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# FINAL REGULATIONS

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For information concerning Final Regulations, see Information Page.

## Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates new text. Language which has been stricken indicates text to be deleted. [Bracketed language] indicates a change from the proposed text of the regulation.

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## VIRGINIA WASTE MANAGEMENT BOARD

Title of Regulation: **9 VAC 20-70. Financial Assurance Regulations for Solid Waste Disposal, Transfer and Treatment Facilities (amending 9 VAC 20-70-10, 9 VAC 20-70-50 through 9 VAC 20-70-75, 9 VAC 20-70-81, 9 VAC 20-70-90, 9VAC 20-70-111, 9VAC 20-70-112, 9VAC 20-70-113, 9VAC 20-70-150 through 9VAC 20-70-230, [9 VAC 20-70-250,] and 9VAC 20-70-260; adding 9VAC 20-70-290; repealing 9VAC 20-70-41, 9VAC 20-70-240, 9VAC 20-70-280, and Appendices I through VI).**

Statutory Authority: §§ 10.1-1402 and 10.1-1410 of the Code of Virginia.

Effective Date: November 21, 2001.

### Summary:

*The amendments require submission of documentation that enables the department to verify that mechanisms are funded to the required amounts, incorporate statutory changes that have been enacted since the regulations were last amended, and maintain consistency with federal regulations. Facilities that have statistically exceeded groundwater protection standards will be required to provide an additional \$1 million of financial assurance using any one of the available financial mechanisms. Clarification is being provided as to when facilities will be required to provide the additional financial assurance and when a facility's obligation to provide the additional financial assurance ends. Also, the local government financial test is being modified so that those using a financial test that assures between 20% and 43% of their total annual revenue for environmental liabilities now will have the option of obtaining a letter of credit in addition to the options of establishing a restricted sinking fund or escrow account.*

Agency Contact: Copies of the regulation may be obtained from Melissa Porterfield, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4238.

### CHAPTER 70.

#### FINANCIAL ASSURANCE REGULATIONS FOR SOLID WASTE [ DISPOSAL, TRANSFER AND TREATMENT ] FACILITIES.

### 9 VAC 20-70-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings, unless the ~~content~~ context clearly indicates otherwise:

*"Abandoned facility"* means any inactive solid waste management facility that has not met closure and post-closure care requirements.

*"Active life"* means the period of operation beginning with the initial receipt of solid waste and ending at the completion of closure activities required by 9 VAC 20-80-10 et seq. Active life does not include the post-closure care monitoring period.

*"Anniversary date"* means the date of issuance of a financial mechanism.

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

*"Authority"* means an authority created under the provisions of the Virginia Water and Waste Authorities Act, Chapter 51 (§ 15.2-5100 et seq.) of Title 15.2 of the Code of Virginia, or, if any such authority shall be abolished, the board, body, or commission succeeding to the principal functions thereof or to whom the powers given by the Virginia Water and Waste Authorities Act to such authority shall be given by law.

*"Board"* means the Virginia Waste Management Board.

*"Cash plus marketable securities"* means all the cash plus marketable securities held on the last day of a fiscal year, excluding cash and marketable securities designed to satisfy past obligations such as pensions.

*"Closed facility"* means a solid waste management facility that has been properly secured in accordance with the ~~facility closure plan~~ requirements of 9 VAC 20-80-10 et seq., 9 VAC 20-101-10 et seq., 9VAC 20-120-10 et seq., or 9VAC 20-170-10 et seq. A closed facility may be undergoing post-closure care.

*"Closure"* means the act of securing a solid waste management facility pursuant to the requirements of this chapter and any other applicable solid waste management standards.

*"Commercial transporter"* means any person who transports for the purpose of commercial carriage of solid wastes or regulated medical wastes as cargo.

*"Corrective action"* means all actions necessary to mitigate the public health or environmental threat from a release to the environment of solid waste or constituents of solid waste from an operating, abandoned, or closed solid waste management facility and to restore the environmental conditions as required.

*"Current annual inflation factor"* means the annual 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.

*"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 normal operating cycle of the business.

"*Current closure cost estimate*" means the most recent of the estimates prepared in accordance with the requirements of 9 VAC 20-70-111.

"*Current dollars*" means the figure represented by the total of the cost estimate multiplied by the current annual inflation factor.

[ "*Current year expenses for closure*" means expenditures documented by the facility during the previous fiscal year for construction-related activities associated with closing the facility. Expenses for closure must be detailed and identified in an approved closure plan. ]

"*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 post-closure cost estimate*" means the most recent of the estimates prepared in accordance with the requirements of 9 VAC 20-70-112.

"*Debt service*" means the amount of principal and interest due on a loan in a given time period, typically the current year.

"*Deficit*" means total annual revenues less total annual expenditures.

"*Department*" means the Virginia Department of Environmental Quality.

"*Director*" means the Director of the Department of Environmental Quality.

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

"*Facility*" means any [ *solid* ] waste management facility unless the context clearly indicates otherwise. [ *The term "facility" includes transfer stations.* ]

"*Federal agency*" means any department, agency, or other instrumentality of the federal government, any independent agency, or establishment of the federal government including any government corporation and the Government Printing Office.

[ "~~*Garbage and refuse collection and disposal system*~~" means a system, plant or facility designed to collect, manage, dispose of, or recover and use energy from solid waste and the land, structures, vehicles and equipment for use in connection therewith. ]

"*Governmental unit*" means any department, institution or commission of the Commonwealth and any public corporate instrumentality thereof, and any district, and shall include local governments.

"*Groundwater*" means any water, except capillary moisture or unsaturated zone moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir or other body of surface water within the boundaries of this Commonwealth, whatever may be the subsurface

geologic structure in which such water stands, flows, percolates or otherwise occurs.

"*Hazardous waste*" means a "*hazardous waste*" as defined by the Virginia Hazardous Waste Management Regulations ( [ ~~9 VAC 20-60-10~~ 9 VAC 20-60-12 ] et seq.).

"*Landfill*" means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill. ~~See as defined by the Solid Waste Management Regulations (9 VAC 20-80-10 et seq.) for further detail.~~

"*Leachate*" means a liquid that has passed through or emerged from solid waste and that contains soluble, suspended, or miscible materials from such waste. Leachate and any material with which it is mixed is solid waste; except that leachate that is pumped from a collection tank for transportation for disposal in an off-site facility is regulated as septage, and leachate discharged into a wastewater collection system is regulated as industrial wastewater.

"*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.

"*Local government*" means a county, city or town or any authority, commission, or district created by one or more counties, cities or towns.

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

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

"*Operator*" means the person responsible for the overall operation and site management of a solid waste management facility.

"*Owner*" means, a person who owns a solid waste management facility or part of a solid waste management facility. For the purposes of this chapter, all individuals, [ ~~incorporated companies, copartnerships~~ corporations, companies, partnerships ], societies or associations, and any federal agency or governmental unit of the Commonwealth having any title or interest in any ~~garbage and refuse collection and disposal system, solid waste management facility~~ or the services or facilities to be rendered thereby shall be considered an owner.

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

"*Permit*" means the written permission of the director to own, operate, modify, or construct a solid waste management facility.

"*Person*" means an individual, a corporation, a partnership, an association, a governmental body, a municipal corporation or any other legal entity.

"*Post-closure care*" means the requirements placed upon an owner or operator of a solid waste disposal facility after

closure to ensure environmental and public health *and* safety are *protected* for a specified number of years after closure.

*"Receiving facility"* means a facility, vessel or operation that receives solid wastes or regulated medical wastes transported, loaded or unloaded upon the navigable waters of the Commonwealth, to the extent allowable under state law, by a commercial transporter. A receiving facility is considered as a solid waste management facility. A facility that receives solid waste from a ship, barge or other vessel and is regulated under § 10.1-1454.1 of the Code of Virginia shall be considered a transfer facility for purposes of this chapter.

*"Regulated medical waste"* means solid waste so defined to be regulated medical waste in Part III of by the Regulated Medical Waste Management Regulations (9 VAC 20-120-10 et seq.) as promulgated by the Virginia Waste Management Board.

*"Sanitary landfill"* means an engineered land burial facility for the disposal of solid waste which is so located, designed, constructed and operated to contain and isolate the solid waste so that it does not pose a substantial present or potential hazard to human health or the environment.

[ ~~"Secure access control" means the use of fences with locking gates, entry control, operational inspection of incoming solid waste and positive limitations on unauthorized disposal. Natural barriers which prevent unauthorized access may be considered as a replacement for fence sections. ]~~

~~"Shadow bond rating" means bond rating as determined by Moody's or Standard and Poor's after analysis of the debt capacity of a local government with no outstanding general obligation bonds.~~

*"Signature"* means the name of a person written with his own hand.

*"Site"* means all land and structures, other appurtenances, and improvements thereon used for treating, storing, and disposing of solid waste. This term includes adjacent land *within the property boundary* used for utility systems such as repair, storage, shipping or processing areas, or other areas incident to the management of solid waste.

*"Solid waste"* means any of those materials defined as "solid waste" in the Virginia Waste Management Act and the Virginia Solid Waste Management Regulations (9 VAC 20-80-10 et seq.).

*"Solid waste disposal facility"* means a solid waste management facility at which solid waste will remain after closure.

*"Solid waste management facility (SWMF)"* means a site used for planned treating, storing, ~~transferring~~, or disposing of solid waste. A facility may consist of several treatment, storage, or disposal units.

*"Storage"* means the holding of waste, at the end of which the waste is treated, disposed, or stored elsewhere.

*"Substantial business relationship"* means the extent of a business relationship necessary under applicable Virginia law to make a guarantee contract incident to that relationship valid and enforceable. A "substantial business relationship"

shall arise from a pattern of recent and on-going 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 director.

*"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.

*"Total expenditures"* means all expenditures excluding capital outlays and debt repayment.

*"Total revenue"* means revenue from all taxes and fees but does not include the proceeds from borrowing or asset sales, excluding revenue from funds managed on behalf of a specific third party.

*"Transfer station"* means any solid waste storage or collection facility at which solid waste is transferred from collection vehicles to haulage vehicles for transportation to a central solid waste management facility for disposal, incineration or resource recovery.

*"Treatment"* means any method, technique, or process, including ~~but not limited to~~ incineration or neutralization, designed to change the physical, chemical, or biological character or composition of any waste to ~~render it more stable neutralize it or render it less hazardous or nonhazardous,~~ safer for transport, or more amenable to use, reuse, reclamation or recovery.

*"Unit"* means a discrete area of land used for the management of solid waste.

## **9 VAC 20-70-41. Analysis of this chapter. (Repealed.)**

~~A. Within three years after January 7, 1998, the department shall perform an analysis on this chapter and provide the board with a report on the results. The analysis shall include:~~

- ~~1. The purpose and need for the chapter;~~
- ~~2. Alternatives which would achieve the stated purpose of this chapter in a less burdensome and less intrusive manner;~~
- ~~3. An assessment of the effectiveness of this chapter;~~
- ~~4. The results of a review of current state and federal statutory and regulatory requirements, including identification and justification of requirements of this chapter which are more stringent than federal requirements; and~~
- ~~5. The results of a review as to whether this chapter is clearly written and easily understandable by affected entities.~~

~~B. Upon review of the department's analysis, the board shall confirm the need to:~~

- ~~1. Continue this chapter without amendment;~~
- ~~2. Repeal this chapter; or~~
- ~~3. Amend this chapter.~~

~~C. If the board's decision is to repeal or amend this chapter, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.~~

**9 VAC 20-70-50. Applicability of chapter.**

A. This chapter applies to all persons who own, operate, or allow the following permitted or unpermitted [ ~~waste management~~ ] facilities to be operated on their property:

1. Solid waste treatment, *transfer* and disposal facilities regulated under the Virginia Solid Waste Management Regulations (9 VAC 20-80-10 et seq.);
2. Facilities regulated under *the* Vegetative Waste Management and Yard Waste Composting Regulations (9 VAC 20-101-10 et seq.); ~~or~~
3. Medical waste treatment, *transfer* or disposal facilities regulated under *the* Regulated Medical Waste Management Regulations (9 VAC 20-120-10 et seq.); *or*
4. *Receiving facilities as defined herein [ ~~or otherwise regulated under the Transportation of Solid and Medical Wastes on State Waters Regulations (9 VAC 20-170-10 et seq.)~~ ]*

B. Exemptions.

1. Owners or operators of facilities who are federal or state government entities whose debts and liabilities are the debts or liabilities of the United States or the Commonwealth, are exempt from this chapter;
2. Owners and operators of facilities conditionally exempt under 9 VAC 20-80-60 D of the Virginia Solid Waste Management Regulations are exempt from this chapter so long as they meet the conditions of the exemption;
3. Owners and operators of facilities that manage solely wastes excluded under 9 VAC 20-80-150 or conditionally exempt under 9 VAC 20-80-160 of the Virginia Solid Waste Management Regulations are exempt from this chapter;
4. Owners or operators of [ ~~regulated medical waste management~~ ] facilities exempt [ *under 9 VAC 20-120-120* ] or excluded under [ ~~Article 2, Part III, 9 VAC 20-120-130~~ ] of the Virginia Regulated Medical Waste Management Regulations (9 VAC 20-120-10 et seq.) are exempt from this chapter; ~~and~~
5. Owners and operators of yard waste composting facilities exempt under 9 VAC 20-101-60 and 9 VAC 20-101-70 of the Vegetative Waste Management and Yard Waste Composting Regulations are exempt from this chapter; and
6. Owners and operators of hazardous waste management units regulated under the Virginia Hazardous Waste Management Regulations ( [ ~~9 VAC 20-60-10~~ 9 VAC 20-60-12 ] et seq.) are exempt from this chapter as far as such units are concerned.

C. Owners and operators of facilities or units that treat or dispose of wastes which are exempted from the Virginia Hazardous Waste Management Regulations ([ ~~9 VAC~~

~~20-60-10~~ 9 VAC 20-60-12 ] et seq.) are subject to these regulations unless also exempted herein.

D. Facilities with separate ownership and operation. If separate, nonexempt persons own and operate a [ ~~waste management~~ ] facility subject to this chapter, the owner and operator shall be jointly and severally ~~responsible~~ *liable* for meeting the requirements of this chapter. If either the owner or operator is exempt, as provided in 9 VAC 20-70-50 B, then the other person shall be [ ~~responsible~~ *liable* ] for meeting the requirements of this chapter. If both the owner and the operator are exempt, as provided in 9 VAC 20-70-50 B, then the requirements of this chapter are not applicable to that [ ~~waste management~~ ] facility.

E. Exemptions for facilities owned and operated by local governments.

1. Closed facilities. Owners and operators of facilities who are local governmental entities or regional authorities that have completed [ ~~the~~ ] closure by October 9, 1994, are exempt from all the requirements of this chapter, provided they:

- a. Have (i) disposed of less than 100 tons per day of solid waste during a representative period prior to October 9, 1993; (ii) disposed of less than 100 tons per day of solid waste each month between October 9, 1993, and April 9, 1994; (iii) ceased to accept solid waste prior to April 9, 1994; and (iv) whose units are not on the National Priority List as found in Appendix B to 40 CFR Part 300; or
- b. Have (i) disposed of more than 100 tons per day of solid waste prior to October 9, 1993, and (ii) ceased to accept solid waste prior to that date.

2. All other facilities. Owners and operators of facilities who are local governmental entities or regional authorities that are not exempt under subdivision 1 of this subsection are subject to the requirements of this chapter ~~on January 7, 1998. The director may delay on a case-by-case basis the effective date for such entities until April 9, 1998, provided that the owner/operator demonstrates to the director's satisfaction that an earlier deadline does not provide sufficient time to comply with these requirements and that such a waiver will not adversely affect human health and the environment.~~

**9 VAC 20-70-60. Enforcement and appeal procedures; offenses and penalties.**

A. An enforcement action commences with a notice from the department or its representative that there is information indicating that a named party (i) is or may be in violation of a law or regulation; or (ii) is not or may not be in compliance with any existing requirement for obtaining or retaining a permit or other benefit or right. The commencement of an enforcement action is not a case decision. An enforcement action ends when a case decision becomes final, either administratively or on court review.

B. All administrative enforcement actions ~~and taken under this chapter are subject to the provisions of the Waste Management Act and § 10.1-1186 of the Code of Virginia. All~~ appeals taken from actions of the director relative to the provisions of § 10.1-1457 of the Virginia Waste Management

Act and this chapter shall be governed by the Administrative Process Act [ ~~Chapter 1.1:1~~ ] (§ ~~9-6.14:4 2.2-4000~~ ] et seq. [ ~~of Title 9~~ ] of the Code of Virginia [ ] ).

C. Orders. The ~~executive~~ director is authorized to issue orders to require any person to comply with this chapter as stated or to require such steps he deems necessary to bring about compliance. ~~Orders will be issued in written form through certified mail and will be issued in accord with provisions of the Virginia Administrative Process Act.~~

**9 VAC 20-70-70. Suspensions and revocations.**

The director may revoke, suspend, or amend any permit for cause as set in § 10.1-1409 of the Code of Virginia and as provided for in 9VAC 20-80-600 and 9VAC 20-80-620 of [ ~~the~~ ] Virginia Solid Waste Management Regulations, 9 VAC 20-120-790 and 9 VAC 20-120-810 of the Regulated Medical Waste [ ~~Management~~ ] Regulations, 9 VAC 20-101-200 of the Vegetative Waste Management and Yard Waste Composting Regulations, and [ ~~9 VAC 20-170-130 of the Transportation of Solid and Medical Wastes on State Waters Regulations any other applicable regulations~~ ]. Failure to provide or maintain adequate financial assurance in accordance with these regulations shall be a basis for revocation of such facility permit. Failure to provide or maintain adequate financial assurance in accordance with this chapter, taken with other relevant facts and circumstances, may be a basis for summary suspension of such facility permit pending a hearing to amend or revoke the permit, or to issue any other appropriate order.

**9 VAC 20-70-75. Forfeitures.**

Forfeiture of any financial obligation imposed pursuant to this chapter shall not relieve any [ ~~holder of a permit issued pursuant to the owner or operator of a solid waste management facility from any obligations to comply with~~ ] provisions of ~~Part VII~~ of the Solid Waste Management Regulations (9 VAC 20-80-10 et seq.) or ~~Parts IV and X~~ of the Regulated Medical Waste [ ~~Management~~ ] Regulations (9 VAC 20-120-10 et seq.), [ ~~the Transportation of Solid and Medical Wastes on State Waters Regulations (9 VAC 20-170-10 et seq.)~~ ], [ ~~the Vegetative Waste Management and Yard Waste Composting Regulations (9 VAC 20-101-10 et seq.)~~ ], [ ~~and any other applicable regulations~~ ] or any other legal obligations for the consequences of abandonment of any facility.

**9 VAC 20-70-81. General purpose and scope.**

A. In order to assure that the costs associated with protecting the public health and safety from the consequences of an abandonment or a failure to properly execute closure, post-closure care or corrective action at a [ ~~solid waste management~~ ] facility are to be recovered from the owner or operator, the owner or operator of such facility shall obtain one, or a combination of the financial responsibility mechanisms described in this part. Financial responsibility mechanisms shall be in ~~the~~ amount [ ~~calculated~~ ] as [ ~~is equal to~~ ] the cost estimate ~~approved by the department~~ using the procedures set forth in Article 3 (9 VAC 20-70-111 et seq.) of this part.

B. In the case of new facilities, the selected financial responsibility mechanism or mechanisms shall be filed with the Department of Environmental Quality as part of the permit application procedures and prior to the issuance of an operating permit.

C. In the case of existing facilities that become regulated as the result of a regulatory amendment, the selected financial responsibility mechanism shall be filed with the Department of Environmental Quality within ~~480~~ 120 days of the effective date of the amendment.

D. The director may reject the proposed evidence of financial responsibility if the mechanism or mechanisms submitted do not adequately assure that funds will be available for closure, post-closure care, or corrective action. The owner or operator shall be notified in writing within 45 [ ~~420~~ 60 ] days of receipt of ~~the~~ a complete financial assurance [ ~~mechanism submission~~ ] of the tentative decision to accept or reject the proposed evidence.

**9 VAC 20-70-90. Closure, post-closure care and corrective action requirements.**

A. The owner or operator shall close his facility in a manner that minimizes the need for further maintenance; and controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, the post-closure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the groundwater, surface water, or to the atmosphere. [ ~~The owner or operator shall close his facility in accordance with all applicable regulations.~~ ]

The closure standards applicable to the solid waste management facilities are described in ~~9 VAC 20-80-200 D~~ 9 VAC 20-80-210 B, 9 VAC 20-80-210 A 7 9 VAC 20-80-210 B 2, 9 VAC 20-80-250 E, 9 VAC 20-80-260 E, 9 VAC 20-80-270 E, 9 VAC 20-80-330 E, 9 VAC 20-80-340 E, ~~9 VAC 20-80-350~~ 9 VAC 20-80-360 E, 9 VAC 20-80-370 E, 9 VAC 20-80-380 B, and 9VAC 20-80-470 E of the Solid Waste Management Regulations. The closure requirements applicable to the regulated medical waste facilities are specified in 9 VAC 20-120-290 of the Regulated Medical Waste Management Regulations. The closure requirements for vegetative waste management and yard waste composting facilities are specified in 9 VAC 20-101-150 of the Vegetative Waste Management and Yard Waste Composting Regulations. [ ~~The closure requirements for receiving facilities are specified in 9 VAC 20-170-90 A of the Transportation of Solid and Medical Wastes on State Waters Regulations.~~ ]

B. Following closure of each solid waste disposal unit, the owner or operator shall conduct post-closure care in accordance with the requirements of 9VAC 20-80-250 F, 9 VAC 20-80-260 F, or 9 VAC 20-80-270 F of the Solid Waste Management Regulations, as applicable.

C. The owner or operator shall institute a corrective action program when required to do so by 9 VAC 20-80-190, 9 VAC 20-80-210 A 7 B 2, or 9 VAC 20-80-310 of the Solid Waste Management Regulations, as applicable.

D. During any [ ~~appeal~~ re-examination ] of a determination of the amount of financial assurance required, the owner or

operator of a landfill facility not closed in accordance with 9 VAC 20-80-10 et seq. shall demonstrate financial assurance by using one or more of the approved mechanisms listed in Article 4 (9 VAC 20-80-140 et seq.) of this part for the lesser of the following:

1. The amount requested by the director [ - ; or ]
2. The following default amounts:
  - a. \$200,000 per acre of fill for sanitary landfills [ - ; or ]
  - b. \$150,000 per acre of fill for construction demolition debris landfills and industrial landfills.

## 9 VAC 20-70-111. Cost estimate for facility closure.

A. The owner or operator shall ~~have submit to the department~~ a detailed written cost estimate, in current dollars, of the cost of closing the facility in accordance with the requirements of 9 VAC 20-70-90 A as part of any permit application, or at the request of the director. The owner or operator shall also submit to the department a revised cost estimate in current dollars when requesting a permit modification that changes the closure cost estimate. The closure cost estimate shall be approved by the director.

1. The estimate shall 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.
2. The closure cost estimate shall be based on the costs to the owner or operator of hiring a third party to close the facility. A third party may not be either a parent or a subsidiary of the owner or operator.
3. The closure cost estimate may not incorporate any salvage value that may be realized by the sale of wastes, facility structures or equipment, land or other facility assets at the time of partial or final closures.

B. During the active life of the facility, the owner or operator shall adjust the closure cost estimate *annually* for inflation within 60 days prior to the anniversary date of the establishment of the financial mechanisms used to comply with this ~~part~~ chapter. For owners and operators using the financial test or guarantee, the closure cost estimate shall be updated for inflation within 30 days after the close of the owner's or operator's fiscal year. The adjustment ~~may shall~~ 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 below. 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 latest 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 shall revise the closure cost estimate no later than 30 days after a revision has been made to the closure plan which increases the cost of closure. If the owner or operator has an approved closure plan, the closure cost estimate shall be revised no later than 30 days after the closure plan has been modified, if the change in the closure plan increases the cost of closure. The revised closure cost estimate shall *also* be adjusted for inflation as specified in subdivisions B 1 and B 2 of this section.

D. The owner or operator shall [ ~~keep at the facility maintain in the facility's operating record~~ ] the latest closure cost estimate prepared in accordance with subsections A through C of this section during the operating life of the facility.

E. The owner or operator of each [ *solid* ] waste management unit shall establish financial assurance [ ~~for the in~~ ] current [ *dollars for the* ] cost of closure of the unit in compliance with 9 VAC 20-70-140. The owner or operator shall provide continuous coverage for closure until released from financial assurance requirements by the director.

F. The owner or operator may ~~reduce~~ request a reduction in the closure cost estimate and the amount of financial assurance provided under subsection E of this section, if the cost estimate exceeds the maximum cost of closure at any time during the ~~remaining~~ active life of the unit. The owner or operator shall ~~notify the director that the justification for the reduction of the closure cost estimate and the amount of financial assurance has been placed in the operating record~~ submit a revised cost estimate with the justification for the reduction to the director when requesting a reduction in the amount of the closure cost estimate and the amount of financial assurance provided. The justification shall include an itemization of all closure costs. No reduction request shall be reviewed until a complete cost estimate acceptable to the department has been submitted. A request for a reduction in the closure cost estimate shall be reviewed in a timely manner.

## 9 VAC 20-70-112. Cost estimate for facility post-closure.

A. The owner or operator shall ~~have submit to the department~~ a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care for the solid waste disposal unit in compliance with the post-closure plan required by 9 VAC 20-70-90 B. The post-closure cost estimate used to demonstrate financial assurance shall account for the total costs of conducting post-closure care, including annual and periodic costs as described in the post-closure plan over the entire post-closure care period. The owner or operator shall ~~notify submit the estimate to the director that and place the estimate has been placed~~ in the operating record. *The post-closure cost estimate shall be approved by the director.*

1. The cost estimate for post-closure care shall be based on the ~~most expensive~~ total costs of post-closure care during the post-closure care period.
2. During the active life of the solid waste disposal unit and during the post-closure care period, the owner or operator shall ~~annually~~ adjust the post-closure cost estimate *annually* for inflation within 60 days prior to the anniversary

date of the establishment of the financial mechanism used to comply with this part. For owners or operators using the financial test or guarantee, the post-closure care cost estimate shall be updated for inflation within 30 days after the close of the owner's or operator's fiscal year. The adjustment process to be used is described in 9VAC 20-70-111 B.

3. The owner or operator shall increase the post-closure care cost estimate and the amount of financial assurance provided under subsection B of this section ~~if changes in no later than 30 days after a revision [ has been made ] to the post-closure plan [ has been approved by the director ] or where a change in the solid waste disposal unit conditions increase the maximum costs of post-closure care.~~

4. The owner or operator may ~~reduce request a reduction in the post-closure cost estimate and the amount of financial assurance provided under subsection B of this section if the cost estimate exceeds the maximum costs of post-closure care remaining over the post-closure care period. The owner or operator shall notify the director that the justification for the reduction of the post-closure cost estimate and the amount of financial assurance has been placed in the operating record submit a revised post closure cost estimate with the justification for the reduction to the director when requesting a reduction in the amount of the post-closure cost estimate and the amount of financial assurance provided. The justification shall include an itemization of all post-closure costs. No reduction request shall be reviewed until a complete cost estimate acceptable to the department has been submitted. A request for a reduction in the post-closure cost estimate shall be reviewed in a timely manner.~~

B. The owner or operator of each solid waste disposal unit shall establish, in a manner under 9 VAC 20-70-140, financial assurance [ in current dollars ] for the [ current ] costs of post-closure care as required under 9 VAC 20-70-90 B. The owner or operator shall provide continuous coverage for post-closure care until released from financial assurance requirements for post-closure care by the director.

C. The owner or operator shall [ ~~keep maintain in the facility's operating record~~ ] the latest post-closure cost estimate prepared in accordance with subsection B of this section during the ~~operating active~~ life of the facility and during the entire post-closure care period [ ~~at a place specified in the post-closure plan~~ ].

**9 VAC 20-70-113. Financial assurance for corrective action.**

A. [ ~~Upon statistically exceeding~~ Within 120 days of a facility's finding or the director's determining (whichever first occurs) that ] Groundwater Protection Standards established as required by 9VAC 20-80-250 D 6, or Appendix 5.6 D of 9 VAC 20-80-10 et seq. as applicable [ have been statistically exceeded ], an owner or operator of a landfill or other unit subject to groundwater monitoring shall [ ~~post \$1 million dollars provide additional~~ ] financial assurance [ ~~with in the amount of \$1 million to~~ ] the department using the mechanisms listed under Article 4 (9 VAC 20-70-140 et seq.)

of this part. [ The director shall release the owner or operator from this requirement after the director has determined:

1. The owner or operator is providing financial assurance for a corrective action program using one or more mechanisms listed under Article 4 (9 VAC 20-70-140 et seq.) of this part, as required under 9 VAC 20-70-90 C and subsections B and C of this section; or

2. The owner of operator has achieved compliance with Groundwater Protection Standards by demonstrating that concentrations of APPENDIX 5.1 constituents of 9 VAC 20-80-10 et seq. have not exceeded the Groundwater Protection Standards for a period of three consecutive years using the appropriate statistical procedures and performance standards. ]

A. B. An owner or operator of a solid waste management unit required to undertake a corrective action program under 9 VAC 20-70-90 C shall ~~have~~ [ prepare and ] submit to the director a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action. The corrective action cost estimate shall account for the total costs of corrective action activities as described in the corrective action plan for the entire corrective action period. The owner or operator shall notify the director that the estimate has been placed in the operating record unless corrective action is proceeding under Part IV of the Solid Waste Management Regulations (9 VAC 20-80-10 et seq.). In the latter case, the new corrective action cost estimate shall be submitted to the director within 30 days of its preparation. The corrective action cost estimate shall be approved by the director.

1. The owner or operator shall ~~annually~~ adjust the estimate annually for inflation ~~until the corrective action program is completed~~ within 60 days prior to the anniversary date of the establishment of the financial mechanism used to comply with this part ~~until the corrective action program is completed~~. For owners or operators using the financial test or guarantee, the corrective action cost estimate shall be updated for inflation within 30 days after the close of the owner's or operator's fiscal year. The adjustment process to be used is described in 9 VAC 20-70-111 B.

2. The owner or operator shall increase the corrective action cost estimate and the amount of financial assurance provided under subsection B of this section ~~if changes in no later than 30 days after revisions to the corrective action program or where a change in the solid waste management unit conditions increase the maximum costs of corrective action.~~

3. The owner or operator may ~~reduce request a reduction in the amount of the corrective action cost estimate and the amount of financial assurance provided under subsection B of this section if the cost estimate exceeds the maximum remaining costs of corrective action. The owner or operator shall notify the director that the justification for the reduction of the corrective action cost estimate and the amount of financial assurance has been placed in the operating record submit a revised cost estimate with the justification for the reduction to the director when requesting a reduction in the amount of the corrective action cost~~

estimate and the amount of financial assurance provided. The justification shall include an itemization of all corrective action costs. No reduction request shall be reviewed until a complete cost estimate acceptable to the department has been submitted. A request for a reduction in the corrective action cost estimate shall be reviewed in a timely manner.

B. C. The owner or operator of each solid waste management unit required to undertake a corrective action program under 9 VAC 20-70-90 C shall establish financial assurance ~~for~~ in the amount specified by the most ~~recent~~ recently approved [corrective action] program [ ~~plan~~ cost estimate for the selected remedy ] in accordance with 9 VAC 20-70-140. The owner or operator shall provide continuous coverage for corrective action until released from financial assurance requirements for corrective action by the director.

**9 VAC 20-70-150. Trust fund.**

A. [ ~~The An~~ ] owner or operator [ ~~of a solid waste management facility~~ ] may satisfy the requirements of this article by establishing a trust fund that conforms to the requirements of this section and by submitting an originally signed ~~duplicate~~ triplicate of the trust agreement to the director. [ ~~The owner or operator shall also place a copy of the trust agreement into the facility's operating record.~~ ] The trustee for the trust fund shall be a bank or financial institution that has the authority to act as a trustee and whose trust operations are regulated and examined by the Commonwealth of Virginia.

B. Payments into the trust fund shall be made annually by the owner or operator over the ~~useful~~ active or the remaining life of the solid waste management ~~facility~~ unit, whichever is shorter. In the case of a trust fund for closure or post-closure care, ~~or over this is known as the "pay-in period."~~ In the case of a trust fund for corrective action for known releases, the "corrective action pay-in period" is one-half of the estimated length of the corrective action program in the case of corrective action for known releases. This period is hereafter referred to as the "pay-in period."

C. If a trust fund is used to demonstrate financial assurance for closure and post-closure care:

1. For a new facility, the first payment shall be made at least 60 days before the initial receipt of waste for treatment or disposal. A receipt from the trustee for this payment shall be submitted by the owner or operator to the director before this initial receipt of waste. For an existing facility, permitted or unpermitted, the first payment is due on the effective date of the trust agreement.
2. The first payment shall be at least equal to the current closure cost and, if applicable, post-closure care estimate divided by the number of years in the pay-in period. The amount of the first payment shall be determined by the formula:

$$\text{First payment is the } \frac{\text{Cost Estimate}}{\text{Total Years}} \text{ or } \frac{\text{CE}}{\text{TY}}$$

where CE is the current closure and post-closure cost estimate and TY is the number of years in the pay-in period. Subsequent payments shall be made no later than

30 days after each anniversary date of the first payment. The amount of each subsequent payment shall be determined by this formula:

$$\text{Next payment} = \frac{\text{CE} - \text{CV}}{\text{Y}}$$

$$\text{Next Payment is the } \frac{\text{Cost Estimate} - \text{Current Value of the trust fund}}{\text{Remaining Years}} \text{ or } \frac{\text{CE} - \text{CV}}{\text{RY}}$$

where CE is the current closure and post-closure care cost estimate (updated for inflation), CV is the current value of the trust fund, and RY is the number of years remaining in the pay-in period.

D. For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund shall be at least equal to one-half of the current cost estimate for corrective action divided by the number of years in the corrective action pay-in period as defined in subsection B of this section. The amount of subsequent payments shall be determined by the following formula:

$$\text{Next payment} = \frac{\text{RB} - \text{CV}}{\text{Y}}$$

$$\text{Next payment is } \frac{\text{The most recent estimate of the trust fund balance} - \text{the Current Value of the trust fund}}{\text{Corrective Action Remaining Years}}$$

$$\text{Or } \frac{\text{RB} - \text{CV}}{\text{CARY}}$$

where RB is the most recent estimate of the required trust fund balance for corrective action (i.e., the total costs that will be incurred during the second half of the corrective action period), CV is the current value of the trust fund, and CARY is the number of years remaining on the pay-in period. The initial payment into the trust fund shall be made no later than 120 days after the corrective action remedy has been selected.

E. The owner or operator must submit to the director [ ~~no less than 15 days~~ ] prior to the anniversary date:

1. The calculation for determining the appropriate payment amount into the trust;
2. A statement from the trustee documenting the current fund value used to calculate the appropriate trust payment (this is the CV value); and
3. A statement from the trustee indicating the amount of the deposit into the trust fund.

E. F. If the owner or operator establishes a trust fund after having used one or more alternate mechanisms specified in this section, the initial payment into the trust fund shall be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of this section, as applicable.



~~F.~~ G. The owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the cost estimate at the time the fund is established. However, the value of the fund shall be maintained at no less than the value would have been if annual payments were made as specified in subsections B through ~~E~~ F of this section, as applicable. *Owners and operators of solid waste management units other than landfills shall deposit the full amount of the cost estimate at the time the fund is established.*

~~G.~~ H. Whenever the cost estimate changes after the pay-in period is completed, the owner or operator shall 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 cost estimate, the owner or operator shall, within 60 days of the change in the cost estimate, deposit a sufficient amount into the fund so that its value after payment at least equals the amount of the new estimate, or obtain other financial assurance as specified in this article to cover the difference. If the value of the trust fund is greater than the total amount of the cost estimate, the owner or operator may submit a written request to the director for release of the amount that is in excess of the cost estimate.

~~H.~~ I. If the owner or operator substitutes other financial assurance as specified in this article for all or part of the trust fund, he may submit a written request to the director for release of the amount in excess of the current cost estimate covered by the trust fund.

~~I.~~ J. Within 60 days after receiving a request from the owner or operator for release of funds specified in subsections ~~G~~ through H and I of this section, the director will instruct the trustee to release to the owner or operator such funds as the director deems appropriate, if any, in writing.

~~J.~~ K. After beginning closure or during the period of post-closure care [ or corrective action ], an owner or operator or any other person authorized to conduct closure [ or , ] post-closure care, [ or corrective action ] may request reimbursement for closure [ or , ] post-closure care [ , or corrective action ] expenditures by submitting itemized bills to the director. *Requests for reimbursement will be granted by the director only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure, post-closure care, or corrective action. [ Reimbursements will not be made from the trust fund until the pay-in period is complete. ]* Within 60 days after receiving bills for closure [ or , ] post-closure care [ , or corrective action ] activities, the director shall instruct the trustee to make reimbursements in those amounts as the director determines are in accordance with the closure or post-closure plan or are otherwise justified.

~~K.~~ L. The director shall agree to terminate the trust when:

1. The owner or operator substitutes alternate financial assurance as specified in this article; or
2. The director notifies the owner or operator that he is no longer required by this article to maintain financial assurance for the closure, post-closure care or corrective action.

~~L.~~ M. The wording of the trust agreement shall be identical to the wording specified in ~~Appendix 1~~ 9 VAC 20-70-290 A and

the trust agreement shall be accompanied by a formal certification of acknowledgment. Schedule A of the trust agreement, as described in ~~Appendix 1~~ 9 VAC 20-70-290 A, shall be updated within 60 days after a change in the amount of the current cost estimate covered by the agreement.

**9 VAC 20-70-160. Surety bond guaranteeing payment or performance.**

A. An owner or operator may demonstrate financial assurance for closure or post-closure care by obtaining a payment or performance surety bond that satisfies the requirements of this section. An owner or operator may demonstrate financial assurance for corrective action by obtaining a performance bond which conforms to the requirements of this section. [ *A copy of the bond shall be placed in the facility's operating record.* ]

1. An owner or operator of a new facility shall submit the *original* bond to the director at least 60 days before the date on which waste is first received for treatment or disposal. In case of existing facilities, the owner or operator who substitutes a surety bond for another financial assurance mechanism already in place shall submit the bond to the director at least 30 days before the expiration date of the previous mechanism.

2. The bond shall be effective before the initial receipt of waste; January 7, 1998; or the expiration date of the previous assurance mechanism, whichever is later, or no later than 120 days after the corrective action remedy has been selected.

3. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of Treasury and must be licensed pursuant to Chapter 10 (§ 38.2-1000 et seq.) of Title 38.2 of the Code of Virginia.

[ 4. *The owner or operator shall submit with the bond evidence that the power of attorney of the attorney-in-fact executing the bond is recorded pursuant to § 38.2-2416 of the Code of Virginia.* ]

B. The surety bond shall name the facility operator or owner as the principal and name the *Department of Environmental Quality*, Commonwealth of Virginia as the obligee.

C. The penal sum of the bond shall be in an amount at least equal to the current closure, post-closure care or corrective action cost estimate, whichever is applicable.

D. The term of the ~~a closure~~ bond shall be for the active life of the [ ~~waste management~~ ] facility for which a permit is applied by the owner or operator through the closure period. A bond used for post-closure care assurance shall extend through the post-closure period. A bond used for corrective action shall extend through the corrective action period.

E. The bond shall guarantee that the owner or operator will:

1. Perform final closure, post-closure care, or corrective action in accordance with the closure or post-closure plan and other requirements in any permit for the facility;

2. Perform final closure, post-closure care, or corrective action following an order to begin closure, post-closure, or

corrective action issued by the director or by a court, or following issuance of a notice of termination of the permit; or

3. Provide alternate financial assurance as specified in this article within 60 days after receipt by the director of a notice of cancellation of the bond from the surety.

F. The surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

G. *Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an owner or operator as debtor, the owner or operator shall notify the director by certified mail of such commencement.*

G. H. The owner or operator shall establish a standby trust fund. The standby trust fund shall meet the requirements of 9 VAC 20-70-150 except the requirements for initial payment and subsequent annual payments.

H. I. Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund. Payments from the trust fund shall be approved by the trustee.

I. J. If upon amendment of the permit, the cost estimate increases to an amount greater than the amount of the penal sum of the bond, the owner or operator shall, within 60 days after the increase, cause the penal sum of the bond to be increased to an amount at least equal to the new estimate or obtain other financial assurance, as specified in this article to cover the increase. Whenever the cost estimate decreases, the penal sum may be reduced to the amount of the cost estimate following written approval by the director. Notice of an increase or decrease in the penal sum shall be sent to the director by certified mail within 60 days after the change.

J. K. The bond shall remain in force for its term unless the surety sends written notice of cancellation by certified mail to the owner or operator and to the director. Cancellation cannot occur, however:

1. During the 120 days beginning on the date of receipt of the notice of cancellation by the director as shown on the signed return receipt; or

2. While an enforcement ~~procedure~~ *action* is pending.

K. L. ~~[ Following a determination that the owner or operator has failed to perform closure or post-closure in accordance with the approved plan and any other permit or order requirements when required to do so, the surety shall perform, or cause to have performed, closure, post-closure care or corrective action in accordance with the terms of the bond, approved plan and any other permit requirement or enforcement order. In the event of failure of the owner or operator to comply with the final closure, post-closure care or corrective action requirements, the director shall request the surety to perform or cause to have performed closure, post-closure, or corrective action. ]~~ As an alternative to performing final closure [ or, ] post-closure [ , or corrective action ], the surety may forfeit the full amount of the penal sum to the

*Department of Environmental Quality, Commonwealth of Virginia.*

L. M. The owner or operator may cancel the bond if the director has given prior written consent based on receipt of evidence of alternative financial assurance as specified in this article or if the owner or operator is no longer required to demonstrate financial responsibility.

M. N. The director will notify the surety if the owner or operator provides alternate financial assurance as specified in this article.

N. O. The surety will not be liable for deficiencies in the performance of closure by the owner or operator after the owner or operator has been notified by the director that the owner or operator is no longer required by this article to maintain financial assurance for closure or post-closure care of the facility.

O. P. In regard to closure or post-closure performed either by the owner or operator or by the surety, proper final closure of a *solid waste management facility* shall be deemed to have occurred when the director determines that final closure or post-closure has been completed. ~~[ Such final closure shall be deemed to have been completed when the provisions of the site's approved plan have been executed and the provisions of any other permit requirements or enforcement orders relative to closure or post-closure care have been complied with. ]~~

[ Q. *In regard to corrective action performed by either the owner or operator or by the surety, completion of a corrective action plan of a solid waste management facility shall be deemed to have occurred when the director determines that corrective action has been completed.*

Q. R. ] *The director [ shall call or may ] cash the surety bond if it is not replaced 30 days prior to expiration with alternate financial assurance acceptable to the director or if the owner or operator fails to fulfill the conditions of the bond.*

R. [ R. S. ] The wording of the surety bond shall be identical to the wording specified in ~~Appendix H~~ 9 VAC 20-70-290 B.

## **9 VAC 20-70-170. Letter of credit.**

A. An owner or operator ~~[ of a solid waste management facility ]~~ may satisfy the requirements of this article by obtaining an irrevocable standby letter of credit that satisfies the requirements of this section and by submitting the *original* letter of credit to the director. ~~[ A copy of the letter of credit shall be placed in the facility's operating record. ]~~ The letter of credit shall be effective before the initial receipt of waste or before January 7, 1998, whichever is later, in case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected. The issuing institution shall be a bank or other financial institution that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by the Commonwealth of Virginia, by a federal agency, or by an agency of another state.

B. The letter of credit shall be irrevocable and issued for a period of at least one year in an amount at least equal to the current cost estimate for closure, post-closure care, or

corrective action, whichever [ *is* ] applicable. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one year. If the issuing institution decides not to extend the letter of credit beyond the current expiration date it shall, at least 120 days before the date, notify both the owner or operator and the director by certified mail of that decision. The 120-day period will begin on the date of receipt by the director as shown on the signed return receipt. Expiration cannot occur, however, while an enforcement ~~procedure~~ *action* is pending. ~~If the letter of credit is canceled by~~ *Within 60 days of receipt of notice from the issuing institution that it does not intend to extend the letter of credit,* the owner or operator shall obtain alternate financial assurance *and submit it to the director.*

C. Whenever the cost estimate increases to an amount greater than the amount of credit, the owner or operator shall, within 60 days of the increase, cause the amount of credit to be increased to an amount at least equal to the new estimate or obtain other financial assurance as specified in this article to cover the increase. Whenever the cost estimate decreases, the letter of credit may be reduced to the amount of the new estimate following written approval by the director. The issuing institution shall send the notice of an increase or decrease in the amount of the credit to the director by certified mail within 60 days of the change.

D. ~~[ Following a determination that~~ *In the event of failure of* ] the owner or operator ~~[ has failed to perform~~ *to comply with the final* ] closure, post-closure ~~[ care ]~~ or corrective action ~~[ in accordance with the approved plan or other permit or order ]~~ requirements, the director ~~will draw on~~ *[ shall call or may ]* cash the letter of credit.

E. The owner or operator may cancel the letter of credit only if alternate financial assurance acceptable to the director is substituted as specified in this article or if the owner or operator is released by the director from the requirements of this chapter.

F. The director shall return the original letter of credit to the issuing institution for termination when:

1. The owner or operator substitutes acceptable alternate financial assurance for closure, post-closure care, or corrective action as specified in this article; or
2. The director notifies the owner or operator that he is no longer required by this article to maintain financial assurance for closure ~~[ of , ]~~ post-closure ~~[ , or corrective action ]~~ of the facility.

G. *The owner or operator shall establish a standby trust fund. The standby trust fund shall meet the requirements of 9 VAC 20-70-150 except the requirements for initial payment and subsequent annual payments.*

H. *Payments made under the terms of the letter of credit will be deposited by the [ surety issuing institution ] directly into the standby trust fund. Payments from the trust fund shall be approved by the [ trustee director ].*

I. *The director [ shall call or may ] cash the letter of credit if it is not replaced [ 30 days ] prior to [ 30 days of ] expiration with alternate financial assurance acceptable to the director.*

~~G. J.~~ The wording of the letter of credit shall be identical to the wording specified in ~~the Appendix III~~ *9 VAC 20-70-290 C.*

## **9 VAC 20-70-180. Certificate of deposit of ~~acceptable collateral.~~**

A. An owner or operator of a ~~[ solid waste management ]~~ facility (with the exception of sanitary landfills) may satisfy the requirements of this article, wholly or in part, by ~~filing with the director a collateral bond payable assigning all rights, title and interest of a certificate of deposit to the Department of Environmental Quality, Commonwealth of Virginia,~~ *conditioned so that the owner or operator shall comply with the closure, post-closure care or corrective action plan filed for the site. The amount of the bond certificate of deposit shall be at least equal to the estimated closure, post-closure care or corrective action cost for the site for which the permit application has been filed or any part thereof not covered by other financial responsibility mechanisms. [ Liability of such ] bond [ The owner or operator shall maintain the ] certificate of deposit [ shall be for the term of the permit or until proper final closure, post-closure care or corrective action is completed, whichever comes last. Such bond shall be executed by the owner or operator after depositing with the director acceptable collateral, the market value of which shall be at least equal to the total estimated closure, post-closure care, or corrective action cost or any part thereof not covered by other financial responsibility mechanisms. [ The original assignment and the certificate of deposit, if applicable, must be submitted to the department to prove that the certificate of deposit has been obtained and meets the requirements of this section. A copy of the certificate of deposit shall be maintained in the facility's operating record. ]*

~~B. Acceptable collateral may include certificates of deposit, negotiable bonds of the United States Government, the Commonwealth of Virginia or any of its agencies, any government authority within the Commonwealth of Virginia, or any county, municipality or other local bond issuing authority within the Commonwealth of Virginia approved as acceptable for financial responsibility purposes by the director.~~

~~C. The director shall, upon receipt of any such collateral, place the mechanisms with the state treasurer to be held in the name of the Commonwealth of Virginia, in trust, for the purposes for which such deposit is made.~~

~~D. B.~~ The owner or operator shall be entitled to demand, receive and recover the interest and income from ~~said mechanisms~~ *the certificate of deposit* as it becomes due and payable as long as the market value of the ~~mechanisms~~ *certificate of deposit* plus any other mechanisms used continue to at least equal the amount of the estimated *current* closure, post-closure care, or corrective action cost.

~~E. The owner or operator shall also be permitted to replace the collateral mechanisms with other like mechanisms of at least equal market value upon proper notification to the director and the state treasurer.~~

~~F. C.~~ In the event of failure of the owner or operator to comply with the final closure, post-closure care or corrective action requirements, the director shall ~~declare said collateral forfeited and shall request the state treasurer to convert said collateral into cash and transfer such funds to the director to~~

~~be used for closure, post-closure care or corrective action purposes. [ call or ] cash the certificate of deposit.~~

[ D. The owner or operator shall establish a standby trust fund. The standby trust fund shall meet the requirements of 9 VAC 20-70-150 except the requirements for initial payment and subsequent annual payments.

E. Payments made under the terms of the certificate of deposit will be deposited by the issuing institution directly into the standby trust fund. Payments from the trust fund shall be approved by the director.

~~D. F. ] The wording of the assignment shall be identical to the wording specified in 9 VAC 20-70-290 D.~~

## 9 VAC 20-70-190. Insurance.

A. An owner or operator may demonstrate financial assurance for closure, post-closure care or corrective action by obtaining insurance which conforms to the requirements of this section. The insurance shall be effective before the initial receipt of waste or before January 7, 1998, whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected. ~~At a minimum, the insurer shall 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. The insurer must be licensed pursuant to Chapter 10 (§ 38.2-1000 et seq.) of Title 38.2 of the Code of Virginia.~~ The owner or operator shall ~~notify~~ provide the director ~~that a with an original signed copy of the insurance policy has been placed and place a copy in the operating record. The department shall be listed as an additional insured on the policy, but the department will not be obligated for payment of the premium in any manner.~~

B. The insurance policy shall guarantee that funds will be available to close the solid waste management unit whenever final closure occurs, ~~[ or ]~~ to provide post-closure care for the solid waste disposal unit whenever the post-closure care period begins, ~~[ or to perform corrective action whenever the corrective action period begins, ]~~ whichever is applicable. The policy shall also guarantee that once closure ~~[ or, ]~~ post-closure care ~~[ , or corrective action ]~~ begins, the insurer will be responsible for ~~the~~ paying ~~out of~~ funds to the owner or operator or other person authorized to conduct closure ~~[ or, ]~~ post-closure care, ~~[ or corrective action ]~~ up to an amount equal to the face amount of the policy.

C. The insurance policy shall be issued *and maintained* for a face amount at least equal to the current cost estimate for closure ~~[ or, ]~~ post-closure care, ~~[ or corrective action, ]~~ whichever is applicable. 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.

~~D. [ An owner or operator, or any other person authorized to conduct closure or post-closure care, may receive reimbursements for closure or post-closure expenditures, whichever is applicable. Requests for reimbursement will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure or~~

~~post-closure care, and if justification and documentation of the cost ] is placed in the operating record [ has been submitted to and approved by the director. The owner or operator shall notify the director that ] the documentation of the justification for reimbursement has been placed in the operating record and that [ reimbursement has been received. The insurance policy shall provide that the insurer will pay closure, post-closure, or corrective action expenditures, whichever is applicable, on behalf of the owner or operator or any other person authorized to conduct closure, post-closure care, or corrective action. Justification and documentation of the expenditures must be submitted to and approved by the director. Requests for payment will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure, post-closure care, or corrective action, or if the director approves the payment. The insurer shall notify the director when a payment has been made. ]~~

E. Each policy shall 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 that such consent is not unreasonably refused.

F. The insurance policy shall 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 shall, 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 cancel the policy by sending notice of cancellation by certified mail to the owner and operator and to the director 120 days in advance of cancellation. ~~If the insurer cancels. Within 60 days of receipt of notice from the insurer that it does not intend to renew the policy, the owner or operator shall obtain alternate financial assurance as specified in this section and submit it to the director.~~

G. For insurance policies providing coverage for post-closure care, 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 shall be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85% of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week Treasury securities.

H. The owner or operator may cancel the insurance policy only if alternate financial assurance is substituted as specified in this article, or if the owner or operator, is no longer required to demonstrate financial responsibility.

~~[ I. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy) of the U.S. Code, naming an owner or operator as debtor, the owner or operator shall notify the director by certified mail of such commencement.~~

~~I. J. ] The wording of the insurance certificate shall be identical to the wording specified in Appendix IV 9 VAC 20-70-290 E.~~

**9 VAC 20-70-200. Corporate financial test.**

An owner or operator may satisfy the requirements for financial assurance by demonstrating that he passes a financial test as specified in this section. To pass this test the owner or operator shall meet the following criteria:

1. Financial component.

a. The owner or operator shall satisfy one of the following three conditions:

(1) *Supply documentation demonstrating that the owner or operator has a current rating for its ~~most recent bond issuance~~ senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's;*

(2) A ratio of less than 1.5 comparing total liabilities to net worth; or

(3) A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities.

b. The tangible net worth of the owner or operator shall be greater than the sum of the current closure, post-closure care, corrective action cost estimates and any other environmental obligations covered by a financial test plus \$10 million.

c. The owner or operator shall have assets located in the United States amounting to at least the sum of current closure, post-closure care, corrective action cost estimates and any other environmental obligations covered by a financial test as described in subdivision 3 of this section.

2. Reporting requirements.

a. To demonstrate that he meets the financial component, the owner or operator shall submit the following items to the director [ *and place copies of the items in the facility's operating record* ]:

(1) *A An original letter signed by the owner's or operator's chief financial officer and worded as specified in ~~Appendix V~~ 9 VAC 20-70-290 F.*

(2) A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year except as provided in subdivision 2 a (2) (a) of this section:

(a) To be eligible to use the financial test, the owner's or operator's financial statements referenced in subdivision 2 of this section shall receive an unqualified opinion from the independent certified public accountant. An adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance. The director may evaluate qualified opinions on a case by case basis and allow use of the financial test in cases where the director deems that the matters which form the basis for the qualification are insufficient to warrant disallowance of the test. If the director does not allow use of the

test, the owner or operator shall provide alternate financial assurance as specified in this article.

(b) (Reserved.)

(3) *A copy of the owner's or operator's audited financial statements for the latest completed fiscal year.*

~~(3)~~ (4) If the chief financial officer's letter providing evidence of financial assurance includes financial data that are different from data in the audited financial statements referred to in subdivision 2 a (2) of this section or any other audited financial statement or data filed with the Securities Exchange Commission (SEC), a special report from the owner's or operator's independent certified public accountant to the owner or operator is required stating that:

(a) He has compared the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(b) In connection with that examination, no matters came to his attention which caused him to believe that the data in the chief financial officer's letter should be adjusted.

(5) *A certification from the corporation's chief financial officer stating the method for funding closure and post-closure costs, and the amount currently designated for closure and post-closure costs in the corporation's [ ~~budget~~ financial statements ] worded as specified in 9 VAC 20-70-290 H.*

b. An owner or operator shall submit the items specified in subdivision 2 of this section before the initial receipt of waste or before January 7, 1998, whichever is later in the case of closure; post-closure care, or no later than 120 days after the corrective action remedy has been selected. If the owner or operator changes the financial assurance mechanism to corporate financial test from any other mechanism, the owner or operator shall submit the items specified in subdivision 2 of this section at least 60 days before the date that the former assurance expires.

c. After the initial submission of items specified in subdivision 2 of this section, the owner or operator shall update the information and submit updated information to the director within 90 days following the close of the owner or operator's fiscal year. This information must consist of all ~~three~~ five items specified in subdivision 2 of this section.

d. The owner or operator is no longer required to submit the items specified in subdivision 2 of this section when:

(1) He substitutes alternate financial assurance as specified in this article; or

(2) He is released from the requirements of this article by the director.

e. If the owner or operator no longer meets the requirements of subdivision 1 of this section, the owner or operator shall, within 120 days following the close of the owner or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this article, notify the director that the owner or operator no longer meets the criteria of the financial test and submit the alternate assurance documentation.

f. The director may, based on a reasonable belief that the owner or operator may no longer meet the requirement of this article, require reports of financial condition at any time from the owner or operator in addition to those specified in subdivision 2 of this section. If the director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subdivision 1 of this section, the owner or operator shall provide alternate financial assurance as specified in this article within 30 days after notification of such a finding.

g. The director 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 subdivision 2 a (2) of this section). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The director will evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in this article within 30 days after notification of the disallowance.

3. Calculation of costs to be assured. When calculating the current cost [  $\tau$  ] estimates for closure, post-closure care, corrective action, or the sum of the combination of such costs to be covered, and any other environmental obligations assured by a financial test referred to in subdivision 1 of this section, the owner or operator must include cost estimates required for municipal solid waste management facilities under this part, as well as cost estimates required for the following environmental obligations, if it assures them through a financial test obligations associated with underground injection control (UIC) facilities under 40 CFR 144.62, petroleum underground storage tank facilities under ~~40 CFR Part 280~~ 9 VAC 25-590-10 et seq., [ *above ground storage tank facilities under 9 VAC 25-640-10 et seq.*, ] polychlorinated biphenyls (PCB) storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265.

4. During the period of post-closure care, the director may approve a decrease in the current post-closure cost estimate for which this test demonstrates financial assurance if the owner or operator demonstrates to the director that the amount of the cost estimate exceeds the remaining cost of the post-closure care.

**9 VAC 20-70-210. Local government financial test.**

An owner or operator that satisfies the requirements of subdivisions 1 through 3 of this section may demonstrate financial assurance [ *using the local government financial*

*test*] up to the amount specified in subdivision 4 of this section.

1. Financial component.

a. The owner or operator shall satisfy the provisions of subdivision 1 a of this section, as applicable:

(1) If the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, he shall ~~have~~ supply the director with documentation demonstrating that the owner or operator has a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard and Poor's on all such general obligation bonds; or

~~(2) If the owner or operator has the legal authority to issue general obligation bonds but does not have any such bonds outstanding, he shall have a current general obligation shadow bond rating of Aaa, Aa, A, or Baa as issued by Moody's, or AAA, AA, A, or BBB as issued by Standard and Poor's; or~~

~~(3)~~ (2) If the owner or operator does not have outstanding, rated general obligation bonds, he shall satisfy each of the following financial ratios based on the owner's or operator's most recent audited annual financial statement:

(a) A ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; and

(b) A ratio of annual debt service to total expenditures less than or equal to 0.20.

b. The owner or operator shall prepare his financial statements in conformity with Generally Accepted Accounting Principles for governments and have its financial statements audited by an independent certified public accountant or by the Auditor of Public Accounts.

c. An owner or operator is not eligible to assure its obligations under this section if he:

(1) Is currently in default on any outstanding general obligation bonds;

(2) Has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's;

(3) Operated at a deficit equal to 5.0% or more of total annual revenue in each of the past two fiscal years; or

(4) Receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant or Auditor of Public Accounts auditing its financial statement as required under subdivision 1 b of this section. However, the director may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the director deems the qualification insufficient to warrant disallowance of the test.

2. Public notice component. The local government owner or operator shall place a reference to the closure,

post-closure care, or corrective action costs assured through the financial test into [ *the* ] next comprehensive annual financial report (CAFR) after January 7, 1998, or prior to the initial receipt of waste at the facility, whichever is later. Disclosure shall include the nature and source of closure and post-closure requirements, the reported liability at the balance sheet date, the estimated total closure and post-closure care cost remaining to be recognized, the percentage of landfill capacity used to date, and the estimated landfill life in years. A reference to corrective action cost shall be placed in CAFR no later than 120 days after the corrective action remedy has been selected in accordance with 9 VAC 20-80-310. For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the operating record until issuance of the next available CAFR if timing does not permit the reference to be incorporated into the most recently issued CAFR or budget. For closure and post-closure care costs, conformance with Government Accounting Standards Board Statement 18 assures compliance with this public notice component.

3. Recordkeeping and reporting requirements.

a. The local government owner or operator must ~~place~~ *submit to the department* the following items [ *and place copies of the items* in the facility's operating record ]:

(1) A ~~An original~~ letter signed by the local government's chief financial officer ~~that~~ *worded as specified in 9 VAC 20-70-290 G.*

~~(a) Lists all the current cost estimates covered by a financial test, as described in subdivision 4 of this section;~~

~~(b) Provides evidence and certifies that the local government meets the conditions of subdivisions 1 a, 1 b, and 1 c of this section; and~~

~~(c) Certifies that the local government meets the conditions of subdivisions 2 and 4 of this section.~~

(2) The local government's independently audited year-end financial statements for the latest fiscal year, including the unqualified opinion of the auditor who must be an independent, certified public accountant or an appropriate state agency that conducts equivalent comprehensive audits;

(3) A report to the local government from the local government's independent certified public accountant (CPA) or the Auditor of Public Accounts based on performing an agreed upon procedures engagement relative to the financial ratios required by subdivision 1 a (3) of this section, if applicable, and the requirements of subdivisions 1 b, 1 c (3) and 1 c (4) of this section. The CPA or state agency's report ~~should~~ *shall* state the procedures performed and the CPA or state agency's findings; and

(4) A copy of the comprehensive annual financial report (CAFR) used to comply with subdivision 2 of this section or certification that the requirements of General Accounting Standards Board Statement 18 have been met.

(5) A certification from the local government's chief executive officer stating in detail the method selected by the local government for funding closure and post-closure costs. If the method selected by the local government is a trust fund, escrow account or similar mechanism, there shall be included a certification from the local government's chief financial officer indicating the current reserve obligated to closure and post-closure care cost. If the method selected by local governments is the use of annual operating budget and Capital Investment Funds, there shall be a certification from the local government's chief financial officer so indicating. Nothing herein shall be construed to prohibit the local government from revising its plan for funding closure and post-closure care [ ~~cost~~ costs ] if such revision provides economic benefit to the local government and if such revision provides adequate means for funding closure and post-closure care cost. This certification shall be worded as specified in 9 VAC 20-70-290 H.

(6) If the local government is required under this section to fund a restricted sinking fund [ ~~or,~~ ] escrow account, [ *or to obtain an irrevocable letter of credit,* ] an original letter signed by the local government's chief financial officer and worded as specified in 9 VAC 20-70-290 I must be submitted.

b. The items required in subdivision 3 a of this section shall be [ *submitted to the department and* ] placed in the facility operating record as follows:

(1) In the case of closure and post-closure care, either before January 7, 1998, or prior to the initial receipt of waste at the facility, whichever is later; or

(2) In the case of corrective action, not later than 120 days after the corrective action remedy is selected in accordance with the requirements of 9 VAC 20-80-310.

c. After the initial [ ~~placement of the items in the facility's operating record~~ *submission of the items* ], the local government owner or operator must update the information [ *and,* ] place [ *a copy of* ] the updated information in the operating record [ *,* ] and submit the updated documentation described in subdivisions 3 a (1) through [ ~~(4)~~ (6) of this section ] to the department within 180 days following the close of the owner or operator's fiscal year.

d. The local government owner or operator is no longer required to meet the requirements of subdivision 3 of this section when:

(1) The owner or operator substitutes alternate financial assurance as specified in this section; or

(2) The owner or operator is released from the requirements of this section in accordance with 9 VAC 20-70-111 E, 9 VAC 20-70-112 B, or [ ~~9 VAC 20-70-113 B~~ 9 VAC 20-70-113 C ].

e. A local government shall satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test it

must, within 210 days following the close of the owner or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this section, place the required submissions for that assurance a copy of the financial assurance mechanism in the operating record, and ~~notify submit the original financial assurance mechanism to the state director that the owner or operator no longer meets the criteria of the financial test and that alternate assurance has been obtained.~~

f. The director, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of the local government financial test, the local government shall provide alternate financial assurance in accordance with this article.

4. Calculation of costs to be assured. The portion of the closure, post-closure, and corrective action costs for which an owner or operator can assure under subdivision 1 of this section is determined as follows:

a. If the local government owner or operator does not assure other environmental obligations through a financial test, it may assure closure, post-closure, and corrective action costs that equal up to [43% ~~20%~~] of the local government's total annual revenue or the sum of total revenues of constituent governments in the case of regional authorities. [ ~~If the local government assures closure, post-closure, and corrective action costs that exceed 20% (but do not exceed 43%) of the local government's total annual revenue or the sum of the revenue of constituent governments in the case of regional authorities, the locality must also establish one of the following:~~

- (1) A restricted sinking fund for the purpose of funding closure of the facility;
- (2) An escrow account managed by a third party escrow agent for the purpose of funding closure of the facility; or
- (3) A letter of credit for the purpose of funding closure of the facility.

The funding of the restricted sinking fund, escrow account, or letter of credit shall be determined by the following formula:

$((CE*CD)-E)$  where CE is the current closure cost estimate, CD is the percent of the landfill capacity used to date, and E is the current year expenses for closure.]

b. If the local government assures other environmental obligations through a financial test, including those associated with UIC facilities under 40 CFR 144.62, petroleum underground storage tank facilities under 40 CFR Part 280 9 VAC 25-590-10 et seq., PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under Part IX or X of the Virginia Hazardous Waste Management

Regulations [ ~~(9 VAC 20-60-10 et seq.)~~ (9 VAC 20-60-12 et seq.) ], it shall add those costs to the closure, post-closure, and corrective action costs it seeks to assure under subdivision 1 of this section. The total shall not exceed [43% ~~20%~~] of the local government's total annual revenue. [ ~~If the local government's total environmental liabilities assured through financial tests exceed 20% (but do not exceed 43%) of the local government's total annual revenue or the sum of the revenue of constituent governments in the case of regional authorities, the locality must also establish one of the following:~~

- (1) A restricted sinking fund for the purpose of funding closure of the facility;
- (2) An escrow account managed by a third party escrow agent for the purpose of funding closure of the facility; or
- (3) A letter of credit for the purpose of funding closure of the facility.

The funding of the restricted sinking fund, escrow account, or letter of credit shall be determined by the following formula:

$((CE*CD)-E)$  where CE is the current closure cost estimate, CD is the percent of the landfill capacity used to date, and E is the current year expenses for closure.]

[ ~~c. If the local government owner or operator does not assure other environmental obligations through a financial test, it may assure closure, post-closure, and corrective action costs that exceed 20% of the local government's total annual revenue or the sum of the revenue of constituent governments in the case of regional authorities but must not exceed 43% of the local government's total annual revenue or the sum of total revenues of constituent governments in the case of regional authorities. The locality must establish one of the following:~~

- (1) A restricted sinking fund for the purposes of funding closure of the facility; or
- (2) An escrow account managed by a third party escrow agent for the purpose of funding closure of the facility.

d. ~~If the local government assures other environmental obligations through a financial test, including those associated with UIC facilities under 40 CFR 144.62, petroleum underground storage tank facilities under 9 VAC 25-590-10 et seq., PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under Part IX or X of the Virginia Hazardous Waste Management Regulations (9 VAC 20-60-12 et seq.), it shall add those costs to the closure, post-closure, and corrective action costs it seeks to assure under subdivision 1 of this section. The total environmental obligations assured through the financial test may exceed 20% of the local government's total annual revenue or the sum of the revenue of constituent governments in the case of regional authorities but do not~~



~~exceed 43% of the local government's total annual revenue or the sum of total revenues of constituent governments in the case of regional authorities. The locality must establish one of the following:~~

~~(1) A restricted sinking fund for the purposes of funding closure of the facility; or~~

~~(2) An escrow account managed by a third party escrow agent for the purpose of funding closure of the facility. ]~~

~~€. [ € c. ]~~ The owner or operator shall obtain an alternate financial assurance mechanism for those costs that exceed the limits set in subdivisions 4 a and 4 b of this section.

**9 VAC 20-70-220. Corporate guarantee.**

A. An owner or operator may meet the requirements of this article by obtaining a written guarantee, hereafter referred to as "corporate guarantee." The guarantor shall 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.

B. Financial component. The guarantor shall meet the requirements for owners or operators in 9 VAC 20-70-200 and shall comply with the terms of the corporate guarantee.

C. Reporting requirements.

1. The wording of the corporate guarantee shall be identical to the wording specified in ~~Appendix VI~~ 9 VAC 20-70-290 J. The corporate guarantee shall accompany the items sent to the director as specified in subdivision 2 of 9 VAC 20-70-200. [ A copy of the guarantee and other items listed in subdivision 2 of 9 VAC 20-70-200 shall be placed in the facility's operating record. ]

2. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter shall 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 shall describe this "substantial business relationship" and the value received in consideration of the guarantee.

3. The guarantee shall be effective and the guarantor shall submit the items specified in subdivision 2 of 9 VAC 20-70-200 before the initial receipt of the waste or before the effective date of this amendment, whichever is later in the case of closure or post-closure care, or no later than 120 days after the corrective action remedy has been selected. If the owner or operator changes the financial assurance mechanism to corporate guarantee from any other mechanism, the guarantor shall submit the required items 60 days before the former mechanism expires.

~~[ 4. A certification from the corporation's chief financial officer stating the method for funding closure and post-closure costs, and the amount currently designated for closure and post-closure costs in the corporation's budget worded as specified in 9 VAC 20-70-290 H. ]~~

D. The terms of the corporate guarantee shall provide that:

1. If the owner or operator fails to perform final closure or post-closure care, or corrective action of a facility covered by the corporate guarantee in accordance with the closure, post-closure care or corrective action plan and other permit or order requirements whenever required to do so, the guarantor will shall:

a. Perform, or pay a third party to perform, closure, post-closure care, and/or corrective action as required (performance guarantee); or

b. Establish a fully funded trust fund as specified in 9 VAC 20-70-150 in the name of the owner or operator (payment guarantee).

2. The corporate guarantee will remain in force unless the guarantor sends a prior notice of cancellation by certified mail to the owner or operator and to the director. 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 director, as evidenced by the return receipts.

3. If a guarantee is canceled, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator, obtain alternate financial assurance, and submit the required documentation to the director.

4. If the owner or operator fails to provide alternate financial assurance as specified in this article and to obtain the written approval of such alternate assurance from the director within 90 days after the receipt by both the owner or operator and the director 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.

E. If a corporate guarantor no longer meets the requirements of subdivision 1 of 9 VAC 20-70-200, the owner or operator must, within 90 days following the close of the guarantor's fiscal year, obtain alternative assurance and submit the required documentation to the director. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within 120 days following the close of the guarantor's fiscal year, obtain alternative assurance, and submit the necessary documentation to the director.

F. The owner or operator is no longer required to submit the items specified in this section when:

1. The owner or operator substitutes alternate financial assurance; or

2. The owner or operator is released from the requirements by the director.

**9 VAC 20-70-230. Local government guarantee.**

A. An owner or operator may demonstrate financial assurance for closure, post-closure, and corrective action, as required by this article, by obtaining a written guarantee provided by a local government. The guarantor shall meet the requirements of the local government financial test in 9 VAC 20-70-210 and shall comply with the terms of a written guarantee.

B. Terms of the written guarantee. The guarantee shall be effective before the initial receipt of waste or before January 7, 1998, whichever is later, in the case of closure, post-closure care, or no later than 120 days after the corrective action remedy has been selected. The guarantee shall provide that:

1. If the owner or operator fails to perform closure, post-closure care, and/or corrective action of a facility covered by the guarantee, the guarantor will:

- a. Perform, or pay a third party to perform, closure, post-closure care, and/or corrective action as required; or
- b. Establish a fully funded trust fund as specified in 9 VAC 20-70-150 in the name of the owner or operator.

2. The guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the director. 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 director, as evidenced by the return receipts.

3. If a guarantee is canceled, the owner or operator shall, within 90 days following receipt of the cancellation notice by the owner or operator and the director, obtain alternate financial assurance, place evidence of that alternate financial assurance in the facility operating record, and notify the director. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor shall provide that alternate assurance within 120 days following the close of the guarantor's fiscal year, obtain alternative assurance *acceptable to the director*, place evidence of the alternate assurance in the facility operating record, and ~~notify~~ submit the alternate assurance to the director.

C. Recordkeeping and reporting.

1. The owner or operator shall ~~place a certified copy of the guarantee~~ submit a signed original guarantee on the form in 9 VAC 20-70-290 K to the [ ~~director~~ department ] along with items required under subdivision 3 of 9 VAC 20-70-210 and place a copy of the document into the facility's operating record before the initial receipt of waste or before January 7, 1998, whichever is later in the case of closure, post-closure care, or no later than 120 days after the corrective action remedy has been selected.

2. The owner or operator is no longer required to maintain the items specified in 9 VAC 20-170-190 when:

- a. The owner or operator substitutes alternate financial assurance as specified in this section; or
- b. The owner or operator is released from the requirements of this chapter.

3. If a local government guarantor no longer meets the requirements of 9VAC 20-70-210, the owner or operator shall, within 90 days following the close of the guarantor's fiscal year, obtain alternative assurance *acceptable to the director*, place evidence of the alternate assurance in the facility operating record, and ~~notify~~ submit alternate

assurance to the director. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor shall provide that alternate assurance within 120 days.

~~[ 4. A certification from the local government's chief executive officer stating in detail the method selected by the local government for funding closure and post-closure costs. If the method selected by the local government is a trust fund, escrow account or similar mechanism, there shall be included a certification from the local government's chief financial officer indicating the current reserve obligated to closure and post-closure care cost. If the method selected by local governments is the use of annual operating budget and Capital Investment Funds, there shall be a certification from the local government's chief financial officer so indicating. Nothing herein shall be construed to prohibit the local government from revising its plan for funding closure and post-closure care cost if such revision provides economic benefit to the local government and if such revision provides adequate means for funding closure and post-closure care cost. This certification shall be worded as specified in 9 VAC 20-70-290 H. ]~~

**9 VAC 20-70-240. Other mechanisms. (Repealed.)**

~~A. An owner or operator may satisfy the requirements of this article by obtaining any other mechanism that is approved by the director. In order to receive such approval, the owner or operator shall submit documentation that:~~

~~1. The financial assurance mechanisms shall ensure that the amount of funds assured is sufficient to cover the costs of closure, post-closure care, and corrective action for known releases when needed;~~

~~2. The financial assurance mechanisms shall ensure that funds will be available in a timely fashion when needed; and~~

~~3. The financial assurance mechanisms shall be obtained by the owner or operator by January 7, 1998, or prior to the initial receipt of solid waste, whichever is later, in the case of closure and post-closure care, and no later than 120 days after the corrective action remedy has been selected, until the owner or operator is released from the financial assurance requirements.~~

~~B. The financial assurance mechanisms shall be legally valid, binding, and enforceable under the federal and Virginia laws.~~

**[ 9 VAC 20-70-250. Multiple financial mechanisms.**

An owner or operator may satisfy the requirements of this article by establishing more than one financial mechanism per facility, except that mechanisms guaranteeing performance, rather than payment, may not be combined with other mechanisms. The mechanisms shall be specified in 9VAC 20-70-150 through ~~9 VAC 20-70-240~~ 9 VAC 20-70-230, except that financial assurance for the amount at least equal to the current cost estimate for closure, post-closure care, or corrective action may be provided by a combination of mechanisms, rather than a single mechanism. ]

**9 VAC 20-70-260. Release of the owner or operator from the financial assurance requirements.**

Within 60 days after receiving certification from the owner or operator that closure, post-closure care or corrective action has been accomplished in accordance with the requirements of the permit or the order, the director shall verify whether proper closure, post-closure care, or corrective action has occurred. Unless the director has reason to believe that closure, post-closure care or corrective action has not been in accordance with the appropriate plan or other requirements, he shall notify the owner or operator in writing that he is no longer required to maintain financial assurance for the particular unit or facility. Such notice shall release the owner or operator only from the requirements for financial assurance for the unit or facility; it does not release him from legal responsibility for meeting the closure, post-closure care or corrective action standards. If no written notice of termination of financial assurance requirements or failure to properly perform closure, post-closure care or corrective action is received by the owner or operator within 60 days after certifying proper closure, post-closure care or corrective action, the owner or operator may *submit a written request* to the director for an immediate decision in which case the director shall respond within 10 days after receipt of such request.

[ Article 7. ]

~~Discounting.~~ [ *Wording of Financial Mechanisms.* ]

**9 VAC 20-70-280. Discounting. (Repealed.)**

~~The director may allow discounting of closure cost estimates, post-closure care cost estimates, and/or corrective action costs up to the rate of return for essentially risk free investments, net of inflation, under the following conditions:~~

- ~~1. The director determines that cost estimates are complete and accurate and the owner or operator has submitted a statement from a registered professional engineer so stating;~~
- ~~2. The director finds the facility in compliance with applicable and appropriate permit conditions;~~
- ~~3. The director determines that the closure date is certain and the owner or operator certifies that there are no foreseeable factors that will change the estimate of site life; and~~
- ~~4. Discounted cost estimates must be adjusted annually to reflect inflation and years of remaining life.~~

**9 VAC 20-70-290. Wording of financial mechanisms.**

**APPENDIX I. A. Wording of trust agreements.**

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.)

**TRUST AGREEMENT**

Trust agreement, the "Agreement," entered into as of (date) by and between (name of the owner or operator), a (State) (corporation, partnership, association, proprietorship), the "Grantor," and (name of corporate trustee), a (State corporation) (national bank), the "Trustee."

Whereas, the Virginia Waste Management Board has established certain regulations applicable to the Grantor, requiring that the owner or operator of a (solid) (regulated medical) (yard) waste [ ~~(disposal)~~ ] (*transfer station*) (*receiving*) (management) facility must provide assurance that funds will be available when needed for (closure, post-closure care, or corrective action) of the facility,

Whereas, the Grantor has elected to establish a trust to provide (all or part of) such financial assurance for the facility 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 "fiduciary" means any person who exercises any power of control, management, or disposition or renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of this trust fund, or has any authority or responsibility to do so, or who has any authority or responsibility in the administration of this trust fund.

B. The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

C. The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

**Section 2. Identification of Facility and Cost Estimates. This Agreement pertains to facility(ies) and cost estimates identified on attached Schedule A.**

(NOTE: On Schedule A, for each facility list, as applicable, the permit number, name, address, and the current closure ~~and/or~~, post-closure, *corrective action* cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement.)

**Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Department of Environmental Quality, Commonwealth of Virginia. 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 property consisting of cash or securities, which are 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 will be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee undertakes no responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments to discharge any liabilities of the Grantor established by the Commonwealth of Virginia's Department of Environmental Quality.**

**Section 4. Payment for (Closure, Post-Closure Care, or Corrective Action). The Trustee will make such payments**

from the Fund as the Department of Environmental Quality, Commonwealth of Virginia will direct, in writing, to provide for the payment of the costs of (closure, post-closure care, corrective action) of the facility covered by this Agreement. The Trustee will reimburse the Grantor or other persons as specified by the Department of Environmental Quality, Commonwealth of Virginia, from the Fund for (closure, post-closure care, corrective action) expenditures in such amounts as the Department of Environmental Quality will direct, in writing. In addition, the Trustee will refund to the Grantor such amounts as the Department of Environmental Quality specifies in writing. Upon refund, such funds will no longer constitute part of the Fund as defined herein.

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

Section 6. Trustee Management. The Trustee will 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 investment guidelines and objectives communicated in writing to the Trustee from time to time by the Grantor, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee or any other fiduciary will 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 any enterprise of a like character and with like aims; except that:

A. Securities or other obligations of the Grantor, or any other owner or operator of the facility, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 USC § 80a-2(a), will not be acquired or held, unless they are securities or other obligations of the federal or a state government;

B. The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

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

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

A. To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate subject to all of the provisions thereof, to be commingled with the assets of other trusts participating herein. To the extent of the equitable share of the Fund in any such commingled trust, such commingled trust will be part of the Fund; and

B. To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 USC § 80a-1 et seq., of 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 Trustees 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 private contract or at public auction. No person dealing with the Trustee will 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 dispositions;

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 will 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 will 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 will be paid from the Fund.

Section 10. Annual Valuation. The Trustee will annually, at the end of the month coincident with or preceding the anniversary date of establishment of the Fund, furnish the Grantor and to the director of the Department of Environmental Quality, Commonwealth of Virginia, a statement confirming the value of the Trust. Any securities in the Fund will be valued at market value as of no more than 30 days prior to the date of the statement. 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 director of the Department of Environmental Quality, Commonwealth of Virginia will 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 will be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee will 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 acceptance of the appointment by the successor trustee, the Trustee will 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 and the date on which he assumes administration of the trust will be specified in writing and sent to the Grantor, the director of the Department of Environmental Quality, Commonwealth of Virginia, and the present trustees 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 will be paid as provided in Part IX.

Section 14. Instructions to the Trustee. All orders, requests and instructions by the Grantor to the Trustee will 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 will be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests, and instructions by the Director of the Department of Environmental Quality, Commonwealth of Virginia, to the Trustee will be in writing, signed by the Director and the Trustee will act and will be fully protected in acting in accordance with such orders, requests and instructions. The Trustee will 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 Commonwealth of Virginia's Department of Environmental Quality hereunder has occurred. The Trustee will have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or the Commonwealth of Virginia's Department of Environmental Quality, except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee will notify the Grantor and the Director of the Department of

Environmental Quality, Commonwealth of Virginia, 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 is not 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 Director of the Department of Environmental Quality, Commonwealth of Virginia, or by the Trustee and the Director of the Department of Environmental Quality, Commonwealth of Virginia, 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 will be irrevocable and will continue until terminated at the written agreement of the Grantor, the Trustee, and the Director of the Department of Environmental Quality, Commonwealth of Virginia, or by the Trustee and the Director if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, will be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee will 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 Director of the Department of Environmental Quality, Commonwealth of Virginia, issued in accordance with this Agreement. The Trustee will 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 will be administered, construed and enforced according to the laws of the Commonwealth of Virginia.

Section 20. Interpretation. As used in the 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 will 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 ~~the relevant regulations of the Department of Environmental Quality, Commonwealth of Virginia 9 VAC 20-70-290 A of the Financial Assurance [ R ] egulations for Solid Waste Management Facilities [ Regulations and Transfer Stations ], as such regulations were constituted on the date shown immediately below.~~

(Signature of Grantor)

By: (Title)

(Date)

Attest:

(Title) (Date)
(Seal)
(Signature of Trustee)
By

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 each 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.

Attest:
(Title) (Date)
(Seal)

Whereas, said Principal is required to have a permit from the Department of Environmental Quality, Commonwealth of Virginia, in order to own or operate the (solid, regulated medical, yard) waste management facility identified above, and

Certification of Acknowledgment:
COMMONWEALTH OF VIRGINIA
STATE OF
CITY/COUNTY OF

Whereas, said Principal is required to provide financial assurance for (closure, post-closure care, corrective action) of the facility as a condition of the permit [ or an order issued by the department],

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.

Now, therefore the conditions of this obligation are such that if the Principal shall faithfully perform (closure, post-closure care, corrective action), whenever required to do so, of the facility identified above in accordance with the [ order or the ] (closure, post-closure care, corrective action) plan submitted to receive said permit and other requirements of said permit as such plan and permit may be amended or renewed pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

(Signature of Notary Public)

Or, if the Principal shall faithfully perform (closure, post-closure care, corrective action) following an order to begin (closure, post-closure care, corrective action) issued by the Commonwealth of Virginia's Department of Environmental Quality or by a court, or following a notice of termination of the permit,

APPENDIX—II. B. Wording of surety bond guaranteeing performance [ or payment].

Or, if the Principal shall provide alternate financial assurance as specified in the Department's regulations and obtain the director's written approval of such assurance, within 90 days of the date notice of cancellation is received by the Director of the Department of Environmental Quality from the Surety, then this obligation will be null and void, otherwise it is to remain in full force and effect for the life of the management facility identified above.

(NOTE: instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.)

PERFORMANCE [ OR PAYMENT] BOND

Date bond executed:.....

Effective date:.....

Principal: (legal name and business address)

Type of organization: (insert "individual," "joint venture," "partnership," or "corporation")

State of incorporation:.....

Surety: (name and business address)

Name, address, permit number, if any, and (closure, post-closure care, or corrective action) cost estimate for the facility:.....

Penal sum of bond: \$.....

Surety's bond number:.....

Know all men by these present, That we, the Principal and Surety hereto are firmly bound to the Department of Environmental Quality, Commonwealth of Virginia, (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

The Surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the Director of the Department of Environmental Quality, Commonwealth of Virginia, that the Principal has been found in violation of the requirements of the Department's regulations, the Surety must either perform (closure, post-closure care, corrective action) in accordance with the approved plan and other permit requirements or forfeit the (closure, post-closure care, corrective action) amount guaranteed for the facility to the Commonwealth of Virginia.

Upon notification by the Director of the Department of Environmental Quality, Commonwealth of Virginia, that the Principal has been found in violation of an order to begin (closure, post-closure care, corrective action), the Surety must either perform (closure, post-closure care, corrective action) in accordance with the order or forfeit the amount of the (closure, post-closure care, corrective action) guaranteed for the facility to the Commonwealth of Virginia.

The Surety hereby waives notification of amendments to the (closure, post-closure care, corrective action) plans, orders, permit, applicable laws, statutes, rules, and regulations and agrees that such amendments shall in no way alleviate its obligation on this bond.

For purposes of this bond, (closure, post-closure care, corrective action) shall be deemed to have been completed when the Director of the Department of Environmental Quality, Commonwealth of Virginia, determines that the conditions of the approved plan have been met.

The liability of the Surety 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 hereunder ~~[shall not]~~ exceed the amount of said penal sum ~~[unless the Director of the Department of Environmental Quality, Commonwealth of Virginia, should prevail in an action to enforce the terms of this bond. In this event, the Surety shall pay, in addition to the penal sum due under the terms of the bond, all interest accrued from the date the Director of the Department of Environmental Quality, Commonwealth of Virginia, first ordered the Surety to perform. The accrued interest shall be calculated at the judgment rate of interest pursuant to § 6.1-330.54 of the Code of Virginia ]~~.

The Surety may cancel the bond by sending written notice of cancellation to the owner or operator and to the Director of the Department of Environmental Quality, Commonwealth of Virginia, provided, however, that cancellation cannot occur (1) during the 120 days beginning on the date of receipt of the notice of cancellation by the director as shown on the signed return receipt; or (2) while ~~a compliance procedure an enforcement action~~ is pending.

The Principal may terminate this bond by sending written notice to the Surety, provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond by the Director of the Department of Environmental Quality, Commonwealth of Virginia.

In witness whereof, the Principal and Surety 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 and *I hereby certify* that the wording of this surety bond is identical to the wording specified in ~~the relevant regulations of the Commonwealth of Virginia, Department of Environmental Quality 9 VAC 20-70-290 B of the Financial Assurance Regulations for Solid Waste [ Management Disposal, Transfer, and Treatment ] Facilities as such regulations were constituted on the date shown immediately below.~~

Principal

Signature(s):.....

Name(s) and Title(s) (typed).....

Corporate Surety

Name and Address:.....

State of Incorporation:.....

Liability Limit: \$.....

Signature(s):.....

Name(s) and Title(s) (typed).....

Corporate Seal:

~~APPENDIX III. C. Wording of irrevocable standby letter of credit.~~

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.)

IRREVOCABLE STANDBY LETTER OF CREDIT

Director  
Department of Environmental Quality  
P.O. Box 10009  
Richmond, Virginia 23240-0009

Dear (Sir or Madam):

We hereby establish our Irrevocable 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..... together with
2. Your signed statement declaring that the amount of the draft is payable pursuant to regulations issued under the authority of the Department of Environmental Quality, Commonwealth of Virginia.

The following amounts are included in the amount of this letter of credit: (Insert the facility permit number, if any, name and address, and the closure, post-closure care, corrective action cost estimate, or portions thereof, for which financial assurance is demonstrated by this letter of credit.)

This letter of credit is effective as of (date) and will expire on (date at least one year later), but such expiration date will be automatically extended for a period of (at least one year) on (date) and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you and (owner or operator's name) by certified mail that we decide not to extend the Letter of Credit beyond the current expiration date. In the event you are so notified, unused portion of the credit will be available upon presentation of your sight draft for 120 days after the date of receipt by you as shown on the signed return receipt or while a compliance procedure is pending, whichever is later.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we will duly honor such draft upon presentation to us, and we will pay to you the amount of the draft promptly and directly.

I hereby certify that I am authorized to execute this letter of credit on behalf of (issuing institution) and *I hereby certify* that the wording of this letter of credit is identical to the wording specified in ~~the relevant regulations of the Department of Environmental Quality, Commonwealth of Virginia 9 VAC 20-70-290 C of the Financial Assurance Regulations for Solid~~

Waste [ ~~Management~~ Disposal, Transfer, and Treatment ] Facilities as such regulations were constituted on the date shown immediately below.

Attest:

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

\_\_\_\_\_  
[ (Signature) (Date) ]

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

D. Assignment of certificate of deposit account.

City \_\_\_\_\_, 20\_\_

\_\_\_ FOR VALUE RECEIVED, the undersigned assigns all right, title and interest to the Virginia Department of Environmental Quality [ , Commonwealth of Virginia, ] and its successors and assigns the Virginia Department of Environmental Quality the principal amount of the instrument, including all monies deposited now or in the future to that instrument, indicated below:

( ) If checked here, this assignment includes all interest now and hereafter accrued.

Certificate of Deposit Account No. \_\_\_\_\_

This assignment is given as security to the Virginia Department of Environmental Quality in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

Continuing Assignment. This assignment shall continue to remain in effect for all subsequent terms of the automatically renewable certificate of deposit.

Assignment of Document. The undersigned also assigns any certificate or other document evidencing ownership to the Virginia Department of Environmental Quality.

[ ~~This contract is subject to the additional terms and provisions contained on the reverse side, which are made part of this contract.~~

Additional Security. This assignment shall secure the payment of any financial obligation of the (name of owner/operator) to the Virginia Department of Environmental Quality for ("closure" "post closure care" "corrective action") at the (facility name and permit number) located (physical address)

Application of Funds. The undersigned agrees that all or any part of the funds of the indicated account or instrument may be applied to the payment of any and all financial assurance obligations of (name of owner/operator) to the Virginia Department of Environmental Quality for ("closure" "post closure care" "corrective action") at the (facility name and address). The undersigned authorizes the Virginia Department of Environmental Quality to withdraw any principal amount on deposit in the indicated account or instrument including any interest, if indicated, and to apply it in the Virginia Department of Environmental Quality's

discretion to fund ("closure" "post closure care" "corrective action") at the (facility name) or in the event of (owner or operator's) failure to comply with the Virginia Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities, 9 VAC 20-70-10 et seq. The undersigned agrees that the Virginia Department of Environmental Quality may withdraw any principal and/or interest from the indicated account or instrument without demand or notice. (The undersigned) agrees to assume any and all loss of penalty due to federal regulations concerning the early withdrawal of funds. Any partial withdrawal of principal or interest shall not release this assignment. ]

The party or parties to this Assignment set their hand or seals, or if corporate, has caused this assignment to be signed in its corporate name by its duly authorized officers and its seal to be affixed by authority of its Board of Directors the day and year above written.

\_\_\_\_\_ SEAL

(Owner)

[ \_\_\_\_\_

(print owner's name) ]

\_\_\_\_\_ SEAL

(Owner)

[ \_\_\_\_\_

(print owner's name) ]

THE FOLLOWING SECTION IS TO BE COMPLETED BY THE BRANCH OR LENDING OFFICE:

The signature(s) as shown above compare correctly with the name(s) as shown on record as owner(s) of the Certificate of Deposit indicated above. The above assignment has been properly recorded by placing a hold in the amount of \$\_\_\_\_\_ for the benefit of the Department of Environmental Quality.

( ) If checked here, the accrued interest on the Certificate of Deposit indicated above has been maintained to capitalize versus being mailed by check or transferred to a deposit account.

\_\_\_\_\_ (Date)

[ \_\_\_\_\_

(print name) ]

\_\_\_\_\_ (Title)

[ ASSIGNMENT OF CERTIFICATE OF DEPOSIT ACCOUNT

~~Additional Security. This assignment shall secure the payment of any financial obligation of the [name of owner/operator] to the Virginia Department of Environmental Quality for ["closure" "post closure care" "corrective action"] at the [facility name and permit number] located [physical address]~~



~~Application of Funds. The undersigned agrees that all or any part of the funds of the indicated account or instrument may be applied to the payment of any and all financial assurance obligations of [name of owner/operator] to the Virginia Department of Environmental Quality for ["closure" "post closure care" "corrective action"] at the [facility name and address]. The undersigned authorizes the Virginia Department of Environmental Quality to withdraw any principal amount on deposit in the indicated account or instrument including any interest, if indicated, and to apply it in the Virginia Department of Environmental Quality's discretion to fund ["closure" "post closure care" "corrective action"] at the [facility name] or in the event of [owner or operator's] failure to comply with the Virginia Financial Assurance Regulations for Solid Waste Management Facilities, 9 VAC 20-70-10 et seq. The undersigned agrees that the Virginia Department of Environmental Quality may withdraw any principal and/or interest from the indicated account or instrument without demand or notice agrees to assume any and all loss of penalty due to federal regulations concerning the early withdrawal of funds. Any partial withdrawal of principal or interest shall not release this assignment.]~~

APPENDIX IV. E. Wording of certificate of insurance.

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.)

CERTIFICATE OF INSURANCE

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

.....

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

.....  
.....

Facilities Covered: (List for each facility: Permit number (if applicable), name, address and the amount of insurance for closure, post-closure care, or corrective action. (These amounts for all facilities covered shall total the face amount shown below.))

Face Amount: \$.....

Policy Number:.....

Effective Date:.....

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for (insert "closure," "post-closure care," "corrective action") for the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of 9VAC 20-70-190 of the Financial Assurance Regulations for Solid Waste [ Disposal, Transfer, and Treatment ] Facilities ("Regulations") (9 VAC 20-70-10 et seq.), as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the Director, the Insurer agrees to furnish to the Director a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in APPENDIX IV 9 VAC 20-70-290 E of the Financial Assurance Regulations for Solid Waste [ Management Disposal, Transfer, and Treatment ] Facilities 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)

APPENDIX V. F. Wording of letter from chief financial officer.

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the parentheses removed.)

Director  
Department of Environmental Quality  
P.O. Box 10009  
Richmond, Virginia 23240-0009

Dear (Sir, Madam):

I am the chief financial officer of (name and address of firm). This letter is in support of this firm's use of the financial test to demonstrate financial assurance, as specified in ~~9 VAC 20-70-120~~ 9 VAC 20-70-200 of the Financial Assurance Regulations for Solid Waste [ Disposal, Transfer, and Treatment ] Facilities (9 VAC 20-70-10 et seq.) ("Regulations").

(Fill out the following four paragraphs regarding solid waste, regulated medical waste, yard waste composting, hazardous waste, underground injection (regulated under the federal program in 40 CFR Part 144, or its equivalent in other states), petroleum underground storage (9 VAC 25-590-10 et seq.), [ above ground storage facilities (9 VAC 25-640-10 et seq.) ] and PCB storage (regulated under 40 CFR Part 761) 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 name, address, permit number, if any, and current closure, post-closure care, corrective action or any other environmental obligation cost estimates. Identify each cost estimate as to whether it is for closure, post-closure care, corrective action or other environmental obligation.)

1. This firm is the owner or operator of the following facilities for which financial assurance is demonstrated through the corporate test specified in 9 VAC 20-70-200 or its equivalent in other applicable regulations. The current cost estimates covered by the test are shown for each facility:
2. This firm guarantees, through the corporate guarantee specified in 9 VAC 20-70-220, the financial assurance for the following facilities owned or operated by subsidiaries of this firm. The current cost estimates so guaranteed are shown for each facility:
3. This firm, as owner or operator or guarantor, is demonstrating financial assurance for the following facilities

through the use of a financial test. The current cost estimates covered by such a test are shown for each facility:

4. This firm is the owner or operator of the following waste management facilities for which financial assurance is not demonstrated through the financial test or any other financial assurance mechanism. The current cost estimates for the facilities which are 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).

- 1) Sum of current closure, post-closure care, corrective action or other environmental obligations cost estimates (total of all cost estimates shown in the four paragraphs above.)  
\$ \_\_\_\_\_
- 2) Tangible net worth\* \$ \_\_\_\_\_
- 3) Total assets located in the United States\*  
\$ \_\_\_\_\_

YES NO

Line 2 exceeds line 1 by at least \$10 million?

Line 3 exceeds line 1 by at least \$10 million?

(Fill in Alternative I if the criteria of 9 VAC 20-70-200 1 a (1) are used. Fill in Alternative II if the criteria of 9 VAC 20-70-200 1 a (2) are used. Fill in Alternative III if the criteria of 9 VAC 20-70-200 1 a (3) are used.)

ALTERNATIVE I

Current bond rating of [~~most recent issuance of~~] this [~~firm~~ firm's senior unsecured debt] and name of rating service

Date of issuance of bond

Date of maturity of bond

ALTERNATIVE II

4) Total liabilities [ \* ] (if any portion of the closure, post-closure care, corrective action or other environmental obligations cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to line 5.) \$ \_\_\_\_\_

5) Net worth [ \* ] \$ \_\_\_\_\_

Is line 4 divided by line 5 less than 2.0? YES NO

ALTERNATIVE III

6) Total liabilities [ \* ] \$ \_\_\_\_\_

7) The sum of net income plus depreciation, depletion, and amortization minus \$10 million\* \$ \_\_\_\_\_

Is line 7 divided by line 6 greater than 0.1? YES NO

I hereby certify that the wording of this letter is identical to the wording specified in ~~Article 4 (9 VAC 20-70-140 et seq.) of Part III 9 VAC 20-70-290 F~~ of the Financial Assurance Regulations for Solid Waste [ ~~Management Disposal, Transfer, and Treatment~~ ] Facilities as such regulations were constituted on the date shown immediately below.

(Signature)

(Name)

(Title)

(Date)

G. Wording of the local government letter from chief financial officer.

(NOTE: Instructions in [brackets parentheses] are to be replaced with the relevant information and the [brackets parentheses] deleted.)

LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of (insert: name and address of local government owner or operator, or guarantor). This letter is in support of the use of the financial test to demonstrate financial responsibility for ("closure care" "post-closure care" "corrective action costs") arising from operating a solid waste management facility.

The following facilities are assured by this financial test: (List for each facility: the name and address of the facility, the permit number, the closure, post-closure and/or corrective action costs, whichever applicable, for each facility covered by this instrument).

This owner's or operator's financial statements were prepared in conformity with Generally Accepted Accounting Principles for governments and have been audited by ("an independent certified public accountant" "Auditor of Public Accounts"). The owner or operator has not received an adverse opinion or a disclaimer of opinion from ("an independent certified public accountant" "Auditor of Public Accounts") on its financial statements for the latest completed fiscal year.

This owner or operator is not currently in default on any outstanding general obligation bond. Any outstanding issues of general obligation [ ~~or revenue bonds~~ ], if rated, have a Moody's rating of ~~Aaa, Aa, A, or Baa~~ or a Standard and Poor's rating of ~~AAA, AA, A or BBB~~; if rated by both firms, the bonds have a Moody's rating of ~~Aaa, Aa, A or Baa~~ and a Standard and Poor's rating of ~~AAA, AA, A, or BBB~~.

The fiscal year of this owner or operator ends on (month, day). The figures for the following items marked with the asterisk are derived from this owner's or operator's independently audited, year-end financial statements for the latest completed fiscal year ended (date).

(Please complete Alternative I or Alternative II.)

(Fill in Alternative I if the criteria in [ ~~40 CFR 258.74 (f)(1)(A)~~ 9 VAC 20-70-210 1 a (1) ] are used. Fill in Alternative II if the criteria of [ ~~40 CFR 258.74(f)(1)(B)~~ 9 VAC 20-70-210 1 a (2) ] are used.)

ALTERNATIVE I – BOND RATING TEST

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding general obligation bond issues that are being used by (name of local government owner or operator, or guarantor) to demonstrate financial responsibility are as follows: (complete table):

Issue Date	Maturity Date	Outstanding Amount	Bond Rating	Rating Agency
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Any outstanding issues of general obligation [ ~~or revenue~~ ] bonds, if rated, have a Moody's rating of Aaa, Aa, A, or Baa or a Standard and Poor's rating of AAA, AA, A or BBB; if rated by both firms, the bonds have a Moody's rating of Aaa, Aa, A or Baa and a Standard and Poor's rating of AAA, AA, A or BBB.

1) Sum of current closure, post-closure and corrective action cost estimates (total of all cost estimates listed above) \$ \_\_\_\_\_

\*2) Operating Deficit

- (a) latest completed fiscal year (insert year) \$ \_\_\_\_\_
- (b) previous fiscal year (insert year) \$ \_\_\_\_\_

\*3) Total Revenue

- (a) latest completed fiscal year (insert year) \$ \_\_\_\_\_
- (b) previous fiscal year (insert year) \$ \_\_\_\_\_

4) Other self-insured environmental costs

- (a) Amount of aggregate underground injection control systems financial assurance insured by a financial test under 40 CFR 144.62 \$ \_\_\_\_\_
- (b) Amount of annual underground storage tank aggregate coverage insured by a financial test under 40 CFR Part 280 and 9 VAC 25-590-10 et seq. \$ \_\_\_\_\_
- (c) Amount of aggregate costs associated with PCB storage facilities insured by a financial test under 40 CFR Part 761 \$ \_\_\_\_\_
- (d) Amount of annual aggregate hazardous waste financial assurance insured by a financial test under 40 CFR Parts 264 and 265 and [ ~~9 VAC 20-60-10~~ 9 VAC 20-60-12 ] et seq. \$ \_\_\_\_\_
- (e) Total of lines 4(A) through 4(d) \$ \_\_\_\_\_

YES NO

5) Is (line 2a , line 3a) < [ ~~0.05~~ 0.05 ]? \_\_\_\_\_

6) Is (line 2b , line 3b) < 0.05? \_\_\_\_\_

7) Is (line 1 + line 4e) £ (line 3a x 0.43)? \_\_\_\_\_

8) Is (line 1 + line 4e) £ (line 3a x .20)? \_\_\_\_\_

If the answer to line 7 is yes and the answer to line 8 is no, please attach [ a ~~letter~~ documentation ] from the agent/trustee [ /issuing institution ] stating the current balance of the account/fund [ /irrevocable letter of credit ] as of the latest fiscal reporting year to this form [ as required by 9 VAC 20-70-210 ].

ALTERNATIVE II – FINANCIAL RATIO TEST

1) Sum of current closure, post-closure and corrective action cost estimates \$ \_\_\_\_\_

\*2) Operating Deficit

- (a) latest completed fiscal year (insert year) \$ \_\_\_\_\_
- (b) previous fiscal year (insert year) \$ \_\_\_\_\_

\*3) Total Revenue

- (a) latest completed fiscal year (insert year) \$ \_\_\_\_\_
- (b) previous fiscal year (insert year) \$ \_\_\_\_\_

4) Other self-insured environmental costs

- (a) Amount of aggregate underground injection control systems financial assurance insured by a financial test under 40 CFR 144.62 \$ \_\_\_\_\_
- (b) Amount of annual underground storage tank aggregate coverage insured by a financial test under 40 CFR Part 280 and 9 VAC 25-590-10 et seq. \$ \_\_\_\_\_
- [ ~~(d)~~ (c) ] Amount of aggregate costs associated with PCB storage facilities insured by a financial test under 40 CFR Part 761 \$ \_\_\_\_\_

- (d) Amount of annual aggregate hazardous waste financial assurance insured by a financial test under 40 CFR Parts 264 and 265 and [ ~~9 VAC 20-60-10~~ 9 VAC 20-60-12 ] et seq. \$ \_\_\_\_\_
- (e) Total of lines 4(a) through 4(d) \$ \_\_\_\_\_

\*5) Cash plus marketable securities \$ \_\_\_\_\_

\*6) Total Expenditures \$ \_\_\_\_\_

\*7) Annual Debt Service \$ \_\_\_\_\_

YES NO

8) Is (line 2a , line 3a) < 0.05? \_\_\_\_\_

9) Is (line 2b , line 3b) < 0.05? \_\_\_\_\_

10) Is (line 1 + line 4e) £ (line 3a x 0.43)? \_\_\_\_\_

11) Is (line 5 , line 6) <sup>3</sup> 0.05? \_\_\_\_\_

12) Is (line 7 , line 6) £ 0.20? \_\_\_\_\_

13) Is (line 1 + line 4e) £ (line 3a x .20) \_\_\_\_\_

(The owner or operator must answer "Yes" to questions 8-12 to qualify to use this Alternative)

If the answer to line 13 is no, [~~has a restricted sinking fund or escrow account been established?~~ please attach documentation from the agent/trustee/issuing institution stating the current balance of the account/fund/irrevocable letter of credit as of the latest fiscal reporting year to this form as required by 9 VAC 20-70-210.]

[~~I hereby certify that the wording of this letter is identical to 9 VAC 20-70-290 G of the Financial Assurance Regulations for Solid Waste Management Facilities.~~]

I hereby certify that the wording of this letter is identical to the wording in 9 VAC 20-70-290 [F G] of the Financial Assurance Regulations for Solid Waste [ ~~Management~~ Disposal, Transfer, and Treatment ] Facilities as such regulations were constituted on the date shown immediately below.

(Signature)

(Name of person signing)

(Title of person signing)

(Date)

H. Certification of funding.

**CERTIFICATION OF FUNDING**

I certify the following information details the current plan for funding closure and post closure at the solid waste management facilities listed below.

Facility	Permit #	Source for funding closure and post closure

Name of Locality or Corporation: \_\_\_\_\_

\_\_\_\_\_  
Signature                      Printed Name                      Date

\_\_\_\_\_  
Title

I. Certification of escrow/sinking fund [ /irrevocable letter of credit ] balance.

Certification of Escrow/Sinking Fund Balance [ or Amount of Irrevocable Letter of Credit ]

I am the Chief Financial Officer of (name of locality) and hereby certify that as of (date) the current balance in the [ restricted sinking ] (type of fund) fund [ or the escrow account or the amount of the irrevocable letter of credit ] restricted to landfill closure costs is \$\_\_\_\_\_.

The calculation used to determine the amount required to be funded is as follows:

(Show the values that were used in the following formula:

$$(CE * CD) - E$$

Where CE is the current closure cost estimate, CD is the [ capacity percentage ] of landfill [ capacity ] used to date, and E is current year expenses for closure.)

Therefore, this account has been funded [ or an irrevocable letter of credit has been obtained ] in accordance with the Financial Assurance Regulations for Solid Waste [ Disposal, Transfer and Treatment ] Facilities, 9 VAC 20-70-10 et seq.

(Signature) \_\_\_\_\_

(Name of person signing) \_\_\_\_\_

(Title of person signing) \_\_\_\_\_

(Date) \_\_\_\_\_

**APPENDIX VI. J. Wording of corporate guarantee.**

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the parentheses removed.)

**CORPORATE GUARANTEE**

Guarantee made this (date) by (name of guaranteeing entity), a business corporation organized under the laws of the state of (insert name of state), herein referred to as guarantor. This guarantee is made on behalf of the (owner or operator) of (business address), which is (one of the following: "our subsidiary"; "a subsidiary of (name and address of common parent corporation) of which guarantor is a subsidiary"; or "an entity with which the guarantor has a substantial business relationship, as defined in Part I of the Virginia Financial Assurance Regulations for Solid Waste [ ~~Management~~ Disposal, Transfer, and Treatment ] Facilities (9 VAC 20-70-10 et seq.)") to the Virginia Department of Environmental Quality ("Department"), obligee, on behalf of our subsidiary (owner or operator) of (business address).

**Recitals**

1. Guarantor meets or exceeds the financial test criteria in 9 VAC 20-70-200 and agrees to comply with the reporting requirements for guarantors as specified in 9 VAC 20-70-220 of the Financial Assurance Regulations for Solid Waste [ Disposal, Transfer, and Treatment ] Facilities ("Regulations").
2. (Owner or operator) owns or operates the following (solid, regulated medical, yard) waste management facility(ies) covered by this guarantee: (List for each facility: name, address, and permit number, if any. Indicate for each whether guarantee is for closure, post-closure care, corrective action or other environmental obligations.)
3. "Closure plans" [ and, ] "post-closure care plans" [ and "corrective action plans" ] as used below refer to the plans maintained as required by the Solid Waste Management Regulations (9 VAC 20-80-10 et seq.), Regulated Medical Waste Management Regulations (9 VAC 20-120-10 et seq.) or Vegetative Waste Management and Yard Waste Composting Regulations (9 VAC 20-101-10 et seq.).
4. For value received from (owner or operator), guarantor guarantees to the Department that in the event that (owner or operator) fails to perform (insert "closure," "post-closure care," or "corrective action") of the above facility(ies) in accordance with the closure or post-closure care plans and

other (requirements of the) permit or (the order) whenever required to do so, the guarantor shall do so or establish a trust fund as specified in 9 VAC 20-70-140 in the name of (owner or operator) in the amount of the current cost estimates.

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 director and to (owner or operator) that he intends to provide alternate financial assurance as specified in Article 4 of Part III of the Regulations, 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 director 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 director of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure, post-closure care, or corrective action, he shall establish alternate financial assurance as specified in Article 4 of Part III of the Regulations, in the name of (owner or operator) unless (owner or operator) has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure [~~or,~~] post-closure [~~or corrective action~~] plan, [~~amendment or modification of the closure or post-closure plan,~~] amendment or modification of the permit, amendment or modification of the order, the extension or reduction of the time of performance of closure [~~or,~~] post-closure, [~~or corrective action~~] or any other modification or alteration of an obligation of the owner or operator pursuant to the [ ( ) Virginia [ ( ) Solid or Regulated Medical Waste Management or Vegetative Waste Management and Yard Waste Composting [~~or Transportation of Solid and Medical Wastes on State Waters~~] Regulations [or §10.1-1454.1 of the Code of Virginia] ].

9. Guarantor agrees to remain bound under this guarantee for so long as (owner or operator [ ]) shall comply with the applicable financial assurance requirements of Article 4 of Part III of the Regulations for the above-listed facilities, except as provided in paragraph 10 of this agreement.

10. (Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator:) Guarantor may terminate this guarantee by sending notice by certified mail to the Director of the Department of Environmental Quality and to the (owner or operator), provided that this guarantee may not be terminated unless and until (the owner or operator) obtains and the director approves, alternate (closure, post-closure, corrective action) coverage complying with the requirements of 9 VAC 20-70-10 et seq. (Insert the

following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator:) Guarantor may terminate this guarantee 120 days following the receipt of notification, through certified mail, by the director and by (the owner or operator).

11. Guarantor agrees that if (owner or operator) fails to provide alternate financial assurance as specified in Article 4 of Part III of the Regulations, and obtain written approval of such assurance from the director within 90 days after a notice of cancellation by the guarantor is received by the director from guarantor, guarantor shall provide such alternate financial assurance in the name of (owner or operator).

12. Guarantor expressly waives notice of acceptance of this guarantee by the Department or by (owner or operator). Guarantor also expressly waives notice of amendments or modifications of the closure and/or post-closure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in Appendix V 9 VAC 20-70-290 J of the *Financial Assurance Regulations for Solid Waste [ Management Disposal, Transfer, and Treatment ] Facilities* as such regulations were constituted on the date first above written shown immediately below.

(Name of guarantor) Effective date:.....

(Authorized signature for guarantor)

(Name of person signing)

(Title of person signing)

Signature of witness or notary:.....

*K. Wording of local government guarantee.*

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the parentheses removed.)

**LOCAL GOVERNMENT GUARANTEE**

Guarantee made this (date) by (name of guaranteeing entity), a local government created under the laws of the state of Virginia, herein referred to as guarantor. This guarantee is made on behalf of the (owner or operator) of (address), to the Virginia Department of Environmental Quality ("Department"), obligee.

**Recitals**

1. Guarantor meets or exceeds the financial test criteria in 9 VAC 20-70-210 and agrees to comply with the reporting requirements for guarantors as specified in 9 VAC 20-70-230 of the *Financial Assurance Regulations for Solid Waste [ Disposal, Treatment and Transfer ] Facilities* ("Regulations").

2. (Owner or operator) owns or operates the following (solid, regulated medical, yard) waste management facility(ies) covered by this guarantee: (List for each facility: name, address, and permit number, if any. Indicate for each whether guarantee is for closure, post-closure care, corrective action or other environmental obligations.)

3. "Closure plans" and "post-closure care plans" as used below refer to the plans maintained as required by the Solid Waste Management Regulations (9 VAC 20-80-10 et seq.) or Vegetative Waste Management and Yard Waste Composting Regulations (9 VAC 20-101-10 et seq.).

4. For value received from (owner or operator), guarantor guarantees to the Department that in the event that (owner or operator) fails to perform (insert "closure," "post-closure care," or "corrective action") of the above facility(ies) in accordance with the closure or post-closure care plans and other (requirements of the) permit or (the order) whenever required to do so, the guarantor shall do so or establish a trust fund as specified in 9 VAC 20-70-150 in the name of (owner or operator) in the amount of the current cost estimates.

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 director and to (owner or operator) that he intends to provide alternate financial assurance as specified in Article 4 of Part III of the Regulations, 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 director 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 director of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure, post-closure care, or corrective action, he shall establish alternate financial assurance as specified in Article 4 of Part III of the Regulations in the name of (owner or operator) unless (owner or operator) has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure or post-closure plan, amendment or modification of the closure or post-closure plan, amendment or modification of the permit, amendment or modification of the order, the extension or reduction of the time of performance of the closure or post-closure, or any other modification or alteration of an obligation of the

owner or operator pursuant to the Virginia (Solid or Regulated Medical Waste Management or Vegetative Waste Management and Yard Waste Composting) Regulations.

9. Guarantor agrees to remain bound under this guarantee for so long as (owner or operator) shall comply with the applicable financial assurance requirements of Article 4 of Part III of the Regulations for the above-listed facilities, except as provided in paragraph 10 of this agreement.

10. Guarantor may terminate this guarantee by sending notice by certified mail to the Director of the Department of Environmental Quality and to the (owner or operator), provided that this guarantee may not be terminated unless and until (the owner or operator) obtains and the director approves, alternate (closure, post-closure, corrective action,) coverage complying with the requirements of 9 VAC 20-70-10 et seq.

11. Guarantor agrees that if (owner or operator) fails to provide alternate financial assurance as specified in Article 4 of Part III of the Regulations, and obtain written approval of such assurance from the director with 90 days after a notice of cancellation by the guarantor is received by the director from guarantor, guarantor shall provide such alternate financial assurance in the name of (owner or operator).

12. Guarantor expressly waives notice of acceptance of this guarantee by the Department or by (owner or operator). Guarantor also expressly waives notice of amendments or modifications of the closure and/or post-closure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in 9 VAC 20-70-290 K of the Financial Assurance Regulations for Solid Waste [Management Disposal, Transfer and Treatment] Facilities as such regulations were constituted on the date shown immediately below.

(Name of guarantor) Effective date:.....

(Authorized signature for guarantor)

(Name of person signing)

(Title of person signing)

Signature of witness or notary:.....

VA.R. Doc. No. R00-91; Filed September 24, 2001, 1:50 p.m.