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Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
February 10, 2017

This is to certify that the Minutes contained herein are a true and accurate account of actions taken by the Alabama Environmental Management Commission on February 10, 2017.

H. Lanier Brown, II, Chair
Alabama Environmental Management Commission

Certified this 21st day of April 2017.

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Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
February 10, 2017

Convened: 11:00 a.m.
Adjourned: 11:52 a.m.

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Part A

ALABAMA ENVIRONMENTAL MANAGEMENT
COMMISSION MEETING

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Alabama Room
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
February 10, 2017
11:00 a.m.

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TAKEN BY:PATRICK R. MILLER, ACCR 631

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APPEARANCES

COMMISSION MEMBERS:
Mr. H. Lanier Brown, II, Esq., Chair
Mr. W. Scott Phillips, Vice Chair
Samuel L. Miller, M.D.
Terry D. Richardson, Ph.D.
Craig Martin, D.V.M.
James E. Laier, Ph.D., P.E.
Mary J. Merritt

ALSO PRESENT:
Robert D. Tambling, EMC Legal Counsel
Ms. Debi Thomas, EMC Executive Assistant

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CHAIRMAN BROWN: Good morning.
(A partial response was heard.)
CHAIRMAN BROWN: We will call -- I call to order the February 10, 2017 meeting of the Alabama Environmental Management Commission. We do have a quorum.
First item on the agenda is consideration of the minutes of the meeting held on December 16, 2016.
DR. MARTIN: Motion to approve the minutes from December.
DR. LAIER: Second.
CHAIRMAN BROWN: All in favor?
(A unanimous response was heard.)
CHAIRMAN BROWN: Next on the agenda is a report from the ADEM Director -- good morning -- Director LeFleur.
MR. LEFLEUR: Good morning, Mr. Chairman.

And good morning and welcome to the third meeting of the Alabama Environmental Management Commission for Fiscal Year 2017 to those others who are present. Today's report, will: briefly update you on the Department's budget status, including possible funding of the badly needed Mobile Field Office; review performance of the Hazardous Waste Program using EPA dashboards; highlight work on the latest and most -- excuse me -- largest and most complicated hazardous waste site in Alabama; and report on a recent action by EPA.
On the budget front, the Department is on target with its FY 2016 [verbatim] funding and expenditures. The Legislature came into session on February the 6th. At this time, our only budgetary issue will be the FY 2018 CAFO allocation, which is the

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only anticipated General Fund contribution to the Department.

In early January, a proposal to fund the new facility to house the Mobile Field Office and the Coastal Program was submitted to the Alabama Gulf Coast Recovery Council. The Council will be distributing funds resulting from the 2010 BP oil spill pursuant to the RESTORE Act. The new facility is being sought to replace the deplorable facilities currently occupied by the Mobile Field Office and to consolidate the two distantly separate -- separated offices in the Mobile area. The objective is to improve effectiveness, reduce costs, improve service to the public, and better position ourselves for both the current and an anticipated increased workload. The $5.9 million request is part of the $2.3 billion of proposals submitted for the $700 million of

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available funds. Competition is expected to be stiff.

Hazardous Waste will be the theme of the bulk of today's report. An agenda item you will be considering later in this meeting will be rulemaking to update the Department's Hazardous Waste rules to conform them to the revised federal rules. Later in this report, I will provide an update on the largest hazardous waste cleanup underway in Alabama. It's been about a year since the Hazardous Waste Program was reviewed for the Commission. But before I begin with an analysis of the performance of the program using the recently updated EPA metrics, it may be helpful to review a little history about the Hazardous Waste Program, specifically the Resource Conservation and Recovery Act, or RCRA.

40 years ago, on October the 21st,

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1976, President Gerald Ford signed the act known as RCRA into law. It has been amended many times over the years, but this law governs the disposal of solid and hazardous waste. It protects our communities and the environment from the threat of new solid and hazardous waste issues. The act also provides a mechanism for cleaning up previously contaminated land sites. You may have noticed our display in the lobby highlighting "40 Years of RCRA" as you walked in today. If not, please take a moment before you leave to see how this program continues to protect our communities and the environment.

Moving on to the Visual Dashboard metrics, Hazardous Waste or RCRA Dashboards are different than Air, Water, and Drinking Water dashboards. Under the other program dashboards, the compliance and enforcement metrics

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show data for nearly all the facilities that hold permits under those programs. The Hazardous Waste Program does not operate in that manner. The Hazardous Waste Program has separate and distinct permitting and compliance areas. The RCRA dashboards primarily focus on compliance and enforcement activities for the regulated facilities. Compliance metrics cover far more RCRA facilities than just those having permits. The permitting component of the Hazardous Waste Program encompasses both active hazardous waste facilities, as well as inactive facilities undergoing corrective action for previously contaminated hazardous waste management areas. Since the cleanups of previously contaminated sites are most often not initiated through compliance and enforcement actions, they are not

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reflected in EPA's dashboard for compliance and enforcement metrics.

So with that caveat, the following slides will look at: the size and composition of the regulated universe; the rate of inspections of components of the universe; the rate of identifying non-compliance, and the timeliness of enforcement actions.

To begin, this dashboard shows the total universe of all the RCRA-regulated facilities in Alabama. In Fiscal Year 2016, Alabama's total hazardous waste universe was more than 5,200 facilities, and about the same as it was in 2015. The universe is broken down into four categories: treatment, storage and disposal facilities (TSDFs), which is shown as the very small slice in purple; large quantity generators (LQGs), shown in yellow; small quantity generators (SQGs), the blue portion; and

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"others," represented in orange. There are only ten operating RCRA-permitted treatment, storage, and disposal facilities in Alabama, which is that small purple slice.

The remainder of the regulated universe shown on this slide is the generators of hazardous waste which do not operate under an individual permit but rather must simply comply with the rules for dealing with hazardous waste. Facilities in this group are classified based on the amount of hazardous waste they produce monthly.

The majority of the RCRA-regulated universe in our state falls into this small quantity generator and "other" categories. These types of facilities either generate or store small amounts of hazardous wastes, or they simply transport hazardous wastes. Even though this is a large number of small facilities, they represent a very

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small fraction of the total hazardous waste generated and managed in Alabama and pose a very small fraction of the environmental exposure risk. The last category represented on this chart is large quantity generators. Their universe is substantially smaller than the small quantity generator and "others" categories; however, the large quantity generators produce the majority of the hazardous waste generated in Alabama. So that is how the hazardous waste universe breaks down.

This next dashboard focuses on large quantity generators, which represent the greatest potential hazardous waste risk.

This slide is a performance dashboard. It shows a comparison of the percentage of annual inspections coverage of large quantity generators made in Alabama for the period of 2011

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through 2016 to the national goal of 20 percent established by EPA. The national goal for the RCRA program is that all large quantity generators receive a comprehensive inspection every five years, resulting in the goal of 20 percent of the universe being inspected every year. This measure of the rate of inspections is one of our RCRA grant commitments made each year to EPA. If you look closely at the graph, you can see the dotted light blue line hovering around 20 percent, around the 20 percent EPA standard. That dotted line is the national average percentage rate of inspections for all states. The ADEM Hazardous Waste Program, as shown by the green columns, continues to meet or exceed the EPA 20 percent goal for the rate of inspections.

This next slide is another performance dashboard that shows the

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percentage of comprehensive hazardous waste inspections in which one or more violations were found during the inspection. Both the EPA national average, shown as the purple dotted line, and the national average for states, shown as the green dotted line, are approximately 35 percent. As you can see, the Alabama Hazardous Waste Program, shown as the blue columns, has outperformed both of these national averages every year when it comes to identifying areas of non-compliance. Our Hazardous Waste Compliance Inspectors are experienced and well trained in identifying non-compliance.

This slide is another RCRA performance dashboard which shows the percentage of hazardous waste generator facilities that were found to be in significant non-compliance, or SNC, with an applicable state or

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federal requirement. The percentages of these facilities found to be in "Significant Non-Compliance" in both Alabama and the nation is very small. The past several years -- for the past several years, ADEM hazardous waste inspectors have been consistent with or have slightly exceeded the national average of other state inspectors, shown as the green dotted line, in identifying SNCs during facility inspections. The red columns in this slide, representing the percentages of sites where EPA participated with ADEM in the inspection, is higher than the other percentages shown. This would stand to reason since ADEM and EPA jointly target for inspection a small number of facilities where there is either a high probability or a history of significant non-compliance.

This final dashboard graph is a performance dashboard for formal

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enforcement actions. As you recall, a formal enforcement action according to EPA's dashboards consists of Administrative Orders and Consent Orders. Other media program dashboards do not have a timeliness metric as shown on this slide for RCRA. This dashboard shows the percentages -- the percentage of facilities where a formal enforcement action has been taken against the facility within 360 days of discovery of the violation. Both the EPA and the State National goals, shown as the black line, are to have at least 80 percent of all formal enforcement actions issued in 360 days or less.

As was noted the last time we reviewed this Hazardous Waste Dashboard, the yellow bars which represent the Department's rate of timely enforcement, we did not achieve the 80 percent goal for Fiscal Years

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2013 and 2014. Prior to 2013, EPA did not include the 30-day public notice period as required under Alabama law when calculating the 360 days. In 2013, EPA changed the calculation without prior notice to include the public notice period within the 360-day clock, which resulted in the Department failing to meet the 80 percent goal for FY 2013 and 2014. Our internal process for issuing formal enforcement has been adjusted to ensure that formal enforcement actions, including the added three -- 30-day public notice required in Alabama, are issued by the Hazardous Waste Program within 360 days. As you can see in FY 2015 and FY 2016, the Hazardous Waste Program met or bettered the timeliness goal for all the orders issued by the RCRA program.

So to summarize, these dashboards

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show: a steady universe of hazardous waste handling facilities; the rate of inspections continues to exceed EPA goals; identification of facilities found to be in both non-compliance and significant non-compliance is on par with or better than national averages; and enforcement actions are timely.

As has been previously noted, the dashboards presented today are just a few of the more than 150 that are available on the EPA website.

In keeping with the hazardous waste focus of today's report, I would like to next address the history and status of the most significant hazardous waste area in the state. Alabama has a long-standing relationship with the United States Department of Defense and the numerous facilities it operates in the state. Redstone Arsenal is the largest and the most storied of the federal facilities in

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Alabama. It has been a critical factor in: the war effort for World War II; heavy lift rocket development; weapons development and manufacture; human space flight; the War on Terror; and many other important national endeavors. The arsenal is home to: the Headquarters of the US Army Material Command; the Army Aviation & Missile Command; the Missile Defense Agency; the Defense Intelligence Agency - Missile & Space Intelligence Center; the NASA Marshall Space Flight Center; and at least 18 other commands, centers, schools, and the like. Redstone is also an important economic engine for Alabama. The activities of the arsenal account for approximately six percent of the State Gross Domestic Product. The history of Redstone as a military installation dates back to the 1940s, which predates most of the environmental

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safeguards in place today. The legacy of past war efforts, weapons development, the space race, and other defense-related activities is that many sites within the arsenal's 38,000 acres are contaminated with hazardous waste, unexploded ordnance, and unknown substances in the soil. Adding to the diverse operational history of Redstone, the facility is also located in an area of complex geology and hydrogeology, which adds greatly to the investigation and cleanup challenges.

There have been more than 400 individual sites within the Redstone Arsenal identified as falling within the RCRA definition of hazardous waste corrective action sites. This number is among the largest number of sites for any single facility in the nation. Not surprisingly, Redstone is the largest hazardous waste site in

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Alabama. Oversight for the cleanup of hazardous waste sites on federal facilities may be provided by either EPA or the state environmental agency depending on several factors including: whether the site is still active; whether RCRA or the Comprehensive Environmental Response, Compensation, and Liability Act, known as CERCLA, laws are applied; and what agreements are negotiated among the Department of Defense, EPA, and the state environmental agency.

From the early 1980s through the early 1990s, the cleanup of sites at Redstone was overseen by ADEM. In 1994, EPA added Redstone to the CERCLA National Priorities List, or as is more commonly known, the Superfund list, and at that point, EPA took the lead role in overseeing the cleanup, with ADEM as a regulatory partner. In recent years, on a national basis, EPA

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has sought to assume control of many activities previously delegated to the states in the Clean Air Act, Clean Water Act, as well as the Resource Conservation and Recovery Act. Counter to that trend, in 2010, upon the renewal of the facility's RCRA Hazardous Waste Permit, ADEM once again took over the lead regulator role for the cleanup of Redstone from the EPA CERCLA program. In part, this change took place because Congress allowed the Department of Defense to reimburse states for cleanup activities, whereas EPA is not reimbursed by DOD. This reimbursement program allows ADEM to dedicate more resources to the cleanup. As a result, cleanup has accelerated. The ADEM Hazardous Waste Program's goal-and-results oriented management approach and Redstone's common desire to address its environmental legacy

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has enabled significant and unparalleled progress in the cleanup of Redstone during the past six-plus years. These next slides illustrate the accelerated pace in the cleanup of Redstone.

The blue column on the left shows the 22 Remedial Investigations accomplished during this 16-year period between 1994 and 2010 when EPA was the lead agency. A Remedial Investigation is the first formal step in the cleanup process. The blue column on the right shows the eight sites where remedies were selected for implementation during the same 16-year period.

The orange column now displayed on the left showed the 88 Remedial Investigations completed during the six-year period from 2010 until 2016 when ADEM was the lead agency. The orange column on the right shows the

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24 additional sites where remedies were selected during that six-year period. As you can see, the results in the last six years have at least tripled the results of the prior 16 years.

Now, this photo shows a typical site where remnants of a former rocket fuel production area at Redstone is -- are being excavated.

And here's a photo of some of the buried ordnance that -- ordnance items that have been removed at Redstone Arsenal.

To give you some sense of the environmental impact of the individual site remedies, a group of five sites employing a technology known as Electrical Resistance Heating has removed more than 50,000 pounds of the solvents Trichloroethylene and Chlorobenzene from the soils at the facility, which had the potential to

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contaminate more than one trillion gallons of groundwater to a level exceeding the safe drinking water Maximum Contaminant Level.

In addition to the investigations which have been completed and the remedies already implemented, Redstone is also making significant progress in completing numerous additional investigations and preparing additional remedies, including some of the most challenging and complex groundwater and munitions sites in the nation. Over the last six years, Redstone has submitted more than 600 technical reports including work plans, investigation reports, remediation plans, and monitoring reports for ADEM review and approval. Obviously, this level of effort and progress is a major improvement from the cleanup pace which existed prior to 2010.

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Environmental cleanup has opened the door to increased development at Redstone. At least ten new and expanded facilities and sites have been created as a result of the cleanup at Redstone. These include such major growth projects as: the Raytheon Missile Manufacturing Facility; NASA's new Space Launch System Test Stand; the Army Aviation and Missile Research Development and Engineering Center's Prototype Integration Facility; and the widening of various access roads. These and other major mission growth and development projects which have been facilitated by the cleanup and restoration work are highlighted in the lobby display. If you have not already done so, once again please take a moment to look over the display. Obviously, these projects and those yet to come will have many

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positive and far-reaching impacts to our state, our nation, and even to the world far into the future.

Due to the complexity and scale of the environmental issues which exist at Redstone, it will be many years before environmental restoration and cleanup work at this facility are complete. However, given the focus, work, and collaboration between the dedicated professionals in the Department's Governmental Hazardous Waste Branch and numerous Redstone, Army, and DOD entities involved with this project, we can rest assured that all involved are working expeditiously to address the many challenging legacy environmental issues which remain. This effort will ensure continued viability -- vitality and viability of the Redstone Arsenal, which is important to the Huntsville area, and it also ensures protection of the

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environment, the workers, and the citizens of Redstone and the surrounding communities now and for generations to come.

At the December Commission meeting, the significant improvements to Alabama's environmental -- environment during the past three decades was highlighted. The Redstone Arsenal cleanup is yet another example of how Alabama's environment is continuing to improve.

Moving on now, it's still too early in the new administration to report on what specific changes will be occurring at EPA; however, I can report that despite some confusing news releases, our federal funding will continue at normal levels for the time being.

I'll close out this portion of today's report by notifying you that after seven years, on January the

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11th, 2017, EPA finally acted to dismiss the petition filed by a number of Alabama environmental organizations in January 2010 to withdraw the state's authority to administer the National Pollutant Discharge Elimination System, or NPDES program. In its findings, EPA documents the exhaustive analysis of each of the 28 -- 26 alleged reasons for withdrawal and dismisses every one of the allegations. Although the analysis identifies areas where ADEM can improve, which have a reasonable basis, it could also have presented a comparison of the Department's NPDES program to others in Region 4, the nation, and indeed even to EPA's own NPDES program. Showing similar performance measures for other states and EPA itself would further support EPA's final conclusion that the petition should be denied. Suffice it

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to say that the lengthy process that has involved significant expenditure of the Department's scarce resources and the final dismissal will allow these resources to be redirected to more productive uses.

Finally, I am pleased to announce the new Chief of our Environmental Services Branch of the Land Division, Clethes, Clethes Stallworth.

(An applause was heard.)

MR. LEFLEUR: A little bit about Clethes. He was originally hired by the Air Pollution Commission as a microbiologist. Clethes has been with the Department for 39 years, with most of that time spent in our Land Division. He is exceptionally well qualified to assume his new position, and Clethes is another example of the deep bench of professional talent at the Department.

And I congratulate you.

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(An applause was heard.)

MR. LEFLEUR: With that, I will be pleased to answer any questions y'all might have.

CHAIRMAN BROWN: Yes, sir?

MR. PHILLIPS: Mr. Director, you talked about the Mobile Field Office. How much have you requested from the RESTORE fund?

MR. LEFLEUR: $5.9 million.

MR. PHILLIPS: 5.9? Out of the 700 million?

MR. LEFLEUR: Out of the 700, correct.

MR. PHILLIPS: Seems like a doable thing.

MR. LEFLEUR: The people in Mobile like the project, but they are not too pleased with the way the funds from the BP oil spill were divided among the state and those counties down there. So we have a little bit of an uphill battle to fight on separating

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ourselves from the Legislature.

MR. PHILLIPS: Is there a timeline that you're looking at?

MR. LEFLEUR: The timeline -- the steps have been laid out, but the timing of those steps has not been established. My personal guess is that it will be sometime this summer before they will submit their proposed list of projects to the Treasury Department. February the 17th here, next Friday, a week from today, is the deadline for the first cut, cutting the 300 projects that have been submitted, and the $2.3 billion's worth down to some more manageable level. They haven't set a specific level, but some of those projects will be eliminated at that point. And once again, that's the first step.

MR. PHILLIPS: Thank you.

CHAIRMAN BROWN: Any other questions or comments?

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(No response was heard.)

CHAIRMAN BROWN: Thank you.

MR. LEFLEUR: Thank you.

CHAIRMAN BROWN: Item 3 is the report from the Commission Chair, I don't have any specifics to report today or discuss.

So we'll move on to Agenda Item 4, which is consideration of the adoption of proposed amendments to ADEM Administrative Code 335-1, General Administration Regulations, Rule 335-1-6-.04. I call on the Department for comments.

MR. KELLY: Good morning, Mr. Chairman. Good morning, Commission.

CHAIRMAN BROWN: Good morning. Thank you.

MR. KELLY: Before you now are Division 1 proposed rule revisions. These revisions allow the Department the flexibility to assess the AFO/CAFO

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fees in whole or in part based upon budgetary circumstances. The comment period began on November 20, 2016, and continued to January 5th, 2017. The public hearing was held on January 5th, here at the ADEM central office. During the comment period, the Department received one comment. The comment was addressed in the reconciliation statement that's part of your package.

At this time, we'd ask for your favorable consideration of the proposed rules, and I'll answer any questions should there be any.

MR. PHILLIPS: I move we adopt the proposed amendments.

DR. LAIER: I second.

CHAIRMAN BROWN: All in favor?

(A unanimous response was heard.)

CHAIRMAN BROWN: Oh, I'm sorry. Was there some comment down there?

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Are you sure?

DR. RICHARDSON: Yes.

CHAIRMAN BROWN: Okay. All in favor?

(A unanimous response was heard.)

CHAIRMAN BROWN: It passes.

MR. KELLY: Thank you, Mr. Chair. Thank you, Commission.

CHAIRMAN BROWN: Next on the agenda, Chair -- excuse me -- Commission will consider the adoption of proposed amendments to ADEM Administrative Code, Hazardous Waste Program Regulations, Rules 335-14-1 through 335-14-7 and 335-14-11.

And we'll call on the Department for comments.

MR. CROCKETT: Thank you, Mr. Chairman. Good morning, Commissioners. I'm Chip Crockett, representing the Land Division. As you know, the Department is required

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to ensure that its Hazardous Waste Regulations remain equivalent to the EPA regulations in order to retain its fully authorized status. The proposed revisions before you today are the result of the Department's annual efforts to maintain this equivalency. Public notice of these proposed rules began on October 23rd, 2016, and a public hearing was held on December 7th, 2016. No written comments were received during the comment period, and there was no one in attendance at the hearing. On January 18th, the State Board of Public Health voted to concur with these revised rules as proposed. As such, the Department asks the Commission to adopt these rules as recommended, and I'm happy to answer any questions you might have.

MR. PHILLIPS: I move we adopt the proposed amendments.

DR. RICHARDSON: Second.

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CHAIRMAN BROWN: Any questions or comments?

(No response was heard.)

CHAIRMAN BROWN: All in favor?

(A unanimous response was heard.)

CHAIRMAN BROWN: Motion passes. Is there any other business?

(No response was heard.)

CHAIRMAN BROWN: There being none, I note that the next Commission meeting is April 21st, 2017, 11 a.m., right here.

We will move on to the public comment period. There are two registered commentors for today. I'll remind you there's a three-minute time limit and ask that you please limit your statements to matters that directly relate to Commission functions.

First, is James Hodges.

And please come forth. Tell us who

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you represent.
MR. HODGES: I represent landowner -- good morning.
CHAIRMAN BROWN: Good morning.
DR. LAIER: Good morning.
DR. RICHARDSON: Good morning.
MR. HODGES: I'm an individual landowner. I live -- it's family land, and I've noticed a problem. The problem is when a complaint is filed, okay, and the contractor is notified of the complaint. And BMPs are not installed. Time rocks on. Time passes. And the BMPs are not installed. Notifications are being sent to the contractor. The contractor is not responding. And during this time frame, what goes on, transport of sediment comes into play. As a landowner downstream, I'm receiving this sediment. And this process seems to keep going on, rogue contractors and enforcement time, and

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BMPs being put in place, just don't happen until the job's complete. And it's a real issue. I don't know if -- you know, what the answers are, but it is an issue. There's no BMPs. You know, months rock on, and nothing -- no enforcement. And if there is enforcement, it may be negotiated down, and it's -- and it's over.
That's all I have to say, is it's a time frame of enforcement and corrective action and when corrective action takes place, not when the job is complete. It's during the construction of a project.
CHAIRMAN BROWN: All right.
MR. HODGES: And it's a concern.
DR. MILLER: Mr. Hodges, where do you live?
MR. HODGES: Houston County, in the Taylor Watershed area. There's a lot of construction down there, and a lot

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that's not being monitored. And there's no corrective action. Unfortunately, our plot of land is next to one of these road sites.
CHAIRMAN BROWN: Have you addressed your concerns with the Director or other people at ADEM?
MR. HODGES: Yes, I have.
CHAIRMAN BROWN: Okay.
MR. HODGES: Yes. I started back in August. And, of course, we was in a dry period at that time. Then we get six and seven inches of rain, and here I am collecting all three drains from a piece of property that has been completely stripped. And I have 40 acres of wetlands. And what is suffering is my cypress trees and my cypress knees. I have sediment in there that's knee-high from non-compliance. I mean, it's killing my trees.
CHAIRMAN BROWN: Okay. Thank you.

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MR. HODGES: Thank you.
CHAIRMAN BROWN: I appreciate it.
MR. LEFLEUR: Mr. Chairman, I have not been aware of his particular complaint, but we'll make sure that our folks who are in the room now find the name of your property and walk you through what has been done, and we'll certainly address it.
MR. HODGES: Yeah, you're aware. It's been brought to your attention, sir.
MR. LEFLEUR: Well, we will -- we will --
CHAIRMAN BROWN: Y'all can discuss it later.
Next, we'll recommend -- excuse me -- recognize Mike Mullen.
MR. MULLEN: Thank you for this opportunity. I know you're tired of hearing us -- hearing from me, but as long as enforcement is not effective, you're going to hear from me. I'm

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going to talk about return to compliance after ADEM issues enforcement actions. The statements you just heard is an example of the ineffectiveness of compliance enforcement. You know, and it's not an isolated incident. This goes on -- particularly in this construction program, which is -- I'm here to harp on all the time, the permitting program. Delays in enforcement are in -- common, but more importantly, we are not having a reasonable time frame for return to compliance. You know, the -- compliance enforcement, the goal ought to be return to compliance. And what we're seeing is an endless stream of paperwork without return to compliance. It's fine to look at these dashboards. They're great for major -- major permits and even some minors, but I don't think they address

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what's going on in the construction permitting program. For some time, environmental advocates have asked ADEM, the Director, and key staff people to provide some meaningful information on the effectiveness of its compliance form -- enforcement programs. For instance, how long does it take between somebody, either the staff finding, or somebody finding a violation and reporting it to ADEM, how long does it take between that and an enforcement action, whether it's a warning letter or a notice of violation, or a penalty? And for each of those -- these different types of orders, how long -- does that produce return to compliance, and how long does it take for a return to compliance? You know, and basically when you get to a consent order, does that consent order have a return for compliance -- a -- a timeline for

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return to compliance? Often, they do not. They will have a 30-day response, or something like that.

More so, these permits all seem to not reflect the type of activity that's going on. You know, you have a wastewater treatment plant that's got a problem. Sure, it may take an engineering design, and it may take construction, and an 180 -- 360-day -- maybe even longer in some cases -- maybe a 700-something day return to compliance deadline is acceptable. A construction site, where it may take one, two, three days to get a design of what BMP needs to be on the ground and two or three days to put those BMPs on the ground, a 30-day time for response is just ludicrous, okay, with no firm deadline. And an egregious case, like this one that James just talked about, where somebody breaks ground in

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August, it's reported in September, there's a -- a warning letter in late September or early October. Nothing happens. Still no BMPs on the ground. Around the end of October, early November, there's a notice of violation. Still nothing happens on the BMPs. Finally, the first week of December -- there's no permit, by the way. The site's never registered. First week in December, the responsible party finally gets registration. ADEM backdates that to the 31st of October. I don't know why the backdating is going on. But in egregious cases like that where somebody does not go through the permitting process or the registration process, has no BMPs on the grounds, the consent order ought to say -- the consent order ought to be coupled with a cease order. Until you come into compliance, you're not going to drive

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another nail on this site. You know, they're just not effective. What's going on in the construction permitting program is not effective. It's pushing a bunch of paper, but it's not effective.

Thank you.

CHAIRMAN BROWN: Thank you.

MR. PHILLIPS: Thank you.

CHAIRMAN BROWN: Anybody have any questions or comments?

Yes?

MR. LEFLEUR: On a number of occasions, Mr. Mullen has come before you to criticize the Department's enforcement activities and personally criticize those who conduct enforcement activities. Today, I would like to set the record straight.

Does the Department like to receive complaints? Yes. We cannot be in all places at all times, and it helps us on places where likely violations are

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occurring. That is why, for several years, we have had a very easy to use automated complaint system to encourage and facilitate the efficient handling of complaints.

Mr. Mullen has filed more complaints than any other individual in the state. It has become his practice to file his complaints directly to the Commission rather than going through the well-established and successful complaint procedures used by the rest of the public. The common themes of his complaints are that the Department does not prevent violations, does not discover all violations, does not respond quickly enough to violations, and is not hard enough on violators to prevent future violations.

Is there room to improve the Department's environmental activities? Yes. There is always room to improve

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any endeavor. Are Mr. Mullen's characterizations of the Department's enforcement activities and the personnel who implement them accurate? Absolutely not. Mr. Mullen has never provided any statistics to indicate that the violations he complains about are anything other than the typical violations and expected frequencies experienced in every single state. Just as State Troopers cannot be at all places and ticket every driver exceeding the speed limit, and just as police cannot stop every burglary before it happens, no environmental regulatory agency, including EPA itself, can prevent all violations and catch every violation. Even those violating permit conditions are entitled to due process, which may take longer than some would like it to be. Penalties must be calculated using objective standards, not

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emotion-driven subjective opinions. Mr. Mullen has provided -- has been provided access to reliable data to analyze, but he has chosen not to utilize objective independent data. Mr. Mullen and others have been provided ample opportunity to meet with the Department to understand the enforcement process and the reasoning behind the process, but he does not accept the Department's approach. Mr. Mullen's unsupported indictments of the program are wrong. The readily available statistics establish he is wrong. Academic research affirms his approach is wrong. EPA has repeatedly determined his claims are wrong. Most recently, on the 11th of January this year, in denying the NPDES withdrawal petition. The United States Office of Inspector General found he is wrong. The courts have repeatedly held the claims he and like-minded individuals

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have made against the Department are wrong. Most recently, on the 24th of January this year, in a citizens suit filed in federal court. Every single reputable accountable oversight authority confirms he is wrong. No reputable source agrees with his contention.

We encourage Mr. Mullen and all other citizens to make us aware of any potential violation they may see. Mr. Mullen is entitled to an opinion even when it is unfounded. He may not be satisfied with the Department's enforcement program; however, his often repeated disparaging characterization of the ADEM enforcement program is without basis, misleading, and demonstrably wrong.

Thank you.

CHAIRMAN BROWN: I have two comments. First, in tone and temperament, I have noticed

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overheatedness between you and you. I don't like it. It seems to me that both of you have always stayed the same, objectives of compliance, and I don't want this to be personal. I want us to stick to being objective and trying to work toward the goal of compliance, okay?

And secondly, what can the Department do to put more pressure on contractors to have the BMPs in place when they put the first shovel in the ground? And I think that's something that the Department needs to consider to address concerns, like Mr. Hodges said. And I hope you-all will give it some consideration and let us know.

MR. LEFLEUR: Certainly.

DR. MARTIN: I have a question along those lines.

CHAIRMAN BROWN: Sure.

DR. MARTIN: Are there certain cities that the county -- counties

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that require or monitor BMPs? I mean, I know if I had a problem, my neighbors would be going to the City, and I'd be getting a phone call from the City. Are there certain cities that require BMPs for permitting?

MR. LEFLEUR: Incorporated areas do have building codes and building inspectors that visit construction sites. Yes, that's correct.

CHAIRMAN BROWN: But Mr. Hodges probably lives out in the unincorporated?

MR. HODGES: That is correct. It's unincorporated. It's like the Wild, Wild West.

CHAIRMAN BROWN: In the country, as they say.

MR. LEFLEUR: It is more challenging out in the unincorporated areas.

DR. RICHARDSON: Mr. Chairman?

CHAIRMAN BROWN: Yes, go ahead.

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DR. RICHARDSON: I'd just like to say a couple of things. You know, we've all been under some extremely trying budgetary issues for many years. Most of you know that the State Legislature has willingly chosen to reduce our budget to zero. Finally getting a little bit restored. In fact, a year or so -- a year ago, they took over a million dollars from our budget. Enforcement actions and having enough boots on the ground is a difficult thing to do without proper funding to do it with. We would all like to see more enforcement. We would all like to see more boots on the ground out there, you know. I am sure ALEA would like to see more State Troopers on the highways, but they're faced with some of the exact problems we're faced with. It's a limited budget. Look at yourselves. Every one of you in this room, look at

yourselves. Mr. Hodges, Mr. Mullens, are you ready to pay more taxes? Are you ready to pay more taxes? Because that's what it's going to take. Most of us are not ready nor willing to increase our tax burden, but the money has to come from somewhere if you want effective enforcement and controlling of these facilities upfront. If you want effective follow-through after the complaint is made, you must have boots on the ground to do that. That takes money. We are fighting right now to do everything we can to keep this Agency working as best as it possibly can. And we are doing a pretty darn good job with the funding that we're getting. And, again, I think a lot of the metrics we have to measure that, I indicate that we are doing a fine job, and we are one of the leanest, trimmest agencies -- departments in this state. And we're

doing what we can. I definitely empathize with you. You know, I've seen situations in my home just like what you're talking about. But all we can do is all we can do, you know? And until we have a state legislative body that recognizes it's time to pony up, this is what we're going to be faced with. Not to mention the fact that we're facing a current federal regime that is liable to reduce some of EPA's funding. That's just going to make matters worse, guys, for enforcement patrol and enforcement action and enforcement follow-up, you know. You reach a point where you can't cut anymore. You can't get blood from a turnip. We're down to what we -- we're doing the best we can.

So I just wanted to put that out there and point that out.

Thank you, Mr. Chairman.

CHAIRMAN BROWN: It should be a reminder that the Legislature is in session, so all stakeholders are encouraged to make their views known on how important the funding for this Department is.

And unless anybody on the Commission has any additional questions or comments, I will entertain a motion to adjourn.

MR. PHILLIPS: I move we adjourn.

DR. LAIER: Second.

CHAIRMAN BROWN: All in favor.

(A unanimous response was heard.)

CHAIRMAN BROWN: We're adjourned.

(Whereupon, the meeting concluded at 11:52 a.m.)

* * * * * * * * *

REPORTER'S CERTIFICATE

STATE OF ALABAMA

MONTGOMERY COUNTY

I, Patrick Miller, Alabama Certified Court Reporter No. 631, and Commissioner for the State of Alabama at Large, hereby certify that on Friday, February 10th, 2017, I reported the TESTIMONY AND PROCEEDINGS in the matter of the foregoing cause, and that the pages herein contain a true and accurate transcription of said proceedings.

I further certify that I am neither kin nor of counsel to the parties to said cause, nor in any manner interested in the results thereof.

This 22nd day of February, 2017.

PATRICK MILLER, ACCR-631
Commissioner for the
State of Alabama at Large
MY LICENSE EXPIRES: 9/30/17
MY COMMISSION EXPIRES: 2/19/19

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Part B

Attachment Index

Attachment 1 Agenda

Attachment 2 Director's Slides
(Agenda Item 2)

Attachment 3 Resolution adopting revisions to ADEM Administrative Code 335-1, General Administration Regulations, Rule 335-1-6-.04 and Attachment A – Adopted Revisions
(Agenda Item 4)

Attachment 4 Resolution adopting revisions to ADEM Administrative Code 335-14, Hazardous Waste Program Regulations, Chapters 335-14-1 through 335-14-7 and 335-14-11 and Attachment A - Adopted Revisions
(Agenda Item 5)

Attachment 1

1/11/17

AGENDA*
MEETING OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION
DATE: February 10, 2017
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

	ITEM	PAGE
1.	Consideration of minutes of meeting held on December 16, 2016**	2
2.	Report from the ADEM Director	2
3.	Report from the Commission Chair	2
4.	Consideration of adoption of proposed amendments to ADEM Administrative Code 335-1, General Administration Regulations, Rule 335-1-6-.04 (NPDES-Related Matter)	2
5.	Consideration of adoption of proposed amendments to ADEM Administrative Code 335-14, Hazardous Waste Program Regulations , Rules 335-14-1 through 335-14-7 and 335-14-11	2
6.	Other business	2
7.	Future business session	2
PUBLIC COMMENT PERIOD		2

* The Agenda for this meeting will be available on the ADEM website, www.adem.alabama.gov, under Environmental Management Commission.

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

1. CONSIDERATION OF MINUTES OF MEETING HELD ON DECEMBER 16, 2016

2. REPORT FROM THE ADEM DIRECTOR

3. REPORT FROM THE COMMISSION CHAIR

4. CONSIDERATION OF ADOPTION OF PROPOSED AMENDMENTS TO ADEM ADMINISTRATIVE CODE 335-1, GENERAL ADMINISTRATION REGULATIONS, RULE 335-1-6-.04 (NPDES-RELATED MATTER)

   The Commission will consider proposed amendments to ADEM Administrative Code 335-1, General Administration Regulations, Rule 335-1-6-.04, to address the suspension in part or whole of Concentrated Animal Feeding Operation (CAFO) Fees. The Department held a public hearing on the proposed amendments on January 5, 2017.

5. CONSIDERATION OF ADOPTION OF PROPOSED AMENDMENTS TO ADEM ADMINISTRATIVE CODE 335-14, HAZARDOUS WASTE PROGRAM REGULATIONS, RULES 335-14-1 THROUGH 335-14-7 AND 335-14-11

   The Commission will consider proposed amendments to ADEM Administrative Code 335-14, Hazardous Waste Program Regulations, Rules 335-14-1 through 335-14-7 and 335-14-11. The proposed amendments would provide annual updates and technical corrections needed to maintain the rule's authorized status. The Department held a public hearing on the proposed amendments on December 7, 2016.

6. OTHER BUSINESS

7. FUTURE BUSINESS SESSION

PUBLIC COMMENT PERIOD

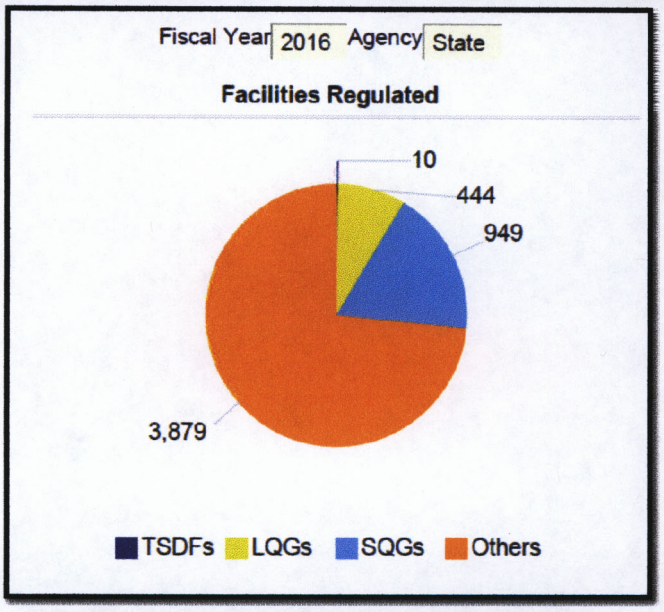
BRIEF STATEMENTS BY MEMBERS OF THE PUBLIC REGISTERED TO SPEAK

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

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

Attachment 2

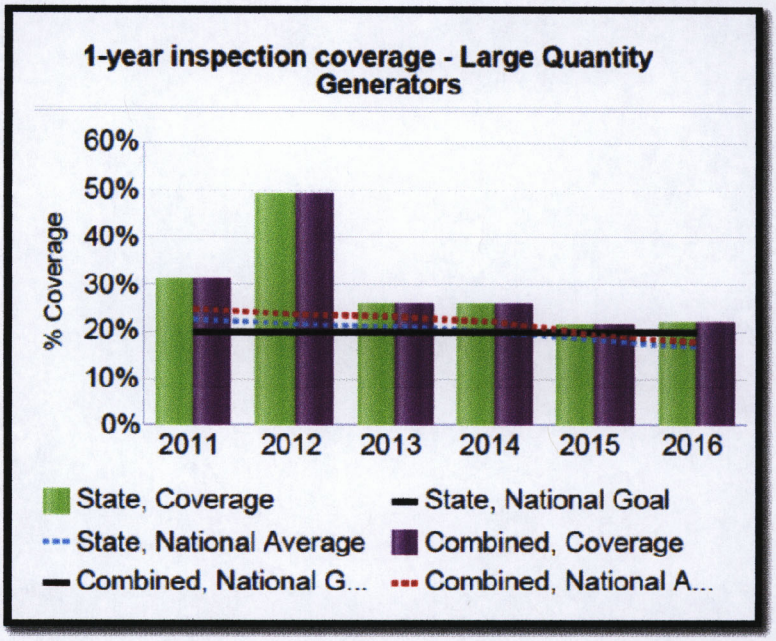
ADEM RCRA Regulated Facilities



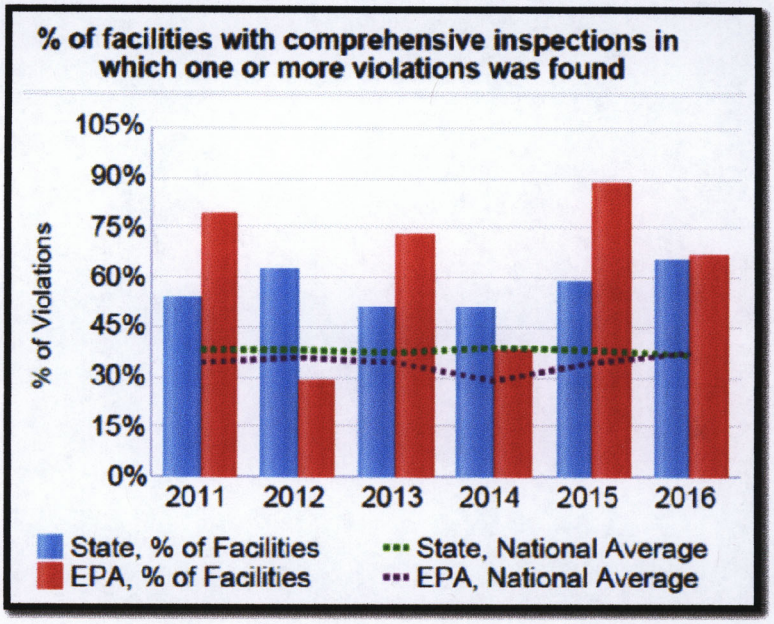
TSDFs – Treatment, Storage & Disposal Facilities
LQGs – Large Quantity Generators
SQGs – Small Quantity Generators

ADEM

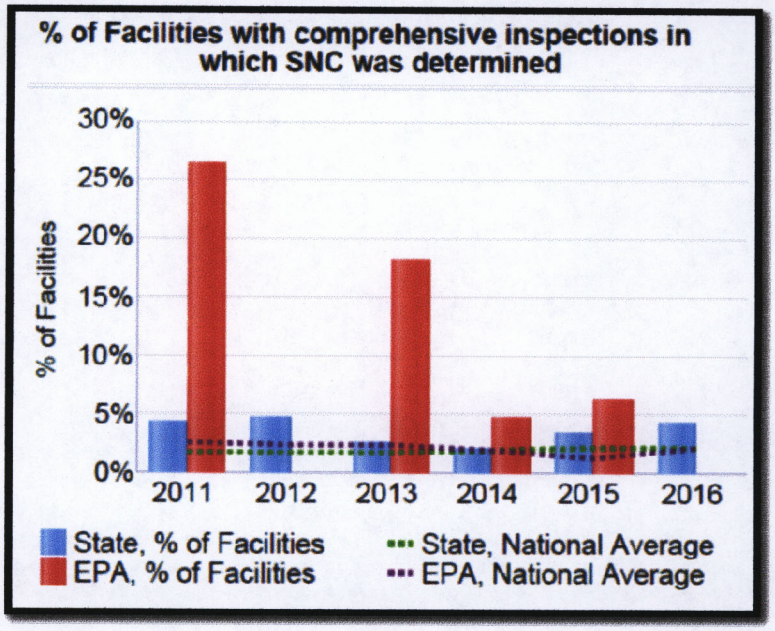
RCRA Inspections of LQGs



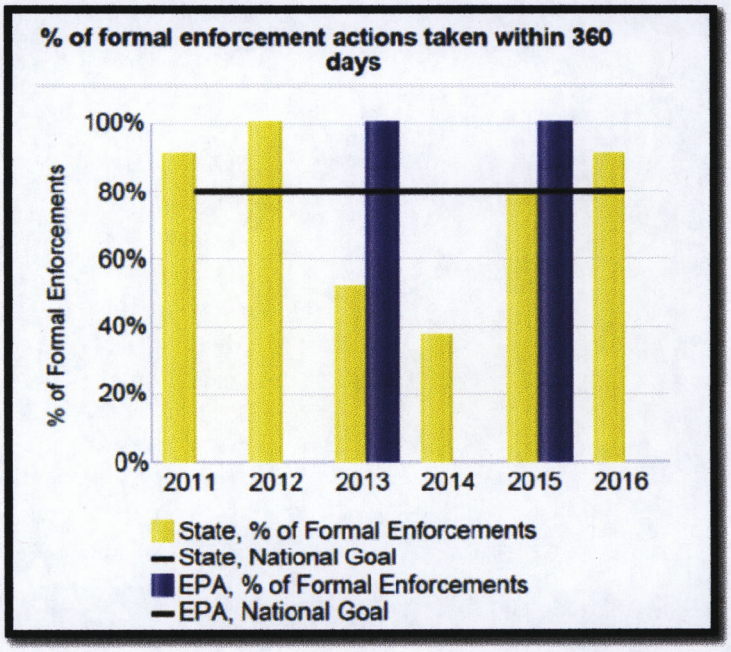
ADEM RCRA Violation Status



ADEM RCRA Compliance Status

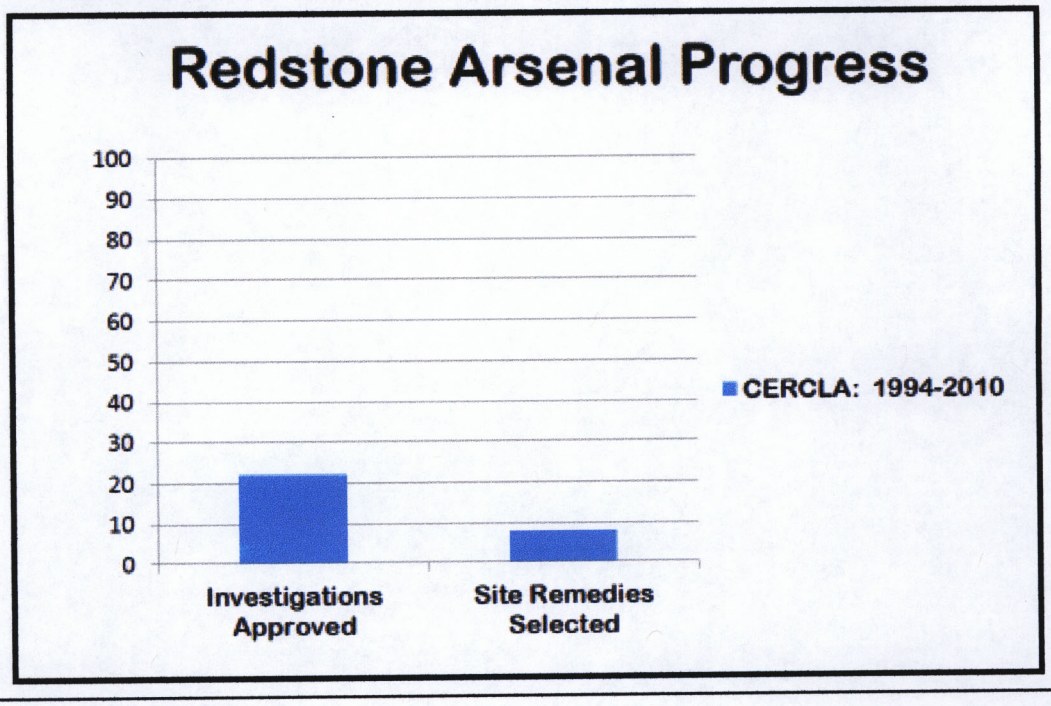


RCRA Enforcement Actions



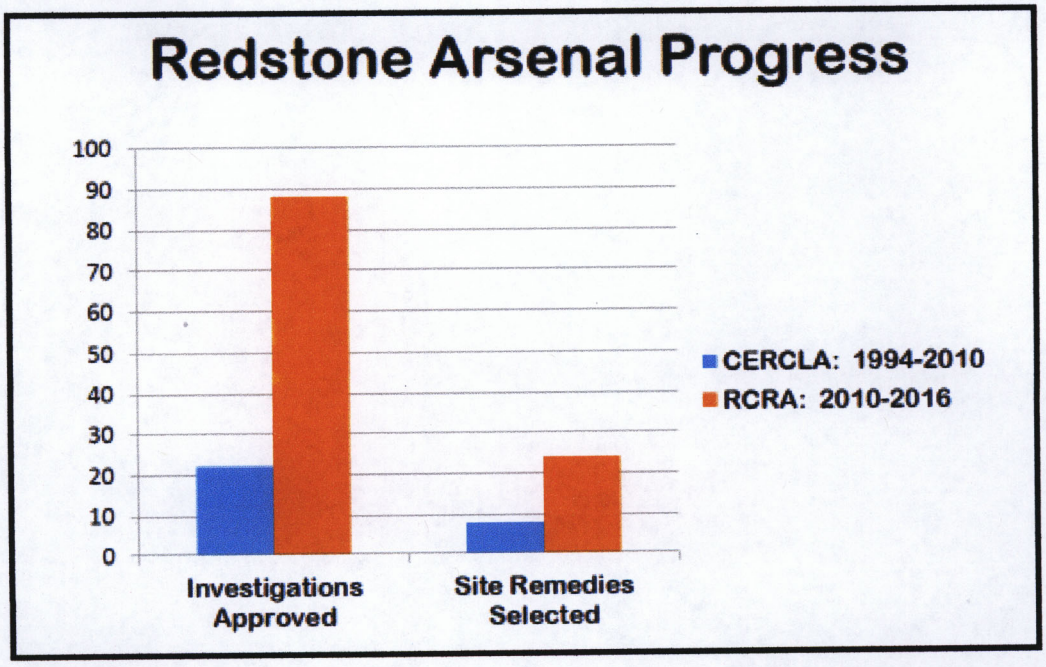
ADEM

Redstone Arsenal



ADEM

Redstone Arsenal



ADEM

Perchlorate Cleanup at Redstone Arsenal

adem.alabama.gov

ADEM

Ordnance Items

adem.alabama.gov

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 335-1 of the Department's General Administration 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 the oral and written 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 oral and written submissions respecting the proposed amendments and the Reconciliation Statement prepared by the Alabama Department of Environmental Management.

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 [335-1-6-.04/Permit Application Fees (Amend)] of the Department's General Administration Program rules, administrative code attached hereto, to become effective forty-five days, unless otherwise indicated, after filing with the Alabama Legislative Reference Service.

ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION

ADEM Admin. Code division 335-1 – General Administration Program

IN WITNESS WHEREOF, we have affixed our signatures below on this 10th day of February 2017.

APPROVED:

DISAPPROVED:

ABSTAINED:

This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 10th day of February 2017.

H. Lanier Brown, II, Chair
Environmental Management Commission
Certified this 10th day of February 2017

ATTACHMENT A

335-1-6-.04 Permit Application Fees.

(1) Except as provided in paragraph (2) of this rule, any person making application to the Department for the issuance, reissuance or modification of a permit shall be subject to a three-part application fee consisting of the following:

(a) a fee of $1,610 per application relating to a greenfield site. This fee shall not apply to Schedule B and Schedule F or to AFO/CAFO registration in Schedule D if continuing education certification is submitted with initial registration and each annual registration request as required by rule 335-6-7-.18;

(b) a fee which shall be the sum of the fees for each applicable type of permit application, and each action deemed necessary to complete evaluation of the application, as specified in Fee Schedules A through J; and

(c) a public hearing fee of $8,450 if a public hearing relating to the permit application is held.

(2) Any person making application to the Department for modification of a permit to change the name of the permittee only or to transfer the permit only shall be subject to a $800 fee per application.

(3) Fees required by AFO/CAFO registration may be suspended in part or whole by category by the Director to reflect the budgetary circumstances of the AFO/CAFO program.

Author: Marilyn Elliott, Russell Kelly.
Statutory Authority: Code of Alabama 1975, § 22-22A-5.
History: February 13, 1985.
Amended: October 30, 1990; January 16, 1997; March 31, 1999; January 9, 2002; January 10, 2006; November 14, 2006; January 22, 2008, May 26, 2009; November 29, 2011; July 30, 2013; February 4, 2016, XXXXX, XXXX.

Attachment 4

ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION

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

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

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

NOW THEREFORE, pursuant to Ala. Code. §§ 22-30-3, 22-30-9, 22-30-10, 22-30-11, 22-30-12, 22-30-14, 22-30-15, 22-30-16 (2006 Rplc. Vol.), and Ala. Code. § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-14 [rules 335-14-1-.01/General; 335-14-1-.02/ Definitions and References (Amend); 335-14-1-.03/Rulemaking Petitions (Amend); 335-14-2-.01/General (Amend); 335-14-2-.04/Lists of Hazardous Wastes (Amend); 335-14-2-.05/Exclusions/Exemptions (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, Surface Impoundments, and Containers (Amend); 335-14-2 Appendix IX/Wastes Excluded Under 335-14-1-.03(2) (Amend); 335-14-3-.01/General (Amend); 335-14-3-.02/The Manifest (Amend); 335-14-3-.03/Pre-Transport Requirements (Amend); 335-14-3-.04/Recordkeeping and Reporting (Amend); 335-14-3-.05Exports of Hazardous Waste (Amend); 335-14-3-.06/Imports

of Hazardous Waste (Amend); 335-14-3-.08/Special Requirements for Generators of Waste Destined for Disposal at Commercial Hazardous Waste Disposal Facilities Located in the State of Alabama (Amend); 335-14-3-.09/Transboundary Shipments of Hazardous Waste for recovery with the Organization for Economic Cooperation and Development (OECD) (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 Appendix I/Uniform Hazardous Waste Manifest and Instructions (Epa Forms 8700 22 and 8700 22A and their Instructions (Amend); 335-14-4-.02/Compliance with the Manifest System and Recordkeeping (Amend); 335-14-4-.03/Hazardous Waste Discharges (Amend); 335-14-4-.05/Transfer Facility Requirements (Amend); 335-14-5-.02/General Facility Standards (Amend); 335-14-5-.05/Manifest System, Recordkeeping and Reporting (Amend); 335-14-5-.07/Closure and Post-Closure (Amend); 335-14-5-.08/Financial Requirements (Amend); 335-14-5-.10/Tank Systems (Amend); 335-14-5-.19/Special Provisions for Cleanup (Amend); 335-14-5-.23/Drip Pads (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); 335-14-5-.29/Subpart CC-Air Emission Standards For Tanks, Surface Impoundments, And Containers (Amend); 335-14-5-.30/Containment Buildings (Amend); 335-14-5 Appendix IX/Groundwater Monitoring List (Amend); 335-14-6-.01/General (Amend); 335-14-6-.02/General Facility Standards (Amend); 335-14-6-.04/Contingency Plan and Emergency Procedures (Amend); 335-14-6-.05/Manifest System, Recordkeeping and Reporting (Amend); 335-14-6-.07/Closure and Post-Closure (Amend); 335-14-6-.08/Financial Requirements (Amend); 335-14-6-.09/Use and Management of Containers (Amend); 335-14-6-.10/Tank Systems (Amend); 335-14-6-.14/Landfills (Amend); 335-14-6-.23/Drip Pads (Amend); 335-14-6-.27/Subpart AA-Air Emission Standards For Process Vents (Amend); 335-14-6-.28/Subpart BB-Air Emission Standards For Equipment Leaks (Amend); 335-14-6-.29/Subpart CC-Air Emission Standards For Tanks, Surface Impoundments, and Containers (Amend); 335-14-6-.30/Containment Buildings (Amend); 335-14-7-.03/Recyclable Materials Used in a Manner Constituting Disposal (Amend); 335-14-7-.06/Recyclable Materials Used for Precious Metal Recovery (Amend); 335-14-7-

.07/Spent Lead-Acid Batteries Being Reclaimed (Amend); 335-14-7-.08/Subpart H-Hazardous Waste Burned in Boilers and Industrial Furnaces (Amend); 335-14-7 Appendix I/Tier I and Tier II Feed Rate and Emissions Screening Limits for Metals (Amend); 335-14-7 Appendix II/Feed Rate Screening Limits for total Chlorine and Chloride (Amend); 335-14-7 Appendix III/Tier II Emission Rate Screening Limits for Free Chlorine and Hydrogen Chloride (Amend); 335-14-7 Appendix IV/Reference Air Concentrations (Amend); 335-14-7 Appendix V/Risk Specific Doses (Amend); 335-14-7 Appendix VI/Stack Plume Rise (Amend); 335-14-7 Appendix VII/Health-Based Limits for Exclusion of Waste-Derived Residues (Amend); 335-14-7 Appendix VIII/Potential PICs for Determination of Exclusion of Waste-Derived Residues (Amend); 335-14-7 Appendix IX/Methods Manual for Compliance with the BIF Regulations (Amend); 335-14-7 Appendix XI/Lead-Bearing Materials that may be Processed in Exempt Lead Smelters (Amend); 335-14-7 Appendix XII/Nickel or Chromium-Bearing Materials that may be Processed in Exempt Nickel-Chromium Recovery Furnaces (Amend); 335-14-7 Appendix XIII/Mercury-Bearing Wastes that may be Processed in Exempt Mercury Recovery Units (Amend); 335-14-9-.00/References Adopted (Amend); 335-14-9-.01/Subpart A-General (Amend); 335-14-9-.02/Subpart B-Schedule for Land Disposal Prohibition and Establishment of Treatment Standards (Amend); 335-14-9-.03/Subpart C-Prohibitions on Land Disposal (Amend); 335-14-9-.04/Subpart D-Treatment Standards (Amend); 335-14-9-.05/Subpart E-Prohibitions on Storage (Amend); 335-14-9 Appendix III/List of Halogenated Organic Compounds Regulated Under § 268.32 (Amend); 335-14-9 Appendix IV/Wastes Excluded from Lab Packs Under the Alternative Treatment Standards section 268.42(c) (Amend); 335-14-9 Appendix VI/Recommended technologies to achieve deactivation of Characteristics in § 268.42 (Amend); 335-14-9 Appendix VII/LDR Effective Dates of Surface Disposed Prohibited Hazardous Wastes (Amend); 335-14-9 Appendix VIII/LDR Effective Dates of Injected Prohibited Hazardous Wastes (Amend); 335-14-9 Appendix IX/Extraction Procedure (EP) Toxicity Test Method and Structural Integrity Test (SW-846, Method 1310) (Amend); 335-14-9 Appendix XI/Metal-Bearing Wastes Prohibited From Dilution in a Combustion Unit According to 40 CFR 268.3(c) (Amend); 335-14-11-.01/General (Amend); 335-14-11-.02/Standards for Small Quantity

ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION

Handlers of Universal Waste (Amend); 335-14-11-.03/Standards for Large Quantity Handlers of Universal Waste (Amend)] of the Department's Hazardous Waste Program rules, administrative code attached hereto, to become effective forty-five days, unless otherwise indicated, after filing with the Alabama Legislative Reference Service.

ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION

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

IN WITNESS WHEREOF, we have affixed our signatures below on this 10th day of February 2017.

APPROVED:

DISAPPROVED:

ABSTAINED:

This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 10th day of February 2017.

H. Lanier Brown, II, Chair
Environmental Management Commission
Certified this 10th day of February 2017

335-14-1-.01 General.

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

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

(b) In 335-14-1:

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

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

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

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

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

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

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

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

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

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

1. If such submission is to the Director,

Mail:

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

Hand Delivery:

Director
Alabama Department of Environmental Management
1400 Coliseum Boulevard
Montgomery, AL 36110-~~2059~~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-~~2059~~2400

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

(2) Availability of information; confidentiality of information.

(a) Any information provided to EPA under Parts 260 through ~~265~~266 and 268 of 40 CFR will be made available to the public to the extent and in the manner authorized by the Freedom of Information Act, 5 U.S.C. Section 552, Section 3007(b) of RCRA and EPA regulations implementing the Freedom of Information Act and Section 3007(b), Part 2 of 40 CFR, as applicable. Any information provided to ADEM under

335-14-1 through 335-14-6 and 335-14-9 will be made available to the public to the extent and in the manner authorized by Rule 335-1-1-.06.

(b) Except as provided in 335-14-1-.01(2)(c), ~~A~~any person who submits information to EPA in accordance with Parts 260 through 266 and 268 of 40 CFR may assert a claim of business confidentiality covering part or all of that information by following the procedures set forth in §2.203(b) of 40 CFR. Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures, set forth in Part 2, Subpart B, of 40 CFR except that information required by §262.53(a) and §262.83 that is submitted in notification of intent to export a hazardous waste will be provided to the Department of State and the appropriate authorities in the transit and receiving countr~~y~~ies regardless of any claims of confidentiality. However, if no such claim accompanies the information when it is received by EPA, it may be made available to the public without further notice to the person submitting it. Any person who submits information to ADEM in accordance with 335-14-1 through 335-14-7 and 335-14-9 may assert a claim of business confidentiality in accordance with Rule 335-1-1-.06.

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

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

(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.

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

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

(1) Definitions.

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

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

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

3. "Accumulated speculatively" or "Speculative accumulation" means a material that is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled; and that – during the calendar year (commencing on January 1) – the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75 percent by weight or volume of the amount of that material accumulated at the beginning of the period. Materials must be placed in a storage unit with a label indicating the first date that the material began to be accumulated. If placing a label on the storage unit is not practicable, the accumulation period must be documented through an inventory log or other appropriate method. In calculating the percentage of turnover, the 75 percent requirement is to be applied to each material of the same type (e.g., slags from a single smelting process) that is recycled in the same way (i.e., from which the same material is recovered or that is used in the same way). Materials accumulating in units that would be exempt from regulation under 335-14-2-.01(4)(c) are not to be included in making the calculation. Materials that are already defined as solid wastes also are not to be included in making the calculation. Materials are no longer in this category once they are removed from accumulation for recycling, however.

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

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

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

(III) that, during the calendar year (commencing on January 1), the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75 percent by weight or volume of the amount of that material accumulated at the beginning of the period. [In calculating the percentage of turnover, the 75 percent

requirement is to be applied to each material of the same type (e.g., slags from a single smelting process) that is recycled in the same way (i.e., from which the same material is recovered or that is used in the same way). Materials accumulating in units that would be exempt from regulation under 335-14-2-.01(4)(c) are not included in making the calculation. Materials that are already defined as solid wastes also are not to be included in making the calculation. Materials are no longer in this category once they are removed from accumulation for recycling, however.]

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

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

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

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

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

8. "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.

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

10. "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.

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

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

13. "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.

14. "Annual" means a calendar year.

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

16. "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).

17. "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.

18. "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.

19. "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.

20. "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.

21. "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).

22. "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).

23. "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.

24. "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.

25. "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.

26. "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).

27. "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.

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

29. "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.

30. "Central accumulation area" for the purposes of 335-14-3-.12 means an on-site hazardous waste accumulation area subject to either 335-14-3-.03(5)(a) or (b) for large quantity generators; or 335-14-3-.03(5)(d), (f), and (g) 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.

31. "Certification" or "Recertification" means:

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

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

32. "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.

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

34. "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.

35. "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".)

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

37. "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).

38. "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.

39. "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.

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

41. "Competent authority" for the purposes of 335-14-3-.09 means the regulatory authority or authorities of concerned countries having jurisdiction over transboundary movements of wastes destined for recovery operations.

42. "Component" means:

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

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

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

43. "Conditionally Exempt Small Quantity Generator (CESQG)" A generator is a conditionally exempt small quantity generator if no more than 100 kilograms of hazardous waste is generated in any calendar month during a twelve month period. The generator's twelve month period is assigned by county in the "specified month schedule" located at 335-14-1-.02(1)(a).

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

45. "Consignee" for the purposes of 335-14-3-.05 means the ultimate treatment, storage, or disposal facility in a receiving country to which the hazardous waste will be sent.

46. "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.

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

48. "Contained" means held in a unit (including a land-based unit as defined in this subpart) 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.

(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.

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

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

51. "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.

52. "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).

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

[**Note:** All regulated units included in a CAMU remain subject to all applicable requirements including, but not limited to, the requirements of 335-14-5-.06, 335-14-5-.07 and 335-14-5-.08, 335-14-8, and the unit-specific requirements of

335-14-5 and 335-14-6 that applied to the units prior to their incorporation into the CAMU. See 335-14-5-.19(1)(b).]

54. "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).

55. "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.

56. "Countries concerned" for the purposes of 335-14-3-.09 means the OECD Member countries of export or import and any OECD Member countries of transit.

57. "Country of export" for the purpose of 335-14-3-.09 means any designated OECD Member country listed in 335-14-3-.05(9)(a)1. from which a transboundary movement of hazardous wastes is planned to be initiated or is initiated.

58. "Country of import" for the purpose of 335-14-3-.09 means any designated OECD Member country listed in 335-14-3-.05(9)(a)1. to which a transboundary movement of hazardous waste is planned or takes place for the purpose of submitting the wastes to recovery operations therein.

59. "Country of transit" for the purpose of 335-14-3-.09 means any designated OECD Member country listed in 335-14-3-.05(9)(a)1. and (a)2. other than the country of export or country of import across which a transboundary movement of hazardous wastes is planned or takes place.

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

61. "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.

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

63. "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.

64. "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).

65. "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).

66. "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.

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

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

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

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 ~~the~~ a ~~S~~state ~~of Alabama in accordance with 335-14-8~~authorized in accordance with 40 CFR Part 271; or

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

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

71. "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.

72. "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.

73. "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.

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

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

76. "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.

77. "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.

78. "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.

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

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.

81. "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.

82. "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.

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

84. "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.

~~83~~85. "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.

~~84~~86. "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.

~~85~~87. "Eligible Naturally Occurring and/or Accelerator-produced Radioactive Material (NARM)" for the purposes of 335-14-7-.14 is NARM that is eligible for the Transportation and Disposal Conditional Exemption. It is a NARM waste that contains RCRA hazardous waste, meets the waste acceptance criteria of, and is allowed by State of Alabama NARM regulations to be disposed of at a low-level radioactive waste disposal facility (LLRWDF) licensed in accordance with 10 CFR Part 61 or NRC Agreement State equivalent regulations.

~~86~~88. "Emergency permit" for the purposes of 335-14-8 means a permit issued in accordance with 335-14-8-.06(1).

~~87~~89. "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.

~~88~~90. "EPA" means the United States Environmental Protection Agency.

~~89~~91. "EPA Acknowledgment of Consent" for the purposes of 335-14-3-.05 means the cable sent to EPA from the U.S. Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

~~90~~92. "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.

~~91~~93. "EPA identification number" means the number assigned by EPA or the Department to each generator, transporter, and treatment, storage or disposal facility.

~~92~~94. "Equivalent method" means any testing or analytical method approved by the Department under 335-14-1-.03(1).

~~93~~95. "Excluded scrap metal" for the purposes of 335-14-2-.01 is processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal.

~~94~~96. "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).

~~95~~97. "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.

~~96~~98. "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.

~~97~~99. "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.

~~98~~100. "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.

~~99~~101. "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.

~~100~~102. "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.

~~101~~103. "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.

~~102~~104. "Exporter" for the purposes of 335-14-3-.09 means the person under the jurisdiction of the country of export who has, or will have at the time the planned transboundary movement commences, possession or other forms of legal control of the wastes and who proposes transboundary movement of the hazardous wastes for the ultimate purpose of submitting them to recovery operations. When the United States is the country of export, *exporter* is interpreted to mean a person domiciled in the United States.

~~103~~105. "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.

~~104~~106. "Facility" or "hazardous waste management facility" or "HWM facility" means:

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

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

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

~~105~~107. "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).

~~106~~108. "Facility owner" means a person who owns a facility. In most cases, this will be the "operator" or the "owner".

~~107~~109. "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.

~~108~~110. "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136-136y).

~~109~~111. "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-.03(5).

~~110~~112. "Food-chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

~~111~~113. "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.

~~112~~114. "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

~~113~~115. "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike and the surface of the waste contained therein.

~~114~~116. "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.

~~115~~117. "Generator" means:

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

~~116~~118. "Geologist" means a person who holds a license as a professional geologist under the Alabama Professional Geologist Licensing Act.

~~117~~119. "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.

~~118~~120. "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(2)(a)2(ii) and 335-14-2-.01(4)(a)23, a facility that collects hazardous secondary materials from other persons is not the hazardous secondary material generator.

~~119~~121. "Groundwater" means water below the land surface in a zone of saturation.

~~120~~122. "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.

~~121~~123. "Hazardous waste" means a hazardous waste as defined in 335-14-2-.01(3).

~~122~~124. "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).

~~123~~125. "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.

~~124~~126. "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.

~~125~~127. "Importer" for the purposes of 335-14-3-.09 means the person to whom possession or other form of legal control of the waste is assigned at the time the waste is received in the country of import.

~~126~~128. "In operation" for the purposes of 335-14-8 refers to a facility which is treating, storing, or disposing of hazardous waste.

~~127~~129. "Inactive portion" means that portion of a facility which is not operated after November 19, 1980. (See also "active portion" and "closed portion".)

~~128~~130. "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.

~~129~~131. "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.

~~130~~132. "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.)

~~131~~133. "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.

~~132~~134. "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.

~~133~~135. "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.

~~134~~136. "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.

~~135~~137. "Injection well" means a bored, drilled, or driven shaft or dug hole which is used for the injection of pollutants. (See also "underground injection".)

~~136~~138. "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.

~~137~~139. "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.

~~138~~140. "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.

~~139~~141. "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

~~140~~142. "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.

~~141~~143. "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.

~~142~~144. "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.

~~143~~145. "Lamp", also referred to as "universal waste lamp", means the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infrared regions of the electromagnetic spectrum. Examples of common universal waste electric lamps include, but are not limited to, fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.

~~144~~146. "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.

~~145~~147. "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.

~~146~~148. "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).

~~147~~149. "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.

~~148~~150. "Land use controls" has the same meaning as in 335-15-1-.02.

~~149~~151. "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.

~~150~~152. "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.

~~151~~153. "Large Quantity Generator (LQG)" A generator is a large quantity generator if 1000 kilograms or more of hazardous waste, or more than one kilogram of acute hazardous waste as listed in 335-14-2-.04(2)(a) or 335-14-2-.04(4)(e), is generated in any calendar month during a twelve month period. The generator's twelve month period is assigned by county in the "specified month schedule" located at 335-14-1-.02(1)(a).

~~152~~154. "Large Quantity Handler of Universal Waste" means a universal waste handler (as defined in 335-14-1-.02) who accumulates 5,000 kilograms or more total of universal waste (batteries, pesticides, mercury-containing equipment, or lamps, calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which the 5,000 kilogram limit is met or exceeded.

~~153~~155. "Leachate" means any liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste.

~~154~~156. "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.

~~155~~157. "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.

~~156~~158. "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.

~~157~~159. "Low-Level Mixed Waste (LLMW)" for the purposes of 335-14-7-.14 is a waste that contains both low-level radioactive waste and RCRA hazardous waste.

~~158~~160. "Low-Level Radioactive Waste (LLW)" for the purposes of 335-14-7-.14 is a radioactive waste which contains source, special nuclear, or byproduct material, and which is not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in section 11e.(2) of the Atomic Energy Act. (See also NRC definition of "waste" at 10 CFR 61.2)

~~159~~161. "Low-Level Radioactive Waste Disposal Facility (LLRWDF)" for the purposes of 335-14-7-.14 is a disposal facility licensed by the NRC or an NRC Agreement State to dispose of low-level radioactive waste.

~~160~~162. "Major facility" for the purposes of 335-14-8 means any facility or activity classed as such by the Department.

~~161~~163. "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.

~~162~~164. "Manifest" means the shipping document EPA Form 8700-22 (including, if necessary, EPA Form 8700-22A), or the electronic manifest, originated and signed by the generator or offered~~or~~ in accordance with the instructions in the 335-14-3-Appendix I and the applicable requirements of 335-14-3 through 335-14-6.

~~163~~165. "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.

~~164~~166. "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.

~~165~~167. "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.

~~166~~168. "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.

~~167~~169. "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.

~~168~~170. "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.

~~169~~171. "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.

~~170~~172. "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.

~~171~~173. "Mixed waste" means a solid waste that is a mixture of hazardous waste [as defined in 335-14-2-.01(3)] and radioactive waste (as defined in 10 CFR 61.2). The radioactive component of mixed waste is subject to regulation by the Atomic Energy Act (AEA)/Nuclear Regulatory Commission (NRC). The non-radioactive chemically hazardous component of mixed waste is subject to regulation by the AHWMMA and ADEM Admin. Code Rule 335-14.

~~172~~174. "Month" means a month of the year.

~~173~~175. "Monthly" means once during each month of the year.

~~174~~176. "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.

~~175~~177. "Movement" means that hazardous waste transported to a facility in an individual vehicle.

~~176~~178. "National Pollutant Discharge Elimination System" or "NPDES" means the program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and enforcing pretreatment requirements under the Alabama Water Pollution Control Act, Code of Alabama 1975, §§ 22-22-1 to 22-22-14, as amended, and the regulations in Division 6 of the Department's Administrative Code.

~~177~~179. "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.]

~~178~~180. "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.

~~179~~181. "New hazardous waste management facility" or "new facility" means a facility which began operation, or for which construction commenced after November 19, 1980.

~~180~~182. "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".)

~~181~~183. "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).

~~182~~184. "NRC" for the purposes of 335-14-7-.14 means the U. S. Nuclear Regulatory Commission.

~~183~~185. "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.

~~184~~186. "OECD" for the purposes of 335-14-3-.09 means the Organization for Economic Cooperation and Development.

~~185~~187. "OECD area" for the purposes of 335-14-3-.09 means all land or marine areas under the national jurisdiction of any designated OECD Member country listed in 335-14-3-.05(9)(a)1. When the regulations refer to shipments to or from an OECD Member country, this means OECD area.

~~186~~188. "One-time shipment" means a unique waste received at a commercial hazardous waste disposal facility which originated from a single generator and is not routinely produced by that generator on a regularly recurring basis. Such waste would include, but would not be limited to, lab packs. Other examples might include spill cleanups, or the removal of obsolete or out-dated commercial chemicals.

~~187~~189. "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.

~~188~~190. "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.

~~189~~191. "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.

~~190~~192. "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.

~~191~~193. "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.

~~192~~194. "Operator" means the person responsible for the overall operation of a facility.

~~193~~195. "Other wastes" are wastes as defined in 335-14-1-.02 that are not hazardous waste as defined in 335-14-2-.01.

~~194~~196. "Owner" means the person who owns in fee simple the property on which a facility or part of a facility is sited.

~~195~~197. "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.

~~196~~198. "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.

~~197~~199. "Permit" for the purposes of 335-14-8 means an authorization or equivalent control document issued by the Department to implement the requirements of 335-14-8. Permit does not include any authorization which has not been the subject of final administrative action, such as a draft permit or a proposed permit; but permit does include interim status permits to the extent set out in 335-14-8-.07.

~~198~~200. "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.

~~199~~201. "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.

~~200~~202. "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

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

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

(iii) Is an animal feed under FFDCA section 201(x) that bears or contains any substances described by paragraph ~~1.~~(i) or ~~2.~~(ii) of this definition, or

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

~~201~~203. "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).

~~202~~204. "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.

~~203~~205. "Pile" means any non-containerized accumulation of solid, non-flowing hazardous waste that is used for treatment or storage and that is not a containment building.

~~204~~206. "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.

~~205~~207. "Plastic" means the non-metallic compounds that result from a chemical reaction and are molded or formed into rigid or pliable construction materials.

~~206~~208. "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.

~~207~~209. "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.

~~208~~210. "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.

~~209~~211. "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.

~~210~~212. "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).

~~211~~213. "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.

~~212~~214. "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).

~~213~~215. "Primary exporter" for the purposes of 335-14-3-.05 means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with 40 CFR Part 262, Subpart B, and ADEM Admin. Code Rule 335-14-3-.02, which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

~~214~~216. "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.

~~215~~217. "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.].

~~216~~218. "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.

~~217~~219. "Publicly owned treatment works" or "POTW" means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by the State of Alabama or municipality [as defined by section 502(4) of the Clean Water Act~~33 U.S.C. §1362(4)~~]. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

~~218~~220. "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.

~~219~~221. "Quarter" means a period of three consecutive months.

~~220~~222. "Quarterly" means once during each period of three consecutive months for a total of four times each calendar year.

~~221~~223. "RCRA" means the Federal Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. §§6901 et seq.).

~~222~~224. "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.

~~223~~225. "Receiving country" for the purposes of 335-14-3-.05 means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage, or disposal (except short-term storage incidental to transportation).

~~224~~226. "Reclaimed" for the purposes of 335-14-2-.01 means a material that is processed to recover a usable product, or if it is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents. In addition, for purposes of 335-14-2-.01(4)(a)23. and 335-14-2-.01(4)(a)24, smelting, melting, and refining furnaces are considered to be solely engaged in metals reclamation if the metal recovery from the hazardous secondary materials meets the same requirements as those specified for metals recovery from hazardous waste found in 335-14-7-.08, and if the residuals meet the requirements specified in 335-14-7-.08.

~~225~~227. "Recognized trader" for the purposes of 335-14-3-.09 means a person who, with appropriate authorization of countries concerned, acts in the role of principal to purchase and subsequently sell wastes; this person has legal control of such wastes from time of purchase to time of sale; such a person may act to arrange and facilitate transboundary movements of wastes destined for recovery operations.

~~226~~228. "Recovery facility" for the purposes of 335-14-3-.09 means a facility which, under applicable domestic law, is operating or is authorized to operate in the country of import to receive wastes and to perform recovery operations on them.

~~227~~229. "Recovery operations" for the purposes of 335-14-3-.09 means activities leading to resource recovery, recycling, reclamation, direct re-use or alternative uses which include:

(i) R1 Use as a fuel (other than in direct incineration) or other means to generate energy

(ii) R2 Solvent reclamation/regeneration

(iii) R3 Recycling/reclamation of organic substances which are not used as solvents

(iv) R4 Recycling/reclamation of metals and metal compounds

(v) R5 Recycling/reclamation of other inorganic materials

(vi) R6 Regeneration of acids or bases

(vii) R7 Recovery of components used for pollution abatement

(viii) R8 Recovery of components used from catalysts

(ix) R9 Used oil re-refining or other reuses of previously used oil

(x) R10 Land treatment resulting in benefit to agriculture or ecological improvement

(xi) R11 Uses of residual materials obtained from any of the operations numbered R1-R10

(xii) R12 Exchange of wastes for submission to any of the operations numbered R1-R11

(xiii) R13 Accumulation of material intended for any operation numbered R1-R12

~~228~~230. "Recycled" for the purposes of 335-14-2-.01 means a material is used, reused, or reclaimed.

~~229~~231. "Regional Administrator" means the Regional Administrator for the EPA Region in which the facility is located, or his designee.

~~230~~232. "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.

~~231~~233. "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.

~~232~~234. "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).

~~233~~235. "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.

~~234~~236. "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.

~~235~~237. "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.

~~236~~238. "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.

~~237~~239. "Rubber" means any of numerous synthetic elastic materials of varying chemical composition with properties similar to those of natural rubber.

~~238~~240. "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.

~~239~~241. "Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

~~240~~242. "Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

~~241~~243. "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).

~~242~~244. "Saturated zone" or "zone of saturation" means that part of the earth's crust in which all voids are filled with water.

~~243~~245. "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.

~~244~~246. "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.

~~245~~247. "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.

~~246~~248. "Semi-annual" means a six month period.

~~247~~249. "Semi-annually" means once during each six month period for a total of two times each calendar year.

~~248~~250. "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.

~~249~~251. "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.

~~250~~252. "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.

~~251~~253. "Small Quantity Generator (SQG)" a generator is a small quantity generator if more than 100 kilograms is generated in any calendar month during a twelve month period and less than 1000 kg of hazardous waste is generated in every month during the same twelve month period. The generator's twelve month period is assigned by county in the "specified month schedule" located at 335-14-1-.02(1)(a).

~~252~~254. "Small Quantity Handler of Universal Waste" means a universal waste handler (as defined in 335-14-1-.02) who does not accumulate 5,000 kilograms or more of universal waste (batteries, pesticides, mercury-containing equipment, or lamps, calculated collectively) at any time.

~~253~~255. "Solid waste" means a waste as defined by 335-14-2-.01(2).

~~254~~256. "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).

~~255~~257. "Solvent-contaminated wipe" means a wipe that, after the use or after cleaning up a spill, either (1) contains one or more of the F001 through F005 solvents listed in 335-14-2-.04(2) or the corresponding P- or U- listed solvents found in 335-14-2-.04(4); (2) exhibits a hazardous characteristic found in 335-14-2-.03 when that characteristic results from a solvent listed in 335-14-2; and/or (3) exhibits only the hazardous waste characteristic of ignitability found in 335-14-2-.03(2) due to the presence of one or more solvents that are not listed in 335-14-2. Solvent-contaminated wipes that contain listed hazardous waste other than solvents, or exhibit the characteristic of toxicity, corrosivity, or reactivity due to contaminants other than solvents, are not eligible for the exclusions in 335-14-2-.01(4)(a)26. and 335-14-2-.01(4)(b)18.

~~256~~258. "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.

~~257~~259. "Specified month schedule" for the purposes of the "Annual Submission of ADEM Form 8700-12" is defined by the chart below according to the county in which the facility is located.

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

~~258~~260. "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.

~~259~~261. "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.

~~260~~262. "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).

~~261~~263. "State" means any of the United States except the State of Alabama.

~~262~~264. "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.

~~263~~265. "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).

~~264~~266. "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.

~~265~~267. "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.

~~266~~268. "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.

~~267~~269. "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.

~~268~~270. "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.

~~269~~271. "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.

~~270~~272. "Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

~~271~~273. "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.

~~272~~274. "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.

~~273~~275. "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.

~~274~~276. "Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of 335-14-11-.02(4)(c)2. or 335-14-11-.03(4)(c)2.

~~275~~277. "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which waste acid is neutralized. An owner or operator who removes hazardous waste from a totally enclosed treatment system must comply with the applicable standards set forth in 335-14-3 with respect to any hazardous waste removed from the totally enclosed treatment facility. An owner or operator who removes hazardous waste from a totally enclosed treatment facility may not reintroduce the waste into the totally enclosed treatment facility unless the owner/operator has first complied with the applicable standards and permit requirements set forth in 335-14-5, 335-14-6, 335-14-8, and 335-14-9.

~~276~~278. "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.

~~277~~279. "Trained professional" for the purposes of 335-14-3-.12 means a person who has completed the applicable RCRA training requirements of

335-14-6-.02(7) for large quantity generators, or is knowledgeable about normal operations and emergencies in accordance with 335-14-3-.03(5)(d)6.(iii) for small quantity generators and conditionally-exempt small quantity generators. A trained professional may be an employee of the eligible academic entity or may be a contractor or vendor who meets the requisite training requirements.

~~278~~280. "Transboundary movement" for the purposes of 335-14-3-.09 means any movement of wastes from an area under the national jurisdiction of one OECD Member country to an area under the national jurisdiction of another OECD Member country.

~~279~~281. "Transfer facility" means any transportation-related facilities including loading docks, parking areas, storage areas, and other related areas where shipments of hazardous waste or hazardous secondary materials are held for more than 24 hours and not longer than 10 days during the normal course of transportation. Transfer facilities that store hazardous waste for more than 10 days are subject to regulation as a storage facility under 335-14-5, 335-14-6, 335-14-8, and 335-14-9.

~~280~~282. "Transit country" for the purposes of 335-14-3-.05 means any foreign country, other than a receiving country, through which a hazardous waste is transported.

~~281~~283. "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.

~~282~~284. "Transportation" means the movement of wastes from the point of generation to any intermediate transfer points, and finally to the disposal site.

~~283~~285. "Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway, or water.

~~284~~286. "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.

~~285~~287. "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.

~~286~~288. "Treatment facility" means a location at which wastes are subjected to treatment, and may include a facility where waste has been generated.

~~287~~289. "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed or immobilized.

~~288~~290. "Underground injection" means the injection of pollutants through a bored, drilled or driven shaft or dug hole.

~~289~~291. "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.

~~290~~292. "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.

~~291~~293. "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.

~~292~~294. "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.

~~293~~295. "Universal waste" means any of the following hazardous wastes that are subject to the universal waste requirements of 335-14-11:

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

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

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

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

~~294~~296. "Universal waste handler":

(i) Means:

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

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

(ii) Does not mean:

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

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

~~295~~297. "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.

~~296~~298. "Universal waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

~~297~~299. "Unsaturated zone" or "zone of aeration" means the zone between the land surface and the water table.

~~298~~300. "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".

~~299~~301. "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.

~~300~~302. "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).

~~301~~303. "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.

~~302~~304. "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.

~~303~~305. "Used oil burner" means a facility where used oil not meeting the specification requirements in 335-14-17-.02(2) is burned for energy recovery in devices identified in 335-14-17-.07(2)(a).

~~304~~306. "Used oil collection center" means any site or facility that is recognized by the Department, in accordance with 335-14-17-.04(2)(b) and accepts/aggregates and stores used oil collected from used oil generators regulated under 335-14-17-.03 who bring used oil to the collection center in shipments of no more than 55 gallons under the provisions of 335-14-17-.03(6). Used oil collection centers may also accept used oil from household do-it-yourselfers.

~~305~~307. "Used oil fuel marketer" means any person who conducts either of the following activities:

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

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

~~306~~308. "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.

~~307~~309. "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.

~~308~~310. "Used oil processor/re-refiner" means a facility that processes used oil.

~~309~~311. "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.

~~310~~312. "Used oil transfer facility" means any transportation related facility including loading docks, parking areas, storage areas, and other areas where shipments of used oil are held for more than 24 hours and not longer than 35 days during the normal course of transportation or prior to an activity performed pursuant to 335-14-17-.03(1)(b)2. Transfer facilities that store used oil for more than 35 days are subject to regulation under 335-14-17-.06.

~~311~~313. "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.

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

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

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

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

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

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

~~312~~315. "Vessel" means every description of watercraft, used or capable of being used as a means of transportation on the water.

~~313~~316. "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.

~~314~~317. "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.

~~315~~318. "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.

~~316~~319. "Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

~~317~~320. "Week" means a calendar week (e.g., Sunday-Saturday).

~~318~~321. "Weekly" means once during each calendar week.

~~319~~322. "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.

~~320~~323. "Well injection" means "underground injection".

~~321~~324. "Wipe" means a woven or non woven shop towel, rag, pad, or swab made of wood pulp, fabric, cotton, polyester blends, or other material.

~~322~~325. "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.

~~323~~326. "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.

~~324~~327. "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.

~~325~~328. 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.

~~326~~329. 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 ~~, Section~~ § 260.11(as published on June 14, 2005, and as amended on September 8, 2005; October 12, 2005; July 18, 2007; and May 18, 2012) are incorporated herein by reference.

A list of the publications and analytical testing methods incorporated by reference are available for purchase and inspection at the Department's offices at 1400 Coliseum Boulevard, Montgomery, Alabama 36110~~-2059~~.

Authors: 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
Statutory Authority: Code of Alabama 1975, §§ 22-30-3 and 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; January 5, 1995; January 12, 1996; March 28, 1997; March 27, 1998; April 2, 1999; March 31, 2000; April 13, 2001; March 15, 2002; April 17, 2003; May 27, 2004; March 31, 2005; April 4, 2006; April 3, 2007; May 27, 2008; March 31, 2009; March 30, 2010; March 31, 2011; April 3, 2012; March 26, 2013; March 31, 2015; April 8, 2016, XXXXX,XXXX.

335-14-1-.03 Rulemaking Petitions ~~for Equivalent Testing or Analytical Methods~~

(1) Petitions for equivalent testing or analytical methods.

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

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

1. The petitioner's name and address;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. The petitioner must demonstrate that the waste:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) [Reserved]

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

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

1. The petitioner's name and address;

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

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

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

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

6. The dates of sampling and testing;

7. The location of the generating facility;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) 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 rules 335-14-1-.03(3) and 335-14-11-.07.

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

1. The petitioner's name and address;

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

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

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

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

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

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

(4) through (9) [Reserved]

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

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

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

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

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

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

(f) Hazardous secondary materials that are transferred for reclamation under 335-14-2-.01(4)(a)24. and are managed at a verified reclamation facility or intermediate facility where the management of the hazardous secondary materials is not addressed under a RCRA Part B permit or interim status standards.

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

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

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

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

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

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

5. Other relevant factors.

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

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

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

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

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

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

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

7. Other relevant factors.

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

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

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

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

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

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

(d) The Department may grant requests for a variance from classifying as a solid waste those hazardous secondary materials that are transferred for reclamation under 335-14-2-.01(4)(a)24. and are managed at a verified reclamation facility or intermediate facility where the management of the hazardous secondary

materials is not addressed under a RCRA Part B permit or interim status standards. The Department's decision will be based on the following criteria:

1. The reclamation facility or intermediate facility must demonstrate that the reclamation process for the hazardous secondary materials is legitimate pursuant to 335-14-1-.03(23);

2. The reclamation facility or intermediate facility must satisfy the financial assurance condition in 335-14-2-.01(4)(a)24.(vi)(VI);

3. The reclamation facility or intermediate facility must not be subject to a formal enforcement action in the previous three years and not be classified as a significant non-complier, or must provide credible evidence that the facility will manage the hazardous secondary materials properly. Credible evidence may include a demonstration that the facility has 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;

4. The intermediate or reclamation facility must have the equipment and trained personnel needed to safely manage the hazardous secondary material and must meet emergency preparedness and response requirements under 335-14-2-.13;

5. If residuals are generated from the reclamation of the excluded hazardous secondary materials, the reclamation facility must have the permits required (if any) to manage the residuals, have a contract with an appropriately permitted facility to dispose of the residuals or present credible evidence that the residuals will be managed in a manner that is protective of human health and the environment; and

6. The intermediate or reclamation facility must address the potential for risk to proximate populations from unpermitted releases of the hazardous secondary material to the environment (i.e., releases that are not covered by a permit, such as a permit to discharge to water or air), which may include, but are not limited to, potential releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures), and must include consideration of potential cumulative risks from other nearby potential stressors.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(15) through (19) [Reserved]

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

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

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

2. The method of accumulation or storage;

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

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

5. Other relevant factors.

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

(a) If a generator is accumulating the waste, the Department will issue a notice setting forth the factual basis for the decision and stating that the person must

comply with the applicable requirements of rules 335-14-3-.01, 335-14-3-.03, 335-14-3-.04 and 335-14-3-.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) Hazardous secondary material generators, tolling contractors, toll manufacturers, reclaimers, and intermediate facilities managing hazardous secondary materials which are excluded from regulation under 335-14-2-.01(2)(a)2.(ii), 335-14-2-.01(4)(a)23., 24., or 25. must send a notification prior to operating under the exclusion(s) and, thereafter, no later than the 15th of the month specified in the schedule located at 335-14-1-.02(1)(a) using ADEM Form 8700-12 that includes the following information:

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

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

3. The NAICS code of the facility;

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

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

6. 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);

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

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

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

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

(23) Legitimate recycling of hazardous secondary materials.

(a) Recycling of hazardous secondary materials for the purpose of the exclusions or exemptions from the hazardous waste regulations must be legitimate. Hazardous secondary material that is not legitimately recycled is discarded material and is a solid waste. In determining if their recycling is legitimate, persons must address all the requirements of this paragraph.

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.

4. The product of the recycling process must be comparable to a legitimate product or intermediate:

(i) Where there is an analogous product or intermediate, the product of the recycling process is comparable to a legitimate product or intermediate if:

(I) The product of the recycling process does not exhibit a hazardous characteristic (as defined in 335-14-2-.03) that analogous products do not exhibit, and

(II) The concentrations of any hazardous constituents found in 335-14-2-appendix VIII that are in the product or intermediate are at levels that are comparable to or lower than those found in analogous products or at levels that meet widely-recognized commodity standards and specifications, in the case where the commodity standards and specifications include levels that specifically address those hazardous constituents.

(ii) Where there is no analogous product, the product of the recycling process is comparable to a legitimate product or intermediate if:

(I) The product of the recycling process is a commodity that meets widely recognized commodity standards and specifications (e.g., commodity specification grades for common metals), or

(II) The hazardous secondary materials being recycled are returned to the original process or processes from which they were generated to be reused (e.g., closed loop recycling).

(iii) If the product of the recycling process has levels of hazardous constituents that are not comparable to or unable to be compared to a legitimate product or intermediate per 335-14-1-.03(23)(a)4.(i) or (ii), the recycling still may be shown to be legitimate, if it meets the following specified requirements. The person performing the recycling must conduct the necessary assessment and prepare documentation showing why the recycling is, in fact, still legitimate. The recycling can be shown to be legitimate based on lack of exposure from toxics in the product, lack of the bioavailability of the toxics in the product, or other relevant considerations which show that the recycled product does not contain levels of hazardous constituents that pose a significant human health or environmental risk. The documentation must include a certification statement that the recycling is legitimate and must be maintained on-site for three years after the recycling operation has ceased. The person performing the recycling must notify the Department of this activity using ADEM Form 8700-12.

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Statutory Authority: Code of Alabama 1975, §§ 22-30-9, 22-30-10, 22-30-11 and 22-30-12.

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335-14-2-.01 General.

(1) Purpose and scope.

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

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

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

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

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

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

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

(c) **[Reserved].**

(2) Definition of solid waste.

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

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

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

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

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

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

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

1. Disposed of; or

2. Burned or incinerated; or

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

4. Sham recycled, as explained in paragraph (g) of this section.

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

1. "Used in a manner constituting disposal".

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

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

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

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

2. "Burning for energy recovery".

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

(I) Burned to recover energy;

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

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

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

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

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

Table 1

	Use constituting disposal 335-14-2-.01 (2)(c)1.	Energy/ recovery fuel 335-14-2-.01(2)(c)2.	Reclamation 335-14-2-.01(2)(c)3.- ~~(~~except as provided in 335-14-2-.01(4)(a)17, 335-14-2-.01(4)(a)23, 335-14-2-.01(4)(a)24, or 335-14-2-.01(4)(a)27.- ~~For mineral processing secondary materials)~~	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-.0 1(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.- ~~For mineral processing secondary materials)~~	Speculative accumulation 335-14-2-.01(2)(c)4.
	1	2	3	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 hazardous secondary material found to be sham recycled is considered discarded and a solid waste. Sham recycling is recycling that is not legitimate recycling as defined in 335-14-1-.03(23).

(3) Definition of hazardous waste.

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

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

2. It meets any of the following criteria:

(i) It exhibits any of the characteristics of hazardous waste identified in 335-14-2-.03. However, any mixture of a waste from the extraction, beneficiation, and processing of ores and minerals excluded under 335-14-2-.01(4)(b)7. and any other solid waste exhibiting a characteristic of hazardous waste under 335-14-2-.03 is a hazardous waste only if it exhibits a characteristic that would not have been exhibited by the excluded waste alone if such mixture had not occurred, or if it continues to exhibit any of the characteristics exhibited by the non-excluded wastes prior to mixture. Further, for the purposes of applying the Toxicity Characteristic to such mixtures, the mixture is also a hazardous waste if it exceeds the maximum concentration for any contaminant listed in Table I of 335-14-2-.03(5) that would not have been exceeded by the excluded waste alone if the mixture had not occurred or if it continues to exceed the maximum concentration for any contaminant exceeded by the nonexempt waste prior to mixture.

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

(iii) Reserved.

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

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

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

they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if he/she finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

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

(IV) A discarded hazardous waste, commercial chemical product, or chemical intermediate listed in 335-14-2-.04(2) through (4), arising from de minimis losses of these materials. For purposes of 335-14-2-.04~~1(3)(a)2.(iv)(IV)~~, "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~~1(3)(a)2.(iv)(IV)~~ must either have eliminated the discharge of wastewaters or have included in its Clean Water Act permit application or submission to its pretreatment control authority the constituents for which each waste was listed (335-14-2-Appendix VII); and the constituents in the table "Treatment Standards for Hazardous Wastes" in 335-14-9-.04(1) for which each waste has a treatment standard (i.e., Land Disposal Restriction constituents). A facility is eligible to claim the exemption once the permit writer or control authority has been notified of possible de minimis releases via the Clean Water Act permit application or the pretreatment control authority submission. A copy of the Clean Water permit application or the submission to the pretreatment control authority must be placed in the facility's on-site files; or

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

wastes used in laboratories that are demonstrated not to be discharged to wastewater are not to be included in this calculation; or

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

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

the sampling and analysis plan if he/she finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected.

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

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

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

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

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

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

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

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

1. A hazardous waste will remain a hazardous waste;

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

provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.);

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

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

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

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

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

II. A one-time notification and certification must be placed in the facility's files and sent to EPA Region 4 and to the Department for K061, K062 or F006 HTMR residues that meet the generic exclusion levels for all constituents and do not exhibit any characteristics that are sent to Subtitle D unit(s) regulated pursuant to Division 335-13 Rules. The notification and certification that is placed in the generator's or treater's files must be updated if the process or operation generating the waste changes and/or if the Subtitle D unit receiving the waste changes. However, the generator or treater need only notify EPA Region 4 and the Department on an annual basis if such changes occur. Such notification and certification should be sent to EPA Region 4 and the Department by the end of the calendar year, but no later than December 31. The notification must include the following information: The name and address of the Subtitle D unit(s) regulated pursuant to Division 335-13 Rules receiving the waste shipments; the EPA Hazardous Waste Number(s) and treatability group(s) at the initial point of generation; and, the treatment standards applicable to the waste at the initial point of generation. The certification must be signed by an authorized

representative and must state as follows: "I certify under penalty of law that the generic exclusion levels for all constituents have been met without impermissible dilution and that no characteristic of hazardous waste is exhibited. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

(IV) Biological treatment sludge from the treatment of one of the following wastes listed in 335-14-2-.04(3) - organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K156), and wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157).

(V) Catalyst inert support media separated from one of the following wastes listed in 335-14-2-.04(3)--Spent hydrotreating catalyst (EPA Hazardous Waste Number K171), and spent hydrorefining catalyst (EPA Hazardous Waste Number K172).

(d) Any solid waste described in 335-14-2-.01(3)(c) is not a hazardous waste if it meets the following criteria:

1. In the case of any solid waste, it does not exhibit any of the characteristics of hazardous waste identified in 335-14-2-.03. (However, wastes that exhibit a characteristic at the point of generation may still be subject to the requirements of 335-14-9, even if they no longer exhibit a characteristic at the point of land disposal.)

2. In the case of a waste which is a listed waste under 335-14-2-.04, contains a waste listed under 335-14-2-.04 or is derived from a waste listed in 335-14-2-.04, it also has been excluded from 335-14-2-.01(3)(c) under 335-14-1-.03(2).

(e) [**Reserved**].

(f) Notwithstanding 335-14-2-.01(3)(a) through (d) and provided the debris as defined in 335-14-9 does not exhibit a characteristic identified in 335-14-2-.03, the following materials are not subject to regulation under 335-14-1 through 335-14-9:

1. Hazardous debris as defined in 335-14-9 that has been treated using one of the required extraction or destruction technologies specified in 335-14-9-.04(6) [see Table 1, 40 CFR 268.45]; persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements; or

2. Debris as defined in 335-14-9 that the Department, considering the extent of contamination, has determined is no longer contaminated with hazardous waste.

(g)1. A hazardous waste that is listed in 335-14-2-.04 solely because it exhibits one or more characteristics of ignitability as defined under 35-14-2-.03(2), corrosivity as defined under 335-14-2-.03(3), or reactivity as defined under

335-14-2-.03(4) is not a hazardous waste, if the waste no longer exhibits any characteristic of hazardous waste identified in 335-14-2-.03.

2. The exclusion described in 335-14-2-.01(3)(g)1. also pertains to:

(i) Any mixture of a solid waste and a hazardous waste listed in 335-14-2-.04 solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity as regulated under 335-14-2-.01(3)(a)2.(iv); and

(ii) Any solid waste generated from treating, storing, or disposing of a hazardous waste listed in 335-14-2-.04 solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity as regulated under 335-14-2-.01(3)(c)2.(i).

3. Wastes excluded under 335-14-2-.01(3) are subject to 335-14-9 (as applicable), even if they no longer exhibit a characteristic at the point of land disposal.

4. Any mixture of a solid waste excluded from regulation under 335-14-2-.01(4)(b)7. and a hazardous waste listed in 335-14-2-.04 solely because it exhibits one or more of the characteristics of ignitability, corrosivity, or reactivity as regulated under 335-14-2-.01(3)(a)2.(iv) is not a hazardous waste, if the mixture no longer exhibits any characteristic of hazardous waste identified in 335-14-2-.03 for which the hazardous waste listed in 335-14-2-.04 was listed.

(h)1. Hazardous waste containing radioactive waste is no longer a hazardous waste when it meets the eligibility criteria and conditions of 335-14-7-.14 ("eligible radioactive mixed waste").

2. The exemption described in 335-14-2-.01(3)(h)1. also pertains to:

(i) Any mixture of a solid waste and an eligible radioactive mixed waste; and

(ii) Any solid waste generated from treating, storing, or disposing of an eligible radioactive mixed waste.

3. Waste exempted under 335-14-2-.01(3) must meet the eligibility criteria and specified conditions in 335-14-7-.14(3) and 335-14-7-.14(4) (for storage and treatment) and in 335-14-7-.14(12) and 335-14-7-.14(13) (for transportation and disposal). Waste that fails to satisfy these eligibility criteria and conditions is regulated as hazardous waste.

(4) 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. "Domestic sewage" means untreated sanitary wastes that pass through a sewer system;

2. Industrial wastewater discharges that are point source discharges subject to regulation under Section 402 of the federal Clean Water Act, as amended. This exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored, or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment;

3. Irrigation return flows;

4. Source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.;

5. Materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process;

6. Pulping liquors (i.e., black liquor) that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively as defined in 335-14-1-.02;

7. Spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively as defined in 335-14-1-.02;

8. Secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(i) Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(ii) Reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

(iii) The secondary materials are never accumulated in such tanks for over twelve months without being reclaimed; and

(iv) The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

9. (i) Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; and

(ii) Wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood.

(iii) Prior to reuse, the wood preserving wastewaters and spent wood preserving solutions described in 335-14-2-.01(4)(a)9.(i) and (a)9.(ii), so long as they meet all of the following conditions:

(I) The wood preserving wastewaters and spent wood preserving solutions are reused on-site at water borne plants in the production process for their original intended purpose;

(II) Prior to reuse, the wastewaters and spent wood preserving solutions are managed to prevent release to either land or ground water or both;

(III) Any unit used to manage wastewaters and/or spent wood preserving solutions prior to reuse can be visually or otherwise determined to prevent such releases;

(IV) Any drip pad used to manage the wastewaters and/or spent wood preserving solutions prior to reuse complies with the standards in 335-14-6-.23, regardless of whether the plant generates a total of less than 100 kg/month of hazardous waste; and

(V) Prior to operating pursuant to this exclusion, the facility owner or operator prepares a one-time notification stating that the facility intends to claim the exclusion, giving the date on which the facility intends to begin operating under the exclusion, and containing the following language: "I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation." The facility must maintain a copy of that document in its on-site records until closure of the facility. The exclusion applies so long as the facility meets all of the conditions. If the facility goes out of compliance with any condition, it may apply to the Director for reinstatement. Director may reinstate the exclusion upon finding that the facility has returned to compliance with all conditions and that the violations are not likely to recur.

10. EPA Hazardous Waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148 and any wastes from the coke by-products processes that are hazardous only because they exhibit the Toxicity Characteristic specified in 335-14-2-.03(5), when, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar or are mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or tar recovery or refining processes, or mixed with coal tar.

11. Nonwastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units, provided it is shipped in drums (if shipped) and not land disposed before recovery.

12.(i) Oil-bearing hazardous secondary materials (i.e., sludges, by-products, or spent materials) that are generated at a petroleum refinery (SIC code 2911) and are inserted into the petroleum refining process (SIC code 2911—including, but not limited to, distillation, catalytic cracking, fractionation, or thermal cracking

units (i.e., cokers)) unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under 335-14-2-.01(4), provided that the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery, and still be excluded under this provision. Except as provided in 335-14-2-.01(4)(a)12.(ii), oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry (i.e., from sources other than petroleum refineries) are not excluded under 335-14-2-.01(4). Residuals generated from processing or recycling materials excluded under 335-14-2-.01(4)(a)12.(i), where such materials as generated would have otherwise met a listing under 335-14-2-.04, are designated as F037 listed wastes when disposed of or intended for disposal.

(ii) Recovered oil that is recycled in the same manner and with the same conditions as described in 335-14-2-.01(4)(a)12.(i). Recovered oil is oil that has been reclaimed from secondary materials (including wastewater) generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incident thereto (SIC codes 1311, 1321, 1381, 1382, 1389, 2911, 4612, 4613, 4922, 4923, 4789, 5171, and 5172.) Recovered oil does not include oil-bearing hazardous wastes listed in 335-14-2-.04; however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as defined in 335-14-1-.02.

13. Excluded scrap metal (processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal) being recycled.

14. Shredded circuit boards being recycled provided that they are:

(i) Stored in containers sufficient to prevent a release to the environment prior to recovery; and

(ii) Free of mercury switches, mercury relays and nickel-cadmium batteries and lithium batteries.

15. Condensates derived from the overhead gases from kraft mill steam strippers that are used to comply with 40 CFR 63.446(e). The exemption applies only to combustion at the mill generating the condensates.

16. **[Reserved].**

17. Spent materials (as defined in 335-14-2-.01(1)) (other than hazardous wastes listed in 335-14-2-.04) generated within the primary mineral processing industry from which minerals, acids, cyanide, water, or other values are recovered by mineral processing or by beneficiation, provided that:

(i) The spent material is legitimately recycled to recover minerals, acids, cyanide, water or other values;

(ii) The spent material is not accumulated speculatively;

(iii) Except as provided in 335-14-2-.01(4)(a)17.(iv), the spent material is stored in tanks, containers, or buildings meeting the following minimum integrity standards: a building must be an engineered structure with a floor, walls, and a roof all of which are made of non-earthen materials providing structural support (except smelter buildings may have partially earthen floors provided the spent material is stored on the non-earthen portion), and have a roof suitable for diverting rainwater away from the foundation; a tank must be free standing, not be a surface impoundment (as defined in 335-14-1-.02), and be manufactured of a material suitable for containment of its contents; a container must be free standing and be manufactured of a material suitable for containment of its contents. If tanks or containers contain any particulate which may be subject to wind dispersal, the owner/operator must operate these units in a manner which controls fugitive dust. Tanks, containers, and buildings must be designed, constructed and operated to prevent significant releases to the environment of these materials.

(iv) The Department may make a site-specific determination, after public review and comment, that only solid mineral processing spent materials may be placed on pads rather than in tanks, containers, or buildings. Solid mineral processing spent materials do not contain any free liquid. The Department must affirm that pads are designed, constructed and operated to prevent significant releases of the secondary material into the environment. Pads must provide the same degree of containment afforded by the non-RCRA tanks, containers and buildings eligible for exclusion.

(I) The Department must also consider if storage on pads poses the potential for significant releases via groundwater, surface water, and air exposure pathways. Factors to be considered for assessing the groundwater, surface water, and air exposure pathways are: the volume and physical and chemical properties of the spent material, including its potential for migration off the pad; the potential for human or environmental exposure to hazardous constituents migrating from the pad via each exposure pathway, and the possibility and extent of harm to human and environmental receptors via each exposure pathway.

(II) Pads must meet the following minimum standards: be designed of non-earthen material that is compatible with the chemical nature of the mineral processing spent material, capable of withstanding physical stresses associated with placement and removal, have run on/runoff controls, be operated in a manner which controls fugitive dust, and have integrity assurance through inspections and maintenance programs.

(III) Before making a determination under 335-14-2-.01(4), the Department must provide notice and the opportunity for comment to all persons potentially interested in the determination. This can be accomplished by placing notice of this action in major local newspapers, or broadcasting notice over local radio stations.

(v) The owner or operator provides a notice to the Department, identifying the following information: the types of materials to be recycled; the type and location of the storage units and recycling processes; and the annual quantities expected to be placed in non land-based units. This notification must be updated when there is a change in the type of materials recycled or the location of the recycling process.

(vi) For purposes of 335-14-2-.01(4)(b)7., mineral processing spent materials must be the result of mineral processing and may not include any listed hazardous wastes. Listed hazardous wastes and characteristic hazardous wastes generated by non-mineral processing industries are not eligible for the conditional exclusion from the definition of solid waste.

18. Petrochemical recovered oil from an associated organic chemical manufacturing facility, where the oil is to be inserted into the petroleum refining process (SIC code 2911) along with normal petroleum refinery process streams, provided:

(i) The oil is hazardous only because it exhibits the characteristic of ignitability (as defined in 335-14-2-.03(2) and/or toxicity for benzene (335-14-2-.03(5), hazardous waste number D018); and

(ii) The oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the petroleum refining process. An "associated organic chemical manufacturing facility" is a facility where the primary SIC code is 2869, but where operations may also include SIC codes 2821, 2822, and 2865; and is physically co-located with a petroleum refinery; and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. "Petrochemical recovered oil" is oil that has been reclaimed from secondary materials (i.e., sludges, byproducts, or spent materials, including wastewater) from normal organic chemical manufacturing operations, as well as oil recovered from organic chemical manufacturing processes.

19. Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or naphthenic acid unless the material is placed on the land, or accumulated speculatively as defined in 335-14-1-.02.

20. Hazardous secondary materials used to make zinc fertilizers, provided that the following conditions specified are satisfied:

(i) Hazardous secondary materials used to make zinc micronutrient fertilizers must not be accumulated speculatively, as defined in 335-14-1-.02.

(ii) Generators and intermediate handlers of zinc-bearing hazardous secondary materials that are to be incorporated into zinc fertilizers must:

(I) Submit a one-time notice to the Department, which contains the name, address and EPA ID number of the generator or intermediate handler facility, provides a brief description of the secondary material that will be subject to the exclusion, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in 335-14-2-.01(4)(a)20.

(II) Store the excluded secondary material in tanks, containers, or buildings that are constructed and maintained in a way that prevents releases of the secondary materials into the environment. At a minimum, any building used for this purpose must be an engineered structure made of non-earthen materials that provide

structural support, and must have a floor, walls and a roof that prevent wind dispersal and contact with rainwater. Tanks used for this purpose must be structurally sound and, if outdoors, must have roofs or covers that prevent contact with wind and rain. Containers used for this purpose must be kept closed except when it is necessary to add or remove material, and must be in sound condition. Containers that are stored outdoors must be managed within storage areas that:

I. Have containment structures or systems sufficiently impervious to contain leaks, spills and accumulated precipitation; and

II. Provide for effective drainage and removal of leaks, spills and accumulated precipitation; and

III. Prevent run-on into the containment system.

(III) With each off-site shipment of excluded hazardous secondary materials, provide written notice to the receiving facility that the material is subject to the conditions of 335-14-2-.01(4)(a)20.

(IV) Maintain at the generator's or intermediate handlers's facility for no less than three years records of all shipments of excluded hazardous secondary materials. For each shipment these records must at a minimum contain the following information:

I. Name of the transporter and date of the shipment;

II. Name and address of the facility that received the excluded material, and documentation confirming receipt of the shipment; and

III. Type and quantity of excluded secondary material in each shipment.

(iii) Manufacturers of zinc fertilizers or zinc fertilizer ingredients made from excluded hazardous secondary materials must:

(I) Store excluded hazardous secondary materials in accordance with the storage requirements for generators and intermediate handlers, as specified in 335-14-2-.01(4)(a)20(ii)(II).

(II) Submit a one-time notification to the Department that, at a minimum, specifies the name, address and EPA ID number of the manufacturing facility, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in 335-14-2-.01(4)(a)20.

(III) Maintain for a minimum of three years records of all shipments of excluded hazardous secondary materials received by the manufacturer, which must at a minimum identify for each shipment the name and address of the generating facility, name of transporter and date the materials were received, the quantity received, and a brief description of the industrial process that generated the material.

(IV) Submit to the Department an annual report that identifies the total quantities of all excluded hazardous secondary materials that were used to manufacture zinc fertilizers or zinc fertilizer ingredients in the previous year, the name and address of each generating facility, and the industrial process(s) from which they were generated.

(iv) Nothing in this section preempts, overrides or otherwise negates the provision in 335-14-3-.01(2), which requires any person who generates a solid waste to determine if that waste is a hazardous waste.

(v) Interim status and permitted storage units that have been used to store only zinc-bearing hazardous wastes prior to the submission of the one-time notice described in 335-14-2-.01(4)(a)20.(ii)(I), and that afterward will be used only to store hazardous secondary materials excluded under this paragraph, are not subject to the closure requirements of 335-14-5 or 335-14-6.

21. Zinc fertilizers made from hazardous wastes, or hazardous secondary materials that are excluded under 335-14-2-.01(4)(a)20., provided that:

(i) The fertilizers meet the following contaminant limits:

(I) For metal contaminants:

Table 1. – Limits on Metal Contaminants

Constituent	Maximum Allowable Total Concentration in Fertilizer, per Unit (1%) of Zinc (ppm)
Arsenic	0.3
Cadmium	1.4
Chromium	0.6
Lead	2.8
Mercury	0.3

(II) For dioxin contaminants the fertilizer must contain no more than eight (8) parts per trillion of dioxin, measured as toxic equivalent (TEQ).

(ii) The manufacturer performs sampling and analysis of the fertilizer product to determine compliance with the contaminant limits for metals no less than every six months, and for dioxins no less than every twelve months. Testing must also be performed whenever changes occur to manufacturing processes or ingredients that could significantly affect the amounts of contaminants in the fertilizer product. The manufacturer may use any reliable analytical method to demonstrate that no constituent of concern is present in the product at concentrations above the applicable limits. It is the responsibility of the manufacturer to ensure that the sampling and analysis are unbiased, precise, and representative of the product(s) introduced into commerce.

(iii) The manufacturer maintains for no less than three years records of all sampling and analyses performed for purposes of determining compliance with the requirements of 335-14-2-.01(4)(a)21(ii). Such records must at a minimum include:

(I) The dates and times product samples were taken, and the dates the samples were analyzed;

(II) The names and qualifications of the person(s) taking the samples;

(III) A description of the methods and equipment used to take the samples;

(IV) The name and address of the laboratory facility at which analyses of the samples were performed;

(V) A description of the analytical methods used, including any cleanup and sample preparation methods; and

(VI) All laboratory analytical results used to determine compliance with the contaminant limits specified in 335-14-2-.01(4)(a)21.

22. Used cathode ray tubes (CRTs).

(i) Used, intact CRTs as described in 335-14-1-.02 are not solid wastes within the United States unless they are disposed, or unless they are speculatively accumulated as defined in 335-14-1-.02 by CRT collectors or glass processors.

(ii) Used, intact CRTs as described in 335-14-1-.02 are not solid wastes when exported for recycling provided that they meet the requirements of 335-14-2-.05(2).

(iii) Used, broken CRTs as described in 335-14-1-.02 are not solid wastes provided that they meet the requirements of 335-14-2-.05(1).

(iv) Glass removed from CRTs is not a solid waste provided that it meets the requirements of 335-14-2-.05(1)(c).

23. Hazardous secondary material generated and legitimately reclaimed within the United States or its territories and under the control of the generator, provided that the material complies with paragraphs 335-14-2-.01(4)(a)23.(i) and (ii) of this section:

(i)(I) The hazardous secondary material is generated and reclaimed at the generating facility (for purposes of this definition, generating facility means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator); or

(II) The hazardous secondary material is generated and reclaimed at different facilities, if the reclaiming facility is controlled by the generator or if both the

generating facility and the reclaiming facility are controlled by a person as defined in 335-14-1-.02, and if the generator provides one of the following certifications: "on behalf of [insert generator facility name], I certify that this facility will send the indicated hazardous secondary material to [insert reclaimer facility name], which is controlled by [insert generator facility name] and that [insert name of either facility] has acknowledged full responsibility for the safe management of the hazardous secondary material," or "on behalf of [insert generator facility name], I certify that this facility will send the indicated hazardous secondary material to [insert reclaimer facility name], that both facilities are under common control, and that [insert name of either facility] has acknowledged full responsibility for the safe management of the hazardous secondary material." For purposes of this paragraph, "control" means the power to direct the policies of the facility, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate facilities on behalf of a different person as defined in 335-14-1-.02 shall not be deemed to "control" such facilities. The generating and receiving facilities must both maintain at their facilities for no less than three years records of hazardous secondary materials sent or received under this exclusion. In both cases, the records must contain the name of the transporter, the date of the shipment, and the type and quantity of the hazardous secondary material shipped or received under the exclusion. These requirements may be satisfied by routine business records (e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations); or

(III) The hazardous secondary material is generated pursuant to a written contract between a tolling contractor and a toll manufacturer and is reclaimed by the tolling contractor, if the tolling contractor certifies the following: "On behalf of [insert tolling contractor name], I certify that [insert tolling contractor name] has a written contract with [insert toll manufacturer name] to manufacture [insert name of product or intermediate] which is made from specified unused materials, and that [insert tolling contractor name] will reclaim the hazardous secondary materials generated during this manufacture. On behalf of [insert tolling contractor name], I also certify that [insert tolling contractor name] retains ownership of, and responsibility for, the hazardous secondary materials that are generated during the course of the manufacture, including any releases of hazardous secondary materials that occur during the manufacturing process". The tolling contractor must maintain at its facility for no less than three years records of hazardous secondary materials received pursuant to its written contract with the tolling manufacturer, and the tolling manufacturer must maintain at its facility for no less than three years records of hazardous secondary materials shipped pursuant to its written contract with the tolling contractor. In both cases, the records must contain the name of the transporter, the date of the shipment, and the type and quantity of the hazardous secondary material shipped or received pursuant to the written contract. These requirements may be satisfied by routine business records (e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations). For purposes of this paragraph, tolling contractor means a person who arranges for the production of a product or intermediate made from specified unused materials through a written contract with a toll manufacturer. Toll manufacturer means a person who produces a product or intermediate made from specified unused materials pursuant to a written contract with a tolling contractor.

(ii)(I) The hazardous secondary material is contained as defined in 335-14-1-.02. A hazardous secondary material released to the environment is discarded and

a solid waste unless it is immediately recovered for the purpose of reclamation. Hazardous secondary material managed in a unit with leaks or other continuing or intermittent unpermitted releases is discarded and a solid waste.

(II) The hazardous secondary material is not speculatively accumulated, as defined in 335-14-1-.02.

(III) Notice is provided as required by 335-14-1-.03(22).

(IV) The material is not otherwise subject to material-specific management conditions under paragraph (a) of this section when reclaimed, and it is not a spent lead-acid battery (see 335-14-7-.07(1) and 335-14-11-.01(2)).

(V) Persons performing the recycling of hazardous secondary materials under this exclusion must maintain documentation of their legitimacy determination on-site. Documentation must be a written description of how the recycling meets all four factors in 335-14-1-.03(23). Documentation must be maintained for three years after the recycling operation has ceased.

(VI) The emergency preparedness and response requirements found in 335-14-2-.13 are met.

24. Hazardous secondary material that is generated and then transferred to a verified reclamation facility for the purpose of reclamation is not a solid waste, provided that:

(i) The material is not speculatively accumulated, as defined in 335-14-1-.02;

(ii) The material is not handled by any person or facility other than the hazardous secondary material generator, the transporter, an intermediate facility or a reclaimer, and, while in transport, is not stored for more than 10 days at a transfer facility, as defined in 335-14-1-.02(1), and is packaged according to applicable Department of Transportation regulations at 49 CFR parts 173, 178, and 179 while in transport;

(iii) The material is not otherwise subject to material-specific management conditions under this paragraph (a) when reclaimed, and it is not a spent lead-acid battery (see 335-14-7-.07(1) and 335-14-11-.01(2));

(iv) The reclamation of the material is legitimate, as specified under 335-14-1-.03(23);

(v) The hazardous secondary material generator satisfies all of the following conditions:

(I) The material must be contained as defined in 335-14-1-.02(1). A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of recycling. Hazardous

secondary material managed in a unit with leaks or other continuing releases is discarded and a solid waste.

(II) The hazardous secondary material generator must arrange for transport of hazardous secondary materials to a verified reclamation facility (or facilities) in the United States. A verified reclamation facility is a facility that has been granted a variance under 335-14-1-.03(11)(d), or a reclamation facility where the management of the hazardous secondary materials is addressed under a RCRA Part B permit or interim status standards. If the hazardous secondary material will be passing through an intermediate facility, the intermediate facility must have been granted a variance under 335-14-1-.03(11)(d) or the management of the hazardous secondary materials at that facility must be addressed under a RCRA Part B permit or interim status standards, and 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.

(III) 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.

(IV) 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);

(V) The hazardous secondary material generator must comply with the emergency preparedness and response conditions in 335-14-2-.13.

(vi) Reclaimers of hazardous secondary material excluded from regulation under this exclusion and intermediate facilities as defined in 335-14-1-.02(1) satisfy all of the following conditions:

(I) The reclaimer and intermediate facility must maintain at its facility for no less than three (3) years records of all shipments of hazardous secondary material that were received at the facility and, if applicable, for all shipments of hazardous

secondary materials that were received and subsequently sent off-site from the facility for further reclamation. For each shipment, these records must at a minimum contain the following information:

I. Name of the transporter and date of the shipment;

II. Name and address of the hazardous secondary material generator and, if applicable, the name and address of the reclaimer or intermediate facility which the hazardous secondary materials were received from;

III. The type and quantity of hazardous secondary material in the shipment; and

IV. For hazardous secondary materials that, after being received by the reclaimer or intermediate facility, were subsequently transferred off-site for further reclamation, the name and address of the (subsequent) reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent.

(II) The intermediate facility must send the hazardous secondary material to the reclaimer(s) designated by the hazardous secondary materials generator.

(III) The reclaimer and intermediate facility must send to the hazardous secondary material generator confirmations of receipt for all off-site shipments of hazardous secondary materials. Confirmations of receipt must include the name and address of the reclaimer (or intermediate facility), the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records (e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt).

(IV) The reclaimer and intermediate facility must manage the hazardous secondary material in a manner that is at least as protective as that employed for analogous raw material and must be contained. An "analogous raw material" is a raw material for which a hazardous secondary material is a substitute and serves the same function and has similar physical and chemical properties as the hazardous secondary material.

(V) Any residuals that are generated from reclamation processes will be managed in a manner that is protective of human health and the environment. If any residuals exhibit a hazardous characteristic according to 335-14-2-.03, or if they themselves are specifically listed in 335-14-2-.04, such residuals are hazardous wastes and must be managed in accordance with the applicable requirements of 335-14-1 through 9.

(VI) The reclaimer and intermediate facility have financial assurance as required under 335-14-2-.08,

(VII) The reclaimer and intermediate facility have been granted a variance under 335-14-1-.03(11) or have a RCRA Part B permit or interim status standards that address the management of the hazardous secondary materials; and

(vii) All persons claiming the exclusion under 335-14-2-.01(4)(a)24. of this section provide notification as required under 335-14-1-.03(22).

25. **[Reserved].**

26. Solvent-contaminated reusable wipes that are sent for cleaning and reuse are not solid wastes from the point of generation, provided that:

(i) The solvent-contaminated wipes, when accumulated, stored, and transported, are contained in non-leaking, closed containers that are labeled "Excluded Solvent-Contaminated Wipes." The containers must be able to contain free liquids, should free liquids occur. During accumulation, a container should be closed in accordance with 335-14-1-.02, except when necessary to add or remove solvent-contaminated wipes;

(ii) The solvent-contaminated wipes may be accumulated by the generator for up to 180 days from the start date of accumulation for each container prior to being sent for cleaning;

(iii) At the point of being sent for cleaning on-site or at the point of being transported off-site for cleaning, the solvent-contaminated wipes must contain no free liquids as defined in 335-14-1-.02;

(iv) Free liquids removed from the solvent-contaminated wipes or from the container holding the wipes must be managed according to the applicable regulations found in 335-14-1 through 335-14-9;

(v) Generators must maintain at their site the following documentation:

(I) Name and address of the laundry or dry cleaner that is receiving the solvent-contaminated wipes;

(II) Documentation that the 180-day accumulation time limit in 335-14-2-.01(4)(a)26.(ii) is being met;

(III) Description of the process the generator is using to ensure the solvent-contaminated wipes contain no free liquids at the point of being laundered or dry cleaned on-site or at the point of being transported off-site for laundering or dry cleaning;

(IV) The generator must maintain in their onsite records, documentation that verifies that "no free liquids" were present in the container, prior to shipment. These records must be kept for at least three years from the date of shipment. At a minimum, these records must include the date and time of the verification, the

name of the person verifying and a notation of the volume of free liquids removed from the container, if present.

(vi) The solvent-contaminated wipes are sent to a laundry or dry cleaner whose discharge, if any, is regulated under sections 301 and 402 or section 307 of the Clean Water Act.

27. Hazardous secondary material that is generated and then transferred to another person for the purpose of remanufacturing is not a solid waste, provided that:

(i) The hazardous secondary material consists of one or more of the following spent solvents: toluene, xylenes, ethylbenzene, 1,2,4-trimethylbenzene, chlorobenzene, n-hexane, cyclohexane, methyl tert-butyl ether, acetonitrile, chloroform, chloromethane, dichloromethane, methyl isobutyl ketone, NN-dimethylformamide, tetrahydrofuran, n-butyl alcohol, ethanol, and/or methanol;

(ii) The hazardous secondary material originated from using one or more of the solvents listed in 335-14-2-.01(4)(a)27.(i) of this section in a commercial grade for reacting, extracting, purifying, or blending chemicals (or for rinsing out the process lines associated with these functions) in the pharmaceutical manufacturing (NAICS 325412), basic organic chemical manufacturing (NAICS 325199), plastics and resins manufacturing (NAICS 325211), and/or the paints and coatings manufacturing sectors (NAICS 325510).

(iii) The hazardous secondary material generator sends the hazardous secondary material spent solvents listed in 335-14-2-.01(4)(a)27.(i) of this section to a remanufacturer in the pharmaceutical manufacturing (NAICS 325412), basic organic chemical manufacturing (NAICS 325199), plastics and resins manufacturing (NAICS 325211), and/or the paints and coatings manufacturing sectors (NAICS 325510).

(iv) After remanufacturing one or more of the solvents listed in 335-14-2-.01(4)(a)27.(i) of this section, the use of the remanufactured solvent shall be limited to reacting, extracting, purifying, or blending chemicals (or for rinsing out the process lines associated with these functions) in the pharmaceutical manufacturing (NAICS 325412), basic organic chemical manufacturing (NAICS 325199), plastics and resins manufacturing (NAICS 325211), and the paints and coatings manufacturing sectors (NAICS 325510) or to using them as ingredients in a product. These allowed uses correspond to chemical functional uses enumerated under the Chemical Data Reporting Rule of the Toxic Substances Control Act (40 CFR Parts 704, 710–711), including Industrial Function Codes U015 (solvents consumed in a reaction to produce other chemicals) and U030 (solvents become part of the mixture);

(v) After remanufacturing one or more of the solvents listed in 335-14-2-.01(4)(a)27.(i) of this section, the use of the remanufactured solvent does not involve cleaning or degreasing oil, grease, or similar material from textiles, glassware, metal surfaces, or other articles. (These disallowed continuing uses correspond to chemical functional uses in Industrial Function Code U029 under the Chemical Data Reporting Rule of the Toxics Substances Control Act.); and

(vi) Both the hazardous secondary material generator and the remanufacturer must:

(I) Notify the Director and update the notification annually in accordance with 335-14-1-.03(22);

(II) Develop and maintain an up-to-date remanufacturing plan which identifies:

I. The name, address and EPA ID number of the generator(s) and the remanufacturer(s),

II. The types and estimated annual volumes of spent solvents to be remanufactured,

III. The processes and industry sectors that generate the spent solvents,

IV. The specific uses and industry sectors for the remanufactured solvents, and

V. A certification from the remanufacturer stating "on behalf of [insert remanufacturer facility name], I certify that this facility is a remanufacturer under pharmaceutical manufacturing (NAICS 325412), basic organic chemical manufacturing (NAICS 325199), plastics and resins manufacturing (NAICS 325211), and/or the paints and coatings manufacturing sectors (NAICS 325510), and will accept the spent solvent(s) for the sole purpose of remanufacturing into commercial-grade solvent(s) that will be used for reacting, extracting, purifying, or blending chemicals (or for rinsing out the process lines associated with these functions) or for use as product ingredient(s). I also certify that the remanufacturing equipment, vents, and tanks are equipped with and are operating air emission controls in compliance with the appropriate Clean Air Act regulations under 40 CFR part 60, part 61 or part 63, or, absent such Clean Air Act standards for the particular operation or piece of equipment covered by the remanufacturing exclusion, are in compliance with the appropriate standards in 335-14-6-.27 (vents), 335-14-6-.28 (equipment) and 335-14-6-.29 (tank storage)";

(III) Maintain records of shipments and confirmations of receipts for a period of three years from the dates of the shipments;

(IV) Prior to remanufacturing, store the hazardous spent solvents in tanks or containers that meet technical standards found in 335-14-2-.09 and 335-14-2-.10, with the tanks and containers being labeled or otherwise having an immediately available record of the material being stored;

(V) During remanufacturing, and during storage of the hazardous secondary materials prior to remanufacturing, the remanufacturer certifies that the remanufacturing equipment, vents, and tanks are equipped with and are operating air emission controls in compliance with the appropriate Clean Air Act regulations under 40 CFR part 60, part 61 or part 63; or, absent such Clean Air Act standards for the particular operation or piece of equipment covered by the remanufacturing exclusion,

are in compliance with the appropriate standards in 335-14-6-.27 (vents), 335-14-6-.28 (equipment) and 335-14-6-.29 (tank storage); and

(VI) Ensure that no hazardous secondary materials are speculatively accumulated.

(b) "Solid wastes which are not hazardous wastes". The following solid wastes are not hazardous wastes:

1. Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered (e.g., refuse-derived fuel), or reused. "Household waste" means any material (including garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas). A resource recovery facility managing municipal solid waste shall not be deemed to be treating, storing, disposing of, or otherwise managing hazardous waste for the purposes of regulation under 335-14-2-.01, if:

(i) Such facility receives and burns only:

(I) Household waste (from single and multiple dwellings, hotels, motels, and other residential sources); and

(II) Solid waste from commercial or industrial sources that does not contain hazardous waste.

(ii) Such facility does not accept hazardous wastes and the owner or operator of such facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in such facility.

2. Solid wastes generated by the following and which are returned to the soils as fertilizers:

(i) The growing and harvesting of agricultural crops;

(ii) The raising of animals, including animal manures.

3. Mining overburden returned to the mine site.

4. Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels, except as provided by 335-14-7-.08(13) for facilities that burn or process hazardous waste.

5. Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy;

6.(i) Wastes which fail the test for the characteristic of toxicity because chromium is present or are listed in 335-14-2-.04 due to the presence of chromium, which do not fail the test for the characteristic of toxicity for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

(I) The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and

(II) The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and

(III) The waste is typically and frequently managed in non-oxidizing environments.

(ii) Specific wastes which meet the standard in 335-14-2-.01(4)(b)6.(i)(I) through (III) (so long as they do not fail the test for the toxicity characteristic for any other constituent, and do not exhibit any other characteristic) are:

(I) Chrome (blue) trimmings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(II) Chrome (blue) shavings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(III) Buffing dust generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(IV) Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(V) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(VI) Waste scrap leather from the leather tanning industry, the shoe manufacturing industry and other leather product manufacturing industries.

(VII) Wastewater treatment sludges from the production of TiO_2 pigment using chromium-bearing ores by the chloride process.

(iii) For waste meeting the criteria described in 335-14-2-.01(4)(b)6.(i) but not specifically listed in 335-14-2-.01(4)(b)6.(ii), the generator may petition the Department in accordance with 335-14-1-.03(2)(f) to have the waste excluded from regulation as a hazardous waste.

7. Solid waste from the extraction, beneficiation, and processing of ores and minerals (including coal, phosphate rock and overburden from the mining of uranium ore), except as provided by 335-14-7-.08(13) for facilities that burn or process hazardous waste.

(i) For the purposes of 335-14-2-.01(4)(b)7., beneficiation of ores and minerals is restricted to the following activities: crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water and/or carbon dioxide; roasting, autoclaving, and/or chlorination in preparation for leaching (except where the roasting (and/or autoclaving and/or chlorination)/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning; precipitation; amalgamation; and heap, dump, vat, tank, and in-situ leaching.

(ii) For the purposes of 335-14-2-.01(4)(b)7., solid waste from the processing of ores and minerals includes only the following wastes as generated:

(I) Slag from primary copper processing;

(II) Slag from primary lead processing;

(III) Red and brown muds from bauxite refining;

(IV) Phosphogypsum from phosphoric acid production;

(V) Slag from elemental phosphorus production;

(VI) Gasifier ash from coal gasification;

(VII) Process wastewater from coal gasification;

(VIII) Calcium sulfate wastewater treatment plant sludge from primary copper processing;

(IX) Slag tailings from primary copper processing;

(X) Fluorogypsum from hydrofluoric acid production;

(XI) Process wastewater from hydrofluoric acid production;

(XII) Air pollution control dust/sludge from iron blast furnaces;

(XIII) Iron blast furnace slag;

(XIV) Treated residue from roasting/leaching of chrome ore;

(XV) Process wastewater from primary magnesium processing by the anhydrous process;

(XVI) Process wastewater from phosphoric acid production;

(XVII) Basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel production;

(XVIII) Basic oxygen furnace and open hearth furnace slag from carbon steel production;

(XIX) Chloride process waste solids from titanium tetrachloride production;

(XX) Slag from primary zinc processing.

(iii) A residue derived from coprocessing mineral processing secondary materials with normal beneficiation raw materials or with normal mineral processing raw materials remains excluded under 335-14-2-.01(4)(b) if the owner or operator:

(I) Processes at least 50 percent by weight normal beneficiation raw materials or normal mineral processing raw materials; and,

(II) Legitimately reclaims the secondary mineral processing materials.

8. Cement kiln dust waste, except as provided by 335-14-7-.08(13) for facilities that burn or process hazardous waste.

9. Solid waste which consists of discarded arsenical-treated wood or wood products which fails the test for the Characteristic of Toxicity for Hazardous Waste Codes D004 through D017 and which is not a hazardous waste for any other reason or reasons, if the waste is generated by persons who utilize the arsenical-treated wood and wood products for these materials' intended end use.

10. Petroleum-contaminated media and debris that fail the test for the Characteristic of Toxicity of 335-14-2-.03(5) (Hazardous Waste Codes D018 through D043 only) and are subject to the corrective action regulations under Part 280 of 40 CFR.

11. Injected groundwater that is hazardous only because it exhibits the Toxicity Characteristic (Hazardous Waste Codes D018 through D043 only) in 335-14-2-.03(5) that is reinjected through an underground injection well pursuant to free phase hydrocarbon recovery operations undertaken at petroleum refineries, petroleum marketing terminals, petroleum bulk plants, petroleum pipelines, and

petroleum transportation spill sites until January 25, 1993. This extension applies to recovery operations in existence, or for which contracts have been issued, on or before March 25, 1991. For groundwater returned through infiltration galleries from such operations at petroleum refineries, marketing terminals, and bulk plants, until October 2, 1991. New operations involving injection wells (beginning after March 25, 1991) will qualify for this compliance date extension (until January 25, 1993) only if:

(i) Operations are performed pursuant to a written State of Alabama agreement that includes a provision to assess the groundwater and the need for further remediation once the free phase recovery is completed; and

(ii) A copy of the written agreement has been submitted to: Waste Identification Branch (5304), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

12. Used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for further use.

13. Non-terne plated used oil filters that are not mixed with wastes listed in 335-14-2-.04 if these oil filters have been gravity hot-drained using one of the following methods:

(i) Puncturing the filter anti-drain back valve or the filter dome end and hot-draining;

(ii) Hot-draining and crushing;

(iii) Dismantling and hot-draining; or

(iv) Any other equivalent hot-draining method which will remove the free-flowing used oil.

14. Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

15. Leachate or gas condensate collected from landfills where certain solid wastes have been disposed, provided that:

(i) The solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, K172, K174, K175, K176, K177, K178, and K181, if these wastes had been generated after the effective date of the listing;

(ii) The solid wastes described in 335-14-2-.01(4)(b)15.(i) of this section were disposed prior to the effective date of the listing;

(iii) The leachate or gas condensate does not exhibit any characteristic of hazardous waste nor are derived from any other listed hazardous waste;

(iv) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under sections 307(b) or 402 of the Clean Water Act.

(v) After February 13, 2001, leachate or gas condensate derived from K169-K172 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. After February 26, 2007, leachate or gas condensate derived from K181 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. After November 21, 2003, leachate or gas condensate derived from K176, K177, and K178 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation (e.g., shutdown of wastewater treatment system), provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of 335-14-2-.01(4)(b)15.(v) after the emergency ends.

16. **[Reserved].**

17. **[Reserved].**

18. Solvent-contaminated disposable wipes, except for wipes that are hazardous waste due to the presence of trichloroethylene, that are sent for disposal are not hazardous wastes from the point of generation provided that:

(i) The solvent-contaminated wipes, when accumulated, stored, and transported, are contained in non-leaking, closed containers that are labeled "Excluded Solvent-Contaminated Wipes." The containers must be able to contain free liquids, should free liquids occur. During accumulation, a container should be closed in accordance with 335-14-1-.02, except when necessary to add or remove solvent contaminated wipes;

(ii) The solvent-contaminated wipes may be accumulated by the generator for up to 180 days from the start date of accumulation for each container prior to being sent for disposal;

(iii) At the point of being transported for disposal, the solvent-contaminated wipes must contain no free liquids as defined in 335-14-1-.02;

(iv) Free liquids removed from the solvent-contaminated wipes or from the container holding the wipes must be managed according to the applicable regulations found in 335-14-1 through 335-14-9;

(v) Generators must maintain at their site the following documentation:

(I) Name and address of the landfill or combustor that is receiving the solvent-contaminated wipes;

(II) Documentation that the 180 day accumulation time limit in accordance with 335-14-2-.01(4)(b)18.(ii) is being met;

(III) Description of the process the generator is using to ensure solvent-contaminated wipes contain no free liquids at the point of being transported for disposal;

(IV) The generator must maintain in their onsite records, Documentation that verifies that "no free liquids" were present in the container, prior to shipment. These records must be kept for at least three years from the date of shipment. At a minimum, these records must include the date and time of the verification, the name of the person verifying and a notation of the volume of free liquids removed from the container, if present.

(vi) The solvent-contaminated wipes are sent for disposal:

(I) To a municipal solid waste landfill regulated under Division 335-13 rules including 335-13-4-.11 and meets the municipal solid waste landfill standards of 40 CFR 258, or to a hazardous waste landfill regulated under 335-14-5, 335-14-6, and 335-14-8; or

(II) To a municipal waste combustor or other combustion facility regulated under section 129 of the Clean Air Act or to a hazardous waste combustor, boiler, or industrial furnace regulated under 335-14-5, 335-14-6, and 335-14-7.

(c) "Hazardous wastes which are exempted from certain regulations". A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated unit, is not subject to regulation under 335-14-3 through 335-14-6, 335-14-8, 335-14-9 or to the notification requirements of Section 3010 of RCRA until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials.

(d) "Samples".

1. Except as provided in 335-14-2-.01(4)(d)2., a sample of solid waste or a sample of water, tested to determine its characteristics or composition, is not subject to any requirements of 335-14-2 or 335-14-3 through 335-14-9 or to the notification requirements of Section 3010 of RCRA, when:

(i) The sample is being transported to a laboratory for the purpose of testing; or

(ii) The sample is being transported back to the sample collector after testing; or

(iii) The sample is being stored by the sample collector before transport to a laboratory for testing; or

(iv) The sample is being stored in a laboratory before testing; or

(v) The sample is being stored in a laboratory after testing but before it is returned to the sample collector; or

(vi) The sample is being stored temporarily in the laboratory after testing for a specific purpose (for example, until conclusion of a court case or enforcement action where further testing of the sample may be necessary).

2. In order to qualify for the exemption in 335-14-2-.01(4)(d)1.(i) and (ii), a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector must:

(i) Comply with United States Department of Transportation (DOT), United States Postal Service (USPS), or any other applicable shipping requirements; or

(ii) Comply with the following requirements if the sample collector determines that DOT, USPS, or other shipping requirements do not apply to the shipment of the sample:

(I) Assure that the following information accompanies the sample:

I. The sample collector's name, mailing address, and telephone number;

II. The laboratory's name, mailing address, and telephone number;

III. The quantity of the sample;

IV. The date of shipment; and

V. A description of the sample; and

(II) Package the sample so that it does not leak, spill, or vaporize from its packaging.

3. This exemption does not apply if the laboratory determines that the waste is hazardous but the laboratory is no longer meeting any of the conditions stated in 335-14-2-.01(4)(d)1.

(e) "Treatability Study Samples".

1. Except as provided in 335-14-2-.01(4)(e)2., persons who generate or collect samples for the purpose of conducting treatability studies as defined in 335-14-1-.02(1), are not subject to any requirement of 335-14-2 through 335-14-4 or

to the notification requirements of Section 3010 of RCRA, nor are such samples included in the quantity determinations of 335-14-2-.01(5) and 335-14-3-.03(5)(d) when:

(i) The sample is being collected and prepared for transportation by the generator or sample collector; or

(ii) The sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or

(iii) The sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.

2. The exemption in 335-14-2-.01(4)(e)1. is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies provided that:

(i) The generator or sample collector uses (in "treatability studies") no more than 10,000 kg of media contaminated with non-acute hazardous waste, 1000 kg of non-acute hazardous waste other than contaminated media, 1 kg of acute hazardous waste, or 2500 kg of media contaminated with acute hazardous waste for each process being evaluated for each generated waste stream; and

(ii) The mass of each sample shipment does not exceed 10,000 kg; the 10,000 kg quantity may be all media contaminated with non-acute hazardous waste, or may include 2500 kg of media contaminated with acute hazardous waste, 1000 kg of hazardous waste, and 1 kg of acute hazardous waste; and

(iii) The sample must be packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the requirements of 335-14-2-.01(4)(e)2.(iii)(I) or (II) are met.

(I) The transportation of each sample shipment complies with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(II) If the DOT, USPS, or other shipping requirements do not apply to the shipment of the sample, the following information must accompany the sample:

I. The name, mailing address, and telephone number of the originator of the sample;

II. The name, address, and telephone number of the facility that will perform the treatability study;

III. The quantity of the sample;

IV. The date of shipment; and

V. A description of the sample, including its EPA Hazardous Waste Number.

(iv) The sample is shipped to a laboratory or testing facility which is exempt under 335-14-2-.01(4)(f) or has an appropriate RCRA permit or interim status.

(v) The generator or sample collector maintains the following records for a period ending 3 years after completion of the treatability study:

(I) Copies of the shipping documents;

(II) A copy of the contract with the facility conducting the treatability study;

(III) Documentation showing:

I. The amount of waste shipped under this exemption;

II. The name, address, and EPA identification number of the laboratory or testing facility that received the waste;

III. The date the shipment was made; and

IV. Whether or not unused samples and residues were returned to the generator.

(vi) The generator reports the information required under 335-14-2-.01(4)(e)2.(v)(III) in its biennial report.

3. The Department may grant requests on a case-by-case basis for up to an additional two years for treatability studies involving bioremediation. The Department may grant requests on a case-by-case basis for quantity limits in excess of those specified in 335-14-2-.01(4)(e)2.(i) and (ii) and 335-14-2-.01(4)(f)4., for up to an additional 5000 kg of media contaminated with non-acute hazardous waste, 500 kg of non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste and 1 kg of acute hazardous waste:

(i) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities in advance of commencing treatability studies. Factors to be considered in reviewing such requests include the nature of the technology, the type of process (e.g., batch versus continuous), size of unit undergoing testing (particularly in relation to scale-up considerations), the time/quantity of material required to reach steady state operating conditions, or test design considerations such as mass balance calculations.

(ii) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities after initiation or completion of initial treatability studies, when: There has been an equipment or mechanical failure during the conduct of a treatability study; there is a need to verify the results of a previously conducted treatability study; there is a need to study and analyze alternative techniques within a previously evaluated treatment process; or there is a need to do further

evaluation of an ongoing treatability study to determine final specifications for treatment.

(iii) The additional quantities and timeframes allowed in 335-14-2-.01(4)(e)3.(i) and (ii) are subject to all the provisions in 335-14-2-.01(4)(e)1. and 2.(iii) through (vi). The generator or sample collector must apply to the Department and provide in writing the following information:

(I) The reason why the generator or sample collector requires additional time or quantity of sample for the treatability study evaluation and the additional quantity needed;

(II) Documentation accounting for all samples of hazardous waste from the waste stream which have been sent for or undergone treatability studies including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results of each treatability study;

(III) A description of the technical modifications or change in specifications which will be evaluated and the expected results;

(IV) If such further study is being required due to equipment or mechanical failure, the applicant must include information regarding the reason for the failure or breakdown and also include what procedures or equipment improvements have been made to protect against further breakdowns; and

(V) Such other information that the Department considers necessary.

(f) Samples Undergoing Treatability Studies at Laboratories and Testing Facilities. Samples undergoing treatability studies and the laboratory or testing facility conducting such treatability studies (to the extent such facilities are not otherwise subject to AHWMMA or RCRA requirements) are not subject to any requirement of 335-14-2, and 335-14-3 through 335-14-9, or to the notification requirements of Section 3010 of RCRA provided that the conditions of 335-14-2-.01(4)(f)1. through 11. are met. A mobile treatment unit (MTU) may qualify as a testing facility subject to 335-14-2-.01(4)(f)1. through (f)11. Where a group of MTUs are located at the same site, the limitations specified in 335-14-2-.01(4)(f)1. through 11. apply to the entire group of MTUs collectively as if the group were one MTU.

1. No less than 45 days before conducting treatability studies, the facility notifies the State Director in writing that it intends to conduct treatability studies under 335-14-2-.01(4)(f).

2. The laboratory or testing facility conducting the treatability study has an EPA identification number.

3. No more than a total of 10,000 kg of "as received" media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste or 250 kg of other "as received" hazardous waste is subjected to

initiation of treatment in all treatability studies in any single day. "As received" waste refers to the waste as received in the shipment from the generator or sample collector.

4. The quantity of "as received" hazardous waste stored at the facility for the purpose of evaluation in treatability studies does not exceed 10,000 kg, the total of which can include 10,000 kg of media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste, 1000 kg of non-acute hazardous wastes other than contaminated media, and 1 kg of acute hazardous waste. This quantity limitation does not include treatment materials (including nonhazardous solid waste) added to "as received" hazardous waste.

5. No more than 90 days have elapsed since the treatability study for the sample was completed, or no more than one year (two years for treatability studies involving bioremediation) has elapsed since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date first occurs. Up to 500 kg of treated material from a particular waste stream from treatability studies may be archived for future evaluation up to five years from the date of initial receipt. Quantities of materials archived are counted against the total storage limit for the facility.

6. The treatability study does not involve the placement of hazardous waste on the land or open burning of hazardous waste.

7. The facility maintains records for 3 years following completion of each study that show compliance with the treatment rate limits and the storage time and quantity limits. The following specific information must be included for each treatability study conducted:

(i) The name, address, and EPA identification number of the generator or sample collector of each waste sample;

(ii) The date the shipment was received;

(iii) The quantity of waste accepted;

(iv) The quantity of "as received" waste in storage each day;

(v) The date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day;

(vi) The date the treatability study was concluded;

(vii) The date any unused sample or residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated facility, the name of the facility and the EPA identification number.

8. The facility keeps, on-site, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for a period ending 3 years from the completion date of each treatability study.

9. The facility prepares and submits a report to the Director by March 15 of each year, that includes the following information for the previous calendar year:

(i) The name, address, and EPA identification number of the facility conducting the treatability studies;

(ii) The types (by process) of treatability studies conducted;

(iii) The names and addresses of persons for whom studies have been conducted (including their EPA identification numbers);

(iv) The total quantity of waste in storage each day;

(v) The quantity and types of waste subjected to treatability studies;

(vi) When each treatability study was conducted;

(vii) The final disposition of residues and unused sample from each treatability study.

10. The facility determines whether any unused sample or residues generated by the treatability study are hazardous waste under 335-14-2-.01(3) and, if so, are subject to 335-14-2 through 335-14-9, unless the residues and unused samples are returned to the sample originator under the 335-14-2-.01(4)(e) exemption.

11. The facility notifies the State Director by letter when the facility is no longer planning to conduct any treatability studies at the site.

(g) "Dredged material that is not a hazardous waste." Dredged material that is subject to the requirements of a permit that has been issued under §404 of the Federal Water Pollution Control Act (33 U.S.C. 1344) or section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413) is not a hazardous waste. For 335-14-2-.01(4)(g), the following definitions apply:

1. The term "dredged material" has the same meaning as defined in 40 CFR 232.2;

2. The term "permit" means:

(i) A permit issued by the U.S. Army Corps of Engineers (Corps) or an approved State under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344);

(ii) A permit issued by the Corps under section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413); or

(iii) In the case of Corps civil works projects, the administrative equivalent of the permits referred to in 335-14-2-.01(4)(g)2.(i) and (ii), as provided for in Corps regulation (for example, see 33 CFR 336.1, 336.2, and 337.6)

(5) Special requirements for hazardous waste generated by Conditionally Exempt Small Quantity Generators.

(a) Reserved.

(b) Except for those wastes identified in 335-14-2-.01(5)(e), (f), (g), and (j), a conditionally exempt small quantity generator's hazardous wastes are not subject to regulation under 335-14-3 through 335-14-9 provided the generator complies with the requirements of 335-14-2-.01(5)(f), (g), and (j). Provided, however, that any generator, including conditionally exempt small quantity generators, may be required by the Department to submit for the Department's approval a plan for the disposal of any hazardous waste generated regardless of whether the waste is to be disposed of at an on-site or off-site disposal area. If the Department requires submission of such a disposal plan, the generator shall not dispose of such hazardous waste at a site not permitted to receive hazardous waste until such times as the Department approves a plan for disposal.

(c) When making the quantity determinations of 335-14-2-.01 and 335-14-3, 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); or

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(1); or

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.; or

4. Is used oil managed under the requirements of 335-14-2-.01(6)(a)4. and 335-14-17; or

5. Is spent lead-acid batteries managed under the requirements of 335-14-7-.07; or

6. Is universal waste managed under 335-14-2-.01(9) and 335-14-11.

7. Is a hazardous waste that is an unused commercial chemical product (listed in 335-14-2-.04 or exhibiting one or more characteristics in 335-14-2-.03) that is generated solely as a result of a laboratory clean-out conducted at an eligible academic entity pursuant to 335-14-3-.12(14). For purposes of this provision, the term eligible academic entity shall have the meaning as defined in 335-14-1-.02.

(d) In determining the quantity of hazardous waste generated, a generator need not include:

1. Hazardous waste when it is removed from on-site storage; or

2. Hazardous waste produced by on-site treatment (including reclamation) of this hazardous waste, so long as the hazardous waste that is treated was counted once; or

3. Spent materials that are generated, reclaimed, and subsequently reused on-site, so long as such spent materials have been counted once.

(e) If a generator generates acute hazardous waste in a calendar month in quantities greater than set forth below, all quantities of that acute hazardous waste are subject to full regulation under 335-14-3 through 335-14-9 and the notification requirements of Section 3010 of RCRA:

1. A total of one kilogram of acute hazardous wastes listed in 335-14-2-.04(2), or (4)(e).

2. A total of 100 kilograms of any residue or contaminated soil, waste, 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 (4)(e).

[**Note** to paragraph 335-14-2-.01(5)(e): "Full regulation" means those regulations applicable to generators of 1,000 kg or greater of hazardous waste in a calendar month.]

(f) In order for acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than those set forth in 335-14-2-.01(5)(e)1. or (e)2. to be excluded from full regulation under 335-14-2-.01(5), the generator must comply with the following requirements:

1. 335-14-3-.01(2);

2. The generator may accumulate acute hazardous waste on-site. If he accumulates at any time acute hazardous wastes in quantities greater than those set forth in 335-14-2-.01(5)(e)1. or (e)2., all of those accumulated wastes are subject to regulation under 335-14-3 through 335-14-9 and the applicable notification requirements of Section 3010 of RCRA. The time period of 335-14-3-.03(5)(a) for accumulation of wastes on-site begins when the accumulated wastes exceed the applicable exclusion limit;

3. A conditionally exempt small quantity generator may either treat or dispose of his acute 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 (if located within Alabama), analogous requirements of another authorized State, or 40 CFR Part 270;

(ii) In interim status under 335-14-6 and 335-14-8 (if located within Alabama), analogous requirements of another authorized State, or 40 CFR Parts 265 and 270;

(iii) Permitted, licensed, or registered by a State to manage municipal solid waste and, if located in the State of Alabama and managed in a municipal solid waste landfill, such facility must:

(I) Have obtained a permit from the Department pursuant to the provisions of the Division 335-13 Rules and meet the municipal solid waste landfill standards of 40 CFR 258; and

(II) Have obtained approval from the Department for the disposal of the conditionally exempt small quantity generator hazardous waste in accordance with the requirements of 335-13-4-.21(1)(c);

(iv) Permitted, licensed, or registered by a State to manage non-municipal non-hazardous waste and, if located in the State of Alabama and managed in a non-municipal non-hazardous waste disposal unit after January 1, 1998, such facility must have obtained a permit from the Department pursuant to the provisions of the Division 335-13 Rules and meet the landfill standards of 40 CFR 257.5 through 257.30; or

(v) 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; or

(vi) For universal waste managed under 335-14-11, a universal waste handler or destination facility subject to the requirements of 335-14-11 (if located within Alabama), analogous requirements of another authorized State, or 40 CFR Part 273.

4. Use of EPA ID numbers by conditionally exempt small quantity generators.

(i) Conditionally exempt small quantity generators that want to obtain and use an EPA ID number must comply with the requirements of 335-14-3-.01(3) and (4), except 335-14-3-.01(3)(d).

(ii) Conditionally exempt small quantity generators that have existing and active EPA ID numbers must comply with the annual notification requirements of 335-14-3-.01(4).

(iii) Conditionally exempt small quantity generators that have EPA ID numbers and want to stop using the EPA ID number for their site may send a letter to ADEM requesting that the ID number be deactivated. The deactivated ID cannot be used by the conditionally exempt small quantity generator for any purpose after that point.

(g) In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of 100 kilograms or less in a calendar month to

be excluded from full regulation under 335-14-2-.01(5), the generator must comply with the following requirements:

1. 335-14-3-.01(2);

2. The conditionally exempt small quantity generator may accumulate hazardous waste on-site. If he accumulates at any time 1000 kilograms or greater of his hazardous wastes, all of those accumulated wastes are subject to regulation under the special provisions of 335-14 applicable to Small Quantity Generators as well as the requirements of 335-14-4 through 335-14-9 and the applicable notification requirements of Section 3010 of RCRA. The time period of 335-14-3-.03(5)(d) for accumulation of wastes on-site begins for a Conditionally Exempt Small Quantity Generator when the accumulated wastes equal or exceed 1000 kilograms;

3. A conditionally exempt small quantity generator may either treat or dispose of his 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 (if located within Alabama), analogous requirements of another authorized State, or 40 CFR Part 270;

(ii) In interim status under 335-14-6 and 335-14-8 (if located within Alabama), analogous requirements of another authorized State, or 40 CFR Parts 265 and 270;

(iii) Permitted, licensed, or registered by a State to manage municipal solid waste and, if located in the State of Alabama and if managed in a municipal solid waste landfill, such facility must:

(I) Have obtained a permit from the Department pursuant to the provisions of the Division 335-13 Rules and meet the municipal solid waste landfill standards of 40 CFR 258; and

(II) Have obtained approval from the Department for the disposal of the conditionally exempt small quantity generator hazardous waste in accordance with the requirements of 335-13-4-.21(1)(c);

(iv) Permitted, licensed, or registered by a State to manage non-municipal non-hazardous waste and, if located in the State of Alabama and managed in a non-municipal non-hazardous waste disposal unit after January 1, 1998, such facility must have obtained a permit from the Department pursuant to the provisions of the Division 335-13 Rules and meet the landfill standards of 40 CFR 257.5 through 257.30;

(v) 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; or

(vi) For universal waste managed under 335-14-11, a universal waste handler or destination facility subject to the requirements of 335-14-11 (if located within Alabama), analogous requirements of another authorized State, or 40 CFR Part 273.

4. Use of EPA ID numbers by conditionally exempt small quantity generators.

(i) Conditionally exempt small quantity generators that want to obtain and use an EPA ID number must comply with the requirements of 335-14-3-.01(3) and (4), except 335-14-3-.01(3)(d).

(ii) Conditionally exempt small quantity generators that have existing and active EPA ID numbers must comply with the annual notification requirements of 335-14-3-.01(4).

(iii) Conditionally exempt small quantity generators that have EPA ID numbers and want to stop using the EPA ID number for their site may send a letter to ADEM requesting that the ID number be deactivated. The deactivated ID cannot be used by the conditionally exempt small quantity generator for any purpose after that point.

(h) Hazardous waste subject to the reduced requirements of 335-14-2-.01(5) may be mixed with nonhazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in 335-14-2-.01(5) unless the mixture meets any of the characteristics of hazardous waste identified in 335-14-2-.03.

(i) If any person mixes a solid waste with a hazardous waste that exceeds a quantity exclusion level of 335-14-2-.01(5), the mixture is subject to full regulation.

(j) If a conditionally exempt 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 so regulated.

(6) Requirements for recyclable materials.

(a)1. Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of 335-14-2-.01(6)(b) and (c), except for the materials listed in 335-14-2-.01(6)(a)2. and (a)3. Hazardous wastes that are recycled will be known as "recyclable materials".

2. The following recyclable materials are not subject to the requirements of 335-14-2-.01(6) but are regulated under 335-14-7-.03 through 335-14-7-.14 and all applicable provisions of 335-14-8 and 335-14-9.

(i) Recyclable materials used in a manner constituting disposal (335-14-7-.03);

(ii) Hazardous wastes burned [the definition of which is incorporated by reference in rule 335-14-7-.08(1)] for energy recovery in boilers and industrial furnaces that are not regulated under 335-14-5-.15 and 335-14-6-.15 (335-14-7-.08);

(iii) Recyclable materials from which precious metals are reclaimed (335-14-7-.06).

(iv) Spent lead-acid batteries that are being reclaimed (335-14-7-.07).

3. The following recyclable materials are not subject to regulation under 335-14-3 through 335-14-9, and are not subject to the notification requirements of Section 3010 of RCRA:

(i) Industrial ethyl alcohol that is reclaimed except that, unless provided otherwise in an international agreement as specified in 335-14-3-.05(9):

(I) A person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, must comply with the requirements applicable to a primary exporter in 335-14-3-.05(4), 335-14-3-.05(7)(a)1. through 4., 6., and 335-14-3-.05(7)(b), and 335-14-3-.05(8), export such materials only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in 335-14-31-.02, and provide a copy of the EPA Acknowledgment of Consent to the shipment to the transporter transporting the shipment for export;

(II) Transporters transporting a shipment for export may not accept a shipment if he knows the shipment does not conform to the EPA Acknowledgment of Consent, must ensure that a copy of the EPA Acknowledgment of Consent accompanies the shipment and must ensure that it is delivered to the facility designated by the person initiating the shipment.

(ii) Scrap metal that is not excluded under 335-14-2-.01(4)(a)13.;

(iii) Fuels produced from the refining of oil-bearing hazardous wastes along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices (this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under 335-14-2-.01(4)(a)12.);

(iv)(I) Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such hazardous wastes, where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under 335-14-17-.02(2) and so long as no other hazardous wastes are used to produce the hazardous waste fuel;

(II) Hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under 335-14-17-.02(2); and

(III) Oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specifications under 335-14-17-.02(2).

4. Used oil that is recycled and is also a hazardous waste solely because it exhibits a hazardous characteristic is not subject to the requirements of 335-14-1 through 335-14-7 and 335-14-9, but is regulated under 335-14-17. Used oil that is recycled includes any used oil which is reused, following its original use, for any purpose (including the purpose for which the oil was originally used). Such term includes, but is not limited to, oil which is re-refined, reclaimed, burned for energy recovery, or reprocessed.

5. Hazardous waste that is exported to or imported from designated member countries of the Organization for Economic Cooperation and Development (OECD) (as defined in 335-14-3-.05(9)(a)1.) for the purpose of recovery is subject to the requirements of 335-14-3-.09 if it is subject to either the manifesting requirements of 335-14-3, or the universal waste management standards of 335-14-11.

(b) Generators and transporters of recyclable materials are subject to the applicable requirements of 335-14-3 and 335-14-4 and the notification requirements under Section 3010 of RCRA, except as provided in 335-14-2-.01(6)(a).

(c)1. Owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of 335-14-5-.01 through 335-14-5-.12, 335-14-5-.27, 335-14-5-.28, 335-14-5-.29, 335-14-6-.01 through 335-14-6-.12, 335-14-6-.27, 335-14-6-.28, 335-14-6-.29, and under 335-14-7, 335-14-8 (except as provided in 335-14-8-.01(1)(c)3.(v)), 335-14-9, and the notification requirements under Section 3010 of RCRA, except as provided in 335-14-2-.01(6)(a). [The recycling process itself is exempt from regulation except as provided in 335-14-2-.01(6)(d).]

2. Owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to the following requirements, except as provided in 335-14-2-.01(6)(a):

(i) Notification requirements under Section 3010 of RCRA;

(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).

(d) Owners or operators of facilities subject to RCRA or AHWMMA permitting requirements with hazardous waste management units that recycle hazardous wastes are subject to the requirements of 335-14-5-.27, 335-14-5-.28, 335-14-6-.27, and 335-14-6-.28.

(7) 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.

(8) PCB wastes regulated under Toxic Substance Control Act. The disposal of PCB-containing dielectric fluid and electric equipment containing such fluid authorized for use and regulated under Part 761 of 40 CFR and that are hazardous only because they fail the test for the Toxicity Characteristic (Hazardous Waste Codes D018 through D043 only) are exempt, except for the provisions of Rules 335-14-5-.25 and 335-14-6-.21, from regulation under 335-14-2 through 335-14-6, and 335-14-9, Parts 270 and 124 of 40 CFR, and the notification requirements of Section 3010 of RCRA.

(9) Requirements for Universal Waste. The wastes listed in 335-14-2-.01(9) are exempt from regulation under 335-14-3 through 335-14-9, except as specified in 335-14-11 and, therefore are not fully regulated as hazardous waste. The wastes listed in 335-14-2-.01(9) are subject to regulation under 335-14-11:

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

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

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

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

(10) Residues of hazardous waste in empty tanks.

(a) 335-14-2-.01(10) only applies to hazardous waste accumulated or stored in tanks. Tanks remain subject to applicable closure standards in 335-14-3, 335-14-5, and 335-14-6 for all hazardous waste numbers placed into the tank since it was last decontaminated, in accordance with 335-14-5-.07 or 335-14-6-.07.

(b) A tank that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an acute hazardous waste listed in 335-14-2-.04(2), (3), or (4)(e), is empty if:

1. All wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of tank (e.g., draining, pumping, and aspirating);

2. No more than 0.3 percent by volume of the total capacity of the tank or 100 gallons, whichever is less, remains in the tank; and

3. The removal of waste in accordance with 335-14-2-.01(10)(b)1. and volume and percent of total capacity remaining in the tank in accordance with 335-14-2-.01(10)(b)2. has been certified with the date, time and name of the person making the certification.

(c)1. Hazardous waste subsequently placed into a tank which has been emptied in accordance with 335-14-2-.01(10)(b) will be identified only by those hazardous waste numbers which are applicable to the waste prior to entering the tank. Any residue remaining in an empty tank system will not cause waste subsequently placed into the tank to be identified pursuant to 335-14-2-.01(3)(a)2.(iv). All hazardous waste numbers applicable to waste placed in the tank since it was last decontaminated will apply to the tank system upon closure.

2. Residues removed from an empty tank are solid wastes subject to the requirements of 335-14-3-.01(2).

(d) Respondents in actions to enforce rules and regulations implementing the AHWMMA, who raise a claim that a tank or tank system was empty in accordance with 335-14-2-.01(10), must demonstrate compliance with 335-14-2-.01(10) by providing appropriate documentation.

[**Note:** Rule 335-14-2-.01(10) is only mandatory when a generator or owner/operator wishes to break the continuing chain of previous hazardous waste numbers. It is not required for demonstrating compliance with the accumulation time limits of Chapter 335-14-3.]

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335-14-2-.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 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 limits for acutely hazardous wastes established in 335-14-2-.01(5): 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 ADEM Admin. Code Rule 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	(T)

Hazardous Waste Number	Hazardous Waste	Hazard Code
	still bottoms from the recovery of these spent solvents and spent solvent mixtures.	
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 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.	(T)
F005	The following spent non-halogenated solvents: toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, and 2-nitropropane; 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, or F004; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(I,T)
F006	Wastewater treatment sludges from electroplating 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)

Hazardous Waste Number	Hazardous Waste	Hazard Code
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)
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 and ADEM Administrative Code Rule 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 the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzenes under alkaline conditions.	(H)

Hazardous Waste Number	Hazardous Waste	Hazard Code
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	Wastes (except wastewater and spent carbon from 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)
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	(T)

Hazardous Waste Number	Hazardous Waste	Hazard Code
	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.	
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, 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.	(T)
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 generated in: induced air flotation	(T)

Hazardous Waste Number	Hazardous Waste	Hazard Code
	(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 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 contactor 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 unit 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 proving 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 ADEM Admin. Code Rule 335-14-1-.03(2) and listed in 335-14-2-Appendix IX.

Hazardous Waste Number	**Hazardous Waste**	**Hazard Code**
Wood preservation:		

Hazardous Waste Number	Hazardous Waste	Hazard Code
K001	Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or penta-chlorophenol.	(T)
Inorganic pigments:		
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)
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)
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)

Hazardous Waste Number	Hazardous Waste	Hazard Code
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)
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)

Hazardous Waste Number	Hazardous Waste	Hazard Code
K112	Reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene.	(T)
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)
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	(T)

Hazardous Waste Number	Hazardous Waste	Hazard Code
	to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.).	
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)
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 nonhazardous 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)
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)

Hazardous Waste Number	Hazardous Waste	Hazard Code
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)
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)

Hazardous Waste Number	Hazardous Waste	Hazard Code
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)
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)
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)

Hazardous Waste Number	Hazardous Waste	Hazard Code
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:		
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)
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)

Hazardous Waste Number	Hazardous Waste	Hazard Code
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)
K144	Wastewater sump residues from light oil refining, including, but not limited to, intercepting or contamination sump sludges from the recovery of coke by-products produced from coal.	(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	Chemical 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

Constituent	Chemical abstracts No.	Mass levels (kg/yr)
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.

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) of this section) 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)-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 nonwastewaters generated.

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

(xi) Nonhazardous waste determinations must be conducted annually to verify that the wastes remain nonhazardous.

(I) The annual testing requirements are suspended after three consecutive successful annual demonstrations that the wastes are nonhazardous. 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 nonhazardous 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).

[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 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) and are subject to the small quantity exclusion defined in 335-14-2-.01(5)(e).

[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(l-), 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-

Hazardous Waste No.	Chemical Abstracts No.	Substance
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- trimeth ylphyrolo[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
P0189	55285-14-8	Carbamic acid, [(dibutylamino)-thio]methyl- 2,3-dihydro-2,2-dimet hyl-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
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

Hazardous Waste No.	Chemical Abstracts No.	Substance
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,4 alpha,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- hexahydr o-, (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)-
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	Dimethoate
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

Hazardous Waste No.	Chemical Abstracts No.	Substance
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
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
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

Hazardous Waste No.	Chemical Abstracts No.	Substance
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 $Ni(CO)_4$, (T-4)-
P074	557-19-7	Nickel cyanide
P074	557-19-7	Nickel cyanide $Ni(CN)_2$
P075	[1]54-11-5	Nicotine, & salts
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
P087	20816-12-0	Osmium oxide OsO_4, (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

Hazardous Waste No.	Chemical Abstracts No.	Substance
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
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

Hazardous Waste No.	Chemical Abstracts No.	Substance
P106	143-33-9	Sodium cyanide
P106	143-33-9	Sodium cyanide Na(CN)
P108	[1]57-24-9	Strychnidin-10-one, and salts
P018	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, l-naphthalenyl-
P093	103-85-5	Thiourea, phenyl-
P185	26419-73-8	Tirpate
P123	8001-35-2	Toxaphene
P118	75-70-7	Trichloromethanethiol
Pll9	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
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[l,2-a] indole-4,7-dione,6-amino-8-[[(aminocarbonyl) oxy]methyl]-1,la,2,8,8a,8b-hexahydro-8a-met hoxy-5-methyl-,[laS-(laalpha,8beta,8aalpha,8 balpha)]-
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
U017	98-87-3	Benzalchloride
U192	23950-58-5	Benzamide,3,5-dichloro-N-(l,l-dimethyl-2-prop ynyl)-
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-dimet hyl-

Hazardous Waste No.	Chemical Abstracts No.	Substance
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-chloroph enyl)-alpha-hydroxy-, ethylester
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)
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
~~U202~~	~~[1]81-07-2~~	~~1,2-Benzisothiazol-3(2H)-one,1,1-dioxide,&salts~~
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
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)
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

Hazardous Waste No.	Chemical Abstracts No.	Substance
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(l- methylethyl)-, S-(2,3-dichloro-2-propenyl) ester
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
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)-
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

Hazardous Waste No.	Chemical Abstracts No.	Substance
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
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
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
U106	606-20-2	2,6-Dinitrotoluene
U107	117-84-0	Di-n-octyl phthalate

Hazardous Waste No.	Chemical Abstracts No.	Substance
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-
U024	111-91-1	Ethane,l,l'-[methylenebis(oxy)] 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
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

Hazardous Waste No.	Chemical Abstracts No.	Substance
U359	110-80-5	Ethylene glycol monoethyl ether
U115	75-21-8	Ethylene oxide(I,T)
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
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
U096	80-15-9	Hydroperoxide,l-methyl-l-phenylethyl-(R)
U116	96-45-7	2-Imidazolidinethione
U137	193-39-5	Indeno[1,2,3-cd]pyrene
Ul90	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-

Hazardous Waste No.	Chemical Abstracts No.	Substance
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
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-
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- octac hloro-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)
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)

Hazardous Waste No.	Chemical Abstracts No.	Substance
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
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
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
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

Hazardous Waste No.	Chemical Abstracts No.	Substance
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-
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
Ul91	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-
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)
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

Hazardous Waste No.	Chemical Abstracts No.	Substance
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-t hioxo-
U180	930-55-2	Pyrrolidine,l-nitroso-
U200	50-55-5	Reserpine
U201	108-46-3	Resorcinol
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
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
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- dimethox y-18-[(3,4,5-trimethoxy- benzoyl)oxy]-,methyle ster,(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 spiking level of 1 ppt, final extraction volume of 10-50 µL. 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 Alabama 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; January 5, 1995; January 12, 1996; March 27, 1998; April 2, 1999; April 13, 2001; March 15, 2002; April 17, 2003; April 4, 2006; April 3, 2007; May 27, 2008; March 31, 2009; March 31, 2011; April 3, 2012; April 8, 2016; XXXXX,XXXX.

335-14-2-.05 Exclusions/Exemptions.

(1) Conditional exclusion for used, broken cathode ray tubes (CRTs) and processed CRT glass undergoing recycling. Used, broken CRTs are not solid wastes if they meet the following conditions:

(a) Prior to processing: These materials are not solid wastes if they are destined for recycling and if they meet the following requirements:

1. Storage. The broken CRTs must be either:

(i) Stored in a building with a roof, floor, and walls, or

(ii) Placed in a container (i.e., a package or a vehicle) that is constructed, filled, and closed to minimize releases to the environment of CRT glass (including fine solid materials).

2. Labeling. Each container in which the used, broken CRT is contained must be labeled or marked clearly with one of the following phrases: "Used cathode ray tube(s) - contains leaded glass" or "Leaded glass from televisions or computers." It must also be labeled: "Do not mix with other glass materials."

3. Transportation. The used, broken CRTs must be transported in a container meeting the requirements of 335-14-2-.05(1)(a)1.(ii) and (a)2.

4. Speculative accumulation and use constituting disposal. The used, broken CRTs are subject to the limitations on speculative accumulation as defined in 335-14-1-.02. If they are used in a manner constituting disposal, they must comply with the applicable requirements of 335-14-7-.03 instead of the requirements of this section.

5. Exports. In addition to the applicable conditions specified in 335-14-2-.05(1)(a)1. – 4., exporters of used, broken CRTs must comply with the following requirements:

(i) Notify EPA of an intended export before the CRTs are scheduled to leave the United States. A complete notification should be submitted sixty (60) days before the initial shipment is intended to be shipped off-site. This notification may cover export activities extending over a twelve (12) month or lesser period. The notification must be in writing, signed by the exporter, and include the following information:

(I) Name, mailing address, telephone number and EPA ID number (if applicable) of the exporter of the CRTs.

(II) The estimated frequency or rate at which the CRTs are to be exported and the period of time over which they are to be exported.

(III) The estimated total quantity of CRTs specified in kilograms.

(IV) All points of entry to and departure from each foreign country through which the CRTs will pass.

(V) A description of the means by which each shipment of the CRTs will be transported [e.g., mode of transportation vehicle (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.)].

(VI) The name and address of the recycler or recyclers and the estimated quantity of used CRTs to be sent to each facility, as well as the names of any alternate recyclers.

(VII) A description of the manner in which the CRTs will be recycled in the foreign country that will be receiving the CRTs.

(VIII) The name of any transit country through which the CRTs will be sent and a description of the approximate length of time the CRTs will remain in such country and the nature of their handling while there.

(ii) Notifications submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Hand-delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 1200 Pennsylvania Ave., NW., Washington, DC. In both cases, the following shall be prominently displayed on the front of the envelope: "Attention: Notification of Intent to Export CRTs."

(iii) Upon request by EPA, the exporter shall furnish to EPA any additional information which a receiving country requests in order to respond to a notification.

(iv) EPA will provide a complete notification to the receiving country and any transit countries. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of 335-14-2-.05(1)(a)5.(i) of this section. Where a claim of confidentiality is asserted with respect to any notification information required by 335-14-2-.05(1)(a)5.(i), EPA may find the notification not complete until any such claim is resolved in accordance with 335-14-1-.01(2).

(v) The export of CRTs is prohibited unless the receiving country consents to the intended export. When the receiving country consents in writing to the receipt of the CRTs, EPA will forward an Acknowledgment of Consent to Export CRTs to the exporter. Where the receiving country objects to receipt of the CRTs or withdraws a prior consent, EPA will notify the exporter in writing. EPA will also notify the exporter of any responses from transit countries.

(vi) When the conditions specified on the original notification change, the exporter must provide EPA with a written renotification of the change, except for changes to the telephone number in 335-14-2-.05(1)(a)5.(i)(I) and decreases in the

quantity indicated pursuant to 335-14-2-.05(1)(a)5.(i)(III). The shipment cannot take place until consent of the receiving country to the changes has been obtained [except for changes to information about points of entry and departure and transit countries pursuant to 335-14-2-.05(1)(a)5.(i)(IV) and (VIII)] and the exporter of CRTs receives from EPA a copy of the Acknowledgment of Consent to Export CRTs reflecting the receiving country's consent to the changes.

(vii) A copy of the Acknowledgment of Consent to Export CRTs must accompany the shipment of CRTs. The shipment must conform to the terms of the Acknowledgment.

(viii) If a shipment of CRTs cannot be delivered for any reason to the recycler or the alternate recycler, the exporter of CRTs must renotify EPA of a change in the conditions of the original notification to allow shipment to a new recycler in accordance with 335-14-2-.05(1)(a)5.(vi) and obtain another Acknowledgment of Consent to Export CRTs.

(ix) Exporters must keep copies of notifications and Acknowledgments of Consent to Export CRTs for a period of three years following receipt of the Acknowledgment.

(x) CRT exporters must file with EPA no later than March 1 of each year, an annual report summarizing the quantities (in kilograms), frequency of shipment, and ultimate destination(s) (i.e., the facility or facilities where the recycling occurs) of all used CRTs exported during the previous calendar year. Such reports must also include the following:

(I) The name, EPA ID number (if applicable), and mailing and site address of the exporter;

(II) The calendar year covered by the report;

(III) A certification signed by the CRT exporter that states:

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

(xi) Annual reports must be submitted to the office specified in paragraph (a)(5)(ii) of this section. Exporters must keep copies of each annual report for a period of at least three years from the due date of the report.

(b) Requirements for used CRT processing: Used, broken CRTs undergoing CRT processing as defined in 335-14-1-.02 are not solid wastes if they meet the following requirements:

1. Storage. Used, broken CRTs undergoing processing are subject to the requirement of 335-14-2-.05(1)(a)4.

2. Processing.

(i) All activities specified in paragraphs (b) and (c) of the definition of "CRT processing" in 335-14-1-.02 must be performed within a building with a roof, floor, and walls; and

(ii) No activities may be performed that use temperatures high enough to volatilize lead from CRTs.

(c) Processed CRT glass sent to CRT glass making or lead smelting: Glass from used CRTs that is destined for recycling at a CRT glass manufacturer or a lead smelter after processing is not a solid waste unless it is speculatively accumulated as defined in 335-14-1-.02.

(d) Use constituting disposal: Glass from used CRTs that is used in a manner constituting disposal must comply with the requirements of 335-14-7-.03 instead of the requirements of this section.

(2) Conditional exclusion for used, intact cathode ray tubes (CRTs) exported for recycling. Used, intact CRTs exported for recycling are not solid wastes if they meet the notice and consent conditions of 335-14-2-.05(1)(a)5., and if they are not speculatively accumulated as defined in 335-14-1-.02.

(3) Notification and Recordkeeping for Used, Intact Cathode Ray Tubes (CRTs) Exported for Reuse.

(a) CRT exporters who export used, intact CRTs for reuse must send a notification to EPA. This notification may cover export activities extending over a twelve (12) month or lesser period.

1. The notification must be in writing, signed by the exporter, and include the following information:

(i) Name, mailing address, telephone number, and EPA ID number (if applicable) of the exporter of the used, intact CRTs;

(ii) The estimated frequency or rate at which the used, intact CRTs are to be exported for reuse and the period of time over which they are to be exported;

(iii) The estimated total quantity of used, intact CRTs specified in kilograms;

(iv) All points of entry to and departure from each transit country through which the used, intact CRTs will pass, a description of the approximate length of time the used, intact CRTs will remain in such country, and the nature of their handling while there;

(v) A description of the means by which each shipment of the used, intact CRTs will be transported (e.g., mode of transportation vehicle (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.));

(vi) The name and address of the ultimate destination facility or facilities where the used, intact CRTs will be reused, refurbished, distributed, or sold for reuse and the estimated quantity of used, intact CRTs to be sent to each facility, as well as the name of any alternate destination facility or facilities;

(vii) A description of the manner in which the used, intact CRTs will be reused (including reuse after refurbishment) in the foreign country that will be receiving the used, intact CRTs; and

(viii) A certification signed by the CRT exporter that states:

"I certify under penalty of law that the CRTs described in this notice are intact and fully functioning or capable of being functional after refurbishment and that the used CRTs will be reused or refurbished and reused. I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

~~(2.)~~ Notifications required by 335-14 shall be addressed to the following:

Mail:
Office of Enforcement and Compliance Assurance
Office of Federal Activities
International Compliance Assurance Division (Mail Code 2254A)
Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 2000460

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 2000460.

In both cases, the following shall be prominently displayed on the front of the envelope: "Attention: Notification of Intent to Export CRTs."

(b) CRT exporters of used, intact CRTs sent for reuse must keep copies of normal business records, such as contracts, demonstrating that each shipment of exported used, intact CRTs will be reused. This documentation must be retained for a period of at least three years from the date the CRTs were exported. If the documents

are written in a language other than English, CRT exporters of used, intact CRTs sent for reuse must provide both the original, non-English version of the normal business records as well as a third-party translation of the normal business records into English within 30 days upon request by EPA.

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335-14-2-.08 Financial Requirements for Management of Excluded Hazardous Secondary Materials.

(1) Applicability

(a) The requirements of this subpart apply to owners or operators of reclamation and intermediate facilities managing hazardous secondary materials excluded under 335-14-2-.01(4)(a)24, except as provided otherwise in this section.

(b) States and the Federal government are exempt from the financial assurance requirements of this subpart.

(2) Definitions of terms as used in this section.
Some terms used in this section are defined in 335-14-1-.02 have the same meaning as those used in 335-14-6-.08.

(3) Cost estimate

(a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of disposing of any hazardous secondary material as listed or characteristic hazardous waste, and the potential cost of closing the facility as a treatment, storage, and disposal facility.

1. The estimate must equal the cost of conducting the activities described in paragraph (a) at the point when the extent and manner of the facility's operation would make these activities the most expensive; and

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

3. The cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous secondary materials, or hazardous or non-hazardous wastes if applicable under 335-14-6-.07(4)(d), facility structures or equipment, land, or other assets associated with the facility.

4. The owner or operator may not incorporate a zero cost for hazardous secondary materials, or hazardous or non-hazardous wastes if applicable under 335-14-6-.07(4)(d) that might have economic value.

(b) during the active life of the facility, the owner or operator must adjust the cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with 335-14-2-.08(4). For owners and operators using the financial test or corporate guarantee, the cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Department as specified in 335-14-2-.08(4)(e)3. The adjustment may be made by recalculating the closure cost

estimate in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business, as specified in 335-14-2-.08(3)(b)1. and (b)2. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

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

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

(c) During the active life of the facility, the owner or operator must revise the cost estimate no later than 30 days after a change in a facility's operating planor design that would increase the costs of conducting the activities described in 335-14-2-.08(3)(a) or no later than 60 days after an unexpected event which increases the cost of conducting the activities described in 335-14-2-.08(3)(a). The revised cost estimate must be adjusted for inflation as specified in 335-14-2-.08(3)(b).

(d) The owner or operator must keep the following at the facility during the operating life of the facility: The latest cost estimate prepared in accordance with paragraphs 335-14-2-.08(3)(a) and (c) and, when this estimate has been adjusted in accordance with 335-14-2-.08(3)(b), the latest adjusted cost estimate.

(4) Per 335-14-2-.01(4)(a)24.(vi)(VI), an owner or operator of a reclamation or intermediate facility must have financial assurance as a condition of the exclusion as required 335-14-2-.01(4)(a)24. He must choose from the options as specified in paragraphs (a) through (e) of this section.

(a) Trust fund

1. An owner or operator may satisfy the requirements of 335-14-2-.08(4) by establishing a trust fund which conforms to the requirements of 335-14-2-.08(4)(a) and submitting an originally signed duplicate of the trust agreement to the Department. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

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

3. The trust fund must be funded for the full amount of the current cost estimate before it may be relied upon to satisfy the requirements of this section.

4. Whenever the current cost estimate changes, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, must either

deposit an amount into the fund so that its value after this deposit at least equals the amount of the current cost estimate, or obtain other financial assurance as specified in 335-14-2-.08(4) to cover the difference.

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

6. If an owner or operator substitutes other financial assurance as specified in 335-14-2-.08(4) for all or part of the trust fund, he may submit a written request to the Department for release of the amount in excess of the current cost estimate covered by the trust fund.

7. Within 60 days after receiving a request from the owner or operator for release of funds as specified 335-14-2-.08(4)(a)5. or 6., the Department will instruct the trustee to release to the owner or operator such funds as the Department specifies in writing. If the owner or operator begins final closure under subpart 335-14-5-.07 or 335-14-6-.07, an owner or operator may request reimbursements for partial or final closure expenditures by submitting itemized bills to the Department. The owner or operator may request reimbursements for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. No later than 60 days after receiving bills for partial or final closure activities, the Department will instruct the trustee to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the Department has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, he may withhold reimbursements of such amounts as he deems prudent until he determines, in accordance with 335-14-2-.08(4)(i) that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Department does not instruct the trustee to make such reimbursements, he will provide to the owner or operator a detailed written statement of reasons.

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

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-2-.08(4); or

(ii) The Department releases the owner or operator from the requirements of this section in accordance with paragraph 335-14-2-.08(4)(i).

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

1. An owner or operator may satisfy the requirements of 335-14-2-.08(4) by obtaining a surety bond which conforms to the requirements of this 335-14-2-.08(4)(b) and submitting the bond to the Department. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

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

3. The owner or operator who uses a surety bond to satisfy the requirements of 335-14-2-.08(4) must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund must meet the requirements specified in 335-14-2-.08(4)(a), except that:

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

(ii) Until the standby trust fund is funded pursuant to the requirements of 335-14-2-.08(4), the following are not required by these regulations:

(I) Payments into the trust fund as specified in 335-14-2-.08(4)(a);

(II) Updating of Schedule A of the trust agreement (see 335-14-2-.08(12)(a)) to show current cost estimates;

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

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

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

(i) Fund the standby trust fund in an amount equal to the penal sum of the bond before loss of the exclusion under 335-14-2-.01(4)(a)24; or

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

(iii) Provide alternate financial assurance as specified in 335-14-2-.08(4), and obtain the Department's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the bond from the surety.

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

6. The penal sum of the bond must be in an amount at least equal to the current cost estimate, except as provided in 335-14-2-.08(4)(f).

7. Whenever the current cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current cost estimate and submit evidence of such increase to the Department, or obtain other

financial assurance as specified in 335-14-2-.08(4) to cover the increase. Whenever the current cost estimate decreases, the penal sum may be reduced to the amount of the current cost estimate following written approval by the Department.

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

9. The owner or operator may cancel the bond if the Department has given prior written consent based on his receipt of evidence of alternatefinancial assurance as specified in 335-14-2-.08(4).

(c) Letter of credit.

1. An owner or operator may satisfy the requirements of 335-14-2-.08(4) by obtaining an irrevocable standby letter of credit which conforms to the requirements of 335-14-2-.08(4)(c) and submitting the letter to the Department. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or State agency.

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

3. An owner or operator who uses a letter of credit to satisfy the requirements of 335-14-2-.08(4) must also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Department will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund must meet the requirements of the trust fund specified in 335-14-2-.08(4)(a) of this section, except that:

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

(ii) Unless the standby trust fund is funded pursuant to the requirements of 335-14-2-.08(4), the following are not required by these regulations:

(I) Payments into the trust fund as specified in 335-14-2-.08(4)(a);

(II) Updating of Schedule A of the trust agreement (see 335-14-2-.08(12)(a)) to show current cost estimates;

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

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

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

5. The letter of credit must be irrevocable and issued for a period of at least 1 year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least 1 year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Department by certified mail of adecision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the Department have received the notice, as evidenced by the return receipts.

6. The letter of credit must be issued in an amount at least equal to the current cost estimate, except as provided in 335-14-2-.08(4)(f).

7. Whenever the current cost estimate increases to an amount greater than the amount of the credit, the owner or operator, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in 335-14-2-.08(4) to cover the increase. Whenever the current cost estimate decreases, the amount of the credit may be reduced to the amount of the current cost estimate following written approval by the Department.

8. Following a determination by the Department that the hazardous secondary materials do not meet the conditions of the exclusion under 335-14-2-.01(4)(a)24, the Department may draw on the letter of credit.

9. If the owner or operator does not establish alternate financial assurance as specified in 335-14-2-.08(4) and obtain written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Department will draw on the letter of credit. The Department may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the Department will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in 335-14-2-.08(4) and obtain written approval of such assurance from the Department.

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

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-2-.08(4); or

(ii) The Department releases the owner or operator from the requirements of this section in accordance with paragraph 335-14-2-.08(4)(i).

(d) Insurance.

1. An owner or operator may satisfy the requirements of 335-14-2-.08(4) by obtaining insurance which conforms to the requirements of this 335-14-2-.08(4)(d) and submitting a certificate of such insurance to the Department. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

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

3. The insurance policy must be issued for a face amount at least equal to the current cost estimate, except as provided in paragraph 335-14-2-.08(4)(f) of this section. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

4. The insurance policy must guarantee that funds will be available whenever needed to pay the cost of removal of all hazardous secondary materials from the unit, to pay the cost of decontamination of the unit, to pay the costs of the performance of activities required under 335-14-5-.07 or 335-14-6-.07, as applicable, for the facilities covered by this policy. The policy must also guarantee that once funds are needed, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Department, to such party or parties as the Department specifies.

5. After beginning partial or final closure under 335-14-5 or 335-14-6, as applicable, an owner or operator or any other authorized person may request reimbursements for closure expenditures by submitting itemized bills to the Department. The owner or operator may request reimbursements only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for closure activities, the Department will instruct the insurer to make reimbursements in such amounts as the Department specifies in writing if the Department determines that the expenditures are in accordance with the approved plan or otherwise justified. If the Department has reason to believe that the maximum cost over the remaining life of the facility will be significantly greater than the face amount of the policy, he may withhold reimbursement of such amounts as he deems prudent until he determines, in accordance with 335-14-2-.08(4)(h), that the owner or operator is no longer required to maintain financial assurance for the particular facility. If the Department does not instruct the insurer to make such reimbursements, he will provide to the owner or operator a detailed written statement of reasons.

6. The owner or operator must maintain the policy in full force and effect until the Department consents to termination of the policy by the owner or operator as specified in 335-14-2-.08(4)(i)10. of this section. Failure to pay the premium, without substitution of alternate financial assurance as specified in 335-14-2-.08(4), will constitute a significant violation of these regulations warranting such remedy as the Department deems necessary. Such violation will be deemed to begin upon receipt by

the Department of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

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

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

(i) The Department deems the facility abandoned; or

(ii) Conditional exclusion or interim status is lost, terminated, or revoked; or

(iii) Closure is ordered by the Department or a U.S. district court or other court of competent jurisdiction; or

(iv) The owner or operator is named as a debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or

(v) The premium due is paid.

9. Whenever the current cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in 335-14-2-.08(4) to cover the increase. Whenever the current cost estimate decreases, the face amount may be reduced to the amount of the current cost estimate following written approval by the Department.

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

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-2-.08(4); or

(ii) The Department releases the owner or operator from the requirements of 335-14-2-.08(4) in accordance with 335-14-2-.08(4)(i).

(e) Financial test and corporate guarantee.

1. An owner or operator may satisfy the requirements of 335-14-2-.08(4) by demonstrating that he passes a financial test as specified in 335-14-2-.08(4)(e). To pass this test the owner or operator must meet the criteria of either paragraph335-14-2-.08(4)(e)1.(i) or (ii):

(i) The owner or operator must have:

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

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

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

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

(ii) The owner or operator must have:

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

(II) Tangible net worth at least six times the sum of the current cost estimates and the current plugging and abandonment cost estimates; and

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

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

2. The phrase"current cost estimates" as used in 335-14-2-.08(4)(e)1. refers to the cost estimates required to be shown in paragraphs 1–4 of the letter from the owner's or operator's chief financial officer (335-14-2-.08(12)(e)). The phrase "current plugging and abandonment cost estimates" as used in 335-14-2-.08(4)(e)1. of this section refers to the cost estimates required to be shown in paragraphs 1– 4 of the letter from the owner's or operator's chief financial officer (§ 40 CFR 144.70(f)).

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

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in 335-14-2-.08(12)(e); and

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

(iii) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies 335-14-2-.08(4)(e)1.(i) that are different from the data in the audited financial statements referred to in 335-14-2-.08(4)(e)3.(ii) or any other audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year_end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of the comparison, and the reasons for any differences.

4. The owner or operator may obtain an extension of the time allowed for submission of the documents specified in 335-14-2-.08(4)(e)3. if the fiscal year of the owner or operator ends during the 90 days prior to the effective date of these regulations and if the year_end financial statements for that fiscal year will be audited by an independent certified public accountant. The extension will end no later than 90 days after the end of the owner's or operator's fiscal year. To obtain the extension, the owner's or operator's chief financial officer must send, by the effective date of these regulations, a letter to the Department. This letter from the chief financial officer must:

(i) Request the extension;

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

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

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

(v) Specify the date, no later than 90 days after the end of such fiscal year, when he will submit the documents specified in 335-14-2-.08(4)(e)3; and

(vi) Certify that the ~~year-end~~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~~year end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide the alternate financial assurance within 120 days after the end of such fiscal year.

7. The Department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of 335-14-2-.08(4)(e)1, require reports of financial condition at any time from the owner or operator in addition to those specified in 335-14-2-.08(4)(e)3. If the Department, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of 335-14-2-.08(4)(e)1, the owner or operator must provide alternate financial assurance as specified in 335-14-2-.08(4) within 30 days after notification of such a finding.

8. The Department may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see 335-14-2-.08(4)(e)3(ii)). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Department will evaluate other qualifications on an individual basis. The owner or operator must provide alternate financial assurance as specified in 335-14-2-.08(4) within 30 days after notification of the disallowance.

9. The owner or operator is no longer required to submit the items specified in 335-14-2-.08(4)(e)3. when:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-2-.08(4); or

(ii) The Department releases the owner or operator from the requirements of 335-14-2-.08(4) in accordance with 335-14-2-.08(4)(i).

10. An owner or operator may meet the requirements of 335-14-2-.08(4) by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in 335-14-2-.08(4)(e)1. through 8. and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in 335-14-2-.08(12)(g)1. A certified copy of the guarantee must accompany the items sent to the Department as specified in 335-14-2-.08(4)(e)3. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee must provide that:

(i) Following a determination by the Department that the hazardous secondary materials at the owner or operator's facility covered by this guarantee do not meet the conditions of the exclusion under 335-14-2-.01(4)(a)24, the guarantor will dispose of any hazardous secondary material as hazardous waste and close the facility in accordance with closure requirements found in 335-14-5 or 335-14-6, as applicable, or establish a trust fund as specified in 335-14-2-.08(4)(a) in the name of the owner or operator in the amount of the current cost estimate.

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

(iii) If the owner or operator fails to provide alternate financial assurance as specified in 335-14-2-.08(4) and obtain the written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternate financial assurance in the name of the owner or operator.

(f) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of 335-14-2-.08(4) by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds, letters of credit, and insurance. The mechanisms must be as specified in 335-14-2-.08(4)(a) through (d), except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The Department may use any or all of the mechanisms to provide for the facility.

(g) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in 335-14-2-.08(4) to meet the requirements for more than one facility. Evidence of financial assurance submitted to the Department must include a list showing, for each facility, the EPA Identification Number (if any issued), name, address, and the amount of funds assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for any of the facilities covered by the mechanism, the Department may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

(h) Removal and Decontamination Plan for Release.

1. An owner or operator of a reclamation facility or an intermediate facility who wishes to be released from his financial assurance obligations under 335-14-2-.01(4)(a)24.(vi)(VI) must submit a plan for removing all hazardous secondary

material residues to the Department at least 180 days prior to the date on which he expects to cease to operate under the exclusion.

2. The plan must include, at least:

(i) For each hazardous secondary materials storage unit subject to financial assurance requirements under 335-14-2-.01(4)(a)24.(vi)(VI), a description of how all excluded hazardous secondary materials will be recycled or sent for recycling, and how all residues, contaminated containment systems (liners, etc), contaminated soils, subsoils, structures, and equipment will be removed or decontaminated as necessary to protect human health and the environment, and

(ii) A detailed description of the steps necessary to remove or decontaminate all hazardous secondary material residues and contaminated containment system components, equipment, structures, and soils including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination necessary to protect human health and the environment; and

(iii) A detailed description of any other activities necessary to protect human health and the environment during this timeframe, including, but not limited to, leachate collection, run-on and run-off control, etc; and

(iv) A schedule for conducting the activities described which, at a minimum, includes the total time required to remove all excluded hazardous secondary materials for recycling and decontaminate all units subject to financial assurance under335-14-2-.01(4)(a)24.(vi)(VI) and the time required for intervening activities which will allow tracking of the progress of decontamination.

3. The Department will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the plan and request modifications to the plan no later than 30 days from the date of the notice. He will also, in response to a request or at his discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the plan. The Department will give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The Department will approve, modify, or disapprove the plan within 90 days of its receipt. If the Department does not approve the plan, he shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator must modify the plan or submit a new plan for approval within 30 days after receiving such written statement. The Department will approve or modify this plan in writing within 60 days. If the Department modifies the plan, this modified plan becomes the approved plan. The Department must assure that the approved plan is consistent with 335-14-2-.08(4)(h). A copy of the modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator.

4. Within 60 days of completion of the activities described for each hazardous secondary materials management unit, the owner or operator must submit to the Department, by registered mail, a certification that all hazardous secondary

materials have been removed from the unit and the unit has been decontaminated in accordance with the specifications in the approved plan. The certification must be signed by the owner or operator and by a qualified Professional Engineer. Documentation supporting the Professional Engineer's certification must be furnished to the Department, upon request, until he releases the owner or operator from the financial assurance requirements for 335-14-2-.01(4)(a)24.(vi)(VI).

(i) Release of the owner or operator from the requirements of 335-14-2-.08(4). Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that all hazardous secondary materials have been removed from the facility or a unit at the facility and the facility or a unit has been decontaminated in accordance with the approved plan per 335-14-2-.08(4)(h), the Department will notify the owner or operator in writing that he is no longer required under 335-14-2-.01(4)(a)24(vi)(VI) to maintain financial assurance for that facility or a unit at the facility, unless the Department has reason to believe that all hazardous secondary materials have not been removed from the facility or unit at a facility or that the facility or unit has not been decontaminated in accordance with the approved plan. The Department shall provide the owner or operator a detailed written statement of any such reason to believe that all hazardous secondary materials have not been removed from the unit or that the unit has not been decontaminated in accordance with the approved plan.

(5) **[Reserved].**

(6) **[Reserved].**

(7) **[Reserved].**

(8) Liability requirements.

(a) Coverage for sudden accidental occurrences. An owner or operator of a hazardous secondary material reclamation facility or an intermediate facility subject to financial assurance requirements under 335-14-2-.01(4)(a)24(vi)(VI), or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least $1 million per occurrence with an annual aggregate of at least $2 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in 335-14-2-.08(8)(a)1, 2, 3, 4, 5, or 6:

1. An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in 335-14-2-.08(8)(a).

(i) Each insurance policy must be amended by attachment of the Hazardous Secondary Material Facility Liability Endorsement, or evidenced by a Certificate of Liability Insurance. The wording of the endorsement must be identical to the wording specified in 335-14-2-.08(12)(h). The wording of the certificate of insurance must be identical to the wording specified in 335-14-2-.08(12)(i). The owner or operator must submit a signed duplicate original of the endorsement or the certificate of

insurance to the Department. If requested by a Department, the owner or operator must provide a signed duplicate original of the insurance policy.

(ii) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

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

3. An owner or operator may meet the requirements of 335-14-2-.08(8) by obtaining a letter of credit for liability coverage as specified in 335-14-2-.08(8)(h).

4. An owner or operator may meet the requirements of 335-14-2-.08(8) by obtaining a surety bond for liability coverage as specified in 335-14-2-.08(8)(i).

5. An owner or operator may meet the requirements of 335-14-2-.08(8) by obtaining a trust fund for liability coverage as specified in 335-14-2-.08(8)(j).

6. An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amounts required by 335-14-2-.08(8). If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this 335-14-2-.08(8)(a), the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

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

(i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in 335-14-2-.08(8)(a)1. through 6; or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous secondary material reclamation facility or intermediate facility is entered between the owner or operator and third-party claimant for liability coverage under 335-14-2-.08(8)(a)1. through 6.; or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous secondary material reclamation facility or intermediate facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under 335-14-2-.08(8)(a)1. through 6.

(b) Coverage for nonsudden accidental occurrences. An owner or operator of a hazardous secondary material reclamation facility or intermediate facility with land-based units, as defined in 335-14-1-.02(1), which are used to manage hazardous secondary materials excluded under 335-14-2-.01(4)(a)24. or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least $3 million per occurrence with an annual aggregate of at least $6 million, exclusive of legal defense costs. An owner or operator who must meet the requirements of this section may combine the required peroccurrence coverage levels for sudden and nonsudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences must maintain liability coverage in the amount of at least $4 million per occurrence and $8 million annual aggregate. This liability coverage may be demonstrated as specified in 335-14-2-.08(8)(b)1, 2, 3, 4, 5, or 6:

1. An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in 335-14-2-.08(8)(b).

(i) Each insurance policy must be amended by attachment of the Hazardous Secondary Material Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement must be identical to the wording specified in 335-14-2-.08(12)(h). The wording of the certificate of insurance must be identical to the wording specified in 335-14-2-.08(12)(i). The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Department. If requested by the Department, the owner or operator must provide a signed duplicate original of the insurance policy.

(ii) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

2. An owner or operator may meet the requirements of 335-14-2-.08(8) by passing a financial test or using the guarantee for liability coverage as specified in 335-14-2-.08(12)(f) and (g).

3. An owner or operator may meet the requirements of 335-14-2-.08(8) by obtaining a letter of credit for liability coverage as specified in 335-14-2-.08(8)(h).

4. An owner or operator may meet the requirements of 335-14-2-.08(8)(by obtaining a surety bond for liability coverage as specified in 335-14-2-.08(8)(i).

5. An owner or operator may meet the requirements of 335-14-2-.08(8) by obtaining a trust fund for liability coverage as specified in 335-14-2-.08(8)(j).

6. An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amounts required by 335-14-2-.08(8). If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under 335-14-2-.08(8)(b), the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

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

(i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in 335-14-2-.08(8)(b)1. through 6.; or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous secondary material treatment and/or storage facility is entered between the owner or operator and third-party claimant for liability coverage under 335-14-2-.08(8)(b)1. through 6.; or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous secondary material treatment and/or storage facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under 335-14-2-.08(8)(b)1. through 6.

(c) Request for variance. If an owner or operator can demonstrate to the satisfaction of the Department that the levels of financial responsibility required by 335-14-2-.08(8)(a) or (b) are not consistent with the degree and duration of risk associated with treatment and/or storage at the facility or group of facilities, the owner or operator may obtain a variance from the Department. The request for a variance must be submitted in writing to the Department. If granted, the variance will take the form of an adjusted level of required liability coverage, such level to be based on the Department's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. The Department may require an owner or operator who requests a variance to provide such technical and engineering information as is deemed necessary by the Department to determine a level of financial responsibility other than thatrequired by 335-14-2-.08(8)(a) or (b).

(d) Adjustments by the Department. If the Department determines that the levels of financial responsibility required by 335-14-2-.08(8)(a) or (b) are not consistent with the degree and duration of risk associated with treatment and/or storage at the facility or group of facilities, the Department may adjust the level of financial responsibility required under 335-14-2-.08(8)(a) or (b) as may be necessary to protect human health and the environment. This adjusted level will be based on the

Department's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the Department determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operations of a facility that is not a surface impoundment, pile, or land treatment facility, he may require that an owner or operator of the facility comply with 335-14-2-.08(8)(b). An owner or operator must furnish to the Department, within a reasonable time, any information which the Department requests to determine whether cause exists for such adjustments of level or type of coverage.

(e) Period of coverage. Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that all hazardous secondary materials have been removed from the facility or a unit at the facility and the facility or a unit has been decontaminated in accordance with the approved plan per 335-14-2-.08(4)(h), the Department will notify the owner or operator in writing that he is no longer required under 335-14-2-.01(4)(a)24.(vi)(VI) to maintain liability coverage for that facility or a unit at the facility, unless the Department has reason to believe that that all hazardous secondary materials have not been removed from the facility or unit at a facility or that the facility or unit has not been decontaminated in accordance with the approved plan.

(f) Financial test for liability coverage.

1. An owner or operator may satisfy the requirements of 335-14-2-.08(8) by demonstrating that he passes a financial test as specified in 335-14-2-.08(8)(f). To pass this test the owner or operator must meet the criteria of 335-14-2-.08(8)(f)1.(i) or (ii):

(i) The owner or operator must have:

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

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

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

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

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

(ii) The owner or operator must have:

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

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

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

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

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

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

2. The phrase "amount of liability coverage" as used in 335-14-2-.08(8)(f)1. refers to the annual aggregate amounts for which coverage is required under 335-14-2-.08(8)(a) and (b) and the annual aggregate amounts for which coverage is required under 335-14-5-.08(8)(a) and (b) and 335-14-6-.08(8)(a) and (b).

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

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in 335-14-2-.08(12)(f). If an owner or operator is using the financial test to demonstrate both assurance as specified by 335-14-2-.08(4)(e), and liability coverage, he must submit the letter specified in 335-14-2-.08(12)(f) to cover both forms of financial responsibility; a separate letter as specified in 335-14-2-.08(12)(e) is not required.

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

(iii) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies 335-14-2-.08(8)(f)1.(i) that are different from the data in the audited financial statements referred to in 335-14-2-.08(8)(f)3.(ii) or any other audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, yearend financial statements for the latest fiscal year with the amounts in such financial statements, the findings of the comparison, and the reasons for any difference.

4. The owner or operator may obtain a one-time extension of the time allowed for submission of the documents specified in 335-14-2-.08(8)(f)3 if the fiscal year of the owner or operator ends during the 90 days prior to the effective date of these regulations and if the ~~year-end~~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~~year end financial statements of the owner or operator for such fiscal year will be audited by an independent certified public accountant.

5. After the initial submission of items specified in 335-14-2-.08(8)(f)3, the owner or operator must send updated information to the within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in 335-14-2-.08(8)(f)3.

6. If the owner or operator no longer meets the requirements of 335-14-2-.08(8)(f)1, he must obtain insurance, a letter of credit, a surety bond, a trust fund, or a guarantee for the entire amount of required liability coverage as specified in 335-14-2-.08(8). Evidence of liability coverage must be submitted to the Department within 90 days after the end of the fiscal year for which the ~~year-end~~year end financial data show that the owner or operator no longer meets the test requirements.

7. The Department may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see 335-14-2-.08(8)(f)3.(ii). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Department will evaluate other qualifications on an individual basis. The owner or operator must provide evidence of insurance for the entire amount of required liability coverage as specified in 335-14-2-.08(8) within 30 days after notification of disallowance.

(g) Guarantee for liability coverage.

1. Subject to 335-14-2-.08(8)(g)2, an owner or operator may meet the requirements of 335-14-2-.08(8) by obtaining a written guarantee, hereinafter referred to as "guarantee." The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in 335-14-2-.08(8)(f)1. through 6. The wording of the guarantee must be identical to the

wording specified in 335-14-2-.08(12)(g)2. A certified copy of the guarantee must accompany the items sent to the Department as specified in 335-14-2-.08(8)(f)3. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee.

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

(ii) **[Reserved].**

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

(I) The State in which the guarantor is incorporated; and

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

(ii) In the case of corporations incorporated outside the United States, a guarantee may be used to satisfy the requirements of 335-14-2-.08(8) only if:

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

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

(h) Letter of credit for liability coverage.

1. An owner or operator may satisfy the requirements of 335-14-2-.08(8) by obtaining an irrevocable standby letter of credit that conforms to the requirements of 335-14-2-.08(8)(h) and submitting a copy of the letter of credit to the Department.

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

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

4. An owner or operator who uses a letter of credit to satisfy the requirements of 335-14-2-.08(8) may also establish a standby trust fund. Under the terms of such a letter of credit, all amounts paid pursuant to a draft by the trustee of the standby trust will be deposited by the issuing institution into the standby trust in accordance with instructions from the trustee. The trustee of the standby trust fund must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

5. The wording of the standby trust fund must be identical to the wording specified in 335-14-2-.08(12)(m).

(i) Surety bond for liability coverage.

1. An owner or operator may satisfy the requirements of 335-14-2-.08(8) by obtaining a surety bond that conforms to the requirements of 335-14-2-.08(8)(i) and submitting a copy of the bond to the Department.

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

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

4. A surety bond may be used to satisfy the requirements of 335-14-2-.08(8) only if the Attorneys General or Insurance Commissioners of:

(i) The State in which the surety is incorporated; and

(ii) Each State in which a facility covered by the surety bond is located have submitted a written statement to EPA that a surety bond executed as described in 335-14-2-.08(8) and 335-14-2-.08(12)(k) is a legally valid and enforceable obligation in that State.

(j) Trust fund for liability coverage.

1. An owner or operator may satisfy the requirements of 335-14-2-.08(8) by establishing a trust fund that conforms to the requirements of 335-14-2-.08(8)(j) and submitting an originally signed duplicate of the trust agreement to the Department.

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

3. The trust fund for liability coverage must be funded for the full amount of the liability coverage to be provided by the trust fund before it may be relied upon to satisfy the requirements of 335-14-2-.08(8). If at any time after the trust fund is created the amount of funds in the trust fund is reduced below the full amount of the liability coverage to be provided, the owner or operator, by the anniversary date of the establishment of the Fund, must either add sufficient funds to the trust fund to cause its value to equal the full amount of liability coverage to be provided, or obtain other financial assurance as specified in 335-14-2-.08(8) to cover the difference. For purposes of this paragraph, "the full amount of the liability coverage to be provided" means the amount of coverage for sudden and/or nonsudden occurrences required to be provided by the owner or operator by 335-14-2-.08(8), less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

4. The wording of the trust fund must be identical to the wording specified in ADEM Admin. Code r. 335-14-2-.08(12)(l).

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

(a) An owner or operator must notify the Department by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding. A guarantor of a corporate guarantee as specified in ADEM Admin. Code r. 335-14-2-.08(4)(e) must make such a notification if he is named as debtor, as required under the terms of the corporate guarantee.

(b) An owner or operator who fulfills the requirements of ADEM Admin. Code r. 335-14-2-.08(4) or 335-14-2-.08(8) by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The owner or operator must establish other financial assurance or liability coverage within 60 days after such an event.

(10) [Reserved].

(11) [Reserved].

(12) Wording of the instruments.

(a)1. A trust agreement for a trust fund, as specified in ADEM Admin. Code r. 335-14-2-.08(4)(a) must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Trust Agreement

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

Whereas, the Alabama Department of Environmental Management, "the Department," an agency of the State of Alabama, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a facility regulated under ADEM Admin. Code r. 335-14-5, or 335-14-6, or satisfying the conditions of the exclusion under ADEM Admin. Code r. 335-14-2-.01(4)(a)24. shall provide assurance that funds will be available if needed for care of the facility under ADEM Admin. Code r. 335-14-5-.07 or 335-14-6-.07, as applicable,

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

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

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

Section 1. Definitions. As used in this Agreement:

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

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

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

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Department in the event that the hazardous secondary materials of the grantor no longer meet the conditions of the exclusion under ADEM Admin. Code r. 335-14-2-.01(4)(a)24. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any

responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Department.

Section 4. Payments from the Fund. The Trustee shall make payments from the Fund as the Department shall direct, in writing, to provide for the payment of the costs of the performance of activities required under ADEM Admin. Code r. 335-14-5-.07 or 335-14-6-.07 for the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the Department from the Fund for expenditures for such activities in such amounts as the beneficiary shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Department specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 10. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the Department a statement confirming the value of the Trust. Any securities in the Fund

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

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

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

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

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

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

Section 16. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 15, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Department, or by the Trustee and the Department, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

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

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

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

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written: The parties below certify that the wording of this Agreement is identical to the wording specified in ADEM Admin. Code r. 335-14-2-.08(12)(a)1. as such regulations were constituted on the date first above written.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

2. The following is an example of the certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in ADEM Admin. Code r. 335-14-2-.08(4)(a).

State of_____

County of _____

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

_____
[Signature of Notary Public]

(b) A surety bond guaranteeing payment into a trust fund, as specified in ADEM Admin. Code r. 335-14-2-.08(4)(b), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Financial Guarantee Bond

Date bond executed: _____

Effective date: _____

Principal:

_____
[legal name and business address of owner or operator]

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

State of incorporation: _____

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

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

Total penal sum of bond: $_____

Surety's bond number: _____

Know All Persons By These Presents, That we, the Principal and Surety(ies) are firmly bound to the Alabama Department of Environmental Management in the event that the hazardous secondary materials at the reclamation or intermediate facility listed below no longer meet the conditions of the exclusion under ADEM Admin. Code r. 335-14-2-.01(4)(a)24, in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as cosureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the Alabama Hazardous Wastes Management and Minimization Act of 1978 (AHWMMA), as amended, to have a permit or interim status in order to own or operate each facility identified above, or to meetconditions under ADEM Admin. Code r. 335-14-2-.01(4)(a)24, and

Whereas said Principal is required to provide financial assurance as a condition of permit or interim status or as a condition of an exclusion under ADEM Admin. Code r. 335-14-2-.01(4)(a)24, and

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

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

Or, if the Principal shall satisfy all the conditions established for exclusion of hazardous secondary materials from coverage as solid waste under ADEM Admin. Code r. 335-14-2-.01(4)(a)24,

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

Or, if the Principal shall provide alternate financial assurance, as specified in ADEM Admin. Code r. 335-14-2-.08, as applicable, and obtain the Department's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the Department from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

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

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

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

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

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

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

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

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in ADEM Admin. Code r. 335-14-2-.08(12)(b) as such regulations were constituted on the date this bond was executed.

Principal

[Signature(s)] _____

[Name(s)] _____

[Title(s)] _____

[Corporate seal] _____

Corporate Surety(ies)

[Name and address]

State of incorporation:

Liability limit: $_____

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

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

Bond premium: $_____

(c) A letter of credit, as specified in ADEM Admin. Code r. 335-14-2-.08(4)(c), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Irrevocable Standby Letter of Credit

Director

Alabama Department of Environmental Management

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No._____ in your favor, in the event that the hazardous secondary materials at the covered reclamation or intermediary facility(ies) no longer meet the conditions of the exclusion under ADEM Admin. Code r. 335-14-2-.01(4)(a)24, at the request and for the account of [owner's or operator's name and address] up to the aggregate amount of [in words] U.S. dollars $_____, available upon presentation of

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

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

This letter of credit is effective as of [date] and shall expire on [date at least 1 year later], but such expiration date shall be automatically extended for a period of [at least 1 year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and [owner's or operator's name], as shown on the signed return receipts.

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

We certify that the wording of this letter of credit is identical to the wording specified in ADEM Admin. Code r. 335-14-2-.08(12)(c) as such regulations were constituted on the date shown immediately below.

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

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

(d) A certificate of insurance, as specified in ADEM Admin. Code r. 335-14-2-.08(4)(e), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certificate of Insurance

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

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

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

Face Amount: _____

Policy Number: _____

Effective Date: _____

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance so that in accordance with applicable regulations all hazardous secondary materials can be removed from the facility or any unit at the facility and the facility or any unit at the facility can be decontaminated at the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of ADEM Admin. Code r. 335-14-2-.08(4)(d) as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

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

I hereby certify that the wording of this certificate is identical to the wording specified in ADEM Admin. Code r. 335-14-2-.08(12)(d) such regulations were constituted on the date shown immediately below.

[Authorized signature for Insurer]

[Name of person signing]

[Title of person signing]

Signature of witness or notary: _____

[Date]

(e) A letter from the chief financial officer, as specified in ADEM Admin. Code r. 335-14-2-.08(4)(e), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Letter From Chief Financial Officer

[Address to the Department in which facilities for which financial responsibility is to be demonstrated through the financial test are located].

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance, as specified in ADEM Admin. Code r. 335-14-2-.08.

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

1. This firm is the owner or operator of the following facilities for which financial assurance is demonstrated through the financial test specified in ADEM Admin. Code r. 335-14-2-.08. The current cost estimates covered by the test are shown for each facility: _____.

2. This firm guarantees, through the guarantee specified in ADEM Admin. Code r. 335-14-2-.08, the following facilities owned or operated by the guaranteed party. The current cost estimates so guaranteed are shown for each facility: _____.

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

3. In States outside of Alabama, where EPA or some designated authority is administering the financial requirements of ADEM Admin. Code r. 335-14-2-.08, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in ADEM Admin. Code r. 335-14-2-.08. The current cost estimates covered by such a test are shown for each facility: _____.

4. This firm is the owner or operator of the following hazardous secondary materials management facilities for which financial assurance is not demonstrated either to the state through the financial test or any other financial assurance mechanism specified in ADEM Admin. Code r. 335-14-2-.08 or equivalent or

substantially equivalent State mechanisms. The current cost estimates not covered by such financial assurance are shown for each facility: _____.

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

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

7. This firm guarantees, through the guarantee specified in ADEM Admin. Code r. 335-14-5-.08 and 335-14-6-.08, the closure or post-closure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or postclosure care so guaranteed are shown for each facility: _____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee _____; or (3) engaged in the following substantial business relationship with the owner or operator ll, and receiving the following value in consideration of this guarantee _____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

8. In States where EPA is not administering the financial requirements of ADEM Admin. Code r. 335-14-5-.08 and 335-14-6-.08, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or postclosure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in ADEM Admin. Code r. 335-14-5-.08 and 335-14-6-.08. The current closure and/or postclosure cost estimates covered by such a test are shown for each facility: _____.

9. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to the Departmente through the financial test or any other financial assurance mechanism specified in ADEM Admin. Code r. 335-14-5-.08 and 335-14-6-.08 or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: _____.

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

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

[Fill in Alternative I if the criteria of 335-14-2-.08(4)(e)1(i). Fill in Alternative II if the criteria of 335-14-2-.08(4)(e)1(ii) are used.]

ALTERNATIVE I

1.	Sum of current cost estimates [total of all cost estimates shown in the nine paragraphs above]	$ _____
2.	Total liabilities [if any portion of the cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4]	$ _____
3.	Tangible net worth	$ _____
4.	Net worth	$ _____

5.	Current asset	$ _____	
6.	Current liabilities	$ _____	
7.	Net working capital [line 5 minus line 6]	$ _____	
8.	The sum of net income plus depreciation, depletion, and amortization	$ _____	
9.	Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.)	$ _____	
10.	Is line 3 at least $10 million?	Yes	No
11.	Is line 3 at least 6 times line 1?	Yes	No
12.	Is line 7 at least 6 times line 1?	Yes	No
13.	Are at least 90% of firm's assets located in the U.S.? If not, complete line 14.	Yes	No
14.	Is line 9 at least 6 times line 1?	Yes	No
15.	Tangible net worth [if any portion of the cost 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 line 10.	Yes	No
10.	Is line 6 at least 6 times line 1?	Yes	No

I hereby certify that the wording of this letter is identical to the wording specified in ADEM Admin. Code 335-14-2-.08(12)(e) as such regulations were constituted on the date shown immediately below.

[Signature] _____

[Name] _____

(Title] _____

[Date] _____

(f) A letter from the chief financial officer, as specified in ADEM Admin. Code r. 335-14-2-.08(8)(f), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Letter From Chief Financial Officer

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

I am the chief financial officer of [firm's name and address]. This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage under ADEM Admin. Code r. 335-14-2-.08(8)[insert "and costs assured ADEM Admin. Code r. 335-14-2-.08(4)(e)" if applicable] as specified in ADEM Admin. Code r. 335-14-2-.08.

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

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified in ADEM Admin. Code r. 335-14-2-.08: _____

The firm identified above guarantees, through the guarantee specified in ADEM Admin. Code r. 335-14-2-.08, liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the following: _____.

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

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified ADEM Admin. Code r. 335-14-5-.08 and 335-14-6-.08: _____

The firm identified above guarantees, through the guarantee specified in ADEM Admin. Code r. 335-14-5-.08 and 335-14-6-.08, liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the following: _____. The firm identified above is [insert one or more: (1) The direct or highertier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee _____; or (3) engaged in the following substantial business relationship with the owner or operator _____, and receiving the following value in consideration of this guarantee _____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.]

[If you are using the financial test to demonstrate coverage of both liability and costs assured under ADEM Admin. Code r. 335-14-2-.08(4)(e) or closure or post-closure care costs under ADEM Admin. Code r. 335-14-5-.08(4),335-14-5-.08(6), 335-14-6-.08(4) or

335-14-6-.08(6), fill in the following nine paragraphs regarding facilities and associated cost estimates. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA identification number (if any issued), name, address, and current cost estimates.]

1. This firm is the owner or operator of the following facilities for which financial assurance is demonstrated through the financial test specified in ADEM Admin. Code r. 335-14-2-.08. The current cost estimates covered by the test are shown for each facility: _____.

2. This firm guarantees, through the guarantee specified in ADEM Admin. Code r. 335-14-2-.08, the following facilities owned or operated by the guaranteed party. The current cost estimates so guaranteed are shown for each facility: _____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee _____, or (3) engaged in the following substantial business relationship with the owner or operator _____, and receiving the following value in consideration of this guarantee _____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

3. In States outside of Alabama, where the U.S. EPA or some designated authority is administering the financial requirements, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in ADEM Admin. Code r. 335-14-2-.08. The current cost estimates covered by such a test are shown for each facility: _____.

4. This firm is the owner or operator of the following hazardous secondary materials management facilities for which financial assurance is not demonstrated to the Department through the financial test or any other financial assurance mechanism specified in ADEM Admin. Code r. 335-14-2-.08. The current cost estimates not covered by such financial assurance are shown for each facility: _____.

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

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

7. This firm guarantees, through the guarantee specified in ADEM Admin. Code r. 335-14-5-.08 and 335-14-6-.08, the closure or post-closure care of the following facilities owned or operated by the guaranteed party. The current cost

estimates for the closure or postclosure care so guaranteed are shown for each facility: _____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee _____; or (3) engaged in the following substantial business relationship with the owner or operator _____, and receiving the following value in consideration of this guarantee _____].

[Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

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

9. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated to the Department through the financial test or any other financial assurance mechanism specified in ADEM Admin. Code r. 335-14-5-.08 and 335-14-6-.08 or equivalent. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: _____.

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

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

Part A. Liability Coverage for Accidental Occurrences

[Fill in Alternative I if the criteria specified in 335-14-2-.08(8)(f)1.(i) are used. Fill in Alternative II if the criteria specified in 335-14-2-.08(8)(f)1.(ii) are used.]

ALTERNATIVE I

1.	Amount of annual aggregate liability coverage to be demonstrated	$	_____
2.	Current assets	$	_____
3.	Current liabilities	$	_____
4.	Net working capital [line 2 minus line 3]	$	_____
5.	Tangible net worth	$	_____

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

ALTERNATIVE II

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

[Fill in part B if you are using the financial test to demonstrate assurance of both liability coverage and costs assured under 335-14-2-.08(4)(e) or closure or post-closure carecosts under ADEM Admin. Code r. 335-14-5-.08(4), 335-14-5-.08(6), 335-14-6-.08(4) or 335-14-6-.08(6).]

Part B. Facility Care and Liability Coverage

[Fill in Alternative I if the criteria of 335-14-2-.08(4)(e)1.(i) and 335-14-2-.08(8)(f)1.(i) are used. Fill in Alternative II if the criteria of 335-14-2-.08(4)(e)1.(ii) and 335-14-2-.08(8)(f)1.(ii) are used.]

ALTERNATIVE I

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

ALTERNATIVE II

1.	Sum of current cost estimates [total of all cost estimates listed above]	$ _____	
2.	Amount of annual aggregate liability coverage to be demonstrated	$ _____	
3.	Sum of lines 1 and 2	_____	
4.	Current bond rating of most recent issuance and name of rating service	_____	
5.	Date of issuance bond	_____	
6.	Date of maturity bond	_____	
7.	Tangible net worth (if any portion of the cost estimates is included in "total liabilities" on your financial statements you may add that portion to this line)	$ _____	
8.	Total assets in the U.S. (required only if less than 90% of firm's assets are located in the U.S.)	$ _____	
9.	Is line 7 at least $10 million?	_____ Yes	_____ No
10.	Is line 7 at least 6 times line 3?	_____ Yes	_____ No
11.	Are at least 90% of the firm's assets located in the U.S.? If not, complete line 12.	_____ Yes	_____ No
12.	Is line 8 at least 6 times line 3?	_____ Yes	_____ No

I hereby certify that the wording of this letter is identical to the wording specified in ADEM Admin. Code 335-14-2-.08(12)(f) as such rules were constituted on the date shown immediately below.

[Signature] _____

[Name] _____

(Title) ____

[Date] _

(g)(1) A corporate guarantee, as specified in 335-14-2-.08(4)(e), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Corporate Guarantee for Facility Care

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the State of [insert name of State], herein referred to as guarantor. This guarantee is made on behalf of the [owner or operator] of [business address], which is [one of the following: "our subsidiary"; "a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary"; or "an entity with which guarantor has a substantial business relationship, as defined in ADEM Admin. Code r. 335-14-5-.08(2)(h) and 335-14-6-.08(2)(h)" to the Alabama Department of Environmental Management.

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in ADEM Admin. Code r. 335-14-2-.08(4)(e).

2. [Owner or operator] owns or operates the following facility(ies) covered by this guarantee: [List for each facility: EPA Identification Number (if any issued), name, and address].

3. "Closure plans" as used below refer to the plans maintained as required by ADEM Admin. Code r. 335-14-2-.08 for the care of facilities as identified above.

4. For value received from [owner or operator], guarantor guarantees that in the event of a determination by the Department that the hazardous secondary materials at the owner or operator's facility covered by this guarantee do not meet the conditions of the exclusion under ADEM Admin. Code r. 335-14-2-.01(4)(a)24, the guarantor will dispose of any hazardous secondary material as hazardous waste, and close the facility in accordance with closure requirements found in ADEM Admin. Code

r.335-14-5 or 335-14-6, as applicable, or establish a trust fund as specified in ADEM Admin. Code r.335-14-2-.08(4)(a) in the name of the owner or operator in the amount of the current cost estimate.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the Department and to [owner or operator] that he intends to provide alternate financial assurance as specified in ADEM Admin. Code r. 335-14-2-.08, as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [owner or operator] has done so.

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

7. Guarantor agrees that within 30 days after being notified by the Department of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate financial assurance as specified in of ADEM Admin. Code r. 335-14-5, 335-14-6, or 335-14-2-.08, as applicable, in the name of [owner or operator] unless [owner or operator] has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure plan, the extension or reduction of the time of performance, or any other modification or alteration of an obligation of the owner or operator pursuant to ADEM Admin. Code r. 335-14-5, 335-14-6, or 335-14-2-.08.

9. Guarantor agrees to remain bound under this guarantee for as long as [owner or operator] must comply with the applicable financial assurance requirements of ADEM Admin. Code r. 335-14-5 and 335-14-6 or the financial assurance condition of ADEM Admin. Code r. 335-14-2-.01(4)(a)24.(vi)~~(VI)~~ for the above-listed facilities, except as provided in paragraph 10 of this agreement.

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

Guarantor may terminate this guarantee by sending notice by certified mail to the Department and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the Department approves, alternate coverage complying with ADEM Admin. Code r.335-14-2-.08(4).

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

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

11. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance as specified in ADEM Admin. Code r. 335-14-5, 335-14-6, or 335-14-2-.08, as applicable, and obtain written approval of such assurance from the Department within 90 days after a notice of cancellation by the guarantor is received by the Department from guarantor, guarantor shall provide such alternate financial assurance in the name of [owner or operator].

12. Guarantor expressly waives notice of acceptance of this guarantee by the Department or by [owner or operator]. Guarantor also expressly waives notice of amendments or modifications of the closure plan and of amendments or modifications of the applicable requirements of ADEM Admin. Code r. 335-14-5, 335-14-6, or 335-14-2-.08.

I hereby certify that the wording of this guarantee is identical to the wording specified in ADEM Admin. Code r. 335-14-2-.08(12)(g)1. as such regulations were constituted on the date first above written.

Effective date: _____

[Name of guarantor] _____

[Authorized signature for guarantor] _____

[Name of person signing] _____

[Title of person signing] _____

Signature of witness or notary: _____

(2) A guarantee, as specified in ADEM Admin. Code r. 335-14-2-.08(8)(g), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Guarantee for Liability Coverage

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

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in ADEM Admin. Code r. 335-14-2-.08(8)(g).

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

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

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

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

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

(c) Bodily injury to:

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

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

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

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

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

(e) Property damage to:

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

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

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

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

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

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the Department and to [owner or operator] that he intends to provide alternate liability coverage as specified in ADEM Admin. Code r. 335-14-2-.08(8), as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless [owner or operator] has done so.

6. The guarantor agrees to notify the Department by certified mail of a voluntary or involuntary proceeding under title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding. Guarantor agrees that within 30 days after being notified by the Department of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate liability coverage as specified in ADEM Admin. Code r. 335-14-2-.08(8) in the name of [owner or operator], unless [owner or operator] has done so.

7. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability requirements set by ADEM Admin. Code r. 335-14-2-.08(8), provided that such modification shall become effective only if the Department does not disapprove the modification within 30 days of receipt of notification of the modification.

8. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable requirements of ADEM Admin.

Code r. 335-14-2-.08(8) for the above-listed facility(ies), except as provided in paragraph 10 of this agreement.

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

10. Guarantor may terminate this guarantee by sending notice by certified mail to the Department and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the Department approves, alternate liability coverage complying with 335-14-2-.08(8).

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

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

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

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

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

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

Certification of Valid Claim

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

[Signatures] _____

Principal _____

(Notary) Date _____

[Signatures] _____

Claimant(s) _____

(Notary) Date _____

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

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

I hereby certify that the wording of the guarantee is identical to the wording specified in ADEM Admin. Code r. 335-14-2-.08(12)(g)2 as such regulations were constituted on the date shown immediately below.

Effective date: _____

[Name of guarantor] _____

[Authorized signature for guarantor] _____

[Name of person signing] _____

[Title of person signing] _____

Signature of witness or notary: _____

(h) A hazardous waste facility liability endorsement as required by ADEM Admin. Code r. 335-14-2-.08(8) must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Hazardous Secondary Material Reclamation/Intermediate Facility Liability Endorsement

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with the insured's obligation to demonstrate financial responsibility under ADEM Admin. Code r. 335-14-2-.08(8). The coverage applies at [list EPA Identification Number (if any issued), name, and address for each facility] for [insert "sudden accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs.

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions

of the policy inconsistent with subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):

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

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in ADEM Admin. Code r. 335-14-2-.08(8)(f).

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

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

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

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

I hereby certify that the wording of this endorsement is identical to the wording specified in ADEM Admin. Code r. 335-14-2-.08(12)(h) as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

[Signature of Authorized Representative of Insurer]

[Type name]

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

[Address of Representative]

(i) A certificate of liability insurance as required in ADEM Admin. Code r. 335-14-2-.08(8) (must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Hazardous Secondary Material Reclamation/ Intermediate Facility Certificate of Liability Insurance

1. [Name of Insurer], (the "Insurer"), of [address of Insurer] hereby certifies that it has issued liability insurance covering bodily injury and property damage to [name of insured], (the "insured"), of [address of insured] in connection with the insured's obligation to demonstrate financial responsibility under ADEM Admin. Code r. 335-14-5, 335-14-6, and the financial assurance condition of ADEM Admin. Code r. 335-14-2-.01(4)(a)24.(vi)(VI). The coverage applies at [list EPA Identification Number (if any issued), name, and address for each facility] for [insert "sudden accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs. The coverage is provided under policy number, issued on [date]. The effective date of said policy is [date].

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

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

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in ADEM Admin. Code r. 335-14-2-.08(8).

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

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

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

I hereby certify that the wording of this instrument is identical to the wording specified in ADEM Admin. Code r. 335-14-2-.08(12)(i) as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

[Signature of authorized representative of Insurer]

[Type name]

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

[Address of Representative]

(j) A letter of credit, as specified in ADEM Admin. Code r. 335-14-2-.08(8)(h), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Irrevocable Standby Letter of Credit

Name and Address of Issuing Institution _____

Regional Administrator(s) _____

Region(s) _____

U.S. Environmental Protection Agency _____

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

Certificate of Valid Claim

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

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

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

(c) Bodily injury to:

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

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

This exclusion applies:

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

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

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

(e) Property damage to:

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

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

(3) Property loaned to [insert principal];

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

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

[Signatures] _____

Grantor _____

[Signatures] _____

Claimant(s) _____

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

This letter of credit is effective as of [date] and shall expire on [date at least one year later], but such expiration date shall be automatically extended for a period of [at least

one year] on [date and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you, the Alabama Department of Environmental Management, and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date.

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

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

We certify that the wording of this letter of credit is identical to the wording specified in ADEM Admin. Code r. 335-14-2-.08(12)(j) as such regulations were constituted on the date shown immediately below.

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

[Date].

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

(k) A surety bond, as specified in ADEM Admin. Code r. 335-14-2-.08(8)(i), must be worded as follows: except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Payment Bond

Surety Bond No. [Insert number]

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

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

	Sudden accidental occurences	Nonsudden accidental
Penal Sum per Occurence	[insert amount]	[insert amount]
Annual Aggregate	[insert amount]	[insert amount]

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

Governing Provisions:

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

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

Conditions:

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

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

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

(c) Bodily injury to:

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

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

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

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

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

(e) Property damage to:

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

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

(3) Property loaned to [insert Principal];

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

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

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

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

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

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

Certification of Valid Claim

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

[Signature]

Principal

[Notary] Date

[Signature(s)]

Claimant(s)

[Notary] Date

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

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

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

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

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

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

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

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

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in ADEM Admin. Code r. 335-14-2-.08(12)(k), as such regulations were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate Seal]

CORPORATE SURETY[IES]

[Name and address]

State of incorporation: _____

Liability Limit: $ _____

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

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

Bond premium: $ _____

(l) A trust agreement, as specified in ADEM Admin. Code r. 335-14-2-.08(8)(j), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Trust Agreement

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

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

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

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

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

Section 1. Definitions. As used in this Agreement:

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

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

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

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

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

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

(c) Bodily injury to:

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

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

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

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

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

(e) Property damage to:

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

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

(3) Property loaned to [insert Grantor];

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

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

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

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

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

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

Certification of Valid Claim

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

[Signatures]

Grantor

[Signatures]

Claimant(s)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor with respect to any question arising as to

the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

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

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

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

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

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

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

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

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

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

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in ADEM Admin. Code r. 335-14-2-.08(12)(l) as such regulations were constituted on the date first above written.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

(2) The following is an example of the certification of acknowledgement which must accompany the trust agreement for a trust fund as specified in ADEM Admin. Code r. 335-14-2-.08(8)(j).

State of _____

County of _____

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

_____

[Signature of Notary Public]

(m) (1) A standby trust agreement, as specified in ADEM Admin. Code r. 335-14-2-.08(8)(h), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Standby Trust Agreement

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

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

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

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

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

Section 1. Definitions. As used in this Agreement:

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

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

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

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

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

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

(c) Bodily injury to:

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

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

This exclusion applies:

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

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

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

(e) Property damage to:

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

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

(3) Property loaned by [insert Grantor];

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

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

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

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

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

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

Certification of Valid Claim

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

[Signature] _____

Grantor _____

[Signatures] _____

Claimant(s) _____

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

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of the proceeds from the letter of credit drawn upon by the Trustee in accordance with the requirements of ADEM Admin. Code r. 335-14-2-.08(12)(k) and Section 4 of this Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 15. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Department, or by the Trustee and the Department, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be paid to the Grantor. The Department will agree to termination of the Trust when the owner or operator substitutes alternative financial assurance as specified in this section.

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

Section 17. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Alabama.

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

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in ADEM Admin. Code r. 335-14-2-.08(12)(m) as such regulations were constituted on the date first above written.

_____

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

_____

[Signature of Trustee]

Attest:

[Title]

[Seal]

(2) The following is an example of the certification of acknowledgement which must accompany the trust agreement for a standby trust fund as specified in ADEM Admin. Code r. 335-14-2-.08(8)(h). State requirements may differ on the proper content of this acknowledgement.

State of _____

County of _____

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

_____

[Signature of Notary Public]

Authors: Bradley N. Curvin;Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, §§ 22-30-11
History: April 8, 2016; XXXXX,XXXX

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.

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).

(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.
Statutory Authority: Code of Alabama 1975, §§ 22-30-11.
History: April 8, 2016; XXXXX,XXXX.

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.

The materials incorporated by reference are available for purchase and inspection at the Department's offices at 1400 Coliseum Boulevard, Montgomery, Alabama 36110-~~2059~~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) ~~§§ 261.1065 - 261.1079~~ **[Reserved]**.

Author: Bradley N. Curvin; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, §§ 22-30-11.
History: April 8, 2016; XXXXX,XXXX.

335-14-2-.29 Subpart CC - Air Emission Standards for Tanks, Surface Impoundments, 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-~~2059~~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).

(5) § 261.1084 Standards: Tanks (as published by EPA on January 13, 2015).

(6) ~~§ 261.1085~~ **[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).

(11) ~~§ 261.1090~~ **[Reserved].**

Author: Bradley N. Curvin; Vernon H. Crockett.
Statutory Authority: Code of Alabama, 1975, §§ 22-30-11.
History: April 8, 2016; XXXXX,XXXX.

TABLE 1 - WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Site	Waste Description
Alabama Power Company - Barry Steam Plant Bucks, AL ALD082148800	Boiler chemical cleanout wastewater (EPA HW No. D007) that is generated at the Alabama Power Co. – Barry Steam Plant (APC – Barry) facility. The waste will not be subject to regulation as D007 at the point of generation if it is not placed outside on the land prior to shipment to a facility that is licensed, permitted, or otherwise authorized to accept the exempted wastewater in accordance with ADEM Admin. Code Division 335-13, Solid Waste Program for recycling, for incineration, or for disposal in a lined landfill with leachate collection. The exclusion is effective as of ~~XXXXX~~April 8, 2016. (1) Hazardous Waste Determination. To demonstrate that the waste continues to be a non-hazardous waste, APC – Barry must verify that the waste contains only trivalent chromium and does not exhibit any other hazardous characteristics by sampling in accordance with 335-14-1-.03(2)(h) during every second boiler clean out event. If at any time the waste is determined to be hazardous, APC – Barry must immediately manage it as a hazardous waste as required by ADEM Admin. Code div. 335-14. (2) Records Documentation. Onsite records documentation must include: hazardous waste determinations, 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. These documents must be maintained 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 ADEM. (3) Reopener Language. (A) If, anytime after disposal of the exempted waste, APC – Barry possesses or is otherwise made aware of any data (including, but not limited, to leachate data or groundwater monitoring data) relevant to the exempted waste at the facility indicating that hexavalent chromium is present in the leachate at a concentration higher than the regulatory limit, or is in the groundwater at a concentration higher than the maximum allowable groundwater concentration, then APC – Barry must report such data in writing to ADEM within 10 days of first possessing or being made aware of that data. (B) Based on the information described in paragraph (A) and any other information received from any source, ADEM will make a preliminary determination as to whether the reported

Site	Waste Description
	information requires departmental action to protect human health or the environment. Further action may include suspending or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If ADEM determines that the reported information does require Department action, ADEM will notify APC – Barry in writing of the actions necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing APC – Barry with an opportunity to present information as to why the proposed departmental action is not necessary or to suggest an alternative action. APC – Barry shall have 30 days from the date of ADEM's notice to present the information. (D) If after 30 days APC – Barry presents no further information, ADEM will issue a final written determination describing the Department's actions that are necessary to protect human health or the environment. Any required action described in ADEM's determination shall become effective immediately, unless the Department provides otherwise.
Alabama Power Company - E.C. Gaston Steam Plant Wilsonville, AL ALD083742858	Boiler chemical cleanout wastewater (EPA HW No. D007) that is generated at the Alabama Power Co. – E.C. Gaston Steam Plant (APC – E. C. Gaston) facility. The waste will not be subject to regulation as D007 at the point of generation if it is not placed outside on the land prior to shipment to a facility that is licensed, permitted, or otherwise authorized to accept the exempted wastewater in accordance with ADEM Admin. Code Division 335-13, Solid Waste Program for recycling, for incineration, or for disposal in a lined landfill with leachate collection. The exclusion is effective as of ~~XXXXX~~April 8, 2016. (1) Hazardous Waste Determination. To demonstrate that the waste continues to be a non-hazardous waste, APC – E.C. Gaston must verify that the waste contains only trivalent chromium and does not exhibit any other hazardous characteristics by sampling in accordance with 335-14-1-.03(2)(h) during every second boiler clean out event. If at any time the waste is determined to be hazardous, APC – Gaston must immediately manage it as a hazardous waste as required by ADEM Admin. Code div. 335-14. (2) Records Documentation. Onsite records documentation must include: hazardous waste determinations, 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. These documents must be maintained on site for no less than three years. The retention period for the

Site	Waste Description
	documentation is automatically extended during the course of any enforcement action or as requested by ADEM. (3) Reopener Language. (A) If, anytime after disposal of the exempted waste, APC – E. C. Gaston possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) relevant to the exempted waste at the facility indicating that hexavalent chromium is present in the leachate at a concentration higher than the regulatory limit, or is in the groundwater at a concentration higher than the maximum allowable groundwater concentration, then APC – E. C. Gaston must report such data in writing to ADEM within 10 days of first possessing or being made aware of that data. (B) Based on the information described in paragraph (A) and any other information received from any source, ADEM will make a preliminary determination as to whether the reported information requires departmental action to protect human health or the environment. Further action may include suspending or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If ADEM determines that the reported information does require Department action, ADEM will notify APC – E. C. Gaston in writing of the actions the Department believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing APC – E. C. Gaston with an opportunity to present information as to why the proposed departmental action is not necessary or to suggest an alternative action. APC E.C. Gaston shall have 30 days from the date of ADEM's notice to present the information. (D) If after 30 days APC – E. C. Gaston presents no further information, ADEM will issue a final written determination describing the Department's actions that are necessary to protect human health or the environment. Any required action described in ADEM's determination shall become effective immediately, unless the Department provides otherwise.
Alabama Power Company - Gadsden Steam Plant Gadsden, AL ALD000615542	Boiler chemical cleanout wastewater (EPA HW No. D007) that is generated at the Alabama Power Co. - Gadsden Steam Plant (APC – Gadsden) facility. The waste will not be subject to regulation as D007 at the point of generation if it is not placed outside on the land prior to shipment to a facility that is licensed, permitted, or otherwise authorized to accept the exempted wastewater in accordance with ADEM Admin. Code Division 335-13, Solid Waste Program for recycling, for incineration, or for disposal in a lined landfill with leachate collection. The exclusion is effective as of ~~XXXXX~~April 8, 2016.

Site	Waste Description
	(1) Hazardous Waste Determination. To demonstrate that the waste continues to be a non-hazardous waste, APC – Gadsden must verify that the waste contains only trivalent chromium and does not exhibit any other hazardous characteristics by sampling in accordance with 335-14-1-.03(2)(h) during every second boiler clean out event. If at any time the waste is determined to be hazardous, APC – Gadsden must immediately manage it as a hazardous waste as required by ADEM Admin. Code div. 335-14. (2) Records Documentation. Onsite records documentation must include: hazardous waste determinations, 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. These documents must be maintained 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 ADEM. (3) Reopener Language. (A) If, anytime after disposal of the exempted waste, APC - Gadsden possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) relevant to the exempted waste at the facility indicating that hexavalent chromium is present in the leachate at a concentration higher than the regulatory limit, or is in the groundwater at a concentration higher than the maximum allowable groundwater concentration, then APC – Gadsden must report such data in writing to ADEM within 10 days of first possessing or being made aware of that data. (B) Based on the information described in paragraph (A) and any other information received from any source, ADEM will make a preliminary determination as to whether the reported information requires departmental action to protect human health or the environment. Further action may include suspending or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If ADEM determines that the reported information does require Department action, ADEM will notify APC - Gadsden in writing of the actions the Department believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing APC - Gadsden with an opportunity to present information as to why the proposed departmental action is not necessary or to suggest an alternative action. APC - Gadsden

Site	Waste Description
	shall have 30 days from the date of ADEM's notice to present the information. (D) If after 30 days APC - Gadsden presents no further information, ADEM will issue a final written determination describing the Department's actions that are necessary to protect human health or the environment. Any required action described in ADEM's determination shall become effective immediately, unless the Department provides otherwise.
Alabama Power Company - Gorgas Steam Plant Parrish, AL ALD000615567	Boiler chemical cleanout wastewater, D007, that is generated at the Alabama Power Company Gorgas Steam Plant (APC – Gorgas) facility. The waste will not be subject to regulation as D007 at the point of generation if it is not placed outside on the land prior to shipment to a facility that is licensed, permitted, or otherwise authorized to accept the exempted wastewater in accordance with ADEM Admin. Code Division 335-13, Solid Waste Program for recycling, for incineration, or for disposal in a lined landfill with leachate collection. The exclusion is effective as of ~~XXXXX~~April 8, 2016. (1) Hazardous Waste Determination. To demonstrate that the waste continues to be a non-hazardous waste, APC – Gorgas must verify that the waste contains only trivalent chromium and does not exhibit any other hazardous characteristics by sampling in accordance with 335-14-1-.03(2)(h) during every second boiler clean out event. If at any time the waste is determined to be hazardous, APC – Gorgas must immediately manage it as a hazardous waste as required by ADEM Admin. Code div. 335-14. (2) Records Documentation. Onsite records documentation must include: hazardous waste determinations, 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. These documents must be maintained 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 ADEM. (3) Reopener Language. (A) If, anytime after disposal of the exempted waste, APC – Gorgas possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) relevant to the exempted waste at the facility indicating that hexavalent chromium is present in the leachate at a concentration higher than the regulatory limit, or is in the groundwater at a concentration higher than the maximum allowable groundwater concentration, then APC – Gorgas must

Site	Waste Description
	report such data in writing to ADEM within 10 days of first possessing or being made aware of that data. (B) Based on the information described in paragraph (A) and any other information received from any source, ADEM will make a preliminary determination as to whether the reported information requires departmental action to protect human health or the environment. Further action may include suspending or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If ADEM determines that the reported information does require Department action, ADEM will notify APC – Gorgas in writing of the actions the Department believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing APC – Gorgas with an opportunity to present information as to why the proposed departmental action is not necessary or to suggest an alternative action. APC – Gorgas shall have 30 days from the date of ADEM's notice to present the information. (D) If after 30 days APC – Gorgas presents no further information, ADEM will issue a final written determination describing the Department's actions that are necessary to protect human health or the environment. Any required action described in ADEM's determination shall become effective immediately, unless the Department provides otherwise.
Alabama Power Company - Greene County Steam Plant Demopolis, AL ALD000615609	Boiler chemical cleanout wastewater, D007, that is generated at the Alabama Power Co. – Greene County Steam Plant (APC – Greene Co.) facility. The waste will not be subject to regulation as D007 at the point of generation if it is not placed outside on the land prior to shipment to a facility that is licensed, permitted, or otherwise authorized to accept the exempted wastewater in accordance with ADEM Admin. Code Division 335-13, Solid Waste Program for recycling, for incineration, or for disposal in a lined landfill with leachate collection. The exclusion is effective as of ~~XXXXX~~April 8, 2016. (1) Hazardous Waste Determination. To demonstrate that the waste continues to be a non-hazardous waste, APC – Greene County must verify that the waste contains only trivalent chromium and does not exhibit any other hazardous characteristics by sampling in accordance with 335-14-1-.03(2)(h) during every second boiler clean out event. If at any time the waste is determined to be hazardous, APC – Greene must immediately manage it as a hazardous waste as required by ADEM Admin. Code div. 335-14. (2) Records Documentation. Onsite records documentation must include: hazardous waste determinations, the volume of

Site	Waste Description
	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. These documents must be maintained 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 ADEM. (3) Reopener Language. (A) If, anytime after disposal of the exempted waste, APC – Greene Co. possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) relevant to the exempted waste at the facility indicating that hexavalent chromium is present in the leachate at a concentration higher than the regulatory limit, or is in the groundwater at a concentration higher than the maximum allowable groundwater concentration, then APC – Greene Co. must report such data in writing to ADEM within 10 days of first possessing or being made aware of that data. (B) Based on the information described in paragraph (A) and any other information received from any source, ADEM will make a preliminary determination as to whether the reported information requires departmental action to protect human health or the environment. Further action may include suspending or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If ADEM determines that the reported information does require Department action, ADEM will notify APC – Greene Co. in writing of the actions the Department believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing APC – Greene Co. with an opportunity to present information as to why the proposed departmental action is not necessary or to suggest an alternative action. APC – Greene Co. shall have 30 days from the date of ADEM's notice to present the information. (D) If after 30 days APC – Greene Co. presents no further information, ADEM will issue a final written determination describing the Department's actions that are necessary to protect human health or the environment. Any required action described in ADEM's determination shall become effective immediately, unless the Department provides otherwise.
Alabama Power Company - Miller Steam Plant Quinton, AL	Boiler chemical cleanout wastewater, D007, that is generated at the Alabama Power Company - Miller Steam Plant (APC – Miller) facility. The waste will not be subject to regulation as D007 at the point of generation if it is not placed outside on the land

Site	Waste Description
ALD000615658	prior to shipment to a facility that is licensed, permitted, or otherwise authorized to accept the exempted wastewater in accordance with ADEM Admin. Code Division 335-13, Solid Waste Program for recycling, for incineration, or for disposal in a lined landfill with leachate collection. The exclusion is effective as of ~~XXXXX~~April 8, 2016. (1) Hazardous Waste Determination. To demonstrate that the waste continues to be a non-hazardous waste, APC – Miller must verify that the waste contains only trivalent chromium and does not exhibit any other hazardous characteristics by sampling in accordance with 335-14-1-.03(2)(h) during every second boiler clean out event. If at any time the waste is determined to be hazardous, APC – Miller must immediately manage it as a hazardous waste as required by ADEM Admin. Code div. 335-14. (2) Records Documentation. Onsite records documentation must include: hazardous waste determinations, 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. These documents must be maintained 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 ADEM. (3) Reopener Language. (A) If, anytime after disposal of the exempted waste, APC – Miller possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) relevant to the exempted waste at the facility indicating that hexavalent chromium is present in the leachate at a concentration higher than the regulatory limit, or is in the groundwater at a concentration higher than the maximum allowable groundwater concentration, then APC – Miller must report such data in writing to ADEM within 10 days of first possessing or being made aware of that data. (B) Based on the information described in paragraph (A) and any other information received from any source, ADEM will make a preliminary determination as to whether the reported information requires departmental action to protect human health or the environment. Further action may include suspending or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If ADEM determines that the reported information does require Department action, ADEM will notify APC – Miller in writing of the actions the Department believes are necessary to

Site	Waste Description
	protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing APC – Miller with an opportunity to present information as to why the proposed departmental action is not necessary or to suggest an alternative action. APC – Miller shall have 30 days from the date of ADEM's notice to present the information. (D) If after 30 days APC – Miller presents no further information, ADEM will issue a final written determination describing the Department's actions that are necessary to protect human health or the environment. Any required action described in ADEM's determination shall become effective immediately, unless the Department provides otherwise.
Ampex Recording Media Corp. Opelika, AL ALD 003 297 116	Solvent recovery residues in the powder or pellet form (EPA Hazardous Waste Nos. F003 and F005) generated from the recovery of spent solvents from the manufacture of tape recording media (generated at a maximum annual rate of 1,000 cubic yards in the powder or pellet form) after August 9, 1993. In order to confirm that the characteristics of the wastes do not change significantly, the facility must, on an annual basis, analyze a representative composite sample of the waste (in its final form) for the constituents listed in 335-14-2-.03(5) using the method specified therein. The annual analytical results, including quality control information, must be compiled, certified according to 335-14-1-.03(2)(i)16., maintained on-site for a minimum of five years, and made available for inspection upon request by any employee or representative of the EPA or the State of Alabama. Failure to maintain the required records on-site will be considered by the EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by the EPA.
Hoechst Celanese Corp. Bucks, AL ALD 056 113 756	Distillation bottoms generated (at a maximum annual rate of 31,500 cubic yards) from the production of sodium hydrosulfite (EPA Hazardous Waste No. F003). This exclusion was published by the EPA on July 17, 1990. This exclusion does not include the waste contained in Hoechst Celanese's on-site surface impoundment.
Honda Manufacturing of Alabama, LLC Lincoln, AL ALR000016261	Wastewater treatment sludge, (EPA Hazardous Waste NO. F019) that is generated at the Honda Manufacturing of Alabama, LLC (Honda) facility. The sludge will not be subject to the F019 listing at the point of generation if the wastes are not placed outside on the land prior to shipment to a facility that is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with ADEM Admin. Code Division 335-13, Solid Waste Program for recycling, for incineration, or for disposal in a lined landfill with

Site	Waste Description
	leachate collection. The exclusion became effective as of December 10, 2007. (1) Hazardous Waste Determination. To demonstrate that the waste continues to be non-hazardous waste, Honda must perform a waste determination as required by 335-14-3-.01(2) on the sludge at least every three years. In addition, the waste must be managed according to all requirements found in 335-14-3. If at any time the waste is determined to be hazardous, Honda must immediately manage the sludge as a hazardous waste as required by Division 335-14. (2) Records Documentation. Onsite records documentation must include: hazardous waste determinations, 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. These documents must be maintained 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 ADEM. (3) Reopener Language. (A) If, anytime after disposal of the delisted waste, Honda possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) relevant to the delisted waste at the facility indicating that any constituent is at a level in the leachate higher than the specified delisting level, or is in the groundwater at a concentration higher than the maximum allowable groundwater concentration, then Honda must report such data in writing to ADEM within 10 days of first possessing or being made aware of that data. (B) Based on the information described in paragraph (A) and any other information received from any source, ADEM will make a preliminary determination as to whether the reported information requires departmental action to protect human health or the environment. Further action may include suspending or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If ADEM determines that the reported information does require Department action, ADEM will notify Honda in writing of the actions the Department believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing Honda with an opportunity to present information as to why the proposed departmental action is not necessary or to suggest an alternative action. Honda shall have 30 days from the date of the ADEM's notice to present the information.

Site	Waste Description
	(D) If after 30 days Honda presents no further information, ADEM will issue a final written determination describing the Department's actions that are necessary to protect human health or the environment. Any required action described in the ADEM's determination shall become effective immediately, unless the Department provides otherwise.
ISE Innomotive Systems US, Inc. Tuscaloosa, AL ALR 000 031 773	Wastewater treatment sludge (EPA Hazardous Waste No. F019) generated at the ISE Innomotive Systems US, Inc. (ISE) facility. The sludge will not be subject to the F019 classification at the point of generation if the waste is not placed outside on the land prior to being legitimately recycled or disposed of in a permitted hazardous waste landfill or a municipal solid waste landfill permitted by the Department. The exclusion became effective as of May 17, 2012. (1) Hazardous Waste Determination. To demonstrate that the waste continues to be a non-hazardous waste, ISE must perform a waste determination as required by 335-14-3-.01(2) on the sludge at least every three years. If at any time the waste is determined to be hazardous, ISE must immediately manage the sludge as a hazardous waste as required by Division 335-14. (2) Records Documentation. Onsite records documentation must include: hazardous waste determinations, the volume of waste generated and disposed offsite; documentation showing when the waste volumes were generated and sent offsite; the name and address of the receiving facility; and documentation confirming receipt of the waste by the receiving facility. These documents must be maintained onsite 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 Department. (3) Reopener Language. (A) If, anytime after disposal of the delisted waste, ISE possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) relevant to the excluded waste at the facility indicating that any constituent is at a level in the leachate higher than the specified exclusion level, or is in the groundwater at a concentration higher than the maximum allowable groundwater concentration, then ISE must report such data in writing to the Department within 10 days of first possessing or being made aware of that data. (B) Based on the information described in paragraph (A) and any other information received from any source, the Department will make a preliminary determination as to whether the reported information requires departmental action to protect human health or the environment. Further action may include suspending or revoking the exclusion, or other

Site	Waste Description
	appropriate response necessary to protect human health and the environment. (C) If the Department determines that the reported information requires Department action, the Department will notify ISE in writing of the actions necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing ISE with an opportunity to present information as to why the proposed departmental action is not necessary or to suggest an alternative action. ISE shall have 30 days from the date of the Department's notice to present the information. (D) If, after 30 days, ISE presents no further information, the Department will issue a final written determination describing the Department's actions that are necessary to protect human health or the environment. Any required action described in the Department's determination shall become effective immediately, unless the Department provides otherwise.
Mercedes-Benz U.S. International, Inc. Vance, AL ALR00002246	Wastewater treatment sludge (EPA Hazardous Waste No. F019) generated at the Mercedes-Benz U.S. International, Inc. (MBUSI) facility. The sludge will not be subject to the F019 listing at the point of generation if the wastes are not placed outside on the land prior to shipment to a facility that is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with ADEM Admin. Code Division 335-13, Solid Waste Program for recycling, incineration, or disposal in a lined landfill with leachate collection. The exclusion became effective as of July 20, 2009. (1) Hazardous Waste Determination. To demonstrate that the waste continues to be a non-hazardous waste, MBUSI must perform a waste determination as required by 335-14-3-.01(2) on the sludge at least every three years. In addition, the waste must be managed according to all requirements found in 335-14-3. If at any time the waste is determined to be hazardous, MBUSI must immediately manage the sludge as a hazardous waste as required by Division 335-14. (2) Records Documentation. Onsite records documentation must include: hazardous waste determinations, the volume of waste generated and disposed of offsite; 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. These documents must be maintained 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 Department. (3) Reopener Language.

Site	Waste Description
	(A) If, anytime after disposal of the delisted waste, MBUSI possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) relevant to the delisted waste at the facility indicating that any constituent is at a level in the leachate higher than the specified delisting level, or is in the groundwater at a concentration higher than the maximum allowable groundwater concentration, then MBUSI must report such data in writing to the Department within 10 days of first possessing or being made aware of that data. (B) Based on the information described in paragraph (A) and any other information received from any source, the Department will make a preliminary determination as to whether the reported information requires departmental action to protect human health or the environment. Further action may include suspending or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If ADEM determines that the reported information does require Department action, ADEM will notify MBUSI in writing of the actions the Department believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing MBUSI with an opportunity to present information as to why the proposed departmental action is not necessary or to suggest an alternative action. MBUSI shall have 30 days from the date of the Department's notice to present the information. (D) If after 30 days MBUSI presents no further information, ADEM will issue a final written determination describing the Department's actions that are necessary to protect human health or the environment. Any required action described in the Department's determination shall become effective immediately, unless the Department provides otherwise.
Mitsubishi Polycrystalline Silicon America Corporation Theodore, AL ALR 000 008 110	Chlorination reactor dust (EPA Hazardous Waste No. D007) generated at the Mitsubishi Polycrystalline Silicon America Corporation (Mitsubishi) facility. The dust will not be subject to the D007 classification at the point of generation if the wastes are not placed outside on the land prior to being legitimately recycled or disposed in a permitted hazardous waste landfill or a municipal solid waste landfill permitted by the Department. The exclusion became effective as of May 11, 2012. (1) Hazardous Waste Determination. At least once every three years, Mitsubishi must collect and analyze one representative sample of the chlorination reactor dust to demonstrate that the dust continues to meet the conditions of the exclusion. If at any time the waste is determined to not meet the conditions of

Site	Waste Description
	the exclusion, Mitsubishi must immediately manage the dust as a hazardous waste as required by Division 335-14. (2) Records Documentation. Onsite records documentation must include: hazardous waste determinations, the volume of waste generated and disposed offsite; documentation showing when the waste volumes were generated and sent offsite; the name and address of the receiving facility; and documentation confirming receipt of the waste by the receiving facility. These documents must be maintained onsite 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 Department. (3) Reopener Language. (A) If, anytime after disposal of the excluded waste, Mitsubishi possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) relevant to the excluded waste at the facility indicating that any constituent is at a level in the leachate higher than the specified exclusion level, or is in the groundwater at a concentration higher than the maximum allowable groundwater concentration, then Mitsubishi must report such data in writing to the Department within 10 days of first possessing or being made aware of that data. (B) Based on the information described in paragraph (A) and any other information received from any source, the Department will make a preliminary determination as to whether the reported information requires departmental action to protect human health or the environment. Further action may include suspending or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If the Department determines that the reported information does require Department action, the Department will notify Mitsubishi in writing of the actions the Department believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing Mitsubishi with an opportunity to present information as to why the proposed departmental action is not necessary or to suggest an alternative action. Mitsubishi shall have 30 days from the date of the Department's notice to present the information. (D) If, after 30 days, Mitsubishi presents no further information, the Department will issue a final written determination describing the Department's actions that are necessary to protect human health or the environment. Any required action described in the Department's determination shall become effective immediately, unless the Department provides otherwise.

Site	Waste Description
Reynolds Metals Company Sheffield, AL ALD 053 365 160	Dewatered wastewater treatment sludges (EPA Hazardous Waste No. F019) generated (at a maximum annual rate of 3,840 cubic yards) from the chemical conversion coating of aluminum after August 15, 1986.
SONY Magnetic Products of America. Dothan, AL ALD 040 653 636	Hazardous Waste Nos. F003 and F005) generated from the recovery of spent solvents from the manufacture of tape recording media (generated at a maximum annual rate of 200 cubic yards) after March 31, 2004. In order to confirm that the characteristics of the wastes do not change significantly, the facility must, on an annual basis, analyze a representative composite sample of the waste (in its final form) for the constituents listed in 335-14-2-.03(5) using the method specified therein. The annual analytical results, including quality control information, must be compiled, certified according to 335-14-1-.03(2)(i)16., maintained on-site for a minimum of five years, and made available for inspection upon request by any employee or representative of the EPA or the State of Alabama. Failure to maintain the required records on-site will be considered by the Department, at its discretion, sufficient basis to revoke the exclusion to the extent directed by the Alabama Department of Environmental Management.
Universal Oil Products Decatur, AL ALD 053 363 776	Wastewater treatment sludges EPA Hazardous Waste No. F006) generated from electroplating operations and contained in two on-site lagoons on August 15, 1986. This is a one-time exclusion.

TABLE 2 - WASTES EXCLUDED FROM SPECIFIC SOURCES

Site	Waste Description
Akzo Chemicals Inc. (formerly Stauffer Chemical Company) Axis, AL ALD 008 161 176	Brine purification muds generated from their chlor-alkali manufacturing operations (EPA Hazardous Waste No. K071) and disposed of in brine mud pond HWTF: 5 EP-201.
Occidental Chemical Corporation Muscle Shoals Plant Sheffield, AL ALD 004 019 642	Retorted wastewater treatment sludge from the mercury cell process in chlorine production (EPA Hazardous Waste No. K106) after September 19, 1989. This exclusion is conditional upon the submission of data obtained from Occidental's full-scale retort treatment system because Occidental's original data were based on a pilot-scale retort system. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern once the full-scale treatment facility is in operation, Occidental must implement a testing program. All sampling and analyses (including quality control procedures) must be performed using appropriate methods. As applicable

Site	Waste Description
	to the method-defined parameters of concern, analyse requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. This testing program must meet the following conditions for the exclusion to be valid: (1) Initial Testing - During the first four weeks of full-scale retort operation, Occidental must do the following: (A) Collect representative grab samples from every batch of retorted material and composite the grab samples to produce a weekly composite sample. The weekly composite samples, prior to disposal or recycling, must be analyzed for the EP leachate concentrations of all the EP toxic metals (except mercury), nickel, and cyanide (using distilled water in the cyanide extractions). Occidental must report the analytical test data, including all quality control data, obtained during this initial period no later than 90 days after the treatment of the first full-scale batch. (B) Collect representative grab samples of every batch of retorted material prior to its disposal or recycling and analyze the sample for EP leachate concentration of mercury. Occidental must report the analytical test data, including all quality control data, within 90 days after the treatment of the first full-scale batch. (2) Subsequent Testing - After the first four weeks of full-full-scale retort operation, Occidental must do the following: (A) Continue to sample and test as described in Condition (1)(A). Occidental must compile and store on-site for a minimum of three years all analytical data and quantity control data. These data must be furnished upon request and made available for inspection by any employee or representative of the EPA or the State of Alabama. These testing requirements shall be terminated by the EPA and the Department when the results of four consecutive weekly composite samples of the petitioned waste, obtained from either the initial testing or subsequent testing show the maximum allowable levels in Condition (3) are not exceeded and the Section Chief, Variances Section, and the Department notifies Occidental that the requirements of this condition have been lifted. (B) Continue to sample and test for mercury as described in Condition (1)(B). Occidental must compile and store on-on-site for a minimum of three years all analytical data and quality control data. These data must be furnished upon request and

Site	Waste Description
	made available for inspection by any employee or representative of the EPA or the State of Alabama. These testing requirements shall remain in effect until Occidental provides the EPA and the Department with analytical and quality control data for 30 consecutive batches of retorted material, collected as described in Condition (1)(B), demonstrating that the EP leachable levels of mercury are below the maximum allowable level in Condition (3) and the Section Chief, Variances Section, and the Department notifies Occidental that the testing in Condition (2)(B) may be replaced with (2)(C). (C) [If the conditions in (2)(B) are satisfied, the testing requirements for mercury in (2)(B) shall be replaced with the following condition.] Collect representative grab samples from every batch of retorted material on a daily basis and composite the grab samples to produce a weekly composite sample. Occidental must analyze each weekly composite sample prior to its disposal or recycling for the EP leachate concentration of mercury. Occidental must compile and store on-site for a minimum of three years all analytical data and quality control data. These data must be furnished upon request and made available for inspection by an employee or representative of the EPA or the State of Alabama. (3) If, under Condition (1) or (2), the EP leachate concentrations for chromium, lead, arsenic, or silver exceed 1.616 mg/l; for barium exceeds 32.3 mg/l; for cadmium or selenium exceed 0.323 mg/l; for mercury exceeds 0.065 mg/l; for nickel exceeds 16.15 mg/l; or for cyanide exceeds 22.61 mg/l, the waste must either be retreated until it meets these levels or managed and disposed of in accordance with Subtitle C of RCRA. (4) Within one week of system start-up, Occidental must notify the Section Chief, Variances Section (see address below) and the Department when the full-scale retort system is on-line and waste treatment has begun. All data obtained through Condition (1) must be submitted to the Section Chief, Variances Section, PSPD/OSW (OS-343), U.S. EPA, 401 M Street SW, Washington, DC 20460 and the Director of the Department within the time period specified in Condition (1). At the Section Chief's or the Director's request, Occidental must submit any other analytical data obtained through Condition (2) to the above address, and to the Department within the time period specified by the Section Chief or the Department. Failure to submit the required data will be considered by the Agency or the Department sufficient basis to revoke Occidental's exclusion to the extent directed by the EPA and the Department. All data must be accompanied by the following certification statement:

Site	Waste Description
	"Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of State of Alabama law and the Federal Code which include, but may not be limited to, 18 U.S.C. 6926), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. In the event that any of this information is determined by the EPA or the Department in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of wastes will be void as if it never had effect or to the extent directed by the EPA or the Department and that the company will be liable for any actions taken in contravention of the company's AHWMMA, RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion."

Authors: Stephen C. Maurer; Philip Woods; Bradley N. Curvin; Theresa A. Maines; James K. Burgess; Ronisha A. Moncrief; Linda Knickerbocker; Metz P. Duites; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, §§ 22-30-10, 22-30-11.
History: November 19, 1980.
Amended: February 15, 1988; August 24, 1989; December 6, 1990; January 25, 1992; January 5, 1995; March 27, 1998; April 4, 2006; April 3, 2007; May 27, 2008; March 31, 2009; March 30, 2010; April 3, 2012; March 26, 2013; April 8, 2016; XXXXX,XXXX.

335-14-3-.01 General.

(1) Purpose, scope, and applicability.

(a) 335-14-3 establishes standards for

1. Generators of hazardous waste and

2. Generators of other waste destined for disposal at commercial hazardous waste disposal facilities located in the State of Alabama.

(b) 335-14-2-.01(5)(c) and (d) must be used to determine the applicability of the provisions of 335-14-3 that are dependent on calculations of the quantity of hazardous waste generated per month.

(c) In addition to the requirements of Chapters 335-14-5 through 335-14-9, a generator who treats, stores, or disposes of hazardous waste on-site must only comply with the following with respect to that waste:

1. 335-14-3-.01(2) for determining whether or not he has a hazardous waste;

2. 335-14-3-.01(3) for obtaining an EPA identification number;

3. 335-14-3-.03(5) for accumulation of hazardous waste;

4. 335-14-3-.04(1)(c) and (d) for recordkeeping;

5. 335-14-3-.04(5) for additional reporting; and

6. If applicable, 335-14-3-.07(1) for farmers.

(d) Any person who exports or imports hazardous wastes that are considered hazardous under U.S. national procedures to or from the countries listed in 335-14-3-.05(9)(a)1. for recovery must comply with 335-14-3-.09. A waste is considered hazardous under U.S. national procedures if the waste meets the definition of hazardous waste in 335-14-2-.01(3) and is subject to either the manifesting requirements of 335-14-3-.02, the universal waste management standards of 335-14-11, or the export requirements in the spent lead-acid battery management standards of 335-14-7-.07.

(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) 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.

(h) The generators of other waste destined for disposal at commercial hazardous waste disposal facilities located in the State of Alabama must only comply with 335-14-3-.08, Appendix I, and Appendix II.

(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) The laboratories owned by an eligible academic entity that chooses to be subject to the requirements of 335-14-3-.12 are not subject to (for purposes of this paragraph, the terms "laboratory" and "eligible academic entity" shall have the meaning as defined in 335-14-1-.02):

1. The requirements of 335-14-3-.01(2) or 335-14-3-.03(5)(c), for large quantity generators and small quantity generators, except as provided in 335-14-3-.12, and

2. The conditions of 335-14-2-.01(5)(b), for conditionally exempt small quantity generators, except as provided in 335-14-3-.12.

[**Note 1**: The provisions of 335-14-3-.03(5) are applicable to the on-site accumulation of hazardous waste by generators. Therefore, the provisions of 335-14-3-.03(5) only apply to owners or operators who are shipping hazardous waste which they generated at the facility.]

[**Note 2**: 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.]

(2) Hazardous waste determination. A person who generates a solid waste, as defined in 335-14-2-.01(2), must determine if that waste is a hazardous waste using the following method:

(a) He should first determine if the waste is excluded from regulation under 335-14-2-.01(4);

(b) He must then determine if the waste is listed as a hazardous waste in 335-14-2-.04; and

(c) For purposes of compliance with Chapter 335-14-9, or if the waste is not listed in 335-14-2-.04, the generator must then determine whether the waste is identified in 335-14-2-.03 by either:

1. Testing the waste according to the methods set forth in 335-14-2-.03 or according to an equivalent testing method approved under 335-14-1-.03; or

2. Applying knowledge of the hazardous characteristic of the waste in light of the materials or the processes used.

(d) If the waste is determined to be hazardous, the generator must refer to Chapters 335-14-2, 335-14-5, 335-14-6, 335-14-7, 335-14-9, and 335-14-11 for possible exclusions or restrictions pertaining to management of his specific waste.

(3) EPA identification numbers.

(a) A generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the Department.

(b) A generator who has not received an EPA identification number may obtain one by applying to the Department using the ADEM Form 8700-12. Upon receiving the request, the Department will assign an EPA identification number to the generator. A generator shall file a new ADEM Form 8700-12 if the generator changes physical location.

[**Note:** EPA identification numbers are location specific and cannot be transferred from one individual generation site to another.]

(c) No notification under 335-14-3-.01 shall be deemed complete without payment of the certification fee specified in Chapter 335-1-6 of the Department's Administrative Code.

(d) 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 ~~S~~state).

(4) Annual Submission of ADEM Form 8700-12, Notification of Regulated Waste Activity and Certifications of Waste Management.

(a) A large quantity generator or small quantity generator must submit a correct and complete ADEM Form 8700-12 (including all appropriate attachment pages and fees) reflecting current waste activities to the Department annually. The Department must receive the ADEM Form 8700-12 (including all appropriate attachment pages and fees) no later than the 15th day of the specified month in the specified month schedule located at 335-14-1-.02(1)(a).

(b) 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.]

(c) A conditionally exempt small quantity generator without an existing and active EPA ID number is not required to submit an ADEM Form 8700-12 annually. A conditionally exempt 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 335-14-2-.01(5)(f)4.(ii).

(d) 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.

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Statutory Authority: Code of Alabama 1975, §§22-30-11, 22-30-13, 22-30-14.
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335-14-3-.02 The Manifest.

(1) General requirements.

(a) A generator who transports, or offers for transportation, hazardous waste for off-site treatment, storage, or disposal, or a treatment, storage, and disposal facility who offers for transportation a rejected hazardous waste load, must prepare a Manifest (OMB control number 2050-0039) on EPA Form 8700-22, and, if necessary, EPA Form 8700-22A, according to the instructions in 335-14-3-Appendix I.

(b) In lieu of using the manifest form specified in 335-14-3-.02(1)(a), a person required to prepare a manifest may prepare and use an electronic manifest, provided that the person:

(i) Complies with the requirements of 335-14-3-.02(5).

(ii) Complies with the requirements of 40 CFR § 3.10 for the reporting of electronic documents to EPA.

(~~b~~c) A generator must designate on the manifest one facility which is permitted to handle the waste described on the manifest.

(~~c~~d) 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~~e) 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~~f) 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.

(g~~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) A registrant may not print, or have printed~~,~~ the manifest~~, manifest continuation sheets, or any changes to the previously approved manifest documents~~ 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).

(b) 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 ~~S~~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.

(i) Electronic manifests that are obtained, completed, and transmitted in accordance with 335-14-3-.02(1)(b) and 335-14-3-.02(5), in lieu of EPA Forms 8700-22 and 8700-22A are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these regulations to obtain, complete, sign, provide, use, or retain a manifest.

(ii) 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).

(iii) Any requirement to give, provide, send, forward, or return to another person a copy of the manifest is satisfied when an electronic manifest is transmitted to the other person by submission to the e-Manifest system.

(iv) Any requirement for a generator to keep or retain a copy of each manifest is satisfied by retention of a signed electronic manifest in the generator's account on the national e-Manifest system, provided that such copies are readily available for viewing and production if requested by the Department.

(v) No generator may be held liable for the inability to produce an electronic manifest for inspection under this section if the generator can demonstrate that the inability to produce the electronic manifest is due exclusively to a technical difficulty with the electronic manifest system for which the generator bears no responsibility.

(b) A generator may participate in the electronic manifest system either by accessing the electronic manifest system from its own electronic equipment, or by accessing the electronic manifest system from portable equipment brought to the generator's site by the transporter who accepts the hazardous waste shipment from the generator for offsite transportation.

(c) A generator may prepare an electronic manifest for the tracking of hazardous waste shipments involving any hazardous waste only if it is known at the time the manifest is originated that all waste handlers named on the manifest participate in the electronic manifest system.

(d) 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) 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 (EPA Forms 8700-22 and 8700-22A, if necessary) according to the instructions in 335-14-3-Appendix I, and use these paper forms from this point forward in accordance with 335-14-3-.02(4).

(f) 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).

~~(5) [Reserved].~~

(6) **[Reserved].**

(7) **[Reserved].**

(8) Waste ~~M~~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."

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335-14-3-.03 Pre-Transport Requirements.

(1) Packaging. Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must package the waste in accordance with the applicable United States Department of Transportation regulations on packaging under 49 CFR Parts 173, 178, and 179. Failure to properly package the waste in accordance with the applicable United States Department of Transportation regulations is a violation of 335-14-3-.03(1).

(2) Labeling. Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must label each package in accordance with the applicable United States Department of Transportation regulations on hazardous materials under 49 CFR Part 172. Failure to properly label the waste in accordance with the applicable United States Department of Transportation regulations is a violation of 335-14-3-.03(2).

(3) Marking.

(a) Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must mark each package of hazardous waste in accordance with the applicable United States Department of Transportation regulations on hazardous materials under 49 CFR Part 172;

(b) Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must mark each container of 119 gallons or less used in such transportation with the following words and information displayed 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.

Generator's Name and Address_____

Generator's EPA Identification Number _____

Manifest Tracking Number _____

(c) Failure to properly mark the waste packages or containers in accordance with the applicable United States Department of Transportation regulations and the requirements of 335-14-3-.03(3) is a violation of 335-14-3-.03(3).

(4) Placarding. Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must 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. Failure to properly placard or offer to the initial transporter the appropriate placards in accordance with the applicable Department of Transportation regulations is a violation of 335-14-3-.03(4).

(5) Accumulation time.

(a) Except as provided in 335-14-3-.03(5)(d), (e), (f), and (g), a large quantity generator may accumulate hazardous waste which is generated on-site for 90 days or less without a permit or without having interim status, provided that:

1. The waste is placed:

(i) In containers and the generator complies with the applicable requirements of 335-14-6-.09, 335-14-6-.27 through 335-14-6-.29; and/or

(ii) In tanks and the generator complies with the applicable requirements of 335-14-6-.10, 335-14-6-.27 through 335-14-6-.29, except 335-14-6-.10(8)(e) and 335-14-6-.10(11); and maintains the following records at the site:

(I) A description of procedures that will be followed to ensure that all wastes are removed from the tank system at least once during each accumulation period (90 days for a large quantity generator, 180 days for a small quantity generator, or 270 days if the small quality generator must ship the waste greater than 200 miles); and

(II) Documentation of each waste removal, including the quantity of waste removed from the tank and the date and time of removal; and/or

(iii) On drip pads and the generator complies with 335-14-6-.23 and maintains the following records at the site:

(I) A description of procedures that will be 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; and/or

(iv) In containment buildings and the generator complies with 335-14-6-.30, and has placed its professional engineer certification that the building complies with the design standards specified in 335-14-6-.30(2) in the generator's operating record no later than 60 days after the date of initial operation of the unit. After February 18, 1993, a professional engineer's certification will be required prior to operation of the unit. The owner or operator shall maintain the following records at the site:

(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 generator showing that they are 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.

[**Note**: In addition, such a generator is exempt from all the requirements of 335-14-6-.07 and 335-14-6-.08, except for 335-14-6-.07(2) and 335-14-6-.07(5).]

2. The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

3. While being accumulated on-site, each container and tank is labeled or marked clearly with the words, "Hazardous Waste" and the EPA hazardous waste number; and

4. The generator complies with the requirements for owners or operators in 335-14-6-.03 and 335-14-6-.04, with 335-14-6-.02(5), 335-14-6-.02(6)(c), 335-14-6-.02(6)(d), 335-14-6-.02(7), 335-14-6-.02(8)(a), 335-14-6-.05(5)(a), 335-14-6-.05(5)(b), and all applicable requirements under 335-14-9.

5. Upon ceasing to operate, or moving, or if the generator closes for business, the generator closes each container storage area, storage tank, drip pad, and containment building in a manner that:

(i) Minimizes the need for further maintenance; and

(ii) Controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, 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; and

(iii) Complies with the closure requirements of 335-14-3-.03 and the applicable requirements of 335-14-6-.09(9), 335-14-6-.10(8), 335-14-6-.23(6), and 335-14-6-.30(3), and the record keeping requirements of 335-14-3-.04(1) and 335-14-3-.04(4).

6. The generator maintains 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.

(b) A large quantity generator who accumulates hazardous waste or acute hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 335-14-5 and 335-14-6, and the permit requirements of 335-14-8 unless he 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 more than 90 days due to unforeseeable, 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 upon written request from the generator submitted prior to the expiration of the 90-day period.

(c) 335-14-3-.03(5)(c) establishes standards for satellite accumulation:

1. A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste as listed in 335-14-2-.04(2) or (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 335-14-3-.03(5)(a) or (d) provided he:

(i) Complies with 335-14-6-.09(2), (3), and (4)(a); and

(ii) Marks his containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.

2. A generator who accumulates either hazardous waste or acutely hazardous waste listed in 335-14-2-.04(2) or (4)(e) in excess of the amounts listed in 335-14-3-.03(5)(c)1. at or near any point of generation must, with respect to the initial amount of waste (55 gallons of hazardous waste or one quart of acutely hazardous waste), comply within three days with 335-14-3-.03(5)(a) or other applicable provisions of Division 335-14. During the three-day period, the generator must continue to comply with 335-14-3-.03(5)(c)1.(i) and (ii). The generator must mark the container holding the initial amount of hazardous waste with the date the initial amount was reached.

[**Note:** For the purpose of this Rule, the phrase "at or near any point of generation" may include areas that are not visible from the point of generation if the use of such an area is necessary for safety reasons (i.e., the waste is flammable or reactive and the point of generation is in an area containing ignition sources or heavy traffic), so long as the location is quickly and easily accessible to the operator of the process generating the waste.]

(d) A ~~S~~small ~~Q~~quantity ~~G~~generator may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that:

1. The quantity of waste accumulated on-site never exceeds 6000 kilograms;

2. For accumulation in containers, the generator complies with the requirements of 335-14-6-.09 except 335-14-6-.09(7) and (10);

3. For accumulation in tanks, the generator complies with the requirements of 335-14-6-.10(12) and maintains the following records at the site:

(i) A description of procedures that will be followed to ensure that all wastes are removed from the tank system at least once during each accumulation period; and

(ii) Documentation of each waste removal, including the quantity of waste removed from the tank and the date and time of removal.

4. For accumulation on drip pads, the generator complies with 335-14-6-.23 and maintains the following records at the site:

(i) A description of procedures that will be 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.

[**Note**: Small quantity generators may utilize drip pads only if they comply with the large quantity generator requirements of 335-14-3-.03(5)(a), including the 90-day limitation for on-site accumulation.]

5. The generator complies with the requirements of 335-14-3-.03(5)(a)2. and (a)3., the requirements of 335-14-6-.03, ~~with~~ and all applicable requirements under 335-14-9; and

6. The generator complies with the following requirements:

(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 site within a short period of time) with the responsibility for coordinating all emergency response measures specified in 335-14-3-.03(5)(d)6.(iv). This employee is the emergency coordinator.

(ii) The generator must post the following information next to the telephone:

(I) The name and 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 generator has a direct alarm.

(iii) Employees must complete an initial training program in hazardous waste management within six months after the date of their employment or assignment to a new position, whichever is later. Employees must not work in unsupervised positions until they have completed the training requirements of 335-14-6-.02(7)(b).

(I) The training program must be designed to ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal site operations and emergencies;

(II) The 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-.03(5)(d)6.(iii).

(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, 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;

(III) In the event of a fire, explosion, or other release which could threaten human health or the environment off-site or when the generator has knowledge that a spill has reached surface water, the generator must immediately notify the Alabama Emergency Management Agency (800/843-0699, 24 hours a day) and the National Response Center (using their 24-hour toll free number 800/424-8802 or 202/~~267~~426-2675).

The report must include the following information:

I. The name, address, and U.S. EPA ~~I~~identification ~~N~~number of the 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.

7. The generator maintains 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.

(e) A ~~S~~small ~~Q~~quantity ~~G~~generator may accumulate hazardous waste in satellite containers in accordance with 335-14-3-.03(5)(c).

(f) A ~~S~~small ~~Q~~quantity ~~G~~generator who must transport his waste, or offer his 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 he complies with the requirements of 335-14-3-.03(5)(d).

(g) A ~~S~~small ~~Q~~quantity ~~G~~generator who accumulates hazardous waste in quantities exceeding 6000 kilograms or accumulates hazardous waste for more than 180 days (or for more than 270 days if he must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of 335-14-5, 335-14-6, and 335-14-8 unless he has been granted an extension to the 180-day (or 270-day if applicable) period. Such extension may be granted by this 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.

(h) A large quantity generator who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the RCRA

hazardous waste code F006, may accumulate F006 waste on-site for more than 90 days, but not more than 180 days, without a permit or without having interim status provided that:

1. The generator has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants, or contaminants entering the F006 waste 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) The F006 waste is placed:

(I) In containers and the generator complies with the applicable requirements of 335-14-6-.09, 6-.27, 6-.28, and 6-.29; and/or

(II) In tanks and the generator complies with the applicable requirements of 335-14-6-.10, 6-.27, 6-.28, and 6-.29, except 335-14-6-.10(8)(e) and 6-.10(11).

(III) In containment buildings and the generator complies with 335-14-6-.30, and has placed its professional engineer certification that the building complies with the design standards specified in 335-14-6-.30(2) in the generator's operating record prior to operation of the unit. The owner or operator must maintain the following records at the site:

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 generator showing that they are consistent with the 180-day limit, and documentation that the generator is complying with the procedures; or

II. Documentation that the unit is emptied at least once every 180 days.

(ii) In addition, such a generator is exempt from all the requirements in 335-14-6-.07 and 6-.08, except for 335-14-6-.07(2) and (5).

(iii) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

(iv) While being accumulated on-site, each container and tank is labeled or marked clearly with the words "Hazardous Waste"; and

(v) The generator complies with the requirements for owners or operators in 335-14-6-.03 and 6-.04, with 335-14-6-.02(7), and with 335-14-9-.01(7).

(i) A ~~L~~large quantity ~~G~~generator who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the RCRA hazardous waste code 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 a permit or without having interim status if the generator complies with the requirements of 335-14-3-.03(5)(h)1. through 4.

(j) A generator accumulating F006 in accordance with 335-14-3-.03(5)(h) and (i) who accumulates F006 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, 335-14-6 and 335-14-8 unless the generator has been granted an extension to the 180-day (or 270-day if applicable) period or an exception to the 20,000 kilogram accumulation limit. Such extensions and exceptions may be granted by ADEM 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.

(k) A 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-.03(5)(a) and (b) or (d), (e), and (f), depending on the amount of hazardous waste on-site in that calendar month. 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.

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Statutory Authority: Code of Alabama 1975, §§22-30-11, 22-30-12, 22-30-14.
History: November 19, 1980.
Amended: September 29, 1986; February 15, 1988; August 24, 1989; December 6, 1990; January 25, 1992; January 1, 1993; January 5, 1995; January 12, 1996; March 28, 1997; March 27, 1998; April 2, 1999; March 31, 2000; April 13, 2001; March 15, 2002; March 31, 2005; April 4, 2006; April 3, 2007; May 27, 2008; March 31, 2009; March 30, 2011; April 3, 2012; April 8, 2016, XXXXX,XXXX.

335-14-3-.04 Recordkeeping and Reporting.

(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) A generator must keep records of any test results, waste analyses, or other determinations made in accordance with 335-14-3-.01(2) for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal.

(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) A generator who transports hazardous waste or offers hazardous waste for transportation off-site must have a program in place to reduce the volume and toxicity of such waste to the degree determined by the generator to be economically practicable. A generator must document this program in a written waste minimization plan.

1. The waste minimization plan must include:

(i) ~~a~~A list of hazardous waste generated at the facility;

(ii) ~~r~~Records of the types, amounts, and destinations of hazardous wastes generated on-site, and descriptions of the methods used by the generator to track the types, amounts, and destinations of hazardous wastes generated on-site;

(iii) ~~d~~Descriptions of activities responsible for hazardous waste generation, and descriptions of opportunities to reduce the volume and/or toxicity of wastes generated by those activities;

(iv) ~~d~~Descriptions of actions that have been taken, are being taken, and will be taken by the generator to reduce the volume and/or toxicity of wastes generated by each activity responsible for hazardous waste generation; and

(v) ~~r~~Records (such as copies of hazardous waste manifests, billing statements, etc.) demonstrating the degree to which the actions taken by the generator have reduced the volume and/or toxicity of hazardous wastes generated on-site.

2. The waste minimization plan must be kept on-site. The plan 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.

(f) 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.

(a) A generator 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 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 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. Reporting for exports of hazardous waste is not required on the Biennial Report form. A separate annual report requirement is set forth in 335-14-3-.05(7).

(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 35 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 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.

(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 submit a legible copy of the manifest, with some indication that the generator has not received confirmation of delivery, to the Department.

(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.

(4) Closure reporting.

(a) A large quantity generator who closes, ceases storage in, or moves a hazardous waste container storage area, tank system, drip pad, and/or containment building (a "unit") must notify the Department in writing no less than 45 days prior to the expected date of beginning closure. The notification must include:

1. The generator's name, address, and EPA ~~I~~identification ~~N~~number;

2. The date closure is expected to begin, and a timeframe for completing closure activities (not to exceed 180 days);

3. A description of the units to be closed, and a site diagram identifying each unit;

4. The procedures to be used for closure;

5. The type and maximum volume of hazardous wastes stored in the unit at any time and the associated EPA hazardous waste numbers;

6. The type and amount of hazardous waste expected to be stored in the unit at the time closure activities are expected to begin;

7. The conditions of the unit(s) at the time of the notification; and

8. Plans for hazardous waste determinations on, and proper management and disposal of, stored wastes, unit components, investigation derived wastes, and decontamination wastes.

(b) Within 45 Days after completion of closure the owner or operator must provide a written report documenting the procedures used to comply with Rule(s) 335-14-3-.03(5)(a)5., 335-14-6-.09(9), 335-14-6-.10(8), 335-14-6-.23(6), and/or 335-14-6-.30(3).

(c) A large quantity generator who ceases hazardous waste operations completely whether due to efficient waste minimization, the generator moving to another location, or the generator ceasing operation altogether must notify the Department in writing no more than 45 days following the stoppage of hazardous waste operations. The notification must include:

1. The generator's name, address, and EPA ~~I~~identification ~~N~~number;

2. The date the cease of hazardous waste operations occurred/will occur; and

3. A description of any required closure activities to be carried out in accordance with 335-14-3-.04.

(5) 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.

(6) Special requirements for ~~S~~small ~~Q~~quantity ~~G~~generators. A ~~S~~small ~~Q~~quantity ~~G~~generator is subject only to the following 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(5), additional reporting.

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Statutory Authority: Code of Alabama 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; March 28, 1997; April 13, 2001; March 31, 2005; April 4, 2006; April 3, 2007; May 27, 2008; March 31, 2009; March 31, 2011; XXXXX,XXXX.

335-14-3-.05 Exports of Hazardous Waste.

(1) Applicability. 335-14-3-.05 establishes requirements applicable to exports of hazardous waste. Except to the extent ~~of~~ 335-14-3-.05(9) provides otherwise, a primary exporter of hazardous waste must comply with the special requirements of 335-14-3-.05 and a transporter transporting hazardous waste for export must comply with applicable requirements of Chapter 335-14-4. 335-14-3-.05(9) sets forth the requirements of international agreements between the United States and receiving countries which establish different notice, export, and enforcement procedures for the transportation, treatment, storage, and disposal of hazardous waste for shipments between the United States and those countries.

(2) **[Reserved].**

(3) General requirements. Exports of hazardous waste are prohibited except in compliance with the applicable requirements of 335-14-3-.05 and Chapter 335-14-4. Exports of hazardous waste are prohibited unless:

(a) Notification in accordance with 335-14-3-.05(4) has been provided;

(b) The receiving country has consented to accept the hazardous waste;

(c) A copy of the EPA Acknowledgment of Consent to the shipment accompanies the hazardous waste shipment and, unless exported by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment)).

(d) The hazardous waste shipment conforms to the terms of the receiving country's written consent as reflected in the EPA Acknowledgment of Consent.

(4) Notification of intent to export.

(a) A primary exporter of hazardous waste must notify the Department and EPA of an intended export before such waste is 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 primary exporter, and include the following information:

1. Name, mailing address, telephone number, and EPA ID number of the primary exporter;

2. By consignee, for each hazardous waste type:

(i) A description of the hazardous waste and the EPA hazardous waste number ~~(from 40 CFR Part 261, Subparts C and D; and 335-14-2-.03 and 335-14-2-.04 of ADEM Admin. Code Rule)~~, U.S. DOT proper shipping name, hazardous class, and ID number (UN/NA) for each hazardous waste as identified in 49 CFR Parts 171 through 177;

(ii) The estimated frequency or rate at which such waste is to be exported and the period of time over which such waste is to be exported.

(iii) The estimated total quantity of the hazardous waste in units as specified in the instructions to the Uniform Hazardous Waste Manifest Form (8700-22);

(iv) All points of entry to and departure from each foreign country through which the hazardous waste will pass;

(v) A description of the means by which each shipment of the hazardous waste will be transported (e.g., mode of transportation ~~vehicle~~ (air, highway, rail, water, etc.), and type(s) of container (e.g. drums, boxes, tanks, etc.);

(vi) A description of the manner in which the hazardous waste will be treated, stored, or disposed of in the receiving country (e.g., land or ocean incineration, other land disposal, ocean dumping, recycling);

(vii) The name and site address of the consignee and any alternate consignee; and

(viii) The name of any transit countries through which the hazardous waste will be sent and a description of the approximate length of time the hazardous waste will remain in such country and the nature of its handling while there;

(b) Notifications submitted by mail should be sent to the following addresses: Alabama Department of Environmental Management, Land Division, P. O. Box 301463, Montgomery, AL 36130-1463; and the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW~~.~~, Washington, DC 20460. Hand-delivered notifications should be delivered to: Alabama Department of Environmental Management, Land Division, 1400 Coliseum Boulevard, Montgomery, AL 36110~~-2059~~; and the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 12th St. and Pennsylvania Ave., NW~~.~~, Washington, DC 20004. In both cases, the following shall be prominently displayed on the front of the envelope: "Attention: Notification of Intent to Export".

(c) Except for changes to the telephone number in 335-14-3-.05(4)(a)1., changes to 335-14-3-.05(4)(a)2.(v), and decreases in the quantity indicated pursuant to 335-14-3-.05(4)(a)2.(iii), when the conditions specified on the original notification change (including any exceedence of the estimate of the quantity of hazardous waste specified in the original notification), the primary exporter must provide the Department and EPA with a written renotification of the change. The shipment cannot take place until consent of the receiving country to the changes (except for changes to 335-14-3-.05(4)(a)2.(viii) and in the ports of entry to and departure from transit countries pursuant to 335-14-3-.05(4)(a)2.(iv)) has been obtained and the primary exporter receives an EPA Acknowledgment of Consent reflecting the receiving country's consent to the changes.

(d) Upon request by EPA or the Department, a primary exporter shall furnish to the appropriate requestor (EPA or the Department) any additional information which a receiving country requests in order to respond to a notification.

(e) In conjunction with the Department of State, 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 335-14-3-.05(4)(a). Where a claim of confidentiality is asserted with respect to any notification information required by 335-14-3-.05(4)(a), EPA and the Department may find the notification not complete until any such claim is resolved in accordance with 335-14-1-.01(2).

(f) Where the receiving country consents to the receipt of the hazardous waste, EPA will forward an EPA Acknowledgment of Consent to the primary exporter for purposes of 335-14-3-.05(5)(h). Where the receiving country objects to receipt of the hazardous waste or withdraws a prior consent, EPA will notify the primary exporter in writing. EPA will also notify the primary exporter of any responses from transit countries.

(5) Special manifest requirements. A primary exporter must comply with the manifest requirements of 335-14-3-.02(1) through 335-14-3-.02(4) except that:

(a) In lieu of the name, site address, and EPA ID number of the designated permitted facility, the primary exporter must enter the name and site address of the consignee;

(b) In lieu of the name, site address, and EPA ID number of a permitted alternate facility, the primary exporter may enter the name and site address of any alternate consignee;

(c) In the International Shipments block, the primary exporter must check the export box and enter the point of exit (city and state) from the United States.

(d) The following statement must be added to the end of the first sentence of the certification set forth in Item 16 of the Uniform Hazardous Waste Manifest Form: "and conforms to the terms of the attached EPA Acknowledgment of Consent";

(e) The primary exporter may obtain the manifest from any source that is registered with the U.S. EPA as a supplier of manifests (e.g., states, waste handlers, and/or commercial forms printers).

(f) The primary exporter must require the consignee to confirm in writing the delivery of the hazardous waste to that facility and to describe any significant discrepancies (as defined in 335-14-5-.05(3)) between the manifest and the shipment. A copy of the manifest signed by such facility may be used to confirm delivery of the hazardous waste.

(g) In lieu of the requirements of 335-14-3-.02(1)(d), where a shipment cannot be delivered for any reason to the designated or alternate consignee, the primary exporter must:

1. Renotify EPA and the Department of a change in the conditions of the original notification to allow shipment to a new consignee in accordance with 335-14-3-.05(4)(c) and obtain an EPA Acknowledgment of Consent prior to delivery; or

2. Instruct the transporter to return the waste to the primary exporter in the United States or designate another facility within the United States; and

3. Instruct the transporter to revise the manifest in accordance with the primary exporter's instructions.

(h) The primary exporter must attach a copy of the EPA Acknowledgment of Consent to the shipment to the manifest which must accompany the hazardous waste shipment.

For exports by rail or water (bulk shipment), the primary exporter must provide the transporter with an EPA Acknowledgment of Consent which must accompany the hazardous waste but which need not be attached to the manifest except that for exports by water (bulk shipment) the primary exporter must attach the copy of the EPA Acknowledgment of Consent to the shipping paper.

(i) The primary exporter shall provide the transporter with an additional copy of the manifest for delivery to the U.S. Customs official at the point the hazardous waste leaves the United States in accordance with 335-14-4-.02(1)(g)4.

(6) Exception reports. In lieu of the requirements of 335-14-3-.04(3), a primary exporter must file an exception report with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW~~,~~, Washington, DC 20460~~-~~ and the Director if any of the following occurs:~~:~~

(a) He has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United States within forty-five (45) days from the date it was accepted by the initial transporter;

(b) Within ninety (90) days from the date the waste was accepted by the initial transporter, the primary exporter has not received written confirmation from the consignee that the hazardous waste was received;

(c) The waste is returned to the United States.

(7) Annual reports.

(a) Primary exporters of hazardous waste shall file with the Administrator and the Director no later than March 1 of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all hazardous waste exported during the previous calendar year. Such reports shall include the following:

1. The EPA identification number, name, and mailing and site address of the exporter;

2. The calendar year covered by the report;

3. The name and site address of each consignee;

4. By consignee, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number (from 40 CFR Part 261, Subpart C or D; and 335-14-2-.03 and 335-14-2-.04 of ADEM Admin. Code Rule), DOT hazard class, the name and USEPA ID number (where applicable) for each transporter used, the total amount of waste shipped, and number of shipments pursuant to each notification;

5. Except for hazardous waste produced by exporters of greater than 100 kg but less than 1000 kg in a calendar month, unless provided pursuant to 335-14-3-.04(2) in even numbered years:

(i) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and

(ii) 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.

6. A certification signed by the primary exporter which 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 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."

(b) Annual reports submitted by mail should be sent to the following mailing addresses: Alabama Department of Environmental Management, Land Division, P. O. Box 301463, Montgomery, AL 36130-1463; and the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW~~.~~, Washington, DC 20460. Hand-delivered reports should be delivered to: Alabama Department of Environmental Management, Land Division, 1400 Coliseum Boulevard, Montgomery, AL 36110~~-2059~~-2400; and the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 12th St. and Pennsylvania Ave., NW~~.~~, Washington, DC 20004.

(8) Recordkeeping.

(a) For all exports a primary exporter must:

1. Keep a copy of each notification of intent to export for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

2. Keep a copy of each EPA Acknowledgment of Consent for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

3. Keep a copy of each confirmation of delivery of the hazardous waste from the consignee for at least three years from the date the hazardous waste was accepted by the initial transporter; and

4. Keep a copy of each annual report for a period of at least three years from the due date of the report.

(b) The periods of retention referred to in 335-14-3-.05(8) are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator or the Director.

(9) International agreements.

(a) Any person who exports or imports wastes that are considered hazardous under U.S. national procedures to and from designated Member countries of the Organization for Economic Cooperation and Development (OECD) as defined in 335-14-3-.05(9)(a)1. is subject to 335-14-3-.09. The requirements of 335-14-3-.05 and 3-.06 do not apply to such exports and imports. A waste is considered hazardous under U.S. national procedures if the waste meets the definition of hazardous waste in 335-14-2-.01(3) and is subject to either the manifest requirements of 335-14-3-.02, or the universal waste management standards of 335-14-11, or the export requirements in the spent lead-acid battery management standards of 335-14-7-.07.

1. For the purposes of 335-14-3-.09, the designated OECD Member countries consist of Australia, Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, ~~South~~ Republic of Korea, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States.

2. For the purposes of 335-14-3-.09, Canada and Mexico are considered OECD Member countries only for the purpose of transit.

(b) Any person who exports hazardous waste to or imports hazardous waste from: a designated OECD Member country for purposes other than recovery (e.g., incineration, disposal), Mexico (for any purpose), or Canada (for any purpose) remains subject to the requirements of 335-14-3-.05 and 3-.06 and is not subject to the requirements of 335-14-3-.09.

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Statutory Authority: Code of Alabama 1975, §§22-30-11, 22-30-14.
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Amended: April 9, 1986, September 29, 1986; August 24, 1989; December 6, 1990; January 1, 1993; March 28, 1997; March 27, 1998; April 13, 2001; March 31, 2005; April 4, 2006; April 3, 2007; March 31, 2011; April 8, 2016; XXXXX,XXXX.

335-14-3-.06 Imports of Hazardous Waste.

(1) Imports of hazardous waste.

(a) Any person who imports hazardous waste from a foreign country into the United States must comply with the requirements of 335-14-3 and the special requirements of 335-14-3-.06.

(b) When importing hazardous waste, a person must meet all the requirements of 335-14-3-.02(1) for the manifest except that:

1. In place of the generator's name, address, and EPA identification number, the name and address of the foreign generator and the importer's name, address, and EPA identification number must be used.

2. In place of the generator's signature on the certification statement, the U.S. importer or his agent must sign and date the certification and obtain the signature of the initial transporter.

(c) A person who imports hazardous waste must obtain the manifest from any source that is registered with the EPA as a supplier of manifests (e.g., states, waste handlers, and/or commercial forms printers).

(d) In the International Shipments block, the importer must check the import box and enter the point of entry (city and ~~S~~state) into the United States.

(e) The importer must provide the transporter with an additional copy of the manifest to be submitted by the receiving facility to U.S. EPA in accordance with 335-14-5-.05(2)(a)2 and 335-14-6-.05(2)(a)2.

(2) **[Reserved].**

Authors: Stephen C. Maurer~~;~~, C. Edwin Johnston~~;~~, Bradley N. Curvin; Vernon H. Crockett
Statutory Authority: Code of Alabama 1975, §§22-30-17, 22-30-11.
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335-14-3-.08 Special Requirements for Generators of Waste Destined ~~F~~for Disposal at Commercial Hazardous Waste Disposal Facilities Located in the State of Alabama.

(1) Applicability. 335-14-3-.08 applies to generators of waste destined for disposal at a commercial hazardous waste disposal facility located in the State of Alabama.

(2) **[Reserved].**

(3) Disposal Requirements. All generators (directly or through their authorized agents) identified in 335-14-3-.08(1) must submit an adequate notification, meeting the requirements of 335-14-3-.08(5)(a), to the Department prior to disposal of any waste stream at a commercial hazardous waste disposal facility located in the State of Alabama. A commercial hazardous waste disposal facility located in the State of Alabama may not dispose of wastes from any generator that has not submitted an adequate notification to the Department.

(a) No waste may be disposed of at a commercial hazardous waste disposal facility in the State of Alabama sooner than five (5) working days following the Department's receipt of notification unless the Department has previously advised the disposal facility, via mail and/or electronic transmission, of its acceptance of the notification.

(b) If, after five (5) working days following receipt of the notification, the Department fails to advise the generator, his authorized agent, and/or the designated commercial hazardous waste disposal facility of either the Department's acceptance of the notification or of a determination that the notification is inadequate, the disposal facility may, at its discretion, dispose of the waste.

(c) If, at any time during the five (5) working days following receipt of a notification, the Department determines that the notification is inadequate, in accordance with 335-14-3-.08(6), the Department will provide notice of the deficiency to the commercial hazardous waste disposal facility and/or the generator or his authorized agent. After notification from the Department of a deficient disposal request, the generator or his authorized agent may not dispose of the proposed waste until the deficiency is resolved to the satisfaction of the Department.

(d) If, at any time after disposal approval is granted or after five (5) working days following receipt of a notification, the Department determines that the notification is inadequate, in accordance with 335-14-3-.08(6), the Department will immediately provide notice of the deficiency to the disposal facility and/or the generator or his authorized agent. Following receipt of the Department's notice of an inadequate notification, further shipments of the waste stream in question may not be disposed of by the commercial hazardous waste disposal facility until the deficiency is resolved to the satisfaction of the Department.

(4) Submittal of ~~N~~notification. The notification required by 335-14-3-.08 may be submitted by the generator, the generator's authorized agent or the commercial

hazardous waste disposal facility using ADEM Form 278 (Disposal Approval Request) or an equivalent form.

(5) Disposal Aapproval. To obtain disposal approval the generator, the generator's authorized agent, or the commercial hazardous waste disposal facility must submit an adequate notification, in accordance with 335-14-3-.08(4), to the Department prior to disposal of the waste.

(a) The notification shall include:

1. All information required by ADEM Form 278.

2. A description of the waste which will enable the Department to determine whether the waste is a hazardous waste. This must include a detailed and complete description of the process generating the waste, and where applicable:

(i). A detailed chemical and physical analysis, including Toxicity Characteristic Leaching Procedure (TCLP), where needed. In accordance with 335-14-3-.01(2)(c)2., the generator may rely on his knowledge of waste generated in determining the extent and types of analytical data supplied to the Department. The commercial hazardous waste disposal facility may also rely on the generator's knowledge in determining the sufficiency and accuracy of the information provided. However, the Department will make the final determination of whether a notification is complete and accurate; and

(ii). A complete list of all applicable hazardous waste codes.

3. A Land Disposal Restrictions Notification or Certification form, if applicable; and

4. All applicable fees as specified in Chapter 335-1-6 of the ADEM Administrative Code.

(b) Unless the Department determines that the generator's information is false, incomplete, or inaccurate, it shall accept such information as meeting the requirements of 335-14-3-.08. The Department's acceptance of the generator's or commercial hazardous waste disposal facility's information does not relieve the generator or commercial hazardous waste disposal facility of the responsibility for complying with the requirements under Division 335-14 or other federal, State of Alabama or local requirements.

(c) All disposal approvals shall remain valid for up to two (2) years unless new information becomes available which would render the notification inadequate under 335-14-3-.08(3)(d).

(6) Deficient Notification. The generator, his authorized agent, and/or the designated commercial hazardous waste disposal facility shall within five (5) working days of receipt of notification be advised by the Department in writing and/or electronic transmission of any deficiencies in the notification.

(7) Adequate Notification. A notification from the generator, the generator's authorized agent, or a commercial hazardous waste disposal facility, which meets the requirements of 335-14-3-.08(5)(a) and has not been determined to be false, incomplete, or inaccurate as indicated in 335-14-3-.08(5)(b) shall be deemed adequate. Adequate notifications will be assigned unique certification numbers as approval for disposal for the waste at the specified commercial hazardous waste disposal facility.

(8) Rejection of Notification.

(a) A notification may be rejected by the Department if:

1. It is determined by the Department that any applicable requirements of any federal, State of Alabama, or local laws or regulations would be violated if the waste is disposed of; or

2. It is determined that the waste is prohibited from land disposal as outlined in Chapter 335-14-9 and the notification does not indicate that the prescribed treatment standards will be met; or

3. The commercial hazardous waste disposal facility has not obtained a Hazardous Waste Permit or does not have interim status authorization to dispose of the waste; or

4. The notification is the subject of an inadequate determination as described in 335-14-3-.08(3)(c) or (d) and 335-14-3-.08(6), and the deficiency has not been reconciled or the information has not been provided to the Department within fifteen (15) calendar days following the notice of an inadequate notification or the request for additional information.

(b) Within two (2) working days following the Department's decision to reject a notification, the generator and/or his authorized agent, and the disposal facility will be notified in writing and/or electronically of the rejection.

(9) Recertification.

(a) A recertification of the initial notification is required biennially (every 2 years) unless:

1. Regulations promulgated since the previous notification have changed the regulatory status of the waste stream; or

2. The process generating the waste, the waste description, or the chemical composition of the waste stream has changed since the previous recertification or initial notification such that new constituents are present or the physical characteristics of the waste stream have changed in a manner which will alter the management method or the regulatory status of the waste stream.

(b) In the case of either 335-14-3-.08(9)(a)1. or 2., the recertification which identifies those changes requiring recertification will be made within five (5) working days prior to disposal of any of the waste which is subject to such change.

1. A recertification will not be necessary for incidental or temporary changes to an approved waste stream which result in "discrepant" waste~~,~~ when the discrepancy is addressed as described in 335-14-5-.05(3)(c). Such changes may include, but are not limited~~,~~ to accumulation of precipitation, process upsets which temporarily change the characteristics of the waste, temporary additions of similar waste, or instances where the waste does not conform in every respect to the waste which was originally approved, but is representative of the waste as generated.

2. The Department may in its discretion allow the commercial hazardous waste disposal facility to receive waste subject to such change prior to completion and submittal of the recertification. These submittals will be treated as modifications to an approved waste stream subject to Departmental review and potential rejection under 335-14-3-.08(8).

(10) Emergency Authorization for Disposal. The Department may grant emergency authorization for disposal if the generator (or responsible party in the case of an emergency cleanup) can demonstrate that a delay in disposal could cause a situation that could cause harm to human health or the environment. To receive emergency authorization for disposal, the generator or responsible party must:

(a) Notify the Department by calling the Land Division at (334) 271-7700 and provide sufficient information to grant emergency authorization for disposal.

(b) Within 15 calendar days submit a complete ADEM Form 278 (Disposal Approval Request) to the Department.

(11) Special Requirements for Brokers of Waste.

(a) For all wastes included in both bulked waste streams and consolidated waste streams, the process generating each individual waste stream must be identified in the notification. For the purpose of completing the notification or the shipping manifest only, the broker may be identified as the waste generator.

(b) Wastes included in a bulked waste stream must be similar in physical form (i.e., solid or liquid) and have similar hazardous constituents. Wastes included in a consolidated waste stream must have similar hazardous constituents.

(c) Any broker of waste may be required by the Department to submit for ADEM's review a list of all generators (including name and EPA ~~I~~identification ~~N~~number) contributing waste to a specific shipment of a bulked or consolidated waste stream. Each broker who either consolidates or bulks waste for shipment for disposal at a commercial hazardous waste landfill in the State of Alabama must submit to the Department certification that it has in place a tracking system capable of providing such information for each shipment of bulked or consolidated waste, and that such information will be provided to the Department upon request. This certification must be renewed annually by the broker.

[**Note:** An example of an acceptable bulked or consolidated waste stream includes F006, K061, and K106. These wastes are similar in physical form and are all listed due to the presence of toxic metals.]

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335-14-3-.09 Transboundary Shipments of Hazardous Waste for Recovery ~~W~~within the Organization for Economic Cooperation and Development (OECD).

(1) Applicability.

(a) The requirements of 335-14-3-.09 apply to imports and exports of wastes that are considered hazardous under U.S. national procedures and are destined for recovery operations in the countries listed in 335-14-3-.05(9)(a)1. A waste is considered hazardous under U.S. national procedures if the waste:

1. Meets the definition of hazardous waste in 335-14-2-.01(3); and

2. Is subject to either the manifesting requirements at 335-14-3-.02, the universal waste management standards of 335-14-11, or the export requirements in the spent lead-acid battery management standards of 334-14-7-.07.

(b) Any person (exporter, importer, or recovery facility operator) who mixes two or more wastes (including hazardous and non-hazardous wastes) or otherwise subjects two or more wastes (including hazardous and non-hazardous wastes) to physical or chemical transformation operations, and thereby creates a new hazardous waste, becomes a generator and assumes all subsequent generator duties under RCRA and any exporter duties, if applicable, under 335-14-3-.09.

(2) **[Reserved].**

(3) General conditions.

(a) Scope. The level of control for exports and imports of waste is indicated by assignment of the waste to either a list of wastes subject to the Green control procedures or a list of wastes subject to the Amber control procedures and by the national procedures of the United States, as defined in 335-14-3-.09(1)(a). The OECD Green and Amber lists are incorporated by reference in 335-14-3-.09(10)(d).

1. Listed wastes subject to the Green control procedures.

(i) Green wastes that are not considered hazardous under U.S. national procedures as defined in 335-14-3-.09(1)(a) are subject to existing controls normally applied to commercial transactions.

(ii) Green wastes that are considered hazardous under U.S. national procedures as defined in 335-14-3-.09(1)(a) are subject to the Amber control procedures set forth in 335-14-3-.09.

2. Listed wastes subject to the Amber control procedures.

(i) Amber wastes that are considered hazardous under U.S. national procedures as defined in 335-14-3-.09(1)(a), are subject to the Amber control procedures set forth in 335-14-3-.09.

(ii) Amber wastes that are considered hazardous under U.S. national procedures as defined in 335-14-3-.09(1)(a), are subject to the Amber control procedures in the United States, even if they are imported to or exported from a designated OECD Member country listed in 335-14-3-.05(9)(a)1. that does not consider the waste to be hazardous. In such an event, the responsibilities of the Amber control procedures shift as provided:

(I) For U.S. exports, the United States shall issue an acknowledgement of receipt and assume other responsibilities of the competent authority of the country of import.

(II) For U.S. imports, the U.S. recovery facility/importer and the United States shall assume the obligations associated with the Amber control procedures that normally apply to the exporter and country of export, respectively.

(iii) Amber wastes that are not considered hazardous under U.S. national procedures as defined in 335-14-3-.09(1)(a), but are considered hazardous by an OECD Member country are subject to the Amber control procedures in the OECD Member country that considers the waste hazardous. All responsibilities of the U.S. importer/exporter shift to the importer/exporter of the OECD Member country that considers the waste hazardous unless the parties make other arrangements through contracts.

[**Note to 335-14-3-.09(3)(a)2.**: Some wastes subject to the Amber control procedures are not listed or otherwise identified as hazardous under RCRA, and therefore are not subject to the Amber control procedures of 335-14-3-.09. Regardless of the status of the waste under RCRA, however, other Federal environmental statutes (e.g., the Toxic Substances Control Act) restrict certain waste imports or exports. Such restrictions continue to apply without regard to 335-14-3-.09.]

3. Procedures for mixtures of wastes.

(i) Green waste that is mixed with one or more other Green waste such that the resulting mixture is not considered hazardous under U.S. national procedures as defined in 335-14-3-.09(1)(a) shall be subject to the Green control procedures, provided the composition of this mixture does not impair its environmentally sound recovery.

[**Note to 335-14-3-.09(3)(a)3.(i)**: The regulated community should note that some OECD Member countries may require, by domestic law, that mixtures of different Green wastes be subject to the Amber control procedures.]

(ii) A Green waste that is mixed with one or more Amber wastes, in any amount, *de minimis* or otherwise, or a mixture of two or more Amber wastes, such that the resulting waste mixture is considered hazardous under U.S. national procedures as defined in 335-14-3-.09(1)(a) are subject to the Amber control procedures, provided the composition of this mixture does not impair its environmentally sound recovery.

[**Note to 335-14-3-.09(3)(a)3.(ii)**: The regulated community should note that some OECD Member countries may require, by domestic law, that a mixture of a Green

waste and more than a *de minimuis* amount of an Amber waste or a mixture of two or more Amber wastes be subject to the Amber control procedures.]

4. Wastes not yet assigned to an OECD waste list are eligible for transboundary movements, as follows:

(i) If such wastes are considered hazardous under U.S. national procedures as defined in 335-14-3-.09(1)(a), such wastes are subject to the Amber control procedures.

(ii) If such wastes are not considered hazardous under U.S. national procedures as defined in 335-14-3-.09(1)(a), such wastes are subject to the Green control procedures.

(b) General conditions applicable to transboundary movements of hazardous waste.

1. The waste must be destined for recovery operations at a facility that, under applicable domestic law, is operating or is authorized to operate in the importing country;

2. The transboundary movement must be in compliance with applicable international transport agreements; and

[**Note to 335-14-3-.09(3)(b)2.**: These international agreements include, but are not limited to, the Chicago Convention (1944), ADR (1957), ADNR (1970), MARPOL Convention (1973/1978), SOLAS Convention (1974), IMDG Code (1985), COTIF (1985), and RID (1985).]

3. Any transit of waste through a non-OECD Member country must be conducted in compliance with all applicable international and national laws and regulations.

(c) Provisions relating to re-export for recovery to a third country.

1. Re-export of wastes subject to the Amber control procedures -from the United States, as the country of import, to a third country listed in 335-14-3-.05(9)(a)1. may occur only after an exporter in the United States provides notification to and obtains consent from the competent authorities in the third country, the original country of export, and any transit countries. The notification must comply with the notice and consent procedures in 335-14-3-.09(4) for all countries concerned and the original country of export. The competent authorities of the original country of export, as well as the competent authorities of all other countries concerned, have thirty (30) days to object to the proposed movement.

(i) The thirty (30) day period begins once the competent authorities of both the initial country of export and new country of import issue Acknowledgements of Receipt of the notification.

(ii) The transboundary movement may commence if no objection has been lodged after the thirty (30) day period has passed or immediately after written consent is received from all relevant OECD importing and transit countries.

2. In the case of re-export of Amber wastes to a country other than those listed in 335-14-3-.05(9)(a)1., notification to and consent of the competent authorities of the original OECD Member country of export and any OECD Member countries of transit is required as specified in 335-14-3-.09(3)(c)1.-, in addition to compliance with all international agreements and arrangements to which the first importing OECD Member country is a party and all applicable regulatory requirements for exports from the first -country of import.

(d) Duty to return or re-export wastes subject to the Amber control procedures. _When a transboundary movement of wastes subject to the Amber control procedures cannot be completed in accordance with the terms of the contract or the consent(s) and alternative arrangements cannot be made to recover the waste in an environmentally sound manner in the country of import, the waste must be returned to the country of export or re-exported to a third country. _The provisions of 335-14-3-.09(3)(c) apply to any shipments to be re-exported to a third country. _The following provisions apply to shipments to be returned to the country of export as appropriate:

1. Return from the United States to the country of export: _The U.S. importer must inform EPA at the specified address in 335-14-3-.09(4)(b)1.(i) of the need to return the shipment. EPA will then inform the competent authorities of the countries of export and transit, citing the reason(s) for returning the waste. The U.S. importer must complete the return within ninety (90) days from the time EPA informs the country of export of the need to return the waste, unless informed in writing by EPA of another timeframe agreed to by the concerned Member countries. If the return shipment will cross any transit country, the return shipment may only occur after EPA provides notification to and obtains consent from the competent authority of the country of transit, and provides a copy of that consent to the U.S. importer.

2. Return from the country of import to the United States: The U.S. exporter must provide for the return of the hazardous waste shipment within ninety (90) days from the time the country of import informs EPA of the need to return the waste or such other period of time as the concerned Member countries agree. The U.S. exporter must submit an exception report to EPA in accordance with 335-14-3-.09(8)(b).

(e) Duty to return wastes subject to the Amber control procedures from a country of transit. When a transboundary movement of wastes subject to the Amber control procedures does not comply with the requirements of the notification and movement documents or otherwise constitutes illegal shipment, and if alternative arrangements cannot be made to recover these wastes in an environmentally sound manner, the waste must be returned to the country of export. The following provisions apply as appropriate:

1. Return from the United States (as country of transit) to the country of export: The U.S. transporter must inform EPA at the specified address in 335-14-3-.09(4)(b)1.(i) of the need to return the shipment. EPA will then inform the

competent authority of the country of export, citing the reason(s) for returning the waste. The U.S. transporter must complete the return within ninety (90) days from the time EPA informs the country of export of the need to return the waste, unless informed in writing by EPA of another timeframe agreed to by the concerned Member countries.

2. Return from the country of transit to the United States (as country of export): The U.S. exporter must provide for the return of the hazardous waste shipment within ninety (90) days from the time the competent authority of the country of transit informs EPA of the need to return the waste or such other period of time as the concerned Member countries agree. The U.S. exporter must submit an exception report to EPA in accordance with 335-14-3-.09(8)(b).

(f) Requirements for wastes destined for and received by R12 and R13 facilities. The transboundary movement of wastes destined for R12 and R13 operations must comply with all Amber control procedures for notification and consent as set forth in 335-14-3-.09(4) and for the movement document as set forth in 335-14-3-.09(5). Additional responsibilities of R12/R13 facilities include:

1. Indicating in the notification document the foreseen recovery facility or facilities where the subsequent R1-R11 recovery operation takes place or may take place.

2. Within three (3) days of the receipt of the wastes by the R12/R13 recovery facility or facilities, the facility(ies) shall return a signed copy of the movement document to the exporter and to the competent authorities of the countries of export and import. The facility(ies) shall retain the original of the movement document for three (3) years.

3. As soon as possible, but no later than thirty (30) days after the completion of the R12/R13 recovery operation and no later than one (1) calendar year following the receipt of the waste, the R12 or R13 facility(ies) shall send a certificate of recovery to the foreign exporter and to the competent authority of the country of export and to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW. Washington, DC 20460, by mail, e-mail without digital signature followed by mail, or fax followed by mail.

4. When an R12/R13 recovery facility delivers wastes for recovery to an R1-R11 recovery facility located in the country of import, it shall obtain as soon as possible, but no later than one (1) calendar year following delivery of the waste, a certification from the R1-R11 facility that recovery of the wastes at that facility has been completed. The R12/R13 facility must promptly transmit the applicable certification to the competent authorities of the countries of import and export, identifying the transboundary movements to which the certification pertain.

5. When an R12/R13 recovery facility delivers wastes for recovery to an R1-R11 recovery facility located:

(i) In the initial country of export, Amber control procedures apply, including a new notification;

(ii) In a third country other than the initial country of export, Amber control procedures apply, with the additional provision that the competent authority of the initial country of export shall also be notified of the transboundary movement.

(g) Laboratory analysis exemption. The transboundary movement of an Amber waste is exempt from the Amber control procedures if it is in certain quantities and destined for laboratory analysis to assess its physical or chemical characteristics, or to determine its suitability for recovery operations. The quantity of such waste shall be determined by the minimum quantity reasonably needed to perform the analysis in each particular case adequately, but in no case exceed twenty-five kilograms (25 kg). Waste destined for laboratory analysis must still be appropriately packaged and labeled.

(4) Notification and consent.

(a) Applicability. Consent must be obtained from the competent authorities of the relevant OECD countries of import and transit prior to exporting hazardous waste destined for recovery operations subject to 335-14-3-.09. Hazardous wastes subject to the Amber control procedures are subject to the requirements of 335-14-3-.09(4)(b); and wastes not identified on any list are subject to the requirements of 335-14-3-.09(4)(c).

(b) Amber wastes. Exports of hazardous waste from the United States as described in 335-14-3-.09(1)(a) that are subject to the Amber control procedures are prohibited unless the notification and consent requirements of 335-14-3-.09(4)(b)1. or (b)2. are met.

1. Transactions requiring specific consent:

(i) Notification. At least forty-five (45) days prior to commencement of each transboundary movement, the exporter must provide written notification in English of the proposed transboundary movement to both the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., ~~NW.~~NW, Washington, DC 20460, and the Alabama Department of Environmental Management, Land Division, P. O. Box 301463, Montgomery, AL 36130-1463; with the words "Attention: OECD Export Notification" prominently displayed on the envelope. This notification must include all of the information identified in 335-14-3-.09(4)(d). In cases where wastes having similar physical and chemical characteristics, the same United Nations classification, and the same RCRA waste codes are to be sent periodically to the same recovery facility by the same exporter, the exporter may submit one general notification of intent to export these wastes in multiple shipments during a period of up to one (1) year. Even when a general notification is used for multiple shipments, each shipment still must be accompanied by its own movement document pursuant to 335-14-3-.09(5).

(ii) Tacit consent. If no objection has been lodged by any countries concerned (i.e., exporting, importing, or transit) to a notification provided pursuant to 335-14-3-.09(4)(b)1.(i) within thirty (30) days after the date of issuance of the Acknowledgment of Receipt of notification by the competent authority of the country of import, the transboundary movement may commence. Tacit consent expires one (1)

calendar year after the close of the thirty (30) day period; renotification and renewal of all consents is required for exports after that date.

(iii) Written consent. If the competent authorities of all the relevant OECD importing and transit countries provide written consent in a period less than thirty (30) days, the transboundary movement may commence immediately after all necessary consents are received. Written consent expires for each relevant OECD importing and transit country one (1) calendar year after the date of that country's consent unless otherwise specified; renotification and renewal of each expired consent is required for exports after that date.

2. Transboundary movements to facilities pre-approved by the competent authorities of the importing countries to accept specific wastes for recovery:

(i) Notification. The exporter must provide EPA a notification that contains all the information identified in 335-14-3-.09(4)(d) in English, at least ten (10) days in advance of commencing shipment to a pre-approved facility. The notification must indicate that the recovery facility is pre-approved, and may apply to a single specific shipment or to multiple shipments as described in 335-14-3-.09(4)(b)1.(i). This information must be sent to both the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and the Alabama Department of Environmental Management, Land Division, P. O. Box 301463, Montgomery, AL 36130-1463; with the words "OECD Export Notification—Pre-approved Facility" prominently displayed on the envelope. General notifications that cover multiple shipments as described in 335-14-3-.09(4)(b)1.(i) may cover a period of up to three (3) years. Even when a general notification is used for multiple shipments, each shipment still must be accompanied by its own movement document pursuant to 335-14-3-.09(5).

(ii) Exports to pre-approved facilities may take place after the elapse of seven (7) working days from the issuance of an Acknowledgement of Receipt of the notification by the competent authority of the country of import unless the exporter has received information indicating that the competent authority of any countries concerned objects to the shipment.

(c) Wastes not covered in the OECD Green and Amber lists. Wastes destined for recovery operations, that have not been assigned to the OECD Green and Amber lists, incorporated by reference in 335-14-3-.09(10)(d), but which are considered hazardous under U.S. national procedures as defined in 335-14-3-.09(1)(a), are subject to the notification and consent requirements established for the Amber control procedures in accordance with 335-14-3-.09(4)(b). Wastes destined for recovery operations, that have– not been assigned to the OECD Green and Amber lists, incorporated by reference in 335-14-3-.09(10)(d), and are not considered hazardous under U.S. national procedures as defined in 335-14-3-.09(1)(a), are subject to Green control procedures.

(d) Notifications submitted under this section must include the information specified in 335-14-3-.09(4)(d)1.-(d)14.:

1. Serial number or other accepted identifier of the notification document;

2. Exporter name and EPA identification number (if applicable), address, ~~and~~ telephone, fax numbers, and e-mail address;

3. Importing recovery facility name, address, telephone, fax numbers, e-mail address, and technologies employed;

4. Importer name (if not the owner or operator of the recovery facility) address, ~~and~~ telephone, fax numbers, and e-mail address; whether the importer will engage in waste exchange recovery operation R12 or waste accumulation recovery operation R13 prior to delivering the waste to the final recovery facility and identification of recovery operations to be employed at the final recovery facility;

5. Intended transporter(s) and/or their agents; address, telephone, fax numbers, and e-mail address;

6. Country of export and relevant competent authority, and point of departure;

7. Countries of transit and relevant competent authorities, and points of entry and departure;

8. Country of import and relevant competent authority, and point of entry;

9. Statement of whether the notification is a single notification or a general notification. If general, include period of validity requested;

10. Date(s) foreseen for commencement of transboundary movements;

11. Means of transport envisaged;

12. Designation of waste type(s) from the appropriate OECD list incorporated by reference in 335-14-3-.09(10)(d), description(s) of each waste type, estimated total quantity of each, RCRA waste code, and United Nations number for each waste type;

13. Specification of the recovery operation(s) as defined in 335-14-1-.02.

14. Certification/Declaration signed by the exporter that states:

"I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally-enforceable written contractual obligations have been entered into, and that any applicable insurance or other financial guarantees are or shall be in force covering the transboundary movement."

Name:_____

Signature:_____

Date:_____

[**Note to 335-14-3-.09(4)(d)14.**: The United States does not currently require financial assurance for these waste shipments; however, U.S. exporters may be asked by other governments to provide and certify to such assurance as a condition of obtaining consent to a proposed movement.]

(e) Certificate of ~~R~~recovery. As soon as possible, but not later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following receipt of the waste, the U.S. recovery facility shall send a certificate of recovery to the exporter and to the competent authorities of the countries of export and import by mail, e-mail without a digital signature followed by mail, or fax followed by mail. The certificate of recovery shall include a signed, written, and dated statement that affirms that the waste materials were recovered in the manner agreed to by the parties to the contract required under 335-14-3-.09(6).

(5) Movement document.

(a) All U.S. parties subject to the contract provisions of 335-14-3-.09(6) must ensure that a movement document meeting the conditions of 335-14-3-.09(5)(b) accompanies each transboundary movement of wastes subject to the Amber control procedures from the initiation of the shipment until it reaches the final recovery facility, including cases in which the waste is stored and/or sorted by the importer prior to shipment to the final recovery facility, except as provided in 335-14-3-.09(5)(a)1. and (a)2.

1. For shipments of hazardous waste within the United States solely by water (bulk shipments only), the generator must forward the movement document with the manifest to the last water (bulk shipment) transporter to handle the waste in the United States if exported by water, (in accordance with the manifest routing procedures at 335-14-3-.02(4)(c)).

2. For rail shipments of hazardous waste within the United States which originate at the site of generation, the generator must forward the movement document with the manifest (in accordance with the routing procedures for the manifest in 335-14-3-.02(4)(d)) to the next non-rail transporter, if any, or the last rail transporter to handle the waste in the United States if exported by rail.

(b) The movement document must include all information required by 335-14-3-.09(4) (for notification), as well as the following:

1. Date movement commenced;

2. Name (if not exporter), address, and telephone, fax numbers, and e-mail of primary exporter;

3. Company name and EPA ID number of all transporters;

4. Identification (license, registered name or registration number) of means of transport, including types of packaging envisaged;

5. Any special precautions to be taken by transporter(s);

6. Certification/declaration signed by the exporter that no objection to the shipment has been lodged, as follows:

"I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally-enforceable written contractual obligations have been entered into, that any applicable insurance or other financial guarantees are or shall be in force covering the transboundary movement, and that:

(i) All necessary consents have been received"; or

(ii) The shipment is directed to a recovery facility within the OECD area and no objection has been received from any of the countries concerned within the thirty (30) day tacit consent period"; or

(iii) The shipment is directed to a recovery facility pre-approved for that type of waste within the OECD area; such an authorization has not been revoked, and no objection has been received from any of the countries concerned."

(Delete sentences that are not applicable.)

Name:_____

Signature:_____

Date:_____

7. Appropriate signatures for each custody transfer (e.g., transporter, importer, and owner or operator of the recovery facility).

(c) Exporters also must comply with the special manifest requirements of 335-14-3-.05(5)(a), (b), (c), (e), and (i) and importers must comply with the import requirements of 335-14-3-.06.

(d) Each U.S. person that has physical custody of the waste from the time the movement commences until it arrives at the recovery facility must sign the movement document (e.g., transporter, importer, and owner or operator of the recovery facility).

(e) Within three (3) working days of the receipt of imports subject to 335-14-3-.09, the owner or operator of the U.S. recovery facility must send signed copies of the movement document to the exporter, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, to the Alabama Department of Environmental Management, Land Division, P. O. Box 301463, Montgomery, AL 36130, and to the competent authorities of the countries of export and transit. If the concerned U.S. recovery facility is a R12/R13 recovery facility as defined in 335-14-1-.02, the facility shall retain the original of the movement document for three (3) years.

(6) Contracts.

(a) Transboundary movements of hazardous wastes subject to the Amber control procedures are prohibited unless they occur under the terms of a valid written contract, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Such contracts or equivalent arrangements must be executed by the exporter and the owner or operator of the recovery facility, and must specify responsibilities for each. Contracts or equivalent arrangements are valid for the purposes of 335-14-3-.09(6) only if persons assuming obligations under the contracts or equivalent arrangements have appropriate legal status to conduct the operations specified in the contract or equivalent arrangement.

(b) Contracts or equivalent arrangements must specify the name and EPA ID number, where available, of 335-14-3-.09(6)(b)1.-4.:

1. The generator of each type of waste;

2. Each person who will have physical custody of the wastes;

3. Each person who will have legal control of the wastes; and

4. The recovery facility.

(c) Contracts or equivalent arrangements must specify which party to the contract will assume responsibility for alternate management of the wastes if their disposition cannot be carried out as described in the notification of intent to export. In such cases, contracts must specify that:

1. The person having actual possession or physical control over the wastes will immediately inform the exporter and the competent authorities of the countries of export and import and, if the wastes are located in a country of transit, the competent authorities of that country; and

2. The person specified in the contract will assume responsibility for the adequate management of the wastes in compliance with applicable laws and regulations including, if necessary, arranging the return of wastes and, as the case may be, shall provide the notification for re-export.

(d) Contracts must specify that the importer will provide the notification required in 335-14-3-.09(3)(c) prior to the re-export of controlled wastes to a third country.

(e) Contracts or equivalent arrangements must include provisions for financial guarantees, if required by the competent authorities of any countries concerned, in accordance with applicable national or international law requirements.

[**Note to 335-14-3-.09(6)(e)**: _Financial guarantees so required are intended to provide for alternate recycling, disposal, or other means of sound management of the wastes in cases where arrangements for the shipment and the recovery operations

cannot be carried out as foreseen. The United States does not require such financial guarantees at this time; however, some OECD Member countries do. It is the responsibility of the exporter to ascertain and comply with such requirements; in some cases, transporters or importers may refuse to enter into the necessary contracts absent specific references or certifications to financial guarantees.]

(f) Contracts or equivalent arrangements must contain provisions requiring each contracting party to comply with all applicable requirements of 335-14-3-.09.

(g) Upon request by EPA, U.S. exporters, importers, or recovery facilities must submit to EPA copies of contracts, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Information contained in the contracts or equivalent arrangements for which a claim of confidentiality is asserted in accordance with 40 CFR 2.203(b) will be treated as confidential and will be disclosed by EPA only as provided in 335-14-1-.01(2).

[**Note to 335-14-3-.09(6)(g)**: Although the United States does not require routine submission of contracts at this time, OECD Decision allows Member countries to impose such requirements. When other OECD Member countries require submission of partial or complete copies of the contract as a condition to granting consent to proposed movements, EPA will request the required information; absent submission of such information, some OECD Member countries may deny consent for the proposed movement.]

(7) Provisions relating to recognized traders.

(a) A recognized trader who takes physical custody of a waste and conducts recovery operations (including storage prior to recovery) is acting as the owner or operator of a recovery facility and must be so authorized in accordance with all applicable Federal laws.

(b) A recognized trader acting as an exporter or importer for transboundary shipments of waste must comply with all the requirements of 335-14-3-.09 associated with being an exporter or importer.

(8) Reporting and recordkeeping.

(a) Annual reports. For all waste movements subject to 335-14-3-.09, persons (e.g., exporters, recognized traders) who meet the definition of primary exporter in 335-14-1-.02(1)(a) or who initiate the movement document under 335-14-3-.09(5) shall file an annual report with both the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., ~~NW.~~NW, Washington, DC 20460 and the Alabama Department of Environmental Management, Land Division, P. O. Box 301463, Montgomery, AL 36130, no later than March 1 of each year summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year. (If the primary exporter or person who initiates the movement document under 335-14-3-.09(5) is required to file an annual report for waste exports that are not covered under 335-14-3-.09, he may include all export information in one report provided the following

information on exports of waste destined for recovery within the designated OECD Member countries is contained in a separate section). Such reports shall include all of the following:

1. The EPA identification number, name, and mailing and site address of the exporter filing the report;

2. The calendar year covered by the report;

3. The name and site address of each final recovery facility;

4. By final recovery facility, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number (from 335-14-2-.03 or 2-.04), designation of waste type(s) and applicable waste code(s) from the appropriate OECD waste list incorporated by reference in 335-14-3-.09(10)(d), DOT hazard class, the name and U.S. EPA identification number (where applicable) for each transporter used, the total amount of hazardous waste shipped pursuant to 335-14-3-.09, and number of shipments pursuant to each notification;

5. In even numbered years, for each hazardous waste exported, except for hazardous waste produced by exporters of greater than 100 kg but less than 1000 kg in a calendar month, and except for hazardous waste for which information was already provided pursuant to 335-14-3-.04(2):

(i) A description of the efforts undertaken during the year to reduce the volume and toxicity of the waste generated; and

(ii) A description of the changes in volume and toxicity of the waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984; and

6. A certification signed by the person acting as primary exporter or initiator of the movement document under 335-14-3-.09(5) 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 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."

(b) Exception reports. Any person who meets the definition of primary exporter in 335-14-1-.02(1)(a) or who initiates the movement document under 335-14-3-.09(5) must file an exception report in lieu of the requirements of 335-14-3-.04(3) (if applicable) with both the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., ~~NW.~~NW, Washington, DC 20460 and the Alabama Department of Environmental Management, Land Division, P. O. Box 301463, Montgomery, AL 36130 if any of the following occurs:

1. He has not received a copy of the RCRA hazardous waste manifest (if applicable) signed by the transporter identifying the -point of departure of the waste from the United States, within forty-five (45) days from the date it was accepted by the initial transporter;

2. Within ninety (90) days from the date the waste was accepted by the initial transporter, the exporter has not received written confirmation from the recovery facility that the hazardous waste was received;

3. The waste is returned to the United States.

(c) Recordkeeping.

1. Persons who meet the definition of primary exporter in 335-14-1-.02(1)(a) or who initiate the movement document under 335-14-3-.09(5) shall keep all of the following records:

(i) A copy of each notification of intent to export and all written consents obtained from the competent authorities of countries concerned for a period of at least three (3) years from the date the hazardous waste was accepted by the initial transporter;

(ii) A copy of each annual report for a period of at least three (3) years from the due date of the report;

(iii) A copy of any exception reports and a copy of each confirmation of delivery (i.e., movement document) sent by the recovery facility to the exporter for at least three (3) years from the date the hazardous waste was accepted by the initial transporter or received by the recovery facility, whichever is applicable; and

(iv) A copy of each certificate of recovery sent by the recovery facility to the exporter for at least three (3) years from the date that the recovery facility completed processing the waste shipment.

2. The periods of retention referred to in 335-14-3-.09(8) are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

(9) ~~Pre-approval for U.S. Recovery Facilities {~~**[Reserved~~}~~]**.

(10) OECD Waste Lists.

(a) General. For the purposes of 335-14-3-.09, a waste is considered hazardous under U.S. national procedures, and hence subject to 335-14-3-.09, if the waste:

1. Meets the definition of hazardous waste in 335-14-2-.01(3); and

2. Is subject to either the manifesting requirements at 335-14-3-.02, to the universal waste management standards of 335-14-11, or the export requirements in the spent lead-acid battery management standards of 335-14-7-.07.

(b) If a waste is hazardous under 335-14-3-.09(10)(a), it is subject to the Amber control procedures, regardless of whether it appears in the OECD Amber List, incorporated by reference in 335-14-.09(10)(d).

(c) The appropriate control procedures for hazardous wastes and hazardous waste mixtures are addressed in 335-14-3-.09(3).

(d) The OECD waste lists,- as set forth in Annex B ("Green List") and Annex C ("Amber List") (collectively "OECD waste lists") of the 2009 "Guidance Manual for the Implementation of Council Decision C(2001)107/FINAL, as Amended, on the Control of Transboundary Movements of Wastes ~~d~~Destined for Recovery Operations," are incorporated by reference. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This material is incorporated as it exists on the date of the approval and a notice of any change in these materials will be published in the *Federal Register*. The materials are available for inspection at the U.S. Environmental Protection Agency, Docket Center Public Reading Room, EPA West, Room 3334, 1301 Constitution Avenue ~~NW.~~NW, Washington, DC 20004 (Docket # EPA-HQ-RCRA_2005-0018) or at the National Archives and Records Administration (NARA), and may be obtained from the Organization for Economic Cooperation and Development, Environment Directorate, 2 rue André Pascal, F-75775 Paris Cedex 16, France.

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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-.03(5)(c) 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) Conditionally exempt small quantity generators. 335-14-3-.12 provides alternative requirements to the conditional exemption in 335-14-2-.01(5)(b) 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-.03(5)(c).

(b) Conditionally exempt 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 335-14-2-.01(5)(b).

(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, 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 ~~I~~identification ~~N~~number. An eligible academic entity that is a conditionally exempt small quantity generator and does not have an EPA ~~I~~identification ~~N~~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 ~~I~~identification ~~N~~number (or site, for conditionally exempt 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 ~~I~~identification ~~N~~number (except for conditionally exempt 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, 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 ~~I~~identification ~~N~~number and that it will comply with the requirements of 335-14-3-.01(2) and 335-14-3-.03(5)(c) for small quantity generators and large quantity generators. An eligible academic entity that is a conditionally exempt small quantity generator and does not have an EPA ~~I~~identification ~~N~~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 335-2-.01(5)(b). An eligible academic entity must submit a separate notification (ADEM Form 8700-12) for each EPA ~~I~~identification ~~N~~number (or site, for

conditionally exempt 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-.03(5)(c) for small quantity generators and large quantity generators, or 335-14-2-.01(5)(b) for conditionally exempt 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 ~~C~~class.

2. Facility's EPA ~~I~~identification ~~N~~number (except for conditionally exempt small quantity generators).

3. Operating ~~N~~name of ~~F~~facility.

4. Location of ~~F~~facility.

5. Facility ~~C~~contact.

6. Facility ~~M~~mailing ~~A~~address.

7. North American Industry Classification System (NAICS) ~~C~~code(s).

8. Ownership.

9. Land ~~T~~type.

10. Certification ~~S~~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 ~~C~~containers in a ~~L~~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) 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 6 months; or

2. Remove containers of unwanted material from each laboratory within 6 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 paragraph (a)1. or (a)2. of this section 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 paragraph (a)1. or (a)2. of this section 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 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 is exceeded; and

(ii) Are removed from the laboratory within 10 calendar days of the date that 1 quart 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) Conditionally exempt 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 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), 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. Conditionally exempt small quantity generators must ensure it is taken directly from the laboratory(ies) to any of the types of facilities listed in 335-2-.01(5)(f)3. for acute hazardous waste, or 335-14-2-.01(5)(g)3. for hazardous waste.

(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-.03(5)(a) for large quantity generators or 335-14-3-.03(5)(d), (f), and (g) 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-.03(5)(a)3.

(d) A trained professional must determine, pursuant to 335-14-3-.01(2), 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 335-14-2-.01(5)(c) and (d) 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), 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 335-14-2-.01(5)(c) and (d) 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 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 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 status, pursuant to 335-14-2-.01(5)(c) and (d). 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 status, pursuant to 335-14-2-.01(5)(c) and (d), 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 paragraph (a)2. of this section, 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 conditionally exempt small quantity generator limits of 335-14-2-.01(5)], 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~~; and~~.

(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 status, pursuant to 335-14-2-.01(5)(c) and (d).

(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 ~~I~~identification ~~N~~numbers. The Laboratory Management Plan must contain two parts with a total of nine elements identified in paragraphs (a) and (b) of this section. In Part I of its Laboratory Management Plan, an eligible academic entity must describe its procedures for each of the elements listed in paragraph (a) of this section. 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 paragraph (b) of this section. 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) 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-laboratory 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-.03(5)(c) 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 335-14-2-.01(5)(b) for conditionally exempt small quantity generators, with respect to that hazardous waste.

Author: Heather M. Jones; Metz Duites; Vernon H. Crockett
Statutory Authority: Code of Alabama 1975, §§ 22-30-11, 22-30-14.
History: March 30, 2010.
Amended: April 3, 2012; XXXXX,XXXX.

335-14-3 Appendix I - Uniform Hazardous Waste Manifest and Instructions (EPA Forms 8700-22 Aand 8700-22A and their Instructions).

U.S. EPA FORM 8700-22

Read all instructions before completing this form.

1. This form has been designed for use on a 12-pitch (elite) typewriter which is also compatible with standard computer printers; a firm point pen may also be used – press down hard.

2. Federal regulations require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage, and disposal facilities to complete this form (8700-22) and, if necessary, the continuation sheet (8700-22A) for both inter- and intrastate transportation of hazardous waste.

Please print or type. (Form designed for use on elite (12-pitch) typewriter.) Form Approved. OMB No. 2050-0039

UNIFORM HAZARDOUS WASTE MANIFEST

1 Generator ID Number | 2 Page 1 of | 3 Emergency Response Phone | 4. Manifest Tracking Number

5 Generator's Name and Mailing Address | Generator's Site Address (if different than mailing address)

Generator's Phone

6 Transporter 1 Company Name | U.S. EPA ID Number

7 Transporter 2 Company Name | U.S. EPA ID Number

8 Designated Facility Name and Site Address | U.S. EPA ID Number

Facility's Phone

9a HM	9b U.S. DOT Description (including Proper Shipping Name, Hazard Class, ID Number, and Packing Group (if any))	10 Containers No.	10 Containers Type	11 Total Quantity	12 Unit Wt./Vol.	13 Waste Codes
	1.					
	2.					
	3.					
	4.					

14 Special Handling Instructions and Additional Information

15 **GENERATOR'S/OFFEROR'S CERTIFICATION:** I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name, and are classified, packaged, marked and labeled/placarded, and are in all respects in proper condition for transport according to applicable international and national governmental regulations. If export shipment and I am the Primary Exporter, I certify that the contents of this consignment conform to the terms of the attached EPA Acknowledgment of Consent.
I certify that the waste minimization statement identified in 40 CFR 262.27(a) (if I am a large quantity generator) or (b) (if I am a small quantity generator) is true.

Generator's/Offeror's Printed/Typed Name | Signature | Month | Day | Year

16 International Shipments ☐ Import to U.S. ☐ Export from U.S. Port of entry/exit

Transporter signature (for exports only) Date leaving U.S.

17 Transporter Acknowledgment of Receipt of Materials

Transporter 1 Printed/Typed Name | Signature | Month | Day | Year

Transporter 2 Printed/Typed Name | Signature | Month | Day | Year

18 Discrepancy

18a Discrepancy Indication Space ☐ Quantity ☐ Type ☐ Residue ☐ Partial Rejection ☐ Full Rejection

Manifest Reference Number

18b Alternate Facility (or Generator) | U.S. EPA ID Number

Facility's Phone

18c Signature of Alternate Facility (or Generator) | Month | Day | Year

19 Hazardous Waste Report Management Method Codes (i.e., codes for hazardous waste treatment, disposal, and recycling systems)

1	2	3	4

20 Designated Facility Owner or Operator: Certification of receipt of hazardous materials covered by the manifest except as noted in Item 18a

Printed/Typed Name | Signature | Month | Day | Year

GENERATOR | INTL | TRANSPORTER | DESIGNATED FACILITY

EPA Form 8700-22 (Rev. 3-05) Previous editions are obsolete. DESIGNATED FACILITY TO DESTINATION STATE (IF REQUIRED)

The following statement must be included with each Uniform Hazardous Waste Manifest, either on the form, in the instructions to the form, or accompanying the form:

Public reporting burden for this collection of information is estimated to average: 30 minutes for generators, 10 minutes for transporters, and 25 minutes for owners or operators of treatment, storage, and disposal facilities. This includes time for reviewing instructions, gathering data, completing, reviewing, and transmitting the form. Any correspondence regarding the PRA burden statement for the manifest must be sent to the Director of the Collection Strategies Division in EPA's Office of Information Collection at the following address: U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, DC 20460. Do not send the completed form to this address.

INSTRUCTIONS FOR GENERATORS U.S. EPA FORM 8700-22

Item 1. Generator's U.S. EPA ~~I~~identification ~~N~~number

Enter the generator's U.S. EPA twelve digit identification number, or the ~~S~~state generator identification number if the generator site does not have an EPA identification number.

Item 2. Page 1 of ____

Enter the total number of pages used to complete this Manifest (i.e., the first page (EPA Form 8700-22) plus the number of Continuation Sheets (EPA form 8700-22A), if any).

Item 3. Emergency Response Phone Number

Enter a phone number for which emergency response information can be obtained in the event of an incident during transportation. The emergency response phone number must:

1. Be the number of the generator or the number of an agency or organization who is capable of and accepts responsibility for providing detailed information about the shipment;

2. Reach a phone that is monitored 24 hours a day at all times the waste is in transportation (including transportation related storage); and

3. Reach someone who is either knowledgeable of the hazardous waste being shipped and has comprehensive emergency response and spill cleanup/incident mitigation information for the material being shipped or has immediate access to a person who has that knowledge and information about the shipment.

[Note: Emergency Response phone number information should only be entered in Item 3 when there is one phone number that applies to all the waste materials described in Item 9b. If a situation (e.g., consolidated shipments) arises where more than one Emergency Response phone number applies to the various wastes listed on

the manifest, the phone numbers associated with each specific material should be entered after its description in Item 9b.]

Item 4. Manifest Tracking Number

This unique tracking number must be pre-printed on the manifest by the form's printer.

Item 5. Generator's Mailing Address, Phone Number and Site Address

Enter the name of the generator, the mailing address to which the completed manifest signed by the designated facility should be mailed, and the generator's telephone number. Note, the telephone number (including area code) should be the normal business number for the generator, or the number where the generator or his authorized agent may be reached to provide instructions in the event the designated and/or alternate (if any) facility rejects some or all of the shipment. Also enter the physical site address from which the shipment originates only if this address is different than the mailing address.

Item 6. Transporter 1 Company Name, and U.S. EPA ID Number

Enter the company name and U.S. EPA ID number of the first transporter who will transport the waste. Vehicle or driver information may not be entered here.

Item 7. Transporter 2 Company Name and U.S. EPA ID Number

If applicable, enter the company name and U.S. EPA ID Number of the second transporter who will transport the waste. Vehicle or driver information may not be entered here.

If more than two transporters are needed, use a Continuation Sheet(s) (EPA Form 8700-22A).

Item 8. Designated Facility Name, Site Address, and U.S. EPA ID Number

Enter the company name and site address of the facility designated to receive the waste listed on this manifest. Also enter the facility's phone number and the U.S. EPA twelve digit identification number of the facility.

Item 9. U.S. DOT Description (Including Proper Shipping Name, Hazard Class or Division, ~~I~~identification ~~N~~number, and Packing Group)

Item 9a. If the wastes identified in Item 9b consist of both hazardous and nonhazardous materials, then identify the hazardous materials by entering an "X" in this Item next to the corresponding hazardous material identified in Item 9b.

Item 9b. Enter the U.S. DOT Proper Shipping Name, Hazard Class or Division, ~~I~~identification ~~N~~number (UN/NA) and Packing Group for each waste as identified in 49 CFR 172. Include technical name(s) and reportable quantity references, if applicable.

[Note: If additional space is needed for waste descriptions, enter these additional descriptions in Item 27 on the Continuation Sheet (EPA Form 8700-22A). Also, if more than one Emergency Response phone number applies to the various wastes described in either Item 9b or Item 27, enter applicable Emergency Response phone numbers immediately following the shipping descriptions for those Items.]

Item 10. Containers (Number and Type)

Enter the number of containers for each waste and the appropriate abbreviation from Table I (below) for the type of container.

Table I – Types of Containers	
BA	Burlap, cloth, paper, or plastic bags
CF	Fiber or plastic boxes, cartons, cases
CM	Metal boxes, cartons, cases (including roll-offs)
CW	Wooden boxes, cartons, cases
CY	Cylinders
DF	Fiberboard or plastic drums, barrels, kegs
DM	Metal drums, barrels, kegs
DT	Dump truck
DW	Wooden drums, barrels, kegs
HG	Hopper or gondola cars
TC	Tank cars
TP	Portable tanks
TT	Cargo tanks (tank trucks)

Item 11. Total Quantity

Enter, in designated boxes, the total quantity of waste. Round partial units to the nearest whole unit, and do not enter decimals or fractions. To the extent practical, report quantities using appropriate units of measure that will allow you to report quantities with precision. Waste quantities entered should be based on actual measurements or reasonably accurate estimates of actual quantities shipped. Container capacities are ~~generally~~ not acceptable as estimates.

Item 12. Units of Measure (Weight/Volume)

Enter, in designated boxes, the appropriate abbreviation from Table II (below) for the unit of Measure.

Table II – Units of Measure	
G	Gallons (liquids only)
K	Kilograms
L	Liters (liquids only)
M	Metric Tons (1000 kilograms)*
N	Cubic Meters*
P	Pounds
T	Tons (2000 pounds)*
Y	Cubic Yards*

[* Note: Tons, Metric Tons, Cubic Meters, and Cubic Yards should only be reported in connection with very large bulk shipments, such as rail cars, tank trucks, or barges.]

Item 13. Waste Codes

Enter up to six federal and state waste codes to describe each waste stream identified in Item 9b. State waste codes that are not redundant with federal codes must be entered here, in addition to the federal waste codes which are most representative of the properties of the waste.

Item 14. Special Handling Instructions and Additional Information

1. Generators may enter any special handling or shipment-specific information necessary for the proper management or tracking of the materials under the generator's or other handler's business processes, such as waste profile numbers, container codes, bar codes, or response guide numbers. Generators also may use this space to enter additional descriptive information about their shipped materials, such as chemical names, constituent percentages, physical state, or specific gravity of wastes identified with volume units in Item 12.

2. This space may be used to record limited types of federally required information for which there is no specific space provided on the manifest, including any alternate facility designations; the manifest tracking number of the original manifest for rejected wastes and residues that are re-shipped under a second manifest; and the specification of PCB waste descriptions and PCB out-of-service dates required under 40 CFR 761.207. This space is not designated for entry of any state required information.

Item 15. Generator's/Offeror's Certifications

1. The generator must read, sign, and date the waste minimization certification statement. In signing the waste minimization certification statement, those generators who have not been exempted by statute or regulation from the duty to make a waste minimization certification under section 3002(b) of RCRA are also certifying that they have complied with the waste minimization requirements. The Generator's Certification also contains the required attestation that the shipment has been properly

prepared and is in proper condition for transportation (the shipper's certification). The content of the shipper's certification statement is as follows: "I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled/placarded, and are in all respects in proper condition for transport by highway according to applicable international and national governmental regulations. If export shipment and I am the Primary Exporter, I certify that the contents of the consignment conform to the terms of the attached EPA Acknowledgement of Consent." When a party other than the generator prepares the shipment for transportation, this party may also sign the shipper's certification statement as the offeror of the shipment.

2. Generator or Offeror personnel may preprint the words, "On behalf of" in the signature block or may hand write this statement in the signature block prior to signing the generator/offeror certification, to indicate that the individual signs as the employee or agent of the named principal.

[Note: All of the above information *except* the handwritten signature required in Item 15 may be pre-printed.]

II. INSTRUCTIONS FOR INTERNATIONAL SHIPMENT BLOCK

Item 16. International Shipments

For export shipments, the primary exporter must check the export box, and enter the point of exit (city and state) from the United States. For import shipments, the importer must check the import box and enter the point of entry (city and state) into the United States. For exports, the transporter must sign and date the manifest to indicate the day the shipment left the United States. Transporters of hazardous waste shipments must deliver a copy of the manifest to the U.S. Customs when ~~importing or~~ exporting the waste across the U.S. borders.

III. INSTRUCTIONS FOR TRANSPORTERS

Item 17. Transporters' Acknowledgements of Receipt

Enter the name of the person accepting the waste on behalf of the first transporter. That person must acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt. Only one signature per transportation company is required. Signatures are not required to track the movement of wastes in and out of transfer facilities, unless there is a change of custody between transporters.

If applicable, enter the name of the person accepting the waste on behalf of the second transporter. That person must acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt.

[Note: Transporters carrying imports, who are acting as importers, ~~or exports of hazardous waste~~ may also have responsibilities to enter information in the International Shipments Block. See above instructions for Item 16.

IV. INSTRUCTIONS FOR OWNERS AND OPERATORS OF TREATMENT, STORAGE, AND DISPOSAL FACILITIES

Item 18. Discrepancy

Item 18a. Discrepancy Indication Space

1. The authorized representative of the designated (or alternate) facility's owner or operator must note in this space any discrepancies between the waste described on the Manifest and the waste actually received at the facility. Manifest discrepancies are: (1) significant differences (as defined 335-14-5-.05(3)(b) and 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)(f).

2. For rejected loads and residues (335-14-5-.05(3)(d), (e), and (f) or 335-14-6-.05(3)(d), (e), and (f)], check the appropriate box if the shipment is a rejected load (i.e., rejected by the designated and/or alternate facility and is sent to an alternate facility or returned to the generator) or a regulated residue that cannot be removed from a container. Enter the reason for the rejection or the inability to remove the residue and a description of the waste. Also, reference the manifest tracking number for any additional manifests being used to track the rejected waste or residue shipment on the original manifest. Indicate the original manifest tracking number in Item 14, the Special Handling Block and Additional Information Block of the additional manifests.

3. Owners or operators of facilities located in unauthorized ~~S~~states (i.e., states in which the U.S. EPA administers the hazardous waste management program) who cannot resolve significant differences in quantity or type within 15 days of receiving the waste must submit to their Regional Administrator a letter with a copy of the Manifest at issue describing the discrepancy and attempts to reconcile it (335-14-5-.05(3)(c) and 335-14-6-.05(3)(c)).

4. Owners or operators of facilities located in authorized ~~S~~states (i.e., those States that have received authorization from the U.S. EPA to administer the hazardous waste management program) should contact their ~~S~~state agency for information on where to report discrepancies involving "significant differences" to state officials.

Item 18b. Alternate Facility (or Generator) for Receipt of Full Load Rejections

Enter the name, address, phone number, and EPA ~~I~~identification ~~N~~number of the Alternate Facility which the rejecting TSDF has designated, after consulting with the

generator, to receive a fully rejected waste shipment. In the event that a fully rejected shipment is being returned to the generator, the rejecting TSDF may enter the generator's site information in this space. This field is not to be used to forward partially rejected loads or residue waste shipments.

Item 18c. Alternate Facility (or Generator) Signature

The authorized representative of the alternate facility (or the generator in the event of a returned shipment) must sign and date this field of the form to acknowledge receipt of the fully rejected wastes or residues identified by the initial TSDF.

Item 19. Hazardous Waste Report Management Method Codes

Enter the most appropriate Hazardous Waste Report Management Method code from Table III below for each waste listed in Item 9. The Hazardous Waste Report Management Method code is to be entered by the first treatment, storage, or disposal facility (TSDF) that receives the waste and is the code that best describes the way in which the waste is to be managed when received by the TSDF.

Table III – HAZARDOUS WASTE REPORT MANAGEMENT METHOD CODES	
Code	**Management Method Code Group**
Reclamation and Recovery	
H010	Metals recovery including retorting, smelting, chemical, etc.
H020	Solvents recovery (distillation, extraction, etc.)
H039	Other recovery or reclamation for reuse including acid regeneration, organics recovery, etc.
H050	Energy recovery at this site – used as fuel (includes on-site fuel blending before energy recovery; report only this code)
H061	Fuel blending prior to energy recovery at another site (waste generated either on site or received from off-site)
Destruction or Treatment Prior to Disposal at Another Site	
H040	Incineration – thermal destruction other than use as a fuel (includes any preparation prior to burning)
H071	Chemical reduction with or without precipitation (includes any preparation or final processes for consolidation of residuals)
H073	Cyanide destruction with or without precipitation (includes any preparation or final processes for consolidation of residuals)
H075	Chemical oxidation (includes any preparation or final processes for consolidation of residuals
H076	Wet air oxidation (includes any preparation or final processes for consolidation of residuals)
H077	Other chemical precipitation with or without pre-treatment (includes processes for consolidation of residuals)
H081	Biological treatment with or without precipitation (includes any preparation or final processes for consolidation of residuals)
H082	Adsorption (as the major component of treatment)
H083	Air or steam stripping (as the major component of treatment)

H101	Sludge treatment and/or dewatering (as the major component of treatment; not H071-H075, H077, or H082)
H103	Absorption (as the major component of treatment)
H111	Stabilization or chemical fixation prior to disposal at another site (as the major component of treatment; not H071-H075, H077, or H082)
H112	Macro-encapsulation prior to disposal at another site (as the major component of treatment; not H071-H075, H077, or H082)
H121	Neutralization only (no other treatment)
H122	Evaporation (as the major component of treatment; not H071-H083)
H123	Settling or clarification (as the major component of treatment; not H071-H083)
H124	Phase separation (as the major component of treatment; not H071-H083)
H129	Other treatment (not H071-H124)
Disposal	
H131	Land treatment or application (to include any prior treatment and/or stabilization)
H132	Landfill or surface impoundment that will be closed as a landfill (to include prior treatment and/or stabilization)
H134	Deep well or underground injection (with or without treatment; this waste was counted as hazardous waste)
H135	Discharge to sewer/POTW or NPDES (with prior storage – with or without treatment)
Transfer Off Site	
H141	The site receiving this waste stored/bulked and transferred the waste with no treatment or recovery (H010-H129), fuel blending (H061), or disposal (H131-H135) at that receiving site.

[**Note:** These codes are subject to change over time, and manifest users are urged to refer to the most recent edition of the Hazardous Waste Report Instructions and Forms for the most current and accurate set of codes. The current list of Management Method Codes can be found on the EPA's website: www.epa.gov/epaoswer/hazwaste/data/biennialreport.]

Item 20. Designated Facility Owner or Operator Certification of Receipt (Except As Noted in Item 18a)

Enter the name of the person receiving the waste on behalf of the owner or operator of the facility. That person must acknowledge receipt or rejection of the waste described on the Manifest by signing and entering the date of receipt or rejection where indicated. Since the Facility Certification acknowledges receipt of the waste except as noted in the Discrepancy Space in Item 18a, the certification should be signed for both waste receipt and waste rejection, with the rejection being noted and described in the space provided in Item 18a. Fully rejected wastes may be forwarded or returned using Item 18b after consultation with the generator. Enter the name of the person accepting the waste on behalf of the owner or operator of the alternate facility or the original generator. That person must acknowledge receipt or rejection of the waste described on the Manifest by signing and entering the date they received or rejected the waste in Item 18c. Partially rejected wastes and residues must be re-shipped under a new manifest, to be initiated and signed by the rejecting TSDF as offeror of the shipment.

Please print or type. (Form designed for use on elite (12-pitch) typewriter.)

Form Approved. OMB No. 2050-0039

UNIFORM HAZARDOUS WASTE MANIFEST (Continuation Sheet)	21. Generator ID Number	22. Page	23. Manifest Tracking Number

24. Generator's Name

25. Transporter _____ Company Name — U.S. EPA ID Number

26. Transporter _____ Company Name — U.S. EPA ID Number

GENERATOR

27a. HM	27b. U.S. DOT Description (including Proper Shipping Name, Hazard Class, ID Number, and Packing Group (if any))	28. Containers No.	28. Containers Type	29. Total Quantity	30. Unit Wt./Vol.	31. Waste Codes		

32. Special Handling Instructions and Additional Information

TRANSPORTER

33. Transporter _____ Acknowledgment of Receipt of Materials
Printed/Typed Name — Signature — Month — Day — Year

34. Transporter _____ Acknowledgment of Receipt of Materials
Printed/Typed Name — Signature — Month — Day — Year

DESIGNATED FACILITY

35. Discrepancy

36. Hazardous Waste Report Management Method Codes (i.e., codes for hazardous waste treatment, disposal, and recycling systems)

EPA Form 8700-22A (Rev. 3-05) Previous editions are obsolete.

DESIGNATED FACILITY TO DESTINATION STATE (IF REQUIRED)

INSTRUCTIONS- CONTINUATION SHEET, U.S. EPA FORM 8700-22A

Read all instructions before completing this form. This form has been designed for use on a 12-pitch (elite) typewriter; a firm point pen may also be used—press down hard.

This form must be used as a continuation sheet to U.S. EPA Form 8700-22 if:

More than two transporters are to be used to transport the waste; or

More space is required for the U.S. DOT descriptions and related information in Item 9 of the U.S. EPA Form 8700-22.

Federal regulations require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage, or disposal facilities to use the uniform hazardous waste manifest (EPA Form 8700-22) and, if necessary, this continuation sheet (EPA Form 8700-22A) for both interstate and intrastate transportation.

Item 21. Generator's ID Number

Enter the generator's U.S. EPA twelve digit identification number or, the ~~S~~state generator identification number if the generator site does not have an EPA identification number.

Item 22. Page ____

Enter the page number of this Continuation Sheet.

Item 23. Manifest Tracking Number

Enter the Manifest Tracking number from Item 4 of the Manifest form to which this continuation sheet is attached.

Item 24. Generator's Name

Enter the generator's name as it appears in Item 5 on the first page of the Manifest.

Item 25. Transporter – Company Name

If additional transporters are used to transport the waste described on this Manifest, enter the company name of each additional transporter in the order in which they will transport the waste. Enter after the word "Transporter" the order of the transporter. For example, Transporter 3 Company Name. Also enter the U.S. EPA twelve digit identification number of the transporter described in Item 25.

Item 26. Transporter – Company Name

If additional transporters are used to transport the waste described on this Manifest, enter the company name of each additional transporter in the order in which they will transport the waste. Enter after the word "Transporter" the order of the transporter. For example, Transporter 4 Company name. Each Continuation Sheet can record the names of two additional transporters. Also enter the U.S. EPA twelve digit identification number of the transporter named in Item 26.

Item 27. U.S. D.O.T. Description Including Proper Shipping Name, Hazard Class, and ID Number (UN/NA)

For each row enter a sequential number under Item 27b that corresponds to the order of waste codes from one continuation sheet to the next, to reflect the total number of wastes being shipped. Refer to instructions for Item 9 of the manifest for the information to be entered.

Item 28. Containers (No. and Type)

Refer to the instructions for Item 10 of the manifest for information to be entered.

Item 29. Total Quantity

Refer to the instructions for Item 11 of the manifest form.

Item 30. Units of Measure (Weight/Volume)

Refer to the instructions for Item 12 of the manifest form.

Item 31. Waste Codes

Refer to the instructions for Item 13 of the manifest form.

Item 32. Special Handling Instructions and Additional Information

Refer to the instructions for Item 14 of the manifest form.

TRANSPORTERS

Item 33. Transporter – Acknowledgement of Receipt of Materials

Enter the same number of the Transporter as identified in Item 25. Enter also the name of the person accepting the waste on behalf of the Transporter (Company Name) identified in Item 25. That person must acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.

Item 34. Transporter – Acknowledgement of Receipt of Materials

Enter the same number of the Transporter as identified in Item 26. Enter also the name of the person accepting the waste on behalf of the Transporter (Company Name) identified in Item 26. That person must acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.

OWNER AND OPERATORS OF TREATMENT, STORAGE, OR DISPOSAL FACILITIES

Item 35. Discrepancy Indication Space

Refer to Item 18. This space may be used to more fully describe information on discrepancies identified in Item 18a of the manifest form.

Item 36. Hazardous Waste Report Management Method Codes

For each field here, enter the sequential number that corresponds to the waste materials described under Item 27, and enter the appropriate process code that describes how the materials will be processed when received. If additional continuation sheets are attached, continue numbering the waste materials and process code fields sequentially, and enter on each sheet the process codes corresponding to the waste materials identified on that sheet.

Authors: Stephen C. Maurer, William K. Mullins II; Michael B. Champion; Amy P. Zachry, Bradley N. Curvin; Theresa A. Maines; Heather M. Jones; Vernon H. Crockett
Statutory Authority: Code of Alabama 1975, §§22-30-11, 22-30-14, 22-30-15, 22-30-16, 22-30-17.
History: April 9, 1986.
Amended: September 29, 1986; February 15, 1988; August 24, 1989; December 21, 1989; January 5, 1995; March 28, 1997; April 13, 2001; April 4, 2006; April 3, 2007; March 31, 2009; XXXXX,XXXX.

335-14-4-.02 Compliance with the Manifest System and Recordkeeping.

(1) The manifest system.

(a) Manifest Requirement

1. A transporter may not accept hazardous waste from a generator unless the transporter is also provided with a manifest signed in accordance with the requirements of 335-14-3-.02(4) or 335-14-3-.02(5).

2. Exports. In the case of exports other than those subject to 335-14-3-.09, a transporter may not accept such waste from a primary exporter or other person if he knows the shipment does not conform to the EPA Acknowledgement of Consent; and unless, in addition to a manifest signed by the generator as provided in this section, the transporter shall also be provided with an EPA Acknowledgement of Consent which, except for shipments by rail, is attached to the manifest [or shipping paper for exports by water (bulk shipment)]. For exports of hazardous waste subject to 335-14-3-.09, a transporter may not accept hazardous waste without a tracking document that includes all information required by 335-14-3-.09(5).

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 ~~shall~~ were not ~~be~~ required until September 4, 2006. The revised Manifest form and procedures had an effective date of September 5, 2006. The Manifest form and procedures revised as of July 1, 2004, were applicable until September 5, 2006.

4. Use of electronic manifest -- legal equivalence to paper forms for participating transporters. Electronic manifests that are obtained, completed, and transmitted in accordance with 335-14-3-.02(b), and used in accordance with 335-14-4-.02(1)(a)4. in lieu of EPA Forms 8700-22 and 8700-22A, are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy any requirement to obtain, complete, sign, carry, provide, give, use, or retain a manifest.

(i) Any requirement to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtain a valid and enforceable electronic signature with the meaning of 40 C.F.R. § 262.25(a).

(ii) Any requirement to give, provide, send, forward, or return to another person a copy of the manifest is satisfied when a copy of an electronic manifest is transmitted to the other person by submission to the electronic manifest system.

(iii) Any requirement for a manifest to accompany a hazardous waste shipment is satisfied when a copy of an electronic manifest is accessible during transportation and forwarded to the person or persons who are scheduled to receive delivery of the waste shipment, except that to the extent that the transporter must carry a paper document to comply with 49 C.F.R. § 177.817, a hazardous waste transporter must carry one printed copy of the electronic manifest on the transport vehicle.

(iv) Any requirement for a transporter to keep or retain a copy of a manifest is satisfied by the retention of an electronic manifest in the transporter's account on the electronic manifest system, provided that such copies are readily available for viewing and production if requested by EPA or the Department.

(v) No transporter may be held liable for the inability to produce an electronic manifest for inspection under this section if that transporter can demonstrate that the inability to produce the electronic manifest is exclusively due to a technical difficulty with the electronic manifest system for which the transporter bears no responsibility.

5. A transporter may participate in the electronic manifest system either by accessing the electronic manifest system from the transporter's own electronic equipment, or by accessing the electronic manifest system from the equipment provided by a participating generator, by another transporter, or by a designated facility.

6. If after a manifest has been originated electronically and signed electronically by the initial transporter, and the electronic manifest system should become unavailable for any reason, then:

(i) The transporter in possession of the hazardous waste when the electronic manifest becomes unavailable shall reproduce sufficient copies of the printed manifest that is carried on the transport vehicle pursuant to 335-14-4-.02(1)(a)4.(iii), or obtain and complete another paper manifest for this purpose. The transporter shall reproduce sufficient copies to provide the transporter and all subsequent waste handlers with a copy for their files, plus two additional copies that will be delivered to the designated facility with the hazardous waste.

(ii) On each printed copy, the transporter shall include a notation in the Special Handling and Additional Description space (Item 14) that the paper manifest is a replacement manifest for a manifest originated in the electronic manifest system, shall include (if not preprinted on the replacement manifest) the manifest tracking number of the electronic manifest that is replaced by the paper manifest, and shall also include a brief explanation why the electronic manifest was not available for completing the tracking of the shipment electronically.

(iii) A transporter signing a replacement manifest to acknowledge receipt of the hazardous waste must ensure that each paper copy is individually signed and that a legible handwritten signature appears on each copy.

(iv) From the point at which the electronic manifest is no longer available for tracking the waste shipment, the paper replacement manifest copies shall be carried, signed, retained as records, and given to a subsequent transporter or to the designated facility, following the instructions, procedures, and requirements that apply to the use of all other paper manifests.

7. If a transporter using an electronic manifest signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the transporter shall sign the electronic manifest electronically and also sign with an ink signature the transporter acknowledgement of receipt of materials on the printed copy of the manifest that is carried on the vehicle in accordance with 335-14-4-.02(1)(a)4.(iii). This printed copy bearing the generator's and transporter's ink signatures shall also be presented by the transporter to the designated facility to sign in ink to indicate the receipt of the waste materials or to indicate discrepancies. After the owner/operator of the designated facility has signed this printed manifest copy with its ink signature, the printed manifest copy shall be delivered to the designated facility with the waste materials.

(b) Before transporting the hazardous waste, the transporter must sign and date the manifest acknowledging acceptance of the hazardous waste from the generator. The transporter must return a signed copy to the generator before leaving the generator's property.

(c) The transporter must ensure that the manifest accompanies the hazardous waste. In the case of exports, the transporter must ensure that a copy of the EPA Acknowledgment of Consent also accompanies the hazardous waste.

(d) A transporter who delivers a hazardous waste to another transporter or to the designated facility must:

1. Obtain the date of delivery and the handwritten signature of that transporter or of the owner or operator of the designated facility on the manifest; and

2. Retain one copy of the manifest in accordance with 335-14-4-.02(3); and

3. Give the remaining copies of the manifest to the accepting transporter or designated facility.

(e) The requirements of 335-14-4-.02(1)(c), (d), and (f) do not apply to water (bulk shipment) transporters if:

1. The hazardous waste is delivered by water (bulk shipment) to the designated facility; and

2. A shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, the state manifest document number, the generator certification and signatures) and, for exports, an EPA Acknowledgment of Consent accompanies the hazardous waste; and

3. The delivering transporter obtains the date of delivery and handwritten signature of the owner or operator of the designated facility on either the manifest or the shipping paper; and

4. The person delivering the hazardous waste to the initial water (bulk shipment) transporter obtains the date of delivery and signature of the water (bulk shipment) transporter on the manifest and forwards it to the designated facility; and

5. A copy of the shipping paper or manifest is retained by each water (bulk shipment) transporter in accordance with 335-14-4-.02(3).

(f) For shipments involving rail transportation, the requirements of 335-14-4-.02(1)(c), (d), and (e) do not apply and the following requirements do apply:

1. When accepting hazardous waste from a non-rail transporter, the initial rail transporter must:

(i) Sign and date the manifest acknowledging acceptance of the hazardous waste;

(ii) Return a signed copy of the manifest to the non-rail transporter;

(iii) Forward at least three copies of the manifest to:

(I) The next non-rail transporter, if any; or

(II) The designated facility, if the shipment is delivered to that facility by rail; or

(III) The last rail transporter designated to handle the waste in the United States;

(iv) Retain one copy of the manifest and rail shipping paper in accordance with 335-14-4-.02(3).

2. Rail transporters must ensure that a shipping paper containing all the information required on the manifest (excluding the EPA

identification numbers, the state manifest document number, the state waste numbers, generator certification and signatures) and, for exports, an EPA Acknowledgment of Consent accompanies the hazardous waste at all times.

[**Note:** Intermediate rail transporters are not required to sign either the manifest or shipping paper.]

3. When delivering hazardous waste to the designated facility, a rail transporter must:

(i) Obtain the date of delivery and handwritten signature of the owner or operator of the designated facility on the manifest or the shipping paper (if the manifest has not been received by the facility); and

(ii) Retain a copy of the manifest or signed shipping paper in accordance with 335-14-4-.02(3).

4. When delivering hazardous waste to a non-rail transporter a rail transporter must:

(i) Obtain the date of delivery and the handwritten signature of the next non-rail transporter on the manifest; and

(ii) Retain a copy of the manifest in accordance with 335-14-4-.02(3).

5. Before accepting hazardous waste from a rail transporter, a non-rail transporter must sign and date the manifest and provide a copy to the rail transporter.

(g) Transporters who transport hazardous waste out of the United States must:

1. Sign and date the manifest in the International Shipments block to indicate the date that the shipment left the United States;

2. Retain one copy in accordance with 335-14-4-.02(3)(d);

3. Return a signed copy of the manifest to the generator; and

4. 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-.02(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) 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. If the hazardous waste cannot be delivered in accordance with 335-14-4-.02(2)(a) because of an emergency condition other than rejection of the waste by the designated facility, then the transporter must contact the generator for further directions and must revise the manifest according to the generator's instructions.

2. 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:

(i) 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.

(ii) For a full load rejection that will be taken back by the transporter, a copy of the original manifest that includes the rejecting facility's signature and date attesting to the rejection, the description of the rejection in the discrepancy block of the manifest, and the name, address, phone number, and Identification Number for the alternate facility or generator to whom the shipment must be delivered. The transporter must retain a copy of the manifest in accordance with 335-14-4-.02(3), and give a copy of the manifest containing this information to the rejecting designated facility. If the original manifest is not used, then the transporter must obtain a new manifest for the shipment and comply with 335-14-5-.05(3)(e)1. through 6. or 335-14-6-.05(3)(e)1. through 6.

(3) Recordkeeping.

(a) A transporter of hazardous waste must keep a copy of the manifest signed by the generator, himself, and the next designated transporter or the owner or operator of the designated facility for a period of three years from the date the hazardous waste was accepted by the initial transporter.

(b) For shipments delivered to the designated facility by water (bulk shipment), each water (bulk shipment) transporter must retain a copy of the shipping paper containing all the information required in 335-14-4-.02(1)(e)2. for a period of three years from the date the hazardous waste was accepted by the initial transporter.

(c) For shipments of hazardous waste by rail within the United States:

1. The initial rail transporter must keep a copy of the manifest and shipping paper with all the information required in 335-14-4-.02(1)(f)2. for a period of three years from the date the hazardous waste was accepted by the initial transporter; and

2. The final rail transporter must keep a copy of the signed manifest (or the shipping paper if signed by the designated facility in lieu of the manifest) for a period of three years from the date the hazardous waste was accepted by the initial transporter.

[**Note:** Intermediate rail transporters are not required to keep records pursuant to 335-14-4.]

(d) A transporter who transports hazardous waste out of the United States must keep a copy of the manifest indicating that the hazardous waste left the United States for a period of three years from the date the hazardous waste was accepted by the initial transporter.

(e) The periods of retention referred to in 335-14-4-.02(3) are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Department.

(4) Required Records.

(a) A transporter of hazardous waste must maintain a copy of the current hazardous waste transporter permit with each vehicle actively transporting hazardous wastes.

(b) A transporter of hazardous waste must maintain a copy of the contingency plan required by rule 335-14-8-.09(4)(g) with each vehicle actively transporting hazardous wastes. This plan should be designed in accordance with the applicable United States Department of Transportation regulations under 49 CFR parts 172.602, 172.604, and 172.606.

Author: Stephen C. Maurer; Amy P. Zachry; Bradley N. Curvin; Jonah Harris; Linda J. Knickerbocker; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, §§ 22-30-11, 22-30-15, 22-30-17, 22-30-18 and 22-30-21.
History: November 19, 1980.
Amended: September 29, 1986; February 15, 1988; August 24, 1989; January 5, 1995; March 28, 1997; March 27, 1998; April 13, 2001; March 31, 2005; April 4, 2006; April 3, 2007; March 31, 2011; XXXXX, XXXX.

335-14-4-.03 Hazardous Waste Discharges.

(1) Immediate action.

(a) In the event of a discharge of hazardous waste 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).

(b) If a discharge of hazardous waste occurs during transportation and the Department or its designee acting within the scope of its official responsibilities determines that immediate removal of the waste is necessary to protect human health or the environment, the Department or its designee may authorize the removal of the waste by transporters who do not have EPA identification numbers or Alabama Hazardous Waste Transportation Permits and without the preparation of manifests.

(c) An air, rail, highway or water transporter who has discharged hazardous waste must:

1. 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~~426-2675); and

2. 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, D.C. 20590. A copy of such report shall be provided to the Land Division, Alabama Department of Environmental Management, P.O. Box 301463, Montgomery, Alabama 36130-1463, not later than 14 days after any such discharge.

(d) A water (bulk shipment) transporter who has discharged hazardous waste must give the same notice as required by 33 CFR § 153.203 for oil and hazardous substances and shall give notice to the Alabama Emergency Management Agency (800/-843-0699, 24 hours a day) and the National Response Center (800/-424-8802 or 202-~~267~~426-2675, 24 hours a day).

(2) Discharge clean up.

A transporter must clean up any hazardous waste discharge that occurs during transportation or take such action as may be required or approved by the Department or its designee so that the hazardous waste discharge no longer presents a hazard to human health or the environment.

Author: Stephen C. Maurer; James T. Shipman; Bradley N. Curvin; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, § 22-30-11.
History: November 19, 1980.
Amended: April 9, 1986; August 24, 1989; January 5, 1995; January 12, 1996; April 13, 2001; April 4, 2006; March 31, 2009; March 26, 2013, XXXXX, XXXX.

335-14-4-.05 Transfer Facility Requirements.

(1) Applicability. The requirements of rule 335-14-4-.05 apply to all persons transporting hazardous waste within Alabama, storing waste at a transfer facility~~ies~~ located in Alabama, as defined in rule 335-14-1-.02, ~~storing hazardous waste~~or transferring a hazardous waste from one container to another at a transfer facility located in Alabama. For the purposes of 335-14-4, such persons are referred to as "transporters."

(2) Storage units. Owners or operators of transfer facilities may not store hazardous waste in units other than containers subject to regulation under Chapters 335-14-5 or 335-14-6.

(a) A container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove hazardous waste.

(b) Special requirements for the management of ignitable or reactive hazardous waste.

1. The owner or operator of a transfer facility must comply with 335-14-5-.02(8)(a);

2. Containers holding ignitable or reactive hazardous waste must be located at least 15 meters (50 feet) from the facility's property line.

[**Note:** Hazardous waste transfer facilities that were in operation prior to March 31, 2005 are exempt from the 15 meter (50 foot) requirement, provided that the facility demonstrates compliance with applicable portions of the National Fire Protection Association's (NFPA) Code(s) 30 and 400. Failure to demonstrate compliance with the applicable NFPA code(s) will be viewed as a violation of 335-14-4-.05(2)(b)2.]

(3) Storage time. A transfer facility may hold waste for no longer than 10 days during the normal course of transportation.

(a) A transfer facility must be able to demonstrate the length of time that the hazardous waste has been stored on-site.

(b) A ~~T~~transfer facility~~ies~~ that stores 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.

(c) The owner or operator may make this demonstration by:

1. Labeling each hazardous waste container with the date that the hazardous waste container was received;

2. Maintaining an inventory system on-site that identifies the date the hazardous waste containers being stored were received;

3. Maintaining an inventory system on-site that identifies the earliest date that any hazardous waste container in a group of hazardous waste containers was received;

4. Placing the hazardous waste container in a specific storage area and identifying the earliest date that any hazardous waste container in the area was received; or

5. Any other method which clearly demonstrates the length of time that the hazardous waste containers have been stored on-site.

(4) Condition of units. Containers used to store hazardous waste at transfer facilities must be:

(a) In good condition (no severe rusting, apparent structural defects or deterioration); and

(b) Not leaking (no visible leaks).

(5) Containment. Container storage areas at transfer facilities must be equipped with a containment system that is designed and operated in accordance with rule 335-14-4-.05(5)(a), except as otherwise provided by rule 335-14-4-.05(5)(b).

(a) The containment system must be designed and operated as follows:

1. The system must consist of, at a minimum, dikes, berms or retaining walls and a floor that covers the entire area within the dikes, berms, or retaining walls.

2. The entire containment system, including walls and floors, must be sufficiently impervious to hazardous waste to prevent any hazardous waste 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 335-14-4-.05(5)(a)4. to contain any run-on or precipitation which might enter the system; and

6. Spilled or leaked hazardous waste 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.

(b) Container storage areas that store containers holding only wastes that do not contain free liquids need not have a containment system defined by rule 335-14-4-.05(5)(a), except as provided by rule 335-14-4-.05(5)(c), provided that:

1. The storage area is sloped or is otherwise designed and operated to drain and remove liquid resulting from precipitation, or

2. The containers are elevated or are otherwise protected from contact with accumulated liquid.

(c) Container storage areas that store containers holding wastes identified as F020, F021, F023, and F027 must have a containment system defined by 335-14-4-.05(5)(a), regardless of whether or not they contain free liquids.

(6) Labels. Containers used to store hazardous waste at transfer facilities must be labeled or marked clearly with the words "Hazardous Waste" and the appropriate EPA hazardous waste number(s). The label(s) must be visible for inspection.

(7) Response to releases. Upon detection of a release of hazardous waste to the environment that is not subject to the corrective action requirements of Division 335-6, Volume 2 of the ADEM Administrative Code, the owner/operator of a transfer facility must perform the following cleanup steps:

(a) Stop the release;

(b) Contain the released hazardous waste;

(c) Clean up and manage properly the released hazardous waste and other materials in accordance with all applicable requirements of Division 335-13 and 335-14 of the ADEM Administrative Code; and

(d) If necessary, repair or replace any leaking hazardous waste storage containers prior to returning them to service.

(8) Closure.

(a) At closure, containers holding hazardous waste or residues of hazardous waste must be removed from the site;

(b) The owner or operator must remove or decontaminate hazardous waste residues, contaminated containment systems components, contaminated soils, and structures and equipment contaminated with hazardous waste, managing them as hazardous waste, unless the materials are not to be a hazardous waste under 335-14-2.

Author: Bradley N. Curvin; Theresa A. Maines, Heather M. Jones; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975 § 22-30-14, 22-30-15, 22-30-16.
History: March 31, 2005.
Amended: April 3, 2007; May 27, 2008; March 31, 2009; March 30, 2010; April 7, 2017.

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 ADEM Admin. Code Rule 335-1-6.

(3) Required notices.

(a)1. The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source must notify the Department in writing at least four weeks in advance of the date the waste is expected to arrive at the facility. Notice of subsequent shipments of the same waste from the same foreign source is not required.

2. The owner or operator of a recovery facility that has arranged to receive hazardous waste subject to 335-14-3-.09 must provide a copy of the movement document bearing all required signatures to the foreign exporter; to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; to the Alabama Department of Environmental Management, P. O. Box 301463, Montgomery, AL 36130; and to the competent authorities of all other countries concerned within three (3) working days of receipt of the shipment. The original of the signed movement document must be maintained at the facility for at least three (3) years. In addition, such owner or operator shall, as soon as possible, but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following the receipt of the hazardous waste, send a certificate of recovery to the foreign exporter and to the competent authority of the country of export and to EPA's Office of Enforcement and Compliance Assurance at the above address by mail, e-mail without a digital signature followed by mail, or fax followed by mail.

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

~~(b)~~2. In order to eliminate the need for multiple ~~N~~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

~~(c)~~3. The ADEM Form 8700-12, Notification of Regulated Waste Activity, is not complete without payment of all the appropriate fees specified in ADEM Admin. Code Rule 335-1-6.

(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~~(5)~~, 335-14-5-.28~~(14)~~, 335-14-5-.29~~(4)~~, 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 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 ~~in accordance with 335-14-5-.29(3)~~:

(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~~(4)~~, 335-14-5-.28~~(3)~~, 335-14-5-.28~~(4)~~, 335-14-5-.28~~(9)~~, and 335-14-5-.29~~(4) through (10~~) where applicable.

[Comment: 335-14-8 requires the inspection schedule to be submitted with Part B of the permit application. ADEM will evaluate the schedule along with the rest of the application to ensure that it adequately protects human health and the environment. As part of this review, the Department may modify or amend the schedule as may be necessary.]

(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) <u>General requirements for ignitable, reactive, or incompatible wastes</u>.

(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.

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335-14-5-.05 Manifest System, Recordkeeping and Reporting.

(1) Applicability.

(a) The requirements of 335-14-5-.05 apply to owners and operators of both on-site and off-site facilities, except as 335-14-5-.01(1) provides otherwise. 335-14-5-.05(2), (3), and (7) do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources, or to owners and operators of off-site facilities with respect to waste military munitions exempted from manifest requirements under 335-14-7-.13(4)(a). 335-14-5-.05(4)(b)9. only applies to permittees who treat, store, or dispose of hazardous wastes on-site where such wastes were generated.

(2) Use of manifest system.

(a) 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)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.

1. 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 335-14-5-.05(3)) on each copy of the manifest;

(iii) Immediately give the transporter at least one copy of the manifest;

(iv) Within 30 days of delivery, send a copy of the manifest to the generator; ~~and~~

(v) Within 30 days of delivery, send the top copy (Page 1) of the Manifest to the electronic manifest system for purposes of data entry and processing. In lieu of mailing this paper copy to EPA, the owner or operator may transmit to the EPA system an image file of Page 1 of the manifest, or both a data string file and the image file corresponding to Page 1 of the manifest. Any data or image files transmitted to EPA under must be submitted in data file and image file formats that are acceptable to EPA and that are supported by EPA's electronic reporting requirements and by the electronic manifest system; and

(vi) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

2. If a facility receives hazardous waste imported from a foreign source, the receiving facility must mail a copy of the manifest and documentation confirming EPA's consent to the import of hazardous waste to the following address within thirty (30) days of delivery: Office of Enforcement and Compliance Assurance,

Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

3. 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 identification numbers, generator's certification, and signatures), the owner or operator, or his agent, must:

1. Sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste covered by the manifest or shipping paper was received;

2. Note any significant discrepancies (as defined in 335-14-5-.05(3)(a)) in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper.

3. Immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received);

4. Within 30 days after the delivery, send a copy of the signed and dated manifest to the generator; however, if the manifest has not been received within 30 days after delivery, the owner or operator, or his agent, must send a copy of the shipping paper signed and dated to the generator; and

5. Retain at the facility a copy of the manifest and shipping paper (if signed in lieu of the manifest at the time of delivery) for at least three years from the date of delivery.

(c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility must comply with the requirements of 335-14-3.

(d) Within three (3) working days of the receipt of a shipment subject to 335-14-3-.09, the owner or operator of the facility must provide a copy of the movement document bearing all required signatures to the exporter; to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; to the Alabama Department of Environmental Management, Land Division, P.O. Box 301463, Montgomery, AL 36130; and to competent authorities of all other countries concerned. The original copy of the movement document must be maintained at the facility for at least three (3) years from the date of signature.

(e) A facility must determine whether the consignment state for a shipment regulates any additional wastes (beyond those regulated Federally) as hazardous wastes under its state hazardous waste program. Facilities must also

determine whether the consignment state or generator state requires the facility to submit any copies of the manifest to these states.

(f) Legal equivalence to paper manifests. Electronic manifests that are obtained, completed, and transmitted in accordance with 335-14-3-.02(b), and used in accordance with this section in lieu of the paper manifest form are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these regulations to obtain, complete, sign, provide, use, or retain a manifest.

1. Any requirement for the owner or operator of a facility to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of 40 C.F.R. § 262.25(a).

2. Any requirement to give, provide, send, forward, or to return to another person a copy of the manifest is satisfied when a copy of an electronic manifest is transmitted to the other person.

3. Any requirement for a manifest to accompany a hazardous waste shipment is satisfied when a copy of an electronic manifest is accessible during transportation and forwarded to the person or persons who are scheduled to receive delivery of the waste shipment.

4. Any requirement for an owner or operator to keep or retain a copy of each manifest is satisfied by the retention of the facility's electronic manifest copies in its account on the electronic manifest system, provided that such copies are readily available for viewing and production if requested by EPA or the Department.

5. No owner or operator may be held liable for the inability to produce an electronic manifest for inspection if the owner or operator can demonstrate that the inability to produce the electronic manifest is due exclusively to a technical difficulty with the electronic manifest system for which the owner or operator bears no responsibility.

(g) An owner or operator may participate in the electronic manifest system either by accessing the electronic manifest system from the owner's or operator's electronic equipment, or by accessing the electronic manifest system from portable equipment brought to the owner's or operator's site by the transporter who delivers the waste shipment to the facility.

(h) Special procedures applicable to replacement manifests. If a facility receives hazardous waste that is accompanied by a paper replacement manifest for a manifest that was originated electronically, the following procedures apply to the delivery of the hazardous waste by the final transporter:

1. Upon delivery of the hazardous waste to the designated facility, the owner or operator must sign and date each copy of the paper replacement manifest by hand in Item 20 (Designated Facility Certification of Receipt) and note any discrepancies in Item 18 (Discrepancy Indication Space) of the paper replacement manifest;

2. The owner or operator of the facility must give back to the final transporter one copy of the paper replacement manifest;

3. Within 30 days of delivery of the waste to the designated facility, the owner or operator of the facility must send one signed and dated copy of the paper replacement manifest to the generator, and send an additional signed and dated copy of the paper replacement manifest to the electronic manifest system; and

4. The owner or operator of the facility must retain at the facility one copy of the paper replacement manifest for at least three years from the date of delivery.

(i) Special procedures applicable to electronic signature methods undergoing tests. If an owner or operator using an electronic manifest signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the owner or operator shall also sign with an ink signature the facility's certification of receipt or discrepancies on the printed copy of the manifest provided by the transporter. Upon executing its ink signature on this printed copy, the owner or operator shall retain this original copy among its records for at least 3 years from the date of delivery of the waste.

(j) **[Reserved]**

(k) Electronic manifest signatures shall meet the criteria described in 40 C.F.R. § 262.25(a).

(3) Manifest discrepancies.

(a) Manifest discrepancies are:

1. Significant differences (as defined by 335-14-5-.05(3)(b)) between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives;

2. Rejected wastes, which may be a full or partial shipment of hazardous waste that the TSDF cannot accept; or

3. Container residues, which are residues that exceed the quantity limits for "empty" containers set forth in 335-14-2-.01(7)(b).

(b) Significant differences in quantity are: For bulk waste, variations greater than 10 percent by weight; for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload. Significant differences in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.

(c) Upon discovering a significant difference in quantity or type, the owner or operator must attempt to reconcile the discrepancy with the waste generator

or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator must immediately submit to the Regional Administrator and the Department a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

(d) Upon rejecting the waste or identifying a container residue that exceeds the quantity limits for "empty" containers set forth in 335-14-2-.01(7)(b), the facility must consult with the generator prior to forwarding the waste to another facility that can manage the waste. If it is impossible to locate an alternative facility that can receive the waste, the facility may return the rejected waste or residue to the generator. The facility must send the waste to the alternative facility or to the generator within 60 days of the rejection or the container residue identification.

1. While the facility is making arrangements for forwarding rejected wastes or residues to another facility under 335-14-5-.05(3), it must ensure that either the delivering transporter retains custody of the waste, or, the facility must provide for secure, temporary custody of the waste, pending delivery of the waste to the first transporter designated on the manifest prepared under 335-14-5-.05(3)(e) or (f).

(e) Except as provided in 335-14-5-.05(3)(e)7, for full or partial load rejections and residues that are to be sent off-site to an alternate facility, the facility is required to prepare a new manifest in accordance with 335-14-3-.02(1)(a) and the following instructions:

1. Write the generator's U.S. EPA ID number in Item 1 of the new manifest. Write the generator's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the generator's site address, then write the generator's site address in the designated space for Item 5.

2. Write the name of the alternate designated facility and facility's U.S. EPA ID number in the designated facility block (Item 8) of the new manifest.

3. Copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

4. Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a).

5. Write the DOT description for the rejected load or the residue in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

6. Sign the Generator's/Offeror's Certification to certify, as the offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation, and mail a signed copy of the manifest to the generator indentified in Item 5 of the new manifest.

7. For full load rejections that are made while the transporter remains present at the facility, the facility may forward the rejected shipment to the alternate facility by completing Item 18b of the original manifest and supplying the information on the next destination facility in the Alternate Facility space. The facility must retain a copy of this manifest for its records, and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with 335-14-5-.05(3)(e)1-6.

(f) Except as provided by 335-14-5-.05(3)(f)7 of this section, for rejected wastes and residues that must be sent back to the generator, the facility is required to prepare a new manifest in accordance with 335-14-3-.02(1)(a) and the following instructions:

1. Write the facility's U.S. EPA ID number in Item 1 of the new manifest. Write the facility's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the facility's site address, then write the facility's site address in the designated space for Item 5 of the new manifest.

2. Write the name of the initial generator and the generator's U.S. EPA ID number in the designated facility block (Item 8) of the new manifest.

3. Copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

4. Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a).

5. Write the DOT description for the rejected load or the residue in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

6. Sign the Generator's/Offeror's Certification to certify, as offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation.

7. For full load rejections that are made while the transporter remains at the facility, the facility may return the shipment to the generator with the original manifest by completing Item 18a and 18b of the manifest and supplying the generator's information in the Alternate Facility space. The facility must retain a copy for its records and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with 335-14-5-.05(3)(f)1-6. and 8.

8. For full or partial load rejections and container residues contained in non-empty containers that are returned to the generator, the facility must also comply with the exception reporting requirements in 335-14-3-.04(3).

(g) If a facility rejects a waste or identifies a container residue that exceeds the quantity limits for "empty" containers set forth in 335-14-2-.01(7)(7) after it has signed, dated, and returned a copy of the manifest to the delivering transporter or the generator, the facility must amend its copy of the manifest to indicate the rejected wastes or residues in the discrepancy space of the amended manifest. The facility must also copy the manifest tracking number from Item 4 of the new manifest to the Discrepancy space of the amended manifest, and must re-sign and date the manifest to certify to the information as amended. The facility must retain the amended manifest for at least three years from the date of amendment, and must within 30 days, send a copy of the amended manifest to the transporter and generator that received copies prior to their being amended.

(4) Operating record.

(a) The owner or operator must keep a written operating record at his facility.

(b) The following information must be recorded, as it becomes available, and maintained in the operating record for three years (unless a different retention time is specified below):

1. A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or disposal at the facility as required by 335-14-5 - Appendix I. This information must be maintained in the operating record until closure of the facility;

2. The location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or diagram that shows each cell or disposal area. For all facilities, this information must include cross-references to manifest document numbers if the waste was accompanied by a manifest. This information must be maintained in the operating record until closure of the facility;

3. Records and results of waste analyses performed as specified in 335-14-5-.02(4) and (8), 335-14-5-.14(15), 335-14-5-.15(2), 335-14-5-.27~~(5)~~, 335-14-5-.28~~(14)~~, 335-14-5-.29~~(4)~~, 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~~(5)~~, 335-14-5-.27~~(6)~~, 335-14-5-.28~~(14)~~, 335-14-5-.28~~(15)~~, and 335-14-5-.29~~(3) through (11)~~. This information must be maintained in the operating

record for three years, except for records and results pertaining to groundwater monitoring and cleanup which must be maintained in the operating record until closure of the facility;

7. For off-site facilities, notices to generators as specified in 335-14-5-.02(3)(b);

8. All closure cost estimates under 335-14-5-.08(3), and, for disposal facilities, all post-closure cost estimates under 335-14-5-.08(5). This information must be maintained in the operating record until closure of the facility;

9. A certification by the permittee no less often than annually, that the permittee has a program in place to reduce the volume and toxicity of hazardous waste that he generates to the degree determined by the permittee to be economically practicable; and the proposed method of treatment, storage, or disposal in that practicable method currently available to the permittee which minimizes the present and future threat to human health and the environment;

10. Records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to 335-14-9-.01(5), a petition pursuant to 335-14-9-.01(6), or a certification under 335-14-9-.01(8), and the applicable notice required by a generator under 335-14-9-.01(7). This information must be maintained in the operating record until closure of the facility;

11. For an off-site treatment facility, a copy of the notice, and the certification and demonstration, if applicable, required by the generator or the owner or operator under 335-14-9-.01(7) or 335-14-9-.01(8);

12. For an on-site treatment facility, the information contained in the notice (except the manifest number), and the certification and demonstration, if applicable, required by the generator or the owner or operator under 335-14-9-.01(7) or 335-14-9-.01(8);

13. For an off-site land disposal facility, a copy of the notice, and the certification and demonstration, if applicable, required by the generator or the owner or operator of a treatment facility under 335-14-9-.01(7) and 335-14-9-.01(8), whichever is applicable;

14. For an on-site land disposal facility, the information contained in the notice required by the generator or owner or operator of a treatment facility under 335-14-9-.01(7), except for the manifest number, and the certification and demonstration, if applicable, required under 335-14-9-.01(8), whichever is applicable;

15. For an off-site storage facility, a copy of the notice, and the certification and demonstration, if applicable, required by the generator or the owner or operator under 335-14-9-.01(7) or 335-14-9-.01(8);

16. For an on-site storage facility, the information contained in the notice (except the manifest number), and the certification and demonstration, if

applicable, required by the generator or the owner or operator under 335-14-9-.01(7) or 335-14-9-.01(8);

17. Any records required under 335-14-5-.01(1)(j)13;

18. Monitoring, testing or analytical data where required by 335-14-5-.15(8) must be maintained in the operating record for five years; and

19. Certifications as required by 335-14-5-10(7)(f) must be maintained in the operating record until closure of the facility.

(5) Availability, retention, and disposition of records.

(a) All records, including plans, required under 335-14-5 must be furnished upon request, and made available at reasonable times for inspection by any officer, employee, or representative of the Department.

(b) The retention period for all records required under 335-14-5 is extended automatically during the course of any unresolved enforcement action regarding the facility or as requested by the Department.

(c) A copy of records of waste disposal locations and quantities under 335-14-5-.05(4)(b)2. must be submitted to the Department and local land authority upon closure of the facility.

(6) Biennial report. The owner or operator must prepare and submit a single copy of a biennial report to the Department by March 1 of each even numbered year. The biennial report must be submitted on the forms supplied by the Department. The owner or operator must retain copies of each biennial report for, at least, three (3) years from the due date of the report. The report must cover facility activities during the previous calendar year and must include:

(a) The EPA identification number, name, and address of the facility;

(b) The calendar year covered by the report;

(c) For off-site facilities, the EPA identification number, name, and location address of each hazardous waste generator from which the facility received a hazardous waste during the year; for imported shipments, the report must give the name and address of the foreign generator;

(d) A description and the quantity of each hazardous waste the facility received during the year. For off-site facilities, this information must be listed by EPA identification number of each generator;

(e) The method of treatment, storage, or disposal for each hazardous waste;

(f) **[Reserved];**

(g) The most recent closure cost estimate under 335-14-5-.08(3), and, for disposal facilities, the most recent post-closure cost estimate under 335-14-5-.08(5);

(h) For generators who treat, store, or dispose of hazardous waste on-site, a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated;

(i) For generators who treat, store, or dispose of hazardous waste on-site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984; and

(j) The certification signed by the owner or operator of the facility or his authorized representative.

(7) Unmanifested waste report.

(a) If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described in 335-14-4-.02(1)(e)2., and if the waste is not excluded from the manifest requirement, then the owner or operator must prepare and submit a single copy of a report to the Department ~~and the Regional Administrator~~ within 15 days after receiving the waste. The owner or operator must retain a copy of each unmanifested waste report for, at least, three (3) years from the due date of the report. Such report must be designated "Unmanifested Waste Report" and include the following information:

1. The EPA identification number, name, and address of the facility;

2. The date the facility received the waste;

3. The EPA identification number, name, and address of the generator and the transporter, if available;

4. A description and the quantity of each unmanifested hazardous waste the facility received;

5. The method of treatment, storage, or disposal for each hazardous waste;

6. The certification signed by the owner or operator of the facility or his authorized representative; and

7. A brief explanation of why the waste was unmanifested, if known.

(b) **[Reserved].**

(8) Additional reports. In addition to submitting the biennial reports and unmanifested waste reports described in 335-14-5-.05(6) and (7), the owner or operator must also report to the Department:

(a) Releases, fires, and explosions as specified in 335-14-5-.04(7)(j);

(b) Facility closures as specified in 335-14-5-.07(6); and

(c) As otherwise required by 335-14-5-.06, 335-14-5-.11 through 335-14-5-.14, 335-14-5-.27, and 335-14-5-.28.

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335-14-5-.07 Closure and Post-Closure.

(1) Applicability. Except as 335-14-5-.01(1) provides otherwise:

(a) 335-14-5-.07(2) through (6) (which concern closure) apply to the owners and operators of all hazardous waste management facilities and CAMUs; and

(b) 335-14-5-.07(7) through (11) (which concern post-closure care) apply to the owners and operators of:

1. All hazardous waste disposal facilities;

2. Waste piles, surface impoundments, and drip pads 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-.12(9), 335-14-5-.11(9), or 335-14-5-.23(6);

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 Department may replace all or part of the requirements of 335-14-5-.07 (and the unit-specific standards referenced in 334-14-5-.07(2)(c) applying to a regulated unit, which alternative requirements set out in a permit or in an enforceable document (as defined in 335-14-8-.01(1)(c)7.), where the Department determines that:

1. The regulated unit is situated among solid waste management units (or areas of concern), a release has occurred, and both the regulated unit and one or more solid waste management unit(s) (or areas of concern) are likely to have contributed to the release; and

2. It is not necessary to apply to closure requirements of 335-14-5-.07 (and those referenced herein) because the alternative requirements will protect human health and the environment and will satisfy the closure performance standard of 334-14-5-.07(2)(a) and (b).

(2) Closure performance standards. The owner or operator must close the facility in a manner that:

(a) Minimizes the need for further maintenance; and

(b) Controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, 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; and

(c) Complies with the closure requirements of 335-14-5-.07, including, but not limited to, the requirements of 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), 335-15-5-.30(3), and 335-14-7-.08(3) [40 CFR 266.102(e)(11)].

(3) Closure plan: amendment of plan.

(a) Written Plan.

1. The owner or operator of a hazardous waste management facility must have a written closure plan. In addition, certain surface impoundments, waste piles, and drip pads from which the owner or operator intends to remove or decontaminate the hazardous waste at partial or final closure are required by 335-14-5-.11(9)(c)1.(i), 335-14-5-.12(9)(c)1.(i), and 335-14-5-.23(6)(c)1.(i) to have contingent closure plans. The plan must be submitted with the permit application, in accordance with 335-14-8-.02(5)(b)13., and approved by the Director as part of the permit issuance procedures. In accordance with 335-14-8-.03(3), the approved closure plan will become a condition of any AHWMMA permit.

2. The Director's approval of the plan must ensure that the approved closure plan is consistent with 335-14-5-.07(2) through (6) and the applicable requirements of 335-14-5-.06(1) et seq., 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), 335-14-5-.30(3) and 335-14-7-.08(3) [40 CFR 266.102(e)(11)]. Until final closure is completed and certified in accordance with 335-14-5-.07(6), a copy of the approved plan and all approved revisions must be furnished to the Director upon request, including requests by mail.

(b) Content of plan. The plan must identify steps necessary to perform partial and/or final closure of the facility at any point during its active life. The closure plan must include, at least:

1. A description of how each hazardous waste management unit at the facility will be closed in accordance with 335-14-5-.07(2);

2. A description of how final closure of the facility will be conducted in accordance with 335-14-5-.07(2). The description must identify the maximum extent of the operations which will be unclosed during the active life of the facility;

3. An estimate of the maximum inventory of hazardous wastes ever on-site over the active life of the facility and a detailed description of the methods to be used during partial closures and final closure, including, but not limited to, methods for removing, transporting, treating, storing, or disposing of all hazardous wastes, and

identification of the type(s) of the off-site hazardous waste management units to be used, if applicable; and

4. A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures, and soils during partial and final closure, 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 required to satisfy the closure performance standard;

5. A detailed description of other activities necessary during the closure period to ensure that all partial closures and final closure satisfy the closure performance standards, including, but not limited to, groundwater monitoring, leachate collection, and run-on and run-off control; and

6. A schedule for closure for each hazardous waste management unit and for final closure of the facility. The schedule must include, at a minimum, the total time required to close each hazardous waste management unit and the time required for intervening closure activities which will allow tracking of the progress of partial and final closure. (For example, in the case of a landfill unit, estimates of the time required to treat or dispose of all hazardous waste inventory and of the time required to place a final cover must be included.)

7. For facilities that use trust funds to establish financial assurance under 335-14-5-.08(4) and (6) and that are expected to close prior to the expiration of the permit, an estimate of the expected year of final closure.

8. For facilities where the Department has applied alternative requirements at a regulated unit under 335-14-5-.06(1)(f), 335-14-5-.07(1)(c), and/or 335-14-5-.08(1)(e), either the alternative requirements applying to the regulated unit, or a reference to the enforceable document containing those alternative requirements.

(c) Amendment of plan. The owner or operator must submit a written request for a permit modification to authorize a change in operating plans, facility design, or the approved closure plan in accordance with the procedures in 335-14-8. The written request must include a copy of the amended closure plan for review or approval by the Director.

1. The owner or operator may submit a written request to the Director for a permit modification to amend the closure plan at any time prior to the notification of partial or final closure of the facility.

2. The owner or operator must submit a written request for a permit modification to authorize a change in the approved closure plan whenever:

(i) Changes in operating plans or facility design affect the closure plan, or

(ii) There is a change in the expected year of closure, if applicable, or

(iii) In conducting partial or final closure activities, unexpected events require a modification of the approved closure plan.

(iv) The owner or operator requests the Department to apply alternative requirements to a regulated unit under 335-14-5-.06(1)(f), 335-14-5-.07(1)(c), and/or 335-14-5-.08(1)(e).

3. The owner or operator must submit a written request for a permit modification including a copy of the amended closure plan for approval at least 60 days prior to the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator must request a permit modification no later than 30 days after the unexpected event. An owner or operator of a surface impoundment, waste pile, or drip pad that intends to remove all hazardous waste at closure and is not otherwise required to prepare a contingent closure plan under 335-14-5-.11(9)(c)1.(i), 335-14-5-.12(9)(c)1 .(i), or 335-14-5-.23(6)(c)1.(i) must submit an amended closure plan to the Department no later than 60 days from the date that the owner or operator or Director determines that the hazardous waste management unit must be closed as a landfill, subject to the requirements of 335-14-5-.14(11), or no later than 30 days from that date if the determination is made during partial or final closure. The Department will approve, disapprove, or modify this amended plan in accordance with the procedures in 335-14-8. In accordance with 335-14-8-.03(3), the approved closure plan will become a condition of any AHWMMA permit issued.

4. The Department may request modifications to the plan under the conditions described in 335-14-5-.07(3)(c)2. The owner or operator must submit the modified plan within 60 days of the Department's request, or within 30 days if the change in facility conditions occurs during partial or final closure. Any modifications requested by the Department will be approved in accordance with the procedures in 335-14-8.

(d) Notification of partial closure and final closure.

1. The owner or operator must notify the Department in writing at least 60 days prior to the date on which he expects to begin closure of a surface impoundment, waste pile, land treatment or landfill unit, or final closure of a facility with such a unit. The owner or operator must notify the Department in writing at least 45 days prior to the date on which he expects to begin final closure of a facility with only treatment or storage tanks, container storage, or incinerator units to be closed. The owner or operator must notify the Department in writing at least 45 days prior to the date on which he expects to begin partial or final closure of a boiler or industrial furnace, whichever is earlier.

2. The date when he "expects to begin closure" must be either:

(i) No later than 30 days after the date on which any hazardous waste management unit receives the known final volume of hazardous wastes or, if there is a reasonable possibility that the hazardous waste management unit will receive additional

hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous waste. If the owner or operator of a hazardous waste management unit can demonstrate to the Department that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and he has taken all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements, the Department may approve an extension to this one-year limit; or

(ii) For units meeting the requirements of 335-14-5-.07(4)(d), no later than 30 days after the date on which the hazardous waste management unit receives the known final volume of non-hazardous wastes, or if there is a reasonable possibility that the hazardous waste management unit will receive additional non-hazardous wastes, no later than one year after the date on which the unit received the most recent volume of non-hazardous wastes. If the owner or operator can demonstrate to the Department that the hazardous waste management unit has the capacity to receive additional non-hazardous wastes and he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements, the Department may approve an extension to this one-year limit.

3. If the facility's permit is terminated, or if the facility is otherwise ordered, by judicial decree or final order under Section 3008 of RCRA, to cease receiving hazardous wastes or to close, then the requirements of 335-14-5-.07(3) do not apply. However, the owner or operator must close the facility in accordance with the deadlines established in 335-14-5-.07(4).

(e) Nothing in this 335-14-5-.07 shall preclude the owner or operator from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved partial or final closure plan at any time before or after notification of partial or final closure.

(4) Closure: time allowed for closure.

(a) Within 90 days after receiving the final volume of hazardous wastes, or the final volume of non-hazardous wastes if the owner or operator complies with all applicable requirements in 335-14-5-.07(4)(d) and (e), at a hazardous waste management unit or facility, the owner or operator must treat, remove from the unit or facility, or dispose of on-site, all hazardous wastes in accordance with the approved closure plan. The Department may approve a longer period if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that:

1.(i) The activities required to comply with 335-14-5-.07(4) will, of necessity, take longer than 90 days to complete; or

(ii)(I) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes, or has the capacity to receive non-hazardous wastes if the owner or operator complies with 335-14-5-.07(4)(d) and (e);

(II) There is a reasonable likelihood that he or another person will recommence operation of the hazardous waste management unit or the facility within one year; and

(III) Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

2. He has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements.

(b) The owner or operator must complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous wastes, or the final volume of non-hazardous wastes if the owner or operator complies with all applicable requirements in 335-14-5-.07(4)(d) and (e), at the hazardous waste management unit or facility. The Director may approve an extension to the closure period if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that:

1.(i) The partial or final closure activities will, of necessity, take longer than 180 days to complete; or

(ii)(I) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes, or has the capacity to receive non-hazardous wastes if the owner or operator complies with 335-14-5-.07(4)(d) and (e);

(II) There is reasonable likelihood that he or another person will recommence operation of the hazardous waste management unit or the facility within one year; and

(III) Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

2. He has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but not operating hazardous waste management unit or facility, including compliance with all applicable permit requirements.

(c) The demonstrations referred to in 335-14-5-.07(4)(a)1. and (b)1. must be made as follows:

1. The demonstrations in 335-14-5-.07(4)(a)1. must be made at least 30 days prior to the expiration of the 90-day period in 335-14-5-.07(4)(a); and

2. The demonstration in 335-14-5-.07(4)(b)1. must be made at least 30 days prior to the expiration of the 180-day period in 335-14-5-.07(4)(b), unless the owner or operator is otherwise subject to the deadlines in 335-14-5-.07(4)(d).

(d) The Department may allow an owner or operator to receive only non-hazardous wastes in a landfill, land treatment, or surface impoundment unit after the final receipt of hazardous wastes at that unit if:

1. The owner or operator requests a permit modification in compliance with all applicable requirements in 335-14-8 and in the permit modification request demonstrates that:

(i) The unit has the existing design capacity as indicated on the Part A Application to receive non-hazardous wastes; and

(ii) There is a reasonable likelihood that the owner or operator or another person will receive non-hazardous wastes in the unit within one year after the final receipt of hazardous wastes; and

(iii) The non-hazardous wastes will not be incompatible with any remaining wastes in the unit, or with the facility design and operating requirements of the unit or facility under this part; and

(iv) Closure of the hazardous waste management unit would be incompatible with continued operation of the unit or facility; and

(v) The owner or operator is operating and will continue to operate in compliance with all applicable permit requirements; and

2. The request to modify the permit includes an amended waste analysis plan, groundwater monitoring and response program, human exposure assessment required under RCRA Section 3019, and closure and post-closure plans, and updated cost estimates and demonstrations of financial assurance for closure and post-closure care as necessary and appropriate, to reflect any changes due to the presence of hazardous constituents in the non-hazardous wastes, and changes in closure activities, including the expected year of closure if applicable under 335-14-5-.07(3)(b)7., as a result of the receipt of non-hazardous wastes following the final receipt of hazardous wastes; and

3. The request to modify the permit includes revisions, as necessary and appropriate, to affected conditions of the permit to account for the receipt of non-hazardous wastes following receipt of the final volume of hazardous wastes; and

4. The request to modify the permit and the demonstrations referred to in 335-14-5-.07(4)(d)1. and (d)2. are submitted to the Director no later than 120 days prior to the date on which the owner or operator of the facility receives the known final volume of hazardous wastes at the unit, or no later than 90 days after the effective date of 335-14-5-.07, whichever is later.

(e) In addition to the requirements in 335-14-5-.07(4)(d), an owner or operator of a hazardous waste surface impoundment that is not in compliance with the liner and leachate collection system requirements in 42 U.S.C. 3004(o)(1) and 3005(j)(1) or 42 U.S.C. 3004(o)(2) or (3) or 3005(j)(2), (3), (4), or (13) must:

1. Submit with the request to modify the permit:

(i) A contingent corrective measures plan, unless a corrective action plan has already been submitted under 335-14-5-.06(10); and

(ii) A plan for removing hazardous wastes in compliance with 335-14-5-.07(4)(e)2.; and

2. Remove all hazardous wastes from the unit by removing all hazardous liquids, and removing all hazardous sludges to the extent practicable without impairing the integrity of the liner(s), if any.

3. Removal of hazardous wastes must be completed no later than 90 days after the final receipt of hazardous wastes. The Director may approve an extension to this deadline if the owner or operator demonstrates that the removal of hazardous wastes will, of necessity, take longer than the allotted period to complete and that an extension will not pose a threat to human health and the environment.

4. If a release that is a statistically significant increase (or decrease in the case of pH) over background values for detection monitoring parameters or constituents specified in the permit or that exceeds the facility's groundwater protection standard at the point of compliance, if applicable, is detected in accordance with the requirements in 335-14-5-.06, the owner or operator of the unit:

(i) Must implement corrective measures in accordance with the approved contingent corrective measures plan required by 335-14-5-.07(4)(e)1. no later than one year after detection of the release, or approval of the contingent corrective measures plan, whichever is later;

(ii) May continue to receive wastes at the unit following detection of the release only if the approved corrective measures plan includes a demonstration that continued receipt of wastes will not impede corrective action; and

(iii) May be required by the Director to implement corrective measures in less than one year or to cease the receipt of wastes until corrective measures have been implemented if necessary to protect human health and the environment.

5. During the period of corrective action, the owner or operator shall provide annual reports to the Director describing the progress of the corrective action program, compile all groundwater monitoring data, and evaluate the effect of the continued receipt of non-hazardous wastes on the effectiveness of the corrective action.

6. The Director may require the owner or operator to commence closure of the unit if the owner or operator fails to implement corrective action measures in accordance with the approved contingent corrective measures plan within one year as required in 335-14-5-.07(4)(e)4., or fails to make substantial progress in implementing corrective action and achieving the facility's groundwater protection standard or background levels if the facility has not yet established a groundwater protection standard.

7. If the owner or operator fails to implement corrective measures as required in 335-14-5-.07(4)(e)4. of, or if the Director determines that substantial progress has not been made pursuant to 335-14-5-.07(4)(e)6., he shall:

(i) Notify the owner or operator in writing that the owner or operator must begin closure in accordance with the deadlines in 335-14-5-.07(4)(a) and (b) and provide a detailed statement of reasons for this determination.

(ii) Provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the decision no later than 20 days after the date of the notice.

(iii) If the Director receives no written comments, the decision will become final five days after the close of the comment period. The Director will notify the owner or operator that the decision is final, and that a revised closure plan, if necessary, must be submitted within 15 days of the final notice and that closure must begin in accordance with the deadlines in 335-14-5-.07(4)(a) and (b).

(iv) If the Director receives written comments on the decision, he shall make a final decision within 30 days after the end of the comment period, and provide the owner or operator in writing and the public through a newspaper notice, a detailed statement of reasons for the final decision. If the Director determines that substantial progress has not been made, closure must be initiated in accordance with the deadlines in 335-14-5-.07(4)(a) and (b).

(v) The final determinations made by the Director under 335-14-5-.07(4)(e)7.(iii) and (iv) are not subject to administrative appeal.

(5) Disposal or decontamination of equipment, structures, and soils. During the partial and final closure periods, all contaminated equipment, structures, and soils must be properly disposed of or decontaminated unless otherwise specified 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-.19(1) through (3), 335-14-5-.23(6), 335-14-5-.24, or 335-14-5-.30(3). By removing any hazardous wastes or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and must handle that waste in accordance with all applicable requirements of 335-14-3.

(6) Certification of closure. Within 60 days of completion of closure of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit, and within 60 days of the completion of final closure, the owner or operator must submit to the Director, by registered mail, a certification that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification must be signed by the owner or operator and by an ~~qualified~~ independent registered ~~P~~professional ~~E~~engineer. Documentation supporting the ~~P~~professional ~~E~~engineer's certification must be furnished to the Director upon request until he releases the owner or operator from the financial assurance requirements for closure under 335-14-5-.08(4)(i).

(7) Survey plat.

(a) No later than the submission of the certification of closure of each hazardous waste disposal unit, the owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Director, a survey plat indicating the location and dimensions of landfill cells or other hazardous waste disposal units with respect to permanently surveyed benchmarks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority, or the authority with jurisdiction over local land use, must contain a note, prominently displayed, which states the owner's or operator's obligation to restrict disturbance of the hazardous waste disposal unit in accordance with the applicable requirements of 335-14-5-.07; and

(b) where closure does not achieve the standard of unrestricted use, the owner or operator or other responsible person must provide documentation of compliance with the requirements of the Uniform Environmental Covenants Program in ADEM Admin. Code Division 335-5.

(8) Post-closure care and use of property.

(a)1. Post-closure care for each hazardous waste management unit subject to the requirements of 335-14-5-.07(8) through (11) must begin after completion of closure of the unit and continue for 30 years after that date, or for 30 years after the date of issuance of a post-closure permit or in an enforceable document (as defined in 335-14-8-.01(1)(c)7.), whichever is later. Post-closure care must consist of at least the following:

(i) Monitoring and reporting in accordance with the requirements of 335-14-5-.06, .11, .12, .13, .14, .23, and .24; and

(ii) Maintenance and monitoring of waste containment systems in accordance with the requirements of 335-14-5-.06, .11, .12, .13, .14, .23, and .24.

2. Any time preceding partial closure of a hazardous waste management unit subject to post-closure care requirements or final closure, or any time during the post-closure period for a particular unit, the Department may, in accordance with the permit modification procedures in 335-14-8:

(i) Shorten the post-closure care period applicable to the hazardous waste management unit, or facility, if all disposal units have been closed, if he finds that the reduced period is sufficient to protect human health and the environment (e.g., leachate or groundwater monitoring results, characteristics of the hazardous wastes, application of advanced technology, or alternative disposal, treatment, or reuse techniques indicate that the hazardous waste management unit or facility is secure); or

(ii) Extend the post-closure care period applicable to the hazardous waste management unit or facility if he finds that the extended period is necessary to protect human health and the environment (e.g., leachate or groundwater monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).

(iii) The post-closure care period automatically extends through any time during which hazardous wastes remains in a hazardous waste management unit unless the owner/operator is able to demonstrate closure by removal in accordance with 335-14-8-.01(1)(c)5.

(b) The Department may require, at partial and final closure, continuation of any of the security requirements of 335-14-5-.02(5) during part or all of the post-closure care period when:

1. Hazardous wastes may remain exposed after completion of partial or final closure; or

2. Access by the public or domestic livestock may pose a hazard to human health.

(c) Post-closure use of property on or in which hazardous wastes remain after partial or final closure must never be allowed to disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the facility's monitoring systems, unless the Department finds that the disturbance:

1. Is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or

2. Is necessary to reduce a threat to human health or the environment.

(d) All post-closure care activities must be in accordance with the provisions of the approved post-closure plan as specified in 335-14-5-.07(9).

(9) Post-closure plan; amendment of plan.

(a) Written plan. The owner or operator of a hazardous waste disposal unit must have a written post-closure plan. In addition, certain surface impoundments, waste piles, and drip pads from which the owner or operator intends to remove or decontaminate the hazardous wastes at partial or final closure are required by 335-14-5-.11(9)(c)1.(ii), 335-14-5-.12(9)(c)1.(ii), and 335-14-5-.23(6)(c)1.(ii) to have contingent post-closure plans. Owners or operators of surface impoundments, waste piles, and drip pads not otherwise required to prepare contingent post-closure plans under 335-14-5-.11(9)(c)1.(ii), 335-14-5-.12(9)(c)1.(ii), and 335-14-5-.23(6)(c)1.(ii) and other hazardous waste management units and CAMUs which cannot demonstrate closure by removal must submit a post-closure plan to the Director within 90 days from the date that the owner or operator or Director determines that the hazardous waste management unit must be closed as a landfill, subject to the requirements of 335-14-5-.07(8) through (11). The plan must be submitted with the permit application, in accordance with 335-14-8-.02(5)(b)13. and approved by the Director as part of the permit issuance procedures under 335-14-8. In accordance with 335-14-8-.03(3), the approved post-closure plan will become a condition of any AHWMMA permit issued.

(b) For each hazardous waste management unit subject to the requirements of 335-14-5-.07, the post-closure plan must identify the activities that will

be carried on after closure of each disposal unit and the frequency of these activities, and include at least:

1. A description of the planned monitoring activities and frequencies at which they will be performed to comply with 335-14-5-.06, .09, .10, .11, .12, .13, .14, .19, .23, .24, and .30 during the post-closure care period; and

2. A description of the planned maintenance activities, and frequencies at which they will be performed, to ensure:

(i) The integrity of the cap and final cover or other containment systems in accordance with the requirements of 335-14-5-.06, .09, .10, .11, .12, .13, .14, .19, .23, .24, and .30; and

(ii) The function of the monitoring equipment in accordance with the requirements of 335-14-5-.06, .09, .10, .11, .12, .13, .14, .19, .23, .24, and .30; and

3. The name, address, and phone number of the person or office to contact about the hazardous waste disposal unit or facility during the post-closure care period.

4. For facilities where the Department has applied alternative requirements at a regulated unit under 335-14-5-.06(1)(f), 335-14-5-.07(1)(c), and/or 335-14-.08(1)(e), either the alternative requirements that apply to the regulated unit, or a reference to the enforceable document containing those requirements.

(c) Until final closure of the facility, a copy of the approved post-closure plan must be furnished to the Department upon request, including request by mail. After final closure has been certified, the person or office specified in 335-14-5-.07(9)(b)3. must keep the approved post-closure plan during the remainder of the post-closure period.

(d) Amendment of plan. The owner or operator must submit a written request for a permit modification to authorize a change in the approved post-closure plan in accordance with the applicable requirements of 335-14-8. The written request must include a copy of the amended post-closure plan for review or approval by the Department.

1. The owner or operator may submit a written request to the Department for a permit modification to amend the post-closure plan at any time during the active life of the facility or during the post-closure care period.

2. The owner or operator must submit a written request for a permit modification to authorize a change in the approved post-closure plan whenever:

(i) Changes in operating plans or facility design affect the approved post-closure plan, or

(ii) There is a change in the expected year of final closure, if applicable, or

(iii) Events which occur during the active life of the facility, including partial and final closures, affect the approved post-closure plan, or

(iv) The owner or operator requests the Department to apply alternative requirements to a regulated unit under 335-14-5-.06(1)(f), 335-14-5-.07(1)(c), and/or 335-14-5-.08(1)(e).

3. The owner or operator must submit a written request for a permit modification at least 60 days prior to the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the post-closure plan. An owner or operator of a surface impoundment, waste pile or drip pad that intends to remove all hazardous waste at closure and is not otherwise required to submit a contingent post-closure plan under 335-14-5-.11(9)(c)1.(ii), 335-14-5-.12(9)(c)1.(ii), and 335-14-5-.23(6)(c)1.(ii) must submit a post-closure plan to the Department no later than 90 days after the date that the owner or operator or Department determines that the hazardous waste management unit must be closed as a landfill, subject to the requirements of 335-14-5-.14(11). The Department will approve, disapprove, or modify this plan in accordance with the procedures in 335-14-8. In accordance with 335-14-8-.03(3), the approved post-closure plan will become a permit condition.

4. The Department may request modifications to the plan under the conditions described in 335-14-5-.07(9)(d)2. The owner or operator must submit the modified plan no later than 60 days after the Department's request, or no later than 90 days if the unit is a surface impoundment, waste pile, or drip pad not previously required to prepare a contingent post-closure plan. Any modifications requested by the Department will be approved, disapproved, or modified in accordance with the procedures in 335-14-8.

(10) Post-closure notices.

(a) No later than 60 days after certification of closure of each hazardous waste disposal unit, the owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Department a record of the type, location, and quantity of hazardous wastes disposed of within each cell or other disposal unit of the facility. For hazardous wastes disposed of before January 12, 1981, the owner or operator must identify the type, location, and quantity of the hazardous wastes to the best of his knowledge and in accordance with any records he has kept.

(b) Within 60 days of certification of closure of the first hazardous waste disposal unit and within 60 days of certification of closure of the last hazardous waste disposal unit, the owner or operator must:

1. Record, in accordance with State of Alabama law, a notation on the deed to the facility property or on some other instrument which is normally examined during title search that will in perpetuity notify any potential purchaser of the property that:

(i) The land has been used to manage hazardous wastes; and

(ii) Its use is restricted under 335-14-5-.07; and

(iii) The survey plat and record of the type, location, and quantity of hazardous wastes disposed of within each cell or other hazardous waste disposal unit of the facility required by 335-14-5-.07(7) and 335-14-5-.07(10)(a) have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the Department; and

2. Submit a certification, signed by the owner or operator, that he has recorded the notation specified in 335-14-5-.07(10)(b)1., including a copy of the document in which the notation has been placed, to the Department.

(c) If the owner or operator or any subsequent owner or operator of the land upon which a hazardous waste disposal unit is located wishes to remove hazardous wastes and hazardous waste residues, the liner, if any, or contaminated soils, he must request a modification to the post-closure permit in accordance with the applicable requirements in 335-14-8. The owner or operator must demonstrate that the removal of hazardous wastes will satisfy the criteria of 335-14-5-.07(8)(c). By removing hazardous waste, the owner or operator may become a generator of hazardous waste and must manage it in accordance with all applicable requirements of Division 335-14. If he is granted a permit modification or otherwise granted approval to conduct such removal activities, the owner or operator may request that the Director approve either:

1. The removal of the notation on the deed to the facility property or other instrument normally examined during title search; or

2. The addition of a notation to the deed or instrument indicating the removal of the hazardous waste.

(11) Certification of completion of post-closure care. No later than 60 days after completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator must submit to the Department, by registered mail, a certification that the post-closure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved post-closure plan. The certification must be signed by the owner or operator and an ~~qualified~~ independent registered ~~P~~professional ~~E~~engineer. Documentation supporting the ~~P~~professional ~~E~~engineer's certification must be furnished to the Department upon request until the Director releases the owner or operator from the financial assurance requirements for post-closure care under 335-14-5-.08(6)(i).

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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 335-14-51-.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) The owner or operator substitutes alternate financial assurance as specified in 335-14-5-.08(4); or

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin final closure issued by the

Department becomes final, or within 15 days after an order to begin final closure is issued by a U.S. district court or other court of competent jurisdiction; or

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

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

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

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

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

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

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

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

(c) Surety bond guaranteeing performance of closure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. Whenever the current closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Department,

or obtain other financial assurance as specified in 335-14-5-.08(4). Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the Department.

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

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

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

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

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

(d) Closure letter of credit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

has failed to provide alternate financial assurance as specified in 335-14-5-.08(4) and obtain written approval of such assurance from the Department.

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

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

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

(e) Closure insurance.

1. An owner or operator may satisfy the requirements of 335-14-5-.08(4) by obtaining closure insurance which conforms to the requirements of 335-14-5-.08(4)(e) and submitting an originally signed certificate of such insurance to the Department. An owner or operator of a new facility must submit the certificate of insurance to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The insurance must be effective before this initial receipt of hazardous waste. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in the State of Alabama, and must not be captive insurance as defined in 335-14-51-.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 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 ~~qualified~~ independent registered ~~O~~Pprofessional ~~E~~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 335-14-5-.11(9) and 335-14-5-.12(9) to prepare a contingent closure and post-closure plan must have a detailed written estimate in a format specified by the Department, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure requirements in 335-14-5-.07(8) through (11), 335-14-5-.11(9), 335-14-5-.12(9), 335-14-5-.13(11), 335-14-5-.14(11), and 335-14-5-.24(4).

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

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

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

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

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

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

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

(6) Financial assurance for post-closure. 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, 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 leas 60 days following the issuance to the

initial post-closure permit or enforceable document (as defined in 335-14-8-.01(1)(c)7.). The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

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

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

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

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

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

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

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

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

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

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

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

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

335-14-8-.01(1)(c)7.) requirements or will deposit the amount of the penal sum into the standby trust fund.

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

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

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

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

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

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

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

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 335-14-5-.08(6)(f).

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

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

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

5. An owner or operator or any other person authorized to conduct post-closure care may request reimbursements for post-closure care expenditures by submitting itemized bills to the Department. Within 60 days after receiving bills for post-closure care activities, the Department will instruct the insurer to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the post-closure care expenditures are in accordance with

the approved post-closure plan or otherwise justified. If the Department does not instruct the insurer to make such reimbursements, he will provide the owner or operator with a detailed written statement of reasons.

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

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

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

(i) The Department deems the facility abandoned; or

(ii) The permit is terminated or revoked or a new permit is denied; or

(iii) Closure is ordered by the Department or a court of competent jurisdiction; or

(iv) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or

(v) The premium due is paid.

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

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

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

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

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

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

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

(i) The owner or operator must have:

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

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

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

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

(ii) The owner or operator must have:

(I) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard 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 a qualified ~~P~~professional ~~E~~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 non-sudden 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 ~~P~~professional ~~E~~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 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 designee, or by the Trustee and the Department or designee, if the Grantor ceases to exist.

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

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

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

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

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written: The parties below certify that the wording of this Agreement is identical to the wording specified in ADEM Admin. Code Rule 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 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 Admin. Code Rule 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 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 Admin. Code Rule 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 Admin. Code Rule 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 Admin. Code Rule 335-14-5-.08, and obtain written approval of such assurance from the Department during the 90 days following receipt by both the Principal and the Department of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the Department.

Upon notification by the Department that the Principal has been found in violation of the corrective action requirements of ADEM Admin. Code Rule 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 Admin. Code Rule 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 Admin. Code Rule 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 Rules 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 Rule 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 Rule 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 Rule 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 Rule 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 Rules 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.) $_____

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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

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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 Rule 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 Rule 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 Rule 335-14-5-.08 and 335-14-6-.08: _____

The firm identified above guarantees, through the guarantee specified in ADEM Admin. Code Rule 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 Rules

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 Rules 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 Rule 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 Rule 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

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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.) $_____

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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 Rule 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 Rules 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 Rules 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 Rule 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 Rule 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 Rule 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 Rule 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 Rule 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 Rules 335-14-5-.08 and 335-335-14-6-.08 for the above-listed facilities, except as provided in paragraph 10. of this agreement.

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

Guarantor may terminate this guarantee by sending notice by certified mail to the Department and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the Department approves, alternate closure, and/or post-closure care coverage complying with ADEM Admin. Code Rules 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 Rule 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 Rule 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 Rules 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 Rules 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 Rule 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 Rules 335-14-5-.08(8) and 335-14-6-.08(8), provided that such modification shall become effective only if the Department does not disapprove the modification within 30 days of receipt of notification of the modification.

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

10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]: Guarantor may terminate this guarantee by sending notice by certified mail to the Department and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the Department approves alternate liability coverage complying with ADEM Admin. Code Rules 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 Rule 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 Rule 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 Rule 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 Rule 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 Rule 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 Rule 335-14-5-.08(12)(j) as such rule was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in the State of Alabama.

[Signature of authorized representative of Insurer]

[Type name]

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

[Address of Representative]

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

Irrevocable Standby Letter of Credit

Name and address of Issuing Institution

Department

Alabama Department of Environmental Management

Dear Sir or Madam: We hereby establish our Irrevocable Letter of Credit No. _____ in the favor of ["any and all third-party liability claimants" or insert name of trustee of the standby trust fund"], at the request and for the account of [owner's or

operator's name and address] for third-party liability awards or settlements up to [in words] U.S. dollars
$_____ per occurrences and the annual aggregate amount of [in words] U.S. dollars $, for sudden accidental occurrences and/or for third-party liability awards or settlements up to the amount of [in words] U.S. dollars $ per occurrence, and the annual aggregate amounts of [in words] U.S. dollars $_____, for nonsudden accidental occurrences available upon presentation of a sight draft, bearing reference to this letter of credit No. _____, and (1) a signed certificate reading as follows:

Certification of Valid Claim

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

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

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

(c) Bodily injury to:

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

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

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

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

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

(e) Property damage to:

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

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

(3) Property loaned to [insert grantor];

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

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

[Signatures]

Grantor

[Signatures]

Claimant(s)

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

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

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

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

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

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

[Date]

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

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

Payment Bond

Surety Bond No. [Insert number]

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

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

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

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

Governing Provisions:

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

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

Conditions:

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

(a) Bodily injury or property damage for which [insert principal] is obligated to pay damages by reason of the assumption of liability in a contract or

agreement. This exclusion does not apply to liability for damages that [insert principal] would be obligated to pay in the absence of the contract or agreement.

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

(c) Bodily injury to:

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

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

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

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

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

(e) Property damage to:

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

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

(3) Property loaned to [insert principal];

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

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

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

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

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

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

Certification of Valid Claim

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

[Signature]

Principal

[Notary] Date

[Signature(s)]

Claimant(s)

[Notary] Date

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

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

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

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

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

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

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

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

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

PRINCIPAL

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate Seal]

CORPORATE SURETY(IES)

[Name and address]

State of incorporation: _____

Liability Limit: $_____

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

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

Bond premium: $_____

(m)1. A trust agreement, as specified in 335-14-5-.08(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) 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 Rule 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.

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[Signature of Notary Public]

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335-14-5-.10 Tank Systems.

(1) Applicability. The requirements of 335-14-5-.10 apply to owners and operators of facilities that use tank systems for storing or treating hazardous waste except as otherwise provided in 335-14-5-.10(1)(a), (b), and (c) or in 335-14-5-.01.

(a) Tank systems that are used to store or treat hazardous waste which contains no free liquids and are situated inside a building with an impermeable floor are exempted from the requirements in 335-14-5-.10(4). To demonstrate the absence or presence of free liquids in the stored/treated waste, the following test must be used: Method 9095 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," EPA Publication No. SW-846, as incorporated by reference in 335-14-1-.02(2).

(b) Tank systems, including sumps, as defined in 335-14-1-.02, that serve as part of a secondary containment system to collect or contain releases of hazardous wastes are exempted from the requirements in 335-14-5-.10(4)(a).

(c) Tanks, sumps, and other such collection devices or systems used in conjunction with drip pads, as defined in 335-14-1-.02 and regulated under 335-14-5-.23, must meet the requirements of 335-14-5-.10.

(2) Assessment of existing tank system's integrity.

(a) For each existing tank system that does not have secondary containment meeting the requirements of 335-14-5-.10(4), the owner or operator must determine that the tank system is not leaking or is unfit for use. Except as provided in 335-14-5-.10(2)(c), the owner or operator must obtain and keep on file at the facility a written assessment reviewed and certified by a qualified ~~P~~professional ~~E~~engineer, in accordance with 335-14-8-.02(2)(d), that attests to the tank system's integrity by January 12, 1988.

(b) This assessment must determine that the tank system is adequately designed and has sufficient structural strength and compatibility with the waste(s) to be stored or treated, to ensure that it will not collapse, rupture, or fail. At a minimum, this assessment must consider the following:

1. Design standard(s), if available, according to which the tank and ancillary equipment were constructed;

2. Hazardous characteristics of the waste(s) that have been and will be handled;

3. Existing corrosion protection measures;

4. Documented age of the tank system, if available (otherwise, an estimate of the age); and

5. Results of a leak test, internal inspection, or other tank integrity examination such that:

(i) For non-enterable underground tanks, the assessment must include a leak test that is capable of taking into account the effects of temperature variations, tank end deflection, vapor pockets, and high water table effects, and

(ii) For other than non-enterable underground tanks and for ancillary equipment, this assessment must include either a leak test, as described above, or other integrity examination that is certified by a qualified ~~P~~professional ~~E~~engineer in accordance with 335-14-8-.02(2)(d) that addresses cracks, leaks, corrosion, and erosion.

[**Note**: The practices described in the American Petroleum Institute (API) Publication, Guide for Inspection of Refinery Equipment, Chapter XIII, "Atmospheric and Low Pressure Storage Tanks," 4th edition, 1981, may be used, where applicable, as guidelines in conducting other than a leak test.]

(c) Tank systems that store or treat materials that become hazardous wastes subsequent to July 14, 1986, must conduct this assessment within 12 months after the date that the waste becomes a hazardous waste.

(d) If, as a result of the assessment conducted in accordance with s335-14-5-.10(2)(a), a tank system is found to be leaking or unfit for use, the owner or operator must comply with the requirements of 335-14-5-.10(7).

(3) Design and installation of new tank systems or components.

(a) Owners or operators of new tank systems or components must obtain and submit to the Department, at time of submittal of Part B information, a written assessment, reviewed and certified by a qualified ~~P~~professional ~~E~~engineer, in accordance with 335-14-8-.02(2)(d) attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. The assessment must show that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection to ensure that it will not collapse, rupture, or fail. This assessment, which will be used by the Department to review and approve or disapprove the acceptability of the tank system design, must include, at a minimum, the following information:

1. Design standard(s) according to which tank(s) and/or the ancillary equipment are constructed;

2. Hazardous characteristics of the waste(s) to be handled;

3. For new tank systems or components in which the external shell of a metal tank or any external metal component of the tank system will be in contact with the soil or with water, a determination by a corrosion expert of:

(i) Factors affecting the potential for corrosion, including but not limited to:

(I) Soil moisture content;

(II) Soil pH;

(III) Soil sulfides level;

(IV) Soil resistivity;

(V) Structure to soil potential;

(VI) Influence of nearby underground metal structures (e.g., piping);

(VII) Existence of stray electric current;

(VIII) Existing corrosion-protection measures (e.g., coating, cathodic protection), and

(ii) The type and degree of external corrosion protection that are needed to ensure the integrity of the tank system during the use of the tank system or component, consisting of one or more of the following:

(I) Corrosion-resistant materials of construction such as special alloys, fiberglass reinforced plastic, etc;

(II) Corrosion-resistant coating (such as epoxy, fiberglass, etc.) with cathodic protection (e.g., impressed current or sacrificial anodes); and

(III) Electrical isolation devices such as insulating joints, flanges, etc.

[**Note**: The practices described in the National Association of Corrosion Engineers (NACE) standard, "Recommended Practice (RP-02-85)-Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems", and the American Petroleum Institute (API) Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems", may be used, where applicable, as guidelines in providing corrosion protection for tank systems.]

4. For underground tank system components that are likely to be adversely affected by vehicular traffic, a determination of design or operational measures that will protect the tank system against potential damage; and

5. Design considerations to ensure that:

(i) Tank foundations will maintain the load of a full tank;

(ii) Tank systems will be anchored to prevent flotation or dislodgment where the tank system is placed in a saturated zone; and

(iii) Tank systems will withstand the effects of frost heave.

(b) The owner or operator of a new tank system must ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing, or placing a new tank system or component in use, an independent, qualified installation inspector or a qualified ~~P~~professional ~~E~~engineer, either of whom is trained and experienced in the proper installation of tank systems or components, must inspect the system for the presence of any of the following items:

1. Weld breaks;

2. Punctures;

3. Scrapes of protective coatings;

4. Cracks;

5. Corrosion;

6. Other structural damage or inadequate construction/installation. All discrepancies must be remedied before the tank system is covered, enclosed, or placed in use.

(c) New tank systems or components that are placed underground and that are backfilled must be provided with a backfill material that is a noncorrosive, porous, homogeneous substance and that is installed so that the backfill is placed completely around the tank and compacted to ensure that the tank and piping are fully and uniformly supported.

(d) All new tanks and ancillary equipment must be tested for tightness prior to being covered, enclosed, or placed in use. If a tank system is found not to be tight, all repairs necessary to remedy the leak(s) in the system must be performed prior to the tank system being covered, enclosed, or placed into use.

(e) Ancillary equipment must be supported and protected against physical damage and excessive stress due to settlement, vibration, expansion, or contraction.

[**Note**: The piping system installation procedures described in American Petroleum Institute (API) Publication 1615 (November 1979), "Installation of Underground Petroleum Storage Systems", or ANSI Standard B31.3, "Petroleum Refinery Piping", and ANSI Standard B31.4 "Liquid Petroleum Transportation Piping System," may be used, where applicable, as guidelines for proper installation of piping systems.]

(f) The owner or operator must provide the type and degree of corrosion protection recommended by an independent corrosion expert, based on the information provided under 335-14-5-.10(3)(a)3. or other corrosion protection if the Department believes other corrosion protection is necessary to ensure the integrity of the tank system during use of the tank system. The installation of a corrosion protection system

that is field fabricated must be supervised by an independent corrosion expert to ensure proper installation.

(g) The owner or operator must obtain and keep on file at the facility written statements by those persons required to certify the design of the tank system and supervise the installation of the tank system in accordance with the requirements of 335-14-5-.10(3)(b) through (f) that attest that the tank system was properly designed and installed and that repairs, pursuant to 335-14-5-.10(3)(b) and (d) were performed. These written statements must also include the certification statement as required in 335-14-8-.02(2)(d).

(4) Containment and detection of releases.

(a) In order to prevent the release of hazardous waste or hazardous constituents to the environment, secondary containment that meets the requirements of 335-14-5-.10(4) must be provided (except as provided in 335-14-5-.10(4)(f) and (g)):

1. For all new and exciting tank systems or components, prior to their being put into service;

2. For tank systems that store or treat materials that become hazardous wastes, within two years of the hazardous waste listing, or when the tank system has reached 15 years of age, whichever comes later.

(b) Secondary containment systems must be:

1. Designed, installed, and operated to prevent any migration of wastes or accumulated liquid out of the system to the soil, groundwater, or surface water at any time during the use of the tank system; and

2. Capable of detecting and collecting releases and accumulated liquids until the collected material is removed.

(c) To meet the requirements of 335-14-5-.10(4)(b), secondary containment systems must be at a minimum:

1. Constructed of or lined with materials that are compatible with the waste(s) to be placed in the tank system and must have sufficient strength and thickness to prevent failure owing to pressure gradients (including static head and external hydrological forces), physical contact with the waste to which it is exposed, climatic conditions, and the stress of daily operation (including stresses from nearby vehicular traffic).

2. Placed on a foundation or base capable of providing support to the secondary containment system, resistance to pressure gradients above and below the system, and capable of preventing failure due to settlement, compression, or uplift;

3. Provided with a leak-detection system that is designed and operated so that it will detect the failure of either the primary or secondary containment structure or the presence of any release of hazardous waste or accumulated liquid in the

secondary containment system within 24 hours, or at the earliest practicable time if the owner or operator can demonstrate to the Department that existing detection technologies or site conditions will not allow detection of a release within 24 hours; and

4. Sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. Spilled or leaked waste and accumulated precipitation must be removed from the secondary containment system within 24 hours, or in as timely a manner as is possible to prevent harm to human health and the environment, if the owner or operator can demonstrate to the Department that removal of the released waste or accumulated precipitation cannot be accomplished within 24 hours.

[**Note**: If the collected material is a hazardous waste under 335-14-2, it is subject to management as a hazardous waste in accordance with all applicable requirements of Chapters 335-14-3 through 335-14-6. If the collected material is discharged through a point source to waters of the United States, it is subject to the requirements of Sections 301, 304, and 402 of the Clean Water Act, as amended. If discharged to a Publicly Owned Treatment Works (POTW), it is subject to the requirements of Section 307 of the Clean Water Act, as amended. If the collected material is released to the environment, it may be subject to the reporting requirements of 40 CFR Part 302.]

(d) Secondary containment for tanks must include one or more of the following devices:

1. A liner (external to the tank);

2. A vault;

3. A double-walled tank; or

4. An equivalent device as approved by the Department.

(e) In addition to the requirements of 335-14-5-.10(4)(b), (c), and (d), secondary containment systems must satisfy the following requirements:

1. External liner systems must be:

(i) Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary;

(ii) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a 25-year, 24-hour rainfall event.

(iii) Free of cracks or gaps, and

(iv) Designed and installed to surround the tank completely and to cover all surrounding earth likely to come into contact with the waste if the waste is

released from the tank(s) (i.e., capable of preventing lateral as well as vertical migration of the waste).

(v) Provided with an impermeable interior coating or lining if a concrete liner is used. The interior coating or lining must be compatible with the stored waste and prevent migration of the waste into the concrete.

2. Vault systems must be:

(i) Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary;

(ii) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a 25-year, 24-hour rainfall event;

(iii) Constructed with chemical-resistant water stops in place at all joints (if any);

(iv) Provided with an impermeable interior coating or lining that is compatible with the stored waste and that will prevent migration of waste into the concrete;

(v) Provided with a means to protect against the formation of and ignition of vapors within the vault, if the waste being stored or treated:

(I) Meets the definition of ignitable waste under 335-14-2-.03(2); or

(II) Meets the definition of reactive waste under 335-14-2-.03(4) and may form an ignitable or explosive vapor; and

(vi) Provided with an exterior moisture barrier or be otherwise designed or operated to prevent migration of moisture into the vault if the vault is subject to hydraulic pressure.

3. Double-walled tanks must be:

(i) Designed as an integral structure (i.e., an inner tank completely enveloped within an outer shell) so that any release from the inner tank is contained by the outer shell.

(ii) Protected, if constructed of metal, from both corrosion of the primary tank interior and of the external surface of the outer shell; and

(iii) Provided with a built-in continuous leak detection system capable of detecting a release within 24 hours, or at the earliest practicable time, if the owner or operator can demonstrate to the Department, and the Department concludes, that the existing detection technology or site conditions would not allow detection of a release within 24 hours.

[**Note**: The provisions outlined in the Steel Tank Institute's (STI) "Standard for Dual Wall Underground Steel Storage Tanks" may be used as guidelines for aspects of the design of underground steel double-walled tanks.]

(f) Ancillary equipment must be provided with secondary containment (e.g., trench, jacketing, doublewalled piping) that meets the requirements of 335-14-5-.10(4)(b) and (c) except for:

1. Aboveground piping (exclusive of flanges, joints, valves, and other connections) that are visually inspected for leaks on a daily basis;

2. Welded flanges, welded joints, and welded connections that are visually inspected for leaks on a daily basis;

3. Sealless or magnetic coupling pumps and sealless valves, that are visually inspected for leaks on a daily basis; and

4. Pressurized aboveground piping systems with automatic shut off devices (e.g., excess flow check valves, flow metering shutdown devices, loss of pressure actuated shut-off devices) that are visually inspected for leaks on a daily basis.

(g) The owner or operator may obtain a variance from the requirements of 335-14-5-.10(4) if the Department finds, as a result of a demonstration by the owner or operator that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous waste or hazardous constituents into the groundwater; or surface water at least as effectively as secondary containment during the active life of the tank system or that in the event of a release that does migrate to groundwater or surface water, no substantial present or potential hazard will be posed to human health or the environment. New underground tank systems may not, per a demonstration in accordance with 335-14-5-.10(4)(g)2., be exempted from the secondary containment requirements of 335-14-5-.10(4).

1. In deciding whether to grant a variance based on a demonstration of equivalent protection of groundwater and surface water, the Department will consider:

(i) The nature and quantity of the wastes;

(ii) The proposed alternate design and operation;

(iii) The hydrogeologic setting of the facility, including the thickness of soils present between the tank system and groundwater; and

(iv) All other factors that would influence the quality and mobility of the hazardous constituents and the potential for them to migrate to groundwater or surface water.

2. In deciding whether to grant a variance based on a demonstration of no substantial present or potential hazard, the Department will consider:

(i) The potential adverse effects on groundwater, surface water, and land quality taking into account:

(I) The physical and chemical characteristics of the waste in the tank system, including its potential for migration,

(II) The hydrogeological characteristics of the facility and surrounding land,

(III) The potential for health risks caused by human exposure to waste constituents,

(IV) The potential for damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents, and

(V) The persistence and permanence of the potential adverse effects;

(ii) The potential adverse effects of a release on groundwater quality, taking into account:

(I) The quantity and quality of groundwater and the direction of groundwater flow,

(II) The proximity and withdrawal rates of groundwater users,

(III) The current and future uses of groundwater in the area, and

(IV) The existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;

(iii) The potential adverse effects of a release on surface water quality, taking into account:

(I) The quantity and quality of groundwater and the direction of groundwater flow,

(II) The patterns of rainfall in the region,

(III) The proximity of the tank system to surface waters,

(IV) The current and future uses of surface waters in the area and any water quality standards established for those surface waters, and

(V) The existing quality of surface water, including other sources of contamination and the cumulative impact on surface-water quality, and

(iv) The potential adverse effects of a release on the land surrounding the tank system, taking into account:

(I) The patterns of rainfall in the region, and

(II) The current and future uses of the surrounding land.

3. The owner or operator of a tank system for which a variance from secondary containment had been granted in accordance with the requirements of 335-14-5-.10(4)(g)1., at which a release of hazardous waste has occurred from the primary tank system but has not migrated beyond the zone of engineering control (as established in the variance), must:

(i) Comply with the requirements of 335-14-5-.10(7), except 335-14-5-.10(7)(d), and

(ii) Decontaminate or remove contaminated soil to the extent necessary to:

(I) Enable the tank system for which the variance was granted to resume operation with the capability for the detection of releases at least equivalent to the capability it had prior to the release; and

(II) Prevent the migration of hazardous waste or hazardous constituents to groundwater or surface water; and

(iii) If contaminated soil cannot be removed or decontaminated in accordance with 335-14-5-.10(4)(g)3.(ii), comply with the requirements of 335-14-5-.10(8)(b).

4. The owner or operator of a tank system, for which a variance from secondary containment had been granted in accordance with the requirements of 335-14-5-.10(4)(g)1., at which a release of hazardous waste has occurred from the primary tank system and has migrated beyond the zone of engineering control (as established in the variance), must:

(i) Comply with the requirements of 335-14-5-.10(7)(a), (b), (c), and (d);

(ii) Prevent the migration of hazardous waste or hazardous constituents to groundwater or surface water, if possible, and decontaminate or remove contaminated soil. If contaminated soil cannot be decontaminated or removed or if groundwater has been contaminated, the owner or operator must comply with the requirements of 335-14-5-.10(8)(b); and

(iii) If repairing, replacing, or reinstalling the tank system, provide secondary containment in accordance with the requirements of 335-14-5-.10(4)(a) through (f) or reapply for a variance from secondary containment and meet the requirements for new tank systems in 335-14-5-.10(3) if the tank system is replaced. The owner or operator must comply with these requirements even if contaminated soil can be decontaminated or removed and groundwater or surface water has not been contaminated.

(h) The following procedures must be followed in order to request a variance from secondary containment:

1. The Department must be notified in writing by the owner or operator that he intends to conduct and submit a demonstration for a variance from secondary containment as allowed in 335-14-5-.10(4)(g) according to the following schedule:

(i) For existing tank systems, at least 24 months prior to the date that secondary containment must be provided in accordance with 335-14-5-.10(4)(a).

(ii) For new tank systems, at least 30 days prior to entering into a contract for installation.

2. As part of the notification, the owner or operator must also submit to the Department a description of the steps necessary to conduct the demonstration and a timetable for completing each of the steps. The demonstration must address each of the factors listed in 335-14-5-.10(4)(g)1. or 335-14-5-.10(4)(g)2.

3. The demonstration for a variance must be completed within 180 days after notifying the Department of an intent to conduct the demonstration; and

4. If a variance is granted under 335-14-5-.10(4)(h), the Department will require the permittee to construct and operate the tank system in the manner that was demonstrated to meet the requirements for the variance.

(i) All tank systems, until such time as secondary containment that meets the requirements of 335-14-5-.10(4) is provided, must comply with the following:

1. For non-enterable underground tanks, a leak test that meets the requirements of 335-14-5-.10(2)(b)5. or other tank integrity method, as approved or required by the Department, must be conducted at least annually.

2. For other than non-enterable underground tanks, the owner or operator must either conduct a leak test as in 335-14-5-.10(4)(i)1. or develop a schedule and procedure for an assessment of the overall condition of the tank system by a qualified ~~P~~professional ~~E~~engineer. The schedule and procedure must be adequate to detect obvious cracks, leaks, and corrosion or erosion that may lead to cracks and leaks. The owner or operator must remove the stored waste from the tank, if necessary, to allow the condition of all internal tank surfaces to be assessed. The frequency of these assessments must be based on the material of construction of the tank and its ancillary equipment, the age of the system, the type of corrosion or erosion protection used, the rate of corrosion or erosion observed during the previous inspection, and the characteristics of the waste being stored or treated.

3. For ancillary equipment, a leak test or other integrity assessment as approved by the Department must be conducted at least annually.

[**Note**: The practices described in the American Petroleum Institute (API) Publication, Guide for Inspection of Refinery Equipment, Chapter XIII, "Atmospheric

and Low-Pressure Storage Tanks", 4th Edition, 1981, may be used, where applicable, as guidelines for assessing the overall condition of the tank system.]

4. The owner or operator must maintain on file at the facility a record of the results of the assessments conducted in accordance with 335-14-5-.10(4)(i)1. through (i)3.

5. If a tank system or component is found to be leaking or unfit for use as a result of the leak test or assessment in 335-14-5-.10(4)(i)1. through (i)3., the owner or operator must comply with the requirements of 335-14-5-.10(7).

(5) General operating requirements.

(a) Hazardous wastes or treatment reagents must not be placed in a tank system if they could cause the tanks, its ancillary equipment, or the containment system to rupture, leak, corrode, or otherwise fail.

(b) The owner or operator must use appropriate controls and practices to prevent spills and overflows from tank or containment systems. These include at a minimum:

1. Spill prevention controls (e.g., check valves, dry disconnect couplings);

2. Overfill prevention controls (e.g., level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standby tank); and

3. Maintenance of sufficient freeboard in uncovered tanks to prevent overtopping by wave or wind action or by precipitation.

(c) The owner or operator must comply with the requirements of 335-14-5-.10(7) if a leak or spill occurs in the tank system.

(6) Inspections.

(a) The owner or operator must develop and follow a schedule and procedure for inspecting overfill controls.

(b) The owner or operator must inspect at least once each operating day data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design.

[**Note**: 335-14-5-.02(6)(c) requires the owner or operator to remedy any deterioration or malfunction he finds. 335-14-5—.10(7) requires the owner or operator to notify the Department within 24 hours of confirming a leak. Also, 40 CFR Part 302 may require the owner or operator to notify the National Response Center of a release.]

(c) In addition, except as noted under 335-14-5-.10(6)(d), the owner or operator must inspect at least once each operating day:

1. Above ground portions of the tank system, if any, to detect corrosion or releases of waste; and

2. The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation).

(d) Owners or operators of tank systems that either use leak detection systems to alert facility personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, must inspect at least weekly those areas described in 335-14-5-.10(6)(c)1. and 2. Use of the alternate inspection schedule must be documented in the facility's operating record. This documentation must include a description of the established workplace practices at the facility.

(e) Ancillary equipment that is not provided with secondary containment, as described in 335-14-5-.10(4)(f)1. through 4., must be inspected at least once each operating day.

(f) The owner or operator must inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:

1. The proper operation of the cathodic protection system must be confirmed within six months after initial installation and annually thereafter, and

2. All sources of impressed current must be inspected and/or tested, as appropriate, at least bimonthly (i.e., every other month).

[**Note**: The practices described in the National Association of Corrosion Engineers (NACE) standard, "Recommended Practice (RP-02-85)-Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems", and the American Petroleum Institute (API) Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems", may be used, where applicable, as guidelines in maintaining and inspecting cathodic protection systems.]

(g) The owner or operator must document in the operating record of the facility an inspection of those items in 335-14-5-.10(6)(a) through (f).

(7) Response to leaks or spills and disposition of leaking or unfit-for-use tank systems. A tank system or secondary containment system from which there has been a leak or spill, or which is unfit for use, must be removed from service immediately, and the owner or operator must satisfy the following requirements:

(a) Cessation of Use; prevent flow or addition of wastes. The owner or operator must immediately stop the flow of hazardous waste into the tank system or secondary containment system and inspect the system to determine the cause of the release.

(b) Removal of waste from tank system or secondary containment system.

1. If the release was from the tank system, the owner/operator must, within 24 hours after detection of the leak or, if the owner/operator demonstrates that it is not possible, at the earliest practicable time, remove as much of the waste as is necessary to prevent further release of hazardous waste to the environment and to allow inspection and repair of the tank system to be performed.

2. If the material released was to a secondary containment system, all released materials must be removed within 24 hours or in as timely a manner as is possible to prevent harm to human health and the environment.

(c) Containment of visible releases to the environment. The owner/operator must immediately conduct a visual inspection of the release and, based upon that inspection:

1. Prevent further migration of the leak or spill to soils or surface water; and

2. Remove, and properly dispose of, any visible contamination of the soil or surface water.

(d) Notifications, reports.

1. Any release to the environment, except as provided in 335-14-5-.10(7)(d)2. of this paragraph, must be reported to the Department within 24 hours of its detection. Report of a release pursuant to 40 CFR Part 302 does not satisfy this requirement.

2. A leak or spill of hazardous waste is exempted from the requirements of 335-14-5-.10(7)(d) if it is:

(i) Less than or equal to a quantity of one (1) pound, and

(ii) Immediately contained and cleaned up.

3. Within 30 days of detection of a release to the environment, a report containing the following information must be submitted to the Department:

(i) Likely route of migration of the release;

(ii) Characteristics of the surrounding soil (soil composition, geology, hydrogeology, climate);

(iii) Results of any monitoring or sampling conducted in connection with the release (if available). If sampling or monitoring data relating to the release are not available within 30 days, these data must be submitted to the Department as soon as they become available.

(iv) Proximity to downgradient drinking water, surface water, and populated areas; and

(v) Description of response actions taken or planned.

(e) Provision of secondary containment, repair, or closure.

1. Unless the owner/operator satisfies the requirements of 335-14-5-.10(7)(e)2. through (e)4., the tank system must be closed in accordance with 335-14-5-.10(8).

2. If the cause of the release was a spill that has not damaged the integrity of the system, the owner/operator may return the system to service as soon as the released waste is removed and repairs, if necessary, are made.

3. If the cause of the release was a leak from the primary tank system into the secondary containment system, the system must be repaired prior to returning the tank system to service.

4. If the source of the release was a leak to the environment from a component of a tank system without secondary containment, the owner/operator must provide the component of the system from which the leak occurred with secondary containment that satisfies the requirements of 335-14-5-.10(4) before it can be returned to service, unless the source of the leak is an aboveground portion of a tank system that can be inspected visually. If the source is an aboveground component that can be inspected visually, the component must be repaired and may be returned to service without secondary containment as long as the requirements of 335-14-5-.10(7)(f) are satisfied. If a component is replaced to comply with the requirements of 335-14-5-.10(7)(e), that component must satisfy the requirements for new tank systems or components in 335-14-5-.10(3) and 335-14-5-.10(4). Additionally, if a leak has occurred in any portion of a tank system component that is not readily accessible for visual inspection (e.g., the bottom of an inground or onground tank), the entire component must be provided with secondary containment in accordance with 335-14-5-.10(4) prior to being returned to use.

(f) Certification of major repairs. If the owner/operator has repaired a tank system in accordance with 335-14-5-.10(7)(e), and the repair has been extensive (e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by a qualified ~~P~~professional ~~E~~engineer in accordance with 335-14-8-.02(2)(d) that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification must be placed in the operating record and maintained until closure of the facility.

[**Note**: The Department may, on the basis of any information received that there is or has been a release of hazardous waste or hazardous constituents into the environment, issue an order under RCRA Section 3004(v), 3008(h), or 7003(a) or the AHWMMA, respectively, requiring corrective action or such other response as deemed necessary to protect human health or the environment.]

[**Note**: See 335-14-5-.02(6)(c) for the requirements necessary to remedy a failure. Also, 40 CFR Part 302 may require the owner or operator to notify the National Response Center of certain releases.]

(8) Closure and post-closure care.

(a) At closure of a tank system, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated soils, and structures and equipment contaminated with waste, and manage them as hazardous waste, unless 335-14-2-.01(3)(d) applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for tank systems must meet all of the requirements specified in 335-14-5-.07 and 335-14-5-.08.

(b) If the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required in 335-14-5-.10(8)(a), then the owner or operator must close the tank system and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills [335-14-5-.14(11)]. In addition, for the purposes of closure, post-closure, and financial responsibility, such a tank system is then considered to be a landfill, and the owner or operator must meet all of the requirements for landfills specified in 335-14-5-.07 and 335-14-5-.08.

(c) If an owner or operator has a tank system that does not have secondary containment that meets the requirements of 335-14-5-.10(4)(b) through (f) and has not been granted a variance from the secondary containment requirements in accordance with 335-14-5-.10(4)(g), then:

1. The closure plan for the tank system must include both a plan for complying with 335-14-5-.10(8)(a) and a contingent plan for complying with 335-14-5-.10(8)(b).

2. A contingent post-closure plan for complying with 335-14-5-.10(8)(b) must be prepared and submitted as part of the permit application.

3. The cost estimates calculated for closure and post-closure care must reflect the costs of complying with the contingent closure plan and the contingent post-closure plan, if those costs are greater than the costs of complying with the closure plan prepared for the expected closure under 335-14-5-.10(8)(a).

4. Financial assurance must be based on the cost estimates in 335-14-5-.10(8)(c)3.

5. For the purposes of the contingent closure and post-closure plans, such a tank system is considered to be a landfill, and the contingent plans must meet all of the closure, post-closure, and financial responsibility requirements for landfills under 335-14-5-.07 and 335-14-5-.08.

(9) Special requirements for ignitable or reactive wastes.

(a) Ignitable or reactive waste must not be placed in tank systems, unless:

1. The waste is treated, rendered, or mixed before or immediately after placement in the tank system so that:

(i) The resulting waste, mixture, or dissolved material no longer meets the definition of ignitable or reactive waste under 335-14-2-.03(2) or 335-14-2-.03(4); and

(ii) 335-14-5-.02(8)(b) is complied with; or

2. The waste is stored or treated in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or

3. The tank system is used solely for emergencies.

(b) The owner or operator of a facility where ignitable or reactive waste is stored or treated in a tank must comply with the requirements for the maintenance of protective distances between the waste 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 335-14-1-.02(2).

(10) Special requirements for incompatible wastes.

(a) Incompatible wastes, or incompatible wastes and materials, must not be placed in the same tank system, unless 335-14-5-.02(8)(b), is complied with.

(b) Hazardous waste must not be placed in a tank system that has not been decontaminated and that previously held an incompatible waste or material, unless 335-14-5-.02(8)(b) is complied with.

(11) Air emission standards. The owner or operator shall manage all hazardous waste placed in a tank in accordance with the applicable requirements of 335-14-5-.27, 335-14-5-.28, 335-14-5-.29.

Authors: Stephen C. Maurer, C. Edwin Johnston; Ronald T. Shell; Theresa A. Maines; Vernon H. Crockett.
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335-14-5-.19 Special Provisions For Cleanup.

(1) Applicability of Corrective Action Management Unit (CAMU) Regulations.

(a) Except as provided in 335-14-5-.19(1)(b), CAMUs are subject to the requirements of 335-14-5-.19(3).

(b) CAMUs that were approved before April 22, 2002, or for which substantially complete applications (or equivalents) were submitted to the Department on or before November 20, 2000, are subject to the requirements in 335-14-5-.19(2) for grandfathered CAMUs; CAMU waste, activities, and design will not be subject to the standards in 335-14-5-.19(2), so long as the waste, activities, and design remain within the general scope of the CAMU as approved.

(2) Grandfathered Corrective Action Management Units (CAMU).

(a) To implement remedies under 335-14-5-.06(12), § 22-30-19 et. seq., Code of Alabama 1975 and/or RCRA Section 3008(h), or to implement remedies at a permitted facility that is not subject to 335-14-5-.06(12), the Department may designate an area at the facility as a corrective action management unit under the requirements in 335-14-5-.19(2). "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). A CAMU must be located within the contiguous property under the control of the owner/operator where the wastes to be managed in the CAMU originated. One or more CAMUs may be designated at a facility.

1. Placement of remediation wastes into or within a CAMU does not constitute land disposal of hazardous wastes.

2. Consolidation or placement of remediation wastes into or within a CAMU does not constitute creation of a unit subject to minimum technology requirements.

[**Note**: The provisions of 335-14-5-.19(2)(a)1. and (2)(a)2. do not relieve the owner or operator of the requirement to meet other applicable requirements of this or other Divisions of the ADEM Administrative Code or other authorities (i.e., These provisions only exempt the unit from the LDR provisions of Chapter 335-14-9 and the hazardous waste minimum technology design requirements of Chapters 335-14-5 and 335-14-8.)]

(b)1. The Department may designate a regulated unit (as defined in 335-14-5-.06(1) as a CAMU, or may incorporate a regulated unit into a CAMU, if:

(i) The regulated unit is closed or closing, meaning it has begun the closure process under 335-14-5-.07(4) or 335-14-6-.07(4); and

(ii) Inclusion of the regulated unit will enhance implementation of effective, protective and reliable remedial actions for the facility.

2. The requirements of 335-14-5-.06, 335-14-5-.07 and 335-14-5-.08 and the unit-specific requirements of Chapters 335-14-5- and 335-14-6 that applied to that regulated unit will continue to apply to that portion of the CAMU after incorporation into the CAMU.

(c) The Department shall designate a CAMU in accordance with the following:

1. The CAMU shall facilitate the implementation of reliable, effective, protective, and cost-effective remedies;

2. Waste management activities associated with the CAMU shall not create unacceptable risks to humans or to the environment resulting from exposure to hazardous wastes or hazardous constituents;

3. The CAMU shall include uncontaminated areas of the facility, only if including such areas for the purpose of managing remediation waste is more protective than management of such wastes at contaminated areas of the facility;

4. Areas within the CAMU, where wastes remain in place after closure of the CAMU, shall be managed and contained so as to minimize future releases, to the extent practicable;

5. The CAMU shall expedite the timing of remedial activity implementation, when appropriate and practicable;

6. The CAMU shall enable the use, when appropriate, of treatment technologies (including innovative technologies) to enhance the long-term effectiveness of remedial actions by reducing the toxicity, mobility, or volume of wastes that will remain in place after closure of the CAMU; and

7. The CAMU shall, to the extent practicable, minimize the land area of the facility upon which wastes will remain in place after closure of the CAMU.

(d) The owner/operator shall provide sufficient information to enable the Department to designate a CAMU in accordance with the criteria of 335-14-5-.19.

(e) The Department shall specify, in the permit or order, requirements for CAMUs to include the following:

1. The areal configuration of the CAMU.

2. Requirements for remediation waste management to include the specification of applicable design, operation and closure requirements.

3. Requirements for groundwater monitoring that are sufficient to:

(i) Continue to detect and to characterize the nature, extent, concentration, direction, and movement of existing releases of hazardous constituents in ground water from sources located within the CAMU; and

(ii) Detect and subsequently characterize releases of hazardous constituents to groundwater that may occur from areas of the CAMU in which wastes will remain in place after closure of the CAMU.

4. Closure and post-closure requirements.

(i) Closure of corrective action management units shall:

(I) Minimize the need for further maintenance; and

(II) Control, minimize, or eliminate, to the extent necessary to protect human health and the environment, for areas where wastes remain in place, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated runoff, or hazardous waste decomposition products to the ground, to surface waters, or to the atmosphere.

(ii) Requirements for closure of CAMUs shall include the following, as appropriate and as deemed necessary by the Department for a given CAMU:

(I) Requirements for excavation, removal, treatment or containment of wastes;

(II) For areas in which wastes will remain after closure of the CAMU, requirements for capping of such areas; and

(III) Requirements for removal and decontamination of equipment, devices, and structures used in remediation waste management activities within the CAMU.

(iii) In establishing specific closure requirements for CAMUs under 335-14-5-.19(2)(e), the Department shall consider the following factors:

(I) CAMU characteristics;

(II) Volume of wastes which remain in place after closure;

(III) Potential for releases from the CAMU;

(IV) Physical and chemical characteristics of the waste;

(V) Hydrogeological and other relevant environmental conditions at the facility which may influence the migration of any potential or actual releases; and

(VI) Potential for exposure of humans and environmental receptors if releases were to occur from the CAMU.

(iv) Post-closure requirements as necessary to protect human health and the environment, to include, for areas where wastes will remain in place, monitoring

and maintenance activities, and the frequency with which such activities shall be performed to ensure the integrity of any cap, final cover, or other containment system.

(f) The Department shall document the rationale for designating CAMUs and shall make such documentation available to the public.

(g) Incorporation of a CAMU into an existing permit must be approved by the Department according to the permit modification procedures of 335-14-8-.04(2).

(h) The designation of a CAMU does not change the Department's existing authority to address clean-up levels, media-specific points of compliance to be applied to remediation at a facility, or other remedy selection decisions.

(3) Corrective Action Management Units (CAMU).

(a) To implement remedies under 335-14-5-.06(12) or RCRA Section 3008(h), or to implement remedies at a permitted facility that is not subject to 335-14-5-.06(12), the Department may designate an area at the facility as a corrective action management unit under the requirements in 335-14-5-.19. Corrective action management unit means an area within a facility that is used only for managing CAMU-eligible wastes for implementing corrective action or cleanup at the facility. A CAMU must be located within the contiguous property under the control of the owner or operator where the wastes to be managed in the CAMU originated. One or more CAMUs may be designated at a facility.

1. CAMU-eligible waste means:

(i) All solid and hazardous wastes, and all media (including ground water, surface water, soils, and sediments) and debris, that are managed for implementing cleanup. As-generated wastes (either hazardous or non-hazardous) from ongoing industrial operations at a site are not CAMU-eligible wastes.

(ii) Wastes that would otherwise meet the description in 335-14-5-.19(3)(a)1.(i) are not ``CAMU-Eligible Wastes'' where:

(I) The wastes are hazardous wastes found during cleanup in intact or substantially intact containers, tanks, or other non-land-based units found above ground, unless the wastes are first placed in the tanks, containers or non-land-based units as part of cleanup, or the containers or tanks are excavated during the course of cleanup; or

(II) The Department exercises the discretion in 335-14-5-.19(3)(a)2. to prohibit the wastes from management in a CAMU.

(iii) Notwithstanding 335-14-5-.19(3)(a)1.(i), where appropriate, as-generated non-hazardous waste may be placed in a CAMU where such waste is being used to facilitate treatment or the performance of the CAMU.

2. The Department may prohibit, where appropriate, the placement of waste in a CAMU where the Department has or receives information that such wastes

have not been managed in compliance with applicable land disposal treatment standards of 335-14-9, or applicable unit design requirements of this part, or applicable unit design requirements of 335-14-6, or that non-compliance with other applicable requirements of this chapter likely contributed to the release of the waste.

3. Prohibition against placing liquids in CAMUs.

(i) The placement of bulk or noncontainerized liquid hazardous waste or free liquids contained in hazardous waste (whether or not sorbents have been added) in any CAMU is prohibited except where placement of such wastes facilitates the remedy selected for the waste.

(ii) The requirements in 335-14-5-.14(15)(d) for placement of containers holding free liquids in landfills apply to placement in a CAMU except where placement facilitates the remedy selected for the waste.

(iii) The placement of any liquid which is not a hazardous waste in a CAMU is prohibited unless such placement facilitates the remedy selected for the waste or a demonstration is made pursuant to 335-14-5-.14(15)(f).

(iv) The absence or presence of free liquids in either a containerized or a bulk waste must be determined in accordance with 335-14-5-.14(15)(c). Sorbents used to treat free liquids in CAMUs must meet the requirements of 335-14-5-.14(15)(e).

4. Placement of CAMU-eligible wastes into or within a CAMU does not constitute land disposal of hazardous wastes.

5. Consolidation or placement of CAMU-eligible wastes into or within a CAMU does not constitute creation of a unit subject to minimum technology requirements.

(b)1. The Department may designate a regulated unit (as defined in 335-14-5-.06(1)(a)2.) as a CAMU, or may incorporate a regulated unit into a CAMU, if:

(i) The regulated unit is closed or closing, meaning it has begun the closure process under 335-14-5-.07(4) or 335-14-6-.07(4); and

(ii) Inclusion of the regulated unit will enhance implementation of effective, protective and reliable remedial actions for the facility.

2. 335-14-5-.06, 5-.07, and 5-.08 or 335-14-6-.06, 6-.07, and 6-.08 and the unit-specific requirements of 335-14-5 or 335-14-6 that applied to the regulated unit will continue to apply to that portion of the CAMU after incorporation into the CAMU.

(c) The Department shall designate a CAMU that will be used for storage and/or treatment only in accordance with 335-14-5-.19(3)(f). The Department shall designate all other CAMUs in accordance with the following:

1. The CAMU shall facilitate the implementation of reliable, effective, protective, and cost-effective remedies;

2. Waste management activities associated with the CAMU shall not create unacceptable risks to humans or to the environment resulting from exposure to hazardous wastes or hazardous constituents;

3. The CAMU shall include uncontaminated areas of the facility, only if including such areas for the purpose of managing CAMU-eligible waste is more protective than management of such wastes at contaminated areas of the facility;

4. Areas within the CAMU, where wastes remain in place after closure of the CAMU, shall be managed and contained so as to minimize future releases, to the extent practicable;

5. The CAMU shall expedite the timing of remedial activity implementation, when appropriate and practicable;

6. The CAMU shall enable the use, when appropriate, of treatment technologies (including innovative technologies) to enhance the long-term effectiveness of remedial actions by reducing the toxicity, mobility, or volume of wastes that will remain in place after closure of the CAMU; and

7. The CAMU shall, to the extent practicable, minimize the land area of the facility upon which wastes will remain in place after closure of the CAMU.

(d) The owner/operator shall provide sufficient information to enable the Department to designate a CAMU in accordance with the criteria in 335-14-5-.19. This must include, unless not reasonably available, information on:

1. The origin of the waste and how it was subsequently managed (including a description of the timing and circumstances surrounding the disposal and/or release);

2. Whether the waste was listed or identified as hazardous at the time of disposal and/or release; and

3. Whether the disposal and/or release of the waste occurred before or after the land disposal requirements of 335-14-9 were in effect for the waste listing or characteristic.

(e) The Department shall specify, in the permit or order, requirements for CAMUs to include the following:

1. The areal configuration of the CAMU.

2. Except as provided in 335-14-5-.19(3)(g), requirements for CAMU-eligible waste management to include the specification of applicable design, operation, treatment and closure requirements.

3. Minimum design requirements. CAMUs, except as provided in 335-14-5-.19(3)(f), into which wastes are placed must be designed in accordance with the following:

(i) Unless the Department approves alternate requirements under 335-14-5-.19(3)(e)3.(ii), CAMUs that consist of new, replacement, or laterally expanded units must include a composite liner and a leachate collection system that is designed and constructed to maintain less than a 30-cm depth of leachate over the liner. For purposes of 335-14-5-.19, composite liner means a system consisting of two components; the upper component must consist of a minimum 30-mil flexible membrane liner (FML), and the lower component must consist of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than $1x10^{-7}$ cm/sec. FML components consisting of high density polyethylene (HDPE) must be at least 60 mil thick. The FML component must be installed in direct and uniform contact with the compacted soil component;

(ii) Alternate requirements. The Department may approve alternate requirements if:

(I) The Department finds that alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents into the ground water or surface water at least as effectively as the liner and leachate collection systems in 335-14-5-.19(3)(e)3.(i); or

(II) The CAMU is to be established in an area with existing significant levels of contamination, and the Department finds that an alternative design, including a design that does not include a liner, would prevent migration from the unit that would exceed long-term remedial goals.

4. Minimum treatment requirements: Unless the wastes will be placed in a CAMU for storage and/or treatment only in accordance with 335-14-5-.19(3) f), CAMU-eligible wastes that, absent 335-14-5-.19, would be subject to the treatment requirements of 335-14-9, and that the Department determines contain principal hazardous constituents must be treated to the standards specified in 335-14-5-.19(3)(e)4.(iii).

(i) Principal hazardous constituents are those constituents that the Department determines to pose a risk to human health and the environment substantially higher than the cleanup levels or goals at the site.

(I) In general, the Department will designate as principal hazardous constituents:

I. Carcinogens that pose a potential direct risk from ingestion or inhalation at the site at or above 10^{-3}; and

II. Non-carcinogens that pose a potential direct risk from ingestion or inhalation at the site an order of magnitude or greater over their reference dose.

(II) The Department will also designate constituents as principal hazardous constituents, where appropriate, when risks to human health and the environment posed by the potential migration of constituents in wastes to ground water are substantially higher than cleanup levels or goals at the site; when making such a designation, the Department may consider such factors as constituent concentrations, and fate and transport characteristics under site conditions.

(III) The Department may also designate other constituents as principal hazardous constituents that the Department determines pose a risk to human health and the environment substantially higher than the cleanup levels or goals at the site.

(ii) In determining which constituents are ``principal hazardous constituents,'' the Department must consider all constituents which, absent 335-14-5-.19, would be subject to the treatment requirements in 335-14-9.

(iii) Waste that the Department determines to contain principal hazardous constituents must meet treatment standards determined in accordance with 335-14-5-.19(3)(e)4.(iv) or (e)4.(v).

(iv) Treatment standards for wastes placed in CAMUs.

(I) For non-metals, treatment must achieve 90 percent reduction in total principal hazardous constituent concentrations, except as provided by 335-14-5-.19(3)(e)4.(iv)(III).

(II) For metals, treatment must achieve 90 percent reduction in principal hazardous constituent concentrations as measured in leachate from the treated waste or media (tested according to the TCLP) or 90 percent reduction in total constituent concentrations (when a metal removal treatment technology is used), except as provided by 335-14-5-.19(3)(e)4.(iv)(III).

(III) When treatment of any principal hazardous constituent to a 90 percent reduction standard would result in a concentration less than 10 times the Universal Treatment Standard for that constituent, treatment to achieve constituent concentrations less than 10 times the Universal Treatment Standard is not required. Universal Treatment Standards are identified in 335-14-9.

(IV) For waste exhibiting the hazardous characteristic of ignitability, corrosivity or reactivity, the waste must also be treated to eliminate these characteristics.

(V) For debris, the debris must be treated in accordance with 335-14-9, or by methods or to levels established under 335-14-5-.19(3)(e)4.(iv)(I) through (IV) or 335-14-5-.19(3)(e)4.(v), whichever the Department determines is appropriate.

(VI) Alternatives to TCLP. For metal bearing wastes for which metals removal treatment is not used, the Department may specify a leaching test other than the TCLP (SW846 Method 1311, as incorporated by reference in 335-14-1-.02(297)) to measure treatment effectiveness, provided the Department determines that an

alternative leach testing protocol is appropriate for use, and that the alternative more accurately reflects conditions at the site that affect leaching.

(v) Adjusted standards. The Department may adjust the treatment level or method in 335-14-5-.19(3)(e)4.(iv) to a higher or lower level, based on one or more of the following factors, as appropriate. The adjusted level or method must be protective of human health and the environment:

(I) The technical impracticability of treatment to the levels or by the methods in 335-14-5-.19(3)(e)4.(iv);

(II) The levels or methods in 335-14-5-.19(3)(e)4.(iv) would result in concentrations of principal hazardous constituents (PHCs) that are significantly above or below cleanup standards applicable to the site (established either site-specifically, or promulgated under state or federal law);

(III) The views of the affected local community on the treatment levels or methods in 335-14-5-.19(3)(e)4.(iv) as applied at the site, and, for treatment levels, the treatment methods necessary to achieve these levels;

(IV) The short-term risks presented by the on-site treatment method necessary to achieve the levels or treatment methods in 335-14-5-.19(3)(e)4.(iv);

(V) The long-term protection offered by the engineering design of the CAMU and related engineering controls:

I. Where the treatment standards in 335-14-5-.19(3)(e)4.(iv) are substantially met and the principal hazardous constituents in the waste or residuals are of very low mobility; or

II. Where cost-effective treatment has been used and the CAMU meets the Subtitle C liner and leachate collection requirements for new land disposal units at 335-14-5-.14(2)(b); or

III. Where, after review of appropriate treatment technologies, the Department determines that cost-effective treatment is not reasonably available, and the CAMU meets the Subtitle C liner and leachate collection requirements for new land disposal units at 335-14-5-.14(2)(b); or

IV. Where cost-effective treatment has been used and the principal hazardous constituents in the treated wastes are of very low mobility; or

V. Where, after review of appropriate treatment technologies, the Department determines that cost-effective treatment is not reasonably available, the principal hazardous constituents in the wastes are of very low mobility, and either the CAMU meets or exceeds the liner standards for new, replacement, or laterally expanded CAMUs in 335-14-5-.19(3)(e)3.(i) and (ii), or the CAMU provides substantially equivalent or greater protection.

(vi) The treatment required by the treatment standards must be completed prior to, or within a reasonable time after, placement in the CAMU.

(vii) For the purpose of determining whether wastes placed in CAMUs have met site-specific treatment standards, the Department may, as appropriate, specify a subset of the principal hazardous constituents in the waste as analytical surrogates for determining whether treatment standards have been met for other principal hazardous constituents. This specification will be based on the degree of difficulty of treatment and analysis of constituents with similar treatment properties.

5. Except as provided in 335-14-5-.19(3)(f), requirements for ground water monitoring and corrective action that are sufficient to:

(i) Continue to detect and to characterize the nature, extent, concentration, direction, and movement of existing releases of hazardous constituents in ground water from sources located within the CAMU; and

(ii) Detect and subsequently characterize releases of hazardous constituents to ground water that may occur from areas of the CAMU in which wastes will remain in place after closure of the CAMU; and

(iii) Require notification to the Department and corrective action as necessary to protect human health and the environment for releases to ground water from the CAMU.

6. Except as provided in 335-14-5-.19(3)(f), closure and post-closure requirements:

(i) Closure of corrective action management units shall:

(I) Minimize the need for further maintenance; and

(II) Control, minimize, or eliminate, to the extent necessary to protect human health and the environment, for areas where wastes remain in place, post-closure escape of hazardous wastes, hazardous constituents, leachate, contaminated runoff, or hazardous waste decomposition products to the ground, to surface waters, or to the atmosphere.

(ii) Requirements for closure of CAMUs shall include the following, as appropriate and as deemed necessary by the Department for a given CAMU:

(I) Requirements for excavation, removal, treatment or containment of wastes; and

(II) Requirements for removal and decontamination of equipment, devices, and structures used in CAMU-eligible waste management activities within the CAMU.

(iii) In establishing specific closure requirements for CAMUs under 335-14-5-.19(3)(e), the Department shall consider the following factors:

(I) CAMU characteristics;

(II) Volume of wastes which remain in place after closure;

(III) Potential for releases from the CAMU;

(IV) Physical and chemical characteristics of the waste;

(V) Hydrogeological and other relevant environmental conditions at the facility which may influence the migration of any potential or actual releases; and

(VI) Potential for exposure of humans and environmental receptors if releases were to occur from the CAMU.

(iv) Cap requirements:

(I) At final closure of the CAMU, for areas in which wastes will remain after closure of the CAMU, with constituent concentrations at or above remedial levels or goals applicable to the site, the owner or operator must cover the CAMU with a final cover designed and constructed to meet the following performance criteria, except as provided in 335-14-5-.19(3)(e)6.(iv)(II):

I. Provide long-term minimization of migration of liquids through the closed unit;

II. Function with minimum maintenance;

III. Promote drainage and minimize erosion or abrasion of the cover;

IV. Accommodate settling and subsidence so that the cover's integrity is maintained; and

V. Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

(II) The Department may determine that modifications to 335-14-5-.19(3)(e)6.(iv)(I) are needed to facilitate treatment or the performance of the CAMU (e.g., to promote biodegradation).

(v) Post-closure requirements as necessary to protect human health and the environment, to include, for areas where wastes will remain in place, monitoring and maintenance activities, and the frequency with which such activities shall be performed to ensure the integrity of any cap, final cover, or other containment system.

(f) CAMUs used for storage and/or treatment only are CAMUs in which wastes will not remain after closure. Such CAMUs must be designated in accordance with all of the requirements of 335-14-5-.19, except as follows.

1. CAMUs that are used for storage and/or treatment only and that operate in accordance with the time limits established in the staging pile regulations at 335-14-5-.19(5)(d)1.(iii), (h), and (i) are subject to the requirements for staging piles at 335-14-5-.19(5)(d)1.(i) and (ii), 335-14-5-.19(5)(d)2., 335-14-5-.19(5)(e) and (f), and 335-14-5-.19(5)(j) and (k) in lieu of the performance standards and requirements for CAMUs at 335-14-5-.19(3)(c) and (e)3. through 6.

2. CAMUs that are used for storage and/or treatment only and that do not operate in accordance with the time limits established in the staging pile regulations at 335-14-5-.19(5)(d)1.(iii), (h), and (i):

(i) Must operate in accordance with a time limit, established by the Department, that is no longer than necessary to achieve a timely remedy selected for the waste, and

(ii) Are subject to the requirements for staging piles at 335-14-5-.19(5)(d)(1)(i) and (ii), 335-14-5-.19(5)(d)2., 335-14-5-.19(5)(e) and (f), and 335-14-5-.19(5)(j) and (k) in lieu of the performance standards and requirements for CAMUs at 335-14-5-.19(3)(c) and 335-14-5-.19(3)(e)4. and 6.

(g) CAMUs into which wastes are placed where all wastes have constituent levels at or below remedial levels or goals applicable to the site do not have to comply with the requirements for liners at 335-14-5-.19(3)(e)3.(i), caps at 335-14-5-.19(3)(e)6.(iv), ground water monitoring requirements at 335-14-5-.19(3)(e)5. or, for treatment and/or storage-only CAMUs, the design standards at 335-14-5-.19(3)(f).

(h) The Department shall provide public notice and a reasonable opportunity for public comment before designating a CAMU. Such notice shall include the rationale for any proposed adjustments under 335-14-5-.19(3)(e)4.(v) to the treatment standards in 335-14-5-.19(3)(e)4.(iv).

(i) Notwithstanding any other provision of 335-14-5-.19, the Department may impose additional requirements as necessary to protect human health and the environment.

(j) Incorporation of a CAMU into an existing permit must be approved by the Department according to the procedures for permit modifications under 335-14-8-.04(2).

(k) The designation of a CAMU does not change ADEM's existing authority to address clean-up levels, media-specific points of compliance to be applied to remediation at a facility, or other remedy selection decisions.

(4) Temporary Units (TU).

(a) For temporary tanks and container storage areas used to treat or store hazardous remediation wastes during remedial activities required under 335-14-5-.06(12), §22-30-19 et. seq., Code of Alabama 1975 and/or RCRA Section 3008(h), or at a permitted facility that is not subject to 335-14-5-.06(12), the

Department may designate a unit at the facility as a temporary unit. A temporary unit must by located within the contiguous property under the control of the owner/operator where the wastes to be managed in the temporary unit originated. For temporary units, the Department may replace the design, operating, or closure standard applicable to these units under 335-14-5 or 335-14-6 with alternative requirements which protect human health and the environment.

(b) Any temporary unit to which alternative requirements are applied in accordance with 335-14-5-.19(2)(a) shall be:

1. Located within the facility boundary; and

2. Used only for treatment or storage of remediation wastes.

(c) In establishing standards to be applied to a temporary unit, the Department shall consider the following factors:

1. Length of time such unit will be in operation;

2. Type of unit;

3. Volumes of wastes to be managed;

4. Physical and chemical characteristics of the wastes to be managed in the unit;

5. Potential for releases from the unit;

6. Hydrogeological and other relevant environmental conditions at the facility which may influence the migration of any potential releases; and

7. Potential for exposure of humans and environmental receptors if releases were to occur from the unit.

(d) The Department shall specify in the permit or order the length of time a temporary unit will be allowed to operate, to be no longer than a period of one year. The Department shall also specify the design, operating, and closure requirements for the unit.

(e) The Department may extend the operational period of a temporary unit once for no longer than a period of one year beyond that originally specified in the permit or order, if the Department determines that:

1. Continued operation of the unit will not pose a threat to human health and the environment; and

2. Continued operation of the unit is necessary to ensure timely and efficient implementation of remedial actions at the facility.

(f) Incorporation of a temporary unit or a time extension for a temporary unit into an existing permit shall be:

1. Approved in accordance with the procedures for State of Alabama-initiated permit modifications under 335-14-8-.04(2); or

2. Requested by the owner/operator as a major modification according to the procedures under Rule 335-14-8-.04(2).

(g) The Department shall document the rationale for designating a temporary unit and for granting time extensions for temporary units and shall make such documentation available to the public.

(5) Staging piles.

(a) A staging pile is an accumulation of solid, non-flowing remediation waste (as defined in 335-14-1-.02) that is not a containment building and is used only during remedial operations for temporary storage at a facility. A staging pile must be located within the contiguous property under the control of the owner/operator where the wastes to be managed in the staging pile originated. Staging piles must be designated by ADEM in accordance with the requirements in 335-14-5-.19.

1. For the purposes of 335-14-5-.19(5), storage includes mixing, sizing, blending, or other similar physical operations as long as they are intended to prepare the wastes for subsequent management or treatment.

2. Reserved.

(b) A staging pile may be used to store hazardous remediation waste (or remediation waste otherwise subject to land disposal restrictions) only if following the standards and design criteria ADEM has designated for that staging pile. ADEM must designate the staging pile in a permit or, at an interim status facility, in a closure plan or order (consistent with 335-14-8-.07(3)(a)5. and (b)5.). ADEM must establish conditions in the permit, closure plan, or order that comply with 335-14-5-.19(3)(d) through (k).

(c) Staging pile designation. When seeking a staging pile designation, the following must be provided:

1. Sufficient and accurate information to enable ADEM to impose standards and design criteria for your staging pile according to 335-14-5-.19(3)(d) through (k);

2. Certification by a qualified ~~P~~professional ~~E~~engineer for technical data, such as design drawings and specifications, and engineering studies, unless ADEM determines, based on information that you provide, that this certification is not necessary to ensure that a staging pile will protect human health and the environment; and

3. Any additional information ADEM determines is necessary to protect human health and the environment.

(d) Staging pile performance criteria. ADEM must establish the standards and design criteria for the staging pile in the permit, closure plan, or order.

1. The standards and design criteria must comply with the following:

(i) The staging pile must facilitate a reliable, effective and protective remedy;

(ii) The staging pile must be designed so as to prevent or minimize releases of hazardous wastes and hazardous constituents into the environment, and minimize or adequately control cross-media transfer, as necessary to protect human health and the environment (for example, through the use of liners, covers, run-off/run-on controls, as appropriate); and

(iii) The staging pile must not operate for more than two years, except when ADEM grants an operating term extension under 335-14-5-.19(3)(i). The two-year limit, or other operating term specified by ADEM in the permit, closure plan, or order, is measured from the first time remediation waste is placed into a staging pile. Records of the date remediation waste is placed into the staging pile must be maintained for the life of the permit, closure plan, or order, or for three years, whichever is longer.

2. In setting the standards and design criteria, ADEM must consider the following factors:

(i) Length of time the pile will be in operation;

(ii) Volumes of wastes intended to be stored in the pile;

(iii) Physical and chemical characteristics of the wastes to be stored in the unit;

(iv) Potential for releases from the unit;

(v) Hydrogeological and other relevant environmental conditions at the facility that may influence the migration of any potential releases; and

(vi) Potential for human and environmental exposure to potential releases from the unit;

(e) Receipt of ignitable or reactive remediation waste in a staging pile. Ignitable or reactive remediation waste must not be placed in a staging pile unless:

1. Remediation waste must be treated, rendered or mixed before being placed it in the staging pile so that:

(i) The remediation waste no longer meets the definition of ignitable or reactive under 335-14-2-.03(2) or 335-14-2-.03(4); and

(ii) The owner or operator has complied with 335-14-5-.02(8)(b); or

2. The remediation waste must be managed to protect it from exposure to any material or condition that may cause it to ignite or react.

(f) Handling incompatible remediation wastes in a staging pile. The term "incompatible waste" is defined in 335-14-1-.02. The owner or operator must comply with the following requirements for incompatible wastes in staging piles:

1. Incompatible remediation wastes must not be placed in the same staging pile unless compliance with 335-14-5-.02(8)(b) has occurred;

2. If remediation waste in a staging pile is incompatible with any waste or material stored nearby in containers, other piles, open tanks or land disposal units (for example, surface impoundments), you must separate the incompatible materials, or protect them from one another by using a dike, berm, wall or other device; and

3. Remediation waste must not be piled on the same base where incompatible wastes or materials were previously piled, unless the base has been decontaminated sufficiently to comply with 335-14-5-.02(8)(b).

(g) Staging piles are subject to Land Disposal Restrictions (LDR) and Minimum Technological Requirements (MTR). Placing hazardous remediation wastes into a staging pile does not constitute land disposal of hazardous wastes or create a unit that is subject to the minimum technological requirements of RCRA 3004(o).

(h) Length of staging pile operation. ADEM may allow a staging pile to operate for up to two years after hazardous remediation waste is first placed into the pile. A staging pile may be used no longer than the length of time designated by ADEM in the permit, closure plan, or order (the "operating term"), except as provided in 335-14-5-.19(5)(i).

(i) Operating extension for a staging pile

1. ADEM may grant one operating term extension of up to 180 days beyond the operating term limit contained in the permit, closure plan, or order (see 335-14-5-.19(5)(l) for modification procedures). To justify to ADEM the need for an extension, sufficient and accurate information must be provided to enable ADEM to determine that continued operation of the staging pile:

(i) Will not pose a threat to human health and the environment; and

(ii) Is necessary to ensure timely and efficient implementation of remedial actions at the facility.

2. ADEM may, as a condition of the extension, specify further standards and design criteria in the permit, closure plan, or order, as necessary, to ensure protection of human health and the environment.

(j) Closure requirement for a staging pile located in a previously contaminated area

1. Within 180 days after the operating term of the staging pile expires, a staging pile located in a previously contaminated area of the site must be closed by removing or decontaminating all:

(i) Remediation waste;

(ii) Contaminated containment system components; and

(iii) Structures and equipment contaminated with waste and leachate.

2. Contaminated subsoils must be decontaminated in a manner and according to a schedule that ADEM determines will protect human health and the environment.

3. ADEM must include the above requirements in the permit, closure plan, or order in which the staging pile is designated.

(k) Closure requirement for a staging piles located in an uncontaminated area.

1. Within 180 days after the operating term of the staging pile expires, you must close a staging pile located in an uncontaminated area of the site according to 335-14-5-.12(9)(a) and 335-14-5-.07(2); or according to 335-14-6-.12(9)(a) and 335-14-6-.07(2).

2. ADEM must include the above requirement in the permit, closure plan, or order in which the staging pile is designated.

(l) Modifying an existing permit, closure plan, or order to allow for use of a staging pile.

1. To modify a permit, to incorporate a staging pile or staging pile operating term extension, either:

(i) ADEM must approve the modification under the procedures for ADEM-initiated permit modifications in 335-14-8-.04(2); or

(ii) Request a major modification under 335-14-8-.04(2).

2. **[Reserved].**

3. To modify a closure plan to incorporate a staging pile or staging pile operating term extension, the owner or operator must follow the applicable requirements under 335-14-5-.07(3)(c) or 335-14-6-.07(3)(c).

4. To modify an order to incorporate a staging pile or staging pile operating term extension, the owner or operator must follow the terms of the order and the applicable provisions of 335-14-8-.07(3)(a)5. or (b)5.

(m) Public information. ADEM must document the rationale for designating a staging pile or staging pile operating term extension and make this documentation available to the public.

(6) Disposal of CAMU-eligible wastes in permitted hazardous waste landfills.

(a) The Department with regulatory oversight at the location where the cleanup is taking place may approve placement of CAMU-eligible wastes in hazardous waste landfills not located at the site from which the waste originated, without the wastes meeting the requirements of 335-14-9, if the conditions in 335-14-5-.19(6)(a)1. through 3. are met:

1. The waste meets the definition of CAMU-eligible waste in 335-14-5-.19(3)(a)1. and 2.

2. The Department with regulatory oversight at the location where the cleanup is taking place identifies principal hazardous constitutes in such waste, in accordance with 335-14-5-.19(3)(e)4.(i) and (ii), and requires that such principal hazardous constituents are treated to any of the following standards specified for CAMU-eligible wastes:

(i) The treatment standards under 335-14-5-.19(3)(e)4.(iv); or

(ii) Treatment standards adjusted in accordance with 335-14-5-.19(3)(e)4.(v)(I), (III), (IV) or (V)I.; or

(iii) Treatment standards adjusted in accordance with 335-14-5-.19(3)(e)4.(v)(V)II., where treatment has been used and that treatment significantly reduces the toxicity or mobility of the principal hazardous constituents in the waste, minimizing the short-term and long-term threat posed by the waste, including the threat at the remediation site.

3. The landfill receiving the CAMU-eligible waste must have a RCRA hazardous waste permit, meet the requirements for new landfills in 335-14-5-.14, and be authorized to accept CAMU-eligible wastes; for the purposes of this requirement, "permit" does not include interim status.

(b) The person seeking approval shall provide sufficient information to enable the Department with regulatory oversight at the location where the cleanup is taking place to approve placement of CAMU-eligible waste in accordance with 335-14-5-.19(6)(a). Information required by 335-14-5-.19(3)(d)1. through 3. for CAMU applications must be provided, unless not reasonably available.

(c) The Department with regulatory oversight at the location where the cleanup is taking place shall provide public notice and a reasonable opportunity for

public comment before approving CAMU eligible waste for placement in an off-site permitted hazardous waste landfill, consistent with the requirements for CAMU approval at 335-14-5-.19(3)(h). The approval must be specific to a single remediation.

(d) Applicable hazardous waste management requirements in this part, including recordkeeping requirements to demonstrate compliance with treatment standards approved under 335-14-5-.19, for CAMU-eligible waste must be incorporated into the receiving facility permit through permit issuance or a permit modification, providing notice and an opportunity for comment and a hearing. Notwithstanding 335-14-8-.01(4)(a), a landfill may not receive hazardous CAMU-eligible waste under 335-14-5-.19 unless its permit specifically authorizes receipt of such waste.

(e) For each remediation, CAMU-eligible waste may not be placed in an off-site landfill authorized to receive CAMU-eligible waste in accordance with 335-14-5-.19(6)(d) until the following additional conditions have been met:

1. The landfill owner/operator notifies the Department responsible for oversight of the landfill and persons on the facility mailing list, maintained in accordance with 335-14-8-.08(6)(c)1.(ix), of his or her intent to receive CAMU-eligible waste in accordance with 335-14-5-.19; the notice must identify the source of the remediation waste, the principal hazardous constituents in the waste, and treatment requirements.

2. Persons on the facility mailing list may provide comments, including objections to the receipt of the CAMU-eligible waste, to the Department within 15 days of notification.

3. The Department may object to the placement of the CAMU-eligible waste in the landfill within 30 days of notification; the Department may extend the review period an additional 30 days because of public concerns or insufficient information.

4. CAMU-eligible wastes may not be placed in the landfill until the Department has notified the facility owner/operator that he or she does not object to its placement.

5. If the Department objects to the placement or does not notify the facility owner/operator that he or she has chosen not to object, the facility may not receive the waste, notwithstanding 335-14-8-.01(4)(a), until the objection has been resolved, or the owner/operator obtains a permit modification in accordance with the procedures of 335-14-8-.04(2) specifically authorizing receipt of the waste.

6. As part of the permit issuance or permit modification process of 335-14-5-.19(6)(d), the Department may modify, reduce, or eliminate the notification requirements of this paragraph as they apply to specific categories of CAMU-eligible waste, based on minimal risk.

(f) Generators of CAMU-eligible wastes sent off-site to a hazardous waste landfill under 335-14-5-.19 must comply with the requirements of 335-14-9-.01(7); off-site facilities treating CAMU-eligible wastes to comply with

335-14-5-.19 must comply with the requirements of 335-14-9-.01(7), except that the certification must be with respect to the treatment requirements of 335-14-5-.19(6)(a)2.

(g) For the purposes of 335-14-5-.19 only, the "design of the CAMU" in 335-14-5-.19(3)(e)4.(v)(V) means design of the permitted Subtitle C landfill.

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335-14-5-.23 Drip Pads.

(1) Applicability.

(a) The requirements of 335-14-5-.23 apply to owners and operators of facilities that use new or existing drip pads to convey treated wood drippage, precipitation, and/or surface water run-off to an associated collection system. Existing drip pads are those constructed before December 6, 1990 and those for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to December 6, 1990. All other drip pads are new drip pads. The requirement of 335-14-5-.23(4)(b)3. to install a leak collection system applies only to those drip pads that are constructed after December 24, 1992, except for those constructed after December 24, 1992 for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to December 24, 1992.

(b) The owner or operator of any drip pad that is inside or under a structure that provides protection from precipitation so that neither run-off nor run-on is generated is not subject to regulation under 335-14-5-.23 (4)(e) or (f), as appropriate.

(c) The requirements of 335-14-5-.23 are not applicable to the management of infrequent and incidental drippage in storage yards provided that:

1. The owner or operator maintains and complies with a written contingency plan that describes how the owner or operator will respond immediately to the discharge of such infrequent and incidental drippage. At a minimum, the contingency plan must describe how the owner or operator will do the following:

(i) Clean up the drippage;

(ii) Document the cleanup of the drippage;

(iii) Retain documents regarding cleanup for three years; and

(iv) Manage the contaminated media in a manner consistent with State of Alabama regulations.

(2) Assessment of existing drip pad integrity.

(a) For each existing drip pad as defined in 335-14-5-.23(1), the owner or operator must evaluate the drip pad and determine that it meets all of the requirements of 335-14-5-.23, except the requirements for liners and leak detection systems of 335-14-5-.23(4)(b). No later than the effective date of 335-14-5-.23, the owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by a qualified ~~P~~professional ~~E~~engineer that attests to the results of the evaluation. The assessment must be reviewed, updated and re-certified annually until all upgrades, repairs, or modifications necessary to achieve compliance with all of the standards of 335-14-5-.23(4) are complete. The evaluation must document the extent to which the drip pad meets each of the design and operating

standards of 335-14-5-.23(4), except the standards for liners and leak detection systems, specified in 335-14-5-.23(4)(b).

(b) The owner or operator must develop a written plan for upgrading, repairing, and modifying the drip pad to meet the requirements of 335-14-5-.23(4)(b) and submit the plan to the Director no later than two years before the date that all repairs, upgrades, and modifications are complete. This written plan must describe all changes to be made to the drip pad in sufficient detail to document compliance with all the requirements of 335-14-5-.23(4). The plan must be reviewed and certified by a qualified ~~P~~professional ~~E~~engineer.

(c) Upon completion of all upgrades, repairs and modifications, the owner or operator must submit to the Director, the as-built drawings for the drip pad together with a certification by a qualified ~~P~~professional ~~E~~engineer attesting that the drip pad conforms to the drawings.

(d) If the drip pad is found to be leaking or unfit for use, the owner or operator must comply with the provisions of 335-14-5-.23(4)(m) or close the drip pad in accordance with 335-14-5-.23(6).

(3) Design and installation of new drip pads. Owners and operators of new drip pads must ensure that the pads are designed, installed, and operated in accordance with one of the following:

(a) All of the requirements of 335-14-5-.23(4) (except (4)(a)4.), (5), and (6), or

(b) All of the requirements of 335-14-5-.23(4) (except (4)(b)), (5), and (6).

(4) Design and Operating requirements.

(a) Drip pads must:

1. Be constructed of non-earthen materials, excluding wood and non-structurally supported asphalt;

2. Be sloped to free-drain treated wood drippage, rain and other waters, or solutions of drippage and water or other wastes to the associated collection system;

3. Have a curb or berm around the perimeter;

4.(i) Have a hydraulic conductivity of less than or equal to $1X10^{-7}$ cm/sec, e.g., existing concrete drip pads must be sealed, coated, or covered with a surface material with a hydraulic conductivity of less than or equal to 1 X 10-7 cm/sec such that the entire surface where drippage occurs or may run across is capable of containing such drippage and mixtures of drippage and precipitation, materials, or other wastes while being routed to an associated collection system. This surface material

must be maintained free of cracks and gaps that could adversely affect its hydraulic conductivity, and the material must be chemically compatible with the preservatives that contact the drip pad. The requirements of this provision apply only to existing drip pads and those drip pads for which the owner or operator elects to comply with 335-14-5-.23(3)(b).

(ii) The owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by a qualified ~~P~~professional ~~E~~engineer that attests to the results of the evaluation. The assessment must be reviewed, updated and recertified annually. The evaluation must document the extent to which the drip pad meets the design and operating standards of 335-14-5-.23(4), except for 335-14-5-.23(4)(b).

5. Be of sufficient structural strength and thickness to prevent failure due to physical contact, climatic conditions, the stress of daily operations; e.g., variable and moving loads such as vehicle traffic, movement of wood, etc.

Note: ADEM will generally consider applicable standards established by professional organizations generally recognized by the industry such as the American Concrete Institute (ACI) or the American Society of Testing Materials (ASTM) in judging the structural integrity requirements of 335-14-5-23-.(4).

(b) If an owner/operator elects to comply with 335-14-5-.23(3)(a) instead of 335-14-5-.23(3)(b), the drip pad must have:

1. A synthetic liner installed below the drip pad that is designed, constructed, and installed to prevent leakage from the drip pad into the adjacent subsurface soil or groundwater or surface water at any time during the active life (including the closure period) of the drip pad. The liner must be constructed of materials that will prevent waste from being absorbed into the liner and to prevent releases into the adjacent subsurface soil or groundwater or surface water during the active life of the facility. The liner must be:

(i) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or drip pad leakage to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation (including stresses from vehicular traffic on the drip pad);

(ii) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(iii) Installed to cover all surrounding earth that could come in contact with the waste or leakage; and

2. A leakage detection system immediately above the liner that is designed, constructed, maintained, and operated to detect leakage from the drip pad. The leakage detection system must be:

(i) Constructed of materials that are:

(I) Chemically resistant to the waste managed in the drip pad and the leakage that might be generated; and

(II) Of sufficient strength and thickness to prevent collapse under the pressures exerted by overlaying materials and by any equipment used at the drip pad;

(ii) Designed and operated to function without clogging through the scheduled closure of the drip pad; and

(iii) Designed so that it will detect the failure of the drip pad or the presence of a release of hazardous waste or accumulated liquid at the earliest practicable time.

3. A leakage collection system immediately above the liner that is designed, constructed, maintained and operated to collect leakage from the drip pad such that it can be removed from below the drip pad. The date, time, and quantity of any leakage collected in this system and removed must be documented in the operating log.

(c) Drip pads must be maintained such that they remain free of cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the drip pad.

Note: See 335-14-5-.23(4)(m) for remedial action required if deterioration or leakage is detected.

(d) The drip pad and associated collection system must be designed and operated to convey, drain, and collect liquid resulting from drippage or precipitation in order to prevent run-off.

(e) Unless protected by a structure, as described in 335-14-5-.23(l)(b), the owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the drip pad during peak discharge from at least a 24-hour, 25-year storm, unless the system has sufficient excess capacity to contain any run-off that might enter the system.

(f) Unless protected by a structure or cover, as described in 335-14-5-.23(1)(b), the owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(g) The drip pad must be evaluated to determine that it meets the requirements of 335-14-5-.23(4)(a) through (f), and the owner or operator must obtain a statement from a qualified ~~P~~professional ~~E~~engineer certifying that the drip pad design meets the requirements of 335-14-5-.23(4).

(h) Drippage and accumulated precipitation must be removed from the associated collection system as necessary to prevent overflow onto the drip pad.

(i) The drip pad surface must be cleaned thoroughly in a manner and frequency such that accumulated residues of hazardous waste or other materials are removed, with residues being properly managed as hazardous waste, so as to allow weekly inspections of the entire drip pad surface without interference or hindrance from accumulated residues of hazardous waste or other materials on the drip pad. The owner or operator must document the date and time of each cleaning and the cleaning procedure used in the facility's operating log. The owner/operator must determine if the residues are hazardous as per 335-14-3-.01(2) and, if so, must manage them under Chapters 335-14-2 through 335-14-9, and Section 3010 of RCRA.

(j) Drip pads must be operated and maintained in a manner to minimize tracking of hazardous waste or hazardous waste constituents off the drip pad as a result of activities by personnel or equipment.

(k) After being removed from the treatment vessel, treated wood from pressure and non-pressure processes must be held on the drip pad until drippage has ceased. The owner or operator must maintain records sufficient to document that all treated wood is held on the pad following treatment in accordance with this requirement.

(l) Collection and holding units associated with run-on and run-off control systems must be emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system.

(m) Throughout the active life of the drip pad and as specified in the permit, if the owner or operator detects a condition that may have caused or has caused a release of hazardous waste, the condition must be repaired within a reasonably prompt period of time following discovery, in accordance with the following procedures:

1. Upon detection of a condition that may have caused or has caused a release of hazardous waste (e.g. upon detection of leakage in the leak detection system), the owner or operator must:

(i) Enter a record of the discovery in the facility operating log;

(ii) Immediately remove the portion of the drip pad affected by the condition from service;

(iii) Determine what steps must be taken to repair the drip pad and clean up any leakage from below the drip pad, and establish a schedule for accomplishing the repairs;

(iv) Within 24 hours after discovery of the condition, notify the Director of the condition and within 10 working days, provide written notice to the Director with a description of the steps that will be taken to repair the drip pad and clean up any leakage and the schedule for accomplishing this work.

2. The Director will review the information submitted, make a determination regarding whether the pad must be removed from service completely or partially until repairs and cleanup are complete, and notify the owner or operator of the determination and the underlying rationale in writing.

3. Upon completing all repairs and cleanup, the owner or operator must notify the Director in writing and provide a certification, signed by an independent, qualified registered professional engineer, that the repairs and cleanup have been completed according to the written plan submitted in accordance with 335-14-5-.23(4)(m)1.(iv).

(n) Should a permit be necessary, the Director will specify in the permit all design and operating practices that are necessary to ensure that the requirements of 335-14-5-.23(4) are satisfied.

(o) The owner or operator must maintain, as part of the facility operating log, documentation of past operating and waste handling practices. This must include identification of preservative formulations used in the past, a description of drippage management practices, and a description of treated wood storage and handling practices.

(5) Inspections.

(a) During construction or installation, liners and cover systems (e.g., membranes, sheets, or coatings) must be inspected for uniformity, damage, and imperfections (e.g., holes, cracks, thin spots, or foreign materials). Immediately after construction or installation, liners must be inspected and certified as meeting the requirements of 335-14-5-.23(4) by a qualified ~~P~~professional ~~E~~engineer. The certification must be maintained at the facility as part of the facility operating record. After installation, liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.

(b) While a drip pad is in operation, it must be inspected weekly and after storms to detect evidence of any of the following:

1. Deterioration, malfunctions, or improper operation of run-on and run-off control systems;

2. The presence of leakage in and proper functioning of leak detection system;

3. Deterioration or cracking of the drip pad surface.

Note: See 335-14-5-.23(4)(m) for remedial action required if deterioration or leakage is detected.

(c) For inspections performed pursuant to 335-14-5-.23(5)(b), the owner or operator must record inspections in an inspection log or summary and 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.

(6) Closure.

(a) At closure, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (pad, liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leakage, and manage them as hazardous waste.

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contamination components, subsoils, structures, and equipment as required in 335-14-5-.23(6)(a), the owner or operator finds that not all contaminated subsoils can be practically removed or decontaminated, he must close the facility and perform post-closure care in accordance with closure and post-closure care requirements that apply to landfills (335-14-5-.14(11)). For permitted units, the requirement to have a permit continues throughout the post-closure period. In addition, for the purposes of closure, post-closure, and financial responsibility, such a drip pad is then considered to be a landfill, and the owner or operator must meet all of the requirements for landfills specified in 335-14-5-.07 and 335-14-5-.08.

(c)1. The owner or operator of an existing drip pad, as defined in 335-14-5-.23(1), that does not comply with the liner requirements of 335-14-5-.23(4)(b)1. must:

(i) Include in the closure plan for the drip pad under 335-14-5-.07(3) both a plan for complying with 335-14-5-.23(6)(a) and a contingent plan for complying with 335-14-5-.23(6)(b) in case not all contaminated subsoils can be practicably removed at closure; and

(ii) Prepare a contingent post-closure plan under 335-14-5-.07(9) for complying with 335-14-5-.23(6)(b) in case not all contaminated subsoils can be practicably removed at closure.

2. The cost estimates calculated under 335-14-5-.07(3) and 335-14-5-.08(5) for closure and post-closure care of a drip pad subject to 335-14-5-.23(6)(c) must include the cost of complying with the contingent closure plan and the contingent post-closure plan, but are not required to include the cost of expected closure under 335-14-5-.23(6)(a).

Authors: Stephen C. Maurer, C. Edwin Johnston, Michael B. Champion, Theresa A. Maines, Jonah Harris; Vernon H. Crockett
Statutory Authority: Code of Alabama 1975, §§22-30-11, 22-30-16.
History: January 25, 1992.
Amended: January 1, 1993; January 5, 1995; April 13, 2001; March 15, 2002; April 17, 2003; April 3, 2007; April 3, 2012; XXXXX, XXXX.

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; and July 14, 2006), 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 ~~1751 Cong. W. L. Dickinson Drive~~1400 Coliseum Blvd, Montgomery, Alabama ~~36130~~36110.

~~(1) §264.1030 Applicability.~~

~~(2) §264.1031 Definitions.~~

~~(3) §264,1032 Standards: Process vents.~~

~~(4) §264.1033 Standards: Closed vent systems and control devices.~~

~~(5) §264.1034 Test methods and procedures.~~

~~(6) §264.1035 Recordkeeping requirements.~~

~~(7) §264.1036 Reporting requirements.~~

~~(8) through (20) §§264.1037 - 264.1049 [Reserved].~~

Authors: Stephen C. Maurer, C. Edwin Johnston, Bradley N. Curvin; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, §§22-30-11, 22-30-16.
History: January 25, 1992;
Amended: January 1, 1993; January 5, 1995; January 12, 1996; Mach 27, 1998; April 2, 1999; March 31, 2000; April 13, 2001; March 31, 2005; April 4, 2006; XXXXX, XXXX.

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; and July 14, 2006), 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 ~~2059~~.

~~(1) §264.1050 Applicability.~~

~~(2) §264.1051 Definitions.~~

~~(3) §264.1052 Standards: Pumps in light liquid service.~~

~~(4) §264.1053 Standards: Compressors.~~

~~(5) §264.1054 Standards: Pressure relief devices in gas/vapor service.~~

~~(6) §264.1055 Standards: Sampling connecting systems.~~

~~(7) §264.1056 Standards: Open-ended valves or lines.~~

~~(8) §264.1057 standards: Valves in gas/vapor service or in light liquid service.~~

~~(9) §264.1058 Standards: Pumps and valves in heavy liquid service, pressure relief advices in light liquid or heavy liquid service, and flanges and other connectors.~~

~~(10) §264.1059 Standards: Delay of repair.~~

~~(11) §264.1060 Standards: Closed-vent systems and control devices.~~

~~(12) §264.1061 Alternative standards for valves in gas/vapor service or in light liquid service: percentage of valves allowed to leak.~~

~~(13) §264.1062 Alternative standards for valves in gas/vapor service or in light liquid service: skip period leak detection and repair.~~

~~(14) §264.1063 Test methods and procedures.~~

~~(15) §264.1064 Recordkeeping requirements.~~

~~(16) §264.1065 Reporting requirements.~~

~~(17)through (30) §§264.1066 - 264.1079 [Reserved].~~

Authors: Stephen C. Maurer, C. Edwin Johnston, Bradley N. Curvin; Vernon H. Crockett

Statutory Authority: Code of Alabama 1975, §§22-30-11, 22-30-16.

History: January 25, 1992.

Amended: January 1, 1993; January 5, 1995; January 12, 1996; March 27, 1998; April 2, 1999; April 13, 2001; March 31, 2005; April 4, 2006, XXXXX, XXXX.

335-14-5-.29 Subpart CC - Air Emission Standards For Tanks, Surface Impoundments, And Containers.

(a) The Environmental Protection Agency Regulations, set forth in 40 CFR, Part 264, Subpart CC (as published by EPA on December 6, 1994 and as amended on May 19, 1995; September 29, 1995; November 13, 1995; June 5, 1996; November 25, 1996; October 8, 1997; December 8, 1997; March 6, 1998; April 22, 1998; September 15, 1998; October 7, 1998; January 21, 1999; July 14, 2006), are incorporated herein by reference.

(b) In the event that any Code of Federal Regulations Rule(s) incorporated herein by reference refers to or cites another Code of Federal Regulations Rule(s), other than 40 CFR Part 264, Subpart CC, such reference to the other Code of Federal Regulations Rule(s) is not incorporated in this ADEM Administrative Code and the ADEM Administrative Code Rule specifically addressing said issue or circumstance shall take precedence, be applicable and govern. Any provision of 40 CFR Part 264, Subpart CC, which is inconsistent with the provisions of ADEM Administrative Code, Division 335-14, is not incorporated herein by reference.

(c) The materials incorporated by reference are available for purchase and inspection at the Department's offices at 1400 Coliseum Boulevard, Montgomery, Alabama 36110 ~~2059~~.

~~(1) §264.1080 Applicability.~~

~~(2) §264.1081 Definitions.~~

~~(3) §264.1082 Standards: General.~~

~~(4) §264.1083 Waste determination procedures.~~

~~(5) §264.1084 Standards: Tanks.~~

~~(6) §264.1085 Standards: Surface impoundments.~~

~~(7) §264.1086 Standards: Containers.~~

~~(8) §264.1087 Standards: Closed vent systems and control devices.~~

~~(9) §264.1088 Inspection and monitoring requirements.~~

~~(10) §264.1089 Recordkeeping requirements.~~

~~(11) §264.1090 Reporting requirements.~~

~~(12) §264.1091 [Reserved].~~

Authors: C. Edwin Johnston, Bradley N. Curvin; Vernon H. Crockett
Statutory Authority: Code of Alabama 1975, §§22-30-11 and 22-30-16.
History: March 27, 1998.

Amended: ~~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; XXXXX, XXXX.

335-14-5-.30 Containment Buildings.

(1) Applicability. The requirements of 335-14-5-.30 apply to owners or operators who store or treat hazardous waste in units designed and operated under 335-14-5-.30(2). ~~These provisions will become effective on February 18, 1993, although owner or operator may notify the Director of his intent to be bound by 335-14-5-.30 at an earlier time.~~ The owner or operator is not subject to the definition of land disposal in ~~Chapter 335-14-1~~RCRA § 3004(K) provided that the unit:

(a) Is a completely enclosed, self-supporting structure that is designed and constructed of manmade materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the unit, and to prevent failure due to pressure gradients, settlement, compression, or uplift physical contact with the hazardous wastes to which they are exposed; climatic conditions; and the stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls;

(b) Has a primary barrier that is designed to be sufficiently durable to withstand the movement of personnel, wastes, and handling equipment within the unit;

(c) If the unit is used to manage liquids, has:

1. A primary barrier designed and constructed of materials to prevent migration of hazardous constituents into the barrier;

2. A liquid collection system designed and constructed of materials to minimize the accumulation of liquid on the primary barrier, and

3. A secondary containment system designed and constructed of materials to prevent migration of hazardous constituents into the barrier, with a leak detection and liquid collection system capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest practicable time, unless the unit has been granted a variance from the secondary containment system requirements under 335-14-5-.30(2).

(d) Has controls sufficient to prevent fugitive dust emissions to meet the no visible emission standard in 335-14-5-.30(2)(c)1.(iv); and

(e) Is designed and operated to ensure containment and prevent the tracking of materials from the unit by personnel or equipment.

(2) Design and operating standards.

(a) All containment buildings must comply with the following design standards:

1. The containment building must be completely enclosed with a floor, walls, and a roof to prevent exposure to the elements, (e.g., precipitation, wind, run-on), and to assure containment of managed wastes.

2. The floor and containment walls of the unit, including the secondary containment system if required under 335-14-5-.30(2)(b), must be designed and constructed of materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the unit, and to prevent failure due to pressure gradients, settlement, compression, or uplift, physical contact with the hazardous wastes to which they are exposed; climatic conditions; and the stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls. The unit must be designed so that it has sufficient structural strength to prevent collapse or other failure. All surfaces to be in contact with hazardous wastes must be chemically compatible with those wastes. The Department will consider standards established by professional organizations generally recognized by the industry such as the American Concrete Institute (ACI) and the American Society of Testing Materials (ASTM) in judging the structural integrity requirements of 335-14-5-.30(2). If appropriate to the nature of the waste management operation to take place in the unit, an exception to the structural strength requirement may be made for light-weight doors and windows that meet these criteria:

(i) They provide an effective barrier against fugitive dust emissions under 335-14-5.30(2)(c)1.(iv); and

(ii) The unit is designed and operated in a fashion that assures that wastes will not actually come in contact with these openings.

3. Incompatible hazardous wastes or treatment reagents must not be placed in the unit or its secondary containment system if they could cause the unit or secondary containment system to leak, corrode, or otherwise fail.

4. A containment building must have a primary barrier designed to withstand the movement of personnel, waste, and handling equipment in the unit during the operating life of the unit and appropriate for the physical and chemical characteristics of the waste to be managed.

(b) For a containment building used to manage hazardous wastes containing free liquids or treated with free liquids (the presence of which is determined by the paint filter test, a visual examination, or other appropriate means), the owner or operator must include:

1. A primary barrier designed and constructed of materials to prevent the migration of hazardous constituents into the barrier (e.g., a geomembrane covered by a concrete wear surface).

2. A liquid collection and removal system to minimize the accumulation of liquid on the primary barrier of the containment building:

(i) The primary barrier must be sloped to drain liquids to the associated collection system; and

(ii) Liquids and waste must be collected and removed to minimize hydraulic head on the containment system at the earliest practicable time.

3. A secondary containment system including a secondary barrier designed and constructed to prevent migration of hazardous constituents into the barrier, and a leak detection system that is capable of detecting failure of the primary barrier and collecting accumulated hazardous wastes and liquids at the earliest practicable time.

(i) The requirements of the leak detection component of the secondary containment system are satisfied by installation of a system that is, at a minimum:

(I) Constructed with a bottom slope of 1 percent or more; and

(II) Constructed of a granular drainage material with a hydraulic conductivity of 1×10^{-2} cm/sec or more and a thickness of 12 inches (30.5 cm) or more, or constructed of synthetic or geonet drainage materials with a transmissivity of $3 \times 10^{-5} m^2$/sec or more.

(ii) If treatment is to be conducted in the building, an area in which such treatment will be conducted must be designed to prevent the release of liquids, wet materials, or liquid aerosols to other portions of the building.

(iii) The secondary containment system must be constructed of materials that are chemically resistant to the waste and liquids managed in the containment building and of sufficient strength and thickness to prevent collapse under the pressure exerted by overlaying materials and by any equipment used in the containment building. (Containment buildings can serve as secondary containment systems for tanks placed within the building under certain conditions. A containment building can serve as an external liner system for a tank, provided it meets the requirements of 335-14-5-.10(4)(e)1. In addition, the containment building must meet the requirements of 335-14-5-.10(4)(b) and 335-14-5-.10(4)(c)1. and 2. to be considered an acceptable secondary containment system for a tank.)

4. For existing units other than 90-day generator units, the Director may delay the secondary containment requirement for up to two years, based on a demonstration by the owner or operator that the unit substantially meets the standards of 335-14-5-.30. In making this demonstration, the owner or operator must:

(i) Provide written notice to the Director of their request by November 16, 1992. This notification must describe the unit and its operating practices with specific reference to the performance of existing containment systems, and specific plans for retrofitting the unit with secondary containment;

(ii) Respond to any comments from the Director on these plans within 30 days; and

(iii) Fulfill the terms of the revised plans, if such plans are approved by the Director.

(c) Owners or operators of all containment buildings must:

1. Use controls and practices to ensure containment of the hazardous waste within the unit; and, at a minimum:

(i) Maintain the primary barrier to be free of significant cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the primary barrier;

(ii) Maintain the level of the stored/treated hazardous waste within the containment walls of the unit so that the height of any containment wall is not exceeded;

(iii) Take measures to prevent the tracking of hazardous waste out of the unit by personnel or by equipment used in handling the waste. An area must be designated to decontaminate equipment and any rinsate must be collected and properly managed; and

(iv) Take measures to control fugitive dust emissions such that any openings (doors, windows, vents, cracks, etc.) exhibit no visible emissions (see 40 CFR Part 60, Appendix A, Method 22-Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares). In addition, all associated particulate collection devices (e.g., fabric filter, electrostatic precipitator) must be operated and maintained with sound air pollution control practices (see 40 CFR Part 60 Subpart 292 for guidance). This state of no visible emissions must be maintained effectively at all times during routine operating and maintenance conditions, including when vehicles and personnel are entering and exiting the unit.

2. Obtain and keep on-site a certification by a qualified ~~P~~professional ~~E~~engineer that the containment building design meets the requirements of 335-14-5-.30(2)(a) through (c). A qualified ~~P~~professional ~~E~~engineer certification will be required prior to operation of the unit.

3. Throughout the active life of the containment building, if the owner or operator detects a condition that could lead to or has caused a release of hazardous waste, the owner or operator must repair the condition promptly, in accordance with the following procedures.

(i) Upon detection of a condition that has led to a release of hazardous waste (e.g., upon detection of leakage from the primary barrier) the owner or operator must:

(I) Enter a record of the discovery in the facility operating record;

(II) Immediately remove the portion the containment building affected by the condition from service;

(III) Determine what steps must be taken to repair the containment building, remove any leakage from the secondary collection system, and establish a schedule for accomplishing the cleanup and repairs; and

(IV) Within 7 days after the discovery of the condition, notify the Director of the condition, and within 14 working days, provide a written notice to the Director with a description of the steps taken to repair the containment building, and the schedule for accomplishing the work.

(ii) The Director will review the information submitted, make a determination regarding whether the containment building must be removed from service completely or partially until repairs and cleanup are completed and notify the owner or operator of the determination and the underlying rationale in writing.

(iii) Upon completing all repairs and cleanup the owner or operator must notify the Director in writing and provide a verification, signed by a qualified, registered professional engineer, that the repairs and cleanup have been completed according to the written plan submitted in accordance with 335-14-5-.30(2)(c)3.(i)(IV).

4. Inspect and record in the facility's operating record, at least once every seven weekdays, data gathered from monitoring equipment and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste.

(d) For a containment buildings that contains both areas with and without secondary containment, the owner or operator must:

1. Design and operate each area in accordance with the requirements enumerated in 335-14-5-.30(2)(a) through (c);

2. Take measures to prevent the release of liquids or wet materials into areas without secondary containment; and

3. Maintain in the facility's operating log a written description of the operating procedures used to maintain the integrity of areas without secondary containment.

(e) Notwithstanding any other provision of 335-14-5-.30 the Director may waive requirements for secondary containment for a permitted containment building where the owner or operator demonstrates that the only free liquids in the unit are limited amounts of dust suppression liquids required to meet occupational health and safety requirements, and where containment of managed wastes and liquids can be assured without a secondary containment system.

(3) Closure and post-closure care.

(a) At closure of a containment building, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (liner, etc.) contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless 335-14-2-.01(3)(d) applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for containment buildings must meet all of the requirements specified in 335-14-5-.07 and 335-14-5-.08.

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in 335-14-5-.30(3)(a), the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he must close the facility and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills [335-14-5-.14(11)]. In addition, for the purposes of closure, post-closure and financial responsibility, such a containment building is then considered to be a landfill, and the owner or operator must meet all of the requirements for landfills specified in 335-14-5-.07 and 335-14-5-.08.

Authors: C. Lynn Garthright~~,~~; C. Edwin Johnston~~,~~; Michael B. Champion~~,~~; Theresa A. Maines; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, §§22-30-11, 22-30-16.
History: January 5, 1995.
Amended: April 13, 2001; March 15, 2002; April 17, 2003; April 3, 2007; XXXXX, XXXX.

335-14-5 **APPENDIX IX - Groundwater Monitoring List[1]**

Common Name[2]	CASRN[3]	Chemical Abstracts Service Index Name[4]
Acenaphthene	83-32-9	Acenaphthylene, 1,2-dihydro-
Acenaphthylene	208-96-8	Acenaphthylene
Acetone	67-64-1	2-Propanone
Acetophenone	98-86-2	Ethanone, 1-phenyl-
Acetonitrile; Methyl cyanide	75-05-8	Acetonitrile
2-Acetylamino fluorene; 2-AAF	53-96-3	Acetamide, N-9H-fluoren-2-yl-
Acrolein	107-02-8	2-Propenal
Acrylonitrile	107-13-1	2-Propenenitrile
Aldrin	309-00-2	1,4:5,8-Dimethano naphthalene, 1,2,3,4,10, 10-hexachloro- 1,4,4a,5, 8,8a-hexahydro- (1α, 4α,4aβ,5aα, 8α, 8aβ)-
Allyl chloride	107-05-1	1-Propene, 3-chloro-
4-Aminobiphenyl	92-67-1	[1,1'-Biphenyl]-4-amine
Aniline	62-53-3	Benzenamine
Anthracene	120-12-7	Anthracene
Antimony	(Total)	Antimony
Aramite	140-57-8	Sulfurous acid, 2-chloroethyl 2-[4-(1,1-dimethylethyl)phenoxy]- 1-methyleth yl ester
Arsenic	(Total)	Arsenic
Barium	(Total)	Barium
Benzene	71-43-2	Benzene
Benzo[a]anthracene; Benzanthracene	56-55-3	Benz[a]anthracene
Benzo[b]fluoranthene	205-99-2	Benz[e]acephenanthrylene
Benzo[k]fluoranthene	207-08-9	Benzo[k]fluoranthene
Benzo[ghi]perylene	191-24-2	Benzo[ghi]perylene
Benzo[a]pyrene	50-32-8	Benzo[a]pyrene
Benzyl alcohol	100-51-6	Benzenemethanol
Beryllium	(Total)	Beryllium
alpha-BHC	319-84-6	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α, 2α,3β,4β, 5β,6β)-
beta-BHC	319-85-7	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α, 2β,3α,4β, 5α, 6β)-

Common Name[2]	**CASRN[3]**	**Chemical Abstracts Service Index Name[4]**
delta-BHC	319-86-8	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α, 2α,3α,4β, 5α, 6β)-
gamma-BHC; Lindane	58-89-9	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α, 2α,3β,4α, 5α, 6β)-
Bis(2-chloroethoxy) methane	111-91-1	Ethane, 1,1'-[methylenebis (oxy)]bis[2-chloro-
Bis(2-chloroethyl)ether	111-44-4	Ethane, 1,1'-oxybis[2-chloro-
Bis(2-chloro-1-methylethyl) ether; 2,2'-Dichloro-diisopropyl ether	108-60-1	Propane, 2,2'-oxybis[1-chloro-
Bis(2-ethylhexyl) phthalate	117-81-7	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl)ester
Bromodichloro-methane	75-27-4	Methane, bromodichloro-
Bromoform; Tribromomethane	75-25-2	Methane, tribromo-
4-Bromophenyl phenyl ether	101-55-3	Benzene, 1-bromo-4-phenoxy-
Butyl benzyl phthalate; Benzyl butyl phthalate	85-68-7	1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester
Cadmium	(Total)	Cadmium
Carbon disulfide	75-15-0	Carbon disulfide
Carbon tetrachloride	56-23-5	Methane, tetrachloro-
Chlordane	57-74-9	4,7-Methano-1H-indene, 1,2,4,5,6,7, 8,8-octachloro-2,3,3a,4, 7,7a- hexahydro-
p-Chloroaniline	106-47-8	Benzenamine, 4-chloro-
Chlorobenzene	108-90-7	Benzene, chloro-
Chlorobenzilate	510-15-6	Benzeneacetic acid, 4-chloro-α-(4-chlorophenyl)- α-hydroxy-, ethyl ester
p-Chloro-m-cresol	59-50-7	Phenol, 4-chloro-3-methyl-
Chloroethane; Ethyl chloride	75-00-3	Ethane, chloro-
Chloroform	67-66-3	Methane, trichloro-
2-Chloronaphthalene	91-58-7	Naphthalene, 2-chloro-
2-Chlorophenol	95-57-8	Phenol, 2-chloro-
4-Chlorophenyl phenyl ether	7005-72-3	Benzene, 1-chloro-4-phenoxy-
Chloroprene	126-99-8	1,3-Butadiene, 2-chloro-
Chromium	(Total)	Chromium
Chrysene	218-01-9	Chrysene
Cobalt	(Total)	Cobalt

Common Name[2]	**CASRN[3]**	**Chemical Abstracts Service Index Name[4]**
Copper	(Total)	Copper
m-Cresol	108-39-4	Phenol, 3-methyl-
o-Cresol	95-48-7	Phenol, 2-methyl-
p-Cresol	106-44-5	Phenol, 4-methyl-
Cyanide	57-12-5	Cyanide
2,4-D; 2,4-Dichloro-phenoxyacetic acid	94-75-7	Acetic acid, (2,4-dichlorophenoxy)-
4,4'-DDD	72-54-8	Benzene, 1,1'-(2,2-dichloroethylidene)bis[4-chloro-
4,4'-DDE	72-55-9	Benzene, 1,1'-(dichloroethenylidene)bis[4-chloro-
4,4'-DDT	50-29-3	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-chloro-
Diallate	2303-16-4	Carbamothioic acid, bis(1-methyl- ethyl)-, S-(2,3-dichloro-2-propenyl) ester
Dibenz[a,h]anthracene	53-70-3	Dibenz[a,h]anthracene
Dibenzofuran	132-64-9	Dibenzofuran
Dibromochloro methane; Chlorodi bromomethane	124-48-1	Methane, dibromochloro-
1,2-Dibromo-3-chloro- propane; DBCP	96-12-8	Propane, 1,2-dibromo-3-chloro-
1,2-Dibromoethane; Ethylene dibromide	106-93-4	Ethane, 1,2-dibromo-
Di-n-butyl phthalate	84-74-2	1,2-Benzenedicarboxylic acid, dibutyl ester
o-Dichlorobenzene	95-50-1	Benzene, 1,2-dichloro-
m-Dichlorobenzene	541-73-1	Benzene, 1,3-dichloro-
p-Dichlorobenzene	106-46-7	Benzene, 1,4-dichloro-
3,3'-Dichlorobenzidine	91-94-1	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dichloro-
trans-1,4-Dichloro-2-butene	110-57-6	2-Butene, 1,4-dichloro-, (E)-
Dichlorodifluoro methane	75-71-8	Methane, dichlorodifluoro-
1,1-Dichloroethane	75-34-3	Ethane, 1,1-dichloro-
1,2-Dichloroethane; Ethylene dichloride	107-06-2	Ethane, 1,2-dichloro-
1,1-Dichloroethylene; Vinylidene chloride	75-35-4	Ethene, 1,1-dichloro-
trans-1,2-Dichloroethylene	156-60-5	Ethene, 1,2-dichloro-, (E)-
2,4-Dichlorophenol	120-83-2	Phenol, 2,4-dichloro-

Common Name[2]	**CASRN[3]**	**Chemical Abstracts Service Index Name[4]**
2,6-Dichlorophenol	87-65-0	Phenol, 2,6-dichloro-
1,2-Dichloropropane	78-87-5	Propane, 1,2-dichloro-
cis-1,3-Dichloropropene	10061-01-5	1-Propene, 1,3-dichloro-, (Z)-
trans-1,3-Dichloropropene	10061-02-6	1-Propene, 1,3-dichloro-, (E)-
Dieldrin	60-57-1	2,7:3,6-Dimethanonaphth [2,3-b]oxirene, 3,4,5,6,9, 9-hexachloro-1a,2,2a, 3,6,6a,7,7a-octahydro-, (1aα,2β,2aα,3β, 6β,6aα, 7β, 7aα)-
Diethyl phthalate	84-66-2	1,2-Benzenedicarboxylic acid, diethyl ester
O,O-Diethyl O-2-pyrazinyl phosphorothioate; Thionazin	297-97-2	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester
Dimethoate	60-51-5	Phosphorodithioic acid, O,O-dimethyl S-[2-(methylamino)-2-oxoethyl] ester
p-(Dimethylamino) azobenzene	60-11-7	Benzenamine, N,N-dimethyl-4- (phenylazo)
7,12-Dimethylbenz[a] anthracene	57-97-6	Benz[a]anthracene,7,12-dimethyl-
3,3'-Dimethylbenzidine	119-93-7	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethyl-
alpha, alpha-Dimethylphene- thylamin e	122-09-8	Benzeneethanamine, α,α- dimethyl-
2,4-Dimethylphenol	105-67-9	Phenol, 2,4-dimethyl-
Dimethyl phthalate	131-11-3	1,2-Benzenedicarboxylic acid, dimethyl ester
m-Dinitrobenzene	99-65-0	Benzene, 1,3-dinitro-
4,6-Dinitro-o-cresol	534-52-1	Phenol, 2-methyl-4,6-dinitro-
2,4-Dinitrophenol	51-28-5	Phenol, 2,4-dinitro-
2,4-Dinitrotoluene	121-14-2	Benzene, 1-methyl-2,4-dinitro-
2,6-Dinitrotoluene	606-20-2	Benzene, 2-methyl-1,3-dinitro-
Dinoseb; DNBP; 2-sec- Butyl-4,6-dinitrophenol	88-85-7	Phenol, 2-(1-methylpropyl) -4,6- dinitro-
Di-n-octyl phthalate	117-84-0	1,2-Benzenedicarboxylic acid, dioctyl ester
1,4-Dioxane	123-91-1	1,4-Dioxane
Diphenylamine	122-39-4	Benzenamine, N-phenyl-
Disulfoton	298-04-4	Phosphorodithioic acid, O,O-diethyl S- [2-(ethylthio)ethyl]ester

Common Name[2]	**CASRN[3]**	**Chemical Abstracts Service Index Name[4]**
Endosulfan I	959-98-8	6,9-Methano-2,4,3-benzodioxathiepin,6,7,8,9, 10,10-hexachloro- 1,5, 5a,6,9,9a-hexahydro-, 3-oxide, (3α,5aβ,6α,9α, 9aβ)-
Endosulfan II	33213-65-9	6,9-Methano-2,4,3-benzodioxathiepin,6,7,8,9, 10,10-hexachloro- 1,5,5a,6, 9,9a-hexahydro- 3-oxide, (3α,5aα,6β,9β, 9aα)-
Endosulfan sulfate	1031-07-8	6,9-Methano-2,4,3-benzodioxathiepin,6,7,8,9, 10,10-hexachloro- 1,5,5a,6, 9,9a-hexahydro-, 3,3-dioxide
Endrin	72-20-8	2,7:3,6-Demethanonaphth[2,3-b]oxirene,3,4, 5, 6,9,9-hexachloro-,1a,2,2a,3,6,6a,7,7a-octahy dro-, (1aα,2β,2aβ,3α, 6α,6aβ, 7β, 7aα)-
Endrin aldehyde	7421-93-4	1,2,4-Methenocyclopenta [cd]pentalene- 5-carboxaldehyde, 2,2a,3,3,4,7- hexachlorodecahydro-, (1α,2β, 2aβ, 4β,4aβ,5β, 6aβ, 6bβ,7R*)-
Ethylbenzene	100-41-4	Benzene, ethyl-
Ethyl methacrylate	97-63-2	2-Propenoic acid, 2-methyl-, ethyl ester
Ethyl methanesulfonate	62-50-0	Methanesulfonic acid, ethyl ester
Famphur	52-85-7	Phosphorothioic acid, O-[4- [(dimethylamino) sulfonyl] phenyl]-O, O-dimethyl ester
Fluoranthene	206-44-0	Fluoranthene
Fluorene	86-73-7	9H-Fluorene
Heptachlor	76-44-8	4,7-Methano-1H-indene,1, 4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-
Heptachlor epoxide	1024-57-3	2,5-Methano-2H-indeno[1, 2-b]oxirene,2, 3,4,5, 6,7,7- heptachloro-1a,lb,5,5a,6, 6a-hexahydro-,(1aα, lbβ,2α,5α, 5aβ,6β, 6aα)
Hexachlorobenzene	118-74-1	Benzene, hexachloro-
Hexachlorobutadiene	87-68-3	1,3-Butadiene, 1,1,2,3,4,4- hexachloro-
Hexachlorocyclopentadiene	77-47-4	1,3-Cyclopentadiene, 1,2,3,4,5,5- hexachloro-
Hexachloroethane	67-72-1	Ethane, hexachloro-
Hexachlorophene	70-30-4	Phenol, 2,2'-methylenebis [3,4,6-trichloro-
Hexachloropropene	1888-71-7	1-Propene, 1,1,2,3,3,3-hexachloro-
2-Hexanone	591-78-6	2-Hexanone
Indeno(1,2,3-cd) pyrene	193-39-5	Indeno[1,2,3-cd]pyrene
Isobutyl alcohol	78-83-1	1-Propanol, 2-methyl-

Common Name[2]	**CASRN[3]**	**Chemical Abstracts Service Index Name[4]**
Isodrin	465-73-6	1,4,5,8-Dimethanonaphthalene,1,2,3,4,10, 10-hexachloro-1,4,4a,5,8,8a hexahydro-(lα, 4α,4aβ,5β, 8β,8aβ)-
Isophorone	78-59-1	2-Cyclohexen-1-one, 3,5,5-trimethyl-
Isosafrole	120-58-1	1,3-Benzodioxole, 5-(1-propenyl)-
Kepone	143-50-0	1,3,4-Metheno-2H-cyclo buta-[cd]pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-
Lead	(Total)	Lead
Mercury	(Total)	Mercury
Methacrylonitrile	126-98-7	2-Propenenitrile, 2-methyl-
Methapyrilene	91-80-5	1,2,Ethanediamine, N,N-dimethyl-N'-2- pyridinyl-N'-(2-thienylmethyl)-
Methoxychlor	72-43-5	Benzene, 1,1'-(2,2,2, trichloro-ethylidene)bis [4-methoxy-
Methyl bromide; Bromomethane	74-83-9	Methane, bromo-
Methyl chloride; Chloromethane	74-87-3	Methane, chloro-
3-Methylcholanthrene	56-49-5	Benz[j]aceanthrylene, 1,2-dihydro- 3-methyl-
Methylene bromide; Dibromo - methane	74-95-3	Methane, dibromo-
Methylene chloride; Dichloromethane	75-09-2	Methane, dichloro-
Methyl ethyl ketone; MEK	78-93-3	2-Butanone
Methyl iodide; Iodomethane	74-88-4	Methane, iodo-
Methyl methacrylate	80-62-6	2-Propenoic acid, 2-methyl-, methyl ester
Methyl methanesulfonate	66-27-3	Methanesulfonic acid, methyl ester
2-Methylnaphthalene	91-57-6	Naphthalene, 2-methyl-
Methyl parathion; Parathion methyl	298-00-0	Phosphorothioic acid, O,O-dimethyl O- (4-nitrophenyl) ester
4-Methyl-2-pentanone; Methyl isobutyl ketone	108-10-1	2-Pentanone, 4-methyl-
Naphthalene	91-20-3	Naphthalene
1,4-Naphthoquinone	130-15-4	1,4-Naphthalenedione
1-Naphthylamine	134-32-7	1-Naphthalenamine
2-Naphthylamine	91-59-8	2-Naphthalenamine
Nickel	(Total)	Nickel

Common Name[2]	CASRN[3]	Chemical Abstracts Service Index Name[4]
o-Nitroaniline	88-74-4	Benzenamine, 2-nitro-
m-Nitroaniline	99-09-2	Benzenamine, 3-nitro-
p-Nitroaniline	100-01-6	Benzenamine, 4-nitro-
Nitrobenzene	98-95-3	Benzene, nitro-
o-Nitrophenol	88-75-5	Phenol, 2-nitro-
p-Nitrophenol	100-02-7	Phenol, 4-nitro-
4-Nitroquinoline 1-oxide	56-57-5	Quinoline, 4-nitro-, 1-oxide
N-Nitrosodi-n-butylamine	924-16-3	1-Butanamine, N-butyl-N-nitroso-
N-Nitrosodiethylamine	55-18-5	Ethanamine, N-ethyl-N-nitroso-
N-Nitrosodimethylamine	62-75-9	Methanamine, N-methyl-N-nitroso-
N-Nitrosodiphenylamine	86-30-6	Benzenamine, N-nitroso-N-phenyl-
N-Nitrosodipropylamine; Di-n-propylnitrosamine	621-64-7	1-Propanamine, N-nitroso-N-propyl-
N-Nitrosomethylethalamine	10595-95-6	Ethanamine, N-methyl-N-nitroso-
N-Nitrosomorpholine	59-89-2	Morpholine, 4-nitroso-
N-Nitrosopiperidine	100-75-4	Piperidine, 1-nitroso-
N-Nitrosopyrrolidine	930-55-2	Pyrrolidine, 1-nitroso-
5-Nitro-o-toluidine	99-55-8	Benzenamine, 2-methyl-5-nitro-
Parathion	56-38-2	Phosphorothioic acid, O,O-diethyl- O-(4-nitrophenyl) ester
Polychlorinated biphenyls; PCBs	See Note 4	1,1'-Biphenyl, chloro derivatives
Polychlorinated dibenzo-p- dioxins; PCDDs	See Note 5	Dibenzo[b,e][1,4]dioxin, chloro derivatives
Polychlorinated dibenzo- furans; PCDFs	See Note 6	Dibenzofuran, chloro derivatives
Pentachlorobenzene	608-93-5	Benzene, pentachloro-
Pentachloroethane	76-01-7	Ethane, pentachloro-
Pentachloronitro-benzene	82-68-8	Benzene, pentachloronitro-
Pentachlorophenol	87-86-5	Phenol, pentachloro-
Phenacetin	62-44-2	Acetamide, N-(4-ethoxyphenyl)
Phenanthrene	85-01-8	Phenanthrene
Phenol	108-95-2	Phenol
p-Phenylenediamine	106-50-3	1,4-Benzenediamine
Phorate	298-02-2	Phosphorodithioic acid, O,O-diethyl S-[(ethylthio) methyl] ester
2-Picoline	109-06-8	Pyridine, 2-methyl-

Common Name[2]	**CASRN[3]**	**Chemical Abstracts Service Index Name[4]**
Pronamide	23950-58-5	Benzamide, 3,5-dichloro-N-(1,1- dimethyl-2-propynyl)-
Propionitrile; Ethyl cyanide	107-12-0	Propanenitrile
Pyrene	129-00-0	Pyrene
Pyridine	110-86-1	Pyridine
Safrole	94-59-7	1,3-Benzodioxole, 5-(2-propenyl)-
Selenium	(Total)	Selenium
Silver	(Total)	Silver
Silvex; 2,4,5-TP	93-72-1	Propanoic acid, 2-(2,4,5-trichloro- phenoxy)-
Styrene	100-42-5	Benzene, ethenyl-
Sulfide	18496-25-8	Sulfide
2,4,5-T; 2,4,5-Trichloro- phenoxyacetic acid	93-76-5	Acetic acid, (2,4,5-trichlorophenoxy)-
2,3,7,8-TCDD; 2,3,7, 8- Tetrachlorodi benzo-p-dioxin	1746-01-6	Dibenzo[b,e][1,4]dioxin, 2,3,7,8- tetrachloro-
1,2,4,5-Tetrachlorobenzene	95-94-3	Benzene, 1,2,4,5-tetrachloro-
1,1,1,2-Tetrachloroethane	630-20-6	Ethane, 1,1,1,2-tetrachloro-
1,1,2,2-Tetrachloroethane	79-34-5	Ethane, 1,1,2,2-tetrachloro-
Tetrachloroethylene; Perchloroethylene; Tetrachloroethene	127-18-4	Ethene, tetrachloro-
2,3,4,6-Tetrachlorophenol	58-90-2	Phenol, 2,3,4,6-tetrachloro-
Tetraethyl dithiopyro- phosphate; Sulfotepp	3689-24-5	Thiodiphosphoric acid, $([(HO)_2 P(S)]_2O$, tetraethyl ester
Thallium	(Total)	Thallium
Tin	(Total)	Tin
Toluene	108-88-3	Benzene, methyl-
o-Toluidine	95-53-4	Benzenamine, 2-methyl-
Toxaphene	8001-35-2	Toxaphene
1,2,4-Trichlorobenzene	120-82-1	Benzene, 1,2,4-trichloro-
1,1,1-Trichloroethane; Methylchloroform	71-55-6	Ethane, 1,1,1-trichloro-
1,1,2-Trichloroethane	79-00-5	Ethane, 1,1,2-trichloro-

Common Name[2]	CASRN[3]	Chemical Abstracts Service Index Name[4]
Trichloroethylene; Trichloroethene	79-01-6	Ethene, trichloro-
Trichlorofluoromethane	75-69-4	Methane, trichlorofluoro-
2,4,5-Trichlorophenol	95-95-4	Phenol, 2,4,5-trichloro-
2,4,6-Trichlorophenol	88-06-2	Phenol, 2,4,6-trichloro-
1,2,3-Trichloropropane	96-18-4	Propane, 1,2,3-trichloro-
O,O,O-Triethyl phosphorothioate	126-68-1	Phosphorothioic acid,O,O,O- triethyl ester
sym-Trinitrobenzene	99-35-4	Benzene, 1,3,5-trinitro-
Vanadium	(Total)	Vanadium
Vinyl acetate	108-05-4	Acetic acid, ethenyl ester
Vinyl chloride	75-01-4	Ethene, chloro-
Xylene (total)	1330-20-7	Benzene, dimethyl-
Zinc	(Total)	Zinc

[1] Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

[2] Chemical Abstracts Service registry number. Where "Total" is entered, all species in the groundwater that contain this element are included.

[3] CAS index names are those used in the 9th Cumulative Index.

[4] Polychlorinated biphenyls (CAS RN 1336-36-3): this category contains congener chemicals, including constituents of Aroclor-1016 (CAS RN 12674-11-2), Aroclor-1221 (CAS RN 11104-28-2), Aroclor-1232 (CAS RN 11141-16-5), Aroclor-1242 (CAS RN 53469-21-9), Aroclor-1248 (CAS RN 12672-29-6), Aroclor-1254 (CAS RN 11097-69-1), and Aroclor-1260 (CAS RN 11096-82-5). ~~The PQL shown is an average value for PCB congeners.~~

[5] This category contains congener chemicals, including tetrachlorodibenzo-p-dioxins (see also 2,3,7,8-TCDD), pentachlorodibenzo-p-dioxins, and hexachlorodibenzo-p-dioxins. ~~The PQL shown is an average value for PCDD congeners.~~

[6] This category contains congener chemicals, including tetrachlorodibenzofurans, pentachlorodibenzofurans, and hexachlorodibenzofurans.

Authors: Stephen C. Maurer, Amy P. Zachry, Michael B. Champion, Vernon H. Crockett, Bradley N. Curvin
Statutory Authority: Code of Alabama 1975, §§22-30-11, 22-30-16.
History: August 24, 1989.
Amended: March 27, 1998; April 17, 2003; May 27, 2004; April 4, 2006; April 3, 2007; XXXXX, XXXX.

335-14-6-.01 General.

(1) Purpose, scope, and applicability.

(a) The purpose of 335-14-6 is to establish minimum standards that define the acceptable management of hazardous waste during the effective term of interim status and until the certification of final closure or, if the facility is subject to post-closure requirements, until post-closure responsibilities are fulfilled.

(b) Except as provided in 335-14-6-.29~~(1)~~, the standards of 335-14-6, and of 335-14-5-.19 apply to owners and operators of facilities that treat, store, or dispose of hazardous waste who have fully complied with the requirements for interim status under rule 335-14-8-.07 until either a final facility permit is issued or until applicable 335-14-6 closure and post-closure responsibilities are fulfilled, and to those owners and operators of facilities in existence on November 19, 1980 who have failed to provide timely notification as required by section 3010(a) of RCRA and/or failed to file Part A of the permit application as required by rule 335-14-8-.07. These standards apply to all treatment, storage, and disposal of hazardous waste at these facilities after the effective date of 335-14-6, except as specifically provided otherwise in 335-14-6 or 335-14-2.

Generators operating landfills, waste piles, or surface impoundments or other land units without a AHWMMA Permit or interim status may be required by the Department to comply with the requirements of 335-14-6-.06, but shall not be granted interim status unless they otherwise qualify for interim status under Division 335-14. These units shall be subject to the closure and post-closure requirements of 335-14-5, except that closure and post-closure plans for these units shall be processed according to the Administrative procedures of rule 335-14-6-.07.

(c) The requirements of 335-14-6 do not apply to:

1. [Reserved]

2. [Reserved]

3. [Reserved]

4. [Reserved]

5. 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 335-14-6 by 335-14-2-.01(5);

6. 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 335-14-6 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);

7. A generator accumulating waste on-site in compliance with 335-14-3-.03(5), except as otherwise provided in rule 335-14-3-.03;

8. A farmer disposing of waste pesticides from his own use in compliance with 335-14-3-.07(1);

9. The owner or operator of a totally enclosed treatment facility, as defined in 335-14-1-.02;

10. The owner or operator of an elementary neutralization unit or wastewater treatment unit as defined in 335-14-1-.02, provided that if the owner or operator is diluting 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, in order to remove the characteristic before land disposal, the owner/operator must comply with the requirements set out in 335-14-6-.02(8)(b).

11. (i) Except as provided in 335-14-6-.01(1)(c)11.(ii), a person engaged in treatment or containment activities during immediate response to any of the following situations:

(I) A discharge of 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 devise, 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 335-14-6 must comply with all applicable requirements of rules 335-14-6-.03 and 335-14-6-.04.

(iii) Any person who is covered by 335-14-6-.01(1)(c)11.(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 335-14-6 and 335-14-8 for those activities.

(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 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.

12. [Reserved]

13. 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 335-14-6-.02(8) and 335-14-6-.09(2) and (3) are complied with.

14. 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); and

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

(d) The following hazardous wastes must not be managed at facilities subject to regulation under 335-14-6.

1. EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, or F027 unless:

(i) The wastewater treatment sludge is generated in a surface impoundment as part of the plant's wastewater treatment system;

(ii) The waste is stored in tanks or containers;

(iii) The waste is stored or treated in waste piles that meet the requirements of 335-14-5-.12(1)(c) as well as all other applicable requirements of rule 335-14-6-.12;

(iv) The waste is burned in incinerators that are certified pursuant to the standards and procedures in 335-14-6-.15(13); or

(v) The waste is burned in facilities that thermally treat the waste in a device other than an incinerator and that are certified pursuant to the standards and procedures in 335-14-6-.16(14).

(e) The requirements of 335-14-6 apply to owners or operators of all facilities which treat, store, or dispose of hazardous waste referred to in 335-14-9,

and 335-14-9 standards are considered material conditions or requirements of 335-14-6 interim status standards.

(f) 335-14-7-.13(6) identifies when the requirements of 335-14-6-.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.

(2) [Reserved]

(3) [Reserved]

(4) Imminent hazard action.

(5) Notwithstanding any other provisions of these rules, enforcement actions may be brought pursuant to Section 7003 of RCRA.

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Statutory Authority: Code of Alabama 1975, §§ 22-30-11 and 22-30-16.
History: November 19, 1980.
Amended: April 9, 1986; August 24, 1989; December 6, 1990, January 25, 1992; January 5, 1995; April 28, 1995; January 12, 1996; March 27, 1998; April 2, 1999; March 31, 2000; April 13, 2001; March 15, 2002; April 17, 2003; March 31, 2005; April 4, 2006; April 3, 2007; XXXXX, XXXX.

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) 1. The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source must notify the Department in writing at least four weeks in advance of the date the waste is expected to arrive at the facility. Notice of subsequent shipments of the same waste from the same foreign source is not required.

2. The owner or operator of a recovery facility that has arranged to receive hazardous waste subject to rule 335-14-3-.09 must provide a copy of the movement document bearing all required signatures to the foreign exporter; to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; to the Alabama Department of Environmental Management, Land Division, P. O. Box 301463, Montgomery, AL 36130; and to the competent authorities of all other countries concerned within three (3) working days of receipt of the shipment. The original of the signed movement document must be maintained at the facility for at least three (3) years. In addition, such owner or operator shall, as soon as possible, but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following the receipt of the hazardous waste, send a certificate of recovery to the foreign exporter, to the competent authority of the country of export, to the Department, and to EPA's Office of Enforcement and Compliance Assurance at the above address by mail, e-mail without digital signature followed by mail, or fax followed by mail.

(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.

1. 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.

2. 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.

3. 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~~(5)~~, 335-14-6-.28~~(14)~~, 335-14-6-.29~~(4)~~, 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~~ in accordance with 335-14-6-.29(3)~~:

(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 335-14-6-.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 with 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~~(4)~~, 335-14-6-.28~~(3)~~, 335-14-6-.28~~(4)~~, 335-14-6-.28~~(9)~~, and 335-14-6-.29~~(5) through (11)~~, 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.

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335-14-6-.04 Contingency Plan and Emergency Procedures.

(1) Applicability.

The requirements of 335-14-6-.04 apply to owners and operators of all hazardous waste facilities, except as 335-14-6-.01(1) provides otherwise.

(2) Purpose and implementation of contingency plan.

(a) Each owner or operator 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 unpermitted sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

(b) The provisions of the plan must be carried out immediately whenever there is a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

(3) Content of contingency plan.

(a) The contingency plan must describe the actions facility personnel must take to comply with 335-14-6-.04(2) and (7) in response to fires, explosions, or any unpermitted sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.

(b) If the owner or operator 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 335-14-6. The owner or operator may develop one contingency plan which meets all regulatory requirements. ADEM 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.

(c) The plan must describe arrangements agreed to by local law enforcement, fire departments, hospitals, contractors, and ADEM Field Operations Division and local emergency response teams to coordinate emergency services, pursuant to 335-14-6-.03(8).

(d) The plan must list names, office and home addresses, and phone numbers of all persons qualified to act as emergency coordinator [see 335-14-6-.04(6)], 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.

(e) 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.

(f) 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). All evacuation routes should be depicted on a map to be included with the evacuation plan.

(4) Copies of contingency plan.

A copy of the contingency plan and all revisions to the plan must be:

(a) Maintained at the facility; and

(b) Submitted to all local law enforcement, fire departments, hospitals, and ADEM Field Operations Division and local emergency response teams that may be called upon to provide emergency services. Documentation of compliance with this requirement must be maintained at the facility.

(5) Amendment of contingency plan.

The contingency plan must be reviewed, and immediately amended, if necessary, whenever:

(a) Applicable rules are revised;

(b) The plan fails in an emergency;

(c) 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 waste or hazardous waste constituents, or changes the response necessary in an emergency;

(d) The list of emergency coordinators changes; or

(e) The list of emergency equipment changes.

(6) 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.

(7) Emergency procedures.

(a) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or his designee when the emergency coordinator is on call) must immediately:

1. Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

2. Notify appropriate State of Alabama or local agencies with designated response roles if their help is needed.

(b) 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.

(c) 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).

(d) 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 (release of hazardous waste or hazardous waste constituents from the active portion of the facility is defined as such a threat), he must report his findings as follows:

1. 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

2. He must immediately notify the Alabama Emergency Management Agency (800/843-0699. 24 hours a day) the National Response Center (800/424-8802 or 202/267-2675, 24 hours a day), and the Department (334/271-7700, 8:00 a.m. to 5:00 p.m., Monday through Friday). 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.

(e) 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 waste at the facility. These measures must include, where applicable, stopping processes and operations, collecting and containing released waste, and removing or isolating containers.

(f) 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.

(g) Immediately after an emergency, the emergency coordinator must provide for treating, storing, or disposing of recovered waste, contaminated soil, or surface water, or any other material that results from a release, fire or explosion at the facility. Unless the owner or operator 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 Chapters 335-14-3, 335-14-4 and 335-14-6.

(h) The emergency coordinator must ensure that, in the affected area(s) of the facility:

1. No waste that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and

2. All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(i) The owner or operator must notify the Department and local authorities, that the facility is in compliance with 335-14-6-.04(7)(h) before operations are resumed in the affected area(s) of the facility.

(j) The owner or operator must note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, he must submit a written report on the incident to the Department. The report must include:

1. Name, address, and telephone number of the owner or operator;

2. Name, address, and telephone number of the facility;

3. Date, time, and type of incident (e.g., fire, explosion);

4. Name and quantity of material(s) involved;

5. The extent of injuries, if any;

6. An assessment of actual or potential hazards to human health or the environment, where this is applicable; and

7. Estimated quantity and disposition of recovered material that resulted from the incident.

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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) 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.

1. If a facility receives a hazardous waste shipment accompanied by a manifest, the owner, operator or his agent must:

(i) Sign and date, by hand, each copy of the manifest;

(ii) Note any discrepancies [as defined in 335-14-6-.05(3)] on each copy of the manifest;

(iii) Immediately give the transporter at least one copy of the manifest;

(iv) Within 30 days of delivery, send a copy of the manifest to the generator; and

(v) Within 30 days of delivery, send the top copy (Page 1) of the manifest to the electronic manifest system for purposes of data entry and processing. In lieu of mailing this paper copy to the electronic manifest system operator, the owner or operator may transmit to the system operator an image file of Page 1 of the manifest, or both a data string file and the image file corresponding to Page 1 of the manifest. Any data or image files transmitted to EPA under this paragraph must be submitted in data file and image file formats that are acceptable to EPA and that are supported by EPA's electronic reporting requirements and by the electronic manifest system.

(vi) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

2. If a facility receives hazardous waste imported from a foreign source, the receiving facility must mail a copy of the manifest and documentation confirming EPA's consent to the import of hazardous waste to the following address within thirty (30) days of delivery: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance

Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

3. Within 60 days after the delivery, send a copy of the manifest to the Department.

(b) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest (excluding the EPA or Alabama identification numbers, generator's certification, and signatures), the owner or operator, or his agent, must:

1. Sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste covered by the manifest or shipping paper was received;

2. Note any significant discrepancies [as defined in 335-14-6-.05(3)(a)] in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper;

3. Immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received);

4. Within 30 days after the delivery, send a copy of the signed and dated manifest to the generator; however, if the manifest has not been received within 30 days after delivery, the owner or operator, or his agent, must send a copy of the shipping paper signed and dated to the generator; and

5. Retain at the facility a copy of the manifest and shipping paper (if signed in lieu of the manifest at the time of delivery) for at least three years from the date of delivery.

(c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility must comply with the requirements of 335-14-3.

(d) Within three (3) working days of the receipt of a shipment subject to 335-14-3-.09, the owner or operator of a facility must provide a copy of the movement document bearing all required signatures to the exporter; to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; to the Alabama Department of Environmental Management, Land Division, P. O. Box 301463, Montgomery, AL 36130; and to the competent authorities of all other countries concerned. The original of the movement document must be maintained at the facility for at least three (3) years from the date of signature.

(e) A facility must determine whether the consignment state for a shipment regulates any additional wastes (beyond those regulated federally) as

hazardous wastes under its state hazardous waste program. Facilities must also determine whether the consignment state or generator state requires the facility to submit any copies of the manifest to these states.

(f) Legal equivalence to paper manifests. Electronic manifests that are obtained, completed, and transmitted in accordance with 335-14-3-.02(b), and used in accordance with this section in lieu of the paper manifest form are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these regulations to obtain, complete, sign, provide, use, or retain a manifest.

1. Any requirement for the owner or operator of a facility to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of 40 C.F.R. § 262.25(a).

2. Any requirement in these regulations to give, provide, send, forward, or to return to another person a copy of the manifest is satisfied when a copy of an electronic manifest is transmitted to the other person.

3. Any requirement for a manifest to accompany a hazardous waste shipment is satisfied when a copy of an electronic manifest is accessible during transportation and forwarded to the person or persons who are scheduled to receive delivery of the waste shipment.

4. Any requirement in these regulations for an owner or operator to keep or retain a copy of each manifest is satisfied by the retention of the facility's electronic manifest copies in its account on the electronic manifest system, provided that such copies are readily available for viewing and production if requested by EPA or the Department.

5. No owner or operator may be held liable for the inability to produce an electronic manifest for inspection under this section if the owner or operator can demonstrate that the inability to produce the electronic manifest is due exclusively to a technical difficulty with the electronic manifest system for which the owner or operator bears no responsibility.

(g) An owner or operator may participate in the electronic manifest system either by accessing the electronic manifest system from the owner's or operator's electronic equipment, or by accessing the electronic manifest system from portable equipment brought to the owner's or operator's site by the transporter who delivers the waste shipment to the facility.

(h) Special procedures applicable to replacement manifests. If a facility receives hazardous waste that is accompanied by a paper replacement manifest for a manifest that was originated electronically, the following procedures apply to the delivery of the hazardous waste by the final transporter:

1. Upon delivery of the hazardous waste to the designated facility, the owner or operator must sign and date each copy of the paper replacement

manifest by hand in Item 20 (Designated Facility Certification of Receipt) and note any discrepancies in Item 18 (Discrepancy Indication Space) of the paper replacement manifest;

2. The owner or operator of the facility must give back to the final transporter one copy of the paper replacement manifest;

3. Within 30 days of delivery of the waste to the designated facility, the owner or operator of the facility must send one signed and dated copy of the paper replacement manifest to the generator, and send an additional signed and dated copy of the paper replacement manifest to the electronic manifest system; and

4. The owner or operator of the facility must retain at the facility one copy of the paper replacement manifest for at least three years from the date of delivery.

(i) Special procedures applicable to electronic signature methods undergoing tests. If an owner or operator using an electronic manifest signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the owner or operator shall also sign with an ink signature the facility's certification of receipt or discrepancies on the printed copy of the manifest provided by the transporter. Upon executing its ink signature on this printed copy, the owner or operator shall retain this original copy among its records for at least 3 years from the date of delivery of the waste.

(j) **[Reserved]**

(k) Electronic manifest signatures shall meet the criteria described in 40 CFR § 262.25(a) of this Chapter.

(3) Manifest discrepancies.

(a) Manifest discrepancies are:

1. Significant differences [as defined by 335-14-6-.05(3)(b)] between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives;

2. Rejected wastes, which may be a full or partial shipment of hazardous waste that the TSDF cannot accept; or

3. Container residues, which are residues that exceed the quantity limits for "empty" containers set forth in 335-14-2-.01(7)(b).

(b) Significant differences in quantity are: For bulk waste, variations greater than 10 percent by weight; for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload. Significant differences in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.

(c) Upon discovering a significant difference in quantity or type, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator must immediately submit to the Regional Administrator and the Department a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

(d) Upon rejecting the waste or identifying a container residue that exceeds the quantity limits for "empty" containers set forth in 335-14-2-.01(7)(b), the facility must consult with the generator prior to forwarding the waste to another facility that can manage the waste. If it is impossible to locate an alternative facility that can receive the waste, the facility may return the rejected waste or residue to the generator. The facility must send the waste to the alternative facility or to the generator within 60 days of the rejection or the container residue identification.

1. While the facility is making arrangements for forwarding rejected wastes or residues to another facility under 335-14-6-.05(3), it must ensure that either the delivering transporter retains custody of the waste, or, the facility must provide for secure, temporary custody of the waste, pending delivery of the waste to the first transporter designated on the manifest prepared under 335-14-6-.05(3)(e) or (f).

(e) Except as provided in 335-14-6-.05(3)(e)7., for full or partial load rejections and residues that are to be sent off-site to an alternate facility, the facility is required to prepare a new manifest in accordance with 335-14-3-.02(1)(a) and the following instructions:

1. Write the generator's U.S. EPA ID number in Item 1. of the new manifest. Write the generator's name and mailing address in Item 5. of the new manifest. If the mailing address is different from the generator's site address, then write the generator's site address in the designated space for Item 5.

2. Write the name of the alternate designated facility and facility's U.S. EPA ID number in the designated facility block (Item 8.) of the new manifest.

3. Copy the manifest tracking number found in Item 4. of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

4. Copy the manifest tracking number found in Item 4. of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a.).

5. Write the DOT description for the rejected load or the residue in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

6. Sign the Generator's/Offeror's Certification to certify, as the offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation, and mail a signed copy of the manifest to the generator identified in Item 5 of the new manifest.

7. For full load rejections that are made while the transporter remains present at the facility, the facility may forward the rejected shipment to the alternate facility by completing Item 18b of the original manifest and supplying the information on the next destination facility in the Alternate Facility space. The facility must retain a copy of this manifest for its records, and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with 335-14-6-.05(3)(e)1. - 6.

(f) Except as provided by 335-14-6-.05(3)(f)7., for rejected wastes and residues that must be sent back to the generator, the facility is required to prepare a new manifest in accordance with 335-14-3-.02(1)(a) and the following instructions:

1. Write the facility's U.S. EPA ID number in Item 1. of the new manifest. Write the facility's name and mailing address in Item 5. of the new manifest. If the mailing address is different from the facility's site address, then write the facility's site address in the designated space for Item 5. of the new manifest.

2. Write the name of the initial generator and the generator's U.S. EPA ID number in the designated facility block (Item 8.) of the new manifest.

3. Copy the manifest tracking number found in Item 4. of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

4. Copy the manifest tracking number found in Item 4. of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a.).

5. Write the DOT description for the rejected load or the residue in Item 9. (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

6. Sign the Generator's/Offeror's Certification to certify, as offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation.

7. For full load rejections that are made while the transporter remains at the facility, the facility may return the shipment to the generator with the original manifest by completing Item 18a and 18b of the manifest and supplying the generator's information in the Alternate Facility space. The facility must retain a copy for its records and then give the remaining copies of the manifest

to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with 335-14-6-.05(3)(f)1. – 6. and 8.

8. For full or partial load rejections and container residues contained in non-empty containers that are returned to the generator, the facility must also comply with the exception reporting requirements in 335-14-3-.04(3).

(g) If a facility rejects a waste or identifies a container residue that exceeds the quantity limits for "empty" containers set forth in 335-14-2-.01(7)(b) after it has signed, dated, and returned a copy of the manifest to the delivering transporter or the generator, the facility must amend its copy of the manifest to indicate the rejected wastes or residues in the discrepancy space of the amended manifest. The facility must also copy the manifest tracking number from Item 4 of the new manifest to the Discrepancy space of the amended manifest, and must re-sign and date the manifest to certify to the information as amended. The facility must retain the amended manifest for at least three years from the date of amendment, and must within 30 days, send a copy of the amended manifest to the transporter and generator that received copies prior to their being amended.

(4) Operating record.

(a) The owner or operator must keep a written operating record at his facility.

(b) The following information must be recorded, as it becomes available, and maintained in the operating record for three years (unless a different retention time is specified below):

1. A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or disposal at the facility as required by 335-14-6-Appendix I. This information must be maintained in the operating record until closure of the facility;

2. The location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or diagram of each cell or disposal area. For all facilities, this information must include cross-references to manifest document numbers if the waste was accompanied by a manifest. This information must be maintained in the operating record until closure of the facility;

3. Records and results of waste analyses and trial tests performed as specified in 335-14-6-.02(4), 335-14-6-.10(11), 335-14-6-.11(6), 335-14-6-.12(3), 335-14-6-.13(4), 335-14-6-.14(15), 335-14-6-.15(2), 335-14-6-.16(6), 335-14-6-.17(3), 335-14-6-.27~~(5)~~, 335-14-6-.28~~(14)~~, 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~~(6)~~, 335-14-6-.28~~(14)~~, 335-14-6-.28~~(15)~~, 335-14-6-.29~~(5) through (11)~~, 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 by the Department. The owner or operator must retain copies of each biennial report for, at least, three (3) years from the due date of the report. The report must cover facility activities during the previous calendar year and must include the following information:

(a) The EPA identification number, name, and address of the facility;

(b) The calendar year covered by the report;

(c) For off-site facilities, the EPA identification number, name, and location address of each hazardous waste generator from which the facility received a hazardous waste during the year; for imported shipments, the report must give the name and address of the foreign generator;

(d) A description and the quantity of each hazardous waste the facility received during the year. For off-site facilities, this information must be listed by EPA identification number of each generator;

(e) The method of treatment, storage, or disposal for each hazardous waste;

(f) Monitoring data under 335-14-6-.06(5)(a)2.(ii), (iii) and (b)2. where required;

(g) The most recent closure cost estimate under 335-14-6-.08(3), and, for disposal facilities, the most recent post-closure cost estimate under 335-14-6-.08(5); and

(h) For generators who treat, store, or dispose of hazardous waste on-site, a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated.

(i) For generators who treat, store, or dispose of hazardous waste on-site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984.

(j) The certification signed by the owner or operator of the facility or his authorized representative.

(7) Unmanifested waste report.

(a) If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described in 335-14-4-.02(1)(e), and if the waste is not excluded from the manifest requirement, then the owner or operator must prepare and submit a single copy of a report to the Department within 15 days after receiving the waste. The owner or operator must retain a copy of each unmanifested waste report for, at least, three (3) years from the due date of the report. Such report must be designated "Unmanifested Waste Report" and include the following information:

1. The EPA identification number, name, and address of the facility;

2. The date the facility received the waste;

3. The EPA identification number, name, and address of the generator and the transporter, if available;

4. A description and the quantity of each unmanifested hazardous waste the facility received;

5. The method of treatment, storage, or disposal for each hazardous waste;

6. The certification signed by the owner or operator of the facility or his authorized representative; and

7. A brief explanation of why the waste was unmanifested, if known.

(b) [Reserved]

(8) Additional reports.

In addition to submitting the biennial report and unmanifested waste reports described in 335-14-6-.05(6) and (7), the owner or operator must also report to the Department:

(a) Releases, fires, and explosions as specified in 335-14-6-.04(7)(j);

(b) Groundwater contamination and monitoring data as specified in 335-14-6-.06(4) and (5); and

(c) Facility closure as specified in 335-14-6-.07(6).

(d) As otherwise required by rules 335-14-6-.27 and 335-14-6-.28.

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335-14-6-.07 Closure and Post-Closure.

(1) Applicability.

Except as 335-14-6-.01(1) provides otherwise:

(a) 335-14-6-.07(2) through 335-14-6-.07(6) [which concern closure] apply to the owners and operators of all hazardous waste management facilities; and

(b) 335-14-6-.07(7) through 335-14-6-.07(11) [which concern post-closure care] apply to the owners and operators of:

1. All hazardous waste disposal facilities;

2. Waste piles, surface impoundments, and drip pads for 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 335-14-6-.11(9), 335-14-6-.12(9), or 335-14-5-.23(6);

3. Tank systems that are required under 335-14-6-.10(8) to meet requirements for landfills; and

4. Containment buildings that are required in 335-14-6-.30(3) to meet the requirements for landfills; and

5. [Reserved]

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

(c) 335-14-6-.07(12) applies to owners and operators of units that are subject to the requirements of 335-14-8-.01(1)(c)7. and are regulated under an enforceable document [as defined in 335-14-8-.01(1)(c)7.].

(d) The Department may replace all or part of the requirements of 335-14-6-.07 [and the unit-specific standards in 335-14-6-.07(2)(c)] applying to a regulated unit [as defined in 335-14-5-.06(1)], with alternative requirements for closure set out in an approved closure or post-closure plan, or in an enforceable document [as defined in 335-14-8-.01(1)(c)7.], where the Department determines that:

1. A regulated unit is situated among solid waste management units (or areas of concern), a release has occurred, and both the regulated unit and one or more solid waste management unit(s) (or areas of concern) are likely to have contributed to the release, and

2. It is not necessary to apply the closure requirements of 335-14-6-.07 (and/or those referenced herein) because the alternative requirements will protect human health and the environment, and will satisfy the closure performance standard of 335-14-6-.07(2)(a) and (b).

(2) Closure performance standard.

The owner or operator must close the facility in a manner that:

(a) Minimizes the need for further maintenance; and

(b) Controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, 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; and

(c) Complies with the closure requirements of 335-14-6-.07 including, but not limited to, the requirements of 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), 335-14-6-.30(3), and 335-14-7-.08(4) [§ 266.103(l) of 40 CFR].

(3) Closure plan; amendment of plan.

(a) Written plan. By May 19, 1981, or by six months after the effective date of the rule that first subjects a facility to provisions of 335-14-6-.07(3), the owner or operator of a hazardous waste management facility must have a written closure plan. Until final closure is completed and certified in accordance with 335-14-6-.07(6), a copy of the most current plan must be furnished to the Department upon request, including request by mail. In addition, for facilities without approved plans, it must also be provided during site inspections, on the day of inspection to any officer, employee, or representative of the Department, who is duly designated by the Department.

(b) Content of plan. The plan must identify steps necessary to perform partial and/or final closure of the facility at any point during its active life. The closure plan must include at least:

1. A description of how each hazardous waste management unit at the facility will be closed in accordance with 335-14-6-.07(2); and

2. A description of how final closure of the facility will be conducted in accordance with 335-14-6-.07(2). The description must identify the maximum extent of the operation which will be unclosed during the active life of the facility; and

3. An estimate of the maximum inventory of hazardous wastes ever on-site over the active life of the facility and a detailed description of the methods to be used during partial and final closure, including, but not limited to, methods for removing, transporting, treating, storing, or disposing of all hazardous waste, identification of and the type(s) of off-site hazardous waste management unit(s) to be used, if applicable; and

4. A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures, and soils during partial and final closure 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 satisfy the closure performance standard; and

5. A detailed description of other activities necessary during the partial and final closure periods to ensure that all partial closures and final closure satisfy the closure performance standards, including, but not limited to, groundwater monitoring, leachate collection, and run-on and run-off control; and

6. A schedule for closure of each hazardous waste management unit and for final closure of the facility. The schedule must include, at a minimum, the total time required to close each hazardous waste management unit and the time required for intervening closure activities which will allow tracking of the progress of partial and final closure. (For example, in the case of a landfill unit, estimates of the time required to treat or dispose of all hazardous waste inventory and of the time required to place a final cover must be included); and

7. An estimate of the expected year of final closure for facilities that use trust funds to demonstrate financial assurance under 335-14-6-.08(4) or 335-14-6-.08(6) and whose remaining operating life is less than 20 years, and for facilities without approved closure plans.

8. For facilities where the Department has applied alternative requirements at a regulated unit under 335-14-6-.06(1)(f), and/or 335-14-6-.07(1)(d), either the alternative requirements applying to the regulated unit, or a reference to the enforceable document containing those alternative requirements.

(c) Amendment of plan. The owner or operator may amend the closure plan at any time prior to the notification of partial or final closure of the facility. An owner or operator with an approved closure plan must submit a written request to the Department to authorize a change to the approved closure plan. The written request must include a copy of the amended closure plan for approval by the Department.

1. The owner or operator must amend the closure plan whenever:

(i) Changes in operating plans or facility design affect the closure plan, or

(ii) There is a change in the expected year of closure, if applicable, or

(iii) In conducting partial or final closure activities, unexpected events require a modification of the closure plan.

(iv) The owner or operator requests the Department to apply alternative requirements to a regulated unit under 335-14-6-.06(1)(f), and/or 335-14-6-.07(1)(d).

2. The owner or operator must amend the closure plan at least 60 days prior to the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator must amend the closure plan no later than 30 days after the unexpected event. These provisions also apply to owners or operators of surface impoundments, waste piles, and drip pads who intended to remove all hazardous wastes at closure, but are required to close as landfills in accordance with 335-14-6-.14(11).

3. An owner or operator with an approved closure plan must submit the modified plan to the Department at least 60 days prior to the proposed change in facility design or operation, or no more than 60 days after an unexpected event has occurred which has affected the closure plan. If an unexpected event has occurred during the partial or final closure period, the owner or operator must submit the modified plan no more than 30 days after the unexpected event. These provisions also apply to owners or operators of surface impoundments, waste piles, and drip pads who intended to remove all hazardous wastes at closure but are required to close as landfills in accordance with 335-14-6-.14(11). If the amendment to the plan is a major modification according to the criteria in 335-14-8-.04(2) and 335-14-8-.04(3), the modification to the plan will be approved according to the procedures in 335-14-6-.07(3)(d)4.

4. The Department may request modifications to the plan under the conditions described in 335-14-6-.07(3)(c)1. An owner or operator with an approved closure plan must submit the modified plan within 60 days of the request from the Department or within 30 days if the unexpected event occurs during partial or final closure. If the amendment is considered a major modification according to the criteria in 335-14-8-.04(2) and 335-14-8-.04(3), the modification to the plan will be approved in accordance with the procedures in 335-14-6-.07(3)(d)4.

(d) Notification of partial closure and final closure.

1. The owner or operator must submit the closure plan to the Department at least 180 days prior to the date on which he expects to begin closure of the first surface impoundment, waste pile, land treatment, landfill, or drip pad unit, or final closure if it involves such a unit, whichever is earlier. The owner or operator must submit the closure plan to the Department at least 45 days prior to the date on which he expects to begin partial or final closure of a boiler or industrial furnace. The owner or operator must submit the closure plan to the Department at least 45 days prior to the date on which he expects to begin final closure of a facility with only tanks, container storage, or incinerator units.

Owners or operators with approved closure plans must notify the Department in writing at least 60 days prior to the date on which he expects to

begin closure of a surface impoundment, waste pile, landfill, land treatment, or drip pad unit, or final closure of a facility involving such a unit.

Owners or operators with approved closure plans must notify the Department in writing at least 45 days prior to the date on which he expects to begin partial or final closure of a boiler or industrial furnace.

Owners or operators with approved closure plans must notify the Department in writing at least 45 days prior to the date on which he expects to begin final closure of a facility with only tanks, container storage, or incinerator units.

2. The date when he "expects to begin closure" must be either:

(i) Within 30 days after the date on which any hazardous waste management unit receives the known final volume of hazardous wastes or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous waste. If the owner or operator of a hazardous waste management unit can demonstrate to the Department that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all interim status requirements, the Director may approve an extension to this one-year limit; or

(ii) For units meeting the requirements of 335-14-6-.07(4)(d), no later than 30 days after the date on which the hazardous waste management unit receives the known final volume of non-hazardous wastes, or if there is a reasonable possibility that the hazardous waste management unit will receive additional non-hazardous wastes, no later than one year after the date on which the unit received the most recent volume of non-hazardous wastes. If the owner or operator can demonstrate to the Department that the hazardous waste management unit has the capacity to receive additional non-hazardous wastes and he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable interim status requirements, the Director may approve an extension to this one-year limit.

3. The owner or operator must submit his closure plan to the Department no later than 15 days after:

(i) Termination of interim status except when a permit is issued simultaneously with termination of interim status; or

(ii) Issuance of a judicial decree or final order under AHWMMA or Section 3008 of RCRA to cease receiving hazardous wastes or close.

4. Processing of closure plan.

(i) The Department shall not approve a closure plan until it is determined to be complete. A plan is complete when the Department receives all required information identified in 335-14-6-.07.

(ii) The Department shall review for completeness every closure plan submitted for approval as required by 335-14-6-.07(3). Upon completing the review, the Department shall notify the owner or operator in writing whether the plan is complete. If the plan is incomplete, the Department:

(I) Shall list the information necessary to make the plan complete;

(II) Shall specify in the notice of deficiency a date for submitting the necessary information; and

(III) May request any information necessary to clarify, modify, or supplement previously submitted material; however, requests for items not required by rules 335-14-6-.07(2) through 335-14-6-.07(7) will not render a plan incomplete.

(iii) Once a closure plan is determined to be complete, 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. It 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 a closure plan. The Department will give public notice of the hearing at least 30 days before it occurs. [Public notice of the hearing may be (but is not required to 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 public comment period will automatically extend to the close of any public hearing under 335-14-6-.07(3)(d). The hearing officer may also extend the comment period by so stating at the hearing.

(iv) After considering any comments submitted during the public comment period and public hearing (if held), the Director will approve or disapprove the plan within 30 days of the close of the comment period. If the Director does not approve the plan, he shall provide the owner or operator with a detailed 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 Director will approve or modify this plan in writing within 60 days of receipt. If the Director modifies the plan, this modified plan becomes the approved closure plan. The Department must assure that the approved closure plan is consistent with rules 335-14-6-.07(2) through 335-14-6-.07(7) and the applicable requirements of rules 335-14-6-.06, 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), 335-14-6-.30(3), and 335-14-7-.08(4) [§ 266.103(l) of 40 CFR]. A copy of the modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator.

(v) If an owner or operator fails or refuses to correct deficiencies in the closure plan, the plan may be modified by the Director and appropriate enforcement action may be taken by the Department.

(e) Removal of wastes and decontamination or dismantling of equipment.

1. Nothing in 335-14-6-.07(3) shall preclude the owner or operator from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved partial or final closure plan at any time before or after notification of partial or final closure.

(4) Closure; time allowed for closure.

(a) Within 90 days after receiving the final volume of hazardous wastes, or the final volume of non-hazardous wastes if the owner or operator complies with all applicable requirements in 335-14-6-.07(4)(d) and (e), at a hazardous waste management unit or facility, or within 90 days after approval of the closure plan, whichever is later, the owner or operator must treat, remove from the unit or facility, or dispose of on-site, all hazardous wastes in accordance with the approved closure plan. The Director may approve a longer period if the owner or operator demonstrates that:

1. (i) The activities required to comply with 335-14-6-.07(4) will, of necessity, take longer than 90 days to complete; or

(ii) (I) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes, or has the capacity to receive non-hazardous wastes if the facility owner or operator complies with 335-14-6-.07(4)(d) and (e); and

(II) There is a reasonable likelihood that he or another person will recommence operation of the hazardous waste management unit or the facility within one year; and

(III) Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

2. He has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all applicable interim status requirements.

(b) The owner or operator must complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous wastes, or the final volume of non-hazardous wastes if the owner or operator complies with all applicable requirements in 335-14-6-.07(4)(d) and (e), at the hazardous waste management unit or facility, or 180 days after approval of the closure plan, if that is later. The Director may approve an extension to the closure period if the owner or operator demonstrates that:

1. (i) The partial or final closure activities will, of necessity, take longer than 180 days to complete; or

(ii) (I) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes, or the final volume of non-hazardous wastes if the owner or operator complies with all applicable requirements in 335-14-6-.07(4)(d) and (e); and

(II) There is reasonable likelihood that he or another person will recommence operation of the hazardous waste management unit or the facility within one year; and

(III) Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

2. He has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but not operating hazardous waste management unit or facility, including compliance with all applicable interim status requirements.

(c) The demonstrations referred to in 335-14-6-.07(4)(a)1. and (b)1. must be made as follows:

1. The demonstrations in 335-14-6-.07(4)(a)1. must be made at least 30 days prior to the expiration of the 90-day period in 335-14-6-.07(4)(a)1.; and

2. The demonstration in 335-14-6-.07(4)(b)1. must be made at least 30 days prior to the expiration of the 180-day period in 335-14-6-.07(4)(b), unless the owner or operator is otherwise subject to the deadlines in 335-14-6-.07(4)(d).

(d) The Director may allow an owner or operator to receive only non-hazardous wastes in a landfill, land treatment, or surface impoundment unit after the final receipt of hazardous wastes at that unit if:

1. The owner or operator submits an amended Part B Application, or a Part B Application, if not previously required and demonstrates that:

(i) The unit has the existing design capacity as indicated on the Part A Application to receive non-hazardous wastes; and

(ii) There is a reasonable likelihood that the owner or operator or another person will receive non-hazardous wastes in the unit within one year after the final receipt of hazardous wastes; and

(iii) The non-hazardous wastes will not be incompatible with any remaining wastes in the unit, or with the facility design and operating requirements of the unit or facility under 335-14-6; and

(iv) Closure of the hazardous waste management unit would be incompatible with continued operation of the unit or facility; and

(v) The owner or operator is operating and will continue to operate in compliance with all applicable interim status requirements; and

2. The Part B Application includes an amended waste analysis plan, groundwater monitoring and response program, human exposure assessment required under RCRA Section 3019, and closure and post-closure plans, and updated cost estimates and demonstrations of financial assurance for closure and post-closure care as necessary and appropriate, to reflect any changes due to the presence of hazardous constituents in the non-hazardous wastes, and changes in closure activities, including the expected year of closure if applicable under 335-14-6-.07(3)(b)7., as a result of the receipt of non-hazardous wastes following the final receipt of hazardous wastes; and

3. The Part B Application is amended, as necessary and appropriate, to account for the receipt of non-hazardous wastes following receipt of the final volume of hazardous wastes; and

4. The Part B Application and the demonstrations referred to in 335-14-6-.07(4)(d)1. and (d)2. are submitted to the Director no later than 180 days prior to the date on which the owner or operator of the facility receives the known final volume of hazardous wastes or no later than 90 days after the effective date of 335-14-6-.07 in the State in which the unit is located, whichever is later.

(e) In addition to the requirements in 335-14-6-.07(4)(d), an owner or operator of a hazardous waste surface impoundment that is not in compliance with the liner and leachate collection system requirements in 42 U.S.C. 3004(o)(1) and 3005(j)(1) or 42 U.S.C. 3004(o)(2) or (3) or 3005(j)(2), (3), (4), or (13) must:

1. Submit with the Part B Application:

(i) A contingent corrective measures plan; and

(ii) A plan for removing hazardous wastes in compliance with 335-14-6-.07(4)(e)2.; and

2. Remove all hazardous wastes from the unit by removing all hazardous liquids, and removing all hazardous sludges to the extent practicable without impairing the integrity of the liner(s), if any.

3. Removal of hazardous wastes must be completed no later than 90 days after the final receipt of hazardous wastes. The Director may approve an extension to this deadline if the owner or operator demonstrates that the removal of hazardous wastes will, of necessity, take longer than the allotted period to complete and that an extension will not pose a threat to human health and the environment.

4. If a release that is a statistically significant increase (or decrease in the case of pH) in hazardous constituents over background levels is detected in

accordance with the requirements in rule 335-14-6-.06, the owner or operator of the unit:

(i) Must implement corrective measures in accordance with the approved contingent corrective measures plan required by 335-14-6-.07(4)(e)1. no later than one year after detection of the release, or approval of the contingent corrective measures plan, whichever is later;

(ii) May receive wastes at the unit following detection of the release only if the approved corrective measures plan includes a demonstration that continued receipt of wastes will not impede corrective action; and

(iii) May be required by the Director to implement corrective measures in less than one year or to cease the receipt of wastes until corrective measures have been implemented if necessary to protect human health and the environment.

5. During the period of corrective action, the owner or operator shall provide annual reports to the Director describing the progress of the corrective action program, compile all groundwater monitoring data, and evaluate the effect of the continued receipt of non-hazardous wastes on the effectiveness of the corrective action.

6. The Director may require the owner or operator to commence closure of the unit if the owner or operator fails to implement corrective action measures in accordance with the approved contingent corrective measures plan within one year as required in 335-14-6-.07(4)(e)4., or fails to make substantial progress in implementing corrective action and achieving the facility's background levels.

7. If the owner or operator fails to implement corrective measures a required in 335-14-6-.07(4)(e)4., or if the Director determines that substantial progress has not been made pursuant to 335-14-6-.07(4)(e)6., he shall:

(i) Notify the owner or operator in writing that the owner or operator must begin closure in accordance with the deadlines in 335-14-6-.07(4)(a) and (b) and provide a detailed statement of reasons for this determination, and

(ii) Provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the decision no later than 20 days after the date of the notice.

(iii) If the Director receives no written comments, the decision will become final five days after the close of the comment period. The Director will notify the owner or operator that the decision is final, and that a revised closure plan, if necessary, must be submitted within 15 days of the final notice and that closure must begin in accordance with the deadlines in 335-14-6-.07(4)(a) and (b).

(iv) If the Director receives written comments on the decision, he shall make a final decision within 30 days after the end of the comment period, and provide the owner or operator in writing and the public through a newspaper notice, a detailed statement of reasons for the final decision. If the Director determines that substantial progress has not been made, closure must be initiated in accordance with the deadlines in 335-14-6-.07(4)(a) and (b).

(v) The final determinations made by the Director under 335-14-6-.07(4)(e)7.(iii) and (iv) are not subject to administrative appeal.

(5) Disposal or decontamination of equipment, structures, and soils.

During the partial and final closure periods, all contaminated equipment, structures, and soil must be properly disposed of, or decontaminated unless specified otherwise in 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-.17(5), 335-14-6-.23(6), or 335-14-6-.30(3). By removing all hazardous wastes or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and must handle that hazardous waste in accordance with all applicable requirements of 335-14-3.

(6) Certification of closure.

Within 60 days of completion of closure of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit, and within 60 days of completion of final closure, the owner or operator must submit to the Department, by registered mail, a certification that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification must be signed by the owner or operator and by an independent registered ~~qualified~~ ~~P~~professional ~~E~~engineer. Documentation supporting the ~~P~~professional ~~E~~engineer's certification must be furnished to the Department upon request until it releases the owner or operator from the financial assurance requirements for closure under rule 335-14-6-.08(4)(h).

(7) Survey plat.

(a) No later than the submission of the certification of closure of each hazardous waste disposal unit, an owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Department, a survey plat indicating the location and dimensions of landfill cells or other hazardous waste disposal units with respect to permanently surveyed benchmarks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority, or the authority with jurisdiction over local land use must contain a note, prominently displayed, which states the owner's or operator's obligation to restrict disturbance of the hazardous waste disposal unit in accordance with the applicable requirements of 335-14-6-.07; and

(b) Where closure does not achieve the standard of unrestricted use, the owner or operator or other responsible person must provide documentation of compliance with the requirements of the Uniform Environmental Covenants Program in ADEM Admin. Code Div. 335-5.

(8) Post-closure care and use of property.

(a) 1. Post-closure care for each hazardous waste management unit subject to the requirements of 335-14-6-.07(8) through 335-14-6-.07(11) must begin after completion of closure of the unit and continue for 30 years after that date, or the date of issuance of a post-closure permit or enforceable document [as defined in 335-14-8-.01(1)(c)7.], whichever date is later. It must consist of at least the following:

(i) Monitoring and reporting in accordance with the requirements of rules 335-14-6-.06, 335-14-6-.11, 335-14-6-.12, 335-14-6-.13, 335-14-6-.14, and 335-14-6-.23; and

(ii) Maintenance and monitoring of waste containment systems in accordance with the requirements of rules 335-14-6-.06, 335-14-6-.11, 335-14-6-.12, 335-14-6-.13, 335-14-6-.14, and 335-14-6-.23.

2. Any time preceding closure of a hazardous waste management unit subject to post-closure care requirements or final closure, or any time during the post-closure period for a particular hazardous waste disposal unit, the Department may:

(i) Shorten the post-closure care period applicable to the hazardous waste management unit, or facility, if all disposal units have been closed, if it finds that the reduced period is sufficient to protect human health and the environment (e.g., leachate or groundwater monitoring results, characteristics of the hazardous waste, application of advanced technology, or alternative disposal, treatment, or re-use techniques indicate that the hazardous waste management unit or facility is secure); or

(ii) Extend the post-closure care period applicable to the hazardous waste management unit or facility, if it finds that the extended period is necessary to protect human health and the environment (e.g., leachate or groundwater monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).

(b) The Department may require, at partial and final closure, continuation of any of the security requirements of 335-14-6-.02(5) during part or all of the post-closure period when:

1. Hazardous wastes may remain exposed after completion of partial or final closure; or

2. Access by the public or domestic livestock may pose a hazard to human health.

(c) Post-closure use of property on or in which hazardous wastes remain after partial or final closure must never be allowed to disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the facility's monitoring systems, unless the Director finds that the disturbance:

1. Is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or

2. Is necessary to reduce a threat to human health or the environment.

(d) All post-closure care activities must be in accordance with the provisions of the approved post-closure plan as specified in 335-14-6-.07(9).

(9) Post-closure plan; amendment of plan.

(a) Written plan. By May 19, 1981, the owner or operator of a hazardous waste disposal unit must have a written post-closure plan. An owner or operator of a surface impoundment, waste pile, drip pad, or other hazardous waste management unit that intends to remove all hazardous wastes at closure must prepare a post-closure plan and submit it to the Department within 90 days of the date that the owner or operator or Department determines that the hazardous waste management unit or facility must be closed as a landfill, subject to the requirements of 335-14-6-.07(8) through 335-14-6-.07(11).

(b) Until final closure of the facility, a copy of the most current post-closure plan must be furnished to the Department upon request, including request by mail. In addition, for facilities without approved post-closure plans, it must also be provided during site inspections, on the day of inspection, to any officer, employee or representative of the Department who is duly designated by the Department. After final closure has been certified, the person or office specified in 335-14-6-.07(9)(c)3. must keep the approved post-closure plan during the post-closure period.

(c) For each hazardous waste management unit subject to the requirements of 335-14-6-.07(9), the post-closure plan must identify the activities that will be carried on after closure of each disposal unit and the frequency of these activities, and include at least:

1. A description of the planned monitoring activities and frequencies at which they will be performed to comply with rules 335-14-6-.06, 335-14-6-.09, 335-14-6-.10, 335-14-6-.11, 335-14-6-.12, 335-14-6-.13, 335-14-6-.14, 335-14-6-.17, 335-14-6-.23, and 335-14-6-.30 during the post-closure care period; and

2. A description of the planned maintenance activities, and frequencies at which they will be performed to ensure:

(i) The integrity of the cap and final cover or other containment systems in accordance with the requirements of rules 335-14-6-.06,

335-14-6-.09, 335-14-6-.10, 335-14-6-.11, 335-14-6-.12, 335-14-6-.13, 335-14-6-.14, 335-14-6-.17, 335-14-6-.23, and 335-14-6-.30;

(ii) The function of the monitoring equipment in accordance with the requirements of rules 335-14-6-.06, 335-14-6-.09, 335-14-6-.10, 335-14-6-.11, 335-14-6-.12, 335-14-6-.13, 335-14-6-.14, 335-14-6-.17, 335-14-6-.23, and 335-14-6-.30; and

3. The name, address, and phone number of the person or office to contact about the hazardous waste disposal unit or facility during the post-closure care period.

4. For facilities subject to 335-14-6-.07(12), provisions that satisfy the requirements of 335-14-6-.07(12)(a)1. and 3.

5. For facilities where the Director has applied alternative requirements at a regulated unit under 335-14-6-.06(1)(f), and/or 335-14-6-.07(1)(d), either the alternative requirements that apply to the regulated unit, or a reference to the enforceable document containing those requirements.

(d) Amendment of plan. The owner or operator may amend the post-closure plan any time during the active life of the facility or during the post-closure care period. An owner or operator with an approved post-closure plan must submit a written request to the Department to authorize a change to the approved plan. The written request must include a copy of the amended post-closure plan for approval by the Department.

1. The owner or operator must amend the post-closure plan whenever:

(i) Changes in operating plans or facility design affect the post-closure plan, or

(ii) Events which occur during the active life of the facility, including partial and final closures, affect the post-closure plan.

(iii) The owner or operator requests the Director to apply alternative requirements to a regulated unit under 335-14-6-.06(1)(f), and/or 335-14-6-.07(1)(d).

2. The owner or operator must amend the post-closure plan at least 60 days prior to the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the post-closure plan.

3. An owner or operator with an approved post-closure plan must submit the modified plan to the Department at least 60 days prior to the proposed change in facility design or operation, or no more than 60 days after an unexpected event has occurred which has affected the post-closure plan. If an owner or operator of a surface impoundment, a waste pile, or a drip pad who intended to remove all hazardous wastes at closure in accordance with 335-14-6-

.11(9)(a), 335-14-6-.12(9)(a), or 335-14-6-.23(6)(a) is required to close as a landfill in accordance with 335-14-6-.14(11), the owner or operator must submit a post-closure plan within 90 days of the determination by the owner or operator or Department that the unit must be closed as a landfill. If the amendment to the post-closure plan is a major modification according to the criteria of 335-14-8-.04(2) and 335-14-8-.04(3), the modification to the plan will be approved according to the procedures in 335-14-6-.07(9)(f).

4. The Department may request modifications to the plan under the conditions described in 335-14-6-.07(9)(d)1. An owner or operator with an approved post-closure plan must submit the modified plan no later than 60 days of the request from the Department. If the amendment to the plan is considered a major modification according to the criteria in 335-14-8-.04(2) and (3), the modifications to the post-closure care plan will be approved in accordance with the procedures in 335-14-6-.07(9)(f). If the Department determines that an owner or operator of a surface impoundment, waste pile, or drip pad who intended to remove all hazardous wastes at closure must close the facility as a landfill, the owner or operator must submit a post-closure plan for approval to the Department within 90 days of the determination.

(e) The owner or operator of a facility with hazardous waste management units subject to these requirements must submit his post-closure plan to the Department at least 180 days before the date he expects to begin partial or final closure of the first hazardous waste disposal unit. The date he "expects to begin closure" of the first hazardous waste disposal unit must be either within 30 days after the date on which the hazardous waste management unit receives the known final volume of hazardous waste, or if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous wastes. The owner or operator must submit the post-closure plan to the Department no later than 15 days after:

1. Termination of interim status (except when a permit is issued to the facility simultaneously with termination of interim status); or

2. Issuance of a judicial decree or final orders under the AHWMMA to cease receiving wastes or close.

(f) Processing of post-closure plan.

1. The Department shall not approve a post-closure plan until it is determined to be complete. A plan is complete when the Department receives all required information identified in 335-14-6-.07.

2. The Department shall review for completeness every post-closure plan submitted for approval as required by 335-14-6-.07(9). Upon completing the review, the Department shall notify the owner or operator in writing whether the plan is complete. If the plan is incomplete, the Department:

(i) Shall list the information necessary to make the plan complete;

(ii) Shall specify in the notice of deficiency a date for submitting the necessary information; and

(iii) May request any information necessary to clarify, modify, or supplement previously submitted material; however, requests for items not required by rules 335-14-6-.07(8) through 335-14-6-.07(11) will not render a plan incomplete.

3. Once a post-closure plan is determined to be complete, 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.

(i) It 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 a post-closure plan. The Department will give public notice of the hearing at least 30 days before it occurs. [Public notice of the hearing may be (but is not required to 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 public comment period will automatically extend to the close of any public hearing under 335-14-6-.07(9)(f). The hearing officer may also extend the comment period by so stating at the hearing.

4. After considering any comments submitted during the public comment period and public hearing (if held), the Director will approve or disapprove the plan within 30 days of the close of the comment period. If the Director does not approve the plan, he shall provide the owner or operator with a detailed 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 Director will approve or modify this plan in writing within 60 days of receipt. If the Director modifies the plan, this modified plan becomes the approved post-closure plan. The Department must assure that the approved post-closure plan is consistent with rules 335-14-6-.07(8) through 335-14-6-.07(11) and the applicable requirements of rules 335-14-6-.06, 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), and 335-14-6-.23(6). A copy of the modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator.

5. If an owner or operator fails or refuses to correct deficiencies in the post-closure plan, the plan may be modified by the Director and appropriate enforcement action may be taken by the Department.

6. The post-closure plan may be processed for approval concurrently with the closure plan required by rule 335-14-6-.07(3) at the request of the Department or the owner or operator, provided that the processing of the post-closure plan does not delay the processing, approval, or implementation of the closure plan.

(g) The post-closure plan and length of the post-closure care period may be modified any time prior to the end of the post-closure care period in either of the following two ways:

1. The owner or operator or any member of the public may petition the Department to extend or reduce the post-closure care period applicable to a hazardous waste management unit or facility based on cause, or alter the requirements of the post-closure care period based on cause.

(i) The petition must include evidence demonstrating that:

(I) The secure nature of the hazardous waste management unit or facility makes the post-closure care requirement(s) unnecessary or supports reduction of the post-closure care period specified in the current post-closure plan (e.g., leachate or groundwater monitoring results, characteristics of the wastes, application of advanced technology or alternative disposal, treatment, or re-use techniques indicate that the facility is secure), or

(II) The requested extension in the post-closure care period or alteration of post-closure care requirements is necessary to prevent threats to human health and the environment (e.g., leachate or groundwater monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).

(ii) These petitions will be considered by the Department only when they present new and relevant information not previously considered by the Department. Whenever the Department is considering a petition, it will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments within 30 days of the date of the notice. It will also, in response to a request or at its own discretion, hold a public hearing whenever a hearing might clarify one or more issues concerning the post-closure plan. The Department will give the 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 written public comments, and the two notices may be combined.) After considering the comments, the Director will issue a final determination, based upon the criteria set forth in 335-14-6-.07(9)(g)1.

(iii) If the Director denies the petition, he will send the petitioner a brief written response giving a reason for the denial.

2. The Director may tentatively decide to modify the post-closure plan if he deems it necessary to prevent threats to human health and the environment. He may propose to extend or reduce the post-closure care period applicable to a hazardous waste management unit or facility based on cause or alter the requirements of the post-closure care period based on cause.

(i) The Department will provide the owner or operator and the affected public, through a newspaper notice, the opportunity to submit written comments within 30 days of the date of the notice and the opportunity for a public hearing

as in 335-14-6-.07(9)(g)1.(ii). After considering the comments, the Director will issue a final determination.

(ii) The Director will base his final determination upon the same criteria as required for petitions under 335-14-6-.07(9)(g)1.(i). A modification of the post-closure plan may include, where appropriate, the temporary suspension rather than permanent deletion of one or more post-closure care requirements. At the end of the specified period of suspension, the Director would then determine whether the requirement(s) should be permanently discontinued or reinstated to prevent threats to human health and the environment.

(10) Post-closure notices.

(a) No later than 60 days after certification of closure of each hazardous waste disposal unit, the owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Department, a record of the type, location, and quantity of hazardous wastes disposed of within each cell or other disposal unit of the facility. For hazardous wastes disposed of before January 12, 1981, the owner or operator must identify the type, location, and quantity of the hazardous wastes to the best of his knowledge and in accordance with any records he has kept.

(b) Within 60 days of certification of closure of the first hazardous waste disposal unit and within 60 days of certification of closure of the last hazardous waste disposal unit, the owner or operator must:

1. Record, in accordance with State of Alabama law, a notation on the deed to the facility property, or on some other instrument which is normally examined during title search, that will in perpetuity notify any potential purchaser of the property that:

(i) The land has been used to manage hazardous wastes; and

(ii) Its use is restricted under rule 335-14-6-.07; and

(iii) The survey plat and record of the type, location, and the quantity of hazardous wastes disposed of within each cell or other hazardous waste disposal unit of the facility required by 335-14-6-.07(7) and 335-14-6-.07(10)(a) have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the Department; and

2. Submit a certification signed by the owner or operator that he has recorded the notation specified in 335-14-6-.07(10)(b)1. and a copy of the document in which the notation has been placed, to the Department.

(c) If the owner or operator or any subsequent owner of the land upon which a hazardous waste disposal unit was located wishes to remove hazardous wastes and hazardous waste residues, the liner, if any, and all contaminated structures, equipment, and soils, he must request a modification to the approved post-closure plan in accordance with the requirements of 335-14-6-.07(9)(g). The

owner or operator must demonstrate that the removal of hazardous wastes will satisfy the criteria of 335-14-6-.07(8)(c). By removing hazardous waste, the owner or operator may become a generator of hazardous waste and must manage it in accordance with all applicable requirements of Division 335-14. If the owner or operator is granted approval to conduct the removal activities, the owner or operator may request that the Director approve either:

1. The removal of the notation on the deed to the facility property or other instrument normally examined during title search, or

2. The addition of a notation to the deed or instrument indicating the removal of the hazardous waste.

(11) Certification of completion of post-closure care.

No later than 60 days after the completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator must submit to the Department, by registered mail, a certification that the post-closure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved post-closure plan. The certification must be signed by the owner or operator and a ~~qualified~~ independent registered ~~P~~professional ~~E~~engineer. Documentation supporting the ~~P~~professional ~~E~~engineer's certification must be furnished to the Department upon request until it releases the owner or operator from the financial assurance requirements for post-closure care under 335-14-6-.08(6)(h).

(12) Post-closure requirements for facilities that obtain enforceable documents in lieu of post-closure permits.

(a) Owners and operators who are subject to the requirement to obtain a post-closure permit under 335-14-8-.01(1)(c), but who obtain enforceable documents in lieu of post-closure permits, as provided under 335-14-8-.01(1)(c)7. must comply with the following requirements:

1. The requirements to submit information about the facility in 335-14-8-.02(19);

2. The requirements for facility-wide corrective action in 335-14-5-.06(12).

3. The requirements of 335-14-5-.06(2) through (11).

(b) 1. The Department, in issuing enforceable documents under 335-14-6-.07(12) in lieu of permits, will assure a meaningful opportunity for public involvement which, at a minimum, includes public notice and opportunity for public comment:

(i) When the Department becomes involved in a remediation at the facility as a regulatory or enforcement matter;

(ii) On the proposed preferred remedy and the assumptions upon which the remedy is based, in particular those related to land use and site characterization; and

(iii) At the time of a proposed decision that remedial action is complete at the facility. These requirements must be met before the Department may consider that the facility has met the requirements of 335-14-8-.01(1)(c)7., unless the facility qualifies for a modification to these public involvement procedures under 335-14-6-.07(12)(b)2. or 3.

2. If the Department determines that even a short delay in the implementation of a remedy would adversely affect human health or the environment, the Department may delay compliance with the requirements of 335-14-6-.07(12)(b)1. and implement the remedy immediately. However, the Department must assure involvement of the public at the earliest opportunity, and, in all cases, upon making the decision that additional remedial action is not needed at the facility.

3. The Department may allow a remediation initiated prior to October 22, 1998 to substitute for corrective action required under a post-closure permit even if the public involvement requirements of 335-14-6-.07(12)(b)1. have not been met so long as the Department assures that notice and comment on the decision that no further remediation is necessary to protect human health and the environment takes place at the earliest reasonable opportunity after October 22, 1998.

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335-14-6-.08 Financial Requirements.

(1) Applicability.

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

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

1. Disposal facilities;

2. Tank systems that are required under 335-14-6-.10(8) to meet the requirements for landfills; and

3. Containment buildings that are required under rule 335-15-6-.30(3) to meet the requirements for landfills; and

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

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

(2) [Reserved]

(3) Cost estimate for closure.

(a) The owner or operator must have a detailed written estimate in a format specified by the Department, in current dollars, of the cost of closing the facility in accordance with the requirements in 335-14-6-.07(2) through 335-14-6-.07(6) and applicable closure requirements of 335-14-6-.09(9), 335-14-6-.10(8), 335-14-6-.11(9), 335-14-6-.12(9), 335-14-6-.13(11), 335-14-6-.14(11), 335-14-6-.15(12), 335-14-6-.16(12), 335-14-6-.17(5), 335-14-6-.23(6), and 335-14-6-.30(3).

1. The estimate must equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan [see 335-14-6-.07(3)(b)]; and

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

3. The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, or non-hazardous wastes if applicable under 335-14-6-.07(4)(d), facility structures or equipment, land or other facility assets associated with the facility at the time of partial or final closure.

4. The owner or operator may not incorporate a zero cost for hazardous wastes, or non-hazardous wastes if applicable under 335-14-6-.07(4)(d), that might have economic value.

(b) During the active life of the facility, the owner or operator must adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with 335-14-6-.08(4). For owners and operators using the financial test or corporate guarantee, the closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Department as specified in 335-14-6-.08(4)(e)5. The adjustment may be made by recalculating the closure cost estimate in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business, as specified in 335-14-6-.08(3)(b)1. and (b)2. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

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

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

(c) During the active life of the facility, the owner or operator must revise the closure cost estimate no later than 30 days after a revision has been made to the closure plan which increases the cost of closure. If the owner or operator has an approved closure plan, the closure cost estimate must be revised no later than 30 days after the Department has approved the request to modify the closure plan, if the change in the closure plan increases the cost of closure. The revised closure cost estimate must be adjusted for inflation as specified in 335-14-6-.08(3)(b).

(d) The owner or operator must keep the following at the facility during the operating life of the facility: The latest closure cost estimate prepared in accordance with 335-14-6-.08(3)(a) and (c) and, when this estimate has been adjusted in accordance with 335-14-6-.08(3)(b), the latest adjusted closure cost estimate.

(4) Financial assurance for closure. By the effective date of these regulations, an owner or operator of each facility must establish financial assurance for closure of the facility. He must choose from the options as specified in 335-14-6-.08(4)(a) through (e).

(a) Closure trust fund.

1. An owner or operator may satisfy the requirements of 335-14-6-.08(4) by establishing a closure trust fund which conforms to the requirements of 335-14-6-.08(4)(a) and submitting an originally signed duplicate of the trust agreement to the Department. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

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

3. Payments into the trust fund must be made annually by the owner or operator over the 8 years beginning with the effective date of these regulations or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereafter referred to as the "pay-in period". The payments into the closure trust fund must be made as follows:

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

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

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

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

(III) If the remaining operating life of the facility is three years, 34% of the current closure cost estimate must be paid initially and 33% of the current closure cost estimate must be paid each of the two subsequent years;

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

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

(VI) If the remaining operating life of the facility is six years, 20% of the current closure cost estimate must be paid each of the first four years and 10%

of the current closure cost estimate must be paid each of the two subsequent years;

(VII) If the remaining operating life of the facility is seven years, 20% of the current closure cost estimate must be paid each of the first three years and 10% of the current closure cost estimate must be paid each of the four subsequent years; and

(VIII) If the remaining operating life of the facility is eight years or longer, 20% of the current closure cost estimate must be paid each of the first two years and 10% of the current closure cost estimate must be paid each of the six subsequent years;

(iii) Following the initial payment, all subsequent annual payments must reconcile any difference between the actual value of the trust fund and the required value of the trust fund. The required value of the trust fund accounts for adjustments to the closure-cost estimate made in accordance with 335-14-6-.08(3), and may be calculated by determining the value of the trust fund if the current payment and all previous payments were made using the current closure-cost estimate.

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

5. If the owner or operator establishes a closure trust fund after having used one or more alternate mechanisms specified in 335-14-6-.08(4), his first payment must be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made as specified in 335-14-6-.08(4)(a)3.

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

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

8. If an owner or operator substitutes other financial assurance as specified in 335-14-6-.08(4) for all or part of the trust fund, he may submit a

written request to the Department for release of the amount in excess of the current closure cost estimate covered by the trust fund.

9. Within 60 days after receiving a request from the owner or operator for release of funds as specified in 335-14-6-.08(4)(a)7. or (a)8., the Department will instruct the trustee to release to the owner or operator such funds as the Department specifies in writing.

10. After beginning partial or final closure, an owner or operator or another person authorized to conduct partial or final closure may request reimbursements for partial or final closure expenditures by submitting itemized bills to the Department. The owner or operator may request reimbursements for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. No later than 60 days after receiving bills for partial or final closure activities, the Department will instruct the trustee to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the Department has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, he may withhold reimbursements of such amounts as he deems prudent until he determines, in accordance with 335-14-6-.08(4)(h), that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Department does not instruct the trustee to make such reimbursements, he will provide to the owner or operator a detailed written statement of reasons.

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

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

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

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

1. An owner or operator may satisfy the requirements of 335-14-6-.08(4) by obtaining a surety bond which conforms to the requirements of 335-14-6-.08(4)(b) and submitting the bond to the Department. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

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

3. The owner or operator who uses a surety bond to satisfy the requirements of 335-14-6-.08(4) must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the

surety directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund must meet the requirements specified in 335-14-6-.08(4)(a), except that:

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

(ii) Until the standby trust fund is funded pursuant to the requirements of 335-14-6-.08(4), the following are not required by these regulations:

(I) Payments into the trust fund as specified in 335-14-6-.08(4)(a).

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

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

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

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

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

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

(iii) Provide alternate financial assurance as specified in 335-14-6-.08(4), and obtain the Department's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the bond from the surety.

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

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

7. Whenever the current closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in 335-14-6-.08(4) to cover the increase. Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the Department.

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

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

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

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

(c) Closure letter of credit.

1. An owner or operator may satisfy the requirements of 335-14-6-.08(4) by obtaining an irrevocable standby letter of credit which conforms to the requirements of 335-14-6-.08(4)(c) and submitting the letter to the Department. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or State agency.

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

3. An owner or operator who uses a letter of credit to satisfy the requirements of 335-14-6-.08(4) must also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Department will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund must meet the requirements of the trust fund specified in 335-14-6-.08(4)(a), except that:

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

(ii) Unless the standby trust fund is funded pursuant to the requirements of 335-14-6-.08(4), the following are not required by these regulations:

(I) Payments into the trust fund as specified in 335-14-6-.08(4)(a);

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

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

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

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

5. The letter of credit must be irrevocable and issued for a period of at least 1 year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least 1 year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Department by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the Department have received the notice, as evidenced by the return receipts.

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

7. Whenever the current closure cost estimate increases to an amount greater than the amount of the credit, the owner or operator, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in 335-14-6-.08(4) to cover the increase. Whenever the current closure cost estimate decreases, the amount of the credit may be reduced to the amount of the current closure cost estimate following written approval by the Department.

8. Following a final administrative determination pursuant to the AHWMMA that the owner or operator has failed to perform final closure in accordance with the approved closure plan when required to do so, the Department may draw on the letter of credit.

9. If the owner or operator does not establish alternate financial assurance as specified in 335-14-6-.08(4) and obtain written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Department will draw on the letter of credit. The Department may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the Department will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in 335-14-6-.08(4) and obtain written approval of such assurance from the Department.

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

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-6-.08(4); or

(ii) The Department releases the owner or operator from the requirements of 335-14-6-.08(4) in accordance with 335-14-6-.08(4)(h).

(d) Closure insurance.

1. An owner or operator may satisfy the requirements of 335-14-6-.08(4) by obtaining closure insurance which conforms to the requirements of 335-14-6-.08(4)(d) and submitting an originally signed certificate of such insurance to the Department. By the effective date of these regulations, the owner or operator must submit the certificate of insurance to the Department or establish other financial assurance as specified in 335-14-6-.08(4). At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in the State of Alabama, and must not be captive insurance as defined in 335-14-1-.02 unless the requirements of 335-14-6-.08(4)(d)1.(ii) are met.

(i) The use of insurance to demonstrate financial assurance for closure and post-closure care pertains exclusively to those insurance policies underwritten by commercial property and casualty insurers (primary or excess and surplus lines), through which, in the insurance contract, the financial burden for closure and post-closure care is transferred to the third-party insurer. Except as provided in 335-14-6-.08(4)(d)1.(ii), the third-party insurer must assume financial responsibility for this accepted risk, using its own pool of resources that is independent, separate, and unrelated to that of the insured (owner or operator). The use of insurance policies underwritten by captive insurers therefore is prohibited.

(ii) Captive insurance may be used for closure insurance only when the facility provides annual documentation to the Department that the owner or operator is in compliance with the requirements of rule 335-14-6-.08(4)(e).

2. The wording of the certificate of insurance must be identical to the wording specified in 335-14-6-.08(6)(e).

3. The closure insurance policy must be issued for a face amount at least equal to the current closure cost estimate, except as provided in 335-14-6-.08(4)(f). The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

4. The closure insurance policy must guarantee that funds will be available to close the facility whenever final closure occurs. The policy must also guarantee that once final closure begins, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Department, to such party or parties as the Department specifies.

5. After beginning partial or final closure, an owner or operator or any other person authorized to conduct closure may request reimbursements for

closure expenditures by submitting itemized bills to the Department. The owner or operator may request reimbursements for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for closure activities, the Department will instruct the insurer to make reimbursements in such amounts as the Department specifies in writing if the Department determines that the partial or final closure expenditures are in accordance with the approved closure plan or otherwise justified. If the Department has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the face amount of the policy, he may withhold reimbursement of such amounts as he deems prudent until he determines, in accordance with 335-14-6-.08(4)(h), that the owner or operator is no longer required to maintain financial assurance for final closure of the particular facility. If the Department does not instruct the insurer to make such reimbursements, he will provide to the owner or operator a detailed written statement of reasons.

6. The owner or operator must maintain the policy in full force and effect until the Department consents to termination of the policy by the owner or operator as specified in 335-14-6-.08(4)(d)10. Failure to pay the premium, without substitution of alternate financial assurance as specified in 335-14-6-.08(4), will constitute a significant violation of these regulations, warranting such remedy as the Department deems necessary. Such violation will be deemed to begin upon receipt by the Department of a notice of future cancellation, termination or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

7. Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

8. The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate or fail to renew the policy by sending notice by certified mail to the owner or operator and the Department. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Department and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:

(i) The Department deems the facility abandoned; or

(ii) Interim status is terminated or revoked; or

(iii) Closure is ordered by the Department or a court of competent jurisdiction; or

(iv) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or

(v) The premium due is paid.

9. Whenever the current closure cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in 335-14-6-.08(4) to cover the increase. Whenever the current closure cost estimate decreases, the face amount may be reduced to the amount of the current closure cost estimate following written approval by the Department.

10. The Department will give written consent to the owner or operator that he may terminate the insurance policy when:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-6-.08(4); or

(ii) The Department releases the owner or operator from the requirements of 335-14-6-.08(4) in accordance with 335-14-6-.08(4)(h).

(e) Financial test and corporate guarantee for closure.

1. An owner or operator may satisfy the requirements of 335-14-6-.08(4) by demonstrating that he passes a financial test as specified in 335-14-6-.08(4)(e). To pass this test the owner or operator must meet the criteria of either 335-14-6-.08(4)(e)1.(i) or (e)1.(ii):

(i) The owner or operator must have:

(I) Two of the following three ratios: A ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

(II) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates; and

(III) Tangible net worth of at least $10 million; and

(IV) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates.

(ii) The owner or operator must have:

(I) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

(II) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates; and

(III) Tangible net worth of at least $10 million; and

(IV) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates.

2. The phrase "current closure and post-closure cost estimates" as used in 335-14-6-.08(4)(e)1. refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer [335-14-5-.08(12)(f) and (g)].

3. To demonstrate that he meets this test, the owner or operator must submit the following items to the Department:

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in 335-14-5-.08(12)(f); and

(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(iii) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(I) He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(II) In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

4. The owner or operator may obtain an extension of the time allowed for submission of the documents specified in 335-14-6-.08(4)(e)3. if the fiscal year of the owner or operator ends during the 90 days prior to the effective date of these regulations and if the year-end financial statements for that fiscal year will be audited by an independent certified public accountant. The extension will end no later than 90 days after the end of the owner's or operator's fiscal year. To obtain the extension, the owner's or operator's chief financial officer must send, by the effective date of these regulations, a letter to the Department. This letter from the chief financial officer must:

(i) Request the extension;

(ii) Certify that he has grounds to believe that the owner or operator meets the criteria of the financial test;

(iii) Specify for each facility to be covered by the test the EPA Identification Number, name, address, and current cost estimates to be covered by the test;

(iv) Specify the date ending the owner's or operator's last complete fiscal year before the effective date of these regulations;

(v) Specify the date, no later than 90 days after the end of such fiscal year, when he will submit the documents specified in 335-14-6-.08(4)(e)3.; and

(vi) Certify that the year-end financial statements of the owner or operator for such fiscal year will be audited by an independent certified public accountant.

5. After the initial submission of items specified in 335-14-6-.08(4)(e)3., the owner or operator must send updated information to the Department within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in 335-14-6-.08(4)(e)3.

6. If the owner or operator no longer meets the requirements of 335-14-6-.08(4)(e)1., he must send notice to the Department of intent to establish alternate financial assurance as specified in 335-14-6-.08(4). The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide the alternate financial assurance within 120 days after the end of such fiscal year.

7. The Department, based on a reasonable belief that the owner or operator may no longer meet the requirements of 335-14-6-.08(4)(e)1., require reports of financial condition at any time from the owner or operator in addition to those specified in 335-14-6-.08(4)(e)3. If the Department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of 335-14-6-.08(4)(e)1., the owner or operator must provide alternate financial assurance as specified in 335-14-6-.08(4) within 30 days after notification of such a finding.

8. The Department may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements [see 335-14-6-.08(4)(e)3.(ii)]. An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Department will evaluate other qualifications on an individual basis. The owner or operator must provide alternate financial assurance as specified in 335-14-6-.08(4) within 30 days after notification of the disallowance.

9. The owner or operator is no longer required to submit the items specified in 335-14-6-.08(4)(e)3. when:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-6-.08(4); or

(ii) The Department releases the owner or operator from the requirements of 335-14-6-.08(4) in accordance with 335-14-6-.08(4)(h).

10. An owner or operator may meet the requirements of 335-14-6-.08(4) by obtaining a written guarantee, hereafter referred to as "corporate guarantee". The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in 335-14-6-.08(4)(e)1. through 8. and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in rule 335-14-5-.08(12)(h). The certified copy of the guarantee must accompany the items sent to the Department as specified in 335-14-6-.08(4)(e)3. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee must provide that:

(i) If the owner or operator fails to perform final closure of a facility covered by the corporate guarantee in accordance with the closure plan and other interim status permit requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in 335-14-6-.08(4)(a) in the name of the owner or operator.

(ii) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts.

(iii) If the owner or operator fails to provide alternate financial assurance as specified in 335-14-6-.08(4) and obtain the written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternate financial assurance in the name of the owner or operator.

(f) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of 335-14-6-.08(4) by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds, letters of credit and insurance. The mechanisms must be as specified in 335-14-6-.08(4)(a) through (d), except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as a standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more

mechanisms. The Department may use any or all of the mechanisms to provide for closure of the facility.

(g) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in 335-14-6-.08(4) to meet the requirements of 335-14-6-.08(4) for more than one facility. Evidence of financial assurance submitted to the Department must include a list showing, for each facility, the EPA or Alabama Identification Number, name, address and the amount of funds for closure assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for closure of any of the facilities covered by the mechanism, the Department may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

(h) Release of the owner or operator from the requirements of 335-14-6-.08(4). Within 60 days after receiving certification from the owner or operator and an ~~qualified~~ independent ~~P~~professional ~~E~~engineer that final closure has been completed in accordance with the approved closure plan, the Department will notify the owner or operator in writing that he is no longer required by 335-14-6-.08(4) to maintain financial assurance for final closure of the facility, unless the Department has reason to believe that final closure has not been in accordance with the approved closure plan. The Department shall provide the owner or operator a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan.

(5) Cost estimate for post-closure care.

(a) The owner or operator of a hazardous waste disposal unit or other hazardous waste management unit which is unable to demonstrate closure by removal must have a detailed written estimate in a format specified by the Department, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure requirements of 335-14-6-.07(8) through 335-14-6-.07(11), 335-14-6-.11(9), 335-14-6-.12(9), 335-14-6-.13(11), and 335-14-6-.14(11).

1. The post-closure cost estimate must be based on the costs to the owner or operator of hiring a third party to conduct post-closure care activities. A third party is a party who is neither a parent nor subsidiary of the owner or operator. (See definition of parent corporation in 335-14-1-.02.)

2. The post-closure cost estimate is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required under 335-14-6-.07(8). Unless expressly extended or shortened by the Department in writing, the post-closure care period shall be assumed to be thirty years for the purposes of calculating the post-closure cost estimate.

(b) During the active life of the facility, the owner or operator must adjust the post-closure cost estimate for inflation within 60 days prior to the

anniversary date of the establishment of the financial instrument(s) used to comply with 335-14-6-.08(6). For owners or operators using the financial test or corporate guarantee, the post-closure care cost estimate must be updated for inflation no later than 30 days after the close of the firm's fiscal year and before submission of updated information to the Department as specified in 335-14-6-.08(6)(e)5. The adjustment may be made by recalculating the post-closure cost estimate in current dollars or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business as specified in 335-14-6-.08(5)(b)1. and (5)(b)2. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

1. The first adjustment is made by multiplying the post-closure cost estimate by the inflation factor. The result is the adjusted post-closure cost estimate.

2. Subsequent adjustments are made by multiplying the latest adjusted post-closure cost estimate by the latest inflation factor.

(c) During the active life of the facility, the owner or operator must revise the post-closure cost estimate no later than 30 days after a revision to the post-closure plan which increases the cost of post-closure care. If the owner or operator has an approved post-closure plan, the post-closure cost estimate must be revised no later than 30 days after the Department has approved the request to modify the plan, if the change in the post-closure plan increases the cost of post-closure care. The revised post-closure cost estimate must be adjusted for inflation as specified in 335-14-6-.08(5)(b).

(d) The owner or operator must keep the following at the facility during the operating life of the facility and throughout the post-closure care period: the latest post-closure cost estimate prepared in accordance with 335-14-6-.08(5)(a) and 335-14-6-.08(5)(c) and, when this estimate has been adjusted in accordance with 335-14-6-.08(5)(b), the latest adjusted post-closure cost estimate.

(6) Financial assurance for post-closure care. By the effective date of these regulations, an owner or operator of a facility with a hazardous waste disposal unit must establish financial assurance for post-closure care of the disposal unit(s).

(a) Post-closure trust fund.

1. An owner or operator may satisfy the requirements of 335-14-6-.08(6) by establishing a post-closure trust fund which conforms to the requirements of 335-14-6-.08(6)(a) and submitting an originally signed duplicate of the trust agreement to the Department. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

2. The wording of the trust agreement must be identical to the wording specified in 335-14-5-.08(12)(a), and the trust agreement must be accompanied

by a formal certification of acknowledgment [for example, see 335-14-5-.08(12)(a)2.]. Schedule A of the trust agreement must be updated, and an originally signed duplicate must be submitted to the Department, within 60 days after a change in the amount of the current post-closure cost estimate covered by the agreement.

3. Payments into the trust fund must be made annually by the owner or operator over the 8 years beginning with the effective date of these regulations or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter. The owner or operator of a post-closure facility must make annual payments into the fund over a term of eight years beginning on the effective date of these regulations. This period is hereafter referred to as the "pay-in period". The payments into the post-closure trust fund must be made as follows:

(i) The first payment must be made by the effective date of these regulations, except as provided in 335-14-6-.08(6)(a)5. The first payment must be at least equal to the amount determined according to the schedule set out in 335-14-6-.08(6)(a)3.(ii)(I) through (a)3.(ii)(VIII).

(ii) Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. Payments must be made according to the following schedule:

(I) If the remaining operating life of the facility is one year, 100% of the current post-closure cost estimate must be paid initially;

(II) If the remaining operating life of the facility is two years, 50% of the current post-closure cost estimate must be paid each of the two years;

(III) If the remaining operating life of the facility is three years, 34% of the current post-closure cost estimate must be paid initially and 33% of the current post-closure cost estimate must be paid each of the two subsequent years.

(IV) If the remaining operating life of the facility is four years, 25% of the current post-closure cost estimate must be paid each of the four years;

(V) If the remaining operating life of the facility is five years, 20% of the current post-closure estimate must be paid each of the five years;

(VI) If the remaining operating life of the facility is six years, 20% of the current post-closure cost estimate must be paid each of the first four years and 10% of the current cost estimate must be paid each of the two subsequent years;

(VII) If the remaining operating life of the facility is seven years, 20% of the current post-closure cost estimate must be paid each of the first three years and 10% of the current post-closure cost estimate must be paid each of the four subsequent years; and

(VIII) If the remaining operating life of the facility is eight years or longer, 20% of the current post-closure cost estimate must be paid each of the first two years and 10% of the current post-closure estimate must be paid each of the six subsequent years;

(IX) For post-closure facilities, 20% of the current post-closure cost estimate must be paid the first year and 10% of the current post-closure cost estimate must be paid each of the seven subsequent years;

(iii) Following the initial payment, all subsequent annual payments must reconcile any difference between the actual value of the trust fund and the required value of the trust fund. The required value of the trust fund accounts for adjustments to the post-closure cost estimate made in accordance with 335-14-6-.08(5), and may be calculated by determining the value of the trust fund if the current payment and all previous payments were made using the current post-closure cost estimate.

4. The owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the current post-closure cost estimate at the time the fund is established. However, he must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in 335-14-6-.08(6)(a)3.

5. If the owner or operator establishes a post-closure trust fund after having used one or more alternate mechanisms specified in 335-14-6-.08(6), his first payment must be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made as specified in 335-14-6-.08(6)(a)3.

6. After the pay-in period is completed, whenever the current post-closure cost estimate changes during the operating life of the facility and throughout the post-closure period, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current post-closure cost estimate, or obtain other financial assurance as specified in 335-14-6-.08(6) to cover the difference.

7. During the operating life of the facility and throughout the post-closure period, if the value of the trust fund is greater than the total amount of the current post-closure cost estimate, the owner or operator may submit a written request to the Department for release of the amount in excess of the current post-closure cost estimate.

8. If an owner or operator substitutes other financial assurance as specified in 335-14-6-.08(6) for all or part of the trust fund, he may submit a written request to the Department for release of the amount in excess of the current post-closure cost estimate covered by the trust fund.

9. Within 60 days after receiving a request from the owner or operator for release of funds as specified in 335-14-6-.08(6)(a)7. or (a)8., the Department will approve or disapprove the request for release. If the Department approves the release of fund, it will instruct the trustee to release to the owner or operator such funds as the Department specifies in writing.

10. Following the completion of the pay-in period, the Department may approve a release of funds if the owner or operator demonstrates to the Department that the value of the trust fund exceeds the remaining cost of post-closure care.

11. Following the completion of the pay-in period, an owner or operator or any other person authorized to conduct post-closure care may request reimbursements for post-closure expenditures by submitting itemized bills to the Department. Within 60 days after receiving bills for post-closure care activities, the Department will instruct the trustee to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the post-closure expenditures are in accordance with the approved post-closure plan or otherwise justified. If the Department does not instruct the trustee to make such reimbursements, he will provide the owner or operator with a detailed written statement of reasons.

12. The Department will agree to termination of the trust when:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-6-.08(6) and approved by the Department; or

(ii) The Department releases the owner or operator from the requirements of 335-14-6-.08(6) in accordance with 335-14-6-.08(6)(h).

(b) Surety bond guaranteeing payment into a post-closure trust fund.

1. An owner or operator may satisfy the requirements of 335-14-6-.08(6) by obtaining a surety bond which conforms to the requirements of 335-14-6-.08(6)(b) and submitting the bond to the Department. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

2. The wording of the surety bond must be identical to the wording specified in 335-14-5-.08(12)(b).

3. The owner or operator who uses a surety bond to satisfy the requirements of 335-14-6-.08(6) must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund must meet the requirements specified in 335-14-6-.08(6)(a), except that:

(i) An originally signed duplicate of the trust agreement must be submitted to the Department with the surety bond; and

(ii) Until the standby trust fund is funded pursuant to the requirements of 335-14-6-.08(6), the following are not required by these regulations:

(I) Payments into the trust fund as specified in 335-14-6-.08(6)(a).

(II) Updating of Schedule A of the trust agreement [see 335-14-5-.08(12)(a)] to show current post-closure cost estimates;

(III) Annual valuations as required by the trust agreement; and

(IV) Notices of nonpayment as required by the trust agreement.

4. The bond must guarantee that the owner or operator will:

(i) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility; or

(ii) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin final closure issued by the Department becomes final, or within 15 days after an order to begin final closure is issued by a court of competent jurisdiction; or

(iii) Provide alternate financial assurance as specified in 335-14-6-.08(6) and obtain the Department's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the bond from the surety.

5. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

6. The penal sum of the bond must be in an amount at least equal to the current post-closure cost estimate, except as provided in 335-14-6-.08(6)(f).

7. Whenever the current post-closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in 335-14-6-.08(6) to cover the increase. Whenever the current post-closure cost estimate decreases, the penal sum may be reduced to the amount of the current post-closure cost estimate following written approval by the Department.

8. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation may not occur, however, during the 120 days

beginning on the date of receipt of notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts.

9. The owner or operator may cancel the bond if the Department has given prior written consent. The Department will provide such written consent when:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-6-.08(6) and approved by the Department; or

(ii) The Department releases the owner or operator from the requirements of 335-14-6-.08(6) in accordance with 335-14-6-.08(6)(h).

(c) Post-closure letter of credit.

1. An owner or operator may satisfy the requirements of 335-14-6-.08(6) by obtaining an irrevocable standby letter of credit which conforms to the requirements of 335-14-6-.08(6)(c) and submitting the letter to the Department. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or State agency.

2. The wording of the letter of credit must be identical to the wording specified in 335-14-5-.08(12)(d).

3. An owner or operator who uses a letter of credit to satisfy the requirements of 335-14-6-.08(6) must also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Department will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund must meet the requirements of the trust fund specified in 335-14-6-.08(6)(a), except that:

(i) An originally signed duplicate of the trust agreement must be submitted to the Department with the letter of credit; and

(ii) Unless the standby trust fund is funded pursuant to the requirements of 335-14-6-.08(6), the following are not required by these regulations:

(I) Payments into the trust fund as specified in 335-14-6-.08(6)(a);

(II) Updating of Schedule A of the trust agreement [see 335-14-5-.08(12)(a)] to show current post-closure cost estimates;

(III) Annual valuations as required by the trust agreement; and

(IV) Notices of nonpayment as required by the trust agreement.

4. The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution and

date, and providing the following information: the EPA Identification Number, name, and address of the facility, and the amount of funds assured for post-closure care of the facility by the letter of credit.

5. The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Department by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the Department have received the notice, as evidenced by the return receipts.

6. The letter of credit must be issued in an amount at least equal to the current post-closure cost estimate, except as provided in 335-14-6-.08(6)(f).

7. Whenever the current post-closure cost estimate increases to an amount greater than the amount of the credit during the operating life of the facility and throughout the post-closure care period, the owner or operator, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current post-closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in 335-14-6-.08(6) to cover the increase. Whenever the current post-closure cost estimate decreases during the operating life of the facility or during the post-closure care period, the amount of the credit may be reduced to the amount of the current post-closure cost estimate following written approval by the Department.

8. During the period of post-closure care, the Department may approve a decrease in the amount of the letter of credit if the owner or operator demonstrates to the Department that the amount exceeds the remaining cost of post-closure care.

9. Following a final administrative determination pursuant to the 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 335-14-1-.02 unless the requirements of 335-14-6-.08(6)(d)1.(ii) are met.

(i) The use of insurance to demonstrate financial assurance for closure and post-closure care pertains exclusively to those insurance policies underwritten by commercial property and casualty insurers (primary or excess and surplus lines), through which, in the insurance contract, the financial burden for closure and post-closure care is transferred to the third-party insurer. Except as provided in 335-14-6-.08(6)(d)1.(ii), the third-party insurer must assume financial responsibility for this accepted risk, using its own pool of resources that is independent, separate, and unrelated to that of the insured (owner or operator). The use of insurance policies underwritten by captive insurers therefore is prohibited.

(ii) Captive insurance may be used for post-closure insurance only when the facility provides annual documentation to the Department that the owner or operator is in compliance with the requirements of rule 335-14-6-.08(6)(e).

2. The wording of the certificate of insurance must be identical to the wording specified in 335-14-6-.08(6)(e).

3. The post-closure insurance policy must be issued for a face amount at least equal to the current post-closure cost estimate, except as provided in 335-14-6-.08(6)(f). The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

4. The post-closure insurance policy must guarantee that funds will be available to provide post-closure care of the facility whenever the post-closure

period begins. The policy must also guarantee that once post-closure care begins the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Department, to such party or parties as the Department specifies.

5. An owner or operator or any other person authorized to perform post-closure care may request reimbursement for post-closure care expenditures by submitting itemized bills to the Department. Within 60 days after receiving bills for post-closure care activities, the Department will instruct the insurer to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the post-closure expenditures are in accordance with the approved post-closure plan or otherwise justified. If the Department does not instruct the insurer to make such reimbursements, he will provide a detailed written statement of reasons.

6. The owner or operator must maintain the policy in full force and effect until the Department consents to termination of the policy by the owner or operator as specified in 335-14-6-.08(6)(d)11. Failure to pay the premium, without substitution of alternate financial assurance as specified in the paragraph, will constitute a significant violation of these regulations, warranting such remedy as the Department deems necessary. Such violation will be deemed to begin upon receipt by the Department of notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

7. Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

8. The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate or fail to renew the policy by sending notice by certified mail to the owner or operator and the Department. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Department and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:

(i) The Department deems the facility abandoned; or

(ii) The facility's interim status permit is terminated or revoked; or

(iii) Closure is ordered by the Department or a court of competent jurisdiction; or

(iv) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or

(v) The premium due is paid.

9. Whenever the current post-closure cost estimate increases to an amount greater than the face amount of the policy during the operating life of the facility or during the post-closure care period, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in 335-14-6-.08(6) to cover the increase. Whenever the current post-closure cost estimate decreases during the operating life of the facility or during the post-closure care period, the face amount may be reduced to the amount of the current post-closure cost estimate following written approval by the Department.

10. Commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amounts of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week Treasury securities.

11. The Department will give written consent to the owner or operator that he may terminate the insurance policy when:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-6-.08(6) and approved by the Department; or

(ii) The Department releases the owner or operator from the requirements of 335-14-6-.08(6) in accordance with 335-14-6-.08(6)(h).

(e) Financial test and corporate guarantee for post-closure care.

1. An owner or operator may satisfy requirements of 335-14-6-.08(6) by demonstrating that he passes a financial test as specified in 335-14-6-.08(6)(e). To pass this test the owner or operator must meet the criteria either of 335-14-6-.08(6)(e)1.(i) or (ii):

(i) The owner or operator must have:

(I) Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

(II) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates; and

(III) Tangible net worth of at least $10 million; and

(IV) Assets in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates.

(ii) The owner or operator must have:

(I) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

(II) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates; and

(III) Tangible net worth of at least $10 million; and

(IV) Assets in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates.

2. The phrase "current closure and post-closure cost estimates" as used in 335-14-6-.08(6)(e)1. refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer [335-14-5-.08(12)(f)].

3. To demonstrate that he meets this test, the owner or operator must submit the following items to the Department.

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in 335-14-5-.08(12)(f); and

(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(iii) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(I) He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(II) In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

4. The owner or operator may obtain an extension of the time allowed for submission of the documents specified in 335-14-6-.08(6)(e)3. if the fiscal year of the owner or operator ends during the 90 days prior to the effective date of these regulations and if the year-end financial statements for that fiscal year will be audited by an independent certified public accountant. The extension will end no later than 90 days after the end of the owner's or operator's fiscal year. To

obtain the extension, the owner's or operator's chief financial officer must send, by the effective date of these regulations, a letter to the Department. This letter from the chief financial officer must:

(i) Request the extension;

(ii) Certify that he has grounds to believe that the owner or operator meets the criteria of the financial test;

(iii) Specify for each facility to be covered by the test the EPA Identification Number, name, address and the current cost estimates to be covered by the test;

(iv) Specify the date ending the owner's or operator's latest complete fiscal year before the effective date of these regulations;

(v) Specify the date, no later than 90 days after the end of such fiscal year, when he will submit the documents specified in 335-14-6-.08(6)(e)3.; and

(vi) Certify that the year-end financial statements of the owner or operator for such fiscal year will be audited by an independent certified public accountant.

5. After the initial submission of items specified in 335-14-6-.08(6)(e)3., the owner or operator must send updated information to the Department within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in 335-14-6-.08(6)(e)3.

6. If the owner or operator no longer meets the requirements of 335-14-6-.08(6)(e)1., he must send notice to the Department of intent to establish alternate financial assurance as specified in 335-14-6-.08(6). The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide the alternate financial assurance within 120 days after the end of such fiscal year.

7. The Department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of 335-14-6-.08(6)(e)1., require reports of financial condition at any time from the owner or operator in addition to those specified in 335-14-6-.08(6)(e)3. If the Department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of 335-14-6-.08(6)(e)1., the owner or operator must provide alternate financial assurance as specified in 335-14-6-.08(6) within 30 days after notification of such a finding.

8. The Department may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements [see 335-14-6-.08(6)(e)3.(ii)]. An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Department will evaluate other

qualifications on an individual basis. The owner or operator must provide alternate financial assurance as specified in 335-14-6-.08(6) within 30 days after notification of the disallowance.

9. During the period of post-closure care, the Department may approve a decrease in the current post-closure cost estimate for which this test demonstrates financial assurance if the owner or operator demonstrates to the Department that the amount of the cost estimate exceeds the remaining cost of post-closure care.

10. The owner or operator is no longer required to submit the items specified in 335-14-6-.08(6)(e)3. when:

(i) An owner or operator substitutes alternate financial assurance as specified in 335-14-6-.08(6); or

(ii) The Department releases the owner or operator from the requirements of 335-14-6-.08(6) in accordance with 335-14-6-.08(6)(h).

11. An owner or operator may meet the requirements of 335-14-6-.08(6) by obtaining a written guarantee, hereafter referred to as "corporate guarantee". The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in 335-14-6-.08(6)(e)1. through 9. and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in rule 335-14-5-.08(12)(h). A certified copy of the guarantee must accompany the items sent to the Department as specified in 335-14-6-.08(6)(e)3. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee must provide that:

(i) If the owner or operator fails to perform post-closure care of a facility covered by the corporate guarantee in accordance with the post-closure plan and other interim status requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in 335-14-6-.08(6)(a) in the name of the owner or operator.

(ii) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts.

(iii) If the owner or operator fails to provide alternate financial assurance as specified in 335-14-6-.08(6) and obtain the written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternate financial assurance in the name of the owner or operator.

(f) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of 335-14-6-.08(6) by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds, letters of credit and insurance. The mechanisms must be as specified in 335-14-6-.08(6)(a) through (d), except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current post-closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The Department may use any or all of the mechanisms to provide for post-closure care of the facility.

(g) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in 335-14-6-.08(6) to meet the requirements of 335-14-6-.08(6) for more than one facility. Evidence of financial assurance submitted to the Department must include a list showing, for each facility, the EPA Identification Number, name, address, and the amount of funds for post-closure care assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for post-closure care of any of the facilities covered by the mechanism, the Department may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

(h) Release of the owner or operator from the requirements of 335-14-6. Within 60 days after receiving certifications from the owner or operator and an ~~qualified~~ independent registered ~~P~~professional ~~E~~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 ~~qualified~~ independent registered ~~P~~professional ~~E~~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 N. Curvin; Theresa A. Maines; Heather M. Jones.
Statutory Authority: Code of Alabama 1975, §§ 22-30-11, 22-30-12 and 22-30-16.
History: February 9, 1983.
Amended: April 9, 1986; September 29, 1986; August 24, 1989; December 6, 1990; January 25, 1992; January 1, 1993; January 5, 1995; March 28, 1997; March 27, 1998; April 2, 1999; March 31, 2000; April 13, 2001; March 15, 2002; May 27, 2004; March 31, 2005; April 3, 2007; March 31, 2009; April 3, 2012, XXXXX, XXXX.

335-14-6-.09 Use and Management of Containers.

(1) Applicability.

The requirements of 335-14-6-.09 apply to owners and operators of all hazardous waste facilities that store containers of hazardous waste, except as 335-14-6-.01 provides otherwise.

(2) Condition of containers.

If a container holding hazardous waste is not in good condition (e.g., severe rusting, apparent structural defects) or if it begins to leak, the owner or operator must transfer the hazardous waste from this container to a container that is in good condition, or manage the waste in some other way that complies with the requirements of 335-14-6.

(3) Compatibility of waste with container.

The owner or operator must use a container made of or lined with materials which 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.

(4) Management of containers.

(a) A container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

(b) A container holding hazardous waste must not be opened, handled, or stored in a manner which may rupture the container or cause it to leak.

(c) Containers having a capacity greater than 30 gallons must not be stacked over two containers high.

(5) Inspections.

The owner or operator must inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration of containers and the containment system caused by corrosion or other factors. The owner or operator must also note the number and capacity of hazardous waste containers present. These inspections must be documented in accordance with rule 335-14-6-.02(6)(d). [Comment: See 335-14-6-.09(2) for remedial action required if deterioration or leaks are detected.]

(6) Containment. Container storage areas must meet the following requirements:

(a) Container storage areas must have a containment system that is designed and operated in accordance with 335-14-6-.09(6)(b), except as otherwise provided by 335-14-6-.09(6)(c).

(b) A containment system must be designed and operated as follows:

1. A base must underlie the containers which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed;

2. The base must be sloped or the containment system must be otherwise designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids;

3. The containment system must have sufficient capacity to contain 10% of the volume of containers or the volume of the largest container, whichever is greater. Containers that do not contain free liquids need not be considered in this determination;

4. Run-on into the containment system must be prevented unless the collection system has sufficient excess capacity in addition to that required in 335-14-6-.09(6)(b)3. to contain any run-on which might enter the system; and

5. Spilled or leaked waste must be removed from the sump or collection area in a timely manner not to exceed 24 hours after detection. Accumulated precipitation must be removed in as timely a manner necessary to prevent overflow of the collection system.

(c) Storage areas that store containers holding only wastes that do not contain free liquids need not have a containment system defined by 335-14-6-.09(6)(b), except as provided by 335-14-6-.09(6)(d) or provided that:

1. The storage area is sloped or is otherwise designed and operated to drain and remove liquid resulting from precipitation, or

2. The containers are elevated or are otherwise protected from contact with accumulated liquid.

(d) Storage areas that store containers holding the wastes listed below that do not contain free liquids must have a containment system defined by 335-14-6-.09(6)(b):

1. F020, F021, F022, F023, F026, and F027;

2. [Reserved]

(7) Special requirements for ignitable or reactive waste.

Containers holding ignitable or reactive waste must be located at least 15 meters (50 feet) from the facility's property line.

(8) Special requirements for incompatible wastes.

(a) Incompatible wastes, or incompatible wastes and materials (see 335-14-6-Appendix V for examples) must not be placed in the same container, unless 335-14-6-.02(8)(b) is complied with.

(b) Hazardous waste must not be placed in an unwashed container that previously held an incompatible waste or material (see 335-14-6-Appendix V for examples), unless 335-14-6-.02(8)(b) is complied with.

(c) A storage container holding a hazardous waste that is incompatible with any waste or other materials 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.

(9) Closure and post-closure care.

(a) At closure, all hazardous waste and hazardous waste residues must be removed from the containment system. Remaining containers, liners, bases, and soil containing or contaminated with hazardous waste or hazardous waste residues must be decontaminated or removed.

(b) If the owner or operator cannot remove or decontaminate waste required by rule 335-14-6-.09(9)(a), then the owner or operator must close the containment system and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills [335-14-6-.14(11)].

(c) [Reserved]

(d) [Reserved]

(10) Air emission standards.

The owner or operator shall manage all hazardous waste placed in a container in accordance with the applicable requirements of 335-14-6-.27, 335-14-6-.28, and 335-14-6-.29.

Author: Stephen C. Maurer; James W. Hathcock; C. Edwin Johnston; Michael B. Champion; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, §§ 22-30-11 and 22-30-16.
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335-14-6-.10 Tank Systems.

(1) Applicability. The requirements of 335-14-6-.10 apply to owners and operators of facilities that use tank systems for storing or treating hazardous waste, except as otherwise provided in 335-14-6-.10(1)(a), (b), and (c) or in rule 335-14-6-.01.

(a) Tank systems that are used to store or treat hazardous waste which contains no free liquids and that are situated inside a building with an impermeable floor are exempted from the requirements of 335-14-6-.10(4). To demonstrate the absence or presence of free liquids in the stored/treated waste, the following test must be used: Method 9095B (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in rule 335-14-1-.02(2).

(b) Tank systems, including sumps, as defined in rule 335-14-1-.02, that serve as part of a secondary containment system to collect or contain releases of hazardous wastes are exempted from the requirements in 335-14-6-.10(4)(a).

(c) Tanks, sumps, and other collection devices used in conjunction with drip pads, as defined in 335-14-1-.02 and regulated under rule 335-14-6-.23, must meet the requirements of 335-14-6-.10.

(2) Assessment of existing tank system's integrity.

(a) For each existing tank system that does not have secondary containment meeting the requirements of 335-14-6-.10(4), the owner or operator must determine that the tank system is not leaking or is unfit for use. Except as provided in 335-14-6-.10(2)(c), the owner or operator must obtain and keep on file at the facility a written assessment reviewed and certified by a qualified Pprofessional Eengineer in accordance with 335-14-8-.02(2)(d) that attests to the tank system's integrity by January 12, 1988.

(b) This assessment must determine that the tank system is adequately designed and has sufficient structural strength and compatibility with the waste(s) to be stored or treated to ensure that it will not collapse, rupture, or fail. At a minimum, this assessment must consider the following:

1. Design standard(s), if available, according to which the tank and ancillary equipment were constructed;

2. Hazardous characteristics of the waste(s) that have been or will be handled;

3. Existing corrosion protection measures;

4. Documented age of the tank system, if available. (Otherwise, an estimate of age); and

5. Results of a leak test, internal inspection, or other tank integrity examination such that:

(i) For nonenterable underground tanks, this assessment must consist of a leak test that is capable of taking into account the effects of temperature variations, tank end deflection, vapor pockets, and high water table effects;

(ii) For other than nonenterable underground tanks and for ancillary equipment, this assessment must be either a leak test, as described above, or an internal inspection and/or other tank integrity examination certified by a qualified ~~P~~professional ~~E~~engineer in accordance with 335-14-8-.02(2)(d) that addresses cracks, leaks, corrosion, and erosion.

[**Note:** The practices described in the American Petroleum Institute (API) Publication, Guide for Inspection of Refinery Equipment, Chapter XIII, "Atmospheric and Low-Pressure Storage Tanks", 4th Edition, 1981, may be used, where applicable, as guidelines in conducting the integrity examination of an other than nonenterable underground tank system.]

(c) Tank systems that store or treat materials that become hazardous wastes subsequent to July 14, 1986 must conduct this assessment within 12 months after the date that the waste becomes a hazardous waste.

(d) If, as a result of the assessment conducted in accordance with 335-14-6-.10(2)(a), a tank system is found to be leaking or unfit for use, the owner or operator must comply with the requirements of 335-14-6-.10(7).

(3) Design and installation of new tank systems or components.

(a) Owners or operators of new tank systems or components must ensure that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection so that it will not collapse, rupture, or fail. The owner or operator must obtain a written assessment reviewed and certified by a qualified ~~P~~professional ~~E~~engineer in accordance with 335-14-8-.02(2)(d), attesting that the system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. This assessment must include the following information:

1. Design standard(s) according to which the tank(s) and the ancillary equipment is or will be constructed;

2. Hazardous characteristics of the waste(s) to be handled;

3. For new tank systems or components in which the external shell of a metal tank or any external metal component of the tank system is or will be in contact with the soil or with water, a determination by a corrosion expert of:

(i) Factors affecting the potential for corrosion, including but not limited to:

(I) Soil moisture content;

(II) Soil pH;

(III) Soil sulfides level;

(IV) Soil resistivity;

(V) Structure to soil potential;

(VI) Influence of nearby underground metal structures (e.g., piping);

(VII) Stray electric current; and

(VIII) Existing corrosion-protection measures (e.g., coating, cathodic protection), and

(ii) The type and degree of external corrosion protection that are needed to ensure the integrity of the tank system during the use of the tank system or component, consisting of one or more of the following:

(I) Corrosion-resistant materials of construction such as special alloys, fiberglass-reinforced plastic;

(II) Corrosion-resistant coating (such as epoxy or fiberglass) with cathodic protection (e.g., impressed current or sacrificial anodes); and

(III) Electrical isolation devices such as insulating joints and flanges.

[**Note:** The practices described in the National Association of Corrosion Engineers (NACE) standard, "Recommended Practice (RP-02-85)-Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems", and the American Petroleum Institute (API) Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems", may be used, where applicable, as guidelines in providing corrosion protection for tank systems.]

4. For underground tank system components that are likely to be affected by vehicular traffic, a determination of design or operational measures that will protect the tank system against potential damage; and

5. Design considerations to ensure that:

(i) Tank foundations will maintain the load of a full tank;

(ii) Tank systems will be anchored to prevent flotation or dislodgment where the tank system is placed in a saturated zone, or is located within a seismic fault zone; and

(iii) Tank systems will withstand the effects of frost heave.

(b) The owner or operator of a new tank system must ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing, or placing a new tank system or component in use, an independent, qualified installation inspector or a qualified ~~P~~professional ~~E~~engineer, either of whom is trained and experienced in the proper installation of tank systems, must inspect the system or component for the presence of any of the following items:

1. Weld breaks;
2. Punctures;
3. Scrapes of protective coatings;
4. Cracks;
5. Corrosion; or
6. Other structural damage or inadequate construction or installation.

All discrepancies must be remedied before the tank system is covered, enclosed, or placed in use.

(c) New tank systems or components and piping that are placed underground and that are backfilled must be provided with a backfill material that is a noncorrosive, porous, homogeneous substance and that is carefully installed so that the backfill is placed completely around the tank and compacted to ensure that the tank and piping are fully and uniformly supported.

(d) All new tanks and ancillary equipment must be tested for tightness prior to being covered, enclosed, or placed in use. If a tank system is found not to be tight, all repairs necessary to remedy the leak(s) in the system must be performed prior to the tank system being covered, enclosed, or placed into use.

(e) Ancillary equipment must be supported and protected against physical damage and excessive stress due to settlement, vibration, expansion, or contraction.

[**Note:** The piping system installation procedures described in American Petroleum Institute (API) Publication 1615 (November 1979), "Installation of Underground Petroleum Storage Systems", or ANSI Standard B31.3, "Petroleum Refinery Piping", and ANSI Standard B31.4 "Liquid Petroleum Transportation Piping System", may be used, where applicable, as guidelines for proper installation of piping systems.]

(f) The owner or operator must provide the type and degree of corrosion protection necessary, based on the information provided under 335-14-6-.10(3)(a)3. to ensure the integrity of the tank system during use of the tank system. The installation of a corrosion protection system that is field fabricated must be supervised by an independent corrosion expert to ensure proper installation.

(g) The owner or operator must obtain and keep on file at the facility written statements by those persons required to certify the design of the tank system and supervise the installation of the tank system in accordance with the requirements of 335-14-6-.10(3)(b) through (f) to attest that the tank system was properly designed and installed and that repairs, pursuant to 335-14-6-.10(3)(b) and (d) were performed. These written statements must also include the certification statement as required in 335-14-8-.02(2)(d).

(4) Containment and detection of releases.

(a) In order to prevent the release of hazardous waste or hazardous constituents to the environment, secondary containment that meets the requirements of 335-14-6-.10(4) must be provided [except as provided in 335-14-6-.10(4)(f) and (g)]:

1. For all new and existing tank systems or components, prior to their being put into service;

2. For tank systems that store or treat materials that become hazardous wastes, within two years of the hazardous waste listing, or when the tank system has reached 15 years of age, whichever comes later.

(b) Secondary containment systems must be:

1. Designed, installed, and operated to prevent any migration of wastes or accumulated liquid out of the system to the soil, groundwater, or surface water at any time during the use of the tank system; and

2. Capable of detecting and collecting releases and accumulated liquids until the collected material is removed.

(c) To meet the requirements of 335-14-6-.10(4)(b), secondary containment systems must be at a minimum:

1. Constructed of or lined with materials that are compatible with the waste(s) to be placed in the tank system and must have sufficient strength and thickness to prevent failure owing to pressure gradients (including static head and external hydrological forces), physical contact with the waste to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation (including stresses from nearby vehicular traffic);

2. Placed on a foundation or base capable of providing support to the secondary containment system and resistance to pressure gradients above and below the system and capable of preventing failure due to settlement, compression, or uplift;

3. Provided with a leak-detection system that is designed and operated so that it will detect the failure of either the primary and secondary containment structure or any release of hazardous waste or accumulated liquid in the secondary containment system within 24 hours, or at the earliest practicable

time if the existing detection technology or site conditions will not allow detection of a release within 24 hours; and

4. Sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. Spilled or leaked waste and accumulated precipitation must be removed from the secondary containment system within 24 hours, or in as timely a manner as is possible to prevent harm to human health and the environment, if removal of the released waste or accumulated precipitation cannot be accomplished within 24 hours.

[**Note:** If the collected material is a hazardous waste under 335-14-2, it is subject to management as a hazardous waste in accordance with all applicable requirements of 335-14-3 through 335-14-6. If the collected material is discharged through a point source to waters of the United States, it is subject to the requirements of Sections 301, 304, and 402 of the Clean Water Act, as amended. If discharged to a Publicly Owned Treatment Works (POTWs), it is subject to the requirements of Section 307 of the Clean Water Act, as amended. If the collected material is released to the environment, it may be subject to the reporting requirements of 40 CFR Part 302.]

(d) Secondary containment for tanks must include one or more of the following devices:

1. A liner (external to the tank);

2. A vault;

3. A double-walled tank; or

4. An equivalent device as approved by the Department.

(e) In addition to the requirements of 335-14-6-.10(4)(b), (c), and (d), secondary containment systems must satisfy the following requirements:

1. External liner systems must be:

(i) Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary;

(ii) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a 25-year, 24-hour rainfall event.

(iii) Free of cracks or gaps; and

(iv) Designed and installed to completely surround the tank and to cover all surrounding earth likely to come into contact with the waste if released from the tank(s) (i.e., capable of preventing lateral as well as vertical migration of the waste).

(v) Provided with an impermeable interior coating or lining if a concrete (or other porous or pervious material) liner is used. The interior coating or lining must be compatible with the stored waste and prevent migration of the waste into the concrete.

2. Vault systems must be:

(i) Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary;

(ii) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a 25-year, 24-hour rainfall event;

(iii) Constructed with chemical-resistant water stops in place at all joints (if any);

(iv) Provided with an impermeable interior coating or lining that is compatible with the stored waste and that will prevent migration of waste into the concrete;

(v) Provided with a means to protect against the formation of and ignition of vapors within the vault, if the waste being stored or treated:

(I) Meets the definition of ignitable waste under 335-14-2-.03(2); or

(II) Meets the definition of reactive waste under 335-14-2-.03(4) and may form an ignitable or explosive vapor; and

(vi) Provided with an exterior moisture barrier or be otherwise designed or operated to prevent migration of moisture into the vault if the vault is subject to hydraulic pressure.

3. Double-walled tanks must be:

(i) Designed as an integral structure (i.e., an inner tank within an outer shell) so that any release from the inner tank is contained by the outer shell;

(ii) Protected, if constructed of metal, from both corrosion of the primary tank interior and of the outer shell; and

(iii) Provided with a built-in continuous leak detection system capable of detecting a release within 24 hours, or at the earliest practicable time, if the owner or operator can demonstrate to the Department, and the Department concurs, that the existing leak detection technology or site conditions will not allow detection of a release within 24 hours.

[**Note:** The provisions outlined in the Steel Tank Institute's (STI) "Standard for Dual Wall Underground Steel Storage Tank" may be used as guidelines for aspects of the design of underground steel double-walled tanks.]

(f) Ancillary equipment must be provided with full secondary containment (e.g., trench, jacketing, double-walled piping) that meets the requirements of 335-14-6-.10(4)(b) and (c) except for:

1. Aboveground piping (exclusive of flanges, joints, valves, and connections) that is visually inspected for leaks on a daily basis;

2. Welded flanges, welded joints, and welded connections that are visually inspected for leaks on a daily basis;

3. Sealless or magnetic coupling pumps and sealless valves, that are visually inspected for leaks on a daily basis; and

4. Pressurized aboveground piping systems with automatic shut-off devices (e.g., excess flow check valves, flow metering shutdown devices, loss of pressure actuated shut-off devices) that are visually inspected for leaks on a daily basis.

(g) The owner or operator may obtain a variance from the requirements of 335-14-6-.10(4) if the Department finds, as a result of a demonstration by the owner or operator, either: that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous waste or hazardous constituents into the groundwater or surface water at least as effectively as secondary containment during the active life of the tank system or that in the event of a release that does migrate to groundwater or surface water, no substantial present or potential hazard will be posed to human health or the environment. New underground tank systems may not, per a demonstration in accordance with 335-14-6-.10(4)(g)2., be exempted from the secondary containment requirements of 335-14-6-.10(4). Application for a variance as allowed in 335-14-6-.10(4)(g) does not waive compliance with the requirements of rule 335-14-6-.10 for new tank systems.

1. In deciding whether to grant a variance based on a demonstration of equivalent protection of groundwater and surface water, the Department will consider:

(i) The nature and quantity of the waste;

(ii) The proposed alternate design and operation;

(iii) The hydrogeologic setting of the facility, including the thickness of soils between the tank system and groundwater; and

(iv) All other factors that would influence the quality and mobility of the hazardous constituents and the potential for them to migrate to groundwater or surface water.

2. In deciding whether to grant a variance based on a demonstration of no substantial present or potential hazard, the Department will consider:

(i) The potential adverse effects on groundwater, surface water, and land quality taking into account:

(I) The physical and chemical characteristics of the waste in the tank system, including its potential for migration,

(II) The hydrogeological characteristics of the facility and surrounding land,

(III) The potential for health risks caused by human exposure to waste constituents,

(IV) The potential for damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents, and

(V) The persistence and permanence of the potential adverse effects;

(ii) The potential adverse effects of a release on groundwater quality, taking into account:

(I) The quantity and quality of groundwater and the direction of groundwater flow,

(II) The proximity and withdrawal rates of water in the area,

(III) The current and future uses of groundwater in the area, and

(IV) The existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;

(iii) The potential adverse effects of a release on surface water quality, taking into account:

(I) The quantity and quality of groundwater and the direction of groundwater flow,

(II) The patterns of rainfall in the region,

(III) The proximity of the tank system to surface waters,

(IV) The current and future uses of surface waters in the area and any water quality standards established for those surface waters, and

(V) The existing quality of surface water, including other sources of contamination and the cumulative impact on surface-water quality;

(iv) The potential adverse effects of a release on the land surrounding the tank system, taking into account:

(I) The patterns of rainfall in the region, and

(II) The current and future uses of the surrounding land.

3. The owner or operator of a tank system for which a variance from secondary containment had been granted in accordance with the requirements of 335-14-6-.10(4)(g)1., at which a release of hazardous waste has occurred from the primary tank system but has not migrated beyond the zone of engineering control (as established in the variance), must:

(i) Comply with the requirements of 335-14-6-.10(7), except 335-14-6-.10(7)(d); and

(ii) Decontaminate or remove contaminated soil to the extent necessary to:

(I) Enable the tank system, for which the variance was granted, to resume operation with the capability for the detection of releases at least equivalent to the capability it had prior to the release, and

(II) Prevent the migration of hazardous waste or hazardous constituents to groundwater or surface water; and

(iii) If contaminated soil cannot be removed or decontaminated in accordance with 335-14-6-.10(4)(g)3.(ii), comply with the requirements of 335-14-6-.10(8)(b).

4. The owner or operator of a tank system, for which a variance from secondary containment had been granted in accordance with the requirements of 335-14-6-.10(4)(g)1., at which a release of hazardous waste has occurred from the primary tank system and has migrated beyond the zone of engineering control (as established in the variance), must:

(i) Comply with the requirements of 335-14-6-.10(7)(a), (b), (c), and (d);

(ii) Prevent the migration of hazardous waste or hazardous constituents to groundwater or surface water, if possible, and decontaminate or remove contaminated soil. If contaminated soil cannot be decontaminated or removed or if groundwater has been contaminated, the owner or operator must comply with the requirements of 335-14-6-.10(8)(b); and

(iii) If repairing, replacing, or reinstalling the tank system, provide secondary containment in accordance with the requirements of 335-14-6-.10(4)(a) through (f) or reapply for a variance from secondary containment and meet the requirements for new tank systems in 335-14-6-.10(3) if the tank system is replaced. The owner or operator must comply with these requirements even if contaminated soil can be decontaminated or removed and groundwater or surface water has not been contaminated.

(h) The following procedures must be followed in order to request a variance from secondary containment:

1. The Department must be notified in writing by the owner or operator that he intends to conduct and submit a demonstration for a variance from secondary containment as allowed in 335-14-6-.10(4)(g) according to the following schedule:

(i) For existing tank systems, at least 24 months prior to the date that secondary containment must be provided in accordance with 335-14-6-.10(4)(a); and

(ii) For new tank systems, at least 30 days prior to entering into a contract for installation of the tank system.

2. As part of the notification, the owner or operator must also submit to the Department a description of the steps necessary to conduct the demonstration and a timetable for completing each of the steps. The demonstration must address each of the factors listed in 335-14-6-.10(4)(g)1. or (g)2.;

3. The demonstration for a variance must be completed and submitted to the Department within 180 days after notifying the Department of intent to conduct the demonstration; and

4. The Department will inform the public, through a newspaper notice, of the availability of the demonstration for a variance. The notice shall be placed in a daily or weekly major local newspaper of general circulation and shall provide at least 30 days from the date of the notice for the public to review and comment on the demonstration for a variance. The Department also will hold a public hearing, in response to a request or at its own discretion, whenever such a hearing might clarify one or more issues concerning the demonstration for a variance. Public notice of the hearing will be given at least 30 days prior to the date of the hearing and may be given at the same time as notice of the opportunity for the public to review and comment on the demonstration. These two notices may be combined.

5. The Department will approve or disapprove the request for a variance within 90 days of receipt of the demonstration from the owner or operator and will notify in writing the owner or operator and each person who submitted written comments or requested notice of the variance decision. If the demonstration for a variance is incomplete or does not include sufficient information, the 90-day time period will begin when the Department receives a complete demonstration, including all information necessary to make a final determination. If the public comment period in 335-14-6-.10(4)(h)4. is extended, the 90-day time period will be similarly extended.

(i) All tank systems, until such time as secondary containment that meets the requirements of 335-14-6-.10(4) is provided, must comply with the following:

1. For nonenterable underground tanks, a leak test that meets the requirements of 335-14-6-.10(2)(b)5. must be conducted at least annually;

2. For other than non-enterable underground tanks, and for all ancillary equipment, the owner or operator must either conduct a leak test, as described in 335-14-6-.10(4)(i)1., or an internal inspection or other tank integrity examination by a qualified ~~P~~professional ~~E~~engineer that addresses cracks, leaks, and corrosion or erosion at least annually. The owner or operator must remove the stored waste from the tank, if necessary, to allow the condition of all internal tank surfaces to be assessed.

[**Note:** The practices described in the American Petroleum Institute (API) Publication, Guide for Inspection of Refining Equipment, Chapter XIII, "Atmospheric and Low- Pressure Storage Tanks", 4th Edition, 1981, may be used, when applicable, as guidelines for assessing the overall condition of the tank system.]

3. The owner or operator must maintain on file at the facility a record of the results of the assessments conducted in accordance with 335-14-6-.10(4)(i)1. through (i)3.

4. If a tank system or component is found to be leaking or unfit for use as a result of the leak test or assessment in 335-14-6-.10(4)(i)1. through (i)3., the owner or operator must comply with the requirements of 335-14-6-.10(7).

(5) General operating requirements.

(a) Hazardous wastes or treatment reagents must not be placed in a tank system if they could cause the tank, its ancillary equipment, or the secondary containment system to rupture, leak, corrode, or otherwise fail.

(b) The owner or operator must use appropriate controls and practices to prevent spills and overflows from tank or secondary containment systems. These include at a minimum:

1. Spill prevention controls (e.g., check valves, dry disconnect couplings);

2. Overfill prevention controls (e.g., level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standby tank); and

3. Maintenance of sufficient freeboard in uncovered tanks to prevent overtopping by wave or wind action or by precipitation.

(c) The owner or operator must comply with the requirements of 335-14-6-.10(7) if a leak or spill occurs in the tank system.

(6) Inspections.

(a) The owner or operator must inspect, where present, at least once each operating day, data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design.

[**Note:** 335-14-6-.02(6)(c) requires the owner or operator to remedy any deterioration or malfunction he finds. 335-14-6-.10(7) requires the owner or operator to notify the Department and the Regional Administrator within 24 hours of confirming a release. Also, 40 CFR Part 302 may require the owner or operator to notify the National Response Center of a release.]

(b) Except as noted under 335-14-6-.10(6)(c), the owner or operator must inspect at least once each operating day:

1. Overfill/spill control equipment (e.g., waste-feed cutoff systems, bypass systems, and drainage systems) to ensure that it is in good working order;

2. Aboveground portions of the tank system, if any, to detect corrosion or releases of waste; and

3. The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation).

(c) Owners or operators of tank systems that either use leak detection equipment to alert facility personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, must inspect at least weekly those areas described in 335-14-6-.10(6)(b)(1) through (3). Use of the alternate inspection schedule must be documented in the facility's operating record. This documentation must include a description of the established workplace practices at the facility.

(d) Ancillary equipment that is not provided with secondary containment, as described in 335-14-6-.10(4)(f)1. through 4., must be inspected at least once each operating day.

(e) The owner or operator must inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:

1. The proper operation of the cathodic protection system must be confirmed within six months after initial installation and annually thereafter; and

2. All sources of impressed current must be inspected and/or tested, as appropriate, at least bimonthly (i.e., every other month).

[**Note:** The practices described in the National Association of Corrosion Engineers (NACE) standard, "Recommended Practice (RP-02-85) - Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems", and the American Petroleum Institute (API) Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems", may be used, where applicable, as guidelines in maintaining and inspecting cathodic protection systems.]

(f) The owner or operator must document in the operating record of the facility an inspection of those items in 335-14-6-.10(6)(a) through (e).

(7) Response to leaks or spills and disposition of leaking or unfit-for-use tank systems. A tank system or secondary containment system from which there has been a leak or spill, or which is unfit for use, must be removed from service immediately, and the owner or operator must satisfy the following requirements:

(a) Cessation of Use; prevent flow or addition of wastes. The owner or operator must immediately stop the flow of hazardous waste into the tank system or secondary containment system and inspect the system to determine the cause of the release.

(b) Removal of waste from tank system or secondary containment system.

1. If the release was from the tank system, the owner or operator must, within 24 hours after detection of the leak or, if the owner or operator demonstrates that it is not possible, at the earliest practicable time remove as much of the waste as is necessary to prevent further release of hazardous waste to the environment and to allow inspection and repair of the tank system to be performed.

2. If the release was to a secondary containment system, all released materials must be removed within 24 hours or in as timely a manner as is possible to prevent harm to human health and the environment.

(c) Containment of visible releases to the environment. The owner or operator must immediately conduct a visual inspection of the release and, based upon that inspection:

1. Prevent further migration of the leak or spill to soils or surface water; and

2. Remove, and properly dispose of, any visible contamination of the soil or surface water.

(d) Notifications, reports.

1. Any release to the environment, except as provided in 335-14-6-.10(7)(d)2., must be reported to the Department within 24 hours of detection.

Report of a release pursuant to 40 CFR Part 302 does not satisfy this requirement.

2. A leak or spill of hazardous waste that is:

(i) Less than or equal to a quantity of one (1) pound, and

(ii) Immediately contained and cleaned up is exempted from the requirements of 335-14-6-.10(7)(d).

3. Within 30 days of detection of a release to the environment, a report containing the following information must be submitted to the Department:

(i) Likely route of migration of the release;

(ii) Characteristics of the surrounding soil (soil composition, geology, hydrogeology, climate);

(iii) Results of any monitoring or sampling conducted in connection with the release (if available). If sampling or monitoring data relating to the release are not available within 30 days, these data must be submitted to the Department as soon as they become available;

(iv) Proximity to downgradient drinking water, surface water, and populated areas; and

(v) Description of response actions taken or planned.

(e) Provision of secondary containment, repair, or closure.

1. Unless the owner or operator satisfies the requirements of 335-14-6-.10(7)(e)2. through 4., the tank system must be closed in accordance with 335-14-6-.10(8).

2. If the cause of the release was a spill that has not damaged the integrity of the system, the owner/operator may return the system to service as soon as the released waste is removed and repairs, if necessary, are made.

3. If the cause of the release was a leak from the primary tank system into the secondary containment system, the system must be repaired prior to returning the tank system to service.

4. If the source of the release was a leak to the environment from a component of a tank system without secondary containment, the owner or operator must provide the component of the system from which the leak occurred with secondary containment that satisfies the requirements of 335-14-6-.10(4) before it can be returned to service, unless the source of the leak is an aboveground portion of a tank system. If the source is an aboveground component that can be inspected visually, the component must be repaired and may be returned to service without secondary containment as long as the requirements of 335-14-6-.10(7)(f) are satisfied. If a component is replaced to comply with the requirements of 335-14-6-.10(7)(e), that component must satisfy the requirements for new tank systems or components in 335-14-6-.10(3) and 335-14-6-.10(4). Additionally, if a leak has occurred in any portion of a tank system component that is not readily accessible for visual inspection (e.g., the bottom of an inground or onground tank), the entire component must be provided with secondary containment in accordance with 335-14-6-.10(4) prior to being returned to use.

(f) Certification of major repairs. If the owner or operator has repaired a tank system in accordance with 335-14-6-.10(7)(e), and the repair has been extensive (e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner or operator has obtained a certification by a qualified ~~P~~professional ~~E~~engineer in accordance with 335-14-8-.02(2)(d) that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification is to be placed in the operating record and maintained until closure of the facility.

[**Note:** The Department may, on the basis of any information received that there is or has been a release of hazardous waste or hazardous constituents into the environment, issue an order under RCRA Section 3004(v), 3008(h), or 7003(a), or the AHWMMA, respectively, requiring corrective action or such other response as deemed necessary to protect human health or the environment.]

[**Note:** See 335-14-6-.02(6)(c) for the requirements necessary to remedy a failure. Also, 40 CFR Part 302 requires the owner or operator to notify the National Response Center of a release of any "reportable quantity".]

(8) Closure and post-closure care.

(a) At closure of a tank system, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated soils, and structures and equipment contaminated with waste, and manage them as hazardous waste, unless 335-14-2-.01(3)(d) applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for tank systems must meet all of the requirements specified in rules 335-14-6-.07 and 335-14-6-.08. [Generators accumulating hazardous waste in tanks for 90 days or less are not required to provide a closure plan, cost estimate, or financial assurance.]

(b) If the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required in 335-14-6-.10(8)(a), then the owner or operator must close the tank system and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills [335-14-6-.14(11)]. In addition, for the purposes of closure, post-closure, and financial responsibility, such a tank system is then considered to be a landfill, and the owner or operator must meet all of the requirements for landfills specified in rules 335-14-6-.07 and 335-14-6-.08.

(c) [Reserved]

(d) [Reserved]

(e) If an owner or operator has a tank system which does not have secondary containment that meets the requirements of 335-14-6-.10(4)(b) through (f) and which is not exempt from the secondary containment requirements in accordance with 335-14-6-.10(4)(g), then,

1. The closure plan for the tank system must include both a plan for complying with 335-14-6-.10(8)(a) and a contingent plan for complying with 335-14-6-.10(8)(b).

2. A contingent post-closure plan for complying with 335-14-6-.10(8)(b) must be prepared and submitted as part of the permit application.

3. The cost estimates calculated for closure and post-closure care must reflect the costs of complying with the contingent closure plan and the contingent post-closure plan, if these costs are greater than the costs of complying with the closure plan prepared for the expected closure under 335-14-6-.10(8)(a).

4. Financial assurance must be based on the cost estimates in 335-14-6-.10(8)(e)3.

5. For the purposes of the contingent closure and post-closure plans, such a tank system is considered to be a landfill, and the contingent plans must meet all of the closure, post-closure, and financial responsibility requirements for landfills under rules 335-14-6-.07 and 335-14-6-.08.

(9) Special requirements for ignitable or reactive wastes.

(a) Ignitable or reactive waste must not be placed in a tank system, unless:

1. The waste is treated, rendered, or mixed before or immediately after placement in the tank system so that:

(i) The resulting waste, mixture or dissolved material no longer meets the definition of ignitable or reactive waste under 335-14-2-.03(2) or 335-14-2-.03(4); and

(ii) 335-14-6-.02(8)(b) is complied with; or

2. The waste is stored or treated in such a way that it is protected from any material or conditions which may cause the waste to ignite or react; or

3. The tank system is used solely for emergencies.

(b) The owner or operator of a facility where ignitable or reactive waste is stored or treated in tanks must comply with the requirements for the maintenance of protective distances between the waste management area and any public ways, streets, alleys, or an adjoining property line that can be built upon as required in Tables 2-1 through 2-6 of the National Fire Protection Association's "Flammable and Combustible Liquids Code", (1977 or 1981) [incorporated by reference in rule 335-14-1-.02(2)].

(10) Special requirements for incompatible wastes.

(a) Incompatible wastes, or incompatible wastes and materials, must not be placed in the same tank system, unless 335-14-6-.02(8)(b) is complied with.

(b) Hazardous waste must not be placed in a tank system that has not been decontaminated and that previously held an incompatible waste or material, unless 335-14-6-.02(8)(b) is complied with.

(11) Waste analysis and trial tests. In addition to performing the waste analysis required by 335-14-6-.02(4), the owner or operator must, whenever a tank system is to be used to treat chemically or to store a hazardous waste that is substantially different from waste previously treated or stored in that tank system; or treat chemically a hazardous waste with a substantially different process than any previously used in that tank system:

(a) Conduct waste analyses and trial treatment or storage tests (e.g., bench-scale or pilot-plant scale tests); or

(b) Obtain written, documented information on similar waste under similar operating conditions to show that the proposed treatment or storage will meet the requirements of 335-14-6-.10(5)(a).

[**Note:** 335-14-6-.02(4) requires the waste analysis plan to include analyses needed to comply with 335-14-6-.10(9) and 335-14-6-.10(10). 335-14-6-.05(4) requires the owner or operator to place the results from each waste analysis and trial test, or the documented information, in the operating record of the facility.]

(12) Special requirements for Small Quantity Generators that accumulate hazardous waste in tanks.

(a) The requirements of 335-14-6-.10(12) apply to small quantity generators that accumulate hazardous waste in tanks for less than 180 days (or 270 days if the generator must ship the waste greater than 200 miles), and do not accumulate over 6,000 kg on-site at any time.

(b) Small quantity generators must comply with the following general operating requirements:

1. Treatment or storage of hazardous waste in tanks must comply with 335-14-6-.02(8)(b).

2. Hazardous wastes or treatment reagents 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.

3. 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.

4. 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).

[**Note:** These systems are intended to be used in the event of a leak or overflow from the tank due to a system failure (e.g., a malfunction in the treatment process, a crack in the tank, etc.).]

(c) Except as noted in 335-14-6-.10(12)(d), small quantity generators accumulating hazardous waste in tanks must inspect, and document in accordance with rule 335-14-6-.02(6)(d), where present:

1. 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;

2. 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;

3. The level of waste in the tank at least once each operating day to ensure compliance with 335-14-6-.10(12)(b)3.;

4. The construction materials of the tank at least weekly to detect corrosion or leaking of fixtures or seams; and

5. 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).

[**Note:** As required by 335-14-6-.02(6)(c), the owner or operator must remedy any deterioration or malfunction he finds.]

(d) Small quantity generators accumulating hazardous waste in tanks or tank systems that have full secondary containment and that either use leak detection equipment to alert facility 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 335-14-6-.10(12)(c)1. through 5. Use of the alternate inspection schedule must be documented in the facility's operating record. This documentation must include a description of the established workplace practices at the facility.

(e) Small quantity generators accumulating hazardous waste in tanks must, upon closure of the facility, remove all hazardous waste from tanks, discharge control equipment, and discharge confinement structures.

[**Note:** At closure, as throughout the operating period, unless the owner or operator can demonstrate, in accordance with 335-14-2-.01(3)(c) or (d), that any solid waste removed from his tank 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.]

(f) Small quantity generators must comply with the following special requirements for ignitable or reactive waste:

1. Ignitable or reactive waste must not be placed in a tank, unless:

(i) The waste is treated, rendered, or mixed before or immediately after placement in a tank so that:

(I) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under 335-14-2-.03(2) or 335-14-2-.03(4); and

(II) 335-14-6-.02(8)(b) is complied with; or

(ii) The waste is stored or treated in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or

(iii) The tank is used solely for emergencies.

2. The owner or operator of a facility which treats or stores 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 rule 335-14-1-.02(2)].

(g) Small quantity generators must comply with the following special requirements for incompatible wastes:

1. 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.

2. Hazardous waste must not be placed in an unwashed tank which previously held an incompatible waste or material, unless 335-14-6-.02(8)(b) is complied with.

(13) Air emission standards. The owner or operator shall manage all hazardous waste placed in a tank(s) in accordance with the applicable requirements of 335-14-6-.27, 335-14-6-.28, and 335-14-6-.29.

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335-14-6-.14 Landfills.

(1) Applicability.

The requirements of 335-14-6-.14 apply to owners and operators of facilities that dispose of hazardous waste in landfills, except as 335-14-6-.01(1) provides otherwise. A waste pile used as a disposal facility is a landfill and is governed by 335-14-6-.14.

(2) Design and operating requirements.

(a) The owner or operator of each new landfill unit, each lateral expansion of a landfill unit, and each replacement of an existing landfill unit, must install two or more liners and a leachate collection and removal system above and between such liners, and operate the leachate collection and removal system, in accordance with 335-14-5-.14(2)(b).

(b) The owner or operator of each unit referred to in 335-14-6-.14(2)(a) must notify the Department at least sixty days prior to receiving waste. The owner or operator of each facility submitting notice must file a Part B application within six months of the receipt of such notice.

(c) The owner or operator of any replacement landfill unit is exempt from 335-14-6-.14(2)(a) if:

1. The existing unit was constructed in compliance with the design standards of section 3004(o)(1)(A)(i) and (o)(5) of the Resource Conservation and Recovery Act and AHWMMA; and

2. There is no reason to believe that the liner is not functioning as designed.

(d) [Reserved]

(e) In the case of any unit in which the liner and leachate collection system has been installed pursuant to the requirements of 335-14-6-.14(2)(a) and in good faith compliance with 335-14-6-.14(2)(a) and with guidance documents governing liners and leachate collection systems under 335-14-6-.14(2)(a), no liner or leachate collection system which is different from that which was so installed pursuant to 335-14-6-.14(2)(a) will be required for such unit by the Department when issuing the first permit to such facility, except that the Department will not be precluded from requiring installation of a new liner when the Department has reason to believe that any liner installed pursuant to the requirements of 335-14-6-.14(2)(a) is leaking.

(f) The owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the landfill during peak discharge from at least a 25-year storm.

(g) The owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(h) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

(i) The owner or operator of a landfill containing hazardous waste which is subject to dispersal by wind must cover or otherwise manage the landfill so that wind dispersal of the hazardous waste is controlled.

(3) Action leakage rate.

(a) The owner or operator of landfill units subject to 335-14-6-.14(2)(a) must submit a proposed action leakage rate to the Director when submitting the notice required under 335-14-6-.14(2)(b). Within 60 days of receipt of the notification, the Director will: establish an action leakage rate either as proposed by the owner or operator or modified using the criteria in 335-14-6-.14(3); or extend the review period for up to 30 days. If no action is taken by the Director before the original 60 or extended 90 day review periods, the action leakage rate will be approved as proposed by the owner or operator.

(b) The Director shall approve an action leakage rate for landfill units subject to 335-14-6-.14(2)(a). The action leakage rate is the maximum design flow rate that the leak detection system (LDS) can remove without the fluid head on the bottom liner exceeding one foot. The action leakage rate must include an adequate safety margin to allow for uncertainties in the design (e.g. slope, hydraulic conductivity, thickness of drainage material), construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions (e.g., the action leakage rate must consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.).

(c) To determine if the action leakage rate has been exceeded, the owner or operator must convert the weekly or monthly flow rate from the monitoring data obtained under 335-14-6-.14(5) to an average daily flow rate (gallons per acre per day) for each sump. Unless the Director approves a different calculation, the average daily flow rate for each sump must be calculated weekly during the active life and closure period, and monthly during the post-closure period when monthly monitoring is required under 335-14-6-.14(5)(b).

(4) Response actions.

(a) The owner or operator of landfill units subject to 335-14-6-.14(2)(a) must develop and keep on-site until closure of the facility a response action plan. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in 335-14-6-.14(4)(b).

(b) If the flow rate into the leak detection system exceeds the action leakage rate for any sump, the owner or operator must:

1. Notify the Director in writing of the exceedance within seven days of the determination;

2. Submit a preliminary written assessment to the Director within 14 days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;

3. Determine to the extent practicable the location, size, and cause of any leak;

4. Determine whether waste receipt should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;

5. Determine any other short-term and longer-term actions to be taken to mitigate or stop any leaks; and

6. Within 30 days after the notification that the action leakage rate has been exceeded, submit to the Director the results of the analyses specified in 335-14-6-.14(4)(b)3., 4., and 5., the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator must submit to the Director a report summarizing the results of any remedial actions taken and actions planned.

(c) To make the leak and/or remediation determinations in 335-14-6-.14(4)(b)3., 4., and 5., the owner or operator must:

1. (i) Assess the source of liquids and amounts of liquids by source,

(ii) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the leak detection system to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and

(iii) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

2. Document why such assessments are not needed.

(5) Monitoring and inspection.

(a) An owner or operator required to have a leak detection system under 335-14-6-.14(2)(a) must record the amount of liquids removed from each leak detection system sump at least once each week during the active life and closure period.

(b) After the final cover is installed, the amount of liquids removed from each leak detection system sump must be recorded at least monthly. If the liquid level in the sump stays below the pump operating level for two consecutive months, the amount of liquids in the sumps must be recorded at least quarterly. If the liquid level in the sump stays below the pump operating level for two consecutive quarters, the amount of liquids in the sumps must be recorded at least semi-annually. If at any time during the post-closure care period the pump operating level is exceeded at units on quarterly or semi-annual recording schedules, the owner or operator must return to monthly recording of amounts of liquids removed from each sump until the liquid level again stays below the pump operating level for two consecutive months.

(c) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the Director based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump. The timing for submission and approval of the proposed "pump operating level" will be in accordance with 335-14-6-.14(3)(a).

(6) [Reserved]

(7) [Reserved]

(8) [Reserved]

(9) [Reserved]

(10) Surveying and recordkeeping.

The owner or operator of a landfill must maintain the following items in the operating record required in 335-14-6-.05(4):

(a) On a map, the exact location and dimensions, including depth, of each cell with respect to permanently surveyed benchmarks; and

(b) The contents of each cell and the approximate location of each hazardous waste type within each cell.

(11) Closure and post-closure care.

(a) At final closure of the landfill or upon closure of any cell, the owner or operator must cover the landfill or cell with a final cover designed and constructed to:

1. Provide long-term minimization of migration of liquids through the closed landfill;

2. Function with minimum maintenance;

3. Promote drainage and minimize erosion or abrasion of the cover;

4. Accommodate settling and subsidence so that the cover's integrity is maintained; and

5. Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

(b) To meet the requirements in rule 335-14-6-.14(11)(a), the final cover system must contain (as a minimum):

1. A vegetated top cover. The top cover must:

(i) Be at least 24 inches thick;

(ii) Support vegetation that will effectively minimize erosion;

(iii) Have a final top slope between three and five percent;

(iv) Have a final side slope which does not exceed 25 percent; and

(v) Have a surface drainage system capable of conducting run-off across the cap without erosion occurring.

2. Drainage layer. The drainage layer must:

(i) Be at least 12 inches thick with a saturated hydraulic conductivity not less than 10^{-3} cm/sec;

(ii) Have a final bottom slope of at least two percent;

(iii) Be overlain by a graded granular or synthetic fabric filter to prevent clogging;

(iv) Be designed so that discharge flows freely in the lateral direction to minimize the head on the low permeability layer.

3. Low Permeability Layer. The low permeability layer must consist of two components, a synthetic liner and a compacted soil liner.

(i) The synthetic liner component must:

(I) Consist of at least a 20 mil synthetic membrane;

(II) Be protected from damage above the membrane by at least six inches of bedding material;

(III) Have a final upper slope of at least two percent;

(IV) Be located wholly below the average frost penetration;

(V) Lay directly on the compacted soil liner;

(ii) The compacted soil component must:

(I) Have 24 inches of soil recompacted to a saturated hydraulic conductivity of not more than 10^{-7} cm/sec;

(II) Have the soil emplaced in lifts not exceeding six inches before compaction to maximize the effectiveness of compaction.

(c) If the owner or operator can demonstrate to the satisfaction of the Department that an alternative cover system meets or exceeds the performance standards set forth in rule 335-14-6-.14(11)(a) and (b), the alternative final cover system may be used.

(d) After final closure, the owner or operator must comply with all post-closure requirements contained in 335-14-6-.07(8) through (11) including maintenance and monitoring throughout the post-closure care period. The owner or operator must:

1. Maintain the integrity and effectiveness of the final cover, including making repairs to the cover as necessary to correct the effects of settling, subsidence, erosion or other events;

2. Continue to operate the leachate collection and removal systems until leachate is no longer detected;

3. Maintain and monitor the leak detection system in accordance with 335-14-5-.14(2)(b)3.(iv), (2)(b)4., and 335-14-6-.14(5)(b), and comply with all other applicable leak detection system requirements of 335-14-6;

4. Maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of rule 335-14-6-.06;

5. Prevent run-on and run-off from eroding or otherwise damaging the final cover; and

6. Protect and maintain surveyed benchmarks used in complying with 335-14-6-.14(10).

7. The owner or operator must visually inspect the final cover to identify evidence of settling, subsidence, erosion, or other events expected to limit the integrity or effectiveness. These inspections must be documented in an inspection log, as required by rule 335-14-6-.02(6)(d). These inspections must be performed at least weekly.

(12) [Reserved]

(13) Special requirements for ignitable or reactive waste.

(a) Except as provided in 335-14-6-.14(13)(b), and in 335-14-6-.14(17), ignitable or reactive waste must not be placed in a landfill, unless the waste and landfill meet all applicable requirements of Chapter 335-14-9, and:

1. The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under 335-14-2-.03(2) or (4); and

2. 335-14-6-.02(8)(b) is complied with.

(b) Except for prohibited wastes which remain subject to treatment standards in rule 335-14-9-.04, ignitable wastes in containers may be landfilled without meeting the requirements of 335-14-6-.14(13)(a) provided that the wastes are disposed of in such a way that they are protected from any material or conditions which may cause them to ignite. At a minimum, ignitable wastes must be disposed of in non-leaking containers which are carefully handled and placed so as to avoid heat, sparks, rupture or any other condition that might cause ignition of the wastes; must be covered daily with soil or other non-combustible material to minimize the potential for ignition of the wastes; and must not be disposed of in cells that contain or will contain other wastes which may generate heat sufficient to cause ignition of the waste.

(14) Special requirements for incompatible wastes.

Incompatible wastes, or incompatible wastes and materials, (see 335-14-6-Appendix V for examples) must not be placed in the same landfill cell, unless 335-14-6-.02(8)(b) is complied with.

(15) Special requirements for bulk and containerized liquids.

~~(a) [Reserved]~~

(~~b~~a) 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~~b) Containers holding free liquids must not be placed in a landfill unless:

1. All free standing liquid:

(i) Has been removed by decanting or other methods;

(ii) Has been mixed with sorbent or solidified so that free-standing liquid is no longer observed; or

(iii) Has been otherwise eliminated; or

2. The container is very small, such as an ampule; or

3. The container is designed to hold free liquids for use other than storage, such as a battery or capacitor; or

4. The container is a lab pack as defined in 335-14-6-.14(17) and is disposed of in accordance with 335-14-6-.14(17).

(~~d~~c) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test must be used: Method 9095B (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in rule 335-14-1-.02(2).

(~~e~~d) [Reserved]

(~~f~~e) Sorbents used to treat free liquids to be disposed of in landfills must be nonbiodegradable. Nonbiodegradable sorbents are: materials listed or described in 335-14-6-.14(15)(f)1.; materials that pass one of the tests in 335-14-6-.14(15)(f)2.; or materials that are determined by the Department to be nonbiodegradable through the rule 335-14-1-.03 petition process.

1. Nonbiodegradable sorbents.

(i) Inorganic minerals, other inorganic materials, and elemental carbon (e.g., aluminosilicates, clays, smectites, Fuller's earth, bentonite, calcium bentonite, montmorillonite, calcined montmorillonite, kaolinite, micas (illite), vermiculites, zeolites; calcium carbonate (organic free limestone); oxides/hydroxides, alumina, lime, silica (sand), diatomaceous earth; perlite (volcanic glass); expanded volcanic rock; volcanic ash; cement kiln dust; fly ash; rice hull ash; activated charcoal/activated carbon); or

(ii) High molecular weight synthetic polymers (e.g., polyethylene, high density polyethylene (HDPE), polypropylene, polystyrene, polyurethane, polyacrylate, polynorborene, polyisobutylene, ground synthetic rubber, cross-linked allylstyrene and tertiary butyl copolymers). This does not include polymers derived from biological material or polymers specifically designed to be degradable; or

(iii) Mixtures of these nonbiodegradable materials.

2. Tests for nonbiodegradable sorbents.

(i) The sorbent material is determined to be nonbiodegradable under ASTM Method G21-70 (1984a)--Standard Practice for Determining Resistance of Synthetic Polymer Materials to Fungi; or

(ii) The sorbent material is determined to be nonbiodegradable under ASTM Method G22-76 (1984b)--Standard Practice for Determining Resistance of Plastics to Bacteria; or

(iii) The sorbent material is determined to be non-biodegradable under OECD test 301B: [CO_2 Evolution (Modified Sturm Test)].

(~~g~~f) The placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the Department, or the Department determines that:

1. The only reasonably available alternative to the placement in such landfill is placement in a landfill or unlined surface impoundment, whether or not permitted or operating under interim status, which contains, or may reasonably be anticipated to contain, hazardous waste; and

2. Placement in such owner or operator's landfill will not present a risk of contamination of any "underground source of drinking water" (as that term is defined in 335-14-1-.02).

(16) Special requirements for containers.

Unless they are very small, such as an ampule, containers must be either:

(a) At least 90 percent full when placed in the landfill; or

(b) Crushed, shredded, or similarly reduced in volume to the maximum practical extent before burial in the landfill.

(17) Disposal of small containers of hazardous waste in overpacked drums (lab packs). Small containers of hazardous waste in overpacked drums (lab packs) may be placed in a landfill if the following requirements are met:

(a) Hazardous waste must be packaged in non-leaking inside containers. The inside containers must be of a design and constructed of a material that will not react dangerously with, be decomposed by, or be ignited by the waste held therein. Inside containers must be tightly and securely sealed. The inside containers must be of the size and type specified in the Department of Transportation (DOT) hazardous materials regulations (49 CFR Parts 173, 178 and 179), if those regulations specify a particular inside container for the waste;

(b) The inside containers must be overpacked in an open head DOT-specification metal shipping container (49 CFR Parts 178 and 179) of no more than 416 liter (110 gallon) capacity and surrounded by, at a minimum, a sufficient quantity of sorbent material, determined to be nonbiodegradable in accordance with 335-14-6-.14(15)(f), to completely sorb all of the liquid contents of the inside containers. The metal outer container must be full after packing with inside containers and sorbent material;

(c) The sorbent material used must not be capable of reacting dangerously with, being decomposed by, or being ignited by the contents of the inside containers, in accordance with 335-14-6-.02(8)(b);

(d) Incompatible wastes, as defined in 335-14-1-.02, must not be placed in the same outside container; and

(e) Reactive wastes, other than cyanide- or sulfide-bearing waste as defined in 335-14-2-.03(4)(a)5., must be treated or rendered non-reactive prior to packaging in accordance with 335-14-6-.14(17)(a) through (d). Cyanide- and sulfide-bearing reactive waste may be packaged in accordance with

335-14-6-.14(17)(a) through (d) without first being treated or rendered non-reactive.

(f) Such disposal is in compliance with the requirements of Chapter 335-14-9. Persons who incinerate lab packs according to the requirements in 335-14-9-.04(3) may use fiber drums in place of metal outer containers. Such fiber drums must meet the DOT specifications in 49 CFR 173.12 and be overpacked according to the requirements in 335-14-6-.14(17)(b).

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335-14-6-.23 Drip pads.

(1) Applicability.

(a) The requirements of 335-14-6-.23 apply to owners and operators of facilities that use new or existing drip pads to convey treated wood drippage, precipitation, and/or surface water run-off to an associated collection system. Existing drip pads are those constructed before December 6, 1990 and those for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to December 6, 1990. All other drip pads are new drip pads. The requirement of 335-14-6-.23(4)(b)3. to install a leak collection system applies only to those drip pads that are constructed after December 24, 1992 except for those constructed after December 24, 1992 for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to December 24, 1992.

(b) The owner or operator of any drip pad that is inside or under a structure that provides protection from precipitation so that neither run-off nor run-on is generated is not subject to regulation under 335-14-6-.23(4)(e) or 335-14-6-.23(4)(f), as appropriate.

(c) The requirements of 335-14-6-.23 are not applicable to the management of infrequent and incidental drippage in storage yards provided that:

1. The owner or operator maintains and complies with a written contingency plan that describes how the owner or operator will respond immediately to the discharge of such infrequent and incidental drippage. At a minimum, the contingency plan must describe how the facility will do the following:

(i) Clean up the drippage;

(ii) Document the cleanup of the drippage;

(iii) Retain documents regarding cleanup for three years; and

(iv) Manage the contaminated media in a manner consistent with State of Alabama regulations.

2. [Reserved]

(2) Assessment of existing drip pad integrity.

(a) For each existing drip pad as defined in 335-14-6-.23(1), the owner or operator must evaluate the drip pad and determine that it meets all of the requirements of 335-14-6-.23, except the requirements for liners and leak detection systems of 335-14-6-.23(4)(b). No later than the effective date of 335-14-6-.23, the owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by a qualified ~~P~~professional ~~E~~engineer that attests to the results of the evaluation. The

assessment must be reviewed, updated and re-certified annually until all upgrades, repairs, or modifications necessary to achieve compliance with all of the standards of 335-14-6-.23(4) are complete. The evaluation must document the extent to which the drip pad meets each of the design and operating standards of 335-14-6-.23(4), except the standards for liners and leak detection systems, specified in 335-14-6-.23(4)(b).

(b) The owner or operator must develop a written plan for upgrading, repairing, and modifying the drip pad to meet the requirements of 335-14-6-.23(4)(b) and submit the plan to the Department no later than two years before the date that all repairs, upgrades, and modifications are complete. This written plan must describe all changes to be made to the drip pad in sufficient detail to document compliance with all the requirements of 335-14-6-.23(4). The plan must be reviewed and certified by a qualified ~~P~~professional ~~E~~engineer.

(c) Upon completion of all repairs and modifications, the owner or operator must submit to the Department, the as-built drawings for the drip pad together with a certification by a qualified ~~P~~professional ~~E~~engineer attesting that the drip pad conforms to the drawings.

(d) If the drip pad is found to be leaking or unfit for use, the owner or operator must comply with the provisions of 335-14-6-.23(4)(m) or close the drip pad in accordance with 335-14-6-.23(6).

(3) Design and installation of new drip pads.

Owners and operators of new drip pads must ensure that the pads are designed, installed, and operated in accordance with one of the following:

(a) All of the applicable requirements of 335-14-6-.23(4) [except 335-14-6-.23(4)(a)4.], (5), and (6) or

(b) All of the applicable requirements of 335-14-6-.23(4) [except 335-14-6-.23(4)(b)], (5), and (6).

(4) Design and operating requirements.

(a) Drip pads must:

1. Be constructed of non-earthen materials, excluding wood and non-structurally supported asphalt;

2. Be sloped to free-drain treated wood drippage, rain and other waters, or solutions of drippage and water or other wastes to the associated collection system;

3. Have a curb or berm around the perimeter;

4. (i) Have a hydraulic conductivity of less than or equal to 1×10^{-7} cm/sec, e.g., existing concrete drip pads must be sealed, coated, or covered

with a surface material with a hydraulic conductivity of less than or equal to 1 x 10^{-7} cm/sec such that the entire surface where drippage occurs or may run across is capable of containing such drippage and mixtures of drippage and precipitation, materials, or other wastes while being routed to an associated collection system. This surface material must be maintained free of cracks and gaps that could adversely affect its hydraulic conductivity, and the material must be chemically compatible with the preservatives that contact the drip pad. The requirements of this provision apply only to existing drip pads and those drip pads for which the owner or operator elects to comply with 335-14-6-.23(3)(b) instead of 335-14-6-.23(3)(a).

(ii) The owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by a qualified ~~P~~professional ~~E~~engineer that attests to the results of the evaluation. The assessment must be reviewed, updated and recertified annually. The evaluation must document the extent to which the drip pad meets the design and operating standards of 335-14-6-.23(4), except for 335-14-6-.23(4)(b).

5. Be of sufficient structural strength and thickness to prevent failure due to physical contact, climatic conditions, the stress of installation, and the stress of daily operations; e.g., variable and moving loads such as vehicle traffic, movement of wood, etc.

[**Note:** ADEM will generally consider applicable standards established by professional organizations generally recognized by industry such as the American Concrete Institute (ACI) or the American Society of Testing Materials (ASTM) in judging the structural integrity requirements of 335-14-6-.23(4)(a).]

(b) If an owner/operator elects to comply with 335-14-6-.23(3)(a) instead of 335-14-6-.23(3)(b), the drip pad must have:

1. A synthetic liner installed below the drip pad that is designed, constructed, and installed to prevent leakage from the drip pad into the adjacent subsurface soil or groundwater or surface water at any time during the active life (including the closure period) of the drip pad. The liner must be constructed of materials that will prevent waste from being absorbed into the liner and prevent releases into the adjacent subsurface soil or groundwater or surface water during the active life of the facility. The liner must be:

(i) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or drip pad leakage to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation (including stresses from vehicular traffic on the drip pad);

(ii) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression or uplift; and

(iii) Installed to cover all surrounding earth that could come in contact with the waste or leakage; and

2. A leakage detection system immediately above the liner that is designed, constructed, maintained, and operated to detect leakage from the drip pad. The leakage detection system must be:

(i) Constructed of materials that are:

(I) Chemically resistant to the waste managed in the drip pad and the leakage that might be generated; and

(II) Of sufficient strength and thickness to prevent collapse under the pressures exerted by overlaying materials and by any equipment used at the drip pad; and

(ii) Designed and operated to function without clogging through the scheduled closure of the drip pad.

(iii) Designed so that it will detect the failure of the drip pad or the presence of a release of hazardous waste or accumulated liquid at the earliest practicable time.

3. A leakage collection system immediately above the liner that is designed, constructed, maintained and operated to collect leakage from the drip pad such that it can be removed from below the drip pad. The date, time, and quantity of any leakage collected in this system and removed must be documented in the operating log.

(c) Drip pads must be maintained such that they remain free of cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the drip pad.

[**Note:** See 335-14-6-.23(4)(m) for remedial action required if deterioration or leakage is detected.]

(d) The drip pad and associated collection system must be designed and operated to convey, drain, and collect liquid resulting from drippage or precipitation in order to prevent run-off.

(e) Unless protected by a structure, as described in 335-14-6-.23(1)(b), the owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the drip pad during peak discharge from at least a 24-hour, 25-year storm, unless the system has sufficient excess capacity to contain any run-on that might enter the system.

(f) Unless protected by a structure or cover, as described in 335-14-6-.23(1)(b), the owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(g) The drip pad must be evaluated to determine that it meets the requirements of 335-14-6-.23(4)(a) through (f), and the owner or operator must obtain a statement from a qualified ~~P~~professional ~~E~~engineer certifying that the drip pad design meets the requirements of 335-14-6-.23(4).

(h) Drippage and accumulated precipitation must be removed from the associated collection system as necessary to prevent overflow onto the drip pad.

(i) The drip pad surface must be cleaned thoroughly in a manner and frequency such that accumulated residues or hazardous waste or other materials are removed, with residues being properly managed as hazardous waste, so as to allow weekly inspections of the entire drip pad surface without interference or hindrance from accumulated residues of hazardous waste or other materials on the drip pad. The owner or operator must document the date and time of each cleaning and the cleaning procedure used in the facility's operating log.

(j) Drip pads must be operated and maintained in a manner to minimize tracking of hazardous waste or hazardous waste constituents off the drip pad as a result of activities by personnel or equipment.

(k) After being removed from the treatment vessel, treated wood from pressure and non-pressure processes must be held on the drip pad until drippage has ceased. The owner or operator must maintain records sufficient to document that all treated wood is held on the pad following treatment in accordance with this requirement.

(l) Collection and holding units associated with run-on and run-off control systems must be emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system.

(m) Throughout the active life of the drip pad, if the owner or operator detects a condition that may have caused or has caused a release of hazardous waste, the condition must be repaired within a reasonably prompt period of time following discovery, in accordance with the following procedures:

1. Upon detection of a condition that may have caused or has caused a release of hazardous waste (e.g. upon detection of leakage by the leak detection system), the owner or operator must:

(i) Enter a record of the discovery in the facility operating log;

(ii) Immediately remove the portion of the drip pad affected by the condition from service;

(iii) Determine what steps must be taken to repair the drip pad, remove any leakage from below the drip pad, and establish a schedule for accomplishing the clean-up and repairs;

(iv) Within 24 hours after discovery of the condition, notify the Department of the condition and within 10 working days, provide written notice

to the Department with a description of the steps that will be taken to repair the drip pad and clean up any leakage and the schedule for accomplishing this work.

2. The Department will review the information submitted, make a determination regarding whether the pad must be removed from service completely or partially until repairs and clean-up are complete, and notify the owner or operator of the determination and the underlying rationale in writing.

3. Upon completing all repairs and clean up, the owner or operator must notify the Department in writing and provide a certification, signed by an independent, qualified registered professional engineer, that the repairs and clean–up have been completed according to the written plan submitted in accordance with 335-14-6-.23(4)(m)1.(iv).

(n) The owner or operator must maintain, as part of the facility operating log, documentation of past operating and waste handling practices. This must include identification of preservative formulations used in the past, a description of drippage management practices, and a description of treated wood storage and handling practices.

(5) Inspections.

(a) During construction or installation, liners and cover systems (e.g., membranes, sheets, or coatings) must be inspected for uniformity, damage, and imperfections (e.g., holes, cracks, thin spots, or foreign materials). Immediately after construction or installation, liners must be inspected and certified as meeting the requirements of 335-14-6-.23(4) by a qualified ~~P~~professional ~~E~~engineer. The certification must be maintained at the facility as part of the facility operating record. After installation, liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.

(b) While a drip pad is in operation, it must be inspected weekly and after storms to detect evidence of any of the following:

1. Deterioration, malfunctions, or improper operation of run-on and run-off control systems;

2. The presence of leakage in and proper functioning of leak detection system;

3. Deterioration or cracking of the drip pad surface.

[**Note:** See 335-14-6-.23(4)(m) for remedial action required if deterioration or leakage is detected.]

(c) For inspections performed pursuant to rule 335-14-6-.23(5)(b), the owner or operator must record inspections in an inspection log or summary and 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.

(6) Closure.

(a) At closure, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (pad, liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leakage, and manage them as hazardous waste.

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in 335-14-6-.23(6)(a), the owner or operator finds that not all contaminated subsoils can be practically removed or decontaminated, he must close the facility and perform post-closure care in accordance with closure and post-closure care requirements that apply to landfills [335-14-6-.14(11)]. For permitted units, the requirement to have a permit continues throughout the post-closure period.

(c) [Reserved]

(d) [Reserved]

(e) 1. The owner or operator of an existing drip pad, as defined in 335-14-6-.23(1), that does not comply with the liner requirements of 335-14-6-.23(4)(b)1. must:

(i) Include in the closure plan for the drip pad under 335-14-6-.07(3) both a plan for complying with 335-14-6-.23(6)(a) and a contingent plan for complying with 335-14-6-.23(6)(b) in case not all contaminated subsoils can be practicably removed at closure; and

(ii) Prepare a contingent post-closure plan under 335-14-6-.07(9) for complying with 335-14-6-.23(6)(b) in case not all contaminated subsoils can be practicably removed at closure.

2. The cost estimates calculated under 335-14-6-.07(3) and 335-14-6.-08(5) for closure and post-closure care of a drip pad subject to 335-14-6-.23(6)(e) must include the cost of complying with the contingent closure plan and the contingent post-closure plan, but are not required to include the cost of expected closure under 335-14-6-.23(6)(a).

Author: Stephen C. Maurer; C. Edwin Johnston; Michael B. Champion; Bradley N. Curvin; Jonah Harris; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, §§ 22-30-11 and 22-30-16.
History: January 25, 1992.
Amended: January 1, 1993; January 5, 1995; April 2, 1999; April 13, 2001; March 15, 2002; April 17, 2003; May 27, 2004; April 4, 2006; April 3, 2007; April 3, 2012; XXXXX, XXXX.

335-14-6-.27 Subpart AA - Air Emission Standards for Process Vents.

The Environmental Protection Agency Regulations set forth in 40 CFR, Part 265, Subpart AA (as published by EPA on June 21, 1990 and as amended on April 26, 1991; December 6, 1994; February 9, 1996; November 25, 1996; June 13, 1997; October 8, 1997; December 8, 1997; June 14, 2005; and July 14, 2006), are 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) § 265.1030 Applicability.~~

~~(2) § 265.1031 Definitions.~~

~~(3) § 265.1032 Standards: Process vents.~~

~~(4) § 265.1033 Standards: Closed vent systems and control devices.~~

~~(5) § 265.1034 Test methods and procedures.~~

~~(6) § 265.1035 Recordkeeping requirements.~~

~~(7) through (20) §§ 265.1036 - 264.1049 [Reserved].~~

Author: Stephen C. Maurer; C. Edwin Johnston; Bradley N. Curvin; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, §§ 22-30-11 and 22-30-16.
History: January 25, 1992.
Amended: January 1, 1993; January 5, 1995; January 12, 1996; March 27, 1998; April 2, 1999; April 13, 2001; March 31, 2005; April 4, 2006; XXXXX, XXXX.

335-14-6-.28 Subpart BB - Air Emission Standards for Equipment Leaks.

The Environmental Protection Agency Regulations, as set forth in 40 CFR, Part 265, 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; and July 14, 2006), are 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) § 265.1050 Applicability.~~

~~(2) § 265.1051 Definitions.~~

~~(3) § 265.1052 Standards: Pumps in light liquid service.~~

~~(4) § 265.1053 Standards: Compressors.~~

~~(5) § 265.1054 Standards: Pressure relief devices in gas/vapor service.~~

~~(6) § 265.1055 Standards: Sampling connecting systems.~~

~~(7) § 265.1056 Standards: Open ended valves or lines.~~

~~(8) § 265.1057 Standards: Valves in gas/vapor service or in light liquid service.~~

~~(9) § 265.1058 Standards: Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors.~~

~~(10) § 265.1059 Standards: Delay of repair.~~

~~(11) § 265.1060 Standards: Closed vent systems and control devices.~~

~~(12) § 265.1061 Alternative standards for valves in gas/vapor service or in light liquid service: percentage of valves allowed to leak.~~

~~(13) § 265.1062 Alternative standards for valves in gas/vapor service or in light liquid service: skip period leak detection and repair.~~

~~(14) § 265.1063 Test methods and procedures.~~

~~(15) § 265.1064 Recordkeeping requirements.~~

~~(16) through (31) §§ 265.1066 - 265.1079 [Reserved].~~

Author: Stephen C. Maurer; C. Edwin Johnston; Bradley N. Curvin; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, §§ 22-30-11 and 22-30-16.
History: January 25, 1992.
Amended: January 1, 1993; January 5, 1995; January 12, 1996; March 27, 1998; April 2, 1999; April 13, 2001; March 31, 2005; April 4, 2006, XXXXX, XXXX.

335-14-6-.29 Subpart CC - Air Emission Standards for Tanks, Surface Impoundments, and Containers.

The Environmental Protection Agency Regulations, as set forth in 40 CFR, Part 265, Subpart CC (as published by EPA on December 6, 1994 and as amended on February 9, 1996; November 25, 1996; December 8, 1997; January 21, 1999; June 14, 2005; and July 14, 2006), are incorporated herein by reference.

In the event that any Code of Federal Regulations Rule(s) incorporated herein by reference refers to or cites another Code of Federal Regulations Rule(s), other than 40 CFR Part 265, Subpart CC, such reference to the other Code of Federal Regulations Rule(s) is not incorporated in this ADEM Administrative Code and the ADEM Administrative Code rule specifically addressing said issue or circumstance shall take precedence, be applicable and govern. Any provision of 40 CFR Part 265, Subpart CC, which is inconsistent with the provisions of ADEM Administrative Code, Division 14, is not incorporated herein by reference.

The materials incorporated by reference are available for purchase and inspection at the Department's offices at 1400 Coliseum Boulevard, Montgomery, Alabama 36110~~-2059~~.

~~(1) § 265.1080 Applicability.~~

~~(2) § 265.1081 Definitions.~~

~~(3) § 265.1082 Schedule for implementation of air emission standards.~~

~~(4) § 265.1083 Standards: General.~~

~~(5) § 265.1084 Waste determination procedures.~~

~~(6) § 265.1085 Standards: Tanks.~~

~~(7) § 265.1086 Standards: Surface impoundments.~~

~~(8) § 265.1087 Standards: Containers.~~

~~(9) § 265.1088 Standards: Closed vent systems and control devices.~~

~~(10) § 265.1089 Inspection and monitoring requirements.~~

~~(11) § 265.1090 Recordkeeping requirements.~~

~~(12) § 265.1091 [Reserved].~~

Author: C. Edwin Johnston; Bradley N. Curvin; Vernon H. Crockett.
Statutory Authority: Code of Alabama, 1975, §§ 22-30-11 and 22-30-16.
History: March 27, 1998.
Amended: April 2, 1999; March 31, 2000; April 13, 2001; March 31, 2005; April 4, 2006; XXXXX, XXXX.

335-14-6-.30 Containment Buildings.

(1) Applicability. The requirements of 335-14-6-.30 apply to owners or operators who store or treat hazardous waste in units designed and operated under 335-14-6-.30(2). The owner or operator is not subject to the definition of land disposal in ~~335-14-1~~RCRA Section 3004(k) provided that the unit:

(a) Is a completely enclosed, self-supporting structure that is designed and constructed of manmade materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the unit; and to prevent failure due to pressure gradients, settlement, compression, or uplift, physical contact with the hazardous wastes to which they are exposed, climatic conditions, and the stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls;

(b) Has a primary barrier that is designed to be sufficiently durable to withstand the movement of personnel and handling equipment within the unit;

(c) If the unit is used to manage liquids, has:

1. A primary barrier designed and constructed of materials to prevent migration of hazardous constituents into the barrier;

2. A liquid collection system designed and constructed of materials to minimize the accumulation of liquid on the primary barrier; and

3. A secondary containment system designed and constructed of materials to prevent migration of hazardous constituents into the barrier, with a leak detection and liquid collection system capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest possible time, unless the unit has been granted a variance from the secondary containment system requirement under 335-14-6-.30(2)(b)4.

(d) Has controls sufficient to prevent fugitive dust emissions in order to meet the no-visible-emission standard in 335-14-6-.30(2)(c)1.(iv); and

(e) Is designed and operated to ensure containment and prevent the tracking of materials from the unit by personnel or equipment.

(2) Design and operating standards.

(a) All containment buildings must comply with the following design standards:

1. The containment building must be completely enclosed with a floor, walls, and a roof to prevent exposure to the elements, (e.g., precipitation, wind, run-on), and to assure containment of managed wastes.

2. The floor and containment walls of the unit, including the secondary containment system if required under 335-14-6-.30(2)(b), must be

designed and constructed of materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the unit; and to prevent failure due to pressure gradients, settlement, compression, or uplift, physical contact with the hazardous wastes to which they are exposed; climatic conditions; and the stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls. The unit must be designed so that it has sufficient structural strength to prevent collapse or other failure. All surfaces to be in contact with hazardous wastes must be chemically compatible with those wastes. The Department will consider standards established by professional organizations generally recognized by the industry such as the American Concrete Institute (ACI) and the American Society of Testing Materials (ASTM) in judging the structural integrity requirements of 335-14-6-.30(2). If appropriate to the nature of the waste management operation to take place in the unit, an exception to the structural strength requirement may be made for light-weight doors and windows that met these criteria;

(i) They provide an effective barrier against fugitive dust emissions under 335-14-6-.30(2)(c)1.(iv); and

(ii) The unit is designed and operated in a fashion that assures that wastes will not actually come in contact with these openings.

3. Incompatible hazardous wastes or treatment reagents must not be placed in the unit or its secondary containment system if they could cause the unit or secondary containment system to leak, corrode, or otherwise fail.

4. A containment building must have a primary barrier designed to withstand the movement of personnel, waste, and handling equipment in the unit during the operating life of the unit and appropriate for the physical and chemical characteristics or the waste to be managed.

(b) For a containment building used to manage hazardous wastes containing free liquids or treated with free liquids (the presence of which is determined by the paint filter test, a visual examination, or other appropriate means), the owner or operator must include:

1. A primary barrier designed and constructed of materials to prevent the migration of hazardous constituents into the barrier (e.g. a geomembrane covered by a concrete wear surface).

2. A liquid collection and removal system to prevent the accumulation of liquid on the primary barrier of the containment building:

(i) The primary barrier must be sloped to drain liquids to the associated collection system; and

(ii) Liquids and waste must be collected and removed to minimize hydraulic head on the containment system at the earliest practicable time that protects human health and the environment.

3. A secondary containment system including a secondary barrier designed and constructed to prevent migration of hazardous constituents into the barrier and a leak detection system that is capable of detecting failure of the primary barrier and collecting accumulated hazardous wastes and liquids at the earliest practicable time.

(i) The requirements of the leak detection component of the secondary containment system are satisfied by the installation of a system that is, at a minimum:

(I) Constructed with a bottom slope of 1 percent or more; and

(II) Constructed of a granular drainage material with a hydraulic conductivity of 1×10^{-2} cm/sec or more and a thickness of 12 inches (30.5 cm) or more or constructed of synthetic or geonet drainage materials with a transmissivity of 3×10^{-5} m^2/sec or more.

(ii) If treatment is to be conducted in the building, an area in which such treatment will be conducted must be designed to prevent the release of liquids, wet materials, or liquid aerosols to other portions of the building.

(iii) The secondary containment system must be constructed of materials that are chemically resistant to the waste and liquids managed in the containment building and of sufficient strength and thickness to prevent collapse under the pressure exerted by overlaying materials and by any equipment used in the containment building. [Containment buildings serve as secondary containment systems for tanks placed within the building under certain conditions. A containment building can serve as an external liner system for a tank, provided it meets the requirements of 335-14-6-.10(4)(e)1. In addition, the containment building must meet the requirements of 335-14-6-.10(4)(b) and (c) to be considered an acceptable secondary containment system for a tank.]

4. For existing units other than 90-day generator units, the Director may delay the secondary containment requirement for up to two years, based on a demonstration by the owner or operator that the unit substantially meets the standards of 335-14-6-.30. In making this demonstration, the owner or operator must:

(i) Provide written notice to the Director of their request by February 18, 1993. This notification must describe the unit and its operating practices with specific reference to the performance of existing containment systems, and specific plans for retrofitting the unit with secondary containment;

(ii) Respond to any comments from the Director on these plans within 30 days; and

(iii) Fulfill the terms of the revised plans, if such plans are approved by the Director.

(c) Owners or operators of all containment buildings must:

1. Use controls and practices to ensure containment of the hazardous waste within the unit; and, at a minimum:

(i) Maintain the primary barrier to be free of significant cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the primary barrier;

(ii) Maintain the level of the stored/treated hazardous waste within the containment walls of the unit so that the height of any containment wall is not exceeded;

(iii) Take measures to prevent the tracking of hazardous waste out of the unit by personnel or by equipment used in handling the waste. An area must be designated to decontaminate equipment and any rinsate must be collected and properly managed; and

(iv) Take measures to control fugitive dust emissions such that any opening (doors, windows, vents, cracks, etc.) exhibits no visible emissions. In addition, all associated particulate collection devices (e.g., fabric filter, electrostatic precipitator) must be operated and maintained with sound air pollution control practices. This state of no visible emissions must be maintained effectively at all times during normal operating conditions, including when vehicles and personnel are entering and exiting the unit.

2. Obtain and keep on-site a certification by a qualified ~~P~~professional ~~E~~engineer that the containment building design meets the requirements of 335-14-6-.30(2)(a) through (c). A qualified ~~P~~professional ~~E~~engineer certification will be required prior to operation of the unit.

3. Throughout the active life of the containment building, if the owner or operator detects a condition that could lead to or has caused a release of hazardous waste, the owner or operator must repair the condition promptly, in accordance with the following procedures.

(i) Upon detection of a condition that has led to a release of hazardous waste (e.g., upon detection of leakage from the primary barrier) the owner or operator must:

(I) Enter a record of the discovery in the facility operating record;

(II) Immediately remove the portion of the containment building affected by the condition from service;

(III) Determine what steps must be taken to repair the containment building, remove any leakage from the secondary collection system, and establish a schedule for accomplishing the cleanup and repairs; and

(IV) Within 7 days after the discovery of the condition, notify the Director of the condition, and within 14 working days, provide a written notice to the

Director with a description of the steps taken to repair the containment building, and the schedule for accomplishing the work.

(ii) The Director will review the information submitted, make a determination regarding whether the containment building must be removed from service completely or partially until repairs and cleanup are complete, and notify the owner or operator of the determination and the underlying rationale in writing.

(iii) Upon completing all repairs and cleanup the owner or operator must notify the Director in writing and provide a verification signed by a qualified, registered professional engineer, that the repairs and cleanup have been completed according to the written plan submitted in accordance with 335-14-6-.30(2)(c)3.(i)(IV).

4. Inspect and record in the facility's operating record, at least once a week, data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste.

(d) For a containment building that contains both areas with and without secondary containment, the owner or operator must:

1. Design and operate each area in accordance with the requirements enumerated in 335-14-6-.30(2)(a) through (c).

2. Take measures to prevent the release of liquids or wet materials into areas without secondary containment; and

3. Maintain in the facility's operating log a written description of the operating procedures used to maintain the integrity of areas without secondary containment.

(e) Notwithstanding any other provision of 335-14-6-.30, the Director may waive requirements for secondary containment for a permitted containment building where the owner or operator demonstrates that the only free liquids in the unit are limited amounts of dust suppression liquids required to meet occupational health and safety requirements, and where containment of managed wastes and liquids can be assured without a secondary containment system.

(3) Closure and post-closure care.

(a) At closure of a containment building, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.) contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless rule 335-14-2-.01(3)(d) applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for containment buildings must meet all of the requirements specified in rules 335-14-6-.07 and 335-14-6-.08.

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in 335-14-6-.30(3)(a), the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he must close the facility and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills [rule 335-14-6-.14(11)]. In addition, for the purposes of closure, post-closure, and financial responsibility, such a containment building is then considered to be a landfill, and the owner or operator must meet all of the requirements for landfills specified in rules 335-14-6-.07 and 335-14-6-.08.

(c) Prior to closure of a containment building, the owner or operator must notify the Department in writing as required by 335-14-3-.04(4)(a).

(d) Within 45 days of completing closure activities, the owner or operator must provide a written report as required by 335-14-3-.04(4)(b) documenting the procedures used to comply with 335-14-6-.30 and 335-14-3-.03(5)(a)5.(i) and (ii).

(4) through (11) [Reserved]

Author: C. Lynn Garthright; Amy P. Zachry; C. Edwin Johnston; Nicholas J. Wolf; Michael B. Champion; Theresa A. Maines; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, §§ 22-30-11 and 22-30-16.
History: January 5, 1995.
Amended: March 28, 1997; March 27, 1998; April 13, 2001; March 15, 2002; April 17, 2003; April 3, 2007, XXXXX, XXXX.

335-14-7-.03 Recyclable Materials Used in a Manner Constituting Disposal.

(1) Applicability.

(a) The requirements of 335-14-7-.03 apply to recyclable materials that are applied to or placed on the land:

1. Without mixing with any other substance(s); or

2. After mixing or combining with any other substance(s). These materials will be referred to throughout 335-14-7-.03 as "materials used in a manner that constitutes disposal".

(b) Products produced for the general public's use that are used in a manner that constitutes disposal and that contain recyclable materials are not presently subject to regulation if the recyclable materials have undergone a chemical reaction in the course of producing the products so as to become inseparable by physical means and if such products meet the applicable treatment standards in rule 335-14-9-.04 (or applicable prohibition levels in 335-14-9-.03(13) or RCRA Section 3004(d), where no treatment standards have been established) for each recyclable material (i.e., hazardous waste) that they contain, and the recycler complies with 40 CFR 268.7(b)(6).

(c) Anti-skid/deicing uses of slags, which are generated from high temperature metals recovery (HTMR) processing of hazardous waste K061, K062, and F006, in a manner constituting disposal are not covered by the exemption in 335-14-7-.03(1)(b) and remain subject to regulation.

(d) Fertilizers that contain recyclable materials are not subject to regulation provided that:

1. They are zinc fertilizers excluded from the definition of solid waste according to 335-14-2-.01(4)(a)20; or

2. They meet the applicable treatment standards in 335-14-9-.04(1) for each hazardous waste that they contain.

(2) Standards applicable to generators and transporters of materials used in a manner that constitutes disposal.

Generators and transporters of materials that are used in a manner that constitutes disposal are subject to the applicable requirements of Chapters 335-14-3 and 335-14-4~~, including the notification requirement under Section 3010 of RCRA~~.

(3) Standards applicable to storers of materials that are to be used in a manner that constitutes disposal who are not the ultimate users.

Owners or operators of facilities that store recyclable materials that are to be used in a manner that constitutes disposal, but who are not the ultimate users of the materials, are regulated under all applicable provisions of rules 335-14-5-.01 through 335-14-5-.12 and 335-14-6-.01 through 335-14-6-.12 and Chapter 335-14-8, and the notification requirement under ~~Section 3010 of RCRA~~335-14-3-.01(3) and 335-14-3-.01(4).

(4) Standards applicable to users of materials that are used in a manner that constitutes disposal.

(a) Owners or operators of facilities that use recyclable materials in a manner that constitutes disposal are regulated under all applicable provisions of rules 335-14-5-.01 through 335-14-5-.14 and 335-14-6-.01 through 335-14-6-.14, Chapter 335-14-8 and Chapter 335-14-9, and the notification requirement under Section 3010 of RCRA. (These regulations do not apply to products which contain these recyclable materials under the provisions of 335-14-7-.03(1)(b).)

(b) The use of waste or used oil or other material, which is contaminated with dioxin or any other hazardous waste (other than a waste identified solely on the basis of ignitability), for dust suppression or road treatment is prohibited.

Author: Stephen C. Maurer; C. Edwin Johnston; Bradley N. Curvin; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, §§ 22-30-11, 22-30-14, 22-30-15 and 22-30-16.
History: April 9, 1986.
Amended: September 29, 1986; February 15, 1988; August 24, 1989; December 6, 1990; April 28, 1995; April 13, 2001; April 17, 2003, May 27, 2004; April 4, 2006; March 26, 2013; XXXXX, XXXX.

335-14-7-.06 Recyclable Materials Utilized for Precious Metal Recovery.

(1) Applicability and requirements.

(a) The requirements of 335-14-7-.06 apply to recyclable materials that are reclaimed to recover economically significant amounts of gold, silver, platinum, palladium, iridium, osmium, rhodium, ruthenium, or any combination of these.

(b) Persons who generate, transport or store recyclable materials that are regulated under 335-14-7-.06 are subject to the following requirements:

1. Notification requirements under 335-14-3-.01(3), 335-14-4-.01(2), and 335-14-5-.02(2)~~, and Section 3010 of RCRA~~;

2. Rule 335-14-3-.02 (for generators), 335-14-4-.02(1) and (2) (for transporters), and 335-14-6-.05(2) and (3) (for persons who store); and

3. For precious metals exported to or imported from designated OECD member countries for recovery, rule 335-14-3-.09 and 335-14-6-.02(3)(a)2. For precious metals exported to or imported from non-OECD countries for recovery, rules 335-14-3-.05 and 335-14-3-.06.

(c) Persons who store recycled materials that are regulated under 335-14-7-.06 must keep the following records to document that they are not accumulating these materials speculatively (as defined in 335-14-1-.02):

1. Records showing the volume of these materials stored at the beginning of the calendar year;

2. The amount of these materials generated or received during the calendar year; and

3. The amount of materials remaining at the end of the calendar year.

(d) Recyclable materials that are regulated under 335-14-7-.06 that are accumulated speculatively (as defined in 335-14-1-.02) are subject to all applicable provisions of Chapters 335-14-3, 335-14-4, 335-14-5, 335-14-6, and 335-14-8.

Author: Stephen C. Maurer; Amy P. Zachry; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, §§ 22-30-11, 22-30-14, 22-30-15 and 22-30-16.
History: April 9, 1986.
Amended: February 15, 1988; August 24, 1989; March 28, 1997; April 13, 2001; April 4, 2006; April 3, 2007; May 27, 2008, XXXXX, XXXX.

335-14-7-.07 Spent Lead-Acid Batteries Being Reclaimed.

(1) Applicability and requirements.

(a) Lead acid batteries that are generated, collected, transported, stored, or regenerated for reclamation purposes may be exempt from certain hazardous waste management requirements. The following table may be used to determine which requirements apply. Alternatively, spent lead-acid batteries may be managed in accordance with the "Universal Waste" rule in 335-14-11.

If the batteries *	**And if the batteries**	**Then the batteries**	**And the batteries**
1. will be reclaimed through regeneration (such as by electrolyte replacement).		are exempt from the requirements of 335-14-3 [except for 335-14-3-.01(2)] through 335-14-9 ~~and the notification requirements at § 3010 of RCRA~~.	are subject to the requirements of 335-14-2 and 335-14-3-.01(2).
2. will be reclaimed other than through regeneration.	are generated, collected, and/or transported.	are exempt from the requirements of 335-14-3 [except for 335-14-3-.01(2)] through 335-14-8 ~~and the notification requirements at § 3010 of RCRA~~.	are subject to the requirements of 335-14-2 and 335-14-3-.01(2), and applicable provisions under 335-14-9.
3. will be reclaimed other than through regeneration.	are stored prior to reclamation by persons other than the person reclaiming the batteries.	are exempt from the requirements of 335-14-3 [except for 335-14-3-.01(2)] through 335-14-8 ~~and the notification requirements at § 3010 of RCRA~~.	are subject to the requirements of 335-14-2 and 335-14-3-.01(2), and applicable provisions under 335-14-9.

If the batteries *	And if the batteries	Then the batteries	And the batteries
4. will be reclaimed other than through regeneration.	are stored prior to reclamation by the person reclaiming the batteries.	are subject to the requirements of 335-14-7-.07(1)(b) and other applicable regulatory provisions described in 335-14-7-.07(1)(b).	are subject to the requirements of 335-14-2 and 335-14-3-.01(2), and applicable provisions under 335-14-9.
5. will be reclaimed other than through regeneration.	are not stored prior to being reclaimed.	are exempt from the requirements of 335-14-3 [except for 335-14-3-.01(2)] through 335-14-8 ~~and the notification requirements at § 3010 of RCRA~~.	are subject to the requirements of 335-14-2 and 335-14-3-.01(2), and applicable provisions under 335-14-9.
6. will be reclaimed through regeneration or any other means.	are exported for reclamation in a foreign country.	are exempt from the requirements of 335-14-4 through 335-14-8~~9 and the notification requirements at § 3010 of RCRA~~. They are also exempt from the requirements of 335-14-3 [except for 335-14-3-.01(2)], and except for the applicable requirements in either: (1) 335-14-3-.09; or (2) 335-14-3-.05(4) "Notification of Intent to Export,"	are subject to the requirements of 335-14-2 and 335-14-3-.01(2), and are either subject to the requirements of 335-14-3-.09 (if shipped to one of the OECD countries specified in 335-14-3-.05(9)(a)1.) or are: (a) subject to the requirements applicable to a primary exporter in 335-14-3-.05(4), 335-14-3-.05(7)(a)1.-4., 6., and (b), and 335-14-3-.05(8); and

If the batteries *	And if the batteries	Then the batteries	And the batteries
		335-14-3-.05(7)(a)1.-4., 6., and (b) "Annual Reports," and 335-14-3-.05(8) "Recordkeeping".	(b) exported only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in 335-14-1-.02; and (c) a copy of the EPA Acknowledgement of Consent for the shipment is provided to the transporter transporting the shipment for export.
7. will be reclaimed through regeneration and any other means.	are transported in the U.S. to be exported for reclamation in a foreign country.	are exempt from the requirements of 335-14-3 [except for 335-14-3-.01(2)] through 335-14-8<u>9</u> ~~and the notification requirements at § 3010 of RCRA~~.	are subject to applicable requirements in 335-14-3-.09 (if shipped to one of the OECD countries specified in 335-14-3-.05(9)(a)1.) or are subject to the following: (a) the shipment must not be accepted if it is known that the shipment does not conform to the EPA Acknowledgment of Consent; (b) a copy of the EPA Acknowledgement

If the batteries *	And if the batteries	Then the batteries	And the batteries
			of Consent accompanies the shipment; and (c) the shipment is delivered to the facility designated by the person initiating the shipment.

(b) The requirements of 335-14-7-.07(1)(b) apply if spent lead-acid batteries are stored prior to reclamation if such reclamation involves any method other than regeneration. The requirements may vary depending upon the RCRA permit status of the person(s) storing and reclaiming the batteries.

1. Interim Status Facilities must comply with:

(i) Notification requirements under ~~section 3010 of RCRA~~335-14-3-.01(3) and 335-14-3-.01(4).

(ii) All applicable provisions in 335-14-6-.01.

(iii) All applicable provisions in 335-14-6-.02 except 335-14-6-.02(4) (waste analysis).

(iv) All applicable provisions in 335-14-6-.03 and 336-14-6-.04.

(v) All applicable provisions in 335-14-6-.05 except 335-14-6-.05(2) and (3) (dealing with the use of the manifest and manifest discrepancies).

(vi) All applicable provisions in 335-14-6-.06 through 335-14-6-.12.

(vii) All applicable provisions in 335-14-8.

2. Permitted Facilities must comply with:

(i) Notification requirements under ~~section 3010 of RCRA~~335-14-3-.01(3) and 335-14-3-.01(4).

(ii) All applicable provisions in 335-14-5-.01.

(iii) All applicable provisions in 335-14-5-.02 except 335-14-5-.02(4) (waste analysis).

(iv) All applicable provisions in 335-14-5-.03 and 336-14-5-.04.

(v) All applicable provisions in 335-14-5-.05 [but not 335-14-5-.05(2) and (3) (dealing with the use of the manifest and manifest discrepancies)].

(vi) All applicable provisions in 335-14-5-.06 through 335-14-5-.12.

(vii) All applicable provisions in 335-14-8.

(2) [Reserved]

(3) Generation.

(a) Facilities which by battery-breaking operations generate separate components of a spent lead-acid battery, which are a solid waste as identified by 335-14-2-.01 and a hazardous waste as identified by 335-14-2-.03 or 335-14-2-.04, must comply with the generator requirements of 335-14-3.

(b) Facilities which generate separate components of a lead-acid battery by battery-breaking operations and offer said components for transportation activities as identified in 335-14-1-.02 must comply with the manifest requirements of 335-14-3-.02 provided the components are a solid waste as identified by 335-14-2-.01 and a hazardous waste as defined by 335-14-2-.03 or 335-14-2.04.

(c) Facilities which generate separate components of a spent lead-acid battery, which are a solid waste as identified by 335-14-2-.01 and a hazardous waste as identified by 335-14-2-.03 or 335-14-2-.04, by battery-breaking operations must comply with the storage requirements of 335-14-5-.09(6) and 335-14-5-.10 for each component.

(4) Transportation.

(a) Facilities which engage in transportation activities as identified in 335-14-1-.02 of separate components of a spent lead-acid battery, which are a solid waste as identified by 335-14-2-.01 and a hazardous waste as identified by 335-14-2-.03 or 335-14-2-.04, must comply with the standards applicable to transporters of hazardous waste as outlined in 335-14-4.

(b) Facilities which receive and store separate components of a spent lead-acid battery must comply with the manifest requirements of 335-14-5-.05 provided the components are a solid waste as identified by 335-14-2-.01 and a hazardous waste as identified by 335-14-2-.03 or 335-14-2-.04.

(c) The requirements of 335-14-7-.07 do not apply to the transportation of whole spent lead-acid batteries which have not been subjected to battery-breaking operations.

(5) Storage.

(a) Facilities which receive and store separate components of a spent lead-acid battery which are a solid waste as identified by 335-14-2-.01 and a hazardous waste as identified by 335-14-2-.03 or 335-14-2-.04 must comply with the storage requirements of 335-14-5-.09(6) and 335-14-5-.10 and the permitting requirements of 335-14-8.

(b) Reserved.

(6) Treatment and/or disposal.

(a) Facilities which treat or dispose of hazardous waste(s) generated from the reclamation of spent lead-acid batteries are subject to the requirements of 335-14-1 through 335-14-6, 335-14-8, and 335-14-9.

(b) Reserved.

Author: Stephen C. Maurer; Steven O. Jenkins; Michael Champion; Robert W. Barr; C. Edwin Johnston; Bradley N. Curvin; Heather M. Jones; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, §§ 22-30-11, 22-30-14, 22-30-15 and 22-30-16.
History: April 9, 1986.
Amended: August 24, 1989; January 1, 1993; January 5, 1995; January 12, 1996; April 2, 1999; March 31, 2000; March 15, 2002; March 31, 2005; March 31, 2011; XXXXX, XXXX.

335-14-7-.08 Subpart H - Hazardous Waste Burned in Boilers and Industrial Furnaces.

The Environmental Protection Agency Regulations ~~, and the Appendices applicable thereto, governing hazardous waste burned in boilers and industrial furnaces (~~40 CFR~~,~~ Part 266, Subpart H ~~and Appendices I - XIII~~ (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) 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 ~~2059.~~.

(1) § 266.100 Applicability (as published by EPA on February 21, 1991).

(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).

(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 (Cl_2) 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:

$$\sum_{i=1}^{n} \frac{\text{Actual} \cdot \text{Quantity} \cdot \text{Burned}(i)}{\text{Allowable} \cdot \text{Quantity} \cdot \text{Burned}(i)} < 1.0$$

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:** 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.]

(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 Alabama 1975, §§ 22-30-4, 22-30-6, 22-30-11.
History: January 25, 1992.
Amended: January 1, 1993, January 5, 1995; April 28, 1995; January 12, 1996; March 27, 1998; April 2, 1999; April 13, 2001; April 17, 2003; March 31, 2005; April 4, 2006, XXXXX, XXXX.

335-14-7-APPENDIX I Tier I and Tier II Feed Rate and Emissions Screening Limits for Metals.

40 CFR, Part 266 Appendix I, of the Environmental Protection Agency Regulations (as published by EPA on February 21, 1991 and amended on July 17, 1991) governing hazardous waste burned in boilers and industrial furnaces, is incorporated herein by reference as set forth in 40 CFR, Part 266.

Any provisions of 40 CFR Part 266 Appendix I which are inconsistent with other provisions of the ADEM Administrative Code are 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.~~.

Author: Stephen C. Maurer; Amy P. Zachry; Bradley N. Curvin; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, §§ 22-30-4, 22-30-6, 22-30-11.
History: January 25, 1992.
Amended: March 27, 1998; April 13, 2001; March 31, 2005; April 4, 2006; XXXXX, XXXX.

335-14-7-APPENDIX II Tier I Feed Rate Screening Limits for Total Chlorine and Chloride.

40 CFR, Part 266 Appendix II, of the Environmental Protection Agency Regulations (as published by EPA on July 17, 1991) governing hazardous waste burned in boilers and industrial furnaces, is incorporated herein by reference as set forth in 40 CFR, Part 266.

Any provisions of 40 CFR Part 266 Appendix II which are inconsistent with other provisions of the ADEM Administrative Code are 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.~~.

Author: Stephen C. Maurer; Amy P. Zachry; Bradley N. Curvin; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, §§ 22-30-4, 22-30-6, 22-30-11.
History: January 25, 1992.
Amended: March 27, 1998; April 13, 2001; March 31, 2005; April 4, 2006; XXXXX, XXXX.

335-14-7-APPENDIX III Tier II Emission Rate Screening Limits for Free Chlorine and Hydrogen Chloride.

40 CFR, Part 266 Appendix III, of the Environmental Protection Agency Regulations (as published by EPA on July 17, 1991 and amended on July 14, 2006) governing hazardous waste burned in boilers and industrial furnaces, is incorporated herein by reference as set forth in 40 CFR, Part 266.

Any provisions of 40 CFR Part 266 Appendix III which are inconsistent with other provisions of the ADEM Administrative Code are 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.~~.

Author: Stephen C. Maurer; Amy P. Zachry; Bradley N. Curvin; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, §§ 22-30-4, 22-30-6, 22-30-11.
History: January 25, 1992.
Amended: March 27, 1998; April 13, 2001; March 31, 2005; April 4, 2006; XXXXX, XXXX.

335-14-7-APPENDIX IV Reference Air Concentrations.

40 CFR, Part 266 Appendix IV, of the Environmental Protection Agency Regulations (as published by EPA on February 21, 1991 and amended on July 17, 1991 and July 14, 2006) governing hazardous waste burned in boilers and industrial furnaces, is incorporated herein by reference as set forth in 40 CFR, Part 266.

Any provisions of 40 CFR Part 266 Appendix IV which are inconsistent with other provisions of the ADEM Administrative Code are 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.~~.

Author: Stephen C. Maurer; Amy P. Zachry; Bradley N. Curvin; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, §§ 22-30-4, 22-30-6, 22-30-11.
History: January 25, 1992.
Amended: March 27, 1998; April 13, 2001; March 31, 2005; April 4, 2006; XXXXX, XXXX.

335-14-7-APPENDIX V Risk Specific Doses.

40 CFR Part 266 Appendix V, of the Environmental Protection Agency Regulations (as published by EPA on February 21, 1991 and amended on July 17, 1991 and July 14, 2006) governing hazardous waste burned in boilers and industrial furnaces, is incorporated herein by reference as set forth in 40 CFR, Part 266.

Any provisions of 40 CFR Part 266 Appendix V which are inconsistent with other provisions of the ADEM Administrative Code are 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.~~.

Author: Stephen C. Maurer; Amy P. Zachry; Bradley N. Curvin; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, §§ 22-30-4, 22-30-6, 22-30-11.
History: January 25, 1992.
Amended: March 27, 1998; April 13, 2001; March 31, 2005; April 4, 2006; XXXXX, XXXX.

335-14-7-APPENDIX VI Stack Plume Rise.

40 CFR Part 266 Appendix VI, of the Environmental Protection Agency Regulations (as published by EPA on February 21, 1991 and amended on July 17, 1991 and July 14, 2006) governing hazardous waste burned in boilers and industrial furnaces, is incorporated herein by reference as set forth in 40 CFR, Part 266.

Any provisions of 40 CFR Part 266 Appendix VI which are inconsistent with other provisions of the ADEM Administrative Code are 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~~.

Author: Stephen C. Maurer; Amy P. Zachry; Bradley N. Curvin; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, §§ 22-30-4, 22-30-6, 22-30-11.
History: January 25, 1992.
Amended: March 27, 1998; April 13, 2001; March 31, 2005; April 4, 2006; XXXXX, XXXX.

335-14-7-APPENDIX VII Health-Based Limits for Exclusion of Waste-Derived Residues.

40 CFR Part 266 Appendix VII, of the Environmental Protection Agency Regulations (as published by EPA on February 21, 1991 and amended on July 17, 1991 and November 9, 1993) governing hazardous waste burned in boilers and industrial furnaces, is incorporated herein by reference ~~as set forth in 40 CFR, Part 266~~.

Any provisions of 40 CFR Part 266 Appendix VII which are inconsistent with other provisions of the ADEM Administrative Code are 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.~~.

Author: Stephen C. Maurer; Amy P. Zachry; Bradley N. Curvin; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, §§ 22-30-4, 22-30-6, 22-30-11.
History: January 25, 1992.
Amended: January 5, 1995; March 27, 1998; April 13, 2001; March 31, 2005; April 4, 2006; XXXXX, XXXX.

335-14-7-APPENDIX VIII Potential PICs for Determination of Exclusion of Waste-Derived Residues.

40 CFR Part 266 Appendix VIII, of the Environmental Protection Agency Regulations (as published by EPA on September 30, 1999 and amended on November 19, 1999 and July 14, 2006) governing hazardous waste burned in boilers and industrial furnaces, is incorporated herein by reference ~~as set forth in 40 CFR, Part 266~~.

Any provisions of 40 CFR Part 266 Appendix VIII which are inconsistent with other provisions of the ADEM Administrative Code are 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.~~.

Author: Stephen C. Maurer; Amy P. Zachry; Bradley N. Curvin; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, §§ 22-30-4, 22-30-6, 22-30-11.
History: January 25, 1992.
Amended: March 27, 1998; April 13, 2001; March 31, 2005; April 4, 2006; XXXXX, XXXX.

335-14-7-APPENDIX IX Methods Manual for Compliance with the BIF Regulations.

40 CFR Part 266 Appendix IX, of the Environmental Protection Agency Regulations (as published by EPA on July 17, 1991; and amended on August 27, 1991; August 25, 1992; September 30, 1992; June 13, 1997; June 14, 2005; July 14, 2006; and June 25, 2009) governing hazardous waste burned in boilers and industrial furnaces, is incorporated herein by reference ~~as set forth in 40 CFR, Part 266~~.

Any provisions of 40 CFR Part 266 Appendix IX which are inconsistent with other provisions of the ADEM Administrative Code are 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~~.

Author: Stephen C. Maurer; Amy P. Zachry; Bradley N. Curvin; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, §§ 22-30-4, 22-30-6, 22-30-11.
History: January 25, 1992.
Amended: January 5, 1995; March 27, 1998; April 13, 2001; March 31, 2005; April 4, 2006, XXXXX, XXXX.

335-14-7-APPENDIX XI Lead-Bearing Materials that May be Processed in Exempt Lead Smelters.

40 CFR Part 266 Appendix XI, of the Environmental Protection Agency Regulations (as published by EPA on August 27, 1991) governing hazardous waste burned in boilers and industrial furnaces, is incorporated herein by reference ~~as set forth in 40 CFR, Part 266~~.

Any provisions of 40 CFR Part 266 Appendix XI which are inconsistent with other provisions of the ADEM Administrative Code are 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~~.

Author: Stephen C. Maurer; Amy P. Zachry; Bradley N. Curvin; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, §§ 22-30-4, 22-30-6, 22-30-11.
History: January 25, 1992.
Amended: March 27, 1998; April 13, 2001; March 31, 2005; April 4, 2006; XXXXX, XXXX.

335-14-7-APPENDIX XII Nickel or Chromium-Bearing Materials that May be Processed in Exempt Nickel-Chromium Recovery Furnaces.

40 CFR Part 266 Appendix XII, of the Environmental Protection Agency Regulations (as published by EPA on August 27, 1991) governing hazardous waste burned in boilers and industrial furnaces, is incorporated herein by reference ~~as set forth in 40 CFR, Part 266~~.

Any provisions of 40 CFR Part 266 Appendix XII which are inconsistent with other provisions of the ADEM Administrative Code are 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.~~.

Author: Stephen C. Maurer; Amy P. Zachry; Bradley N. Curvin; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, §§ 22-30-4, 22-30-6, 22-30-11.
History: January 25, 1992.
Amended: March 27, 1998; April 13, 2001; March 31, 2005; April 4, 2006; XXXXX, XXXX.

335-14-7-APPENDIX XIII Mercury-Bearing Wastes that May be Processed in Exempt Mercury Recovery Units.

40 CFR Part 266 Appendix XIII, of the Environmental Protection Agency Regulations (as published by EPA on September 19, 1994 and amended on July 14, 2006) governing hazardous waste burned in boilers and industrial furnaces, is incorporated herein by reference ~~as set forth in 40 CFR, Part 266~~.

Any provisions of 40 CFR Part 266 Appendix XIII which are inconsistent with other provisions of the ADEM Administrative Code are 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~~.

Author: C. Lynn Garthright; Amy P. Zachry; Bradley N. Curvin; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, §§ 22-30-4, 22-30-6, 22-30-11.
History: April 28, 1995.
Amended: March 27, 1998; April 13, 2001; March 31, 2005; April 4, 2006; XXXXX, XXXX.

335-14-9-.00 References Adopted.

The Environmental Protection Agency Regulations 40 CFR Part 268 and Appendices (as published and amended by EPA on November 7, 1986; May 28, 1986; September 6, 1989; June 4, 1987; July 8, 1987; July 19, 1988; August 17, 1988; September 6, 1989; June 1, 1990; January 31, 1991; March 25, 1991; August 18, 1992; May 24, 1993; September 19, 1994; May 11, 1995; September 19, 1995; April 8, 1996; June 28, 1996; January 14, 1997; May 12, 1997; June 17, 1997; July 14, 1997; May 26, 1998; August 6, 1998; September 9, 1998; November 30, 1998; May 11, 1999; July 6, 1999; August 5, 2005; June 1, 1990; June 13, 1990; January 31, 1991; March 6, 1992; August 18, 1992; February 16, 1993; May 24, 1993; June 20, 1994; September 19, 1994; January 3, 1995; April 8, 1996; June 28, 1996; October 28, 1996; February 19, 1997; May 12, 1997; December 5, 1997; May 4, 1998; May 26, 1998; September 4, 1998; September 24, 1998; November 30, 1998; May 11, 1999; May 26, 1999; October 20, 1999; March 17, 2000; June 8, 2000; November 8, 2000; December 26, 2000; June 26, 2001; November 20, 2001; May 22, 2002; May 28, 2002; February 11, 2004; November 19, 2004; February 24, 2005; June 14, 2005; August 3, 2005; February 7, 2006; April 4, 2006; July 14, 2006; May 14, 2008; March 18, 2010; December 17, 2010; June 13, 2011; and August 22, 2012), ~~and the Appendices applicable thereto, governing Land Disposal Restrictions (40 CFR, Part 268 and Appendices)~~, designated in rules 335-14-9-.01, .02, .03, .04, .05, and Appendices I through XI, are incorporated herein by reference as set forth in 40 CFR, Part 268, except for the exclusions provided in ADEM Administrative Code rule 335-14-9-.01(1).

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 268, 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~~-2059~~.

Author: Stephen C. Maurer; Steven O. Jenkins; Amy P. Zachry; Bradley N. Curvin; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, §§ 22-30-11.
History: December 6, 1990.
Amended: January 25, 1992; January 1, 1993; January 5, 1995; April 28, 1995; January 12, 1996; March 28, 1997; March 27, 1998; April 2, 1999; March 31, 2000; April 13, 2001; March 15, 2002; April 17, 2003; March 31, 2005; April 4, 2006; XXXXX, XXXX.

335-14-9-.01 Subpart A - General.

(1) 40 CFR § 268.1 Purpose, scope and applicability (as published by EPA on November 7, 1986; June 4, 1987, and as amended on July 19, 1988; August 17, 1988; September 6, 1989; June 1, 1990; May 24, 1993; September 19, 1994; May 11, 1995; April 8, 1996; June 28, 1996; May 12, 1997; July 6, 1999; and August 5, 2005), excluding the provisions of § 268.1(c)(3).

(2) 40 CFR § 268.2 Definitions applicable in this part (as published by EPA on June 1, 1990, and as amended on January 31, 1991; August 18, 1992; February 16, 1993; May 24, 1993; September 19, 1994; January 3, 1995; April 8, 1996; June 28, 1996; May 26, 1998; November 30, 1998; May 11, 1999; and July 14, 2006).

(3) 40 CFR § 268.3 Dilution prohibited as a substitute for treatment (as published by EPA on April 8, 1996, as amended at June 28, 1996; and May 26, 1998).

(4) 40 CFR § 268.4 Treatment surface impoundment exemption (as published by EPA on November 7, 1986; June 4, 1987, and as amended on July 8, 1987; August 17, 1988; May 12, 1997; May 26, 1998; and July 14, 2006).

(5) 40 CFR § 268.5 Procedures for case-by-case extensions to an effective date (as published by EPA on November 7, 1986; June 4, 1987, and as amended on July 8, 1987; September 6, 1989; June 13, 1990; and August 18, 1992).

(6) 40 CFR § 268.6 Petitions to allow land disposal of a waste prohibited under Subpart C of Part 268(as published by EPA on November 7, 1986; June 4, 1987, and as amended July 8, 1987; August 17, 1988; September 6, 1989; and July 14, 2006).

(7) 40 CFR § 268.7 Testing, tracking, and recordkeeping requirements for generators, treaters, and disposal facilities (as published by EPA on November 7, 1986 and June 4, 1987).

(8) § 268.8 [Reserved]

(9) § 268.9 Special rules regarding wastes that exhibit a characteristic (as published by EPA on June 1, 1990, and as amended on January 31, 1991; August 18, 1992; May 24, 1993; September 19, 1994; January 3, 1995; April 8, 1996; May 12, 1997; May 11, 1999; and April 4, 2006).

Author: Stephen C. Maurer; Amy P. Zachry; Lynn T. Roper; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, §§ 22-30-4, 22-30-6, 22-30-11.
History: August 24, 1989.
Amended: December 6, 1990; January 25, 1992; January 1, 1993; January 5, 1995; April 28, 1995; January 12, 1996; March 28, 1997; March 27, 1998; April 2, 1999; March 31, 2000; April 13, 2001; March 31, 2005;

XXXXX, XXXX.

335-14-9-.02 Subpart B - Schedule for Land Disposal Prohibition and Establishment of Treatment Standards.

(1) 40 CFR § 268.10 [Reserved]

(2) 40 CFR § 268.11 [Reserved]

(3) 40 CFR § 268.12 [Reserved]

(4) 40 CFR § 268.13 Schedule for wastes identified or listed after November 8, 1984 (as published by EPA on May 28, 1986).

(5) 40 CFR § 268.14 Surface Impoundment Exemptions (as published by EPA on August 18, 1992, and as amended July 14, 2006).

Author: Stephen C. Maurer; Amy P. Zachry; Bradley N. Curvin; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, §§ 22-30-4, 22-30-6, 22-30-11.
History: August 24, 1989.
Amended: December 6, 1990; January 25, 1992; January 5, 1995; March 28, 1997; April 4, 2006, XXXXX, XXXX.

335-14-9-.03 Subpart C - Prohibitions on Land Disposal.

(1) 40 CFR § 268.20 Waste specific prohibitions – Dyes and/or pigments production wastes (as published by EPA on February 24, 2005).

(2) 40 CFR § 268.21 [Reserved]

(3) 40 CFR § 268.22 [Reserved]

(4) 40 CFR § 268.23 [Reserved]

(5) 40 CFR § 268.24 [Reserved]

(6) 40 CFR § 268.25 [Reserved]

(7) 40 CFR § 268.26 [Reserved]

(8) 40 CFR § 268.27 [Reserved]

(9) 40 CFR § 268.28 [Reserved]

(10) 40 CFR § 268.29 [Reserved]

(11) 40 CFR § 268.30 Waste specific prohibitions - Wood preserving wastes (as published by EPA on May 12, 1997).

(12) 40 CFR § 268.31 Waste specific prohibitions - Dioxin containing wastes (as published by EPA on August 17, 1988).

(13) 40 CFR § 268.32 Waste specific prohibitions - Soil exhibiting the toxicity characteristic for metals and containing PCBs (as published by EPA on December 26, 2000).

(14) 40 CFR § 268.33 Waste specific prohibitions - chlorinated aliphatic wastes (as published by EPA on November 8, 2000).

(15) 40 CFR § 268.34 Waste specific prohibitions - toxicity characteristic metal wastes (as published by EPA on May 26, 1998 and as amended on September 9, 1998).

(16) 40 CFR § 268.35 Waste specific prohibitions - petroleum refining wastes (August 6, 1998).

(17) 40 CFR § 268.36 Waste specific prohibitions - inorganic chemical wastes (as published by EPA on November 20, 2001).

(18) 40 CFR § 268.37 Waste specific prohibitions - Ignitable and corrosive characteristic wastes whose treatment standards were vacated (as published by EPA on May 24, 1993).

(19) 40 CFR § 268.38 Waste specific prohibitions - Newly identified organic toxicity characteristic wastes and newly listed coke by-product and chlorotoluene production wastes (as published by EPA on September 19, 1995).

(20) 40 CFR § 268.39 Waste specific prohibitions - Spent aluminum potliners; reactive; and carbamate wastes (as published by EPA on April 8, 1996, and as amended on June 28, 1996; January 14, 1997; June 17, 1997; July 14, 1997; and September 24, 1998.

Author: Stephen C. Maurer; Steven O. Jenkins; Amy P. Zachry; Lynn T. Roper; Bradley N. Curvin; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, §§ 22-30-4, 22-30-6, 22-30-11.
History: August 24, 1989.
Amended: December 21, 1989; December 6, 1990; January 25, 1992; January 1, 1993; January 5, 1995; April 28, 1995; March 28, 1997; March 27, 1998; April 2, 1999; March 31, 2000; April 13, 2001; March 15, 2002; April 17, 2003; March 31, 2005; April 4, 2006; XXXXX, XXXX.

335-14-9-.04 Subpart D - Treatment Standards.

(1) 40 CFR § 268.40 Applicability of treatment standards (as published by EPA on September 19, 1994).

(2) 40 CFR § 268.41 Treatment standards expressed as concentrations in waste extract (as published by EPA on September 19, 1994).

(3) 40 CFR § 268.42 Treatment standards expressed as specified technologies (as published by EPA on November 7, 1986, and as amended on July 8, 1987; June 1, 1990; January 31, 1991; March 6, 1992; August 18, 1992; May 24, 1993; June 20, 1994; September 19, 1994; January 3, 1995; April 8, 1996; May 12, 1997; May 26, 1998; July 14, 2006; and May 14, 2008).

(4) 40 CFR § 268.43 Treatment standards expressed as waste concentrations (as published by EPA on September 19, 1994).

(5) 40 CFR § 268.44 Variance from a treatment standard (as published by EPA on November 7, 1986, and as amended on June 4, 1987; August 17, 1988; September 6, 1989; March 25, 1991; October 28, 1996; May 12, 1997; December 5, 1997; May 26, 1998; 64 May 26, 1999; June 26, 2001; May 22, 2002; May 28, 2002; February 11, 2004; November 19, 2004; June 14, 2005; August 3, 2005; February 7, 2006; July 14, 2006; May 14, 2008; and August 22, 2012).

(6) 40 CFR § 268.45 Treatment standards for hazardous debris (as published by EPA on August 18, 1992 and as amended on September 19, 1994; May 26, 1998; and July 14, 2006).

(7) 40 CFR § 268.46 Alternative treatment standards based on HTMR (as published by EPA on September 19, 1994).

(8) 40 CFR § 268.48 Universal treatment standards (as published by EPA on September19, 1994, and as amended on January 3, 1995; April 8, 1996; June 28, 1996; February 19, 1997; May 4, 1998; May 26, 1998; September 4, 1998; May 11, 1999; March 17, 2000; June 14, 2005; February 24, 2005; July 14, 2006; March 18, 2010; and June 13, 2011).

(9) 40 CFR § 268.49 Alternative LDR Treatment standards for contaminated soil (as published by EPA on May 26, 1998, and as amended on May 11, 1999; October 20, 1999; December 26, 2000; and July 14, 2006).

Author: Stephen C. Maurer; Amy P. Zachry; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, §§ 22-30-4, 22-30-6, 22-30-11.
History: August 24, 1989.
Amended: December 6, 1990; January 25, 1992; January 1, 1993; January 5, 1995; April 28, 1995; January 12, 1996; March 28, 1997; March 27, 1998; April 2, 1999; March 31, 2000; April 13, 2001; March 15, 2002; April 17, 2003; XXXXX, XXXX.

335-14-9-.05 Subpart E - Prohibitions on Storage.

(1) § 268.50 Prohibitions on storage of restricted wastes (as published by EPA on November 7, 1986; June 4, 1987, and as amended on July 8, 1987; September 6, 1989; August 18, 1992; November 30, 1998; and July 14, 2006).

Author: Stephen C. Maurer; Amy P. Zachry; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, §§ 22-30-4, 22-30-6, 22-30-11.
History: August 24, 1989.
Amended: December 6, 1990; January 25, 1992; January 5, 1995; March 31, 2000; XXXXX, XXXX.

335-14-9-APPENDIX III List of Halogenated Organic Compounds Regulated Under § 268.32.

(as published by EPA on December 26, 2000)

Author: Amy P. Zachry; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, §§ 22-30-10, 22-30-11, 22-30-16.
History: March 15, 2002.
Amended: April 17, 2003; XXXXX, XXXX.

335-14-9-APPENDIX IV Wastes Excluded from Lab Packs Under the Alternative Treatment Standards of § 268.42(c).

(as published by EPA on September 19, 1994)

Author: Stephen C. Maurer; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, §§ 22-30-4, 22-30-6, 22-30-11.
History: December 6, 1990.
Amended: January 25, 1992; April 28, 1995; March 26, 2013; XXXXX, XXXX.

335-14-9-APPENDIX VI Recommended Technologies to Achieve Deactivation of Characteristics in § 268.42.

(as published by EPA on June 1, 1990 and as amended on May 12, 1997)

Author: Stephen C. Maurer; Amy P. Zachry; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, §§ 22-30-4, 22-30-6, 22-30-11.
History: December 6, 1990.
Amended: January 25, 1992; March 27, 1998; March 26, 2013; XXXXX, XXXX.

335-14-9-APPENDIX VII LDR Effective Dates of Surface Disposed Prohibited Hazardous Wastes.

(as published by EPA on May 12, 1997 and as amended on May 26, 1998; June 8, 2000; July 14, 2006; and December 17, 2010)

Author: Stephen C. Maurer; Amy P. Zachry; Lynn T. Roper; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, §§ 22-30-4, 22-30-6, 22-30-11.
History: December 6, 1990.
Amended: January 25, 1992; March 27, 1998; April 2, 1999; April 13, 2001; March 15, 2002; March 31, 2005; XXXXX, XXXX.

335-14-9-APPENDIX VIII LDR Effective Dates of Injected Prohibited Hazardous Wastes.

(as published by EPA on May 12, 1997 and as amended on May 26, 1998 and July 14, 2006)

Author: Stephen C. Maurer; Amy P. Zachry; Vernon H. Crockett.
Statutory Authority: Code of Alabama, §§ 22-30-4, 22-30-6, 22-30-11.
History: December 6, 1990.
Amended: January 25, 1992; March 27, 1998; April 2, 1999; XXXXX, XXXX.

335-14-9-APPENDIX IX Extraction Procedure (EP) Toxicity Test Method and Structural Integrity Test (SW-846, Method 1310).

Note: The EP (Method 1310B) is published in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 335-14-1-.01(2).

Author: Stephen C. Maurer; Lynn T. Roper; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, §§ 22-30-4, 22-30-6, 22-30-11.
History: January 25, 1992.
Amended: March 31, 2005; XXXXX, XXXX.

335-14-9-APPENDIX XI Metal-Bearing Wastes Prohibited From Dilution in a Combustion Unit According to 40 CFR 268.3(c)[1].

(as published by EPA on April 8, 1996)

Note: [1]A combustion unit is defined as any thermal technology subject to 40 CFR 264, subpart O; 40 CFR 265, subpart O; and/or 40 CFR 266, subpart H.

Author: Amy P. Zachry; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, §§ 22-30-4, 22-30-6, 22-30-11.
History: March 28, 1997.
Amended: **XXXXX, XXXX.**

335-14-11-.01 General.

(1) Scope.

(a) 335-14-11 establishes requirements for managing the following:

1. Batteries as described in 335-14-11-.01(2);

2. Pesticides as described in 335-14-11-.01(3);

3. Mercury-containing equipment as described in 335-14-11-.01(4); and

4. Lamps as described in 335-14-11-.01(5).

(b) 335-14-11 provides an alternative set of management standards in lieu of regulation under 335-14-1 through 335-14-9.

(2) Applicability—batteries.

(a) Batteries covered under 335-14-11.

1. The requirements of 335-14-11 apply to persons managing batteries, as described in 335-14-1-.02, except those listed in 335-14-11-.01(2)(b).

2. Spent lead-acid batteries which are not managed under 335-14-7-.07 are subject to management under 335-14-11.

(b) Batteries not covered under 335-14-11. The requirements of 335-14-11 do not apply to persons managing the following batteries:

1. Spent lead-acid batteries that are managed under 335-14-7-.07.

2. Batteries, as described in 335-14-1-.02, that are not yet wastes under 335-14-2, including those that do not meet the criteria for waste generation in 335-14-11-.01(2)(c).

3. Batteries, as described in 335-14-1-.02, that are not hazardous waste. A battery is a hazardous waste if it exhibits one or more of the characteristics identified in 335-14-2-.03.

(c) Generation of waste batteries.

1. A used battery becomes a waste on the date it is discarded (e.g., when sent for reclamation).

2. An unused battery becomes a waste on the date the handler decides to discard it.

(3) Applicability—pesticides.

(a) Pesticides covered under 335-14-11. The requirements of 335-14-11 apply to persons managing pesticides, as described in 335-14-1-.02, meeting the following conditions, except those listed in 335-14-11-.01(3)(b):

1. Recalled pesticides that are:

(i) Stocks of a suspended and canceled pesticide that are part of a voluntary or mandatory recall under FIFRA section 19(b), including, but not limited to those owned by the registrant responsible for conducting the recall; or

(ii) Stocks of a suspended or cancelled pesticide, or a pesticide that is not in compliance with FIFRA, that are part of a voluntary recall by the registrant.

2. Stocks of other unused pesticide products that are collected and managed as part of a waste pesticide collection program.

(b) Pesticides not covered under 335-14-11. The requirements of 335-14-11 do not apply to persons managing the following pesticides:

1. Recalled pesticides described in 335-14-11-.01(3)(a)1., and unused pesticide products described in 335-14-11-.01(3)(a)2., that are managed by farmers in compliance with 335-14-3-.07(1). [335-14-3-.07(1) addresses pesticides disposed of on the farmer's own farm in a manner consistent with the disposal instructions on the pesticide label, providing the container is triple rinsed in accordance with 335-14-2-.01(7)(b)3.];

2. Pesticides not meeting the conditions set forth in 335-14-11-.01(3)(a). These pesticides must be managed in compliance with the hazardous waste regulations in 335-14-1 through 335-14-9;

3. Pesticides that are not wastes under 335-14-2, including those that do not meet the criteria for waste generation in 335-14-11-.01(3)(c) or those that are not wastes as described in 335-14-11-.01(3)(d); and

4. Pesticides that are not hazardous waste. A pesticide is a hazardous waste if it is listed in 335-14-2-.04 or if it exhibits one or more of the characteristics identified in 335-14-2-.03.

(c) When a pesticide becomes a waste.

1. A recalled pesticide described in 335-14-11-.01(3)(a)1. becomes a waste on the first date on which both of the following conditions apply:

(i) The generator of the recalled pesticide agrees to participate in the recall; and

(ii) The person conducting the recall decides to discard (e.g., burn the pesticide for energy recovery).

2. An unused pesticide product described in 335-14-11-.01(3)(a)2. becomes a waste on the date the generator decides to discard it.

(d) Pesticides that are not wastes. The following pesticides are not wastes:

1. Recalled pesticides described in 335-14-11-.01(3)(a)1., provided that the person conducting the recall:

(i) Has not made a decision to discard (e.g., burn for energy recovery) the pesticide. Until such a decision is made, the pesticide does not meet the definition of "solid waste" under 335-14-2-.01(2); thus the pesticide is not a hazardous waste and is not subject to hazardous waste requirements, including 335-14-11. This pesticide remains subject to the requirements of FIFRA; or

(ii) Has made a decision to use a management option that, under 335-14-2-.01(2), does not cause the pesticide to be a solid waste [i.e., the selected option is use (other than use constituting disposal) or reuse (other than burning for energy recovery), or reclamation]. Such a pesticide is not a solid waste and therefore is not a hazardous waste, and is not subject to the hazardous waste requirements including 335-14-11. This pesticide, including a recalled pesticide that is exported to a foreign destination for use or reuse, remains subject to the requirements of FIFRA.

2. Unused pesticide products described in 335-14-11-.01(3)(a)2., if the generator of the unused pesticide product has not decided to discard (e.g., burn for energy recovery) them. These pesticides remain subject to the requirements of FIFRA.

(4) Applicability — mercury-containing equipment.

(a) Mercury-containing equipment covered under 335-14-11. The requirements of 335-14-11 apply to persons managing mercury-containing equipment, as described in 335-14-1-.02, except those listed in 335-14-11-.01(4)(b).

(b) Mercury-containing equipment not covered under 335-14-11. The requirements of 335-14-11 do not apply to persons managing the following mercury-containing equipment:

1. Mercury-containing equipment that is not yet a waste under 335-14-2. 335-14-11-.01(4)(c) describes when mercury-containing equipment becomes a waste;

2. Mercury-containing equipment that is not a hazardous waste. Mercury-containing equipment is a hazardous waste if it exhibits one or more of the characteristics identified in 335-14-2-.03 or is listed in 335-14-2-.04.

3. Equipment and devices from which the mercury-containing components have been removed.

(c) Generation of waste mercury-containing equipment.

1. Used mercury-containing equipment becomes a waste on the date it is discarded.

2. Unused mercury-containing equipment becomes a waste on the date the handler decides to discard it.

(5) Applicability—lamps.

(a) Lamps covered under 335-14-11. The requirements of 335-14-11 apply to persons managing lamps, as described in 335-14-1-.02, except those listed in 335-14-11-.01(5)(b).

(b) Lamps not covered under 335-14-11. The requirements of 335-14-11 do not apply to persons managing the following lamps:

1. Lamps that are not yet wastes under 335-14-2. 335-14-11-.01(5)(c) describes when lamps become wastes.

2. Lamps that are not hazardous waste. A lamp is a hazardous waste if it exhibits one or more of the characteristics identified in 335-14-2-.03.

3. Lamps that are broken, crushed, or otherwise no longer intact are not to be handled as universal waste.

(c) Generation of waste lamps.

1. A used lamp becomes a waste on the date it is discarded (e.g., sent for reclamation).

2. An unused lamp becomes a waste on the date the handler decides to discard it.

(6) [Reserved]

(7) [Reserved]

(8) Applicability—household and conditionally exempt small quantity generator waste.

(a) Persons managing the wastes listed below may, at their option, manage them under the requirements of 335-14-11:

1. Household wastes that are exempt under 335-14-2-.01(4)(b)1. and are also of the same type as the universal wastes defined at 335-14-1-.02; and/or

2. Conditionally exempt small quantity generator wastes that are exempt under 335-14-2-.01(5) and are also of the same type as the universal wastes defined at 335-14-1-.02.

(b) Persons who commingle the wastes described in 335-14-11-.01(8)(a)1. and (a)2. together with universal waste regulated under 335-14-11 must manage the commingled waste under the requirements of 335-14-11.

(9) [Reserved]

Author: Amy P. Zachry; Michael B. Jones; C. Edwin Johnston; Lynn T. Roper; Bradley N. Curvin; Theresa A. Maines; Heather M. Jones; Vernon H. Crockett.
Statutory Authority: Code of Alabama 1975, §§ 22-30-11, 22-30-14, 22-30-15, and 22-30-16.
History: January 12, 1996.
Amended: March 28, 1997; March 27, 1998; March 31, 2000; April 13, 2001; March 31, 2005; April 4, 2006; April 3, 2007; May 27, 2008; XXXXX, XXXX.

335-14-11-.02 Standards for Small Quantity Handlers of Universal Waste.

(1) Applicability. 335-14-11-.02 applies to small quantity handlers of universal waste [as defined in rule 335-14-1-.02].

(2) Prohibitions. A small quantity handler of universal waste is:

(a) Prohibited from disposing of universal waste; and

(b) Prohibited from diluting or treating universal waste, except by responding to releases as provided in 335-14-11-.02(8); or by managing specific wastes as provided in 335-14-11-.02(4) or 335-14-8-.01(1)(c)2.(x).

(3) Notification. A small quantity handler of universal waste is not required to notify the Department of universal waste handling activities.

(4) Waste management.

(a) Universal waste batteries. A small quantity handler of universal waste must manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

1. A small quantity handler of universal waste must contain any universal waste battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the battery, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

2. A small quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed (except that cells may be opened to remove electrolyte but must be immediately closed after removal):

(i) Sorting batteries by type;

(ii) Mixing battery types in one container;

(iii) Discharging batteries so as to remove the electric charge;

(iv) Regenerating used batteries;

(v) Disassembling batteries or battery packs into individual batteries or cells;

(vi) Removing batteries from consumer products; or

(vii) Removing electrolyte from batteries.

3. A small quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste (e.g., battery pack materials, discarded consumer products) as a result of the activities listed above, must determine whether the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste identified in rule 335-14-2-.03.

(i) If the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste, it is subject to all applicable requirements of 335-14-1 through 335-14-9. The handler is considered the generator of the hazardous electrolyte and/or other waste and is subject to 335-14-3.

(ii) If the electrolyte or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, State of Alabama, or local solid waste regulations.

(b) Universal waste pesticides. A small quantity handler of universal waste must manage universal waste pesticides in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste pesticides must be contained in one or more of the following:

1. A container that remains closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; or

2. A container that does not meet the requirements of 335-14-11-.02(4)(b)1., provided that the unacceptable container is overpacked in a container that does meet the requirements of 335-14-11-.02(4)(b)1.; or

3. A tank that meets the requirements of rule 335-14-6-.10, except for 335-14-6-.10(8)(e), (11), and (12); or

4. A transport vehicle or vessel that is closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(c) Universal waste mercury-containing equipment. A small quantity handler of universal waste must manage universal waste mercury-containing equipment in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

1. A small quantity handler of universal waste must place in a container any universal waste mercury-containing equipment with non-contained elemental mercury or that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The container must be closed, structurally sound, compatible with the contents of the device, must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and must be reasonably designed to prevent the escape of mercury into the environment by volatilization or any other means.

2. A small quantity handler of universal waste may remove mercury-containing ampules from universal waste mercury-containing equipment provided the handler:

(i) Removes and manages the ampules in a manner designed to prevent breakage of the ampules;

(ii) Removes ampules only over or in a containment device (e.g., tray or pan sufficient to collect and contain any mercury released from an ampule in case of breakage);

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules, from that containment device to a container that meets the requirements of rule 335-14-3-.03(5);

(iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of rule 335-14-3-.03(5);

(v) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(vi) Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;

(vii) Stores removed ampules in closed, non-leaking containers that are in good condition;

(viii) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation;

3. A small quantity handler of universal waste mercury-containing equipment that does not contain an ampule may remove the open original housing holding the mercury from universal waste mercury-containing equipment provided the handler:

(i) Immediately seals the original housing holding the mercury with an air-tight seal to prevent the release of any mercury to the environment; and

(ii) Follows all requirements for removing ampules and managing removed ampules under paragraph (c)2. of this section;

4. (i) A small quantity handler of universal waste who removes mercury-containing ampules from mercury-containing equipment or seals mercury from mercury-containing equipment in its original housing must

determine whether the following exhibit a characteristic of hazardous waste identified in rule 335-14-2-.03:

(I) Mercury or clean-up residues resulting from spills or leaks; and/or

(II) Other solid waste generated as a result of the removal of mercury-containing ampules or housings (e.g., the remaining mercury-containing device).

(ii) If the mercury, residues, and/or other solid waste exhibits a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of 335-14-1 through 335-14-9. The handler is considered the generator of the mercury, residues, and/or other waste and must manage it in compliance with 335-14-3.

(iii) If the mercury, residues, and/or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, State of Alabama or local solid waste regulations.

(d) Lamps. A small quantity handler of universal waste must manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

1. A small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

2. A small quantity handler of universal waste must immediately clean up and place in a container any lamp that is broken and must place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment. Containers must be closed, structurally sound, compatible with the contents of the lamps and must lack evidence of leakage, spillage or damage that could cause leakage or releases of mercury or other hazardous constituents to the environment under reasonable foreseeable conditions.

(5) Labeling/marking. A small quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below:

(a) Universal waste batteries (i.e., each battery), or a container in which the batteries are contained, must be labeled or marked clearly with any one of the following phrases: "Universal Waste—Battery(ies)", or "Waste Battery(ies)", or "Used Battery(ies)";

(b) A container, (or multiple container package unit), tank, transport vehicle or vessel in which recalled universal waste pesticides as described in 335-14-11-.01(3)(a)1. are contained must be labeled or marked clearly with:

1. The label that was on or accompanied the product as sold or distributed; and

2. The words "Universal Waste-Pesticide(s)" or "Waste-Pesticide(s)";

(c) A container, tank, or transport vehicle or vessel in which unused pesticide products as described in 335-14-11-.01(3)(a)2. are contained must be labeled or marked clearly with:

1. (i) The label that was on the product when purchased, if still legible;

(ii) If using the labels described in 335-14-11-.02(5)(c)1.(i) is not feasible, the appropriate label as required under the Department of Transportation regulation 49 CFR Part 172;

(iii) If using the labels described in 335-14-11-.02(5)(c)1.(i) and (ii) is not feasible, another label prescribed or designated by the waste pesticide collection program administered or recognized by a State; and

2. The words "Universal Waste_-Pesticide(s)" or "Waste_-Pesticide(s)".

(d) (i) Universal waste mercury-containing equipment (i.e., each device), or a container in which the equipment is contained, must be labeled or marked clearly with any one of the following phrases: "Universal Waste-Mercury-Containing Equipment", "Waste Mercury-Containing Equipment", or "Used Mercury-Containing Equipment".

(ii) A universal waste mercury-containing thermostat or container containing only universal waste mercury-containing thermostats may be labeled or marked clearly with any of the following phrases: "Universal Waste-Mercury Thermostat(s)," "Waste Mercury Thermostat(s)," or "Used Mercury Thermostat(s)."

(e) Each lamp or a container or package in which the lamps are contained must be labeled or marked clearly with any one of the following phrases: "Universal Waste – Lamp(s)", or "Waste Lamp(s)", or "Used Lamp(s)".

(6) Accumulation time limits.

(a) A small quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated, or received from another handler, unless the requirements of 335-14-11-.02(6)(b) are met.

(b) A small quantity handler of universal waste may accumulate universal waste for longer than one year from the date the universal waste is generated, or received from another handler, if such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal. However, the handler bears the burden of proving that such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal.

(c) A small quantity handler of universal waste who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by:

1. Placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received;

2. Marking or labeling each individual item of universal waste (e.g., each battery or thermostat) with the date it became a waste or was received;

3. Maintaining an inventory system on-site that identifies the date each universal waste became a waste or was received;

4. Maintaining an inventory system on-site that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received;

5. Placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or

6. Any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

(7) Employee training. A small quantity handler of universal waste must inform all employees who handle or have responsibility for managing universal waste. The information must describe proper handling and emergency procedures appropriate to the type(s) of universal waste handled at the facility.

(8) Response to releases.

(a) A small quantity handler of universal waste must immediately contain all releases of universal wastes and other residues from universal wastes.

(b) A small quantity handler of universal waste must determine whether any material resulting from the release is hazardous waste, and if so, must manage the hazardous waste in compliance with all applicable

requirements of 335-14-1 through 335-14-9. The handler is considered the generator of the material resulting from the release, and must manage it in compliance with 335-14-3.

(9) Off-site shipments.

(a) A small quantity handler of universal waste is prohibited from sending or taking universal waste to a place other than another universal waste handler, a destination facility, or a foreign destination.

(b) If a small quantity handler of universal waste self-transports universal waste off-site, the handler becomes a universal waste transporter for those self-transportation activities and must comply with the transporter requirements of rule 335-14-11-.04 while transporting the universal waste.

(c) If a universal waste being offered for off-site transportation meets the definition of hazardous materials under 49 CFR Parts 171 through 180, a small quantity handler of universal waste must package, label, mark and placard the shipment, and prepare the proper shipping papers in accordance with the applicable Department of Transportation regulations under 49 CFR Parts 172 through 180;

(d) Prior to sending a shipment of universal waste to another universal waste handler, the originating handler must ensure that the receiving handler agrees to receive the shipment.

(e) If a small quantity handler of universal waste sends a shipment of universal waste to another handler or to a destination facility and the shipment is rejected by the receiving handler or destination facility, the originating handler must either:

1. Receive the waste back when notified that the shipment has been rejected, or

2. Agree with the receiving handler on a destination facility to which the shipment will be sent.

(f) A small quantity handler of universal waste may reject a shipment containing universal waste, or a portion of a shipment containing universal waste that he has received from another handler. If a handler rejects a shipment or a portion of a shipment, he must contact the originating handler to notify him of the rejection and to discuss reshipment of the load. The handler must:

1. Send the shipment back to the originating handler, or

2. If agreed to by both the originating and receiving handler, send the shipment to a destination facility.

(g) If a small quantity handler of universal waste receives a shipment containing hazardous waste that is not a universal waste, the handler

must immediately notify the Department of the illegal shipment, and provide the name, address, and phone number of the originating shipper. The Department will provide instructions for managing the hazardous waste.

(h) If a small quantity handler of universal waste receives a shipment of non-hazardous, non-universal waste, the handler may manage the waste in any way that is in compliance with applicable federal, State of Alabama, or local solid waste regulations.

(10) Tracking universal waste shipments. A small quantity handler of universal waste is not required to keep records of shipments of universal waste.

(11) Exports. A small quantity handler of universal waste who sends universal waste to a foreign destination other than to those OECD countries specified in 335-14-3-.05(9)(a)1. (in which case the handler is subject to the requirements of rule 335-14-3-.09) must:

(a) Comply with the requirements applicable to a primary exporter in rules 335-14-3-.05(4), 335-14-3-.05(7)(a)1. through 4., (a)6., and (b), and 335-14-3-.05(8);

(b) Export such universal waste only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent as defined in rule 335-14-1-.02; and

(c) Provide a copy of the EPA Acknowledgment of Consent for the shipment to the transporter transporting the shipment for export.

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335-14-11-.03 Standards for Large Quantity Handlers of Universal Waste.

(1) Applicability. 335-14-11-.03 applies to large quantity handlers of universal waste [as defined in rule 335-14-1-.02].

(2) Prohibitions. A large quantity handler of universal waste is:

(a) Prohibited from disposing of universal waste; and

(b) Prohibited from diluting or treating universal waste, except by responding to releases as provided in 335-14-11-.03(8); or by managing specific wastes as provided in 335-14-11-.03(4) or 335-14-8-.01(1)(c)2.(x).

(3) Notification.

(a) 1. Except as provided in 335-14-11-.03(3)(a)2. and 3., a large quantity handler of universal waste must have sent written notification of universal waste management to the Department, and received an EPA Identification Number, before meeting or exceeding the 5,000 kilogram storage limit.

2. A large quantity handler of universal waste who has already notified the Department of his hazardous waste management activities and has received an EPA Identification Number is not required to renotify under 335-14-11-.03(3).

3. A large quantity handler of universal waste who manages recalled universal waste pesticides as described in 335-14-11-.01(3)(a)1. and who has sent notification to EPA as required by 40 CFR Part 165 is not required to notify for those recalled universal waste pesticides under 335-14-11-.03(3).

(b) This notification must include:

1. The universal waste handler's name and mailing address;

2. The name and business telephone number of the person at the universal waste handler's site who should be contacted regarding universal waste management activities;

3. The address or physical location of the universal waste management activities;

4. A list of all of the types of universal waste managed by the handler (e.g., batteries, pesticides, mercury-containing equipment, lamps); and

5. A statement indicating that the handler is accumulating more than 5,000 kilograms of universal waste at one time and the types of universal waste (e.g., batteries, pesticides, mercury-containing equipment, lamps) the handler is accumulating above this quantity.

(4) Waste management.

(a) Universal waste batteries. A large quantity handler of universal waste must manage universal waste batteries in a way that prevents release of any universal waste or component of a universal waste to the environment, as follows:

1. A large quantity handler of universal waste must contain any universal waste battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the battery, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

2. A large quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed (except that cells may be opened to remove electrolyte but must be immediately closed after removal):

(i) Sorting batteries by type;

(ii) Mixing battery types in one container;

(iii) Discharging batteries so as to remove the electric charge;

(iv) Regenerating used batteries;

(v) Disassembling batteries or battery packs into individual batteries or cells;

(vi) Removing batteries from consumer products; or

(vii) Removing electrolyte from batteries.

3. A large quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste (e.g., battery pack materials, discarded consumer products) as a result of the activities listed above, must determine whether the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste identified in rule 335-14-2-.03.

(i) If the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of 335-14-1 through 335-14-9. The handler is considered the generator of the hazardous electrolyte and/or other waste and is subject to 335-14-3.

(ii) If the electrolyte or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, State of Alabama, or local solid waste regulations.

(b) Universal waste pesticides. A large quantity handler of universal waste must manage universal waste pesticides in a way that prevents release of any universal waste or component of a universal waste to the

environment. The universal waste pesticides must be contained in one or more of the following:

1. A container that remains closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; or

2. A container that does not meet the requirements of 335-14-11-.03(4)(b)1., provided that the unacceptable container is overpacked in a container that does meet the requirements of 335-14-11-.03(4)(b)1.; or

3. A tank that meets the requirements of rule 335-14-6-.10, except for 335-14-6-.10(8)(e), (11), and (12); or

4. A transport vehicle or vessel that is closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(c) Universal waste mercury-containing equipment. A large quantity handler of universal waste must manage universal waste mercury-containing equipment in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

1. A large quantity handler of universal waste must place in a container any universal waste mercury-containing equipment with non-contained elemental mercury or that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The container must be closed, structurally sound, compatible with the contents of the device, must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and must be reasonably designed to prevent the escape of mercury into the environment by volatilization or any other means.

2. A large quantity handler of universal waste may remove mercury-containing ampules from universal waste mercury-containing equipment provided the handler:

(i) Removes and manages the ampules in a manner designed to prevent breakage of the ampules;

(ii) Removes the ampules only over or in a containment device (e.g., tray or pan sufficient to collect and contain any mercury released from an ampule in case of breakage);

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks of broken ampules from that containment device to a container that meets the requirements of 335-14-3-.03(5);

(iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of 335-14-3-.03(5);

(v) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(vi) Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;

(vii) Stores removed ampules in closed, non-leaking containers that are in good condition;

(viii) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation.

3. A large quantity handler of universal waste mercury-containing equipment that does not contain an ampule may remove the open original housing holding the mercury from universal waste mercury-containing equipment provided the handler:

(i) Immediately seals the original housing holding the mercury with an air-tight seal to prevent the release of any mercury to the environment; and

(ii) Follows all requirements for removing ampules and managing removed ampules under paragraph (c)2. of this section; and

4. (i) A large quantity handler of universal waste who removes mercury-containing ampules from mercury-containing equipment or seals mercury from mercury-containing equipment in its original housing must determine whether the following exhibit a characteristic of hazardous waste identified in rule 335-14-2-.03:

(I) Mercury or clean-up residues resulting from spills or leaks; and/or

(II) Other solid waste generated as a result of the removal of mercury-containing ampules or housings (e.g., the remaining mercury-containing device).

(ii) If the mercury, residues, and/or other solid waste exhibits a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of 335-14-1 through 335-14-9. The handler is considered the generator of the mercury, residues, and/or other waste and must manage it in compliance with 335-14-3.

(iii) If the mercury, residues, and/or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, State of Alabama or local solid waste regulations.

(d) Universal Waste Lamps. A large quantity handler of universal waste must manage lamps in a way that prevents release of any universal waste or component of a universal waste to the environment, as follows:

1. A large quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers must remain closed and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

2. A large quantity handler of universal waste must immediately clean up and place in a container any lamp that is broken and must place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment. Containers must be closed, structurally sound, compatible with the contents of the lamps and must lack evidence of leakage, spillage or damage that could cause leakage or releases of mercury or other hazardous constituents to the environment under reasonably foreseeable conditions.

(5) Labeling/marking. A large quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below:

(a) Universal waste batteries (i.e., each battery), or a container or tank in which the batteries are contained, must be labeled or marked clearly with any one of the following phrases: "Universal Waste—Battery(ies)", or "Waste Battery(ies)", or "Used Battery(ies)";

(b) A container (or multiple container package unit), tank, transport vehicle or vessel in which recalled universal waste pesticides as described in 335-14-11-.01(3)(a)1. are contained must be labeled or marked clearly with:

1. The label that was on or accompanied the product as sold or distributed; and

2. The words "Universal Waste_—Pesticide(s)" or "Waste_-Pesticide(s)";

(c) A container, tank, or transport vehicle or vessel in which unused pesticide products as described in 335-14-11-.01(3)(a)2. are contained must be labeled or marked clearly with:

1. (i) The label that was on the product when purchased, if still legible;

(ii) If using the labels described in 335-14-11-.03(5)(c)1.(i) is not feasible, the appropriate label as required under the Department of Transportation regulation 49 CFR Part 172;

(iii) If using the labels described in 335-14-11-.03(5)(c)1.(i) and (ii) is not feasible, another label prescribed or designated by the pesticide collection program; and

2. The words "Universal Waste__-Pesticide(s)" or "Waste__-Pesticide(s)".

(d) 1. Universal waste mercury-containing equipment (i.e., each device), or a container in which the equipment is contained, must be labeled or marked clearly with any one of the following phrases: "Universal Waste-Mercury Containing Equipment", "Waste Mercury-Containing Equipment," or "Used Mercury-Containing Equipment."

2. A universal waste mercury-containing thermostat or container containing only universal waste mercury-containing thermostats may be labeled or marked clearly with any of the following phrases: "Universal Waste-Mercury Thermostat(s)," "Waste Mercury Thermostat(s)," or "Used Mercury Thermostat(s)."

(e) Each lamp or a container or package in which the lamps are contained must be labeled or marked clearly with any one of the following phrases: "Universal Waste – Lamp(s)", or "Waste Lamp(s)", or "Used Lamp(s)".

(6) Accumulation time limits.

(a) A large quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated, or received from another handler, unless the requirements of 335-14-11-.03(6)(b) are met.

(b) A large quantity handler of universal waste may accumulate universal waste for longer than one year from the date the universal waste is generated, or received from another handler, if such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal. However, the handler bears the burden of proving that such activity was solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal.

(c) A large quantity handler of universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by:

1. Placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received;

2. Marking or labeling the individual item of universal waste (e.g., each battery or thermostat) with the date it became a waste or was received;

3. Maintaining an inventory system on-site that identifies the date the universal waste being accumulated became a waste or was received;

4. Maintaining an inventory system on-site that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received;

5. Placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or

6. Any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

(7) Employee training. A large quantity handler of universal waste must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relative to their responsibilities during normal facility operations and emergencies.

(8) Response to releases.

(a) A large quantity handler of universal waste must immediately contain all releases of universal wastes and other residues from universal wastes.

(b) A large quantity handler of universal waste must determine whether any material resulting from the release is hazardous waste, and if so, must manage the hazardous waste in compliance with all applicable requirements of 335-14-1 through 335-14-9. The handler is considered the generator of the material resulting from the release, and is subject to 335-14-3.

(9) Off-site shipments.

(a) A large quantity handler of universal waste is prohibited from sending or taking universal waste to a place other than another universal waste handler, a destination facility, or a foreign destination.

(b) If a large quantity handler of universal waste self-transports universal waste off-site, the handler becomes a universal waste transporter for those self-transportation activities and must comply with the transporter requirements of 335-14-11-.04 while transporting the universal waste.

(c) If a universal waste being offered for off-site transportation meets the definition of hazardous materials under 49 CFR 171 through 180, a large quantity handler of universal waste must package, label, mark and placard the shipment, and prepare the proper shipping papers in accordance with the applicable Department of Transportation regulations under 49 CFR Parts 172 through 180;

(d) Prior to sending a shipment of universal waste to another universal waste handler, the originating handler must ensure that the receiving handler agrees to receive the shipment.

(e) If a large quantity handler of universal waste sends a shipment of universal waste to another handler or to a destination facility and the shipment is rejected by the receiving handler or destination facility, the originating handler must either:

1. Receive the waste back when notified that the shipment has been rejected, or

2. Agree with the receiving handler on a destination facility to which the shipment will be sent.

(f) A large quantity handler of universal waste may reject a shipment containing universal waste, or a portion of a shipment containing universal waste that he has received from another handler. If a handler rejects a shipment or a portion of a shipment, he must contact the originating handler to notify him of the rejection and to discuss reshipment of the load. The handler must:

1. Send the shipment back to the originating handler, or

2. If agreed to by both the originating and receiving handler, send the shipment to a destination facility.

(g) If a large quantity handler of universal waste receives a shipment containing hazardous waste that is not a universal waste, the handler must immediately notify the Department of the illegal shipment, and provide the name, address, and phone number of the originating shipper. The Department will provide instructions for managing the hazardous waste.

(h) If a large quantity handler of universal waste receives a shipment of non-hazardous, non-universal waste, the handler may manage the waste in any way that is in compliance with applicable federal, State of Alabama, or local solid waste regulations.

(10) Tracking universal waste shipments.

(a) Receipt of shipments. A large quantity handler of universal waste must keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, or

other shipping document. The record for each shipment of universal waste received must include the following information:

1. The name and address of the originating universal waste handler or foreign shipper from whom the universal waste was sent;

2. The quantity of each type of universal waste received (e.g., batteries, pesticides, thermostats);

3. The date of receipt of the shipment of universal waste.

(b) Shipments off-site. A large quantity handler of universal waste must keep a record of each shipment of universal waste sent from the handler to other facilities. The record may take the form of a log, invoice, manifest, bill of lading or other shipping document. The record for each shipment of universal waste sent must include the following information:

1. The name and address of the universal waste handler, destination facility, or foreign destination to whom the universal waste was sent;

2. The quantity of each type of universal waste sent (e.g., batteries, pesticides, thermostats);

3. The date the shipment of universal waste left the facility.

(c) Record retention.

1. A large quantity handler of universal waste must retain the records described in 335-14-11-.03(10)(a) for at least three years from the date of receipt of a shipment of universal waste.

2. A large quantity handler of universal waste must retain the records described in 335-14-11-.03(10)(b) for at least three years from the date a shipment of universal waste left the facility.

(11) Exports. A large quantity handler of universal waste who sends universal waste to a foreign destination other than to those OECD countries specified in 335-14-3-.05(9)(a)1. (in which case the handler is subject to the requirements of rule 335-14-3-.09) must:

(a) Comply with the requirements applicable to a primary exporter in rules 335-14-3-.05(4), 335-14-3-.05(7)(a)1. through 4., (a)6., and (b), and 335 14-3-.05(8);

(b) Export such universal waste only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent as defined in rule 335-14-1-.02; and

(c) Provide a copy of the EPA Acknowledgement of Consent for the shipment to the transporter transporting the shipment for export.

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