professional engineer stating that the facility has been constructed or modified in compliance with the permit; and

(ii)(I) The Department has inspected the modified or newly constructed facility and finds it is in compliance with the conditions of the permit; or

(II) Within 15 days of the date of submission of the letter in 335-14-8-.03(1)(l)2.(i), the permittee has not received notice from the Department of its intent to inspect, prior inspection is waived and the permittee may commence treatment, storage, or disposal of hazardous waste.

3. Transfers. This permit is not transferable to any person except after notice to the Department. ~~The Department may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the AHWMMA~~Before transferring ownership or operation of the facility during the term of this permit, the permittee shall notify the new owner or operator, in writing, of the requirements of 335-14-5 and 335-14-8 and this permit. The permittee shall submit a permit modification request no later than 30 days after the change in ownership or operation and must comply with all conditions of this permit until a permit modification to transfer the permit is approved by the Department. (See 335-14-8-.04(1).~~)~~ The permit modification request should include documentation of the notification to the

new owner or operator of the requirements of 335-14-5 and 335-14-8 and this permit.

4. Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit.

5. Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

6. Twenty-four hour reporting.

(i) The permittee shall report any noncompliance which may endanger human health or the environment orally within 24 hours from the time the permittee becomes aware of the circumstances, including:

(I) Information concerning release of any hazardous waste that may cause an endangerment to public drinking water supplies.

(II) Any information of a release or discharge of hazardous waste or of a fire or explosion from the HWM facility, which could threaten the environment or human health outside the facility.

(ii) The description of the occurrence and its cause shall 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;

(IV) Name and quantity of material(s) involved;

(V) The extent of injuries, if any;

(VI) An assessment of actual or potential hazards to the environment and human health outside the facility, where this is applicable; and

(VII) Estimated quantity and disposition of recovered material that resulted from the incident.

(iii) A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate and prevent reoccurrence of the noncompliance. The Department may waive the five day written notice requirement in favor of a written report within fifteen days.

7. Manifest discrepancy report: If a significant discrepancy in a manifest is discovered, the permittee must ~~attempt~~:

(i) Attempt to reconcile the discrepancy. If not resolved within ~~fifteen~~20 days, the permittee must submit a letter report, including a copy of the manifest, to the Department. [See 335-14-5-.05(3).]

(ii) Beginning on December 1, 2025, attempt to reconcile the discrepancy. If not resolved within 20 days, the permittee must immediately submit a Discrepancy Report to the EPA e-Manifest System describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue. [See 335-14-5-.05(3)]

8. Unmanifested waste report: ~~This report must be submitted~~A permittee must:

(i) Submit the Unmanifested Waste Report to the Department within 15 days of receipt of unmanifested waste. [See 335-14-5-.05(7)~~.~~]

(ii) Beginning on December 1, 2025, submit an electronic Unmanifested Waste Report in the EPA e-Manifest system within 15 days of receipt of unmanifested waste. [See 335-14-5-.05(7)]

9. Biennial report: A biennial report must be submitted covering facility activities during odd numbered calendar years. [See 335-14-5-.05(6).]

10. Other noncompliance. The permittee shall report all instances of noncompliance not reported under 335-14-8-.03(1(I))4., (l)5. and (l)6., at the time monitoring reports are submitted. The reports shall contain the information listed in 335-14-8-.03(l)(I)6.

11. Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department, it shall promptly submit such facts or information.

(m) Information repository. The Department may require the permittee to establish and maintain an information repository at any time, based on the factors set forth in 335-14-8-.08(1)(c)2. The information repository will be governed by the provisions in 335-14-8-.08(1)(c)3. through 6.

(2) Requirements for recording and reporting of monitoring results. All permits shall specify:

(a) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

(b) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

(c) Applicable reporting requirements based upon the impact of the regulated activity and as specified in Chapters 335-14-5 and 335-14-7. Reporting shall be no less than specified in the above regulations.

(3) Establishing permit conditions.

(a) In addition to conditions required in all permits 335-14-8-.03(1), the Department shall establish conditions, as required on a case-by-case basis, in permits under 335-14-8-.05(1) (duration of permits), 335-14-8-.03(4)(a) (schedules of compliance) and 335-14-8-.03(2) (monitoring).

(b)1. Each AHWMMA permit shall include permit conditions necessary to achieve compliance with the AHWMMA and rules, including each of the applicable requirements specified in Chapters 335-14-5 and 335-14-7 through 335-14-9. In satisfying this provision, the Department may incorporate applicable requirements of Chapters 335-14-5 and 335-14-7

through 335-14-9 directly into the permit or establish other permit conditions that are based on these Chapters.

2. Each permit issued under the AHWMMA shall contain terms and conditions as the Department determines necessary to protect human health and the environment.

(c) An applicable requirement is a statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit. 335-14-8-.08(9) (reopening of comment period) provides a means for reopening permit proceedings at the discretion of the Department where new requirements become effective during the permitting process and are of sufficient magnitude to make additional proceedings desirable. An applicable requirement is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed in 335-14-8-.04(2).

(d) New or reissued permits, and to the extent allowed under 335-14-8-.04(2), modified or revoked and reissued permits shall incorporate each of the applicable requirements referenced in 335-14-8-.03(2).

(e) All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit.

(4) Schedules of compliance.

(a) The permit may, when appropriate, specify a schedule of compliance leading to compliance with the AHWMMA and Rules.

1. Any schedules of compliance under 335-14-8-.03(4) shall require compliance as soon as possible.

2. Except as provided in 335-14-8-.03(4)(b)1.(ii), if a permit establishes a schedule of compliance which exceeds 1 year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

(i) The time between interim dates shall not exceed 1 year.

(ii) If the time necessary for completion of an interim requirement is more than 1 year and is not readily divisible into stages for completion, the permit shall specify interim dates for the

submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

3. The permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, the permittee shall notify the Department in writing, of its compliance or noncompliance with the interim or final requirements.

(b) A permit applicant or permittee may cease conducting regulated activities (by receiving a terminal volume of hazardous waste and, for treatment and storage HWM facilities, closing pursuant to applicable requirements; and, for disposal HWM facilities, closing and conducting post-closure care pursuant to applicable requirements) rather than continue to operate and meet permit requirements as follows:

1. If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

(i) The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

(ii) The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit;

2. If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination which will ensure timely compliance with applicable requirements;

3. If the permittee is undecided whether to cease conducting regulated activities, the Department may issue or modify a permit to contain two schedules as follows:

(i) Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

(ii) One schedule shall lead to timely compliance with applicable requirements;

(iii) The second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements;

(iv) Each permit containing two schedules shall include a requirement that after the permittee has made a final decision under 335-14-8-.03(4)(b)3.(i) it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities; and

4. The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Department, such as resolution of the board of directors of a corporation.

**Author:** Stephen C. Maurer; Amy P. Zachry; Michael B. Champion; Vernon H. Crockett

**Statutory Authority:** Code of Ala. 1975, §§22-40-11, 22-30-12.

**History:** July 19, 1982. **Amended:** April 9, 1986; September 29, 1986; February 15, 1988; August 24, 1989. **Amended:** Filed: November 30, 1994 effective January 5, 1995. **Amended:** Filed February 21, 1997; effective March 28, 1997. **Amended:** Filed February 20, 1998; effective March 28, 1998. **Amended:** Filed March 9, 2001; effective April 13, 2001. **Amended:** Filed March 13, 2003; effective April 17, 2003. **Amended:** Filed April 22, 2004; effective May 27, 2004. **Amended:** Filed February 28, 2012; effective April 3, 2012. **Amended:** Published ; effective .

**APA-1**

**TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION**

| | |
|---|---|
| Control: | 335 |
| Department or Agency: | Alabama Department of Environmental Management Land Division - Hazardous Waste Program |
| Rule No.: | 335-14-11-.07 |
| Rule Title: | Petitions To Include Other Wastes Under Chapter 335-14-11 |
| Intended Action | Amend |

| | |
|---|---|
| Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? | Yes |
| Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? | Yes |
| Is there another, less restrictive method of regulation available that could adequately protect the public? | No |
| Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? | No |

To what degree?: N/A

| | |
|---|---|
| Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? | NA |
| Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? | Yes |
| Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? | No |

Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of certifying officer: Jeffery W. Kitchens

Jeffery W. Kitchens

Date: Tuesday, August 19, 2025

REC'D & FILED
AUG 19, 2025
LEGISLATIVE SVC AGENCY

APA-2

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**
**LAND DIVISION - HAZARDOUS WASTE PROGRAM**

**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** Alabama Department of Environmental Management

**RULE NO. & TITLE:** 335-14-11-.07 Petitions To Include Other Wastes Under Chapter 335-14-11

**INTENDED ACTION:** Amend

**SUBSTANCE OF PROPOSED ACTION:**
The Department proposes to revise Rule 335-14-11-.07 to make general clarifications, correct typographical or grammatical errors, and maintain equivalency with federal regulations.

**TIME, PLACE AND MANNER OF PRESENTING VIEWS:**
Comments may be submitted in writing or orally at a public hearing to be held at 10:00 a.m., October 7, 2025, in the ADEM Main Hearing Room, 1400 Coliseum Boulevard, Montgomery, Alabama 36110. Attendance at the hearing is not necessary to present such data, views, arguments, or comments. All comments should be received by 5:00 p.m., October 7, 2025. Written submissions and other inquiries should be directed to: ADEM Hearing Officer, Office of General Counsel, Alabama Department of
Environmental Management, P.O. Box 301463, Montgomery, AL 36130-1463 (street address: 1400 Coliseum Boulevard, Montgomery, AL 36110-2400) or by e-mail at hearing.officer@adem.alabama.gov.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**
Tuesday, October 7, 2025

**CONTACT PERSON AT AGENCY:**
Lynn T. Roper, 334-271-7728

Jeffery W. Kitchens
Jeffery W. Kitchens

(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

**335-14-11-.07 Petitions To Include Other Wastes Under Chapter 335-14-11.**

(1) General.

(a) Except as provided in 335-14-11-.07(1)(d), any person seeking to add a hazardous waste or a category of hazardous waste to 335-14-11 may petition for a regulatory amendment under 335-14-11-.07 and 335-14-1-.03(3).

(b) To be successful, the petitioner must demonstrate to the satisfaction of the Director that regulation under the universal waste regulations of 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. The petition must include the information required by 335-14-1-.03(3)(b). The petition should also address as many of the factors listed in 335-14-11-.07(2) as are appropriate for the waste or waste category addressed in the petition.

(c) The Director will evaluate petitions using the factors listed in 335-14-11-.07(2). 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) Hazardous waste pharmaceuticals are regulated by 335-14-7-.16 and may not be added as a category of hazardous waste for management under ~~this part~~335-14-11.

(2) Factors for petitions to include other wastes under Chapter 335-14-11.

(a) The waste or category of waste, as generated by a wide variety of generators, is listed in Rule 335-14-2-.04, or (if not listed) a proportion of the waste stream exhibits one or more characteristics of hazardous waste identified in Rule 335-14-2-.03. (When a characteristic waste is added to the universal waste regulations of Chapter 335-14-11 by using a generic name to identify the waste category (e.g., batteries), the definition of universal waste in Rules 335-14-1-.02 will be amended to include only the hazardous waste portion of the waste category (e.g., hazardous waste batteries).) Thus, only the portion of the waste stream that does exhibit one or more characteristics (i.e., is hazardous

waste) is subject to the universal waste regulations of Chapter 335-14-11;

(b) The waste or category of waste is not exclusive to a specific industry or group of industries, is commonly generated by a wide variety of types of establishments (including, for example, households, retail and commercial businesses, office complexes, very small quantity generators, small businesses, government organizations, as well as large industrial facilities);

(c) The waste or category of waste is generated by a large number of generators (e.g., more than 1,000 nationally) and is frequently generated in relatively small quantities by each generator;

(d) Systems to be used for collecting the waste or category of waste (including packaging, marking, and labeling practices) would ensure close stewardship of the waste;

(e) The risk posed by the waste or category of waste during accumulation and transport is relatively low compared to other hazardous wastes, and specific management standards proposed or referenced by the petitioner (e.g., waste management requirements appropriate to be added to Rules 335-14-11-.02(4), 335-14-11-.03(4), and 335-14-11-.04(3); and/or applicable Department of Transportation requirements) would be protective of human health and the environment during accumulation and transport;

(f) Regulation of the waste or category of waste under Chapter 335-14-11 will increase the likelihood that the waste will be diverted from non-hazardous waste management systems (e.g., the municipal waste stream, non-hazardous industrial or commercial waste stream, municipal sewer or stormwater systems) to recycling, treatment, or disposal in compliance with Subtitle C of RCRA.

(g) Regulation of the waste or category of waste under Chapter 335-14-11 will improve implementation of and compliance with the hazardous waste regulatory program; and/or

(h) Such other factors as may be appropriate.

**Author:** Amy P. Zachry; Lynn T. Roper; Bradley N. Curvin; Vernon H. Crockett; Sonja B. Favors; Brent A. Watson

**Statutory Authority:** Code of Ala. 1975, §§22-30-11, 22-30-14, 22-30-15, 22-30-16.

**History:** **New Rule:** Filed December 8, 1995; effective January 12, 1996. **Amended:** Filed February 21, 1997; effective March 28,

1997. **Amended:** Filed March 9, 2001; effective April 13, 2001.
**Amended:** Filed February 24, 2005; effective March 31, 2005.
**Amended:** Filed February 28, 2006; effective April 4, 2006.
**Amended:** Filed February 20, 2018; effective April 7, 2018.
**Amended:** Published February 28, 2020; effective April 13, 2020.
**Amended:** Published _____; effective _____.

**APA-1**

**TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION**

| | |
|---|---|
| Control: | 335 |
| Department or Agency: | Alabama Department of Environmental Management Land Division - Hazardous Waste Program |
| Rule No.: | 335-14-17-.05 |
| Rule Title: | Standards For Used Oil Transporter And Transfer Facilities |
| Intended Action | Amend |

| | |
|---|---|
| Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? | Yes |
| Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? | Yes |
| Is there another, less restrictive method of regulation available that could adequately protect the public? | No |
| Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? | No |

To what degree?: N/A

| | |
|---|---|
| Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? | NA |
| Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? | Yes |
| Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? | No |

| | |
|---|---|
| Does the proposed rule have an economic impact? | No |

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of certifying officer: *Jeffery W. Kitchens*
Jeffery W. Kitchens

Date: Tuesday, August 19, 2025

REC'D & FILED
AUG 19, 2025
LEGISLATIVE SVC AGENCY

**APA-2**

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LAND DIVISION - HAZARDOUS WASTE PROGRAM**

**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** Alabama Department of Environmental Management

**RULE NO. & TITLE:** 335-14-17-.05 Standards For Used Oil Transporter And Transfer Facilities

**INTENDED ACTION:** Amend

**SUBSTANCE OF PROPOSED ACTION:**

The Department proposes to revise Rule 335-14-17-.05(4) to clarify the financial assurance requirements for government owned (state and federal) used oil transporter facilities to be consistent with the treatment, storage, and disposal (TSD) facility requirements. TSD facilities owned by the State of Alabama and the Federal government are exempt from the financial requirements of ADEM Admin. Code r. 335-14-5-.08.

**TIME, PLACE AND MANNER OF PRESENTING VIEWS:**

Comments may be submitted in writing or orally at a public hearing to be held at 10:00 a.m., October 7, 2025, in the ADEM Main Hearing Room, 1400 Coliseum Boulevard, Montgomery, Alabama 36110. Attendance at the hearing is not necessary to present such data, views, arguments, or comments. All comments should be received by 5:00 p.m., October 7, 2025. Written submissions and other inquiries should be directed to: ADEM Hearing Officer, Office of General Counsel, Alabama Department of
Environmental Management, P.O. Box 301463, Montgomery, AL 36130-1463 (street address: 1400 Coliseum Boulevard, Montgomery, AL 36110-2400) or by e-mail at hearing.officer@adem.alabama.gov.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**

Tuesday, October 7, 2025

**CONTACT PERSON AT AGENCY:**

Lynn T. Roper, 334-271-7728

Jeffery W. Kitchens

Jeffery W. Kitchens

(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

**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 For 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, except for the State of Alabama and Federal government, 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: _____

_____

[name(s) and business address(es)]

Surety(ies): _____

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 Ala. 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 Ala. 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, P.O. Box 301463, Montgomery, Alabama 36130-1463]

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 Ala. 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

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, PO Box 301463, Montgomery, AL (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 to 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(297)].

(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 as 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 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;

5.(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 Persumption. 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, C. Edwin Johnston, Lawrence A. Norris, Abe Oberkor, Bradley N. Curvin; Clethes Stallworth, Linda J. Knickerbocker

**Statutory Authority**: Code of Ala. 1975, §§22-22A-4(n), 22-22A-5(3), 22-22A-5(4), 22-22A-5(20), 22-30-9(5).

**History**: **New Rule**: Filed November 30, 1994 effective January 5, 1995. **Amended**: Filed December 8, 1995; effective January 12, 1996. **Amended**: Filed February 2, 1996; effective March 8, 1996. **Amended**: Filed February 26, 1999; effective April 2, 1999. **Amended**: Filed March 9, 2001; effective April 13, 2001. **Amended**: Filed February 8, 2002; effective March 15, 2002. **Amended**: Filed March 13, 2003; effective April 17, 2003. **Amended**: Filed April 22, 2004; effective May 27, 2004. **Amended**: Filed February 24, 2005; effective March 31, 2005. **Amended**: Filed February 28, 2006; effective April 4, 2006. **Amended**: Filed February 27, 2007; effective April 3, 2007. **Amended**: Filed April 22, 2008; effective May 27, 2008. **Amended**: Filed February 24, 2009; effective March 31, 2009. **Amended**: Filed February 23, 2010; effective March 30, 2010. **Amended**: Filed February 23, 2011; effective March 30, 2011. **Amended**: Filed February 28, 2012; effective April 3, 2012. **Amended**: Filed February 19, 2013; effective March 26, 2013. **Amended**: Filed February 19, 2019;

effective April 6, 2019. **Amended:** Published ; effective .

**Attachment 4**

BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

| | | |
|---|---|---|
| In the Matter of: | ) | |
| | ) | |
| Michael Del Vecchio, Kara Del Vecchio, David F. Del Vecchio, Peggy R. Del Vecchio, William R. Novack, Tara Novack, Anthony Keith, and Emily Keith, Petitioners, | ) | |
| | ) | |
| vs. | ) | EMC Docket No. 26-01 |
| | ) | |
| Alabama Department of Environmental Management, Respondent, | ) | |
| | ) | |
| and | ) | |
| | ) | |
| The City of Dothan, Alabama Intervenor. | ) | |

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ORDER

Before the Commission in the above matter is the Request for Oral Argument at the hearing on the Motion for Stay submitted in the Petitioners' Motion for Stay. Having considered the same and having considered ADEM Admin. Code Rule 335-2-1-.23(4), pertaining to oral argument on an application for a stay, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:

1. That the Petitioners' Request for Oral Argument is hereby granted; and

2. That this action has been taken and this Order shall be deemed rendered effective as of the date shown below; and

3. That a copy of the Order shall be forthwith served upon each of the parties hereto either personally, or by certified mail.

ISSUED this 12th day of December 2025.

APPROVED:

Mary J. Merritt, Commissioner

H. Lanier Brown, II, Commissioner

J. Patrick Tucker, Commissioner

Kevin McKinstry, Commissioner

John (Jay) H. Masingill, III, Commissioner

Ruby L. Perry, Commissioner

A. Frank McFadden, Commissioner

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DISAPPROVED:

Mary J. Merritt, Commissioner

H. Lanier Brown, II, Commissioner

J. Patrick Tucker, Commissioner

Kevin McKinstry, Commissioner

John (Jay) H. Masingill, III, Commissioner

Ruby L. Perry, Commissioner

A. Frank McFadden, Commissioner

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ABSTAINED:

Mary J. Merritt, Commissioner

H. Lanier Brown, II, Commissioner

J. Patrick Tucker, Commissioner

Kevin McKinstry, Commissioner

John (Jay) H. Masingill, III, Commissioner

Ruby L. Perry, Commissioner

A. Frank McFadden, Commissioner

**This is to certified that this Order is a true and accurate account of the actions taken by the Environmental Management Commission on this 12th day of December 2025.**

**A. Frank McFadden, Chair**
**Environmental Management Commission**
**Certified this 12th day of December 2025**

**Attachment 5**

BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

| | | |
|---|---|---|
| In the Matter of: | ) | |
| | ) | |
| Michael Del Vecchio, Kara Del Vecchio, David F. Del Vecchio, Peggy R. Del Vecchio, William R. Novack, Tara Novack, Anthony Keith, and Emily Keith, Petitioners, | ) | |
| | ) | |
| vs. | ) | EMC Docket No. 26-01 |
| | ) | |
| Alabama Department of Environmental Management, Respondent, | ) | |
| | ) | |
| and | ) | |
| | ) | |
| The City of Dothan, Intervenor. | ) | |

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ORDER

Before the Commission in the above matter are the Petitioners' Motion for Stay, with attached Affidavits and Exhibits A through T; Respondent ADEM's Response to Request for Stay of Administrative Action, with attached Affidavit and copy of the ADEM Solid Waste Disposal Facility Permit No. 35-06 for the City of Dothan's Sanitary Landfill; and Intervenor The City of Dothan, Alabama's Opposition to Petitioners' Motion to Stay, with attached Exhibits A and B. Having considered the same and the factors enumerated in ADEM Admin. Code Rule 335-2-1-.23(5) that the party requesting a stay must show before a stay of a contested action may be granted, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:

1. That the Petitioners' Motion for Stay is hereby denied; and

2. That this action has been taken and this Order shall be deemed rendered effective as of the date shown below; and

3. That a copy of the Order shall be forthwith served upon each of the parties hereto either personally, or by certified mail.

ISSUED this 12th day of December 2025.

APPROVED:

Mary J. Merritt, Commissioner

H. Lanier Brown, II, Commissioner

J. Patrick Tucker, Commissioner

Kevin McKinstry, Commissioner

John (Jay) H. Masingill, III, Commissioner

Ruby L. Perry, Commissioner

A. Frank McFadden, Commissioner

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DISAPPROVED:

Mary J. Merritt, Commissioner

H. Lanier Brown, II, Commissioner

J. Patrick Tucker, Commissioner

Kevin McKinstry, Commissioner

John (Jay) H. Masingill, III, Commissioner

Ruby L. Perry, Commissioner

A. Frank McFadden, Commissioner

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ABSTAINED:

Mary J. Merritt, Commissioner

H. Lanier Brown, II, Commissioner

J. Patrick Tucker, Commissioner

Kevin McKinstry, Commissioner

John (Jay) H. Masingill, III, Commissioner

Ruby L. Perry, Commissioner

A. Frank McFadden, 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 12th day of December 2025.**

**A. Frank McFadden, Chair**
**Environmental Management Commission**
**Certified this 12th day of December 2025**