

[TRANSPORTATION OF SOLID AND MEDICAL WASTES ON STATE WATERS REGULATIONS

9 VAC 20-170-10 et seq.

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CHAPTER 170.**TRANSPORTATION OF SOLID [**AND**] MEDICAL WASTES ON STATE WATERS****REGULATIONS.****PART I.****DEFINITIONS AND PROGRAM ADMINISTRATION.****9 VAC 20-170-10. Definitions.**

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

"Affiliated company" means (i) any company that directly or indirectly owns, controls, or holds, with power to vote, 10% or more of the outstanding voting securities of a pure captive insurer or (ii) any company of which 10% or more of the voting securities are directly or indirectly owned, controlled, or held, with power to vote, by a parent, subsidiary, or associated company.

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

"Applicant" means any and all persons seeking or holding a permit required under this chapter.

"Associated company" means any company in the same corporate system with a pure captive insurer.

"Association captive insurer" means any insurer transacting the business of insurance and reinsurance only on risks, hazards, and liabilities of the members of an insurance association.

"Beneficial use" means both instream and offstream uses of state waters. Instream beneficial uses include, but are not limited to, the protection of fish and wildlife habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. Offstream beneficial uses include, but are not limited to,

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domestic (including public water supply), agricultural, electric power generation, commercial and industrial uses. Public water supply uses for human consumption shall be considered the highest priority.

"Board" means the Virginia Waste Management Board.

"Bodily injury" means the death or injury of any person incident to a waste deposit from a vessel, but not including any death, disablement, or injuries covered by ~~worker's workers'~~ compensation, disability benefits or unemployment compensation law or other similar law. Bodily injury may include payment of medical, hospital, surgical, and funeral expenses arising out of the death or injury of any person. This term shall not include those liabilities that, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

"Captive insurer" means any pure captive insurer or any association captive insurer.

"Certificant" means an owner or operator who has been issued a Certificate of Financial Responsibility under this chapter.

"Certificate applicant" means an owner or operator who has applied for a Certificate of Financial Responsibility or for the renewal of a Certificate of Financial Responsibility under this chapter.

"Certificate of Financial Responsibility" or "certificate" means a Certificate of Financial Responsibility issued under Part VI (~~9 VAC 20-170-200~~ 9 VAC 20-170-270 et seq.) of this chapter, unless otherwise indicated.

"Certified copy" means a legible copy certified as accurate by a notary public or other person authorized to take oaths in the United States.

"CFR" means Code of Federal Regulations.

"Charter by demise" means to hire for exclusive use through a lease.

"Closure" means the act of securing a solid waste management facility pursuant to the requirements of this chapter.

"Commercial transport" means transportation for the purposes of commercial carriage of solid wastes or regulated medical wastes as cargo.

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

["Construction demolition debris waste" or "CDD waste" means solid waste which is produced or generated during construction or destruction, remodeling, or repair of pavements, houses, commercial buildings, their foundations and other structures. Construction demolition debris wastes include, but are not limited to lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, paving materials, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids and garbage are not construction demolition debris wastes.]

"Container" means any watertight structure that meets the provisions of this chapter.

"Containment and cleanup" means abatement, containment, removal and disposal of solid wastes or regulated medical wastes that have been deposited to state waters or adjoining shorelines, and the restoration of the environment to its existing state prior to a deposit of the wastes.

"Demise charterer" means a person with whom the owner of the vessel enters into a demise charter. The charterer takes over all possession and control of the vessel from the owner of the vessel and becomes subject to the duties and responsibilities of ownership. The charterer is also responsible for directing the operations of the vessel and providing the master and crew.

"Department" means the Virginia Department of Environmental Quality.

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"Destination facility" means a facility that treats, disposes of, or recycles solid wastes or regulated medical wastes in accordance with applicable federal and state regulations.

"Director" means the Director of the Virginia Department of Environmental Quality or an authorized representative.

"Disclosure statement" means a sworn statement or affirmation, in such form as may be required by the director, which includes:

1. The full name, business address, and social security number of all key personnel;
2. The full name and business address of any entity, other than a natural person, that collects, transports, treats, stores, or disposes of solid waste or hazardous waste in which any key personnel holds an equity interest of 5.0% or more;
3. A description of the business experience of all key personnel listed in the disclosure statement;
4. A listing of all permits or licenses required for the collection, transportation, treatment, storage or disposal of solid waste or hazardous waste issued to or held by any key personnel within the past 10 years;
5. A listing and explanation of any notices of violation, prosecutions, administrative orders (whether by consent or otherwise), license or permit suspensions or revocations, or enforcement actions of any sort by any state, federal or local authority, within the past 10 years, that are pending or have concluded with a finding of violation or entry of a consent agreement, regarding an allegation of civil or criminal violation of any law, regulation or requirement relating to the collection, transportation, treatment, storage or disposal of solid waste or hazardous waste by any key personnel, and an itemized list of all convictions within 10 years of key personnel of any of the following crimes punishable as felonies under the laws of the Commonwealth or the equivalent thereof under the laws of any other jurisdiction: murder; kidnapping; gambling; robbery; bribery; extortion; criminal usury; arson; burglary; theft and related crimes; forgery and

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fraudulent practices; fraud in the offering, sale, or purchase of securities; alteration of motor vehicle identification numbers; unlawful manufacture, purchase, use or transfer of firearms; unlawful possession or use of destructive devices or explosives; violation of the Drug Control Act, Chapter 34 (§ ~~54.1-3401~~ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia; racketeering; or violation of antitrust laws;

6. A listing of all agencies outside the Commonwealth that have regulatory responsibility over the applicant or have issued any environmental permit or license to the applicant within the past 10 years in connection with the applicant's collection, transportation, treatment, storage, or disposal of solid waste or hazardous waste;

7. Any other information about the applicant and the key personnel that the director may require that reasonably relates to the qualifications and abilities of the key personnel or the applicant to lawfully and competently operate a solid waste management facility in Virginia; and

8. The full name and business address of any member of the local governing body or planning commission in which the solid waste management facility is located or proposed to be located, who holds an equity interest in the facility.

"Existing facility" means any receiving facility that is constructed prior to [~~February 16, 2001~~ the effective date of this chapter].

"Generator" means any person, by site, whose act or process produces solid wastes or regulated medical wastes, or whose act first causes solid wastes or regulated medical wastes to become subject to this chapter.

"Insurance association" means any group of individuals, corporations, partnerships, associations, or governmental units or agencies whose members collectively own, control, or hold with power to vote all of the outstanding voting securities of an association captive insurer.

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"Key personnel" means the applicant itself and any person employed by the applicant in a managerial capacity, or empowered to make discretionary decisions, with respect to the solid waste or hazardous waste operations of the applicant in Virginia, but shall not include employees exclusively engaged in the physical or mechanical collection, transportation, treatment, storage, or disposal of solid or hazardous waste and such other employees as the director may designate by regulation. If the applicant has not previously conducted solid waste or hazardous waste operations in Virginia, the term also includes any officer, director, partner of the applicant, or any holder of 5.0% or more of the equity or debt of the applicant. If any holder of 5.0% or more of the equity or debt of the applicant or of any key personnel is not a natural person, the term includes all key personnel of that entity, provided that where such entity is a chartered lending institution or a reporting company under the Federal Security and Exchange Act of 1934, the term does not include key personnel of such entity. Provided further that the term means the chief executive officer of any agency of the United States or of any agency or political subdivision of the Commonwealth, and all key personnel of any person, other than a natural person, that operates a landfill or other facility for the disposal, treatment or storage of nonhazardous solid waste under contract with or for one of those governmental entities.

"Leachate" means a liquid that has passed through or emerged from solid waste or regulated medical waste and 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 to disposal in an off-site facility is regulated as septage, and leachate discharged into a wastewater collection system is regulated as industrial wastewater.

"Load Line Certificate" means a certificate issued by the American Bureau of Shipping (ABS) or other similarly qualified organizations authorized by the Secretary of Transportation (U.S. Department of Transportation) to the owner of the vessel, in accordance with 46 USC Chapter 51.

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"Manifest" means the shipping document originated and signed by the generator in accordance with the provisions of this chapter. For transportation of regulated medical wastes, the hazardous materials shipping paper requirements under 49 CFR Part 172 Subpart C may be reflected in the manifest.

"Medical waste" or "regulated medical waste" means solid wastes defined to be regulated medical wastes by Part III of the Regulated Medical Waste Management Regulations (9 VAC 20-120-10 et seq.). Solid waste packaged as regulated medical waste is regulated medical waste. Medical wastes that have been sterilized, treated or incinerated in accordance with the Regulated Medical Waste Management Regulations (9 VAC 20-120-10 et seq.) are no longer considered as regulated medical waste.

"Navigable waters of the Commonwealth" means state water being used or susceptible of being used, in its natural and ordinary condition, as a highway for commerce, on which trade and travel are or may be conducted in the customary modes of trade and travel on water.

"New facility" means any receiving facility [~~which that~~] is constructed on or after [~~February 16, 2001 the effective date of this chapter~~].

"Odors" means any emissions [~~which that~~] cause an odor objectionable to individuals of ordinary sensibility.

"Operator" means, in the case of a receiving facility, any person responsible for the overall operation of a receiving facility that handles solid wastes or regulated medical wastes. In the case of a vessel, it means any person who operates, charters by demise, rents or otherwise exercises control over or responsibility for a vessel.

"Owner" means, in the case of a receiving facility, any person who owns a receiving facility or part of a receiving facility [~~is~~] that handles solid wastes or regulated medical wastes as cargo for hire. In the case of a

vessel, it means any person who owns a vessel or a part of a vessel that transports solid wastes or regulated medical wastes as cargo for hire.

"Parent" means a corporation, partnership, governmental unit or agency, or individual who directly or indirectly owns, controls or holds, with power to vote, more than 50% of the outstanding voting securities of a pure captive insurer.

"Permit by rule" means provisions including public participation of this chapter stating that a facility or activity is deemed to have a permit if it meets the requirements of the provision.

"Person" means an individual, trust, firm, joint stock company, corporation including a government corporation, partnership, association, any state or agency thereof, municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, joint venture, commercial entity, the government of the United States or any unit or agency thereof.

"Property damage" means the loss or destruction of, or damage to, the property of any third party including any loss, damage or expense incident to a waste deposit from a vessel. This term shall not include those liabilities that, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage.

"Provider of financial responsibility" means an entity that provides financial responsibility to an owner and operator of a vessel transporting solid wastes or regulated medical wastes through one of the mechanisms listed in ~~9 VAC 20-170-240~~ 9 VAC 20-170-310, including a financial institution, surety, or issuer of a letter of credit.

"Public vessel" means a vessel that is owned or demise chartered and operated by the United States government or a government of a foreign country and that is not engaged in commercial service.

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"Pure captive insurer" means any insurer transacting the business of insurance and reinsurance only on risks, hazards, and liabilities of its parent, subsidiary companies of its parent, and associated and affiliated companies.

"Receiving facility" means a facility, vessel or operation that [~~receives loads or off-loads~~] 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~~].

"Solid waste" means any garbage, refuse, sludge and other discarded material, including solid, liquid, semisolid or contained gaseous material, resulting from industrial, commercial, mining and agricultural operations, or community activities but does not include (i) materials regulated as hazardous wastes under the Virginia Hazardous Waste Management Regulations (9 VAC 20-60-10 et seq.); (ii) scrap metal, dredged material [~~;~~ ~~recyclable construction demolition debris being transported directly to a processing facility for recycling or reuse, on or after July 1, 2003~~] and source-separated recyclables; (iii) solid or dissolved material in domestic sewage; (iv) solid or dissolved material in irrigation return flows or in industrial discharges that are sources subject to a permit from the State Water Control Board; or (v) source, special nuclear, or byproduct material as defined by the Federal Atomic Energy Act of 1954, as amended.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction.

"Subsidiary company" means any corporation of which 50% or more of the outstanding voting securities are directly or indirectly owned, controlled, or held, with power to vote, by a parent or by a company that is a subsidiary of the parent.

~~"Surface waters" means:~~

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- ~~1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;~~
- ~~2. All interstate waters, including interstate wetlands;~~
- ~~3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
 - ~~a. That are or could be used by interstate or foreign travelers for recreational or other purposes;~~
 - ~~b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or~~
 - ~~c. That are used or could be used for industrial purposes by industries in interstate commerce;~~~~
- ~~4. All impoundments of waters otherwise defined as surface waters under this definition;~~
- ~~5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;~~
- ~~6. The territorial sea; and~~
- ~~7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions 1 through 6 of this definition.~~

~~"Surface water" means any water in the Commonwealth, except ground water as defined in § 62.1-255 of the Code of Virginia.~~

~~"Transport" or "transportation" means any movement of solid wastes or regulated medical wastes, and any packing, loading, unloading or storage incidental thereto.~~

~~"USC" means the U.S. Code.~~

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"Vehicle" means any motor vehicle, rolling stock or other artificial contrivance for transport whether self-propelled or otherwise, except vessels.

"Vessel" includes every description of watercraft or other contrivance used as a means of transporting on water, whether self-propelled or otherwise, and shall include barges and tugs.

"Waste deposit" or "deposit of waste" means any solid waste or regulated medical waste from a vessel or a receiving facility that is placed, discharged, spilled, dropped, or leaked into state waters or adjoining shorelines.

9 VAC 20-170-20. Purpose.

This chapter establishes standards and procedures pertaining to the commercial transport, loading and off-loading of solid wastes or regulated medical wastes upon the navigable waters of the Commonwealth to the extent allowable under state law in order to protect the public health, safety and welfare, and to protect the environment and natural resources from pollution, impairment or destruction.

9 VAC 20-170-30 Applicability

[A.]This chapter applies to each owner and/or operator of a vessel transporting solid wastes or regulated medical wastes for the purposes of commercial carriage as cargo, and each owner or operator of a receiving facility. This chapter also applies to the receiving facilities and vessels transporting solid wastes or regulated medical wastes upon the navigable waters of the Commonwealth, to the extent allowable under state law.

[~~9 VAC 20-170-40 Exclusions.~~]

[B.]This chapter does not apply to a public vessel as defined under 9 VAC 20-170-10; the owner and operator of a public vessel; vessels transporting solid wastes or regulated medical wastes incidental to their predominant business or purposes; vessels transporting solid wastes or regulated medical wastes generated during normal operations of the vessel; solid wastes or regulated medical wastes generated during the normal operations of the

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vessel; and solid wastes excluded pursuant to 9 VAC 20-80-150 or conditionally exempted pursuant to 9 VAC 20-80-160 of the Virginia Solid Waste Management Regulations.

9 VAC 20-170- [5040] Relationship to Other Regulations

A.The Solid Waste Management Regulations (9 VAC 20-80-10 et seq.) prescribe requirements for the solid waste management facilities in general. While a facility utilized to receive 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 is a solid waste management facility, this chapter herein prescribes specific requirements, including siting, design/construction, operation, and permitting, for this type of facilities. If there is any overlapping requirement between these two regulations, whichever is more stringent shall apply.

B.The Regulated Medical Waste Management Regulations (9 VAC 20-120-10 et seq.) address special needs for regulated medical waste management. A facility utilized to receive regulated medical waste transported, loaded, or unloaded upon the navigable waters of the Commonwealth, to the extent allowable under state law, by a commercial transporter is a regulated medical waste facility and it must conform to any applicable sections of the Regulated Medical Waste Management Regulations adopted by the Board. If there is any overlapping requirement between these two regulations, whichever is more stringent shall apply.

C.This chapter does not exempt any receiving facility from obtaining a Virginia Water Protection Permit, as required by the Virginia Water Protection Permit Regulation (9 VAC 25-210-10 et seq.), whenever it is applicable.

9 VAC 20-170- [6050] Enforcement, Inspections, and Right of Entry

A.Any person violating any requirement of this chapter [, **except for those enforced by the U. S . Department of Transportation and the U. S. Coast Guard,**] is liable for a civil penalty of not more than \$25,000 per violation. Each day of a continuing violation is a separate violation.

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B. The owner or operator of a receiving facility or a vessel shall allow the director or his designee, upon presentation of appropriate credentials or other documents as may be required by law, to:

1. Enter at reasonable time upon any premises where a regulated facility or activity is located or conducted, or where records must be kept under the provisions of this chapter;
2. Have access to and copy, at reasonable times, any records that must be kept under the provisions of this chapter;
3. Inspect at reasonable times any facilities, equipment, practices, or operations regulated or required under the provisions of this chapter; and
4. Sample or monitor at reasonable times, for the purposes of assuring that the provisions of this chapter are being complied with.

[C. The regulations of the U. S. Department of Transportation and the U. S. Coast Guard are enforced by those federal agencies. Information on possible violations of federal rules will be referred to the federal agency for enforcement.]

9 VAC 20-170- [7060] Delegation of Authority

The director may perform any act of the Board provided under this chapter, except as limited by 9 10.1-1405 of the Code of Virginia.

[PART II

STANDARDS FOR CONTAINERS

9 VAC 20-170-70 Design, Operation and Maintenance of Containers (NOTE: Effective date of 9 VAC 20-170-70 Suspended. Text and Suspension Notice published in the Virginia Register of Regulations in 19:18 on June 2, 2003.)

[~~PART II. PART III~~]

STANDARDS FOR [~~LOADING AND OFF-LOADING~~] ~~RECEIVING FACILITIES.~~

Article 1.

Standards for ~~Containers and Receiving Facilities Design and Operation.~~

9 VAC 20-170-80. Siting.

A. The receiving facility shall be adjacent to or have direct access to roads [~~which that~~] are paved or surfaced and capable of withstanding anticipated load limits.

B. The receiving facility shall be located so as to minimize waterborne traffic congestion and navigational hazards. Sites shall allow for sufficient room to minimize land traffic congestion and allow for safe operation.

C. No loading, unloading, or receiving areas shall be located closer than 50 feet to any property line (excluding the property line along the water side), nor closer than 200 feet to any occupied dwelling, a health care facility, school or recreational park area, or similar type public institution.

[~~9 VAC 20-170-85. Design, operation and maintenance of containers used to transport solid wastes and regulated medical wastes on Virginia waters.~~

~~A. Each container used to transport solid wastes or regulated medical wastes on state waters shall be watertight and leak proof; prevent the loss or spillage of waste, liquids or odors; and prevent the loss or spillage of waste or leachate during transport, during normal handling and in the event of an accident.~~

~~B. Each container shall be designed, constructed and maintained to contain any liquids, including any leachate that may be generated, and prevent the loss of liquids during loading, transport or unloading of the container. Each container shall be designed, constructed and maintained to prevent the entry of liquids into the container during normal transport, during handling and in the event it is lost overboard. Each container must~~

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~~be completely enclosed, rigid and constructed of nonpermeable material. Each container must be designed to remain upright in the event that it is lost overboard.~~

~~C. Each container must meet all applicable U.S. Department of Transportation specifications.~~

~~D. Each container shall have a gas pressure activated relief valve or equivalent device that will allow the escape of gases to prevent the unsafe buildup of decomposition gases. Such release device shall minimize the escape of odors, liquids and waste and shall include safety measures for the planned opening of the container.~~

~~E. At least once in every six months, each container shall be tested and certified by the American Bureau of Shipping (ABS) to be in compliance with the requirements of this section. The ABS certification shall include, at least, the following items:~~

~~1. Each container shall be certified and bear a plate (CSC plate) showing certification of compliance with the International Convention for Safe Containers standards for ocean shipping containers.~~

~~2. Each container shall be certified as meeting the ABS's General Specifications (See Rules for Certification of Cargo Containers, 1987, Section 6) including weathertightness for general service. Each container must have affixed to it in a visible and accessible location a decal including the ABS general service emblem, a notice and date of certification, and the names, addresses and telephone numbers of the person performing the test and the owner of the container.~~

~~3. Each container shall be certified as having passed the following test: each container shall be tested using applied soap and maintenance of internal gas pressure of 5.0 pounds per square inch (gauge) in accordance with "Section 2, Material Handling, Recommended Practices for Installation of Underground Liquid Storage Systems" (PEI/RP100-2000) by Petroleum Equipment Institute. To pass the test, an internal gas pressure of 5.0 pounds per square inch (gauge) shall be maintained for one hour with no~~

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~~appreciable loss of pressure and an inspection shall have not revealed any appreciable leakage. (Note: Petroleum Equipment Institute, Post Office Box 2380, Tulsa, Oklahoma 74101-2380.)~~

~~F. Owners of all containers must keep a record of testing of each container for at least the preceding 12 months and provide copies of the log and certification to persons who lease or handle the container and to the department. The container owner shall certify to the department that such testing has been conducted in accordance with subsection E of this section, and that the container is watertight, leak proof and otherwise in compliance with this chapter. The certification shall so be endorsed by a decal (located near the ABS decal and CSC plate), including the last testing date, and shall be legible, accessible, and permanently marked with indelible ink on each container. The certification shall explicitly indicate compliance of the container with the requirements contain in this section.]~~

9 VAC 20-170-90. Design / and construction of facilities.

~~A. Containers used to transport solid wastes or regulated medical wastes shall be watertight, designed, and constructed so as to prevent the escape of wastes, liquids, and odors, and to prevent the loss or spillage of wastes during transport, normal handling, and in the event of an accident. A container is considered to be watertight if it passes the watertightness test. It is demonstrated by filling the tested unit with a minimum head of water of 24 inches for at least 15 minutes and the exterior is free from the penetration of water.~~

~~B. Each container shall meet the U.S. Department of Transportation specifications and be certified by the American Bureau of Shipping (ABS) and affixed with a decal signifying that the container meets the requirements including watertightness for its general service.~~

~~C. A. An all-weather road suitable for loaded transfer vehicles shall be provided from the entrance gate to the loading, unloading, or receiving area.~~

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~~D. B. Any solid waste or liquid deriving from solid waste shall be properly managed and not be allowed to contact or mix with storm water.]~~ The loading, unloading, or receiving areas shall be constructed of easily cleanable materials; equipped with containment or diversionary structures, drains or pumps, or equivalent means to facilitate the removal of wastewater for proper storage or disposal; and equipped with appropriate storm water management systems so as to prevent storm water from contacting wastes and/or contaminating state waters.

~~E. C. Sufficient on-site queuing capacity shall be provided for the expected traffic so that the waiting transfer vehicles do not back up onto the public road.~~

9 VAC 20-170-100. Operation.

A. At facilities handling containers used to transport solid wastes or regulated medical wastes on state waters, all containers, including empty containers, shall be secured and maintained so as to prevent the escape of wastes, liquids, and odors, and to prevent the loss or spillage of wastes during transport, normal handling, and in the event of an accident.

~~B. Containers shall be tested at least once every six months for watertightness. The container owner shall certify that such testing has been conducted in accordance with 9 VAC 20-170-90 A and it has shown that the container is watertight. Such certification including a current testing date shall be legible, accessible, and permanently marked on each container.~~

B. No person shall load solid waste or regulated medical waste into a container to be commercially transported on state waters if the container is not fully in compliance with 9 VAC 20-170 [~~85-70~~]. No person shall unload solid waste or regulated medical waste from a container that is not fully in compliance with 9 VAC 20-170[~~85-70~~]. No person shall receive or unload from a vessel commercially transporting container containing solid waste or regulated medical waste if the container is not fully in compliance with 9 VAC 20-

170[~~-85-70~~]. No person shall operate a vessel commercially transporting on state waters a container of solid waste or regulated medical waste if the container is not fully in compliance with 9 VAC 20-170[~~-85-70~~.]

C. The owner or operator of a receiving facility shall not receive solid wastes or regulated medical wastes in containers [~~not meeting that do not meet~~] the requirements of this [~~part, nor shall such containers shall~~ chapter. Containers shall not] be received without a properly signed manifest, as specified under subsection D of this section. The owner or operator of the receiving facility shall sign and date each copy of the manifest to certify that the waste covered by the manifest was received [~~noting The owner or operator shall note~~] any significant discrepancies on each copy of the manifest. A copy of the properly signed manifest shall be delivered to the next transporter and, subsequently, [~~delivered to~~] the destination facility.

D. The manifest shall include, but not be limited to, the following information:

1. An identification number of each container [~~and a description of the container to include its total volumetric capacity and weight when empty~~] ;
2. A general description of the wastes being transported (solid wastes or regulated medical wastes) in each container;
3. The total quantity of the wastes being transported in each container;
4. The name and address of the generator, transporter or transporters, receiving facility, and destination facility; and
5. For transportation of solid wastes, a certification statement signed by the generator as follows ~~;~~ :

"I hereby certify that the above-named materials meet the quality acceptable to the destination facility according to applicable federal and state regulations; have been properly described, classified and packaged; and are in proper condition for transportation according to applicable federal and state regulations."

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For transportation of regulated medical waste, a certification statement signed by the generator as follows :

:

"I hereby certify that the above-named materials do not contain any radioactive, explosive, toxic, or hazardous waste as defined by 40 CFR Part 261 or the Virginia Hazardous Waste Management Regulations; have been properly described, classified, packaged, marked and labeled; and are in proper condition for transportation according to applicable federal and state regulations."

6. A certification of receipt of materials signed by the transporter or transporters, the owner or operator of the receiving facility, and the owner or operator of the destination facility.

E. Containers loaded with solid wastes or regulated medical wastes shall not be kept on site more than 72 hours once they arrive at [~~the off-loading~~] receiving facility by vessels during normal operation. In the event of inclement weather or equipment malfunction, containers may be kept on site up to seven days provided a written justification is filed with the appropriate department regional office. Loaded containers shall not be stacked more than two high in the loading or unloading areas.

F. Empty containers shall be maintained watertight to prevent any escape of residual wastes, liquids, and odors during normal handling and in the event of an accident. Any remaining liquids inside of the containers shall be managed as leachate.

G. The owner or operator of a receiving facility shall load and off-load solid wastes or regulated medical wastes to assure that any deposit of solid wastes or regulated medical wastes into state waters or adjoining shorelines is prevented. Receiving facilities shall employ containment or diversionary structures and any other appropriate equipment ~~to limit the dispersion of wastes or leachate in the event of a spill.~~

H. In the event of a deposit of solid wastes or regulated medical wastes into state waters or adjoining shorelines as a result of any facility operation or failure of the integrity of the containers, the owner or operator

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of a receiving facility shall immediately notify the appropriate department regional office, the [~~United State Coast Guard (USCG)~~] National Response Center at 1-800-424-8802, the cleanup contractor as identified under subdivision 3 g of 9 VAC 20-170-110, the emergency coordinator of the local jurisdiction, the local office of the state Health Department, and any federal or state wildlife or natural resource authority or private natural resource management entity whose reserves could be affected by the incident. Such verbal notification shall be followed by written notification to the department regional office within five days.

I. In the event of a deposit of solid wastes or regulated medical wastes into state waters or adjoining shorelines, the owner or operator of a receiving facility shall immediately take all necessary actions, in accordance with the receiving facility's Response and Mitigation Plan as specified under subdivision 3 of 9 VAC 20-170-110, to contain and remove such waste.

J. The owner or operator of the receiving facility shall have a placard located at the facility where it will be readily visible to persons involved in waste handling indicating the individuals responsible for notifying the appropriate department regional office, the [~~USCG~~] National Response Center, and the cleanup contractor as identified under subdivision 3 g of 9 VAC 20-170-110, in the event of a deposit of solid wastes or regulated medical wastes into state waters or adjoining shorelines.

1. The telephone numbers for the individuals responsible for notification shall be visibly and legibly displayed on the placard.
2. The telephone numbers for the individuals responsible for notification shall be designated by the owner or operator of the receiving facility.
3. The individuals responsible for notification must be a supervisory employee responsible for waste handling activities or an officer of the company owning or operating the receiving facility who is responsible for some aspect of waste handling activities (e.g., vice president in charge of operations).

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K. Adequate numbers and types of properly maintained equipment shall be available for operation. Provision shall be made for substitute equipment to be available within 24 hours should the former become inoperable or unavailable. In the event of a deposit of solid wastes or regulated medical wastes into state waters or adjoining shorelines, and initiation of cleanup activities, operation shall not be continued unless adequate cleanup equipment is available on site and cleanup is proceeding in an effective and expeditious manner.

L. The receiving facility shall operate under the direct supervision of a Class I waste management facility operator licensed by the Board for Waste Management Facility Operators. During the facility's operating hours, the licensed operator shall be present at the facility or be readily available to direct the facility personnel in the proper handling of solid wastes or regulated medical wastes.

M. An operating record to include date, quantity by weight or volume, source and type of the wastes received and processed shall be maintained on site for at least three years and be made available to the department for examination or use when requested. A copy of the manifest shall be maintained in the operating record.

N. The owner or operator shall conduct daily inspections of the receiving facility. The inspection shall include, but is not limited to, visual inspection of the integrity of the containers, ~~equipments~~ equipment, and loading, unloading, and receiving areas to ensure that the provisions of this chapter are met. The owner or operator shall keep an inspection log or summary including at least the date and time of inspection, the printed name and the handwritten signature of the inspector, a notation of observations made and the date and nature of any repairs or corrective action. The log or summary shall be kept on site as part of the operating record.

O. All new or modified receiving facilities shall be inspected by the department to verify that the provisions of this chapter and the permit have been met prior to the commencement of operations. All facilities shall be inspected by the department regional office on at least a quarterly basis to verify that the provisions of this

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chapter and the permit are met. These inspections may include, but are not limited to, documentation verification and visual inspections of the receiving facility and containers.

P. The specifications and methods adopted by the owner or operator to meet these waste handling practice standards shall be identified in the Operation and Maintenance manual.

9 VAC 20-170-110. Operation and Maintenance Manual.

The Operation and Maintenance Manual shall contain the following information:

1. Housekeeping and recordkeeping procedures, on-site traffic control, schedules for waste loading and unloading, wastewater and storm water collections, odor control, noise control, and methods of enforcement of traffic flow plans for the waste transfer vehicles.
2. A description of the basic operation and maintenance measures adopted by the receiving facility to implement the requirements of 9 VAC 20-170-90 and 9 VAC 20-170-100; and
3. A Response and Mitigation Plan. The plan shall include the following information:
 - a. Name of the facility, geographic location on the applicable 7.5 minute USGS quadrangle map, and the access routes to the facility by road and water;
 - b. Name of the facility operators and owners, including address and telephone number;
 - c. A physical description of the facility consisting of a plan of the facility which identifies the waste loading and unloading areas, staging areas, cranes, wharves, roadways, pollution control devices, diversionary structures within the facility boundary, and adjacent easements and leased property;
 - d. A complete listing, including 24-hour numbers, of all federal, state and local agencies, to be notified in the event of a deposit of wastes to state waters or adjoining shorelines due to any facility operation or failure of the integrity of the containers. This listing shall include the appropriate department regional

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office, the [~~USCG~~] National Response Center, the cleanup contractor as identified under subdivision 3 g of this section, the emergency coordinator of the local jurisdiction, the local office of the state Health Department and any federal or state wildlife or natural resource authority or private natural resource management entity whose reserves could be affected by the incident described in 9 VAC 20-170-100 H. This list shall also include the adjacent property owners;

e. The position title of the individuals responsible for making the required notifications and a copy of the notification check-off list;

f. The position title, address and phone number of the individuals authorized to act on behalf of the owner or operator to initiate containment and cleanup actions and ensure compliance with all applicable federal, state and local requirements. These individuals shall be available on a 24-hour basis to ensure the appropriate containment and cleanup actions are undertaken;

g. Identification and [~~insurance assurance~~] by contract or other means acceptable to the department of the availability of the facility and/or private personnel and equipment necessary to contain and cleanup the worst case circumstance. This contract or agreement shall ensure a certain response within the shortest feasible time. The department will accept a letter of understanding between the operator and the response contractors which attests to this capability being readily available. Membership in a cleanup cooperative or other response organization is also acceptable. A listing of contractor or cooperative capabilities, including an inventory of the on-site and off-site equipment, and means to conduct a monitoring program to assess the effects of the incident, shall be included;

h. Assessment of the worst case circumstance, including measures to limit the dispersion of floating and sinking wastes as well as those wastes that are miscible in water, the recovery strategy, disposal plan and monitoring plan. For the purpose of this chapter, the worst case circumstance is (i) the instantaneous release of the contents of the ~~largest maximum number of waste handling container capable of utilization~~

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at the facility; containers that may be on site at any given time and (ii) the instantaneous release of the contents of the maximum number of waste handling containers that may be on a barge traveling to the facility which is deposited into ~~near shore~~ state waters. Facilities shall take into consideration the types of wastes that may be solid wastes or regulated medical wastes; the forms of wastes that may be solid, liquid, semisolid or contained gaseous materials; and the dispersion of the wastes due to downstream flow or tidal influences within 72 hours of the event;

i. Identification and location of natural resources at risk due to the worst case circumstance listed in subdivision 3 h of this section. These resources are, but are not limited to, all surface waters as indicated on the applicable USGS quadrangle maps, groundwater, public and agricultural water supplies, public and private water wells and springs, state or federal wildlife management areas, wildlife refuges, public or private management areas, sanctuaries, shoreline habitats, wetlands, property listed on the National Register of Historic Places and property listed on the National Register of Natural Landmarks. The identification shall include priorities for protection, the means of protecting these resources and respective monitoring programs to ensure protection and recovery of these resources and their beneficial uses; and

j. Identification of risks to human health due to the worst case circumstance listed in subdivision 3 h of this section. These risks shall include water borne and air borne pathogens; alterations of the physical, chemical or biological properties of the affected waters that would deny or prevent full beneficial uses of these waters; and the impairment or destruction of commercial or recreational fisheries, including shellfish. The identification shall include priorities of the risks and means of notification of closure of affected areas, if necessary. The facility shall provide for the monitoring and restoration of the affected areas in cooperation with the local emergency coordinator, health department and fisheries regulatory agencies.

Article 2.Facility Closure.**9 VAC 20-170-120. Closure standards.**

A. The owner or operator shall close the receiving 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 escape of residual waste, surface runoff, or waste decomposition products to the groundwater, surface water, or to the atmosphere.

B. At closure, the owner or operator shall remove or decontaminate all waste residues, contaminated containment systems, containers, contaminated subsoils, and structures and equipment contaminated with waste.

C. The owner or operator shall complete closure activities in accordance with the closure plan and within six months after receiving the final volume of wastes.

9 VAC 20-170-130. Closure plan and amendment of plan.

A. The owner or operator of a receiving facility shall prepare a written closure plan. The plan shall identify the steps necessary to completely close the facility at its full operation. The closure plan shall include, at least a schedule for final closure including, as a minimum, the anticipated date when wastes will no longer be received, the date when completion of final closure is anticipated, and intervening milestone dates which will allow tracking of the progress of closure.

B. The owner or operator with the approval of the department may amend his closure plan at any time during the active life of the facility. At least 45 days prior to the submittal of the amended plan for the department's approval, the owner or operator shall publish a notice in a major local newspaper of general circulation informing the public that he intends to amend the closure plan. Results of the public participation

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effort including a summary of and the permittee's response to the comments received shall be submitted along with the amended closure plan for approval. The approved plan shall be placed in the operating record.

C. At least 90 days prior to beginning closure of the receiving facility, the owner or operator shall notify the [~~director~~ department] of the intent to close.

9 VAC 20-170-140. Inspection.

The department shall inspect all receiving facilities that have been closed to determine if the closing is complete and adequate. It shall notify the owner of a closed facility, in writing, if the closure is satisfactory, and shall order necessary construction or such other steps as may be necessary to bring unsatisfactory sites into compliance with this part.

[~~PART III~~ **PART IV**].

PERMITTING OF [~~OFF-LOADING~~] RECEIVING FACILITIES.

9 VAC 20-170-150. Applicability.

A. This part applies to a receiving facility [() as defined under 9 VAC 20-170-10 [) ~~that off-loads solid waste or regulated medical waste~~] and its owner or operator.

B. Each [~~off-loading~~] receiving facility's permit shall be limited to one site and shall be nontransferable between sites.

9 VAC 20-170-160. Compliance dates.

No new or existing facilities shall receive any solid wastes or regulated medical wastes from a ship, barge, or other vessel without a permit issued in accordance with this part.

9 VAC 20-170-170. Permit by rule.

The owner or operator of the [~~off-loading~~] receiving facility shall be deemed to have a solid waste management facility permit if the provisions in 9 VAC 20-170-180 and 9 VAC 20-170-190 are met.

9 VAC 20-170-180. Permit certification procedures.

A. The owner or operator of a receiving facility shall submit the permit certification fee in accordance with 9 VAC 20-170-190 and a certification package including the following documents:

1. A notice of intent which notifies the [~~director~~ ~~department~~] of his intent to operate such a facility and a statement certifying that the siting standards have been met by the facility in accordance with 9 VAC 20-170-80;
2. Plans and specifications of the receiving facility and a certificate signed by a registered professional engineer that the facility has been designed and constructed in accordance with 9 VAC 20-170-90 ~~C, D and E~~;
3. An Operation and Maintenance Manual and a statement certifying that the Operation and Maintenance Manual will be implemented prior to the commencement of operation in accordance with 9 VAC 20-170-110;
4. A certification from the governing body of the county, city or town in which the facility is or is to be located that the location and operation of the facility is consistent with all applicable ordinances. If the applicant proposes to locate the facility on property not governed by any county, city or town zoning ordinance, a certification from the governing body that it has held a public hearing to receive public comment on the proposed facility;
5. A disclosure statement for all key personnel;

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6. Results of the public participation effort conducted in accordance with the requirements contained in subsection B of this section, including a summary of and the applicant's response to the comments received; and

7. A closure plan and a statement certifying that a closure plan has been prepared in accordance with 9 VAC 20-170-120.

B. Public participation.

1. Before the initiation of any construction of a new receiving facility or operation of an existing facility, the owner or operator shall publish a notice as a display ad in a major local newspaper of general circulation informing the public that he intends to construct and/or operate a facility eligible for a permit by rule. The notice shall include:

a. A brief description of the new or existing facility;

b. A statement that the purpose of the public participation is to acquaint the public with the technical aspects of the facility and how the standards and the requirements of this chapter will be met;

c. Announcement of a 30-day comment period in accordance with subdivision 4 of this subsection, and the name and address of the owner's or operator's representative where comments shall be sent;

d. Announcement of the date, time, and place for a public meeting in accordance with subdivision 3 of this subsection; and

e. Location where copies of the documentation to be submitted to the department in support of the permit by rule notification and any supporting documents can be viewed and copied.

2. The owner or operator shall place a copy of the documentation and support documents in a location accessible to the public in the vicinity of the proposed facility.

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3. The owner or operator shall hold a public meeting not earlier than 15 days after the publication of the notice required in subdivision 1 of this subsection and no later than seven days before the close of the 30-day comment period. The meeting shall be held to the extent practicable in the vicinity of the new or existing facility.

4. The public shall be provided 30 days to comment on the technical and the regulatory aspects of the proposal. The comment period shall begin on the date the owner or operator publishes the notice in the local newspaper.

C. Upon receiving the certifications and other required documents, the director will review and make determination of the technical and administrative completeness of the certification package within 60 days. If the applicant's submission is incomplete, the applicant will be notified that the facility will not be considered to have a permit by rule until the missing certifications or other documents are submitted and approved.

D. Change of ownership. A permit by rule shall not be transferred by the permittee to a new owner or operator without proper notification to and approval by the department. In the event that the property transfer takes place without proper closure, at least 30 days in advance of the property transfer, the new owner shall notify, in writing, the department of the sale, agree to abide by the provisions of this chapter, and submit a disclosure statement and an updated Operation and Maintenance Manual in accordance with subsection A of this section. Upon receipt and approval of such notification, the [~~department~~ director] will release the old owner from [~~its~~ his] closure [~~obligation~~] and issue a new permit by rule in the name of the new owner.

E. Facility modifications. The owner or operator of a facility operating under a permit by rule may modify its permit by rule by furnishing the department the permit fee in accordance with 9 VAC 20-170-190 and a new documentation required under subsection A of this section, as applicable. Whenever modifications in the permit by rule affect the provisions of the approved closure plan, the owner or operator shall also submit an amended closure plan in accordance with 9 VAC 20-170-130 and subdivision A 7 of this section.

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F. Loss of permit by rule status. In the event that a facility operating under a permit by rule violates any applicable siting, design, construction, or closure provisions of [~~Article 1 (9 VAC 20-170-80 et seq.) of Part II~~ of this chapter, or the owner or operator fails to submit the inspection fee in accordance with 9 VAC 20-170-190, the owner or operator of the facility will be considered to be operating an unpermitted facility and shall be required to either obtain a new permit by rule in accordance with subsection A of this section or close the facility in accordance with Article 2 [~~(9 VAC 20-170-120 et seq.) of Part II~~] of this chapter.

G. Revocation or amendment of permits. Any permit issued by the director pursuant to this chapter may be revoked, amended or suspended in accordance with the provisions of [~~Chapter 1.1:1 (9-6.14:1 et seq.) of Title 9 § 2.2-4000 et seq.~~] of the Code of Virginia.

9 VAC 20-170-190. Permit fee requirements.

A. Purpose. The purpose of this section is to establish schedules and procedures pertaining to the payment and collection of fees from any owner or operator of a receiving facility seeking a new permit by rule or seeking a modification to an existing permit by rule. It also establishes schedules and procedures pertaining to the payment and collection of inspection fees from any owner or operator of a receiving facility.

B. Payment, deposit and use of fees.

1. Due date. All permit certification fees are due on the submittal day of the certification package. The inspection fees for the first year or portion of a year are due as part of the permit certification. Thereafter, all inspection fees are due March 1.

2. Method of payment. Fees shall be paid by check, draft or postal money order made payable to "Treasurer of Virginia/DEQ", and shall be sent to the Department of Environmental Quality, Receipts Control, P.O. Box 10150, Richmond, VA 23240.

3. Incomplete payments. All incomplete payments will be deemed nonpayments.

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4. Late payment. No certifications will be deemed complete until the department receives proper payment is received by the department. In the event that the inspection fee is not received by the department on or prior to March 1, the owner or operator of the facility will be considered to be operating an unpermitted facility.

~~[5. Deposit and use of fees. The department shall collect the permit fees pursuant to this chapter and deposit them into a separate account within the Virginia Waste Management Board Permit Program Fund. All moneys collected shall be used solely for the purposes of this chapter.]~~

[6 5] Fee schedules. Each certification for a permit by rule or each certification for a modification to a permit by rule is a separate action and shall be assessed a separate fee. The amount of the permit certification fee is based on the costs associated with the permitting program required by this chapter. An inspection fee will be collected annually and its amount is based on the costs associated with the inspections program conducted by the department on at least a quarterly basis. The fee schedules are shown in the following table.

<u>Type of Action</u>	<u>Fee</u>
<u>Initial certification</u>	<u>\$6,200</u>
<u>Modification</u>	
<u>with a closure plan</u>	<u>\$2,500</u>
<u>amendment</u>	
<u>without a closure plan</u>	<u>\$1,250</u>
<u>amendment</u>	
<u>Inspections</u>	<u>\$10,000</u>

[PART IV.

STANDARDS FOR VESSELS TRANSPORTING SOLID WASTES OR REGULATED MEDICAL

WASTES.

9 VAC 20-170-200, 9 VAC 20-170-210, 9 VAC 20-170-220 and 9 VAC 20-170-230

PART V.

REGISTRATION OF VESSELS TRANSPORTING SOLID WASTES OR REGULATED MEDICAL

WASTES.

9 VAC 20-170-240, 9 VAC 20-170-250 and 9 VAC 20-170-250]

[PART V

OFF-LOADING FEES COLLECTED BY RECEIVING FACILITIES

9 VAC 20-170-195 Off-loading fee requirements (NOTE: Effective date of 9 VAC 20-170-70
Suspended. Text and Suspension Notice published in the Virginia Register of Regulations in 19:18 on June
2, 2003.)]

PART VI.

FINANCIAL RESPONSIBILITY REQUIREMENTS FOR VESSELS TRANSPORTING SOLID

WASTES OR REGULATED MEDICAL WASTES.

9 VAC 20-170-270. General purpose and scope.

A. This part sets forth the procedures by which an owner and operator of a vessel transporting solid wastes
or regulated medical wastes upon the navigable waters of the Commonwealth, to the extent allowable under
state law, may establish and maintain evidence of financial responsibility to cover liability of the owner and
operator arising from a deposit of solid wastes or regulated medical wastes into state waters.

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B. In order to ensure that the costs associated with protecting public health, welfare and property from the consequences of such a deposit of solid wastes or regulated medical wastes are to be recovered from the owner and operator of a vessel transporting solid wastes or regulated medical waste, the owner and operator of such a vessel shall obtain one or a combination of the financial mechanisms described in this part.

C. The director may reject the proposed evidence of financial responsibility if the mechanism or mechanisms submitted do not adequately ensure that funds will be available to accomplish the purpose of this part.

9 VAC 20-170-280. Applicability

A. This part applies to all persons who own or operate a vessel transporting solid wastes or regulated medical wastes [for the purposes of commercial carriage as cargo] on the navigable waters of the Commonwealth, to the extent allowable under state law, unless otherwise exempt.

B. For purposes of this part, when a vessel is chartered by demise, the demise charterer rather than the title owner is the owner of the chartered vessel.

C. Owners or operators of such vessels 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 part.

D. If separate, nonexempt persons own or operate a vessel subject to this part, the owner and operator shall be jointly and severally liable for meeting the requirements of this part. If either the owner or operator is exempt, as provided in subsection C of this section, then the other person shall be responsible for meeting the requirements of this part. If both the owner and the operator are exempt, as provided in subsection C of this section, then the requirements of this part are not applicable to that vessel.

9 VAC 20-170-290. Certificate of Financial Responsibility.

A. No vessel shall transport solid waste or regulated medical waste upon the navigable waters of the Commonwealth, to the extent allowable under state law, without a valid Certificate of Financial Responsibility (certificate).

B. Application requirements.

1. Each owner and operator shall file an application for a certificate with the department. If the owner and operator are the same entity, only one application is required to be filed with the department. The application shall be in the standard form approved by the board. The application and all supporting documents shall be in English. All monetary terms must be expressed in United States dollars.

2. A certificate applicant may include more than one vessel on the application.

3. Each completed application form shall be accompanied by valid evidence of financial responsibility from the certificate applicant in accordance with 9 VAC 20-170-310, in the amounts specified in 9 VAC 20-170-300 and valid evidence of liability coverage in accordance with 9 VAC 20-170-330.

4. An authorized official of the certificate applicant shall sign the application. The title of the signer must be shown in the space provided on the application. The application must be accompanied by a written statement providing authority to sign, where the signer is not disclosed as an individual (sole proprietor) certificate applicant, a partner in a partnership certificate applicant, or a director, chief executive officer, or any other duly authorized officer of a corporate certificate applicant.

5. If, before the issuance of a certificate, the certificate applicant becomes aware of a change in any of the facts contained in the application or supporting documentation, the certificate applicant shall, within five business days of becoming aware of the change, notify the [~~Director~~ department], in writing, of the change.

C. Issuance and carriage requirements.

1. Within 60 days of receipt of a complete application and acceptable evidence of financial responsibility in accordance with subsection B of this section from both the owner and operator, the director will issue a Certificate of Financial Responsibility. The original certificate or a certified copy shall be carried aboard the vessel covered by the certificate and a copy shall remain on file with the department. The director shall issue an individual certificate for each vessel for which a completed application has been submitted by the owner and the operator.

2. Each vessel transporting solid wastes or regulated medical waste on the navigable waters of the Commonwealth, to the extent allowable under state law, shall carry an original or certified copy of a valid certificate in the name of the owner and operator. The carriage of a valid certificate or certified copy indicates compliance with this chapter. Failure to carry a valid certificate or certified copy subjects the vessel to enforcement action, except where a certificate is removed temporarily from a vessel for inspection by a state official.

3. The certificate applicant or an authorized officer of the certificate applicant may submit to the [~~director~~ ~~department~~] a letter requesting that additional vessels be added to a previously submitted application for an individual certificate. The letter must provide the following information: vessel name, vessel owner and operator, gross tonnage, and type of wastes to be transported. The certificate applicant or an authorized official also shall submit or cause to be submitted acceptable evidence of financial responsibility in accordance with subsection B of this section for these additional vessels.

D. Renewal requirements.

1. The Certificate of Financial Responsibility shall expire one year from the date of issuance.

2. Each owner and operator shall file a written application, in the form provided by the department, for the renewal of a certificate at least 60 days before the expiration date of the certificate. The certificate applicant shall identify in the renewal application any changes ~~which~~ that have occurred since the original application for which a certificate was filed, and set forth the correct information in full.

E. Denial or revocation of certificate.

1. The director may deny a certificate when a certificate applicant:

- a. Willfully or knowingly makes a false statement in connection with an application for an initial or renewal certificate;
- b. Fails to establish acceptable evidence of financial responsibility as required by this part;
- c. Fails to comply with or respond to lawful inquiries, regulations, or orders of the department pertaining to the activities subject to this part; or
- d. Fails to timely file requested statements, data, notifications, affidavits, or other information.

2. The director may revoke a certificate when a certificant:

- a. Willfully or knowingly makes a false statement in connection with an application for an initial or a renewal certificate, or in connection with any other filing required by this part;
- b. Fails to comply with or respond to lawful inquiries, regulations, or orders of the department pertaining to the activities subject to this part;
- c. Fails to timely file required statements, data, notifications, or affidavits;
- d. Fails to maintain acceptable evidence of financial responsibility as required by this part; or
- e. Alters any certificate or copy of a certificate except as permitted by this part in connection with notarized certifications of copies.

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3. The director shall advise the certificate applicant or certificant, in writing, of the intention to deny or revoke a certificate under subdivision 1 or 2 of this subsection and shall state the reason therefore. Written advice from the director that an incomplete application will be considered withdrawn unless it is completed within a stated period, shall be the equivalent of a denial.

4. If the intended revocation under subdivision 2 of this subsection is based on failure to timely file the required financial statements, data, notifications, or affidavits, the revocation is effective 10 days after the date of the notice of intention to revoke, unless, before revocation, the certificant demonstrates to the satisfaction of the director that the required documents were timely filed or have been filed.

5. Except in the case of subdivisions 3 and 4 of this subsection, the director may deny or revoke a certificate only after [~~a~~ an informal fact finding] conference, or a waiver of a conference, in accordance with [~~9-6.14:1 et seq.~~ § 2.2-4000 et seq.] of the Code of Virginia. A certificate subject to revocation under this subdivision remains valid until the director issues a written decision revoking the certificate.

9 VAC 20-170-300. Amount and scope of financial responsibility requirement.

Each owner and operator of a vessel transporting solid waste and/or regulated medical waste upon the navigable waters of the Commonwealth, to the extent allowable under state law, shall demonstrate financial responsibility for the total cost of cleanup and containment of a solid waste and/or regulated medical waste deposit into state waters, and the potential impairment of beneficial use of these waters in the following amounts:

1. For each owner and operator of a vessel transporting solid wastes only: \$1 million or \$300 per gross ton of such vessel, whichever is larger. If the owner or operator owns or operates more than one vessel transporting waste, the amount of financial responsibility shall equal \$1 million or \$300 per gross ton of the owned or operated vessel with the largest transporting capacity, whichever is larger.

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2. For each owner and operator of a vessel transporting regulated medical waste or a combination of regulated medical waste and solid waste: \$5 million or \$300 per gross ton of such vessel. If the owner or operator owns or operates more than one vessel transporting waste, the amount of financial responsibility shall equal \$5 million or \$300 per gross ton of the owned or operated vessel with the largest transporting capacity, whichever is larger.

9 VAC 20-170-310. Allowable financial mechanisms.

A. Each owner and operator shall demonstrate financial responsibility by establishing and maintaining a financial mechanism, or combination of mechanisms, in the amounts specified in 9 VAC 20-170-300. The mechanisms used to demonstrate financial responsibility shall ensure that the funds necessary to meet the costs of cleanup and containment and the restoration of beneficial uses of state waters will be available whenever they are needed. The owner and operator shall provide continuous coverage until released by the director.

B. Each owner and operator shall submit the original financial mechanism or combination of mechanisms together with the application for a certificate as specified in 9 VAC 20-170-290 B.

C. Owners and operators shall demonstrate financial responsibility using one or more of the following financial mechanisms:

1. Trust fund.

a. The owner or operator of a vessel may satisfy the requirements of subsection A of this section by establishing a trust fund that conforms to the requirements of this section and by submitting an originally signed trust agreement to the [~~director~~ department]. 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 a federal agency or the State Corporation Commission.

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b. The trust fund shall be irrevocable and shall continue until terminated at the written direction of the director and the trustee. Upon termination of the trust, all remaining trust property, less final trust administration expenses, shall be delivered to the owner or operator. The wording of the trust agreement must be identical to the wording specified in APPENDIX I, except that instructions in brackets must be replaced with the relevant information and the brackets deleted, and must be accompanied by a formal certification of acknowledgment as specified in APPENDIX I.

c. The owner or operator initially shall submit the original, signed trust agreement to the [~~director~~ department] as a part of the application for a certificate as specified in 9 VAC 20-170-290 B.

d. The irrevocable trust fund, when established, must be funded for the full financial responsibility amount as specified in 9 VAC 20-170-300, or funded for part of the required amount and used in combination with other mechanisms that provide the remaining required amount.

e. If the value of the trust fund is greater than the required financial responsibility amount as specified in 9 VAC 20-170-300, the owner or operator may submit a written request to the [~~director~~ department] for release of the excess.

f. If another financial mechanism as specified in this part is substituted for all or part of the trust fund, the owner or operator may submit a written request to the [~~director~~ department] for release of the excess.

g. Within 60 days after receiving a request from the owner or operator for release of funds as specified in subdivision 1 e or 1 f of this subsection, the director will instruct the trustee to release to the owner or operator such funds as the director deems appropriate, if any, in writing.

h. Whenever the required financial responsibility amount as specified in 9 VAC 20-170-300 changes after the establishment of the trust fund, the owner or operator shall compare the new amount with the

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trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the required amount, the owner or operator shall, within 60 days of the change in the required amount specified in 9 VAC 20-170-300, deposit a sufficient amount into the fund so that its value after payment at least equals the new financial responsibility amount, or obtain another financial mechanism or combination of mechanisms as specified in this part to cover the difference. If the value of the trust fund is greater than the new financial responsibility amount, the owner or operator may submit a written request to the [~~director~~ department] for release of the amount that is in excess of the new amount.

i. After beginning a cleanup or containment operation in accordance with the approved Response and Mitigation Plan, an owner or operator or any other person authorized to conduct cleanup or containment, may request reimbursement for cleanup or containment expenditures by submitting itemized bills to the [~~director~~ department]. Within 60 days after receiving bills for cleanup or containment activities, the director shall instruct the trustee to make reimbursements in those amounts as the director determines are justified.

j. If [~~at any time after the trust is funded, the amount in the trust is reduced below the full amount of coverage required; the director approves reimbursements from the fund,~~ the owner or operator providing the mechanism shall by the anniversary date of the trust:

(1) Replenish the value of the trust to equal the full amount of coverage required pursuant to ~~9 VAC 20-170-230~~ 9 VAC 20-170-300; or

(2) Acquire another financial responsibility mechanism for the amount by which the funds in the trust have been reduced.

2. Standby trust fund.

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a. An owner or operator using any one of the mechanisms authorized by subdivisions 3 and 4 of this subsection or 9 VAC 20-170-330 C 3 and 4 must establish a standby trust fund when the mechanism is acquired and submit the original standby trust agreement to the [~~director~~ department]. The trustee of the standby trust fund must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or the State Corporation Commission.

b. The standby trust agreement or trust agreement must be worded identically as specified in APPENDIX I or APPENDIX VI, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted, and accompanied by a formal certification of acknowledgment as specified in APPENDIX I and APPENDIX VI.

c. An owner or operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this section.

3. Surety bond guaranteeing payment.

a. An owner or operator may satisfy the requirements of subsection A of this section by obtaining a surety bond that conforms to the requirements of this section and submitting the original bond to the [~~director~~ department]. The surety company issuing the bond shall be licensed to operate as a surety in the Commonwealth of Virginia and be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

b. The surety bond must be worded identically as specified in APPENDIX II, except that instructions in brackets must be replaced with the relevant information and the brackets deleted.

c. The owner or operator initially shall submit the original bond to the [~~director~~ department] as a part of the application for a certificate as specified in 9 VAC 20-170-290 B.

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- d. The surety bond shall name the vessel operator or owner as the principal and name the Commonwealth of Virginia as the obligee.
- e. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. The surety's liability is limited to the penal sum of the bond.
- f. The owner or operator who uses a surety bond to satisfy the requirements of subsection A of this section must establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the director under 9 VAC 20-170-360. This standby trust fund shall meet the requirements specified in subdivision 2 of this subsection.
- g. Whenever the financial responsibility amount specified in 9 VAC 20-170-300 increases to an amount greater than the penal sum of the bond, the owner or operator shall, within 60 days of the increase, cause the penal sum of the bond to be increased to an amount at least equal to the amount specified in 9 VAC 20-170-300 or obtain another financial mechanism or combination of mechanisms as specified in this [[article part](#)] to cover the increase. Whenever the financial responsibility amount specified in 9 VAC 20-170-300 decreases, the penal sum of the bond may be reduced to the new amount following written approval by the director. The surety shall send the notice of an increase or decrease in the amount of the bond to the [[director department](#)] by certified mail within 60 days of the change.

4. Letter of credit.

- a. An owner or operator may satisfy the requirements of subsection A of this section 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 department](#)] . The issuing institution shall be a bank or other

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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 owner or operator initially shall submit the original letter of credit to the [~~director~~ department] as a part of the application for a certificate as specified in 9 VAC 20-170-290 B.

c. 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 amount specified in 9 VAC 20-170-300. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one year. If the letter of credit is canceled by the issuing institution, the owner or operator shall obtain alternate evidence of financial responsibility in accordance with this part.

d. The letter of credit must be worded identically as specified in APPENDIX III, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

e. An owner or operator who uses a letter of credit to satisfy the requirements of subsection A of this section must also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the board will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the board under 9 VAC 20-170-360. This standby trust fund must meet the requirements specified in subdivision 2 of this subsection.

f. Whenever the financial responsibility amount specified in 9 VAC 20-170-300 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 amount specified in 9 VAC 20-170-300 or obtain another financial mechanism or combination of mechanisms as specified in this part to

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cover the increase. Whenever the financial responsibility amount specified in 9 VAC 20-170-300 decreases, the letter of credit may be reduced to the new amount 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~~ department] by certified mail within 60 days of the change.

9 VAC 20-170-320. Multiple mechanisms.

An owner or operator may satisfy the requirements of this part by establishing more than one financial mechanism, except that mechanisms guaranteeing performance, rather than payment, may not be combined with other mechanisms. The mechanisms shall be as specified in 9 VAC 20-170-310 C 1 through 4, except that evidence of financial responsibility in the amount at least equal to the amount specified in 9 VAC 20-170-300 may be provided by a combination of mechanisms, rather than a single mechanism.

9 VAC 20-170-330. Liability requirement.

A. The owner and operator of a vessel or a group of such vessels transporting solid wastes or regulated medical wastes upon the navigable waters of the Commonwealth, to the extent allowable under state law, shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden and/or nonsudden accidental occurrences arising from a deposit of solid wastes and/or regulated medical waste into the navigable waters of the Commonwealth. The owner or operator shall establish and maintain liability coverage in the following amounts:

1. For sudden and/or nonsudden accidental occurrences, arising from the deposit of solid wastes from a vessel into the navigable waters of the Commonwealth, to the extent allowable under state law, at least \$1 million per occurrence with an annual aggregate of at least \$2 million, exclusive of legal defense costs; and
2. For sudden and/or nonsudden accidental occurrences, arising from the deposit of regulated medical wastes, or a combination of solid wastes and regulated medical wastes, from a vessel into the navigable

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waters of the Commonwealth, to the extent allowable under state law, at least \$3 million per occurrence with an annual aggregate of at least \$6 million, exclusive of legal defense costs.

B. Liability coverage shall include coverage for waste deposits that occur from loading and unloading the vessels.

C. An owner or operator may demonstrate liability coverage with the following mechanisms:

1. An insurance policy(s) that conforms to the requirements of this section from a qualified insurer.

a. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

b. Each insurance policy must be amended by an endorsement worded in no respect less favorable than the coverage as specified in APPENDIX IV, or evidenced by a certificate of insurance worded identically as specified in APPENDIX V, except that instructions in brackets must be replaced with the relevant information and the brackets deleted.

c. The owner or operator initially shall submit an original certificate of insurance or endorsement and a copy of the entire insurance policy to the [~~director~~ department] as a part of the application for a certificate as specified in 9 VAC 20-170-290 B. After the initial submission, the owner or operator shall submit an original certificate of insurance or endorsement evidencing policy renewal as a part of the application for renewal of the vessel's certificate as specified in 9 VAC 20-170-290 D.

d. An owner or operator shall submit a copy of the entire insurance policy to the department within 30 days of the director's written request.

e. Each insurance policy must be issued by an insurer that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or approved surplus lines insurer in the Commonwealth of Virginia. The insurer shall not be a captive insurer.

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- f. Each insurance policy shall provide first dollar coverage. The insurer shall be liable for the payment of all amounts within any deductible applicable to the policy to the damaged third party, as provided in this chapter, with a right of reimbursement by the insured for any such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in subdivisions 2 through 4 of this subsection.
2. A trust agreement as specified in 9 VAC 20-170-310 C 1 except that the amount of the trust shall be equal to the amount specified in subsection A of this section. The trust agreement must be worded identically as specified in APPENDIX VI, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.
3. A surety bond as specified in [~~9 VAC 20-170-310.C.2~~ 9 VAC 20-170-310.C.3.] except that the amount of the bond shall be equal to the amount specified in subsection A of this section. The surety bond must be worded identically as specified in APPENDIX VII, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.
4. A letter of credit as specified in [~~9 VAC 20-170-310.C.3~~ 9 VAC 20-170-310.C.4.] except that the face amount of the letter of credit shall be equal to the amount specified in subsection A of this section. The letter of credit must be worded identically as specified in APPENDIX VIII, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.
- D. An owner or operator shall notify the [~~director~~ department] in writing within 30 days:
1. Whenever a claim for bodily injury or property damages caused by a waste deposit into state waters is made against the owner or operator or an instrument providing financial responsibility for liability coverage under subsection A of this section; or

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2. Whenever the amount of financial responsibility for liability coverage under subsection A of this section provided by a financial instrument authorized by subsection C of this section is reduced.

E. An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, trust funds, surety bonds, and letters of credit. The amounts of coverage demonstrated shall total at least the minimum amounts required by subsection A of this section. If the owner or operator demonstrates the required coverage through the use of a combination of financial responsibility mechanisms under subsection C of this section, the owner or operator shall specify at least one such mechanism as "primary" coverage and shall specify other mechanism as "excess" coverage.

9 VAC 20-170-340. Substitution of financial responsibility mechanisms by owner or operator.

A. An owner or operator may substitute any alternate financial responsibility mechanism as specified in this part, provided that at all times the owner or operator maintains an effective financial responsibility mechanism or combination of mechanisms that satisfies the requirements of 9 VAC 20-170-310 C if the mechanism or mechanisms are submitted to comply with the requirements of 9 VAC 20-170-310 A and [~~subsection C of this section~~ 9 VAC 20-170-330] if the mechanism or mechanisms are submitted to comply with the requirements of [~~subsection A of this section~~ 9 VAC 20-170-330.A].

B. After obtaining an alternate financial responsibility mechanism, or combination of mechanisms, as specified in this part and written approval from the [~~Director~~ director], an owner or operator may cancel [~~a the replaced~~] financial responsibility mechanism by providing notice to the provider of financial responsibility.

9 VAC 20-170-350. Cancellation or nonrenewal by a provider of financial responsibility.

A. Except as otherwise provided, a provider of financial responsibility may cancel or fail to renew a financial responsibility mechanism by sending a notice of termination by certified mail to the owner or operator and the [~~director~~ department].

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1. Termination of a surety bond or a letter of credit may not occur until 120 days after the date on which the [~~director~~ department] and the owner or operator receive the notice of termination, as evidenced by the return receipts.

2. Termination of insurance coverage, except for nonpayment or misrepresentation by the insured may not occur until 60 days after the date on which the [~~director~~ department] and the owner or operator receive the notice of termination, as evidenced by the return receipts. Termination for nonpayment of premium or misrepresentation by the insured may not occur until a minimum of 30 days after the date on which the [~~director~~ department] and the owner or operator receives the notice of termination, as evidenced by the return receipts.

B. If a provider of financial responsibility cancels or fails to renew, the owner or operator must obtain alternate coverage as specified in this section within 60 days after receipt of the notice of termination. [~~If the owner or operator fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the owner or operator must immediately notify the board of such failure and submit:~~

~~1. The name and address of the provider of financial responsibility;~~

~~2. The effective date of termination; and~~

~~3. The evidence of the financial responsibility mechanism subject to the termination maintained in accordance with 9 VAC 20-170-310 A or 9 VAC 20-170-340 A.]~~

9 VAC 20-170-360. Drawing on a financial responsibility mechanism.

A. The director may require the surety or institution issuing a letter of credit to place the amount of funds stipulated by the board, up to the limit of funds provided by the financial responsibility mechanism, into the standby trust if:

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1. a. The owner or operator fails to obtain and submit an alternate financial responsibility mechanism, or combination of mechanisms within 60 days after receiving notice of cancellation of the surety bond or letter of credit described in this subsection; or

b. The director determines or ~~suspects~~ ~~has a reasonable belief~~ that a deposit of solid wastes and/or regulated medical wastes into state waters has occurred and so notifies the owner and operator, or the owner or operator has notified the [~~director department pursuant to 9 VAC 20-170-210~~] of a waste deposit into state waters from a vessel covered by the mechanism; or

2. The conditions of subsection B of this section are satisfied.

B. The director may draw on a standby trust fund or funds when:

1. The director makes a final determination that a waste deposit has occurred and immediate or long-term cleanup and/or containment for the waste deposit is needed, or the beneficial uses of state waters have been impaired as a result of the waste deposit and the owner and operator, after appropriate notice and opportunity to comply, have not conducted cleanup or containment [~~as required under 9 VAC 20-170-210~~ ~~H~~]; or

2. The director has received either:

a. Certification from the owner or operator and the third-party liability claimants and from attorneys representing the owner or operator and the third-party liability claimants that a third-party liability claim should be paid. The certification must be worded identically as specified in APPENDIX IX, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted;

b. A valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by a waste deposit from a vessel covered by financial responsibility under this part and the board determines that the owner or operator has not satisfied the judgment.

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C. If the director determines that the amount of cleanup and/or containment costs or beneficial use impact costs and third-party liability claims eligible for payment under subsection B of this section may exceed the balance of the standby trust fund and the obligation of the provider of financial responsibility, the first priority for payment shall be the cleanup and containment activities necessary to protect human health and the environment. The board shall direct payment from the standby trust fund for third-party liability claims in the order in which the board receives certifications under subdivision B 2 a of this section and valid court orders under subdivision B 2 b of this section.

9 VAC 20-170-370. Replenishment of letters of credit or surety bonds.

A. If at any time after a standby trust is funded upon the instruction of the director with funds drawn from a letter of credit or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the owner or operator providing the mechanism shall by the anniversary date of the financial mechanism from which the funds were drawn:

1. Replenish the value of the financial responsibility mechanism to equal the full amount of coverage required; or
2. Acquire another financial responsibility mechanism for the amount by which funds in the standby trust have been reduced.

B. For purposes of this section, the full amount of coverage required is the amount of coverage to be provided under 9 VAC 20-170-300 [, if the owner or operator is demonstrating for cleanup or containment,] or 9 VAC 20-170-340 A if the owner or operator is demonstrating financial responsibility for liability coverage. If a combination of mechanisms was used to provide the financial responsibility funds [~~which~~ that] were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

9 VAC 20-170-380. Incapacity of owners, operators or financial institution.

A. An owner or operator shall notify the [~~director~~ department] by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding.

B. An owner or operator who fulfills the requirements of this part by obtaining a trust fund, a letter of credit, a surety bond, or an insurance policy, will be deemed to be without the required financial responsibility in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing a surety bond, letter of credit, or insurance policy to issue such mechanisms. The owner or operator shall establish another financial responsibility mechanism, or combination of mechanisms, within 60 days of such event. If the owner or operator does not obtain alternate coverage within 60 days after such notification, he shall immediately notify the [~~director~~ department] in writing.

9 VAC 20-170-390. Service of process.

A. When executing the forms required by this part, each certificate applicant shall designate on the face of the application, a person located in Virginia as its agent for service of process for purposes of this part and for receipt of notices of designations and presentations of claims under this regulation. Each designated agent shall acknowledge [his designation by providing] the [~~director~~ department] with a letter showing that he has agreed [~~in advance~~] to act as the registered agent for service of process for the certificate applicant or certificant in question.

B. If any certificate applicant or certificant desires, for any reason, to change any designated agent, the certificate applicant or certificant shall notify the [~~director~~ department] of the change and furnish the relevant information, including the new agent's acknowledgment in accordance with subsection A of this section. In the

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event of death, disability, or unavailability of a designated agent, the certificate applicant or certificant shall designate another agent in accordance with paragraph A of this section within 10 days of knowledge of any such event. The certificate applicant or certificant shall submit the new designation to the [~~director department~~] . The director may revoke a certificate if a certificate applicant or certificant fails to designate and maintain an agent for service of process.

C. If a designated agent can not be served because of death, disability, unavailability, or similar event and another agent has not been designated under this section, then service of process on the director will constitute valid service of process. Service of process on the director will not be effective unless the server

1. Sends the certificate applicant or certificant by registered mail, at its last known address on file with the [~~director department~~] a copy of each document served on the director; and
2. Attests to this registered mailing, at the time process is served upon the director, indicating that the intent of the mailing is to effect service of process on the certificate applicant or certificant and that service on the designated agent is not possible, stating the reason why.

9 VAC 20-170-400. Release from financial responsibility requirements.

Within 60 days after termination of vessel registration is accomplished [~~pursuant to 9 VAC 20-170-250 G~~] , the director shall notify the owner and operator in writing that they are no longer required to maintain financial responsibility and liability coverage for the vessel. Such notice shall release the owner and operator only from the requirements for financial responsibility for the vessel; it does not release him from legal responsibility for meeting any other requirements of this chapter.

APPENDIX I.

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

TRUST AGREEMENT

Trust agreement, the "Agreement," entered into as of [date] by and between [name of the vessel 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 and operator of a vessel transporting solid and/or regulated medical waste upon the navigable waters of the Commonwealth must provide assurance that funds will be available when needed for cleanup or containment of a waste deposit into such waters,

[Insert the following paragraph if this Trust is established as the financial responsibility mechanism pursuant to 9 VAC 20-170-310 C 1:

Whereas, the Grantor has elected to establish a trust to assure all or part of such financial responsibility for the vessels identified herein,]

[Insert the following paragraph if this Trust is established as a standby trust agreement:

Whereas the Grantor has elected to establish [insert either "a surety bond," or "letter of credit"] to provide all or part of such financial responsibility for its covered vessels and is required to establish a standby trust fund able to accept payments from the instrument,]

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:

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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 Vessels. [*Insert the following sentence if this Trust is established as the financial responsibility mechanism pursuant to 9 VAC 20-170-310.C.1:*] This Agreement pertains to vessels and amounts identified on attached Schedule A. (NOTE: On Schedule A, for each vessel list, as applicable, the vessel name, gross tonnage, owner and operator and the amount of financial responsibility demonstrated by this Agreement.) []]

[Insert the following paragraph if this Trust is established as a standby trust agreement:

This Agreement pertains to the [identify the financial responsibility mechanism, either a letter of credit or a surety bond from which the standby trust fund is established to receive payments.]

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. [Insert the following sentence if this Trust is established as the financial responsibility mechanism pursuant to 9 VAC 20-170-310 C.1: The Fund is established initially as property consisting of cash or securities, which are acceptable to the Trustee, described in Schedule B attached hereto.] [Insert the following sentence if the fund is established as a standby trust fund: The Fund is established initially as a standby to receive payments and shall not consist of

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any property.] 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 Containment and Clean up of a Waste Deposit. 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 cleanup and containment of any deposit of waste from a vessel covered by this Agreement or the costs to restore any beneficial uses impaired by such a waste deposit. The Trustee will reimburse such persons as specified by the Department of Environmental Quality, Commonwealth of Virginia, from the Fund for 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

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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:

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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 State 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

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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 Section 9.

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. If a payment has been made under Section 4 of this Trust, the Grantor shall, on or before the anniversary date of the establishment of the Fund following such a payment, either make payments to the Trustee in amounts sufficient to cause the Trust to return to its value immediately prior to the payments made under Section 4, or shall provide written proof to the Trustee that other financial assurance as required by 9 VAC 20-170-10 et seq. has been obtained equaling the amount necessary to return the Trust to its value prior to the payments made under Section 4. If the Grantor does not either make payments to the Trustee

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or provide the Trustee with such proof, the Trustee shall within 10 working days after the anniversary date of the establishment of the Fund provide a written notice of nonpayment to the Director of the Department of Environmental Quality, Commonwealth of Virginia.

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.

(Signature of Grantor)

By: [Title] _____ [Date]

Attest:

[Title] _____ [Date]

[Seal]

[Signature of Trustee]

By

Attest:

[Title]

[Seal] _____ [Date]

Certification of Acknowledgment:

COMMONWEALTH OF VIRGINIA

STATE OF

CITY/COUNTY OF

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that [she/he] resides at [address]; that [she/he] is [title] of [corporation], the corporation described in and which executed the above instrument; that [she/he] knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that [she/he] signed [her/his] name thereto by like order.

[Signature of Notary Public]

SCHEDULE A

IDENTIFICATION OF COVERED VESSELS

The Trust Agreement, by and between [insert Grantor Name and Trustee Name] dated [insert date of Agreement] is applicable to the following vessels:

Total Financial Responsibility Amount:

<u>Vessel</u>	<u>Gross tons</u>	<u>Owner</u>	<u>[Operator]</u>
<u>Name</u>			

APPENDIX II

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

SURETY BOND GUARANTEEING PAYMENT

Date bond executed:.....

Effective date:.....

Principal: [legal name and business address]

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Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation:.....

Surety: [name and business address]

Vessels covered by this bond (see attached Schedule A):.....

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 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.

Whereas, said Principal is required to have a registration number issued by the Department of Environmental Quality, Commonwealth of Virginia, in order to transport solid or regulated medical waste upon the navigable waters of the Commonwealth, and

Whereas, said Principal is required to provide financial assurance for the cleanup and containment of a waste deposit from a vessel transporting solid and/or regulated medical waste upon the navigable waters of the Commonwealth and for the costs of restoring any beneficial uses impaired as a result of such a waste deposit as a condition of operation pursuant to 9 VAC 20-170-10 et seq.,

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Whereas, said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance.

Now, therefore the conditions of this obligation are such that if the Principal shall faithfully pay or cause to be paid any sum or sums for which the Principal is obligated to pay to clean up or contain a waste deposit from a covered vessel pursuant to 9 VAC 20-170-10 et seq. or restore any beneficial uses impaired from such a deposit, then this obligation, to the extent of such payment, shall be void, otherwise to remain in full force and effect.

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 60 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 vessel identified above.

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 forfeit the penal sum of the bond and deposit the entire amount of the bond into the standby trust established for this purpose.

The Surety hereby waives notification of amendments to any plans, orders, applicable laws, statutes, rules, and regulations and agrees that such amendments shall in no way alleviate its obligation on this bond.

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 exceed the amount of said penal sum.

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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 during the 120 days beginning on the date of receipt of the notice of cancellation by the [~~director department~~] as shown on the signed return receipt.

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 Surety 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 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.

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:

SCHEDULE A

IDENTIFICATION OF COVERED VESSELS

Surety Bond [insert bond number] is applicable to the following vessels:

Vessel Gross tons Owner Operator

Name

APPENDIX III

(NOTE: Instructions in ~~parentheses brackets~~ are to be replaced with the relevant information and the ~~parentheses brackets~~ 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 [vessel 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.

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The following vessels are included in the amount of this letter of credit: (See attached Schedule of Covered Vessels).

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; in addition, the unused portion of the credit will be available for an additional 90 days from the stated expiration date upon presentation of your sight draft and your signed statement declaring that there is a compliance procedure pending.

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 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.

Attest:

[Signature and title of official of issuing institution] [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," or "the Uniform Commercial Code"].

SCHEDULE A

IDENTIFICATION OF COVERED VESSELS

Letter of credit [insert letter of credit number] is applicable to the following vessels:

<u>Vessel</u>	<u>Gross tons</u>	<u>Owner</u>	<u>Operator</u>
<u>Name</u>			

APPENDIX IV

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

ENDORSEMENT FOR LIABILITY COVERAGE

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with the insured's obligation to demonstrate financial responsibility under 9 VAC 20-170-330 of the Transportation of Solid and Medical Waste on State Waters Regulations. The coverage applies to the vessels listed on the attached Schedule A for sudden accidental occurrences and/or nonsudden accidental occurrences. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs.

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy to which this endorsement is attached.

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(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in 9 VAC 20-170-330.

(c) Whenever requested by the Director of the Department of Environmental Quality, Commonwealth of Virginia or the Regional Administrator of the U.S. Environmental Protection Agency (EPA), the Insurer agrees to furnish to the director or the Regional Administrator a signed duplicate original of the policy and all endorsements.

(d) Cancellation of this endorsement, whether by the Insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of a covered vessel, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the Director of the Department of Environmental Quality, Commonwealth of Virginia.

(e) Any other termination of this endorsement will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the Director of the Department of Environmental Quality, Commonwealth of Virginia.

Attached to and forming part of policy No. _____ issued by [name of Insurer], herein called the Insurer, of [address of Insurer] to [name of insured] of [address] this _____ day of _____, 19 20 _____. The effective date of said policy is _____ day of _____, 19 20 _____.

I hereby certify that the wording of this endorsement is identical to the wording specified in the relevant regulations of the Department of Environmental Quality, Commonwealth of Virginia, and that the Insurer is

licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

[Signature of Authorized Representative of Insurer]

[Type name]

[Title], Authorized Representative of [name of Insurer]

[Address of Representative]

SCHEDULE A

IDENTIFICATION OF COVERED VESSELS

Insurance Policy [insert policy number] is applicable to the following vessels:

<u>Vessel</u>	<u>Gross tons</u>	<u>Owner</u>	<u>Operator</u>
<u>Name</u>			

APPENDIX V

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

CERTIFICATE OF INSURANCE FOR LIABILITY COVERAGE

1. [Name of Insurer], (the "Insurer"), of [address of Insurer] hereby certifies that it has issued liability insurance covering bodily injury and property damage to [name of insured], (the "insured"), of [address of insured] in connection with the insured's obligation to demonstrate financial responsibility under 9 VAC 20-170-330 of the Transportation of Solid and Medical Waste on State Waters Regulations. The coverage applies to the vessels listed on the attached Schedule A for sudden accidental occurrences and/or nonsudden accidental occurrences. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual

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aggregate" limits of the Insurer's liability], exclusive of legal defense costs. The coverage is provided under policy number _____, issued on [date]. The effective date of said policy is [date].

2. The Insurer further certifies the following with respect to the insurance described in Paragraph 1:

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in 9 VAC 20-170-330.

(c) Whenever requested by the Director of the Department of Environmental Quality, Commonwealth of Virginia or a Regional Administrator of the U.S. Environmental Protection Agency (EPA), the Insurer agrees to furnish to the director or Regional Administrator a signed duplicate original of the policy and all endorsements.

(d) Cancellation of the insurance, whether by the insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of a covered vessel, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the [~~Director of~~] the Department of Environmental Quality, Commonwealth of Virginia.

(e) Any other termination of the insurance will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the [~~Director of~~] the Department of Environmental Quality, Commonwealth of Virginia.

I hereby certify that the wording of this instrument is identical to the wording specified in the relevant regulations of the Department of Environmental Quality, Commonwealth of Virginia, and that the Insurer is

licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

[Signature of authorized representative of Insurer]

[Type name]

[Title], Authorized Representative of [name of Insurer]

[Address of Representative]

SCHEDULE A

IDENTIFICATION OF COVERED VESSELS

Insurance Policy [insert policy number] is applicable to the following vessels:

<u>Vessel</u>	<u>Gross tons</u>	<u>Owner</u>	<u>Operator</u>
<u>Name</u>			

APPENDIX VI

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

TRUST AGREEMENT FOR THIRD PARTY LIABILITY COVERAGE

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the vessel owner or operator], a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the State of _____" or "a national bank"], the "trustee."

Whereas, the Virginia Waste Management Board has established certain regulations applicable to the Grantor, requiring that an owner and operator of a vessel transporting solid and/or regulated medical waste on

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the navigable waters of the Commonwealth must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from the transport by water of solid and/or regulated medical waste,

[Insert the following paragraph if this Trust is established as the financial responsibility mechanism pursuant to 9 VAC 20-170-330 C 2:

Whereas, the Grantor has elected to establish a trust to assure all or part of such financial responsibility for the vessels identified herein,]

[Insert the following paragraph if this Trust is established as a standby trust agreement:

Whereas, the Grantor has elected to establish [insert either “a surety bond,” or “letter of credit”] to provide all or part of such financial responsibility for its covered vessels and is required to establish a standby trust fund able to accept payments from the instrument,]

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term “Grantor” means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term “Trustee” means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Vessels. This Agreement pertains to vessels and amounts identified on attached Schedule A. (NOTE: On Schedule A, for each vessel list, as applicable, the vessel name, gross tonnage, owner and operator and the amount of financial responsibility demonstrated by this Agreement.)

[Insert the following paragraph if this Trust is established as a standby trust agreement:

This Agreement pertains to the [identify the financial responsibility mechanism, either a letter of credit or a surety bond from which the standby trust fund is established to receive payments.]

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, hereinafter the "Fund," for the benefit of any and all third parties injured or damaged by sudden and/or nonsudden accidental occurrences arising from a deposit of solid and/or regulated medical waste into the navigable waters of the Commonwealth from a vessel covered by this Agreement, in the amounts of [insert "\$1 million per occurrence and \$2 million annual aggregate for accidental occurrences arising from a deposit of solid waste into navigable waters" and/or "\$3 million per occurrence and \$6 million annual aggregate for occurrences arising from a deposit of regulated medical waste into navigable waters"], except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert Grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Grantor] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert Grantor] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert Grantor] arising from, and in the course of, employment by [insert Grantor];

or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Grantor].

This exclusion applies:

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(A) Whether [insert Grantor] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft or motor vehicle.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert Grantor];

(2) Premises that are sold, given away or abandoned by [insert Grantor] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert Grantor];

(4) Personal property in the care, custody or control of [insert Grantor];

(5) That particular part of real property on which [insert Grantor] or any contractors or subcontractors working directly or indirectly on behalf of [insert Grantor] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the fund shall be considered [insert "primary" or "excess"] coverage.

[Insert the following sentence if this Trust is established as the financial responsibility mechanism pursuant to 9 VAC 20-170-330 C 2: The Fund is established initially as property consisting of cash or securities, which are acceptable to the Trustee, described in Schedule B attached hereto.] [Insert the following sentence if the fund is established as a standby trust fund: The Fund is established initially as a standby to receive payments and shall not consist of any property.] Such property and any other property subsequently transferred to the

Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Department of Environmental Quality, Commonwealth of Virginia.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by making payments from the Fund only upon receipt of one of the following documents;

(a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Grantor] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by an accidental occurrence arising from a deposit of solid and/or regulated medical waste into navigable waters from a covered vessel should be paid in the amount of \$[].

[Signatures]

Grantor

[Signatures]

Claimant(s)

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(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by an accidental occurrence arising from a deposit of solid and/or regulated medical waste into navigable waters from one or more of the Grantor's vessels covered by this Agreement.

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

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstance then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 USC § 80a-2(a), shall not be acquired or held unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

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

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

9 VAC 20-170-10 et seq. TRANSPORTATION OF SOLID AND MEDICAL WASTES ON STATE WATERS

(a) To transfer from time to time any or all of the assets of the Fund to any common commingled, or collective trust fund created by the Trustee in which the fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 USC § 81a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve

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bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuations. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the Director of the Department of Environmental Quality, Commonwealth of Virginia a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the Director of the Department of Environmental Quality, Commonwealth of Virginia shall constitute a conclusively binding assent by the Grantor barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor with respect to any question arising as to the construction of this Agreement or any action to be

9 VAC 20-170-10 et seq. TRANSPORTATION OF SOLID AND MEDICAL WASTES ON STATE WATERS

taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Director of the Department of Environmental Quality, Commonwealth of Virginia, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the director to the Trustee shall be in writing, signed by the Director of the Department of Environmental Quality, Commonwealth of Virginia, or his designees, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a

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termination of the authority of any person to act on behalf of the Grantor or the Department of Environmental Quality, Commonwealth of Virginia hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Director of the Department of Environmental Quality, Commonwealth of Virginia, except as provided for herein.

Section 15. Notice of Nonpayment. If a payment for bodily injury or property damage is made under Section 4 of this trust, the Trustee shall notify the Grantor of such payment and the amount(s) thereof within five (5) working days. The Grantor shall, on or before the anniversary date of the establishment of the Fund following such notice, either make payments to the Trustee in amounts sufficient to cause the trust to return to its value immediately prior to the payment of claims under Section 4, or shall provide written proof to the Trustee that other financial assurance for liability coverage has been obtained equaling the amount necessary to return the trust to its value prior to the payment of claims. If the Grantor does not either make payments to the Trustee or provide the Trustee with such proof, the Trustee shall within 10 working days after the anniversary date of the establishment of the Fund provide a written notice of nonpayment to the Director of the Department of Environmental Quality, Commonwealth of Virginia.

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 shall be irrevocable and shall 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, shall be delivered

9 VAC 20-170-10 et seq. TRANSPORTATION OF SOLID AND MEDICAL WASTES ON STATE WATERS

to the Grantor. The director will agree to termination of the Trust when the owner or operator substitutes alternate financial assurance as specified in this section.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Director of the Department of Environmental Quality, Commonwealth of Virginia issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the Commonwealth of Virginia.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in the relevant regulations of the Department of Environmental Quality, Commonwealth of Virginia.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

(2) The following is an example of the certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in 9 VAC 20-170-240 or 9 VAC 20-170-260 of this chapter.

State of _____

County of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address]; that [she/he] is [title] of [corporation], the corporation described in and which executed the above instrument; that [she/he] knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that [she/he] signed [her/his] name thereto by like order.

[Signature of Notary Public]

SCHEDULE A

IDENTIFICATION OF COVERED VESSELS

The Trust Agreement, by and between [insert Grantor Name and Trustee Name] dated [insert date of Agreement] is applicable to the following vessels:

Total Financial Responsibility Amount:

Vessel Gross tons Owner Operator

Name

APPENDIX VII

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

PAYMENT BOND FOR THIRD PARTY LIABILITY COVERAGE

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]

Vessels covered by this bond (see attached Schedule A):.....

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

Surety's bond number:.....

Purpose: This is an agreement between the Surety and the Principal under which the Surety, its successors and assignees, agree to be responsible for the payment of claims against the Principal for bodily injury and/or property damage to third parties caused by accidental occurrences arising from the transport of [insert "solid waste" or "regulated medical waste"] by a covered vessel on the navigable waters of the Commonwealth in the sums prescribed herein; subject to the governing provisions and the following conditions.

9 VAC 20-170-10 et seq. TRANSPORTATION OF SOLID AND MEDICAL WASTES ON STATE WATERS

Governing Provisions:

(1) Virginia Waste Management Act, Title 10.1, Code of Virginia (1950), as amended.

(2) Transportation of Solid and Medical Wastes on State Waters Regulations, 9 VAC 20-170-10 et seq.

Conditions:

(1) The Principal is subject to the applicable governing provisions that require the Principal to have and maintain liability coverage for bodily injury and property damage to third parties caused by accidental occurrences arising from the transport of [insert "solid waste" or "regulated medical waste"] by a covered vessel on the navigable waters of the Commonwealth. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which [insert principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert principal] under a workers' compensation, disability benefits, or unemployment compensation law or similar law.

(c) Bodily injury to:

(1) An employee of [insert principal] arising from, and in the course of, employment by [insert principal];

or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal].

This exclusion applies:

(A) Whether [insert principal] may be liable as an employer or in any other capacity; and

9 VAC 20-170-10 et seq. TRANSPORTATION OF SOLID AND MEDICAL WASTES ON STATE WATERS

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft or motor vehicle.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert principal];

(2) Premises that are sold, given away or abandoned by [insert principal] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert principal];

(4) Personal property in the care, custody or control of [insert principal];

(5) That particular part of real property on which [insert principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert principal] are performing operations, if the property damage arises out of these operations.

(2) This bond assures that the Principal will satisfy valid third party liability claims, as described in condition 1.

(3) If the Principal fails to satisfy a valid third party liability claim, as described above, the Surety becomes liable on this bond obligation.

(4) The Surety shall satisfy a third party liability claim only upon the receipt of one of the following documents:

9 VAC 20-170-10 et seq. TRANSPORTATION OF SOLID AND MEDICAL WASTES ON STATE WATERS

(a) Certification from the Principal and the third party claimant(s) that the liability claim should be paid.

The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert name of Principal] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by an accidental occurrences arising from the transport of [insert "solid waste" or "regulated medical waste"] by a covered vessel on the navigable waters of the Commonwealth should be paid in the amount of \$[].

[Signature]

Principal

[Notary] [Date]

[Signature(s)]

Claimant(s)

[Notary] [Date]

or (b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by accidental occurrences arising from the transport of [insert "solid waste" or "regulated medical waste"] by a covered vessel on the navigable waters of the Commonwealth.

(5) In the event of combination of this bond with another mechanism for liability coverage, this bond will be considered [insert "primary" or "excess"] coverage.

(6) The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond. In no

9 VAC 20-170-10 et seq. TRANSPORTATION OF SOLID AND MEDICAL WASTES ON STATE WATERS

event shall the obligation of the Surety hereunder exceed the amount of said annual aggregate penal sum, provided that the Surety furnishes notice to the Director of the Department of Environmental Quality, Commonwealth of Virginia forthwith of all claims filed and payments made by the Surety under this bond.

(7) The Surety may cancel the bond by sending notice of cancellation by certified mail to the Principal and the Director of the Department of Environmental Quality, Commonwealth of Virginia, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal and the director, as evidenced by the return receipt.

(8) 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.

(9) The Surety hereby waives notification of amendments to applicable laws, statutes, rules and regulations and agrees that no such amendment shall in any way alleviate its obligation on this bond.

(10) This bond is effective from [insert date] (12:01 a.m., standard time, at the address of the Principal as stated herein) and shall continue in force until terminated as described above.

In Witness Whereof, the Principal and Surety have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety and 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.

PRINCIPAL

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate Seal]

CORPORATE SURETY(IES)

[Name and address]

State of incorporation: _____

Liability Limit: \$ _____

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

Bond premium: \$ _____

SCHEDULE A

IDENTIFICATION OF COVERED VESSELS

Surety Bond [insert bond number] is applicable to the following vessels:

<u>Vessel</u>	<u>Gross tons</u>	<u>Owner</u>	<u>Operator</u>
<u>Name</u>			

APPENDIX VIII

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

IRREVOCABLE STANDBY LETTER OF CREDIT FOR

THIRD PARTY LIABILITY COVERAGE

[Name and Address of Issuing Institution]

Director

Department of Department of Environmental Quality

629 East Main Street

P.O. Box 10009

Richmond, Virginia 23240-0009

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. _____ in favor of any and all third-party liability claimants, at the request and for the account of [insert owner's or operator's name and address] for third-party liability awards or settlements up to U.S. dollars [\$ _____] per occurrence and the annual aggregate amount of U.S. dollars [\$ _____], for accidental occurrences available upon presentation of a signed draft, bearing reference to this letter of credit No. _____, and

1. A signed certificate reading as follows:

Certification of Valid Claim

The undersigned, as parties [insert principal and insert name and address of third-party claimants], hereby certify that the claim of bodily injury and/or property damage arising from a waste deposit into navigable waters by a covered vessel transporting solid and/or regulated medical waste should be paid in the amount of \$ _____. We hereby certify that the claim does not apply to any of the following:

(a) Bodily injury or property damage for which insert principal is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that insert principal would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of insert principal under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of insert principal arising from, and in the course of, employment by insert principal;

or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by insert principal. This exclusion applies:

(A) Whether insert principal may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who shall pay damages because of the injury to persons identified in paragraphs (1) and (2).

Signatures

Principal

Signatures

Claimant(s)

or

2. A valid final court order establishing a judgement against the principal for bodily injury or property damage arising from a waste deposit into navigable waters from a covered vessel transporting solid and/or regulated medical waste.

The provisions of this letter of credit are applicable to the vessels indicated on the attached Schedule of Covered Vessels.

This letter of credit is effective as of date and shall expire on date at least one year later, but such expiration date shall be automatically extended for a period of at least one year on date and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you, the director and owner's or

operator's name by certified mail that we have decided not to extend this letter of credit beyond the current expiration date.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us.

In the event that this letter of credit is used in combination with another mechanism for liability coverage, this letter of credit shall be considered insert "primary" or "excess" coverage.

We certify that the wording of this letter of credit is identical to the wording specified in the relevant regulations of the Department of Environmental Quality, Commonwealth of Virginia.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

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

SCHEDULE A

IDENTIFICATION OF COVERED VESSELS

Letter of credit [insert letter of credit number] is applicable to the following vessels:

Vessel Gross tons Owner Operator

Name

APPENDIX IX

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

CERTIFICATION OF VALID CLAIM

The undersigned, as principals and as legal representatives of [insert vessel owner or operator] and [insert name and address of third party claimant] hereby certify that the claim of bodily injury [and/or] property damage caused by a sudden and/or nonsudden accidental occurrence arising from a waste deposit from [owner or operator] vessel into state waters should be paid in the amount of \$[].

[Signatures]

Vessel Owner or Operator

Attorney for Owner or Operator

[Notary] _____ [Date]

[Signature(s)]

Claimant(s)

Attorney(s) for Claimant(s)

[Notary] _____ [Date]

PART VII.

COMPLIANCE OF VESSELS TRANSPORTING SOLID WASTES OR REGULATED MEDICAL

WASTES WITH FEDERAL STATUTES AND REGULATIONS

[AND STATE SPILL RESPONSE REQUIREMENTS].

9 VAC 20-170-410. General provisions.

~~[A. All vessels used to transport solid waste or regulated medical waste on state waters shall be in full compliance with all applicable requirements of the U.S. Coast Guard, the U.S. Department of Transportation and any other federal or state agency having jurisdiction regarding the design and operation of such vessels.]~~

9 VAC 20-170-10 et seq. TRANSPORTATION OF SOLID AND MEDICAL WASTES ON STATE WATERS

~~B. 33 CFR Part 151 (effective July 1, 2000) and 46 CFR Part 42 (effective October 1, 2000) are incorporated by reference.]~~

~~[Vessels must comply with federal regulations 33 CFR 151 (effective July 1, 2002) and 46 CFR 42 (effective October 1, 2002). These regulations apply to vessels transporting solid wastes or regulated medical wastes on state waters and are enforced by the U. S. Coast Guard. The owner or operator of a vessel shall immediately notify the appropriate regional office of the department, Virginia Department of Emergency Management, and the National Response Center at 1-800-424-8802 in the event of a deposit of solid wastes or regulated medical wastes into state waters. Such verbal notification shall be followed by written notification to the appropriate department regional office within five days. The owner or operator of a vessel from which there is spillage or loss to state waters of wastes shall immediately take all such actions as may be necessary to contain and remove such wastes from state waters.]~~

[PART VIII

VARIANCE

9 VAC 20-170-420 Petitioning for Variance or Exemption

~~A. Any person regulated by this chapter may petition the department to grant a variance or an exemption from any requirement of this chapter subject to the provisions of this section. Any petition submitted to the department is also subject to the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).~~

~~B. The petition shall be submitted to the department by certified mail and shall include:~~

- ~~1. The petitioner's name and address;~~
- ~~2. A statement of petitioner's interest in the proposed action;~~
- ~~3. A description of desired action and a citation of the regulation from which a variance is requested;~~

9 VAC 20-170-10 et seq. TRANSPORTATION OF SOLID AND MEDICAL WASTES ON STATE WATERS

4. A description of need and justification for the proposed action, including impacts from existing operations;

5. Information demonstrating that the requested variance will meet the purposes and objectives of the relevant regulatory provision and of the Virginia Waste Management Act;

6. The duration of the variance, if applicable;

7. The potential impact of the variance on public health or the environment;

8. Other information believed by the applicant to be pertinent; and

9. The following statement signed by the petitioner or authorized representative:

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

C. Effects of the decisions:

1. When the director renders a decision under this section in accordance with the procedures contained in subsection B of this section, he may:

a. Deny the petition; or

b. Grant the variance as requested; or

c. Grant a modified or partial variance.

2. When a modified variance is granted, the director may:

a. Specify the termination date of the variance;

b. Include a schedule for:

(1) Compliance, including increments of progress, by the facility with each requirement of the variance; and

(2) Implementation by the facility of such control measures as the director finds necessary in order that the variance may be granted.

D. The director will evaluate the application and issue a draft notice tentatively denying the petition, granting the variance as requested, or granting a modified or partial variance. Notification of this tentative decision will be provided by newspaper advertisement in the locality where the applicant is located. The director will accept comment on the tentative decision for 30 days, and shall hold a public hearing if a request is received or at his discretion if there is no request. The director will issue a final decision after receipt of comments and after the hearing (if any).

E. The director may grant the variance if the applicant demonstrates to the satisfaction of the director that:

1. The proposed variance will meet the goals and purposes of the provisions from which a variance is sought;
2. The variance does not conflict with federal or state law or regulations.

F. In the event of a declared emergency by the Governor, a temporary variance may be granted and the public comment period may be held after the variance is granted. In any event, notice of the public comment period shall be published within 90 days after the variance is granted.]

DOCUMENTS INCORPORATED BY REFERENCE

Rules for Certification of Cargo Containers, 1987, American Bureau of Shipping.

9 VAC 20-170-10 et seq. TRANSPORTATION OF SOLID AND MEDICAL WASTES ON STATE WATERS

[~~Recommended Practices for Installation of Underground Liquid Storage Systems, 2000, Petroleum Equipment Institute.~~]

Certified True and Accurate: _____

Robert G. Burnley, Director, DEQ

Date: _____