

SOUTH CAROLINA HAZARDOUS WASTE MANAGEMENT REGULATIONS

June 25, 2004



**Promulgated Pursuant to Sections 48-1-10 et seq. and 44-56-30
of the 1976 South Carolina Code of Laws**

**Supersedes
Regulations R.61-79.124, R.61-79.260 through .266,
.268, .270 and .273
(federal compliance)**

Previously Amended June 27, 2003

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Note to Users

This amendment to R.61-79 is effective June 25, 2004, superseding a June 27, 2003, amendment. The federal equivalent to R. 61-79 is amended throughout the year. This document reflects federal amendments published in the Federal Register prior to June 30, 2003. Recent federal amendments affect: zinc fertilizer made from recycled hazardous secondary materials, treatment standards for some hazardous and radioactive batteries prior to radioactive waste disposal, and technical corrections to combustor standards. The State is required to adopt certain federal amendments to maintain authorization by the United States Environmental Protection Agency for the State Hazardous Waste Management Program.

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For further information regarding the State's hazardous waste regulations,
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SC RCRA REGS 2004

This disc includes all the files from Regulations 61-79.124, 260, 261, 262, 263, 264, 265, 268, 270 and 273. These files meet Federal Compliance requirements and reflect any changes made through and including June of 2002.

These files may be copied or searched.

In any dispute, the official regulations are those published in the State Register.

Questions &/or comments may be directed to Suzanne Rhodes 896-4174 or Carolyn McLaughlin at 896-4254.

We hope you find this version of our regulation package usable and useful.

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Part 264 - Standards for Owners & Operators of Hazardous Waste Treatment Storage and Disposal Facilities

Subpart A - General

264.1 Purpose, scope and applicability

(a) The purpose of this part is to establish minimum national standards which define the acceptable management of hazardous waste. (12/93)

(b) The standards in this part apply to owners and operators of all facilities which treat, store, or dispose of hazardous waste, except as specifically provided otherwise in this part or in R.61-79.261.

(c) The requirements of this regulation apply to a person disposing of hazardous waste by means of ocean disposal subject to a permit issued under the Marine Protection, Research, and Sanctuaries Act only to the extent they are included under R.61-79.270, in a permit under these regulations. (12/92; 12/93)

[Comment: These R.61-79.264 regulations do apply to the treatment or storage of hazardous waste before it is loaded onto an ocean vessel for incineration or disposal at sea.] (12/92; 12/93)

(d) The requirements of this regulation apply to a person disposing of hazardous waste by means of underground injection subject to a permit issued under an Underground Injection Control (UIC) Regulations R.61-87 only to the extent required by R.61-79.270.60(b) and 44-55-10 et. seq. (12/92; 12/93)

[Comment: These R.61-79.264 regulations do apply to the aboveground treatment or storage of hazardous waste before it is injected underground.] (12/92; 12/93)

(e) The requirements of this regulation apply to the owner or operator of a POTW which treats, stores, or disposes of hazardous waste only to the extent they are included in a RCRA permit by rule granted to such a person under part 270.

(f) [Reserved]

(g) The requirements of this regulation do not apply to:

(1) The owner or operator of a facility permitted, licensed, or registered 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 R.61-79.261.5; (12/93)

(2) The owner or operator of a facility managing recyclable materials described in R.61-79.261.6 (a)(2),

(3), and (4) (except to the extent that requirements of this subpart are referred to in or subparts C, F, G, or H of part 266). (12/93)

(3) A generator accumulating waste onsite in compliance with R.61-79.262.34;

(4) A farmer disposing of waste pesticides from his own use in compliance with R.61-79.262.70; or

(5) The owner or operator of a totally enclosed treatment facility, as defined in R.61-79.260.10;

(6) The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in R.61-79.260.10, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory defined in 268.40, Table Treatment Standards for Hazardous Wastes), or reactive (D003) waste, to remove the characteristic before land disposal, the owner/operator must comply with the requirements set out in 264.17(b). (12/93; 5/96)

(7) [Reserved]

(8)(i) Except as provided in paragraph (g)(8)(ii) of this section, a person engaged in treatment or containment activities during immediate response to any of the following situations:

- (A) A discharge of a hazardous waste;
- (B) An imminent and substantial threat of a discharge of hazardous waste;
- (C) A discharge of a material which, when discharged, becomes a hazardous waste.
- (D) An immediate threat to human

health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in 260.10. (9/98)

(ii) An owner or operator of a facility otherwise regulated by this part must comply with all applicable requirements of subparts C and D.

(iii) Any person who is covered by paragraph (g)(8)(i) of this section and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this regulation and R.61-79.124 and R.61-79.270 for those activities.

(iv) In the case of an explosives or munitions emergency response, if a Federal, State, 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. (9/98)

(9) A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of R.6-79.262.30 at a transfer facility for a period of ten days or less. (12/92)

(10) The addition of absorbent material to waste in a container (as defined in R.61-79.260.10) or the addition of waste to absorbent material in a container, provided that these actions occur at the time waste is first placed in the container; and 264.17(b), 264.171, and 264.172 are complied with.

(11) Universal waste handlers and universal waste transporters (as defined in R.61-79.260.10) handling the wastes listed below. These handlers are subject to regulation under R.61-79.273, when handling the below listed universal wastes. (5/96)

(i) Batteries as described in R.61-79.273.2;

(ii) Pesticides as described in R.61-79.273.3;

and

(iii) Thermostats as described in 273.4. and

(8/00)

(iv) Lamps as described in 273.5. (8/00)

(h) The requirements of this part apply to owners or operators of all facilities which treat, store, or dispose of hazardous wastes referred to in part 268. (11/90)

(i) Section 266.205 of this chapter identifies when the requirements of this part apply to the storage of military munitions classified as solid waste under 266.202 of this chapter. The treatment and disposal of hazardous waste military munitions are subject to the applicable permitting, procedural, and technical standards in 260 through 270. (9/98)

(j) The requirements of subparts B, C, and D of this part and 264.101 do not apply to remediation waste management sites. (However, some remediation waste management sites may be a part of a facility that is subject to a traditional RCRA permit because the facility is also treating, storing or disposing of hazardous wastes that are not remediation wastes. In these cases, Subparts B, C, and D of this part, and 264.101 do apply to the facility subject to the traditional RCRA permit.) Instead of the requirements of subparts B, C, and D of this part, owners or operators of remediation waste management sites must: (8/00)

(1) Obtain an EPA identification number by applying to the Department using EPA Form 8700-12;

(2) Obtain a detailed chemical and physical analysis of a representative sample of the hazardous

remediation wastes to be managed at the site. At a minimum, the analysis must contain all of the information which must be known to treat, store or dispose of the waste according to this part and part 268 of this chapter, and must be kept accurate and up to date;

(3) Prevent people who are unaware of the danger from entering, and minimize the possibility for unauthorized people or livestock to enter onto the active portion of the remediation waste management site, unless the owner or operator can demonstrate to the Department that:

(i) Physical contact with the waste, structures, or equipment within the active portion of the remediation waste management site will not injure people or livestock who may enter the active portion of the remediation waste management site; and

(ii) Disturbance of the waste or equipment by people or livestock who enter onto the active portion of the remediation waste management site, will not cause a violation of the requirements of this part;

(4) Inspect the remediation waste management site for malfunctions, deterioration, operator errors, and discharges that may be causing, or may lead to, a release of hazardous waste constituents to the environment, or a threat to human health. The owner or operator must conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment, and must remedy the problem before it leads to a human health or environmental hazard. Where a hazard is imminent or has already occurred, the owner/operator must take remedial action immediately;

(5) Provide personnel with classroom or on-the-job training on how to perform their duties in a way that ensures the remediation waste management site complies with the requirements of this part, and on how to respond effectively to emergencies;

(6) Take precautions to prevent accidental ignition or reaction of ignitable or reactive waste, and prevent threats to human health and the environment from ignitable, reactive and incompatible waste;

(7) For remediation waste management sites subject to regulation under subparts I through O and subpart X of this part, the owner/operator must design, construct, operate, and maintain a unit within a 100-year floodplain to prevent washout of any hazardous waste by a 100-year flood, unless the owner/operator can meet the demonstration of 264.18(b);

(8) Not place any non-containerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine or cave;

(9) Develop and maintain a construction quality assurance program for all surface impoundments, waste piles and landfill units that are required to comply with 264.221(c) and (d), 264.251(c) and (d), and 264.301(c) and (d) at the remediation waste management site, according to the requirements of 264.19;

(10) Develop and maintain procedures to prevent accidents and a contingency and emergency plan to control accidents that occur. These procedures must address proper design, construction, maintenance, and operation of remediation waste management units at the site. The goal of the plan must be to minimize the possibility of, and the hazards from a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment. The plan must explain specifically how to treat, store and dispose of the hazardous remediation waste in question, and must be implemented immediately whenever a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment;

(11) Designate at least one employee, either on the facility premises or on call (that is, available to respond to an emergency by reaching the facility quickly), to coordinate all emergency response measures. 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;

(12) Develop, maintain and implement a plan to meet the requirements in paragraphs (j)(2) through (j)(6) and (j)(9) through (j)(10) of this section; and

(13) Maintain records documenting compliance with paragraphs (j)(1) through (j)(12) of this section.

264.2 [Reserved]

264.3 Relationship to interim status standards

A facility owner or operator who has fully complied with the requirements for interim status - as defined under R.61-79.270.70 and in section 3005(e) of RCRA - must comply with the regulations specified in R.61-79.265 in lieu of the regulations in this part, until final administrative disposition of his permit application is made, except as provided under R.61-79.264, subpart S. (12/92; 12/93)

[Comment: As stated in 44-56-60 and section 3005(a) of RCRA, after the effective date of regulations under that section, i.e., parts 270 and 124, the treatment, storage, or disposal of hazardous waste is prohibited except in accordance with a permit under these regulations; the statutes. 44-56-60 and Section 3005(e) of RCRA provide for the continued operation of an existing facility which meets certain conditions until final administrative disposition of the owner's or operator's permit application is made.] (12/92; 12/93)

264.4 Imminent hazard action

Notwithstanding any other provisions of these regulations, enforcement actions may be brought pursuant to Section 44-56-50 of the 1976 South Carolina Code of Laws, as amended, and pursuant to section 7003 of RCRA. (12/92)

264.5 Notification requirements upon owners and operators of hazardous waste facilities

(a) Any person who owns or operates a facility within the State which treats, store, or disposed of a hazardous waste and has not previously done so shall file a completed Notification Form with the Department within thirty (30) days of the effective date of this regulation.

(b) Any person who plans to construct a new facility to treat, store or dispose of hazardous waste shall file a completed Notification Form with the Department as part of his permit application.

(c) This notification shall be on a form designated by the Department and shall be completed as required by the instructions supplied with such form.

(d) Any person who owns or operates a facility which treats, stores, or disposed of a hazardous waste which is classified or listed for the first time by a revision of R.61-79.261 and has not previously done so shall file a revised or new Notification Form for that waste within ninety (90) days after the effective date of such revision. The information to be furnished on the form shall include but not be limited to the location and general description of such activity, the identified or listed hazardous wastes handled by such person and, if applicable, a description of the production or energy recovery activity carried out at the facility and such other information as the Department deems necessary.

(e) Persons engaged in the following activities are required to make a separate notification:

(1) Producers of fuels from; identified or

(i) Any hazardous wastes listed in R.61-79.261;

(ii) Used oil; and

(iii) Used oil and any other material.

(2) Burners (other than a single or two-family residence) for purposes of energy recovery any fuel produced identified in paragraph 1.

(3) Distributors or marketers of any fuel as identified in paragraph 1.

Subpart B - General Facility Standards

264.10 Applicability

(a) The regulations in this subpart apply to owners and operators of all hazardous waste facilities, except as provided in 264.1 and in paragraph (b) of this section.

(b) Section 264.18(b) applies only to facilities subject to regulation under subparts I through O and subpart X of this part (11/90).

264.11 Identification number

(a) No owner or operator of a hazardous waste facility shall treat, store, or dispose of hazardous waste or accept for treatment, storage or disposal hazardous waste without having received an EPA identification number.

(b) An owner or operator of a hazardous waste facility who has not previously received an EPA identification number may obtain one by submitting the Notification Form required under 264.5. Every facility owner or operator must apply for an EPA identification number in accordance with the notification procedures under 264.5. (12/92; 12/93)

264.12 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 part 262, subpart H must provide a copy of the tracking document bearing all required signatures to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the competent authorities of all other concerned countries within three working days of receipt of the shipment. The original of the signed tracking document must be maintained at the facility for at least three years. (9/98)

(b) The owner or operator of a facility that receives hazardous waste from an offsite source (except where the owner or operator is also the generator) must inform the generator in writing that he has the appropriate permit(s) under these regulations 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. (5/95, 6/97)

(c) Before transferring ownership or operation of a facility during its operating life, or of a disposal facility during the postclosure care period, the owner or operator must notify the new owner or operator in writing of the requirements of this part and R.61-79.270.

[Comment: An owner's or operator's failure to notify the new owner or operator of the requirements of this part in no way relieves the new owner or operator of his obligation to comply with all applicable requirements.] (12/92)

264.13 General waste analysis

(a)(1) Before an owner or operator treats, stores, or disposes of any hazardous wastes, or nonhazardous

wastes if applicable under 264.113(d), he must obtain a detailed chemical and physical analysis of a representative sample of the wastes. At a minimum, the analysis must contain all the information which must be known to treat, store, or dispose of the waste in accordance with the requirements of this regulation or with the conditions of a permit issued under R.61-79.268, .270, Subparts A and B, and R.61-79.124. (11/90; 12/93)

(2) The analysis may include data developed under part 261, and existing published or documented data on the hazardous waste or on hazardous waste generated from similar processes. [Comment: For example, the facility's records of analyses performed on the waste before the effective date of these regulations, or studies conducted on hazardous waste generated from processes similar to that which generated the waste to be managed at the facility, may be included in the data base required to comply with paragraph (a)(1) of this section. The owner or operator of an offsite facility may arrange for the generator of the hazardous waste to supply part or all of the information required by paragraph (a)(1) of this section, except as otherwise specified in 268.7 (b) and (c). If the generator does not supply the information, and the owner or operator chooses to accept a hazardous waste, the owner or operator is responsible for obtaining the information required to comply with this section. (12/92; 12/93)]

(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 nonhazardous wastes if applicable under 264.113(d), has changed; (11/90) and

(ii) For offsite facilities, when the results of the inspection required in paragraph (a)(4) of this section indicate that the hazardous waste received at the facility does not match the waste designated on the accompanying manifest or shipping paper.

(4) The owner or operator of an offsite facility must inspect and, if necessary, 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. (12/92)

(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 paragraph (a) of this section. He must keep this plan at the facility. At a minimum, the plan must specify:

(1) The parameters for which each hazardous waste, or nonhazardous waste if applicable under 264.113(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 paragraph (a) of this section; (11/90)

(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 Appendix I of R.61-79.261; or

(ii) An equivalent sampling method.

[Comment: See 260.21 for related discussion.] (12/92)

(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; and (12/92)

(5) For offsite facilities, the waste analyses that hazardous waste generators have agreed to supply.

(6) Where applicable, the methods that will be used to meet the additional waste analysis requirements for specific waste management methods as specified in 264.17, 264.314, 264.341, 264.1034(d), 264.1063(d), 264.1083, and 268.7. (12/92, 9/98)

(7) For surface impoundments exempted from land disposal restrictions under 268.4(a), the procedures and schedules for (11/90):

(i) The sampling of impoundment contents;

(ii) The analysis of test data; and,

(iii) The annual removal of residues which are not delisted under 260.22 or which exhibit a characteristic of hazardous waste and either:

(A) Do not meet applicable treatment standards of part 268, subpart D; or

(B) Where no treatment standards have been established;

(1) Such residues are prohibited from land disposal under 268.32 or RCRA section 3004(d); or

(2) Such residues are prohibited from land disposal under 268.33(f).

(8) For owners and operators seeking an exemption to the air emission standards of subpart CC in accordance with 264.1082: (9/98)

(i) If direct measurement is used for the waste determination, the procedures and schedules for waste sampling and analysis, and the results of the analysis of test data to verify the exemption.

(ii) If knowledge of the waste is used for the waste determination, any information prepared by the facility owner or operator or by the generator of the hazardous waste, if the waste is received from off-site, that is used as the basis for knowledge of the waste.

(c) For offsite facilities, the waste analysis plan required in paragraph (b) of this section must also specify the procedures which will be used to inspect and, if necessary, 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: (12/92)

(1) The procedures which will be used to determine the identity of each movement of waste managed at the facility; and

(2) The sampling method which will be used to obtain a representative sample of the waste to be identified, if the identification method includes sampling.

(3) The procedures that the owner or operator of an offsite 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. (12/93)

[Comment: R.61-79.270 requires that the waste analysis plan be submitted with Part B of the permit application.] (12/92)

264.14 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 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 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 this part.

[Comment: R.61-79.270 requires that an owner or operator who wishes to make the demonstration referred to above must do so with Part B of the permit application required under these regulations. (12/92; 12/93)

(b) Unless the owner or operator has made a successful demonstration under paragraphs (a)(1) and (a)(2) of this section, 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).

[Comment: The requirements of paragraph (b) of this section are satisfied if the facility or plant within which the active portion is located itself has a surveillance system, or a barrier and a means to control

entry, which complies with the requirements of paragraph (b)(1) or (2) of this section. (12/92)

(c) Unless the owner or operator has made a successful demonstration under paragraphs (a)(1) and (a)(2) of this section, 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 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. (12/93)

[Comment: See 264.117(b) for discussion of security requirements at disposal facilities during the postclosure care period.]

264.15 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 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 264.174, 264.193, 264.194, 264.195, 264.226, 264.253, 264.254, 264.278, 264.303, 264.347, 264.602, 264.1033, 264.1052, 264.1053, 264.1058, and 264.1083 through 264.1089. (12/92; 12/93, 9/98, 11/99)

[Comment: Part 270 requires the inspection schedule to be submitted with Part B of the permit application. The Department 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. (12/92)]

(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.

264.16 Personnel training

(a) (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 this part. The owner or operator must ensure that this program includes all the elements described in the document required under paragraph (d)(3) of this section.

[Comment: Part 270 requires that owners and operators submit with Part B of the RCRA permit application, an outline of the training program used (or to be used) at the facility and a brief description of how the training program is designed to meet actual job tasks.] (12/92)

(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.

(b) Facility personnel must successfully complete the program required in paragraph (a) of this section 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 paragraph (a) of this section.

(c) Facility personnel must take part in an annual review of the initial training required in paragraph (a) of this section.

(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 paragraph (d)(1) of this section. 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 paragraph (d)(1) of this section;

(4) Records that document that the training or job experience required under paragraphs (a), (b), and (c) of this section 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.

(f) R.61-79.270 Subpart B requires that owners and operator submit, with Part B of the permit application, an outline of the training program used (or to be used) at the facility and a brief description of how the training program is designed to meet actual job tasks.

264.17 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

264.18 Location standards [See also R.61-104] (12/92)
there is a hazard from ignitable or reactive waste. (12/92)

(b) Where specifically required by other sections of this part, 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 paragraph (a) or (b) of this section, 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 264.13), or the results of the treatment of similar wastes by similar treatment processes and under similar operating conditions.

264.18 Location standards [See also R.61-104] (12/92)

(a) Seismic considerations.

(1) Portions of new facilities where treatment, storage, or disposal of hazardous waste will be conducted must not be located within 61 meters (200 feet) of a fault which has had displacement in Holocene time.

(2) As used in paragraph (a)(1) of this section:

(i) "Fault" means a fracture along which rocks on one side have been displaced with respect to those on the other side.

(ii) "Displacement" means the relative movement of any two sides of a fault measured in any direction.

(iii) "Holocene" means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene to the present.

[Comment: Procedures for demonstrating compliance with this standard in Part B of the permit application are specified in R61-79.270.14(b)(11). Facilities which are located in political jurisdictions other than those listed in Appendix VI of this part, are assumed to be in compliance with this requirement.] (12/92; 12/93)

(b) Floodplains.

(1) 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 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: (11/90)

(A) The volume and physical and chemical characteristics of the waste in the facility;

(B) The concentration of hazardous constituents that would potentially affect surface waters as a result of washout;

(C) The impact of such concentrations on the current or potential uses of and water quality standards established for the affected surface waters; and

(D) 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.

[Comment: The location where wastes are moved must be a facility which is either permitted under part 270 or in interim status under parts 270 and 265.] (12/92)

(2) As used in paragraph (b)(1) of this section:

(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.

[Comment: (1) Requirements pertaining to other laws which affect the location and permitting of facilities are found in 270.3 and R.61-104. For details relative to these laws, see also EPA's manual for SEA (special environmental area) requirements for hazardous waste facility permits. Applicants are advised to consider them in planning the location of a facility to help prevent subsequent project delays.] (12/92; 12/93)

(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.

264.19 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

264.19 Construction quality assurance program

264.221 (c) and (d), 264.251 (c) and (d), and 264.301 (c) and (d). 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 paragraph (a) of this section 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 paragraph (a)(2) of this section, 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 264.73.

(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 paragraph (a)(2) of this section;

(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 264.221, 264.251, and 264.301.

(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 264.221(c)(1)(i)(B), 264.251(c)(1)(i)(B), and 264.301(c)(1)(i)(B) 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 264.221(c)(1)(i)(B), 264.251(c)(1)(i)(B), and 264.301(c)(1)(i)(B) in the field.

(d) Certification. Waste shall not be received in a unit subject to 264.19 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 264.221 (c) or (d), 264.251 (c) or (d), or 264.301 (c) or (d); and the procedure in 270.30(l)(2)(ii) has been completed. Documentation supporting the CQA officer's certification must be furnished to the Department upon request.

Subpart C - Preparedness And Prevention

264.30 Applicability

The regulations in this subpart apply to owners and operators of all hazardous waste facilities, except as 264.1 provides otherwise.

264.31 Design and operation of facility

Facilities must be designed, constructed, maintained, and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or nonsudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

264.32 Required equipment

All facilities must be equipped with the following, unless it can be demonstrated to the Department that none of the hazards posed by waste handled at the facility could require a particular kind of equipment specified below:

(a) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;

(b) A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams;

(c) Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals),

spill control equipment, and decontamination equipment; and

(d) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

[Comment: Part 270 requires that an owner or operator who wishes to make the demonstration referred to above must do so with Part B of the permit application.] (12/92)

264.33 Testing and maintenance of equipment

All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, must be tested and maintained as necessary to assure its proper operation in time of emergency.

264.34 Access to communications or alarm system

(a) Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless the Department has ruled that such a device is not required under 264.32.

(b) If there is ever just one employee on the premises while the facility is operating, he must have immediate access to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, unless the Department has ruled that such a device is not required under 264.32.

264.35 Required aisle space

The owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless it can be demonstrated to the Department that aisle space is not needed for any of these purposes.

[Comment: Part 270 requires that an owner or operator who wishes to make the demonstration referred to above must do so with Part B of the permit application.] (12/92)

264.36 [Reserved]

264.37 Arrangements with local authorities

(a) The owner or operator must attempt to make the following arrangements, as appropriate for the type of waste handled at his facility and the potential need for the services of these organizations:

(1) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working,

264.54 Amendment of contingency plan

entrances to and roads inside the facility, and possible evacuation routes;

(2) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;

(3) Agreements with State emergency response teams, emergency response contractors, and equipment suppliers; and

(4) Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

(b) Where State or local authorities decline to enter into such arrangements, the owner or operator must document the refusal in the operating record.

Subpart D - Contingency Plans And Emergency Procedures

264.50 Applicability

The regulations in this subpart apply to owners and operators of all hazardous waste facilities, except as 264.1 provides otherwise.

264.51 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 unplanned sudden or nonsudden 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.

264.52 Content of contingency plan

(a) The contingency plan must describe the actions facility personnel must take to comply with 264.51 and 264.56 in response to fires, explosions, or any unplanned sudden or nonsudden 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 part 1510 of Chapter V, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this part. (12/92)

(c) The plan must describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, pursuant to 264.37.

(d) The plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see 264.55), 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. For new facilities, this information must be supplied to the Department at the time of certification, rather than at the time of permit application.

(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).

264.53 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 police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

[Comment: The contingency plan must be submitted to the Department with Part B of the permit application under part 270 and, after modification or approval, will become a condition of any permit issued.] (12/92; 12/93)

264.54 Amendment of contingency plan

The contingency plan must be reviewed, and immediately amended, if necessary, whenever: (moved 11/90)

(a) The facility permit is 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.

264.55 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.

[Comment: The emergency coordinator's responsibilities are more fully spelled out in 264.56. Applicable responsibilities for the emergency coordinator vary, depending on factors such as type and variety of waste(s) handled by the facility, and type and complexity of the facility.] (12/92)

264.56 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 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 runoff 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, 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 Department (using its 24-hour number 803-253-6488) and the government official designated as the on-scene coordinator for that geographical area, (in the applicable regional contingency plan under part 1510 of this title) and the National Response Center (using their 24-hour toll free number 800/424-8802). The report must include: (12/92)

- (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 release 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.

[Comment: Unless the owner or operator can demonstrate, in accordance with R.61-79.261.3(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 R.61-79.262 Standards Applicable to Generators of Hazardous Waste, R.61-79.263 Standards Applicable to Transporters of Hazardous Waste and R.61-79.264. (11/90, 12/92)]

(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 appropriate State and local authorities, that the facility is in compliance with paragraph (h) of this section 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.

Subpart E - Manifest System, Recordkeeping, and Reporting

264.70 Applicability

The regulations in this subpart apply to owners and operators of both on-site and off-site facilities, except as R.61-79.264.1 provides otherwise. Sections 264.71, 264.72, and 264.76 do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources, and to owners and operators of off-site facilities with respect to waste military munitions exempted from manifest requirements under 266.203(a). Section 264.73(b) only applies to permittees who treat, store, or dispose of hazardous wastes on-site where such wastes were generated. (11/90, 9/98)

264.71 Use of manifest system

(a) If a facility receives hazardous waste accompanied by a manifest, the owner or operator, or his agent, must:

- (1) Sign and date each copy of the manifest to certify that the hazardous waste covered by the manifest was received;
- (2) Note any significant discrepancies in the manifest (as defined in 264.72(a)) on each copy of the manifest;

[Comment: The Department does not intend that the owner or operator of a facility whose procedures under 264.13(c) include waste analysis must perform that analysis before signing the manifest and giving it to the transporter. Section 264.72(b), however, requires reporting an unreconciled discrepancy discovered during later analysis.] (12/92)

- (3) Immediately give the transporter at least one copy of the signed manifest;
- (4) Within 30 days after the delivery, send a copy of the completed manifest to the generator; and (6/97)
- (5) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

(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 264.72(a)) in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper.

[Comment: The Department does not intend that the owner or operator of a facility whose procedures under 264.13(c) include waste analysis must perform that analysis before signing the shipping paper and giving it to the transporter. Section 264.72(b), however, requires reporting an unreconciled discrepancy discovered during later analysis.] (12/92)

(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 completed 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 (6/97)

[Comment: Section 262.23(c) requires the generator to send three copies of the manifest to the facility when hazardous waste is sent by rail or water (bulk shipment).] (12/92)

(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 R.61-79.262.

[Comment: The provisions of R.61-79.262.34 are applicable to the onsite accumulation of hazardous wastes by generators. Therefore, the provisions of 262.34 only apply to owners or operators who are shipping hazardous waste which they generated at that facility.] (12/92)

(d) Within three working days of the receipt of a shipment subject to 262, subpart H, the owner or operator of the facility must provide a copy of the tracking document bearing all required signatures to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW.,

Washington, DC 20460, and to competent authorities of all other concerned countries. The original copy of the tracking document must be maintained at the facility for at least three years from the date of signature. (9/98)

264.72 Manifest discrepancies

(a) Manifest discrepancies are differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste a facility actually receives.

Significant discrepancies in quantity are:

- (1) For bulk waste, variations greater than 10 percent in weight, and
- (2) for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload.

Significant discrepancies 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.

(b) Upon discovering a significant discrepancy, 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 Department a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

264.73 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 until closure of the facility:

(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 Appendix I; (11/90)

(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 specific manifest document numbers, if the waste was accompanied by a manifest;

[Comment: See 264.119 for related requirements.] (11/90, 12/92)

(3) Records and results of waste analyses and waste determinations performed as specified in 264.13, 264.17, 264.314, 264.341, 264.1034, 264.1063, 264.1083, 268.4(a), and 268.7; (6/89, 12/92; 12/93, 9/98)

(4) Summary reports and details of all incidents that require implementing the contingency plan as specified in 264.56(j);

(5) Records and results of inspections as required by 264.15(d) (except these data need be kept only three years);

(6) Monitoring, testing or analytical data, and corrective action where required by subpart F of this part and 264.19, 264.191, 264.193, 264.195, 264.222, 264.223, 264.226, 264.252 through 264.254, 264.276, 264.278, 264.280, 264.302 through 264.304, 264.309, 264.347, 264.602, 264.1034(c) through 264.1034(f), 264.1035, 264.1063(c) through 264.1063(i), 264.1064, 264.1088, and 264.1082 through 264.1090. (11/90; 12/92; 12/93, 9/98, 11/99)

(7) For offsite facilities, notices to generators as specified in section 264.12(b); and

(8) All closure cost estimates under 264.142, and, for disposal facilities, all postclosure cost estimates under 264.144 (11/90).

(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 is 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 268.5, a petition pursuant to 268.6, or a certification under 268.8, and the applicable notice required by a generator under 268.7(a); (11/90)

(11) For an offsite treatment facility, a copy of the notice, and the certification and demonstration, if applicable, required by the generator or the owner or operator under 268.7 or 268.8; (11/90)

(12) For an onsite 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 268.7 or 268.8; (11/90)

(13) For an offsite 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 268.7 and 268.8, whichever is applicable; and (11/90)

(14) For an onsite land disposal facility, the information contained in the notice required by the generator or owner or operator of a treatment facility under 268.7, except for the manifest number, and the certification and demonstration if applicable, required under 268.8, whichever is applicable. (11/90)

(15) For an offsite storage facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator under 268.7 or 268.8; and (11/90)

(16) For an onsite 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 268.7 or 268.8. (11/90)

(17) Any records required under 264.1(j)(13). (8/00)

264.74 Availability, retention, and disposition of records

(a) All records, including plans, required under this part must be furnished upon request, and made available at all reasonable times for inspection, by any officer, employee, or representative of the Department.

(b) The retention period for all records required under this part 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 264.73(b)(2) must be submitted to the Department and local land authority upon closure of the facility.

264.75 Quarterly report

(a) Each owner or operator of a hazardous waste facility shall, no later than thirty (30) days after the end of each calendar quarter, submit a written report to the Department including (12/92; 12/93)

(1) The types and quantities of hazardous waste generated giving the EPA hazardous waste number (from R.61-79.261 Subparts C or D) and the DOT hazardous class;

(2) The types and quantities of hazardous waste received at the facility during the reporting period;

(3) The types and quantities of hazardous wastes treated, stored, disposed of, and otherwise handled during the reporting period; (11/90)

(4) The EPA identification number, name, and address of the facility; and

(5) The calendar quarter covered by the report;

(6) For offsite facilities, the EPA identification number 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;

(7) A description and the quantity of each hazardous waste the facility received during the year. For offsite facilities, this information must be listed by EPA identification number of each generator; and

(8) The most recent closure cost estimate under 264.142, and, for disposal facilities, the most recent postclosure cost estimate under 264.144; and

(9) Certification from any out-of-state generator who shipped waste to the facility during the reporting period that he has a program in place to reduce the volume or quantity and toxicity of such waste to the degree determined to be economically practicable and that the proposed method of handling the waste is that

practicable method currently available which minimizes the present and future threat to human health and the environment;

(10) The method of treatment, storage, or disposal for each hazardous waste; and (moved 12/93)

(11) certification of information signed by the owner or operator of the facility or his authorized representative. (moved 11/90; 12/93)

(b) Each owner or operator shall submit the information required by paragraph (a) on a form designated by the Department and according to the instructions included with such form.

(c) Each owner or operator shall retain a copy of the report required in paragraphs (a) and (b) for a period of three (3) years.

264.76 Unmanifested waste report

If a facility accepts for treatment, storage, or disposal any hazardous waste from an offsite source without an accompanying manifest, or without an accompanying shipping paper as described in R.61-79.263.20(e)(2) and if the waste is not excluded from the manifest requirement by R.61-79.261.5, then the owner or operator must prepare and submit a single copy of a report to the Department within fifteen days after receiving the waste. The unmanifested waste report must be submitted to the Department on form 8700-13B. Such report must be designated 'Unmanifested Waste Report' and include the following information: (12/93)

(a) The EPA identification number, name, and address of the facility;

(b) The date the facility received the waste;

(c) The EPA identification number, name, and address of the generator and the transporter, if available;

(d) A description and the quantity of each unmanifested hazardous waste and facility received; (12/93)

(e) The method of treatment, storage, or disposal for each hazardous waste;

(f) The certification signed by the owner or operator of the facility or his authorized representative; and

(g) A brief explanation of why the waste was unmanifested, if known.

[Comment: Small quantities of hazardous waste are excluded from this regulation and do not require a manifest. Where a facility receives unmanifested hazardous wastes, the Department requires that the owner or operator obtain from each generator a certification that the waste qualifies for exclusion. Otherwise, the Department requires that the owner or operator file an unmanifested waste report for the hazardous waste movement. (12/92)]

264.77 Additional reports

In addition to submitting the reports described in 264.75 and 264.76, each owner or operator of an applicable hazardous waste facility must submit the groundwater

reports required under 264.97(i) and furnish additional reports concerning their hazardous waste activities including the following: (11/90)

- (a) Releases, fires, and explosions as specified in 264.56(j);
- (b) Facility closures specified in 264.115; and
- (c) As otherwise required by subparts F, K through N, AA, BB, and CC of R.61-79.264 (12/92, 9/98).
- (d) With the fourth quarter report, generators who treat, store, or dispose of hazardous waste onsite, a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated. (moved 12/93)
- (e) With the fourth quarter report, generators who treat, store, or dispose of hazardous waste onsite, 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. (moved 12/93)

264.78 Hazardous waste contingency fund fees [see also 44-56-170 & -510]

A check payable to the Department for the amount of the following fees:

- (a) A fee of thirty-four dollars a ton of hazardous wastes generated and disposed of in this State by landfilling or other means of land disposal.
- (b) A fee of thirteen dollars and seventy cents a ton of wastes generated and disposed of in this State by landfilling or other means of land disposal.
- (c) A fee of one dollar per ton of hazardous wastes in excess of fifty tons remaining in storage at the end of the reporting period.
- (d) For all hazardous wastes generated outside of the State and received at a facility during the quarter each owner/operator of a hazardous waste land disposal facility shall remit to the department an amount equal to the per ton fee imposed on out-of-state waste by the state from which the hazardous waste originated but in any event no less than thirty-four dollars a ton.
- (e) A fee of ten dollars a ton on the incineration of hazardous waste in this State whether the waste was generated within or outside of this State.
- (f) Fees imposed by this subsection must be collected by the facility at which it is incinerated and remitted to the State Treasurer to be credited to the general fund of the State. For purposes of this subsection, "incineration" includes hazardous waste incinerators, boilers, and industrial furnaces.

Subpart F - Groundwater Protection - Releases From Solid Waste Management Units

264.90 Applicability

(a) (1) Except as provided in paragraph (b) of this section, the regulations in this subpart apply to owners or operators of facilities that treat, store or dispose of hazardous waste. The owner or operator must satisfy

the requirements identified in paragraph (a)(2) of this section for all wastes (or constituents thereof) contained in solid waste management units at the facility, regardless of the time at which waste was placed in such units. (12/93)

(2) All solid waste management units must comply with the requirements in 264.101. A surface impoundment, waste pile, and land treatment unit or landfill that receives hazardous waste after July 26, 1982 (hereinafter referred to as a "regulated unit") must comply with the requirements of 264.91 through 264.100 in lieu of 264.101 for purposes of detecting, characterizing and responding to releases to the uppermost aquifer. The financial responsibility requirements of 264.101 apply to regulated units.

(b) The owner or operator's regulated unit or units are not subject to regulation for releases into the uppermost aquifer under this subpart if:

- (1) The owner or operator is exempted under 264.1; or
- (2) He operates a unit which the Department finds:
 - (i) Is an engineered structure,
 - (ii) Does not receive or contain liquid waste or waste containing free liquids,
 - (iii) Is designed and operated to exclude liquid, precipitation, and other runoff and runoff,
 - (iv) Has both inner and outer layers of containment enclosing the waste,
 - (v) Has a leak detection system built into each containment layer,
 - (vi) The owner or operator will provide continuing operation and maintenance of these leak detection systems during the active life of the unit and the closure and postclosure care periods, and
 - (vii) To a reasonable degree of certainty, will not allow hazardous constituents to migrate beyond the outer containment layer prior to the end of the postclosure care period.

(3) The Department finds, pursuant to 264.280(d), that the treatment zone of a land treatment unit that qualifies as a regulated unit does not contain levels of hazardous constituents that are above background levels of those constituents by an amount that is statistically significant, and if an unsaturated zone monitoring program meeting the requirements of 264.278 has not shown a statistically significant increase in hazardous constituents below the treatment zone during the operating life of the unit. An exemption under this paragraph can only relieve an owner or operator of responsibility to meet the requirements of this subpart during the postclosure care period (12/92); or

(4) The Department finds that there is no potential for migration of liquid from a regulated unit to the uppermost aquifer during the active life of the regulated unit (including the closure period) and the postclosure care period specified under 264.117. This

demonstration must be certified by a qualified geologist or geotechnical engineer. In order to provide an adequate margin of safety in the prediction of potential migration of liquid, the owner or operator must base any predictions made under this paragraph on assumptions that maximize the rate of liquid migration.

(5) He designs and operates a pile in compliance with 264.250(c).

(c) The regulations under this subpart apply during the active life of the regulated unit (including the closure period). After closure of the regulated unit, the regulations in this subpart:

(1) Do not apply if all waste, waste residues, contaminated containment system components, and contaminated subsoils are removed or decontaminated at closure;

(2) Apply during the postclosure care period under 264.117 if the owner or operator is conducting a detection monitoring program under 264.98; or

(3) Apply during the compliance period under 264.96 if the owner or operator is conducting a compliance monitoring program under 264.99 or a corrective action program under 264.100.

(d) Regulations in this subpart may apply to miscellaneous units when necessary to comply with 264.601 through 264.603. (11/90)

(e) [Reserved] (8/00)

(f) The Department may replace all or part of the requirements of 264.91 through 264.100 applying to a regulated unit with alternative requirements for groundwater monitoring and corrective action for releases to groundwater set out in the permit (as defined in 270.1(c)(7)) where the Department determines that: (8/00, 7/02)

(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 the groundwater monitoring and corrective action requirements of 264.91 through 264.100 because alternative requirements will protect human health and the environment.

264.91 Required programs

(a) Owners and operators subject to this subpart must conduct a monitoring and response program as follows:

(1) Whenever hazardous constituents under 264.93 from a regulated unit are detected at a compliance point under 264.95, the owner or operator must institute a compliance monitoring program under 264.99. Detected is defined as statistically significant evidence of contamination as described in 264.98(f); (11/90; 12/93)

(2) Whenever the groundwater protection standard under 264.92 is exceeded, the owner or operator must institute a corrective action program under 264.100. Exceeded is defined as statistically significant evidence of increased contamination as described in 264.99(d); (11/90; 12/93)

(3) Whenever hazardous constituents under 264.93 from a regulated unit exceed concentration limits under 264.94 in groundwater between the compliance point under 264.95 and the downgradient facility property boundary, the owner or operator must institute a corrective action program under 264.100; or

(4) In all other cases, the owner or operator must institute a detection monitoring program under 264.98.

(b) The owner or operator shall specify in the permit application the specific elements of the monitoring and response program. The owner or operator shall include one or more of the programs identified in paragraph (a) of this section in the permit application as may be necessary to protect human health and the environment and will specify the circumstances under which each of the programs will be required. In deciding whether to institute a particular program, the owner or operator shall consider the potential adverse effects on human health and the environment that might occur before final administrative action on a permit modification application to incorporate such a program could be taken. (12/93)

264.92 Groundwater protection standard

The owner or operator must comply with conditions specified in the facility permit that are designed to ensure that hazardous constituents under 264.93 detected in the groundwater from a regulated unit do not exceed the concentration limits under 264.94 in the uppermost aquifer underlying the waste management area beyond the point of compliance under 264.95 during the compliance period under 264.96. The Department will establish this groundwater protection standard in the facility permit when hazardous constituents have been detected in the groundwater. (11/90, 12/92)

264.93 Hazardous constituents

(a) The owner or operator will specify in the permit application the hazardous constituents to which the groundwater protection standard of 264.92 applies. Hazardous constituents are constituents identified in Appendix VIII of R.61-79.261 that have been detected in groundwater in the uppermost aquifer underlying a regulated unit and that are reasonably expected to be in or derived from waste contained in a regulated unit, unless the Department has granted exclusion of a constituent or constituents under paragraph (b) of this section. (12/93)

(b) The Department will consider exclusion of an Appendix VIII constituent from the list of hazardous constituents specified in the permit application if the

owner or operator can demonstrate to the Department that the constituent is not capable of posing a substantial present or potential hazard to human health or the environment. In making such demonstration, the owner or operator will consider the following: (12/93)

- (1) Potential adverse effects on groundwater quality, considering:
 - (i) The physical and chemical characteristics of the waste in the regulated unit, including its potential for migration;
 - (ii) The hydrogeological characteristics of the facility and surrounding land;
 - (iii) The quantity of groundwater and the direction of groundwater flow;
 - (iv) The proximity and withdrawal rates of groundwater users;
 - (v) The current and future uses of groundwater in the area;
 - (vi) The existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;
 - (vii) The potential for health risks caused by human exposure to waste constituents;
 - (viii) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;
 - (ix) The persistence and permanence of the potential adverse effects; and
- (2) Potential adverse effects on hydraulically connected surface water quality, considering:
 - (i) The volume and physical and chemical characteristics of the waste in the regulated unit;
 - (ii) The hydrogeological characteristics of the facility and surrounding land;
 - (iii) The quantity and quality of groundwater, and the direction of groundwater flow;
 - (iv) The patterns of rainfall in the region;
 - (v) The proximity of the regulated unit to surface waters;
 - (vi) The current and future uses of surface waters in the area and any water quality standards established for those surface waters;
 - (vii) The existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality;
 - (viii) The potential for health risks caused by human exposure to waste constituents;
 - (ix) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and,
 - (x) The persistence and permanence of the potential adverse effects.

(c) In making any determination under paragraph (b) of this section about the use of groundwater in the area around the facility, the Department will consider any identification of underground sources of drinking water and exempted aquifers made under Section 48-1-50 of the Code of Laws.

264.94 Concentration limits

(a) The owner or operator will specify in his permit application concentration limits in the groundwater for hazardous constituents established under 264.93. The concentration of a hazardous constituent: (12/93)

- (1) Must not exceed the background level of that constituent in the groundwater at the time that limit is specified in the permit; or
- (2) For any of the constituents listed in Table 1, must not exceed the respective value given in that table if the background level of the constituent is below the value given in Table 1; or

264.94 Table 1 Maximum Concentration of Constituents for Groundwater Protection	
Constituent (12/92)	Maximum Concentration ¹
Arsenic	0.05
Barium	1.0
Cadmium	0.01
Chromium	0.05
Lead	0.05
Mercury	0.002
Selenium	0.01
Silver	0.05
Endrin (1,2,3,4,10,10-hexachloro-1,7-epoxy-1,4,4a,5,6,7,8,9a-octahydro-1, 4-endo, endo-5, 8-dimethano naphthalene)	0.0002
Lindane (1,2,3,4,5,6-hexachlorocyclohexane, gamma isomer)	0.004
Methoxychlor (1,1,1-Trichloro-2,2 bis p-methoxyphenylethane)	0.1
Toxaphene (C ₁₀ H ₁₀ Cl ₆ , Technical chlorinated camphene, 67 to 69 percent chlorine)	0.005
2,4-D (2,4-Dichlorophenoxyacetic acid)	0.1
2,4,5-TP Silvex (2,4,5-Trichlorophenoxy-propionic acid)	0.01

1 Milligram per liter.

(3) Must not exceed an alternate limit established by the Department under paragraph (b) of this section.

(b) The Department will consider establishing an alternate concentration limit for a hazardous constituent if the owner or operator can demonstrate to the Department that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the alternate concentration limit is not exceeded. In making such demonstration the owner or operator will consider the following factors: (12/93)

- (1) Potential adverse effects on groundwater quality, considering:
 - (i) The physical and chemical characteristics of the waste in the regulated unit, including its potential for migration;

- (ii) The hydrogeological characteristics of the facility and surrounding land;
 - (iii) The quantity of groundwater and the direction of groundwater flow;
 - (iv) The proximity and withdrawal rates of groundwater users;
 - (v) The current and future uses of groundwater in the area;
 - (vi) The existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;
 - (vii) The potential for health risks caused by human exposure to waste constituents;
 - (viii) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;
 - (ix) The persistence and permanence of the potential adverse effects; and
- (2) Potential adverse effects on hydraulically connected surfacewater quality, considering:
- (i) The volume and physical and chemical characteristics of the waste in the regulated unit;
 - (ii) The hydrogeological characteristics of the facility and surrounding land;
 - (iii) The quantity and quality of groundwater, and the direction of groundwater flow;
 - (iv) The patterns of rainfall in the region;
 - (v) The proximity of the regulated unit to surface waters;
 - (vi) The current and future uses of surface waters in the area and any water quality standards established for those surface waters;
 - (vii) The existing quality of surface water, including other sources of contamination and the cumulative impact on surfacewater quality;
 - (viii) The potential for health risks caused by human exposure to waste constituents;
 - (ix) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and
 - (x) The persistence and permanence of the potential adverse effects.

(c) In making any determination under paragraph (b) of this section about the use of groundwater in the area around the facility the Department will consider any identification of underground sources of drinking water and exempted aquifers made under Section 48-1-50 of the Code of Laws.

264.95 Point of compliance

(a) The owner or operator will specify in the facility permit application the point of compliance at which the groundwater protection standard of 264.92 applies and at which monitoring must be conducted. The point of compliance is a vertical surface located at the hydraulically downgradient limit of the waste management area that extends down into the uppermost aquifer underlying the regulated units. (12/93)

264.97 General groundwater monitoring requirements

- (b) The waste management area is the limit projected in the horizontal plane of the area on which waste will be placed during the active life of a regulated unit.
 - (1) The waste management area includes horizontal space taken up by any liner, dike, or other barrier designed to contain waste in a regulated unit.
 - (2) If the facility contains more than one regulated unit, the waste management area is described by an imaginary line circumscribing the several regulated units.

264.96 Compliance period

- (a) The owner or operator will specify in his the facility permit application the compliance period during which the groundwater protection standard of 264.92 applies. The compliance period is the number of years equal to the active life of the waste management area (including any waste management activity prior to permitting, and the closure period.) (12/93)
- (b) The compliance period begins when the owner or operator initiates a compliance monitoring program meeting the requirements of 264.99.
- (c) If the owner or operator is engaged in a corrective action program at the end of the compliance period specified in paragraph (a) of this section, the compliance period is extended until the owner or operator can demonstrate that the groundwater protection standard of 264.92 has not been exceeded for a period of three consecutive years.

264.97 General groundwater monitoring requirements

The owner or operator must comply with the following requirements for any groundwater monitoring program developed to satisfy 264.98, 264.99, or 264.100: (12/93)

- (a) The groundwater monitoring system must consist of a sufficient number of wells, installed at appropriate locations and depths to yield groundwater samples from the uppermost aquifer that:
 - (1) Represent the quality of background water that has not been affected by leakage from a regulated unit; (11/90)
 - (i) A determination of background quality may include sampling of wells that are not hydraulically upgradient of the waste management area where:
 - (A) Hydrogeologic conditions do not allow the owner or operator to determine what wells are hydraulically upgradient; and
 - (B) Sampling at other wells will provide an indication of background groundwater quality that is representative or more representative than that provided by the upgradient wells; and
 - (2) Represent the quality of groundwater passing the point of compliance.
 - (3) Allow for the detection of contamination when hazardous waste or hazardous constituents have migrated from the waste management area to the uppermost aquifer.

264.97 General groundwater monitoring requirements specified in the unit permit upon approval by the Department. This sampling procedure shall be: (11/90)

(b) If a facility contains more than one regulated unit, separate groundwater monitoring systems are not required for each regulated unit provided that provisions for sampling the groundwater in the uppermost aquifer will enable detection and measurement at the compliance point of hazardous constituents from the regulated units that have entered the groundwater in the uppermost aquifer.

(c) All monitoring wells must be cased in a manner that maintains the integrity of the monitoring well bore hole. This casing must be screened or perforated and packed with gravel or sand, where necessary, to enable collection of groundwater samples. The annular space (i.e., the space between the bore hole and well casing) above the sampling depth must be sealed to prevent contamination of samples and the groundwater. All monitoring wells will have a locking cap or other security devices to prevent damage and/or vandalism. Each well will be labeled with an identification plate constructed of durable material affixed to the casing or surface pad where it is readily visible. The plate will provide monitoring well identification number, date of construction, total well depth, static water level, and driller certification number. More sophisticated monitoring well construction may be required if deemed necessary by the Department (11/90; 12/92; 6/95).

(d) The groundwater monitoring program must include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide a reliable indication of groundwater quality below the waste management area. At a minimum the program must include procedures and techniques for:

- (1) Sample collection;
- (2) Sample preservation and shipment;
- (3) Analytical procedures; and
- (4) Chain of custody control.

(e) The groundwater monitoring program must include sampling and analytical methods that are appropriate for groundwater sampling and that accurately measure hazardous constituents in groundwater samples.

(f) The groundwater monitoring program must include a determination of the groundwater surface elevation each time groundwater is sampled.

(g) In detection monitoring or where appropriate in compliance monitoring, data on each hazardous constituent specified in the permit application will be collected from background wells and wells at the compliance point(s). The number and kinds of samples collected to establish background shall be appropriate for the form of statistical test employed, following generally accepted statistical principles. The sample size shall be as large as necessary to ensure with reasonable confidence that a contaminant release to groundwater from a facility will be detected. The owner or operator will determine an appropriate sampling procedure and interval for each hazardous constituent listed in the facility permit which shall be

(1) A sequence of at least four samples, taken at an interval that assures, to the greatest extent technically feasible, that an independent sample is obtained, by reference to the uppermost aquifer's effective porosity, hydraulic conductivity, and hydraulic gradient, and the fate and transport characteristics of the potential contaminants, or

(2) an alternate sampling procedure proposed by the owner or operator and approved by the Department.

(h) The owner or operator will specify one of the following statistical methods to be used in evaluating groundwater monitoring data for each hazardous constituent which, upon approval by the Department, will be specified in the unit permit. The statistical test chosen shall be conducted separately for each hazardous constituent in each well. Where practical quantification limits (pql's) are used in any of the following statistical procedures to comply with 264.97(i)(5), the pql must be proposed by the owner or operator and approved by the Department. Use of any of the following statistical methods must be protective of human health and the environment and must comply with the performance standards outlined in paragraph (i) of this section. (11/90)

(1) A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent.

(2) An analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent.

(3) A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit.

(4) A control chart approach that gives control limits for each constituent.

(5) Another statistical test method submitted by the owner or operator and approved by the Department.

(i) Any statistical method chosen under 264.97(h) for specification in the unit permit shall comply with the following performance standards, as appropriate: (11/90)

(1) The statistical method used to evaluate groundwater monitoring data shall be appropriate for the distribution of chemical parameters or hazardous constituents. If the distribution of the chemical parameters or hazardous constituents is shown by the

owner or operator to be inappropriate for a normal theory test, then the data should be transformed or a distribution-free theory test should be used. If the distributions for the constituents differ, more than one statistical method may be needed.

(2) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a groundwater protection standard, the test shall be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I experimentwise error rate for each testing period shall be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons must be maintained. This performance standard does not apply to tolerance intervals, prediction intervals or control charts.

(3) If a control chart approach is used to evaluate groundwater monitoring data, the specific type of control chart and its associated parameter values shall be proposed by the owner or operator and approved by the Department if he or she finds it to be protective of human health and the environment.

(4) If a tolerance interval or a prediction interval is used to evaluate groundwater monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain, shall be proposed by the owner or operator and approved by the Department if it finds these parameters to be protective of human health and the environment. These parameters will be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(5) The statistical method shall account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any practical quantification limit (pql) approved by the Department under 264.97(h) that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

(6) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(j) Groundwater monitoring data collected in accordance with paragraph (g) of this section including actual levels of constituents must be maintained in the facility operating record. The owner or operator will specify in the permit application the frequency (quarterly, semiannually, or annually) by which groundwater monitoring data will be collected at each monitoring well. (11/90; 12/93)

[Note: 264.98(d) requires specification of statistical evaluation frequency); 270.30(l)(4) states the

Department will specify the intervals monitoring data is reported] (12/93)

(k) Report to the Department no later than thirty (30) days after the end of the quarter, semiannual or annual period specified, the groundwater data and determinations made pursuant to the following paragraphs: (11/90)

(1) Paragraphs (e) and (f) of 264.98, Detection Monitoring Program; and

(2) Paragraphs (d), (e) and (g) of 264.99, Compliance Monitoring Program; and

(3) Paragraph (d) of 264.100, Correction Action Program.

264.98 Detection monitoring program

An owner or operator required to establish a detection monitoring program under this subpart must, at a minimum, discharge the following responsibilities:

(a) The owner or operator must monitor for indicator parameters (e.g., specific conductance, total organic carbon, or total organic halogen), waste constituents, or reaction products that provide a reliable indication of the presence of hazardous constituents in groundwater. The owner or operator will specify the parameters or constituents to be monitored in the facility permit application, after considering the following factors: (12/93)

(1) The types, quantities, and concentrations of constituents in wastes managed at the regulated unit;

(2) The mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the waste management area;

(3) The detectability of indicator parameters, waste constituents, and reaction products in groundwater; and

(4) The concentrations or values and coefficients of variation of proposed monitoring parameters or constituents in the groundwater background.

(b) The owner or operator must install a groundwater monitoring system at the compliance point as specified under 264.95. The groundwater monitoring system must comply with 264.97(a)(2), (b), and (c).

(c) The owner or operator must conduct a groundwater monitoring program for each chemical parameter and hazardous constituent specified in the permit pursuant to paragraph (a) of this section in accordance with 264.97(g). The owner or operator must maintain a record of groundwater analytical data as measured and in a form necessary for the determination of statistical significance under 264.97(h).

(d) The permit application will specify the frequencies for collecting samples and conducting statistical tests to determine whether there is statistically significant evidence of contamination for any parameter or hazardous constituent specified in the permit under paragraph (a) of this section in accordance with 264.97(g). A sequence of at least four samples from

each well (background and compliance wells) must be collected at least semiannually during detection monitoring.

(e) The owner or operator must determine the groundwater flow rate and direction in the uppermost aquifer at least annually.

(f) The owner or operator must determine whether there is statistically significant evidence of contamination for any chemical parameter of hazardous constituent specified in the permit pursuant to paragraph (a) of this section at a frequency specified under paragraph (d) of this section. (11/90)

(1) In determining whether statistically significant evidence of contamination exists, the owner or operator must use the method(s) specified in the permit under 264.97(h). These method(s) must compare data collected at the compliance point(s) to the background groundwater quality data.

(2) The owner or operator must determine whether there is statistically significant evidence of contamination at each monitoring well as the compliance point within a reasonable period of time after completion of sampling. The permit application will specify what period of time is reasonable, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of groundwater samples.

(g) If the owner or operator determines pursuant to paragraph (f) of this section that there is statistically significant evidence of contamination for chemical parameters or hazardous constituents specified pursuant to paragraph (a) of this section at any monitoring well at the compliance point, he or she must:

(1) Notify the Department of this finding in writing within seven days. The notification must indicate what chemical parameters or hazardous constituents have shown statistically significant evidence of contamination;

(2) Immediately sample the groundwater in all monitoring wells and determine whether constituents in the list of Appendix IX of part 264 are present, and if so, in what concentration.

(3) For any Appendix IX compounds found in the analysis pursuant to paragraph (g)(2) of this section, the owner or operator may resample within one month and repeat the analysis for those compounds detected. If the results of the second analysis confirm the initial results, then these constituents will form the basis for compliance monitoring. If the owner or operator does not resample for the compounds found pursuant to paragraph (g)(2) of this section, the hazardous constituents found during this initial Appendix IX analysis will form the basis for compliance monitoring.

(4) Within 90 days, submit to the Department an application for a permit modification to establish a compliance monitoring program meeting the requirements of 264.99. The application must include the following information: (12/93)

(i) An identification of the concentration or any Appendix IX constituent detected in the groundwater at each monitoring well at the compliance point;

(ii) Any proposed changes to the groundwater monitoring system at the facility necessary to meet the requirements of 264.99;

(iii) Any proposed additions or changes to the monitoring frequency, sampling and analysis procedures or methods, or statistical methods used at the facility necessary to meet the requirements of 264.99;

(iv) For each hazardous constituent detected at the compliance point, a proposed concentration limit under 264.94(a) (1) or (2), or a notice of intent to seek an alternate concentration limit under 264.94(b); and

(5) Within 180 days, submit to the Department: (11/90)

(i) All data necessary to justify an alternate concentration limit sought under 264.94(b); and

(ii) An engineering feasibility plan for a corrective action program necessary to meet the requirement of 264.100, unless:

(A) All hazardous constituents identified under paragraph (g)(2) of this section are listed in Table 1 of 264.94 and their concentrations do not exceed the respective values given in that Table; or

(B) The owner or operator has sought an alternate concentration limit under 264.94(b) for every hazardous constituent identified under paragraph (g)(2) of this section.

(6) If the owner or operator determines, pursuant to paragraph (f) of this section, that there is a statistically significant difference for chemical parameters or hazardous constituents specified pursuant to paragraph (a) of this section at any monitoring well at the compliance point, he or she may demonstrate that a source other than a regulated unit caused the contamination or that the detection is an artifact caused by an error in sampling, analysis, or statistical evaluation or natural variation in the groundwater. The owner operator may make a demonstration under this paragraph in addition to, or in lieu of, submitting a permit modification application under paragraph (g)(4) of this section; however, the owner or operator is not relieved of the requirement to submit a permit modification application within the time specified in paragraph (g)(4) of this section unless the demonstration made under this paragraph successfully shows that a source other than a regulated unit caused the increase, or that the increase resulted from error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator must: (11/90, 12/92)

(i) Notify the Department in writing within seven days of determining statistically significant evidence of contamination at the compliance point that

he intends to make a demonstration under this paragraph;

(ii) Within 90 days, submit a report to the Department which demonstrates that a source other than a regulated unit caused the contamination or that the contamination resulted from error in sampling, analysis, or evaluation;

(iii) Within 90 days, submit to the Department an application for a permit modification to make any appropriate changes to the detection monitoring program facility; and

(iv) Continue to monitor in accordance with the detection monitoring program established under this section.

(h) If the owner or operator determines that the detection monitoring program no longer satisfies the requirements of this section, he or she must, within 90 days, submit an application for a permit modification to make any appropriate changes to the program. (moved 11/90)

264.99 Compliance Monitoring Program

An owner or operator required to establish a compliance monitoring program under this subpart must, at a minimum, discharge the following responsibilities:

(a) The owner or operator must monitor the groundwater to determine whether regulated units are in compliance with the groundwater protection standard under 264.92. The Department will specify the groundwater protection standard in the facility permit, including: (11/90; 12/93)

(1) A list of the hazardous constituents identified under 264.93;

(2) Concentration limits under 264.94 for each of those hazardous constituents;

(3) The compliance point under 264.95; and

(4) The compliance period under 264.96.

(b) The owner or operator must install a groundwater monitoring system at the compliance point as specified under 264.95. The groundwater monitoring system must comply with 264.97(a)(2), (b), and (c). (11/90)

(c) The Department will specify the sampling procedures and statistical methods appropriate for the constituents and the facility, consistent with 264.97 (g) and (h). (11/90; 12/93)

(1) The owner or operator must conduct a sampling program for each chemical parameter or hazardous constituent in accordance with 264.97(g).

(2) The owner or operator must record groundwater analytical data as measured and in form necessary for the determination of statistical significance under 264.97(h) for the compliance period of the facility.

(d) The owner or operator must determine whether there is statistically significant evidence of increased contamination for any chemical parameter or hazardous constituent specified in the permit, pursuant to

paragraph (a) of this section, at a frequency specified under paragraph (f) under this section. (11/90)

(1) In determining whether statistically significant evidence of increased contamination exists, the owner or operator must use the method(s) specified in the permit under 264.97(h). The method(s) must compare data collected at the compliance point(s) to a concentration limit developed in accordance with 264.94.

(2) The owner or operator must determine whether there is statistically significant evidence of increased contamination at each monitoring well at the compliance point within a reasonable time period after completion of sampling. The permit application will specify that time period in the facility permit, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of groundwater samples.

(e) The owner or operator must determine the groundwater flow rate and direction in the uppermost aquifer at least annually.

(f) The permit application will specify the frequencies for collecting samples and conducting statistical tests to determine statistically significant evidence of increased contamination in accordance with 264.97(g). A sequence of at least four samples from each well (background and compliance wells) must be collected at least semiannually during the compliance period of the facility. (11/90)

(g) The owner or operator must analyze samples from all monitoring wells at the compliance point for all constituents contained in Appendix IX of part 264 at least annually to determine whether additional hazardous constituents are present in the uppermost aquifer and, if so, at what concentration, pursuant to procedures in 264.98(f). If the owner or operator finds Appendix IX constituents in the groundwater that are not already identified in the permit as monitoring constituents, the owner or operator may resample within one month and repeat the Appendix IX analysis. If the second analysis confirms the presence of new constituents, the owner or operator must report the concentration of these additional constituents to the Department within seven days after the completion of the second analysis and add them to the monitoring list. If the owner or operator chooses not to resample, then he or she must report the concentrations of these additional constituents to the Department within seven days after completion of the initial analysis and add them to the monitoring list. (11/90)

(h) If the owner or operator determines pursuant to paragraph (d) of this section that any concentration limits under 264.94 are being exceeded at any monitoring well at the point of compliance he or she must: (11/90)

(1) Notify the Department of this finding in writing within seven days. The notification must indicate what concentration limits have been exceeded.

264.100 Corrective action program (11/90)

(2) Submit to the Department an application for a permit modification to establish a corrective action program meeting the requirements of 264.100 within 180 days, or within 90 days if an engineering feasibility study has been previously submitted to the Department under 264.98(g)(5). The application must at a minimum include the following information:

(i) A detailed description of corrective actions that will achieve compliance with the groundwater protection standard specified in the permit under paragraph (a) of this section; and

(ii) A plan for a groundwater monitoring program that will demonstrate the effectiveness of the corrective action. Such a groundwater monitoring program may be based on a compliance monitoring program developed to meet the requirements of this section.

(i) If the owner or operator determines, pursuant to paragraph (d) of this section, that the groundwater concentration limits under this section are being exceeded at any monitoring well at the point of compliance, he or she may demonstrate that a source other than a regulated unit caused the contamination or that the detection is an artifact caused by an error in sampling, analysis, or statistical evaluation or natural variation in the groundwater. In making a demonstration under this paragraph, the owner or operator must: (11/90)

(1) Notify the Department in writing within seven days that he intends to make a demonstration under this paragraph;

(2) Within 90 days, submit a report to the Department which demonstrates that a source other than a regulated unit caused the standard to be exceeded or that the apparent noncompliance with the standards resulted from error in sampling, analysis, or evaluation;

(3) Within 90 days, submit to the Department an application for a permit modification to make any appropriate changes to the compliance monitoring program at the facility; and

(4) Continue to monitor in accord with the compliance monitoring program established under this section.

(j) If the owner or operator determines that the compliance monitoring program no longer satisfies the requirements of this section, he must, within 90 days, submit an application for a permit modification to make any appropriate changes to the program. (moved 11/90)

264.100 Corrective action program (11/90)

An owner or operator required to establish a corrective action program under this subpart must, at a minimum, discharge the following responsibilities:

(a) The owner or operator must take corrective action to ensure that regulated units are in compliance with the groundwater protection standard under 264.92. The permit application under these regulations will

specify the groundwater protection standard, including (12/92; 12/93):

(1) A list of the hazardous constituents identified under 264.93;

(2) Concentration limits under 264.94 for each of those hazardous constituents;

(3) The compliance point under 264.95; and

(4) The compliance period under 264.96 (12/92).

(b) The owner or operator must implement a corrective action program that prevents hazardous constituents from exceeding their respective concentration limits at the compliance point by removing the hazardous waste constituents or treating them in place. The owner or operator will specify the specific measures that will be taken in the permit application. (12/93)

(c) The owner or operator must begin corrective action within a reasonable time period after the groundwater protection standard is exceeded. The Department will specify that time period in the facility permit. If a facility permit includes a corrective action program in addition to a compliance monitoring program, the permit will specify when the corrective action will begin and such a requirement will operate in lieu of 264.99(i)(2). (12/93)

(d) In conjunction with a corrective action program, the owner or operator must establish and implement a groundwater monitoring program to demonstrate the effectiveness of the corrective action program. Such a monitoring program may be based on the requirements for a compliance monitoring program under 264.99 and must be as effective as that program in determining compliance with the groundwater protection standard under 264.92 and in determining the success of a corrective action program under paragraph (e) of this section, where appropriate.

(e) In addition to the other requirements of this section, the owner or operator must conduct a corrective action program to remove or treat in place any hazardous constituents under 264.93 that exceed concentration limits under 264.94 in groundwater:

(1) Between the compliance point under 264.95 and the downgradient property boundary; and

(2) Beyond the facility boundary, where necessary to protect human health and the environment, unless the owner or operator demonstrates to the satisfaction of the Department that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action. The owner/operator is not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where offsite access is denied. Onsite measures to address such releases will be determined on a case-by-case basis.

(3) Corrective action measures under this paragraph must be initiated and completed within a reasonable period of time considering the extent of contamination.

(4) Corrective action measures under this paragraph may be terminated once the concentration of hazardous constituents under 264.93 is reduced to levels below their respective concentration limits under 264.94.

(f) The owner or operator must continue corrective action measures during the compliance period to the extent necessary to ensure that the groundwater protection standard is not exceeded. If the owner or operator is conducting corrective action at the end of the compliance period, he must continue that corrective action for as long as necessary to achieve compliance with the groundwater protection standard. The owner or operator may terminate corrective action measures taken beyond the period equal to the active life of the waste management area (including the closure period) if he can demonstrate, based on data from the groundwater monitoring program under paragraph (d) of this section, that the groundwater protection standard of 264.92 has not been exceeded for a period of three consecutive years.

(g) The owner or operator must report in writing to the Department on the effectiveness of the corrective action program. The owner or operator must submit these reports semi-annually (12/92).

(h) If the owner or operator determines that the corrective action program no longer satisfies the requirements of this section, he must, within 90 days, submit an application for a permit modification to make any appropriate changes to the program.

264.101 Corrective action for solid waste management units (11/90)

(a) The owner or operator of a facility seeking a permit for the treatment, storage or disposal of hazardous waste must institute corrective action as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time at which waste was placed in such unit. (11/90)

(b) Corrective action will be specified in the permit application in accordance with this section and subpart S of this part. The permit application will contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing such corrective action. (11/90; 12/93)

(c) The owner or operator must implement corrective actions beyond the facility property boundary, where necessary to protect human health and the environment, unless the owner or operator demonstrates to the satisfaction of the Department that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such actions. The owner/operator is not relieved of all responsibility to clean up a release that has migrated

beyond the facility boundary where offsite access is denied. Onsite measures to address such releases will be determined on a case-by-case basis. Assurances of financial responsibility for such corrective action must be provided. (11/90)

(d) This does not apply to remediation waste management sites unless they are part of a facility subject to a permit for treating, storing or disposing of hazardous wastes that are not remediation wastes. (8/00)

(e) All monitoring wells to be installed pursuant to 264.101 must be cased in a manner that maintains the integrity of the monitoring well bore hole. This casing must be screened or perforated and packed with gravel or sand, where necessary, to enable collection of groundwater samples. The annular space (i.e., the space between the bore hole and well casing) above the sampling depth must be sealed to prevent contamination of samples and the groundwater. More sophisticated monitoring well construction may be required if deemed necessary by the Department. All monitoring wells will have a locking cap or other security devices to prevent damage and/or vandalism. Each well will be labeled with an identification plate constructed of a durable material affixed to the casing or surface pad where it is readily visible. The plate will provide monitoring well identification number, date of construction, total well depth, static water level, and driller certification number. [Note: See for guidance EPA's RCRA Groundwater Monitoring Technical Enforcement Guidance Document, TEGD]. (6/95; 8/00)

(f) If not otherwise proposed as part of a plan submitted for approval by the Department, the general design, construction, and location of monitoring wells installed for the purpose of investigating groundwater contamination from solid waste management units will be submitted to the Department for approval prior to installation. (6/95; 8/00)

Subpart G - Closure and Postclosure

264.110 Applicability

Except as 264.1 provides otherwise:

(a) Sections 264.111 through 264.115 (which concern closure) apply to the owners and operators of all hazardous waste management facilities; and

(b) Sections 264.116 through 264.120 (which concern postclosure care) apply to the owners and operators of:

(1) All hazardous waste disposal facilities;

(2) Waste piles and surface impoundments from which the owner or operator intends to remove the wastes at closure to the extent that these sections are made applicable to such facilities in 264.228 and 264.258;

(3) Tank systems that are required under 264.197 to meet the requirements for landfills; and

(4) Containment buildings that are required under 264.1102 to meet the requirement for landfills. (12/93)

(c) The Department may replace all or part of the requirements of this subpart (and the unit-specific standards referenced in 264.111(c) applying to a regulated unit), where the Department determines that: (8/00)

(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 the closure requirements of this subpart (and those referenced herein) because the alternative requirements will protect human health and the environment and will satisfy the closure performance standard of 264.111(a) and (b).

264.111 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, postclosure escape of hazardous waste, hazardous constituents, leachate, contaminated runoff, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere (12/92); and

(c) Complies with the closure requirements of this subpart, including, but not limited to, the requirements of 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, 264.351, and 264.601 through 264.603, and 264.1102. (12/92; 12/93)

264.112 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 and waste piles from which the owner or operator intends to remove or decontaminate the hazardous waste at partial or final closure are required by 264.228(c)(1)(i) and 264.258(c)(1)(i) to have contingent closure plans. The plan must be submitted with the permit application, in accordance with R.61-79.270.14(b)(13), and approved by the Department as part of the permit issuance procedures under R.61-79.124. In accordance with R.61-79.270.32, the approved closure plan will become a condition of any permit under these regulations. (11/90, 12/92)

(2) The Department's approval of the plan must ensure that the approved closure plan is consistent with Sections 264.111 through 264.115 and the applicable requirements of subpart F of this part, 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, 264.351, and 264.601, and 264.1102. Until final closure is completed and certified in accordance with 264.115, a

copy of the approved plan and all approved revisions must be furnished to the Department upon request, including requests by mail. (11/90; 12/93)

(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 264.111;

(2) A description of how final closure of the facility will be conducted in accordance with 264.111. The description must identify the maximum extent of the operations which will be unclosed during the active life of the facility; and

(3) An estimate of the maximum inventory of hazardous wastes ever onsite 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 offsite 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; and

(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 runoff and runoff 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.)

(7) For facilities that use trust funds to establish financial assurance under 264.143 or 264.145 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 264.90(f), and/or 264.110(c), the alternative requirements applying to the regulated unit. (8/00)

(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 applicable procedures in R.61-79.124 and R.61-79.270. The written request must include a copy of the closure plan for review or approval by the Department. (11/90; 12/92; 12/93)

(1) The owner or operator may submit a written request to the Department 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 264.90(f), and/or 264.110(c). (8/00)

(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 or waste pile that intends to remove all hazardous waste at closure and is not otherwise required to prepare a contingent closure plan under 264.228(c)(1)(i) or 264.258(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 Department determines that the hazardous waste management unit must be closed as a landfill, subject to the requirements of 264.310, 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 R.61-79.124 and R.61-79.270. In accordance with R.61-79.270.32, the approved closure plan will become a condition of permit issued under these regulations. (10/01)

(4) The Department may request modifications to the plan under the conditions described in 264.112(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 R.61-79.124 and R.61-79.270.

(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: (11/90)

(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 wastes. 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 264.113(d), no later than 30 days after the date on which the hazardous waste management unit receives the known final volume of nonhazardous wastes, or if there is a reasonable possibility that the hazardous waste management unit will receive additional nonhazardous wastes, no later than one year after the date on which the unit received the most recent volume of nonhazardous wastes. If the owner or operator can demonstrate to the Department that the hazardous waste management unit has the capacity to receive additional nonhazardous 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 S.C. 44-56-130 and 140 or under section 3008 of RCRA, to cease receiving hazardous wastes or to close, then the requirements of this paragraph do not apply. However, the owner or operator must close the facility

in accordance with the deadlines established in 264.113 (12/92).

(e) Removal of wastes and decontamination or dismantling of equipment. Nothing in this section 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.

264.113 Closure; time allowed for closure

(a) Within 90 days after receiving the final volume of hazardous wastes, or the final volume of nonhazardous wastes if the owner or operator complies with all applicable requirements in paragraphs (d) and (e) of this section, at a hazardous waste management unit or facility, the owner or operator must treat, remove from the unit or facility, or dispose of onsite, 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: (11/90, 12/92)

(1)(i) The activities required to comply with this paragraph will, of necessity, take longer than 90 days to complete; or

(ii)(A) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes, or has the capacity to receive nonhazardous wastes if the owner or operator complies with paragraphs (d) and (e) of this section (12/92); and

(B) 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

(C) 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 nonhazardous wastes if the owner or operator complies with all applicable requirements in paragraphs (d) and (e) of this section, at the hazardous waste management unit or facility. The Department 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: (11/90, 12/92)

(1)(i) The partial or final closure activities will, of necessity, take longer than 180 days to complete; or

(ii)(A) The hazardous waste management unit or facility has the capacity to receive additional

264.113 Closure; time allowed for closure

hazardous wastes, or has the capacity to receive nonhazardous wastes if the owner or operator complies with paragraphs (d) and (e) of this section (12/92); and

(B) There is reasonable likelihood that he or another person will recommence operation of the hazardous waste management unit or the facility within one year (12/92); and

(C) 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 paragraphs (a)(1) and (b)(1) of this section must be made as follows: (11/90)

(1) The demonstrations in paragraph (a)(1) of this section must be made at least 30 days prior to the expiration of the 90 day period in paragraph (a) of this section; and

(2) The demonstration in paragraph (b)(1) of this section must be made at least 30 days prior to the expiration of the 180-day period in paragraph (b) of this section, unless the owner or operator is otherwise subject to the deadlines in paragraph (d) of this section.

(d) The Department may allow an owner or operator to receive only nonhazardous wastes in a landfill, land treatment, or surface impoundment unit after the final receipt of hazardous wastes at that unit if: (11/90)

(1) The owner or operator requests a permit modification in compliance with all applicable requirements in parts 270 and 124 of this title 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 nonhazardous wastes; and

(ii) There is a reasonable likelihood that the owner or operator or another person will receive nonhazardous wastes in the unit within one year after the final receipt of hazardous wastes; and

(iii) The nonhazardous 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 the SC Pollution Control Act 48-1-50, and closure and postclosure plans, and updated cost estimates and

demonstrations of financial assurance for closure and postclosure care as necessary and appropriate, to reflect any changes due to the presence of hazardous constituents in the nonhazardous wastes, and changes in closure activities, including the expected year of closure if applicable under 264.112(b)(7), as a result of the receipt of nonhazardous wastes following the final receipt of hazardous wastes (12/92); 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 nonhazardous wastes following receipt of the final volume of hazardous wastes; and

(4) The request to modify the permit and the demonstrations referred to in paragraphs (d)(1) and (d)(2) of this section are submitted to the Department 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 this rule in the state in which the unit is located, whichever is later.

(e) In addition to the requirements in paragraph (d) of this section, 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) (2) or (3) or and 3005(j)(1) or 42 U.S.C. 3004(o)(2) or (3) or 3005(j)(2), (3), (4) or (13) and the SC Pollution Control Act 48-1-50 must: (11/90; 12/92; 12/93, 9/01)

(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 264.99; and

(ii) A plan for removing hazardous wastes in compliance with paragraph (e)(2) of this section; 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 Department 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 subpart F of this part, the owner or operator of the unit:

(i) Must implement corrective measures in accordance with the approved contingent corrective measures plan required by paragraph (e)(1) of this

section 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 Department 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 semiannual reports to the Department that describe the progress of the corrective action program, compile all groundwater monitoring data, and evaluate the effect of the continued receipt of nonhazardous wastes on the effectiveness of the corrective action.

(6) The Department 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 paragraph (e)(4) of this section, 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 paragraph (e)(4) of this section, or if the Department determines that substantial progress has not been made pursuant to paragraph (e)(6) of this section he shall:

(i) Notify the owner or operator in writing that the owner or operator must begin closure in accordance with the deadlines in paragraphs (a) and (b) of this section 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 Department receives no written comments, the decision will become final five days after the close of the comment period. The Department 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 paragraphs (a) and (b) of this section.

(iv) If the Department 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

Department determines that substantial progress has not been made, closure must be initiated in accordance with the deadlines in paragraphs (a) and (b) of this section.

(v) The final determinations made by the Department under paragraphs (e)(7) (iii) and (iv) of this section are not subject to administrative appeal.

264.114 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 264.197, 264.228, 264.258, 264.280 or 264.310. 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 R.61-79.262 (11/90).

264.115 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 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 professional engineer. Documentation supporting the independent registered 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 closure under 264.143(i).

264.116 Survey plat

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 Department, a survey plat indicating the location and dimensions of landfills 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 subpart G regulations.

264.117 Postclosure care and use of property

(a) (1) Postclosure care for each hazardous waste management unit subject to the requirements of 264.117 through 264.120 must begin after completion of closure

264.117 Postclosure care and use of property

of the unit and continue for 30 years after that date and must consist of at least the following: (11/90)

(i) Monitoring and reporting in accordance with the requirements of subparts F, K, L, M, N, and X of this part; and (12/93)

(ii) Maintenance and monitoring of waste containment systems in accordance with the requirements of subparts F, K, L, M, N, and X of this part.

(2) Any time preceding partial closure of a hazardous waste management unit subject to postclosure care requirements or final closure, or any time during the postclosure period for a particular unit, the Department may, in accordance with the permit modification procedures in R.61-79.124 and R.61-79.270:

(i) Shorten the postclosure 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 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 postclosure 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) (12/92).

(b) The Department may require, at partial and final closure, continuation of any of the security requirements of 264.14 during part or all of the postclosure 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) Postclosure 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: (12/93)

(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 postclosure care activities must be in accordance with the provisions of the approved postclosure plan as specified in 264.118.

264.118 Postclosure plan; amendment of plan

(a) Written Plan. The owner or operator of a hazardous waste disposal unit must have a written postclosure plan. In addition, certain surface impoundments and waste piles from which the owner or operator intends to remove or decontaminate the hazardous wastes at partial or final closure are required by 264.228(c)(1)(ii) and 264.258(c)(1)(ii) to have contingent postclosure plans. Owners or operators of surface impoundments and waste piles not otherwise required to prepare contingent postclosure plans under 264.228(c)(1)(ii) and 264.258(c)(1)(ii) must submit a postclosure plan to the Department within 90 days from the date that the owner or operator or the Department determines that the hazardous waste management unit must be closed as a landfill, subject to the requirements of 264.117 through 264.120. The plan must be submitted with the permit application, in accordance with R.61-79.270.14(b)(13) and approved by the Department as part of the permit issuance procedures under R.61-79.124. In accordance with R.61-79.270.32, the approved postclosure plan will become a condition of any RCRA permit issued (12/92).

(b) For each hazardous waste management unit subject to the requirements of this section, the postclosure 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 subparts F, K, L, M, N, and X of this part during the postclosure care period; and (11/90; 12/93)

(2) A description of the planned maintenance activities, and frequencies at which they will be performed, to ensure: (11/90)

(i) The integrity of the cap and final cover or other containment systems in accordance with the requirements of subparts F, K, L, M, N and X of this part; and (11/90; 12/93)

(ii) The function of the monitoring equipment in accordance with the requirements of subparts F, K, L, M, N, and X of this part; and (12/93)

(3) The name, address, and phone number of the person or office to contact about the hazardous waste disposal unit or facility during the postclosure care period.

(4) For facilities where the Department has applied alternative requirements at a regulated unit under 264.90(f), and/or 264.110(c), the alternative requirements that apply to the regulated unit. (8/00)

(c) Until final closure of the facility, a copy of the approved postclosure 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 264.118(b)(3) must keep the approved postclosure plan during the remainder of the postclosure 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 postclosure plan in accordance with the applicable requirements in parts 124 and 270. The written request must include a copy of the amended postclosure plan for review or approval by the Department. (11/90)

(1) The owner or operator may submit a written notification or request to the Department for a permit modification to amend the postclosure plan at any time during the active life of the facility or during the postclosure care period.

(2) The owner or operator must submit a written notification of or request for a permit modification to authorize a change in the approved postclosure plan whenever:

(i) Changes in operating plans or facility design affect the approved postclosure 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 postclosure plan.

(iv) The owner or operator requests the Department to apply alternative requirements to a regulated unit under 264.90(f), and/or 264.110(c). (8/00)

(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 postclosure plan. An owner or operator of a surface impoundment or waste pile that intends to remove all hazardous waste at closure and is not otherwise required to submit a contingent postclosure plan under 264.228(c)(1)(ii) and 264.258(c)(1)(ii) must submit a postclosure plan to the Department no later than 90 days after the date that the owner or operator or the Department determines that the hazardous waste management unit must be closed as a landfill, subject to the requirements of 264.310. The Department will approve, disapprove or modify this plan in accordance with the procedures in R.61-79.124 and R.61-79.270. In accordance with R.61-79.270.32, the approved postclosure plan will become a permit condition.

(4) The Department may request modifications to the plan under the conditions described in R.61-79.264.118(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 or waste pile not previously required to prepare a contingent postclosure plan. Any modifications requested by the Department will be approved, disapproved, or modified in accordance with the procedures in R.61-79.124 and R.61-79.270.

264.119 Postclosure 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. (12/92)

(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 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 R.61-79.264 and 265 subpart G; 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 264.116 and 264.119(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 paragraph (b)(1) of this section, 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 postclosure permit in accordance with the applicable requirements in R.61-79.124 and R.61-79.270. The owner or operator must demonstrate that the removal of hazardous wastes will satisfy the criteria of 264.117(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 these Regulations. If he is granted a permit modification or otherwise granted approval to conduct such removal activities, the owner or operator may request that the Department 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.

264.120 Certification of completion of postclosure care

No later than 60 days after completion of the established postclosure care period for each hazardous waste disposal unit, the owner or operator must submit to the Department, by registered mail, a certification that the postclosure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved postclosure plan. The certification must be signed by the owner or operator and an independent registered professional engineer. Documentation supporting the independent registered professional engineer's certification must be furnished to the Department upon request until it releases the owner or operator from the financial assurance requirements for postclosure care under 264.145(i).

Subpart H - Financial Requirements

264.140 Applicability

(a) The requirements of 264.142, 264.143, and 264.147 through 264.151 apply to owners and operators of all hazardous waste facilities, except as provided otherwise in this section or in 264.1.

(b) The requirements of 264.144 and 264.145 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 waste.s at closure, to the extent that these sections are made applicable to such facilities in 264.228 and 264.258;
- (3) Tank systems that are required under 264.197 to meet the requirements for landfills; and (12/92)
- (4) Containment buildings that are required under 264.1102 to meet the requirements for landfills. (12/93)

(c) State and Federal governments are exempt from the requirements of this subpart. (moved from (d) 6/95)

(d) [Reserved 6/03]

264.141 Definitions of terms as used in this subpart

(a) "Closure plan" means the plan for closure prepared in accordance with the requirements of 264.112.

(b) "Current closure cost estimate" means the most recent of the estimates prepared in accordance with 264.142 (a), (b), and (c).

(c) "Current postclosure cost estimate" means the most recent of the estimates prepared in accordance with 264.144 (a), (b) and (c).

(d) "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.

(e) "Postclosure plan" means the plan for postclosure care prepared in accordance with the requirements of 264.117 through 264.120.

(f) The following terms are used in the specifications for the financial tests for closure, postclosure 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.

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

"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.

"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.

"Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with SC Safe Drinking Water Act 44-55-10 et seq. and Federal 40 CFR 144.62(a), (b) and (c). (6/89, 12/92)

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

"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.

"Net working capital" means current assets minus current liabilities.

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

"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.

(g) In the liability insurance requirements the terms "bodily injury" and "property damage" shall have the meanings given these terms by applicable State law. However, these terms do not include those liabilities which, consistent with standard industry practices, are excluded from coverage in liability policies for bodily injury and property damage. The Agency 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.

"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.

"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.

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

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

(h) "Substantial business relationship" means the extent of a business relationship necessary under applicable State 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. (11/90)

264.142 Cost estimate for closure (12/92)

(a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in 264.111 through 264.115 and applicable closure requirements in 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, 264.351, 264.601 through 264.603, and 264.1102. (11/90; 12/92; 12/93)

(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 264.112(b)]. (12/92)

(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 264.141(d)). The owner or operator may use costs for onsite disposal if he can demonstrate that onsite disposal capacity will exist at all times over the life of the facility. (12/92)

(3) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, or nonhazardous wastes if applicable under 264.113(d), facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure. (11/90)

(4) The owner or operator may not incorporate a zero cost for hazardous wastes, or nonhazardous wastes if applicable under 264.113(d), that might have economic value. (11/90)

(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 264.143. 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 264.143(f)(3). 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 paragraphs (b)(1) and (2) of this section. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

(1) The first adjustment is made by multiplying the 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 closure cost estimate must be adjusted for inflation as specified in 264.142(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 264.142 (a) and (c) and, when this estimate has been adjusted in accordance with 264.142(b), the latest adjusted closure cost estimate.

264.143 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 paragraphs (a) through (f) of this section.

(a) Standby trust fund. [5/93]

(1) An owner or operator may satisfy the requirements of this section by establishing a standby trust fund which conforms to the requirements of this paragraph 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 264.151(a)(1), and the trust agreement must be accompanied by a formal certification of acknowledgement [for example, see 264.151 (a)(2)]. Schedule A of the trust agreement must be updated within 60 days after a change in the amount of the current closure cost estimate covered by the agreement. (12/93)

(3) [Reserved]

(4) [Reserved]

(5) [Reserved]

(6) 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 this section 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 this section 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 paragraphs (a) (7) or (8) of this section, 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, the Department may

withhold reimbursements of such amounts as it deems prudent until it determines, in accordance with 264.143(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, it will provide the owner or operator with a detailed written statement of reasons.

(11) The Department will agree to termination of the trust when:

(i) An owner or operator substitutes alternate financial assurance as specified in this section; or,

(ii) The Department releases the owner or operator from the requirements of this section in accordance with 264.143(i).

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

(1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this paragraph and submitting the bond to the 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 264.151(b). (12/93)

(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 264.143(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 this section, the following are not required by these regulations:

(A) Payments into the trust fund as specified in 264.143(a);

(B) Updating of Schedule A of the trust agreement (see 264.151(a)) to show current closure cost estimates;

(C) Annual valuations as required by the trust agreement; and

(D) Notices of nonpayment as required by the trust agreement.

(4) The bond must guarantee that the owner or operator will:

(i) Fund the standby trust fund in an amount equal to the penal sum of the bond before 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 (11/90)

(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 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 264.143(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 this section 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 evidence 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 alternate financial assurance as specified in this section.

(c) Surety bond guaranteeing performance of closure.

(1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this paragraph and submitting the bond to the 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 264.151(c). (12/92; 12/93)

(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 must meet the requirements specified in 264.143(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 this section, the following are not required by these regulations:

(A) Payments into the trust fund as specified in 264.143(a);

(B) Updating of Schedule A of the trust agreement (see 264.151(a)) to show current closure cost estimates;

(C) Annual valuations as required by the trust agreement; and

(D) Notices of nonpayment as required by the trust agreement.

(4) The bond must guarantee that the owner or operator will:

(i) 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 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 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 RCRA 3008 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 this section. 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 this section; or

(ii) The Department releases the owner or operator from the requirements of this section in accordance with 264.143(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 this section in accordance with 264.143(i).

(d) Closure letter of credit.

(1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph and submitting the letter to the 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 264.151(d) of this regulation. (12/92; 12/93)

(3) An owner or operator who uses a letter of credit to satisfy the requirements of this section must also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the 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 264.143(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 this section, the following are not required by these regulations:

(A) Payments into the trust fund as specified in 264.143(a);

(B) Updating of Schedule A of the trust agreement (see 264.151(a)) to show current closure cost estimates;

(C) Annual valuations as required by the trust agreement; and

(D) Notices of nonpayment as required by the trust agreement.

(4) The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: the EPA Identification Number, 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 264.143(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 this section 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 S.C. 44-56-130 and -140 or section 3008 of RCRA 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. (12/92)

(9) If the owner or operator does not establish alternate financial assurance as specified in this section and obtain written approval of such alternate assurance from the 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 this section 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 this section; or

(ii) The Department releases the owner or operator from the requirements of this section in accordance with 264.143(i).

(e) Closure insurance.

(1) An owner or operator may satisfy the requirements of this section by obtaining closure insurance which conforms to the requirements of this paragraph and submitting a 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 one or more States.

(2) The wording of the certificate of insurance must be identical to the wording specified in 264.151(e). (12/92; 12/93)

(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 264.143(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, it may withhold reimbursements of such amounts as it deems prudent until it determines, in accordance with 264.143(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, it 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 paragraph (e)(10) of this section. Failure to pay the premium, without substitution of alternate financial assurance as specified in this section, will constitute a significant violation of these regulations, warranting such remedy as the 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 State court or other court of competent jurisdiction; or

(iv) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or

(v) The premium due is paid.

(9) Whenever the current 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 this section 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 this section; or

(ii) The Department releases the owner or operator from the requirements of this section in accordance with 264.143(i).

(f) Financial test and corporate guarantee for closure.

(1) An owner or operator may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria of either paragraph (f)(1)(i) or (ii) of this section:

(i) The owner or operator must have:

(A) Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

(B) Net working capital and tangible net worth each at least six times the sum of the current closure and postclosure cost estimate and the current plugging and abandonment cost estimates; and

(C) Tangible net worth of at least \$10 million; and

(D) Assets located in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates.

(ii) The owner or operator must have:

(A) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

(B) Tangible net worth at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates; and

(C) Tangible net worth of at least \$10 million; and

(D) Assets located in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates.

(2) The phrase "current closure and postclosure cost estimates" as used in paragraph (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1 through 4 of the letter from the owner's or operator's chief financial officer [264.151(f)]. The phrase "current plugging and abandonment cost estimates" as used in paragraph (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1 through 4 of the letter from the owner's or operator's chief financial officer.

(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 264.151(f); and, (12/92; 12/93)

(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:

(A) 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 (6/89)

(B) 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 paragraph (f)(3) of this section 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 paragraph (f)(3) of this section, 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 paragraph (f)(3) of this section.

(6) If the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, he must send notice to the Department of intent to establish alternate financial assurance as specified in this section. The notice must be sent by certified mail within 90 days

after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide the alternate financial assurance within 120 days after the end of such fiscal year.

(7) The Department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of paragraph (f)(1) of this section, require reports of financial condition at any time from the owner or operator in addition to those specified in paragraph (f)(3) of this section. If the Department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, the owner or operator must provide alternate financial assurance as specified in this section within 30 days after notification of such a finding.

(8) The 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 paragraph (f)(3)(ii) of this section). 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 this section within 30 days after notification of the disallowance.

(9) The owner or operator is no longer required to submit the items specified in paragraph (f)(3) of this section when:

(i) An owner or operator substitutes alternate financial assurance as specified in this section; or

(ii) The Department releases the owner or operator from the requirements of this section in accordance with 264.143(i).

(10) An owner or operator may meet the requirements of this section by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraphs (f)(1) through (8) of this section and must comply with the terms of the corporate guarantee. The wording of the corporate guarantee must be identical to the wording specified in 264.151(h). The certified copy of the guarantee must accompany the items sent to the Department as specified in paragraph (f)(3) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, 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 corporate guarantee must provide that: (12/93)

(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 264.143(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 this section 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 this section by establishing more than one financial mechanism per facility. These mechanisms are limited to surety bonds guaranteeing payment into a trust fund, letters of credit, and insurance. The mechanisms must be as specified in paragraphs (a), (b), (d) and (e), respectively, of this section, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current closure cost estimate. 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. (12/92; 5/93; 12/93)

(h) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in this section to meet the requirements of this section for more than one facility. Evidence of financial assurance submitted to the Department must include a list showing, for each facility, the EPA Identification Number, name, address, and the amount of funds for closure assured by the mechanism. The amount of funds available through the mechanisms 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 this section. Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Department will notify the owner or operator in writing that he is no longer required by this section 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. (12/93)

264.144 Cost estimate for postclosure care

(a) The owner or operator of a disposal surface impoundment, disposal miscellaneous unit, land treatment unit, or landfill unit, or of a surface impoundment or waste pile required under 264.228 and 264.258 to prepare a contingent closure and postclosure plan, must have a detailed written estimate, in current dollars, of the annual cost of postclosure monitoring and maintenance of the facility in accordance with the applicable postclosure regulations in 264.117 through 264.120, 264.228, 264.258, 264.280, 264.310, and 264.603. (6/89; 11/90; 12/93)

(1) The postclosure cost estimate must be based on the costs to the owner or operator of hiring a third party to conduct postclosure 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 264.141(d).)

(2) The postclosure cost estimate is calculated by multiplying the annual postclosure cost estimate by the number of years of postclosure care required under 264.117.

(b) During the active life of the facility and during the postclosure period of the facility, the owner or operator must adjust the postclosure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with 264.145. For owners or operators using the financial test or corporate guarantee, the postclosure 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 264.145(f)(5). The adjustment may be made by recalculating the postclosure 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 264.145(b)(1) and (2). The inflation factor is the result of dividing the latest

published annual Deflator by the Deflator for the previous year. (5/93)

(1) The first adjustment is made by multiplying the postclosure cost estimate by the inflation factor. The result is the adjusted postclosure cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted postclosure cost estimate by the latest inflation factor.

(c) During the active life of the facility, the owner or operator must revise the postclosure cost estimate within 30 days after the Department has approved the request to modify the postclosure plan, if the change in the postclosure plan increases the cost of postclosure care. The postclosure cost estimate must be adjusted for inflation as specified in 264.144(b).

(d) (5/93)

(1) The owner or operator must keep the following at the facility during the active life of the facility: The latest postclosure cost estimate prepared in accordance with section 264.144 (a) and (c) and, when this estimate has been adjusted in accordance with Section 264.144(b), the latest adjusted postclosure cost estimate. (12/93)

(2) During the postclosure period of the facility, the owner or operator must maintain the information specified in (d)(1) and provide it to the Department upon request.

264.145 Financial assurance for postclosure care

The owner or operator of a hazardous waste management unit subject to the requirements of 264.144 must establish financial assurance for postclosure care in accordance with the approved postclosure plan for the facility 60 days prior to the initial receipt of hazardous waste or the effective date of the regulation, whichever is later. He must choose from the following options:

(a) Standby trust fund (replaced 5/93).

(1) An owner or operator may satisfy the requirements of this section by establishing a standby trust fund which conforms to the requirements of this paragraph 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 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 264.151(a)(1), and the trust agreement must be accompanied by a formal certification of acknowledgement [for example, see 264.151(a)(2)]. Schedule A of the trust agreement must be updated within 60 days after a change in the amount of the current postclosure cost estimate covered by the agreement. (12/93)

(3) [Reserved]

(4) [Reserved]

(5) [Reserved]

(6) Whenever the current postclosure 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 postclosure cost estimate, or obtain other financial assurance as specified in this section to cover the difference.

(7) During the operating life of the facility, if the value of the trust fund is greater than the total amount of the current postclosure cost estimate, the owner or operator may submit a written request to the Department for release of the amount in excess of the current postclosure cost estimate.

(8) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund, he may submit a written request to the Department for release of the amount in excess of the current postclosure 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 paragraph (a) (7) or (8) of this section, the Department will instruct the trustee to release to the owner or operator such funds as the Department specifies in writing.

(10) During the period of postclosure care, 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 postclosure care.

(11) An owner or operator or any other person authorized to conduct postclosure care may request reimbursements for postclosure care expenditures by submitting itemized bills to the Department. Within 60 days after receiving bills for postclosure 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 postclosure care expenditures are in accordance with the approved postclosure 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 this section; or
- (ii) The Department releases the owner or operator from the requirements of this section in accordance with 264.145(i).

264.145 Financial assurance for postclosure care

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

(1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this paragraph and submitting the bond to the 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 and licensed to do business in South Carolina. (6/89)

(2) The wording of the surety bond must be identical to the wording specified in 264.151(b). (12/92; 12/93)

(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 264.145(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 this section, the following are not required by these regulations:

(A) Payments into the trust fund as specified in 264.145(a);

(B) Updating of Schedule A of the trust agreement (see 264.151(a)) to show current postclosure cost estimates;

(C) Annual valuations as required by the trust agreement; and

(D) Notices of nonpayment as required by the trust agreement.

(4) The bond must guarantee that the owner or operator will:

(i) Fund the standby trust fund in an amount equal to the penal sum of the bond before 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 the State court or other court of competent jurisdiction; or (12/93)

(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 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 postclosure cost estimate, except as provided in 264.145(g).

(7) Whenever the current postclosure 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 postclosure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current postclosure cost estimate decreases, the penal sum may be reduced to the amount of the current postclosure 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. (11/90)

(9) The owner or operator may cancel the bond if the Department has given prior written consent based on his receipt of evidence of alternate financial assurance as specified in this section. (11/90)

(c) Surety bond guaranteeing performance of postclosure care. (11/90)

(1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this paragraph and submitting the bond to the 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. (11/90)

(2) The wording of the surety bond must be identical to the wording specified in 264.151(c). (11/90)

(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 264.145(a), except that: (11/90)

(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 this section, the following are not required by these regulations:

(A) Payments into the trust fund as specified in 264.145(a);

(B) Updating of Schedule A of the trust agreement (see 264.151(a)) to show current postclosure cost estimates;

(C) Annual valuations as required by the trust agreement; and

(D) Notices of nonpayment as required by the trust agreement.

(4) The bond must guarantee that the owner or operator will: (11/90)

(i) Perform postclosure care in accordance with the postclosure plan and other requirements of the permit for the facility; or

(ii) Provide alternate financial assurance as specified in this section, 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 section 3008 of RCRA that the owner or operator has failed to perform postclosure care in accordance with the approved postclosure plan and other permit requirements, under the terms of the bond the surety will perform postclosure care in accordance with the postclosure plan and other permit requirements or will deposit the amount of the penal sum into the standby trust fund. (11/90)

(6) The penal sum of the bond must be in an amount at least equal to the current postclosure cost estimate. (11/90)

(7) Whenever the current postclosure cost estimate increases to an amount greater than the penal sum during the active life of the facility, 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 postclosure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section. Whenever the current postclosure cost estimate decreases during the active life of the facility, the penal sum may be reduced to the amount of the current postclosure cost estimate following written approval by the Department. (11/90)

(8) During the period of postclosure care, 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 postclosure care.

(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 the 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 this section; or

(ii) The Department releases the owner or operator from the requirements of this section in accordance with 264.145(i).

(11) The surety will not be liable for deficiencies in the performance of postclosure care by the owner or operator after the Department releases the owner or operator from the requirements of this section in accordance with 264.145(i).

(d) Postclosure letter of credit.

(1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph and submitting the letter to the 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 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 264.151(d). (12/92; 12/93)

(3) An owner or operator who uses a letter of credit to satisfy the requirements of this section must also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the 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 264.145(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 this section, the following are not required by these regulations:

(A) Payments into the trust fund as specified in 264.145(a);

(B) Updating of Schedule A of the trust agreement (see 264.151(a)) to show current postclosure cost estimates;

(C) Annual valuations as required by the trust agreement; and

(D) Notices of nonpayment as required by the trust agreement.

(4) The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: the EPA Identification Number, name, and address of the facility, and the amount of funds assured for postclosure 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 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 postclosure cost estimate, except as provided in 264.145(g).

(7) Whenever the current postclosure cost estimate increases to an amount greater than the amount of the credit during the operating life of the facility, 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 postclosure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current postclosure cost estimate decreases during the operating life of the facility, the amount of the credit may be reduced to the amount of the current postclosure cost estimate following written approval by the Department. (11/90)

(8) During the period of postclosure 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 postclosure care.

(9) Following a final administrative determination pursuant to SCHWMA 44-56-140 and section 3008 of RCRA that the owner or operator has failed to perform postclosure care in accordance with the approved postclosure plan and other permit requirements, the Department may draw on the letter of credit. (12/92)

(10) If the owner or operator does not establish alternate financial assurance as specified in this section and obtain written approval of such alternate assurance from the 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 this section 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 this section; or

(ii) The Department releases the owner or operator from the requirements of this section in accordance with 264.145(i).

(e) Postclosure insurance.

(1) An owner or operator may satisfy the requirements of this section by obtaining postclosure insurance which conforms to the requirements of this paragraph and submitting a 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. 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. (11/90)

(2) The wording of the certificate of insurance must be identical to the wording specified in 264.151(e). (12/92; 12/93)

(3) The postclosure insurance policy must be issued for a face amount at least equal to the current postclosure cost estimate, except as provided in 264.145(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 postclosure insurance policy must guarantee that funds will be available to provide postclosure care of the facility whenever the postclosure period begins. The policy must also guarantee that once postclosure 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 postclosure care may request reimbursements for postclosure care expenditures by submitting itemized bills to the Department. Within 60 days after receiving bills for postclosure 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 postclosure care expenditures are in accordance with

the approved postclosure plan or otherwise justified. If the Department does not instruct the insurer to make such reimbursements, it will provide the owner or operator with a detailed written statement of reasons. (11/90)

(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 paragraph (e)(11) of this section. Failure to pay the premium, without substitution of alternate financial assurance as specified in this section, will constitute a significant violation of these regulations, warranting such remedy as the 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 State court or other court of competent jurisdiction; or
- (iv) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or
- (v) The premium due is paid.

(9) Whenever the current postclosure 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 postclosure cost estimate and submit evidence of such

increase to the Department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current postclosure cost estimate decreases during the operating life of the facility, the face amount may be reduced to the amount of the current postclosure 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 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 this section; or
 - (ii) The Department releases the owner or operator from the requirements of this section in accordance with 264.145(i).
- (f) Financial test and corporate guarantee for postclosure care.

(1) An owner or operator may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria of either paragraph (f)(1)(i) or (ii) of this section:

- (i) The owner or operator must have:
 - (A) Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and
 - (B) Net working capital and tangible net worth each at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates; and
 - (C) Tangible net worth of at least \$10 million; and
 - (D) 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 postclosure cost estimates and the current plugging and abandonment cost estimates.

- (ii) The owner or operator must have:
 - (A) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and
 - (B) Tangible net worth at least six times the sum of the current closure and postclosure cost

estimates and the current plugging and abandonment cost estimates; and

(C) Tangible net worth of at least \$10 million; and

(D) Assets located in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates.

(2) The phrase "current closure and postclosure cost estimates" as used in paragraph (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1 through 4 of the letter from the owner's or operator's chief financial officer [264.151(f)]. The phrase "current plugging and abandonment cost estimates" as used in paragraph (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1 through 4 of the letter from the owner's or operator's chief financial officer.

(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 264.151(f); and (12/92; 12/93)

(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:

(A) 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

(B) 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 paragraph (f)(3) of this section to the Department 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 paragraph (f)(3) of this section, 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 paragraph (f)(3) of this section.

(6) If the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, he must send notice to the Department of intent to establish alternate financial assurance as specified in this section. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer

meets the requirements. The owner or operator must provide the alternate financial assurance within 120 days after the end of such fiscal year.

(7) The Department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of paragraph (f)(1) of this section, require reports of financial condition at any time from the owner or operator in addition to those specified in paragraph (f)(3) of this section. If the Department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, the owner or operator must provide alternate financial assurance as specified in this section within 30 days after notification of such a finding.

(8) The 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 paragraph (f)(3)(ii) of this section). 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 this section within 30 days after notification of the disallowance.

(9) During the period of postclosure care, the Department may approve a decrease in the current postclosure 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 postclosure care.

(10) The owner or operator is no longer required to submit the items specified in paragraph (f)(3) of this section when:

(i) An owner or operator substitutes alternate financial assurance as specified in this section; or

(ii) The Department releases the owner or operator from the requirements for this section in accordance with 264.145(i). (12/93)

(11) An owner or operator may meet the requirements for this section by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraphs (f)(1) through (9) of this section and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in 264.151(h). A certified copy of the guarantee must accompany the items sent to the Department as specified in paragraph (f)(3) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the

owner or operator, 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: (12/93)

(i) If the owner or operator fails to perform postclosure care of a facility covered by the corporate guarantee in accordance with the postclosure plan and other permit requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in 264.145(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 this section 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 this section by establishing more than one financial mechanism per facility. These mechanisms are limited to surety bonds guaranteeing payment into a trust fund, letters of credit, and insurance. The mechanisms must be as specified in paragraphs, (b), (d), and (e), respectively, of this section, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current postclosure cost estimate. 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 postclosure care of the facility. (5/93; 12/93)

(h) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in this section to meet the requirements of this section for more than one facility. Evidence of financial assurance submitted to the Department must include a list showing, for each facility, the EPA Identification Number, name, address, and the amount of funds for postclosure 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

postclosure 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. (11/90)

(i) Release of the owner or operator from the requirements of this section. Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that the postclosure 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 postclosure care of that unit, unless the Department has reason to believe that postclosure care has not been in accordance with the approved postclosure plan. The Department shall provide the owner or operator with a detailed written statement of any such reason to believe that postclosure care has not been in accordance with the approved postclosure plan.

264.146 Use of a mechanism for financial assurance of both closure and postclosure care

An owner or operator may satisfy the requirements for financial assurance for both closure and postclosure care for one or more facilities by using a surety bond, letter of credit, insurance, financial test, or corporate guarantee that meets the specifications for the mechanism in both 264.143 and 264.145. 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 postclosure care.

264.147 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 paragraphs (a) (1), (2), (3), (4), (5), or (6) of this section: (11/90; 12/93)

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

(i) Each insurance policy must be amended by attachment of the Hazardous 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 264.151(i). The wording of the certificate of insurance must be identical to the wording specified in 264.151(j). The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Department. The owner or operator must provide a signed duplicate original of the insurance policy, application, and any agreements which may affect the 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. (6/89; 12/93)

(ii) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

(2) An owner or operator may meet the requirements of this section by passing a financial test or using the guarantee for liability coverage as specified in paragraphs (f) and (g) of this section. (11/90, 12/92)

(3) An owner or operator may meet the requirements of this section by obtaining a letter of credit for liability coverage as specified in paragraph (h) of this section. (11/90)

(4) An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in paragraph (i) of this section. (11/90)

(5) An owner or operator may meet the requirements of this section by obtaining a trust fund for liability coverage as specified in paragraph (j) of this section. (11/90)

(6) An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amounts required by this section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this paragraph, the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess" coverage. (11/90)

(7) An owner or operator shall notify the Department in writing within 30 days whenever: (12/93)

(i) A claim results in a reduction in the amount of financial assurance for liability coverage

provided by a financial instrument authorized in paragraphs (a)(1) through (a)(6) of this section; or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under paragraphs (a)(1) through (a)(6) of this section; or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous 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 paragraphs (a)(1) through (a)(6) of this section. (11/90; 12/93)

(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 this section may combine the required per-occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences must maintain liability coverage in the amount of at least \$4 million per occurrence and \$8 million annual aggregate. This liability coverage may be demonstrated as specified in paragraphs (b) (1), (2), (3), (4), (5), or (6), of this section: (11/90, 12/92)

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

(i) Each insurance policy must be amended by attachment of the Hazardous 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 264.151(i). The wording of the certificate of insurance must be identical to the wording specified in 264.151(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, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

(2) An owner or operator may meet the requirements of this section by passing a financial test or using the guarantee for liability coverage as specified in paragraphs (f) and (g) of this section. (11/90)

(3) An owner or operator may meet the requirements of this section by obtaining a letter of credit for liability coverage as specified in paragraph (h) of this section. (11/90)

(4) An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in paragraph (i) of this section. (11/90)

(5) An owner or operator may meet the requirements of this section by obtaining a trust fund for liability coverage as specified in paragraph (j) of this section. (11/90)

(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 this section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this paragraph, the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess" coverage. (11/90)

(7) An owner or operator shall notify the Department in writing within 30 days whenever:

(i) A claim results in the reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in paragraphs (b)(1) through (b)(6) of this section; or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under paragraphs (b)(1) through (b)(6) of this section; or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of 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 paragraphs (b)(1) through (b)(6) of this section. (11/90; 12/93)

(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 paragraph (a) or (b) of this section 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 R.61-79.270.14 for a facility that does not have a permit, or pursuant to the procedures for permit modification under R.61-79.124.5 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 paragraph (a) or (b) of this section. Any request for a variance for a permitted facility will be treated as a request for a permit modification under R.61-79.270.41(a)(5) and R.61-79.124.5. (12/92)

(d) Adjustments by the Department. If the Department determines that the levels of financial responsibility required by paragraph (a) or (b) of this section are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the Department may adjust the level of financial responsibility required under paragraph (a) or (b) of this section as may be necessary to protect human health and the environment. This adjusted level will be based on the Department's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the Department determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operations of a facility that is not a surface impoundment, landfill, or land treatment facility, he may require that an owner or operator of the facility comply with paragraph (b) of this section. 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 R.61-79.270.41(a)(5) and R.61-79.124.5.

(e) Period of coverage. Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Department will notify the owner or operator in writing that he is no longer required by this section 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 this section by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria of paragraph (f)(1)(i) or (ii):

(i) The owner or operator must have:

(A) Net working capital and tangible net worth each at least six times the amount of liability coverage to be demonstrated by this test; and

(B) Tangible net worth of at least \$10 million; and

(C) Assets in the United States amounting to either: (1) At least 90 percent of his total assets; or (2) at least six times the amount of liability coverage to be demonstrated by this test.

(ii) The owner or operator must have:

(A) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's, or Aaa, Aa, A, or Baa as issued by Moody's; and

(B) Tangible net worth of at least \$10 million; and

(C) Tangible net worth at least six times the amount of liability coverage to be demonstrated by this test; and

(D) Assets in the United States amounting to either:

(1) At least 90 percent of his total assets; or

(2) At least six times the amount of liability coverage to be demonstrated by this test.

(2) The phrase "amount of liability coverage" as used in paragraph (f)(1) of this section refers to the annual aggregate amounts for which coverage is required under paragraphs (a) and (b) of this section.

(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 264.151(g). If an owner or operator is using the financial test to demonstrate both assurance for closure or postclosure care, as specified by 264.143(f),

264.145(f), 265.143(e), and 265.145(e), and liability coverage, he must submit the letter specified in 264.151(g) to cover both forms of financial responsibility; a separate letter as specified in 264.151(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:

(A) 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

(B) 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 paragraph (f)(3) of this section 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 paragraph (f)(3) of this section, 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 paragraph (f)(3) of this section.

(6) If the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, he must obtain insurance, a letter of credit, a surety bond, a trust fund, or a guarantee for the entire amount of required liability coverage as specified in this section. Evidence of liability coverage must be submitted to the 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. (12/93)

(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 paragraph (f)(3)(ii) of this section). 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. (11/90)

(1) Subject to paragraph (g)(2) of this section, an owner or operator may meet the requirements of this section by obtaining a written guarantee, hereinafter referred to as "guarantee." The guarantor must be the

direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraphs (f)(1) through (f)(6) of this section. The wording of the guarantee must be identical to the wording specified in 264.151(h)(2) of this part. A certified copy of the guarantee must accompany the items sent to the Department as specified in paragraph (f)(3) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. (11/90)

(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] (11/90)

(2)(i) In the case of corporations incorporated in the United States, a guarantee may be used to satisfy the requirements of this section only if the Attorneys General or Insurance Commissioners of (A) the State in which the guarantor is incorporated, and (B) each State in which a facility covered by the guarantee is located have submitted a written statement to the Department that a guarantee executed as described in this section and 264.151(h)(2) is a legally valid and enforceable obligation in that State. (11/90)

(ii) In the case of corporations incorporated outside the United States, a guarantee may be used to satisfy the requirements of this section only if (A) the non-U.S. corporation has identified a registered agent for service of process in each State in which a facility covered by the guarantee is located and in the State in which it has its principal place of business, and (B) the Attorney General or Insurance Commissioner of each State in which a facility covered by the guarantee is located and the State in which the guarantor corporation has its principal place of business, has submitted a written statement to the Department that a guarantee executed as described in this section and 264.151(h)(2) is a legally valid and enforceable obligation in that State. (11/90)

(h) Letter of credit for liability coverage. (11/90)

(1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit that conforms to the requirements of this paragraph and submitting a copy of the letter of credit to the Department. (11/90; 12/93)

(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. (11/90)

(3) The wording of the letter of credit must be identical to the wording specified in 264.151(k) of this part. (11/90)

(4) An owner or operator who uses a letter of credit to satisfy the requirements of this section must also establish a standby trust fund. Under the terms of 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. (12/93)

(5) The wording of the standby trust fund must be identical to the wording specified in 264.151(n). (12/93)

(i) Surety bond for liability coverage. (11/90)

(1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond that conforms to the requirements of this paragraph and submitting a copy of the bond to the 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 264.151(l) of this part.

(4) A surety bond may be used to satisfy the requirements of this section only if the Attorneys General or Insurance Commissioners of

(i) the State in which the surety is incorporated, and

(ii) each State in which a facility covered by the surety bond is located have submitted a written statement to the Department that a surety bond executed as described in this section and 264.151(l) of this part is a legally valid and enforceable obligation in that State. (12/92)

(j) Trust fund for liability coverage. (11/90)

(1) An owner or operator may satisfy the requirements of this section by establishing a trust fund that conforms to the requirements of this paragraph and submitting an originally signed duplicate of the trust agreement to the 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 this section. If at any time after the trust fund is created the amount of funds in the trust fund is reduced below the full amount of the liability coverage to be provided, the owner or operator, by the anniversary date of the establishment of the fund, must either add sufficient funds to the trust fund to cause its value to equal the full amount of liability coverage to be provided, or obtain other financial assurance as specified in this section to cover the difference. For purposes of this paragraph, "the full amount of the liability coverage to be provided" means the amount of coverage for sudden and/or nonsudden occurrences required to be provided by the owner or operator by this section, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator. (12/92)

(4) The wording of the trust fund must be identical to the wording specified in 264.151(m).

(k) Notwithstanding any other provision of this part, an owner or operator using liability insurance to satisfy the requirements of this section may use, until October 16, 1982, a Hazardous Waste Facility Liability Endorsement or Certificate of Liability Insurance that does not certify that the insurer is licensed to transact the business of insurance, or eligible as an excess or surplus lines insurer, in one or more States. (11/90)

264.148 Incapacity of owners or operators, guarantors, or financial institutions (6/89, 12/92)

(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 264.143(f) and 264.145(f) must make such a notification if he is named as debtor, as required under the terms of the corporate guarantee (264.151(h))

(b) An owner or operator who fulfills the requirements of 264.143, 264.145, or 264.147 by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The owner or operator must establish other financial assurance or liability coverage within 60 days after such an event.

264.149 Hazardous waste contingency fund

The payment of fees required under 44-56-160, -170, and -510 et seq. and under section 262.45, and section 264.78 and 265.78 will be deposited in the Hazardous Waste Contingency Fund to ensure the availability of funds for contingencies arising from permitted hazardous waste landfills and to defray the costs of governmental response actions at uncontrolled hazardous waste sites. Of the fees collected pursuant to 44-56-170(C), (D), and (E), credited to the contingency fund pursuant to section 44-56-175, thirteen percent must be held separate and distinct within the fund in a permitted site fund for the purpose of response actions arising from the operation of the permitted land disposal facilities in this State. Of the fees collected pursuant to Section 44-56-510 and credited to the contingency fund pursuant to Section 44-56-175, twenty-six percent must be credited to the fund for permitted sites. (12/93)

264.150 [Reserved 12/93]

264.151 Wording of the instruments

(a) (1) A standby trust fund, as specified in 264.143(a) or 264.145(a) or 265.143(a) or 265.145(a), must be worded as noted in 264.151 Appendix A (1) except that instructions in brackets are to be replaced with the relevant information and the brackets deleted. (11/90, 5/93)

(2) Certification of acknowledgement which must accompany the trust agreement for a trust fund as specified in 264.143(a) and 264.145(a) or 265.143(a). This document must be worded as noted in 264.151 Appendix A(2) except that instructions in brackets are to be replaced with the relevant information and the brackets deleted. (11/90; 12/93)

(b) A surety bond guaranteeing payment into a trust fund, as specified in 264.143(b) or 264.145(b) or 265.143(b) or 265.145(b) must be worded as noted in 264.151 Appendix B follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted. (11/90; 12/93)

(c) A surety bond guaranteeing performance of closure and/or postclosure care, as specified in 264.143(c) or 264.145(c), must be worded as noted in 264.151 Appendix C, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted. (11/90; 12/93)

(d) A letter of credit, as specified in 264.143(d) or 264.145(d) or 265.143(c) or 265.145(c) must be worded as noted in 264.151 Appendix D, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted. (11/90; 12/93)

(e) A certificate of insurance, as specified in 264.143(e) or 264.145(e) or 265.143(d) or 265.145(d) must be worded as noted in 264.151 Appendix E, except that instructions in brackets are to be replaced

with the relevant information and the brackets deleted. (11/90; 12/93)

(f) A letter from the chief financial officer, as specified in 264.143(f) or 264.145(f) or 265.143(e) or 265.145(e) must be worded as noted in 264.151 Appendix F, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted. (11/90; 12/93)

(g) A letter from the chief financial officer, as specified in 264.147(f) or 265.147(f), must be worded as noted in 264.151 Appendix G, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted. (12/93)

(h) (11/90)

(1) A corporate guarantee, as specified in 264.143(f) or 264.145(f) or 265.143(e) or 265.145(e) must be worded as indicated in 264.151 Appendix H 1, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

(2) A guarantee, as specified in 264.147(g) or 265.147(g) must be worded as noted in 264.151 Appendix H 2, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

(i) A hazardous waste facility liability endorsement as required in 264.147 or 265.147 must be worded as noted in 264.151 Appendix I, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted. (11/90)

(j) A certificate of liability insurance as required in 264.147 or 265.147 must be worded as noted in 264.151 Appendix J, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted. (11/90)

(k) A letter of credit, as specified in 264.147(i) or 265.147(i), must be worded as noted in 264.151 Appendix K, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted. (11/90)

(l) A surety bond, as specified in 264.147(h) or 265.147(h), must be worded as noted in 264.151 Appendix L, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted. (12/93)

(m) (1) A trust agreement, as specified in 264.147(j) or 265.147(j), must be worded as noted in 264.151 Appendix M(1), except that instructions in brackets are to be replaced with the relevant information and the brackets deleted. (12/93)

(2) 264.151 Appendix M(2) contains an example of the certification of acknowledgement which must accompany the trust agreement for a trust fund as specified in 264.147(j) or 265.147(j). (12/93)

(n) (1) A standby trust agreement, as specified in 264.147(h) or 265.147(h), must be worded as noted in 264.151 Appendix N(1), except that instructions in brackets are to be replaced with the relevant information and the brackets deleted. (12/93)

(2) 264.151 Appendix N (2) contains an example of the certification of acknowledgement which must accompany the trust agreement for a standby trust fund as specified in section 264.147(h) or 265.147(h). (12/93)

264.151 Appendix A (1)

SOUTH CAROLINA DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT
(12/93; 5/96; 8/00)

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 South Carolina Department of Health and Environmental Control, hereafter referred to as the "Department", an agency of the state of South Carolina, 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 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 and/or post-closure 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 and/or post-closure 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 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, 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 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.

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 South Carolina.

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 R.61-79.264.151 (a)(1) as such regulations were constituted on the date first above written.

[Signature of Grantor]
[Title]

Attest: _____
[Title]
[Seal]

[Signature of Trustee]

Attest: _____
[Title]
[Seal]

264.151 Appendix A (2)

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT
(12/93; 5/96; 8/00)

Certificate of Acknowledgement (must accompany the trust agreement):

State of South Carolina

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) _____

264.151 Appendix B

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT
(12/93; 5/96; 8/00)

Surety Bond: Guaranteeing Payment Into a Trust Fund for Closure and/or Postclosure Care

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 closure and/or postclosure amount(s) for each facility guaranteed by this bond [indicate closure and postclosure 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 South Carolina Department of Health and Environmental Control (hereinafter called 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 South Carolina Hazardous Waste Management Regulation 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 postclosure 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 an EPA Regional Administrator or a U.S. district court or other court of competent jurisdiction,

Or, if the Principal shall provide alternate financial assurance, as specified in Subpart H of R.61-79.264 or R.61-79.265, 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.

Upon notification by the Department that the Principal has been found in violation of the postclosure requirements of R.61-79.264 for a facility for which this bond guarantees performance of postclosure care, the Surety(ies) shall either perform postclosure care in accordance with

the postclosure plan and other permit requirements or place the postclosure 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 Subpart H of R.61-79.264 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.

The surety(ies) hereby waive(s) notification of amendments to closure plans, permits, 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 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 and/or postclosure 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 R.61-79.264 Section 264.151(b) as such regulations were constituted on the date this bond was executed.

Principal
[Signature(s)] _____
[Name(s)] _____
[Title(s)] _____
[Corporate seal] _____

Corporate Surety(ies)
[Name and address] _____
[State of incorporation:] _____
Liability limit: \$ _____
[Signature(s)] _____
[Name(s) and title(s)] _____
[Corporate seal] _____

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

Bond premium: \$ _____

Surety Bond: Guaranteeing Performance of Closure and/or Postclosure Care

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, address, and closure and/or postclosure amount(s) for each facility guaranteed by this bond [indicate closure and postclosure 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 South Carolina Department of Health and Environmental Control hereinafter called 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 S.C. Hazardous Waste Management Regulations and the Resource Conservation and Recovery Act as amended (RCRA) 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 postclosure 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 postclosure care of each facility for which this bond guarantees postclosure care, in accordance with the postclosure 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.

Or, if the Principal shall provide alternate financial assurance as specified in Subpart H of R.61-79.264 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 R.61-79 part 264, 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 postclosure requirements of R.61-79 part 264 for a facility for which this bond guarantees performance of postclosure care, the Surety(ies) shall either perform postclosure care in accordance with the postclosure plan and other permit requirements or place the postclosure 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 Subpart H of R.61-79 part 264, 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.

The Surety(ies) hereby waive(s) notification of amendments to closure plans, permits, 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 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 and/or postclosure 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 R.61-79.264.151(c) as such regulation was constituted on the date this bond was executed.

Principal

[Signatures] _____
 [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: \$ _____

264.151 Appendix D

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
 BUREAU OF LAND AND WASTE MANAGEMENT
 (12/93; 12/94; 5/96; 8/00)

Letter of Credit Covering Cost of Closure and/or Postclosure Care

Irrevocable Standby Letter of Credit

Chief
 Bureau of Land and Waste Management
 2600 Bull Street
 Columbia, South Carolina 29201

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 South Carolina Department of Health and Environmental Control."

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 R.61-79.264.151(d) 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"].

264.151 Appendix E

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Insurance Covering Cost of Closure and/or Postclosure Care

CERTIFICATE OF INSURANCE FOR CLOSURE OR POSTCLOSURE 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:

EPA ID# _____

NAME _____

ADDRESS _____

AMOUNT OF INSURANCE FOR CLOSURE AND/OR THE AMOUNT FOR POSTCLOSURE CARE _____

(These amounts for all facilities covered must total the face amount 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 postclosure care" or "postclosure care"] for the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of the Department including R.61-79.264.143(e), 264.145(e), 265.143(d), and 265.145(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.

The insurer agrees to furnish to the Department a duplicate original of the policy listed above, including all endorsements thereon. In addition, the Insurer shall provide a copy of the insurance policy, application, and any agreements which may affect the policy.

I hereby certify that the wording of this certificate is identical to the wording specified in R.61-79.264.151(e) as 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] _____

264.151 Appendix F

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT
(12/93; 5/96; 8/00)

Financial Test for Closure and/or Postclosure Care

LETTER FROM CHIEF FINANCIAL OFFICER

Chief
Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201

Dear Sir: 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 for closure and/or postclosure costs, as specified in Subpart H of R.61-79 Parts 264 and 265 by the South Carolina Department of Health and Environmental Control. (6/89)

[Fill out the following four 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 closure and/or postclosure cost estimates. Identify each cost estimate as to whether it is for closure or postclosure care].

1. This firm is the owner or operator of the following facilities which are located in the state of South Carolina and for which financial assurance for closure or postclosure care is demonstrated through the financial test specified in Subpart H of R.61-79.264 or R.61-79.265. The current closure and/or postclosure cost estimates covered by the test are shown for each facility: _____ (6/89)
2. This firm guarantees, through the guarantee specified in Subpart H of R.61-79.264 or R.61-79.265, the closure or postclosure care of the following facilities which are located in the state of South Carolina and which are owned or operated by the guaranteed party. The current cost estimates for the closure or postclosure care so guaranteed are shown for each facility: _____ (6/89) 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 South Carolina, where the United States Environmental Protection Agency (EPA) or some designated authority is administering the financial requirements of subpart H of part 264 or 265, 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 R.61-79 Subpart H Parts 264 and 265. The current closure and/or postclosure cost estimates covered by such a test are shown for each facility: _____ (6/89)
4. 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, postclosure care, is not demonstrated to the Department through the financial test or any other financial assurance mechanism specified in Subpart H of R.61-79.264 and R.61-79.265 or equivalent or substantially equivalent State mechanisms. The current closure and/or postclosure cost estimates not covered by such financial assurance are shown for each facility: _____

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

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

[Fill in Alternative I if the criteria of paragraph (f)(1)(i) of 264.143 or 264.145, or of paragraph (e)(1)(i) of 265.143 or 265.145 are used. Fill in Alternative II if the criteria of paragraph (f)(1)(ii) of 264.143 or 264.145, or of paragraph (e)(1)(ii) of 265.143 or 265.145 are used.]:

ALTERNATIVE I

1. Sum of current closure and postclosure cost estimates [total of all cost estimates shown in the four paragraphs above]... \$ _____
- * 2. Total liabilities [If any portion of the closure or postclosure cost estimates is included in total liabilities, you may deduct the amount of

(12/93; 5/96; 8/00)

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.)	\$

Chief
Bureau of Land and Waste Management
2600 Bull Street
Columbia, SC 29201

Dear Sir: 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 postclosure care" if applicable] as specified in Subpart H of Parts 264 and 265.

[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].

	Yes	No
10. Is line 3 at least \$10 million?		
11. Is line 3 at least 6 times line 1?		
12. Is line 7 at least 6 times line 1?		
* 13. Are at least 90% of firm's assets located in the U.S.? If not, complete line 14.		
14. Is line 9 at least 6 times line 1?		
15. Is line 2 divided by line 4 less than 2.0?		
16. Is line 8 divided by line 2 greater than 0.1?		
17. Is line 5 divided by line 6 greater than 1.5?		

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified in Subpart H of Parts 264 and 265: _____.

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

ALTERNATIVE II

- Sum of current closure and postclosure cost estimates [total of all cost estimates shown in the four paragraphs above] \$ _____
- Current bond rating of most recent issuance of this firm and name of rating service _____
- _____
- Date of maturity of bond _____
- *5. Tangible net worth [if any portion of the closure and postclosure cost estimates is included in "total liabilities" on your financial statements, you may add the amount of that portion to this line] \$ _____
- Total assets in U.S. (required only if less than 90% of assets are located in the U.S.) \$ _____

[If you are using the financial test to demonstrate coverage of both liability and closure and postclosure care, fill in the following four paragraphs regarding facilities and associated closure and postclosure 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 postclosure cost estimates. Identify each cost estimate as to whether it is for closure or postclosure care.]

- The firm identified above owns or operates the following facilities for which financial assurance for closure or postclosure care or liability coverage is demonstrated through the financial test specified in Subpart H of Parts 264 and 265. The current closure and/or postclosure cost estimate covered by the test are shown for each facility: _____.
- The firm identified above guarantees, through the guarantee specified in Subpart H of Parts 264 and 265, the closure and postclosure care or liability coverage of the following facilities owned or operated by the guaranteed party. The current cost estimates for closure or postclosure care so guaranteed are shown for each facility: _____.
- In states outside of South Carolina, where the United States Environmental Protection Agency or some designated authority is not administering the financial responsibility requirements of subpart H of parts 264 and 265, this firm 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 R.61-79 Subpart H Parts 264 and 265. The current closure or postclosure estimates covered by such a test or guarantee are shown for each facility: _____ (6/89)
- The firm identified above owns or operates the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, postclosure care, is not demonstrated to the Department through the financial test or any

	Yes	No
7.		
8. Is line 5 at least 6 times line 1?		
*9. Are at least 90% of firm's assets located in the U.S.? If not, complete line 10.		
10. Is line 6 at least 6 times line 1?		

I hereby certify that the wording of this letter is identical to the wording specified in R.61-79.264.151(f) as such regulations were (6/89) constituted on the date shown immediately below.

_____(Signature)
_____(Name)
_____(Title)
_____(Date)

other financial assurance mechanisms specified in Subpart H of Parts 264 and 265 or equivalent or substantially equivalent State mechanisms. The current closure and/or postclosure cost estimates not covered by such financial assurance are shown for each facility:
_____.

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

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

[Fill in 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 paragraph (f)(1)(i) of Section 264.147 or Section 265.147 are used. Fill in Alternative II if the criteria of paragraph (f)(1)(ii) of Section 264.147 or Section 265.147 are used.]

Alternative I

- 1. Amount of annual aggregate liability coverage to be demonstrated. \$ _____
- * 2. Current assets. \$ _____
- * 3. Current liabilities. \$ _____
- 4. Net working capital (line 2 minus line 3). \$ _____
- * 5. Tangible net worth. \$ _____
- * 6. If less than 90% of assets are located in the U.S., given total U.S. assets. \$ _____

	Yes	No
7. Is line 5 at least \$10 million?		
8. Is line 4 at least 6 times line 1?		
9. Is line 5 at least 6 times line 1?		
* 10. Are at least 90% of assets located in the U.S.? If not, complete line 11.		
11. Is line 6 at least 6 times line 1?		

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.). \$ _____

	Yes	No
7. Is line 5 at least \$10 million?		
8. Is line 5 at least 6 times line 1?		
9. Are at least 90% of assets located in the U.S.? If not, complete line 10.		
10. Is line 6 at least 6 times line 1?		

[Fill in part B if you are using the financial test to demonstrate assurance of both liability coverage and closure or postclosure care.]

Part B. Closure or Postclosure Care and Liability Coverage

[Fill in Alternative I if the criteria of paragraphs (f)(1)(i) of Section 264.143 or Section 264.145 and (f)(1)(i) of Section 264.147 are used or if the criteria of paragraphs (e)(1)(i) of Section 265.143 or Section 265.145 and (f)(1)(i) of Section 265.147 are used. Fill in Alternative II if the criteria of paragraphs (f)(1)(ii) of Section 264.143 or Section 264.145 and (f)(1)(ii) of Section 264.147 are used or if the criteria of paragraphs (e)(1)(ii) of Section 265.143 or Section 265.145 and (f)(1)(ii) of Section 265.147 are used.]

Alternative I

- 1. Sum of current closure and postclosure 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 postclosure 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.). \$ _____

	Yes	No
12. Is line 5 at least \$10 million?		
13. Is line 5 at least 6 times line 3?		
14. Is line 9 at least 6 times line 3?		
15. Are at least 90% of assets located in the U.S.? If not, complete line 16.		
16. Is line 11 at least 6 times line 3?		
18. Is line 10 divided by line 4 greater than 0.1?		
19. Is line 7 divided by line 8 greater than 1.5?		

Alternative II

- 1. Sum of current closure and postclosure 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 postclosure cost estimates is included in "total liabilities" on your financial statements you may add that portion to this line). \$ _____
- * 8. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.). \$ _____

	Yes	No
9. Is line 7 at least \$10 million?		
10. Is line 7 at least 6 times line 3?		
* 11. Are at least 90% of assets located in the U.S.? If not, complete line 12.		
12. Is line 8 at least 6 times line 3?		

I hereby certify that the wording of this letter is identical to the wording specified in 264.151(g) as such regulations were constituted on the date shown immediately below.

[Signature] _____
 [Name] _____
 [Title] _____
 [Date] _____

264.151 Appendix H (1)

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
 BUREAU OF LAND AND WASTE MANAGEMENT
 (12/93; 5/96; 8/00)

H - (1): Corporate Guarantee

Corporate Guarantee for Closure or Postclosure Care

Guarantee made this _____ (date) by [name of guaranteeing entity], a business corporation organized under the laws of the State of South Carolina, 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 R.61-79 [either 264.141(h) or 265.141(h)]" to 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 R. 61-79.264 Section 264.143(f), 264.145(f), 265.143(e), and 265.145(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, postclosure care, or both.]

3. "Closure plans" and "postclosure plans" as used below refer to the plans maintained as required by Subpart G of R.61-79.264 and R.61-79.265 for the closure and postclosure 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," "postclosure care" or "closure and postclosure care"] of the above facility(ies) in accordance with the closure or postclosure plans and other permit or interim status requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in Subpart H of R.61-79.264 and R.61-79.265, as applicable, in the name of [owner or operator] in the amount of the current closure or postclosure cost estimates as specified in Subpart H of R.61-79.264 and R.61-79.265.

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 EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is (are) located and to [owner or operator] that he intends to provide alternate financial assurance as specified in Subpart H of R.61-79.264 and R.61-79.265, 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. (6/89)

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 postclosure care, he shall establish alternate financial assurance as specified in Subpart H of R. 61-79.264 or R. 61-79.265, 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 postclosure plan, amendment or modification of the permit, the extension or reduction of the time of performance of closure or postclosure, or any other modification or alteration of an obligation of the owner or operator pursuant to R. 61-79.264 or R. 61-79.265.

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 Subpart H of R. 61-79.264 and R. 61-79.265 for the above listed facilities, except as provided in paragraph 10 of this agreement.

10. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance as specified in Subpart H of R. 61-79.264 or R. 61-79.265, 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].

11. 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 and/or postclosure 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 R.61-79.264.151(h) 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: _____

264.151 Appendix H (2)

Guarantee for Liability Coverage (12/93)

Guarantee made this _____ [date] by _____ [name of guaranteeing entity], a business corporation organized under the laws of the State of South Carolina, 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 R.61-79 [either 264.141(h) or 265.141(h)]", to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in R.61-79.264.147(g) and R.61-79.265.147(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 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 R.61-79.264.147 and 265.147 as applicable, in the name of _____ [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless _____ [owner or operator] has done so.

6. The guarantor agrees to notify the 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 R.61-79.264.147 or 265.147 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 R.61-79.264.147 and 265.147, provided that such modification shall become effective only if a 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 R.61-79.264.147 and R.61-79.265.147 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 approve alternate liability coverage complying with R.61-79.264.147 and/or R.61-79.265.147.

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

Guarantor may terminate this guarantee 120 days following receipt of notification, through certified mail, by the 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 this guarantee is identical to the wording specified in R.61-79.264(h)(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: _____

264.151 Appendix I

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
 BUREAU OF LAND AND WASTE MANAGEMENT
 (12/93; 5/96; 8/00)

Liability Requirements; Endorsements
 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 264.147 or 265.147. 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 Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in 264.147(f) or 265.147(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 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 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 264.151(i) as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

[Signature of Authorized Representatives of Insurer]

[Type name] _____
 [Title], Authorized Representatives of [name of Insurer]

[Address of Representative] _____

264.151 Appendix J

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
 BUREAU OF LAND AND WASTE MANAGEMENT
 (12/93; 5/96; 8/00)

Liability Requirements; Certificate

(1) 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 insured's obligation to demonstrate financial responsibility under R.61-79.264.147 or 265.147. 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 R.61-79.264.147(f) and 265.147(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 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 264.151(j) 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] _____

264.151 Appendix K

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
 BUREAU OF LAND AND WASTE MANAGEMENT
 (12/93; 12/94; 5/96; 8/00)

Irrevocable Standby Letter of Credit

Chief
 Bureau of Land and Waste Management
 2600 Bull Street
 Columbia, SC 29201

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] 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 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 the 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 264.151(k) 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"].

264.151 Appendix L

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
 BUREAU OF LAND AND WASTE MANAGEMENT
 (12/93; 5/96; 8/00)

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) SC Hazardous Waste Management Act 44-56 et seq. and Section 3004 of the Resource Conservation and Recovery Act of 1976, as amended.

(2) Rules and regulations of the Department of Health and Environmental Control, particularly R.61-79.264.147" or "265.147" (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 264.151(1), 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: \$ _____

264.151 Appendix M (1)

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL BUREAU OF LAND AND WASTE MANAGEMENT (12/93; 5/96; 8/00)

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 Department, an agency of the State of South Carolina Government, 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 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, 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 [Grantors] hazardous waste treatment, storage, or disposal facility 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 Grantors facility or group of facilities.

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

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

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

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

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

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

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

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

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

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

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

Section 10. Annual Valuations. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the appropriate EPA Regional Administrator a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the 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 Grantors orders, requests, and instructions. All orders, requests, and instructions by the Department to the Trustee shall be in writing, signed by a representative of 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 South Carolina.

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 264.151(m) as such regulations were constituted on the date first above written.

[Signature of Grantor]
[Title]

Attest:

[Title]
[Seal]

[Signature of Trustee]

Attest:

[Title]
[Seal]

264.151 Appendix M (2)

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT
(12/93; 5/96; 8/00)

Certification of 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]

264.151 Appendix N (1)

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT
(12/93; 5/96; 8/00)

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 South Carolina Department of Health and Environmental Control, "the Department", an agency of the State of South Carolina Government, 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 \$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 or [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 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 [Grantors] 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 Grantors 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 264.151(k) and Section 4 of this Agreement.

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

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

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

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

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

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

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

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

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such

securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

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

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

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

Section 12. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment; the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the 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 Grantors 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 reasonable 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 South Carolina.

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 264.151(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]

264.151 Appendix N (2)

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT
(12/93; 5/96; 8/00)

Certification of 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]

264.152 - .154 [Removed 6/03]

Subpart I - Use and Management of Containers

264.170 Applicability

The regulations in this subpart apply to owners and operators of all hazardous waste facilities that store containers of hazardous waste, except as 264.1 provides otherwise.

[Comment: Under 261.7 and 261.33(c), if a hazardous waste is emptied from a container the residue remaining in the container is not considered a hazardous waste if the container is empty as defined in 261.7. In that event, management of the container is exempt from the requirements of this subpart.] (12/92)

264.171 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 this part. (12/92)

264.172 Compatibility of waste with containers

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.

264.173 Management of containers (5/93)

- (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) Each container containing hazardous waste shall be permanently and legibly marked with the following or equivalent statement: "Hazardous Waste - federal law prohibits improper disposal." (6/97)
- (d) Each container shall be appropriately labeled with EPA hazardous waste number.

[Comment: Reuse of containers in transportation is governed by U.S. Department of Transportation regulations including those set forth in 49 CFR 173.28.] (12/92)

264.174 Inspections

At least weekly, the owner or operator must inspect areas where containers are stored, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.

[Comment: See 264.15(c) and 264.171 for remedial action required if deterioration or leaks are detected.] (12/92)

264.175 Containment

- (a) Container storage areas must have a containment system that is designed and operated in accordance with paragraph (b) of this section, except as otherwise provided by paragraph (c) of this section.
- (b) A containment system must be designed and operated as follows: (11/90)