# Colorado Hazardous Waste Regulations

# Part 266

# Financial Requirements

# (Amended 5/20/2014, Effective 6/30/14)

To obtain more information regarding the
Colorado Hazardous Waste Regulations,
please contact the Hazardous Materials and
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## PART 266 COLORADO FINANCIAL REQUIREMENTS

### Subpart A -- Financial Assurance

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## Part 266 Colorado Financial Requirements

### § 266.10 Applicability.

(a) The requirements of §§ 266.12, 266.14 and 266.16 through 266.17 apply to owners and operators of all hazardous waste facilities, except as provided otherwise in this section or in §§ 264.1 or 265.1.

(b) The requirements of §§ 266.13 and 266.15 apply only to owners and operators of:

(1) Disposal facilities;

(2) Piles, and surface impoundments from which the owner or operator intends to remove the wastes at closure, to the extent that these sections are made applicable to such facilities in §§ 264.228 and 264.258, or §§ 265.228 and 265.258;

(3) Tank systems that are required under §§ 264.197 or 265.197 of these regulations to meet the requirements for landfills; and

(4) Containment buildings that are required under §§ 264.1102 or 265.1102 to meet the requirements for landfills.

(c) The State of Colorado and the Federal government are exempt from the requirements of Part 266 of these regulations.

(d) The Director may replace all or part of the requirements of this subpart applying to a regulated unit with alternative requirements for financial assurance set out in the permit or in an enforceable document (as defined in § 100.10(d) of these regulations), where the Director:

(1) Prescribes alternative requirements for the regulated unit under § 264.90(f) or § 265.90(f) and/or § 264.110(c) or § 265.110(d); and

(2) Determines that it is not necessary to apply the requirements of this subpart because the alternative financial assurance requirements will protect human health and the environment.

(e) An attached statement of basis and purpose for these regulations has been adopted by the Board of Health and is hereby incorporated by reference in these regulations pursuant to C.R.S. 1988, 24-4-103.

**§ 266.11 Definitions of terms as used in this Part.**

(a) **"Closure plan"** means the plan for closure prepared in accordance with the requirements of §§ 264.112 and 265.112.

(b) **"Current closure cost estimate"** means the most recent of the estimates prepared in accordance with § 266.12.

(c) **"Current post-closure cost estimate"** means the most recent of the estimates prepared in accordance with § 266.13.

(d) **"Parent corporation"** means a corporation which directly owns at least 50 percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

(e) **"Post-closure plan"** means the plan for post-closure care prepared in accordance with the requirements of §§ 264.117 through 264.120, and 265.117 through 265.120.

(f) [Reserved]

(g) In the liability insurance requirements the terms "bodily injury" and "property damage" shall have the meanings given these terms by applicable State law. However, these terms do not include those liabilities which, consistent with standard industry practices, are excluded from coverage in liability policies for bodily injury and property damage. The Department intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry. The definitions given below of several of the terms are intended to assist in the understanding of these regulations and are not intended to limit their meanings in a way that conflicts with general insurance industry usage.

> **"Accidental occurrence"** means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.
>
> **"Legal defense costs"** means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.
>
> **"Non-sudden accidental occurrence"** means an occurrence which takes place over time and involves continuous or repeated exposure.
>
> **"Sudden accidental occurrence"** means an occurrence which is not continuous or repeated in nature.

(h) **"Substantial business relationship"** means the extent of a business relationship necessary under applicable State law to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" must arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the Department.

(i) **"Captive Insurance Company"** means a closely-held company owned by one or more organizations or parents, whose original purpose was and may continue to be, to insure some or all of the risks of shareholders or affiliated organizations.

**§ 266.12 Cost Estimate for Closure.**

(a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in §§ 264.111 through 264.115 and §§ 265.111 through 265.115, and applicable closure requirements in §§ 264.178, 264.197, 265.197, 264.228, 265.228, 264.258, 265.258, 264.280, 265.280, 264.310, 265.310, 264.351, 265.351, 265.381, 265.404, 264.601 through 264.603, 264.1102, and 265.1102.

(1) The estimate must equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (See § 264.112(b) and § 265.112(b)); and

(2) The closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of "parent corporation" in § 266.11(d).) The owner or operator may use costs for on-site disposal if the owner or operator can demonstrate that on-site disposal capacity will exist at all times over the life of the facility.

(3) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, or non-hazardous wastes if applicable under § 264.113(d) and § 265.113(d), facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

(4) The owner or operator may not incorporate a zero cost for hazardous wastes, or non-hazardous wastes if applicable under § 264.113(d) and § 265.113(d), that might have an economic value.

(b) During the active life of the facility, the owner or operator must adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with § 266.14. For owners and operators using the financial test or guarantee, the closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Department as specified in § 266.14(i)(3). The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product as published by the U.S. Department of Commerce in its Survey of Current Business, as specified in paragraphs (b)(1) and (2) of this section. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

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

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

(c) During the active life of the facility, the owner or operator must revise the closure cost estimate no later than 30 days after the Department has approved the request to modify the closure plan, if the change in the closure plan increases the cost of closure. The revised closure cost estimate must be adjusted for inflation as specified in § 266.12(b). For interim status facilities that do not have an approved closure plan, during the active life of the facility, the owner or operator must revise the closure cost estimate no later than 30 days after a revision has been made to the closure plan which increases the cost of closure.

(d) The owner or operator must keep the following at the facility during the operating life of the facility: The latest closure cost estimate prepared in accordance with § 266.12(a) and (c) and, when this estimate has been adjusted in accordance with § 266.12(b), the latest adjusted closure cost estimate.

**§ 266.13 Cost Estimate for Post-Closure Care.**

(a) The owner or operator of a disposal surface impoundment, disposal miscellaneous unit, land treatment unit, or landfill unit, or of a surface impoundment or waste pile required under §§ 264.228 and 264.258 to prepare a contingent closure and post-closure plan, must have a detailed written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure regulations in §§ 264.117 through 264.120, 264.228, 264.258, 264.280, 264.310, and 264.603. For interim status facilities, the owner or operator of a hazardous waste disposal unit must have a detailed written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in

accordance with the applicable post-closure regulations in §§ 265.117 through 265.120, 265.228, 265.258, 265.280, and 265.310.

(1) The post-closure cost estimate must be based on the costs to the owner or operator of hiring a third party to conduct post-closure care activities. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in § 266.11(f)).

(2) The post-closure cost estimate is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required under § 264.117 and 265.117.

(b) During the active life of the facility, the owner or operator must adjust the post-closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with § 266.14. For owners or operators using the financial test or guarantee, the post-closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before the submission of updated information to the Department as specified in § 266.14(i)(5). The adjustment may be made by recalculating the post-closure cost estimate in current dollars or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Businesses specified in paragraphs (b)(1) and (2) of this section. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

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

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

(c) During the active life of the facility, the owner or operator must revise the post-closure cost estimate within 30 days after the Department has approved the request to modify the post-closure plan or post-closure permit, if a change in the post-closure plan or post-closure permit increases the cost of post-closure care. The revised post-closure estimate must be adjusted for inflation as specified in § 266.13(b).

(d) The owner or operator must keep the following at the facility during the operating life of the facility: The latest post-closure cost estimate prepared in accordance with § 266.13(a) and (c) and, when this estimate has been adjusted in accordance with § 266.13(b), the latest adjusted post-closure cost estimate.

**§ 266.14 Financial assurance for closure and/or post-closure.**

(a) An owner or operator of each facility, by the effective date of these regulations, must establish financial assurance for closure, and if applicable, post closure of the facility. All hazardous waste facilities needing to implement post-closure care must initially provide enough financial assurance to provide for 30 years of post-closure care, maintenance, and monitoring.

(b) The owner and/or operator of each facility must choose from the options as specified in paragraphs (c) through (j) of this section.

(c) **Closure and/or Post Closure Trust Fund.**

(1) An owner or operator may satisfy the requirements of this section by establishing a closure and/or post-closure trust fund which conforms to the requirements of this paragraph and submitting an originally signed duplicate of the trust agreement to the Department within 30 days after the effective date of these regulations. An owner or operator of a new facility must submit the originally signed duplicate of the trust agreement to the Department at least 60 days before waste is first received for treatment, storage or disposal. The trustee must be an entity and which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(2) The wording of the trust agreement must be identical to the wording specified in § 266.18(a)(1), and the trust agreement must be accompanied by a formal certification of acknowledgment § 266.18(a)(2). Schedule A of the trust agreement must be updated within 60 days after a change in the amount of the current closure and/or post-closure cost estimate covered by the agreement.

(3) For a new facility, the trust fund must be fully funded by the owner or operator at least 60 days before waste is first received for treatment, storage, or disposal. For existing interim status or permitted facilities, the trust must be fully funded by the owner or operator within 30 days of the effective date of these regulations.

(4) Whenever the current closure and/or post-closure cost estimate changes, the owner or operator must compare the new cost estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure and/or post-closure cost estimate, or obtain other financial assurance as specified in this section to cover the difference.

(5) If the value of the trust fund is greater than the total amount of the current closure and/or post-closure cost estimate, the owner or operator may submit a written request to the Department for the release of the amount in excess of the current closure and/or post-closure cost estimate.

(6) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund, he/she may submit a written request to the Department for release of the amount in excess of the current closure and/or post-closure cost estimate covered by the trust fund.

(7) Within 60 days after receiving a request from the owner or operator for release of funds as specified in paragraphs (a)(5) or (6) of this section, the Department will instruct the trustee to release to the owner or operator such funds as the Department specifies in writing.

(8) Closure and post-closure care reimbursements.

(i) After beginning partial or final closure; an owner or operator or another person authorized to conduct partial or final closure may request reimbursements for partial or final closure expenditures by submitting itemized bills to the Department. The owner or operator may request reimbursements for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for partial or final closure activities, the Department will instruct the trustee to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the Department has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, it may withhold reimbursements of such amounts as it deems prudent until it determines, in accordance with § 266.14(l) that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Department does not instruct the trustee to make such reimbursements, it will provide the owner or operator with a detailed written statement of reasons.

(ii) During the period of post-closure care, the Department may approve a release of funds if the owner or operator demonstrates to the Department that the value of the trust fund exceeds the remaining cost of post-closure care.

(iii) An owner or operator or any other person authorized to conduct post-closure care may request reimbursements for post-closure care expenditures by submitting itemized bills to the Department. Within 60 days after receiving bills for post-closure care activities, the Department will instruct the trustee to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the post-closure care expenditures are in accordance with the approved post-closure plan or otherwise justified. If the Department does not instruct the trustee to make such reimbursements, it will provide the owner or operator with a detailed written statement of reasons.

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

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

(ii) The Department releases the owner or operator from the requirements of this section in accordance with § 266.14(l).

(d) [Reserved]

(e) **Closure and/or Post-Closure Letter of Credit.**

(1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph and submitting the letter to the Department within 30 days after the effective date of these regulations. An owner or operator of a new facility must submit the letter of credit to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The letter of credit must be effective before this initial receipt of hazardous waste. The issuing institution must have the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or State agency.

(2) The wording of the letter of credit must be identical to the wording specified in § 266.18(e).

(3) An owner or operator who uses a letter of credit to satisfy the requirements of this section must also establish a standby trust fund, unless an alternate mechanism has been established by the State of Colorado to directly receive monies. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Department will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund must meet the requirements of the trust fund specified in § 266.14(a) except that:

(i) An originally signed duplicate of the trust agreement must be submitted to the Department with letter of credit; and

(ii) Until the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

(A) Payments into the trust fund as specified in § 266.14(a);

(B) Updating of Schedule A of the trust agreement [see § 266.18(a)] to show current closure and/or post-closure cost estimates;

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

(4) The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: the EPA Identification Number, name, and address of the facility, and the amount of funds assured for closure and/or post-closure of the facility by the letter of credit.

(5) The letter of credit must be irrevocable and issued for a period of at least 1 year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least 1 year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Department by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the Department have received the notice, as evidenced by the return receipts.

(6) The letter of credit must be issued in an amount at least equal to the current closure and/or post-closure cost estimate, except as provided in § 266.14(j).

(7) Whenever the current closure and/or post-closure cost estimate increases to an amount greater than the amount of the credit, the owner or operator, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current closure and/or post-closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current closure and/or post-closure cost estimate decreases, the amount of the credit may be reduced to the amount of the current closure and/or post-closure cost estimate following written approval by the Department.

(8) During the period of post-closure care, the Department may approve a decrease in the amount of the letter of credit if the owner or operator demonstrates to the Department that the amount exceeds the remaining cost of post-closure.

(9) Following a final administrative determination pursuant to CRS 1973, 25-15-301 et seq. that the owner or operator has failed to perform final closure or post-closure in accordance with the approved closure or post-closure plan and other permit requirements when required to do so, the Department may draw on the letter of credit.

(10) If the owner or operator does not establish alternate financial assurance as specified and obtain written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice from issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Department will draw on the letter of credit. The Department may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the Department will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this section and obtain written approval of such assurance from the Department.

(11) The Department will return the letter of credit to the issuing institution for termination when:

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

(ii) The Department releases the owner or operator from the requirements of this section in accordance with § 266.14(l).

(f) **Surety Bond Guaranteeing Payment into a Closure and/or Post Closure Trust Fund.**

(1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this paragraph and submitting the bond to the Department within 30 days after the effective date of these regulations. An owner or operator of a new facility must submit the bond to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond and any co-sureties must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury. If the surety is using reinsurance, a Treasury reinsurance form must be submitted with the bond or within 45 days thereafter. If co-sureties are being used, the original bond must reflect that fact.

(2) The wording of the surety bond must be identical to the wording specified in § 266.18(f).

(3) The owner or operator who uses a surety bond to satisfy the requirements of this section must also establish a standby trust fund, unless there has been an alternate mechanism established by the State of Colorado to directly receive monies. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with the instructions from the Department. This standby trust fund must meet the requirements specified in § 266.14(a), except that:

(i) An originally signed duplicate of the trust agreement must be submitted to the Department with the surety bond; and

(ii) Until the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

(A) Payments into the trust fund as specified in § 266.14(a);

(B) Updating of Schedule A of the trust agreement [see § 266.18(a)] to show current closure cost estimates;

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

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

(i) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility; or

(ii) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin closure is issued by the Department or State court or other court of competent jurisdiction; or

(iii) Provide alternate financial assurance as specified in this section, and obtain the Department's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(6) The penal sum of the bond must be in an amount at least equal to the current closure and/or post-closure cost estimate, except as provided in § 266.14.(j).

(7) Whenever the current closure and/or post closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure and/or post-closure cost estimate and submit evidence of such increase to the Department or obtain other financial assurance as specified in this section to cover the increase. Whenever the current closure and/or post-closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure and/or post-closure cost estimate following written approval by the Department.

(8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidence by the return receipts.

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

(g) **Surety bond guaranteeing performance of closure and/or post-closure.**

(APPLICABLE TO PART B PERMITTED FACILITIES ONLY)

(1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this paragraph and submitting the bond to the Department. An owner or operator of a new facility must submit the bond to the Department at least 60 days before the date on which hazardous waste is first received for disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury .

(2) The wording of the surety bond must be identical to the wording specified in § 266.18(g).

(3) The owner or operator who uses a surety bond to satisfy the requirements of this section must also establish a standby trust fund, unless an alternate mechanism has been established by the State of Colorado to directly receive monies. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund must meet the requirements specified in § 266.15, except that:

(i) An originally signed duplicate of the trust agreement must be submitted to the Department with the surety bond; and

(ii) Unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

(A) Payments into the trust fund as specified in § 266.15;

(B) Updating of Schedule A of the trust agreement (see § 266.18(a)) to show current post-closure cost estimates;

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

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

(i) Perform closure and/or post-closure care in accordance with the closure and/or post-closure plan and other requirements of the permit for the facility; or

(ii) Provide alternate financial assurance as specified in this section, and obtain the Department's written approval of the assurance provided, within 90 days of receipt by both the owner or operator and the Department of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final administrative determination pursuant to CRS 1973, 25-15-301 et seq. that the owner or operator has failed to perform closure and/or post-closure care in accordance with the approved closure and/or post-closure plan and other permit requirements when required to do so, under the terms of the bond the surety will perform final closure and/or post-closure as guaranteed by the bond or will deposit the amount of the penal sum into the standby trust fund.

(6) The penal sum of the bond must be in an amount at least equal to the current closure and/or post-closure cost estimate.

(7) Whenever the current closure and/or post-closure cost estimate increases to an amount greater than the penal sum, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure and/or post-closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section. Whenever the current closure and/or post-closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure and/or post-closure cost estimate following written approval by the Department.

(8) During the period of closure and/or post-closure care, the Department may approve a decrease in the penal sum if the owner or operator demonstrates to the Department that the amount exceeds the remaining cost of closure and/or post-closure care.

(9) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts.

(10) The owner or operator may cancel the bond if the Department has given prior written consent. The Department will provide such written consent when:

> (i) An owner or operator substitutes alternate financial assurance as specified in this section; or
>
> (ii) The Department releases the owner or operator from the requirements of this section in accordance with § 266.14(l).

(11) The surety will not be liable for deficiencies in the performance of closure and/or post-closure care by the owner or operator after the Department releases the owner or operator from the requirements of this section in accordance with § 266.14(l).

(h) **Closure and/or Post Closure Insurance.**

(1) An owner or operator may satisfy the requirements of this section by obtaining closure and/or post closure insurance which conforms to the requirements of this paragraph and submitting a certificate of such insurance to the Department. An owner or operator of a new facility must submit a copy of the insurance policy and all endorsements to the Department at least 90 days before the date on which hazardous waste is first received for treatment, storage, or disposal, and must submit the certificate of insurance to the Department at least 30 days before the date on which hazardous waste is first received for treatment, storage, or disposal. If an owner or operator changes a current insurance policy, the owner or operator must submit a copy of the proposed insurance policy and all endorsements to the Department at least 90 days before changing to a new insurance policy. The insurance must be effective before this initial receipt of hazardous waste.

(2) The insurer must be licensed to transact the business of insurance or be eligible to provide insurance as an excess or surplus lines insurer, in one or more states and comply with the Title 10 Insurance Code, C.R.S., as amended.

(3) The owner or operator shall submit annually to the Department on the anniversary of the insurance policy the following information regarding the insurer's qualifications.

(i) The most recent A.M. Best rating of A- or better for the insurer; and

(ii) Documentation demonstrating that the insurer has capital and surplus of at least one hundred million dollars in excess of all current policy liabilities.

(4) The owner or operator of a facility using a Captive Insurance Company, as defined in § 266.11(i), must do the following:

(i) Annually submit to the Department on the anniversary of the insurance policy, items specified in § 266.14(h)(3)(i) and(ii);

(ii) Utilize a Captive Insurance Company that is domiciled in the State of Vermont;

(iii) Annually submit to the Department the Annual Certificate of Good Standing for the Captive Insurance Company issued by the Department of Financial Regulation of Vermont; and

(iv) The owner or operator or Captive Insurance Company shall not defund the captive insurance policy without providing a 180 day notice to the Department of their intent to defund, and having in place another mechanism allowed in § 266.14.

(5) The Department may disallow use of the insurer or the Captive Insurance Company by the owner or operator if the applicable requirements of § 266.14(h)(3) and (4) are not met.

(6) The wording of the certificate of insurance must be identical to the wording specified in § 266.18(h).

(7) The closure and/or post closure insurance policy must be issued for a face amount at least equal to the current closure and/or post closure cost estimate, except as provided in § 266.14(j). The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(8) The closure and/or post closure insurance policy must guarantee that funds will be available to close or provide post closure care of the facility whenever final closure and/or post closure occurs. The policy must also guarantee that once final closure and/or post closure begins, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Department, to such party or parties as the Department specifies.

(9) Closure and post closure care reimbursements.

(i) After beginning partial or final closure, an owner or operator or another person authorized to perform closure may request reimbursements for closure expenditures by submitting itemized bills to the Department. The owner or operator may request reimbursements for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for closure activities, the Department will instruct the insurer to make reimbursements in such amounts as the Department specifies in writing if the Department determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the Department has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the face amount of the policy, it may withhold reimbursements of such amounts as it deems prudent until it determines, in accordance with § 266.14(l), that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Department does not instruct the insurer to make such reimbursements, it will provide the owner or operator with a detailed written statement of reasons.

(ii) An owner or operator or any other person authorized to conduct post closure care may request reimbursements for post closure care expenditures by submitting itemized bills to the Department. Within 60 days after receiving bills for post closure care activities, the Department will instruct the insurer to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the post closure care expenditures are in accordance with the approved post closure plan or otherwise justified. If the Department does not instruct the insurer to make such reimbursements, it will provide the owner or operator with a detailed written statement of reasons.

(10) The owner or operator must maintain the policy in full force and effect until the Department consents to termination of the policy by the owner or operator as specified in

paragraph (h) (15) of this section. Failure to pay the premium, without substitution of alternate financial assurance as specified in this section, will constitute a violation of these regulations, warranting such remedy as the Department deems necessary. Such violation will be deemed to begin upon receipt by the Department of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

(11) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

(12) The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the Department. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Department and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:

(i) The Department deems the facility abandoned; or

(ii) The permit is terminated or revoked or a new permit is denied; or

(iii) Closure is ordered by the Department or a State or other court of competent jurisdiction; or

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

(v) The premium due is paid.

(13) Whenever the current closure and/or post closure cost estimate increases to an amount greater that the face amount of the policy, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current closure and/or post closure cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current closure and/or post closure cost estimate decreases, the face amount may be reduced to the amount of the current closure and/or post closure cost estimate following written approval by the Department.

(14) Commencing on the date that liability to make payments pursuant to the post closure insurance policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or

of the equivalent coupon issue yield announced by the U.S. Treasury for 26 week Treasury securities.

(15) The Department will give written consent to the owner or operator that he/she may terminate the insurance policy when:

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

(ii) The Department releases the owner or operator from the requirements of this section in accordance with § 266.14(l).

(i) [Reserved]

**[RESERVED]**

**PAGES 738 AND 739 ARE RESERVED**

(j) **Use of Multiple Financial Mechanisms.**

An owner or operator may satisfy the requirements of this section by establishing more than one financial mechanism per facility. These mechanisms are trust funds, letters of credit, surety bonds guaranteeing payment into a trust fund, surety bond guaranteeing performance, insurance, financial test, and guarantee. The mechanisms must be as specified in paragraphs (a), (e), (f), (g), (h), and (i), respectively, of this section, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current closure or post-closure cost estimates. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, the owner or operator may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The Department may use any or all of the mechanisms to provide for closure and/or post-closure care of the facility.

(k) **Use of a Financial Mechanism for Multiple Facilities.**

An owner or operator may use a financial assurance mechanism specified in this section to meet the requirements of this section for more than one facility. Evidence of financial assurance submitted to the Department must include a list showing, for each facility, the EPA Identification Number, name, address, and the amount of funds for closure and/or post-closure assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for closure and/or post-closure of any of the facilities covered by the mechanism, the Department may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

(l) **Release of the Owner or Operator from the Requirements of this Section.**

(1) Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Department will notify the owner or operator in writing that the owner or operator is no longer required by this section to maintain financial assurance for final closure of the facility, unless the Department has reason to believe that final closure has not been in accordance with the approved closure plan. The Department shall provide the owner or operator with a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan.

(2) Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that the post-closure care period has been completed for a hazardous waste disposal unit in accordance with the approved post-closure plan or permit, the Department will notify the owner or operator in writing that the owner or operator is no longer required by this section to maintain financial

assurance for post-closure care of that unit, unless the Department has reason to believe that post-closure care has not been in accordance with the approved post-closure plan or permit. The Department shall provide the owner or operator with a detailed written statement of any such reason to believe that post-closure care has not been in accordance with the approved post-closure plan or post-closure permit.

**§ 266.15 Use of a Mechanism for Financial Assurance of Both Closure and Post-Closure Care.**

An owner or operator may satisfy the requirements for financial assurance for both closure and post-closure care for one or more facilities by using a trust fund, letter of credit, surety bond guaranteeing payment or performance, insurance, financial test, or guarantee that meets the specifications for the mechanism in § 266.14. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for financial assurance of closure and post-closure care.

**§ 266.16 Liability Requirements.**

(a) **Coverage for Sudden Accidental Occurrences.**

An owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least $1 million per occurrence with an annual aggregate of at least $2 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in subsections (f), (g), (h), (i), (j), (k), and (l) of this section.

(b) **Coverage for Non-sudden Accidental Occurrences.**

An owner or operator of a surface impoundment, landfill, or land treatment facility, or disposal miscellaneous unit which is used to manage hazardous waste, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least $3 million per occurrence with an annual aggregate of at least $6 million, exclusive of legal defense costs. An owner or operator who must meet the requirements of this section may combine the required per-occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and nonsudden accidental

occurrences must maintain liability coverage in the amount of at least $4 million per occurrence and $8 million annual aggregate. This liability coverage may be demonstrated as specified in subsections (f), (g), (h), (i), (j), (k), and (l) of this section.

(c) **Request for Variance.**

If an owner or operator can demonstrate to the satisfaction of the Department that the levels of financial responsibility required by paragraphs (a) or (b) of this section are not consistent with the degree and duration of risk associated with treatment, storage or disposal at the facility or group of facilities, the owner or operator may obtain a variance from the Department. The request for a variance must be submitted to the Department as part of the application under § 100.61 of these regulations for a facility that does not have a permit, or pursuant to the procedures for permit modification under § 100.61 of these regulations for a facility that has a permit. If granted, the variance will take the form of an adjusted level of required liability coverage, such level to be based on the Department's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. The Department may require an owner or operator who requests a variance to provide such technical and engineering information as is deemed necessary by the Department to determine a level of financial responsibility other than that required by paragraph (a) or (b) of this section. Any request for a variance for a permitted facility will be treated as a request for a permit modification under § 100.61 of these regulations.

(d) **Upward Adjustments by the Department.**

If the Department determines that the levels of financial responsibility required by paragraph (a) or (b) of this section are not adequate based on the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the Department may adjust the level of financial responsibility required under paragraph (a) or (b) of this section as may be necessary to protect human health and the environment. This adjusted level will be based on the Department's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the Department determines that there is a significant risk to human health and the environment from non-sudden accidental occurrences resulting from the operations of a facility that is not a surface impoundment, landfill, or land treatment facility, the Department may require that the owner or operator of the facility comply with paragraph (b) of this section. An owner or operator must furnish to the Department within a reasonable time, any information which the Department requests to determine whether cause exists for such adjustments of level or type of coverage. Any adjustment of the level or type of coverage for a permitted facility will be treated as a request for a permit modification under § 100.61 of these regulations.

(e) **Period of Coverage.**

Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Department will notify the owner or operator in writing that he/she is no longer required by this section to maintain liability coverage for that facility, unless the Department has reason to believe that closure has not been in accordance with the approved closure plan.

(f) [Reserved]

(g) [Reserved]

**[RESERVED]**

**PAGES 744 AND 745 ARE RESERVED**

(h) **Insurance for liability coverage.**

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

(2) Each insurance policy must be evidenced by a Certificate of Liability Insurance. The wording of the certificate of insurance must be identical to the wording specified in § 266.18(h). The owner or operator must submit a signed duplicate original of the certificate of insurance to the Department. If requested by the Department, the owner or operator must provide a signed duplicate of the insurance policy. An owner or operator of a new facility must submit the signed duplicate original of the Certificate of Liability Insurance to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The insurance must be effective before this initial receipt of hazardous waste.

(3) Insurance for liability coverage must meet the requirements specified in § 266.14(h)(2)-(5).

(4) 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 (i) through (v) of this Paragraph (4) are amended to conform with subsections (i) through (v);

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

(ii) 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 payments made by the Insurer.

(iii) Whenever requested by the Department, the Insurer agrees to furnish to the Department a signed duplicate original of the policy.

(iv) Cancellation of the insurance policy whether by the Insurer or the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the Department.

(v) Any other termination of the insurance policy will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the Department.

(5) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or be eligible to provide insurance as an excess or surplus lines insurer, in one or more states and comply with Title 10 C.R.S. 1987, as amended.

(i) **Letter of credit for liability coverage.**

(1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit that conforms to the requirements of this subsection and submitting a copy of the letter of credit to the Department. An owner or operator of a new facility must submit a copy of the letter of credit to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The letter of credit must be effective before this initial receipt of hazardous waste.

(2) The financial institution issuing the letter of credit must be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency.

(3) The wording of the letter of credit must be identical to the wording specified in § 266.18(l) of this part.

(4) An owner or operator who uses a letter of credit to satisfy the requirements of this section may also establish a standby trust fund. Under the terms of such a letter of credit, all amounts paid pursuant to a draft by the trustee of the standby trust will be deposited by the issuing institution into the standby trust in accordance with instructions from the trustee. The trustee of the standby trust fund must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(5) The wording of the standby trust fund must be identical to the wording specified in § 266.18(n).

(j) **Surety bond for liability coverage.**

(1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond that conforms to the requirements of this subsection and submitting a copy of the bond to the Department. An owner or operator of a new facility must submit a copy of the bond to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The bond must be effective before this initial receipt of hazardous waste.

(2) The surety company issuing the bond must be among those listed as acceptable sureties on Federal bonds in the most recent Circular 570 of the U.S. Department of Treasury.

(3) The wording of the surety bond must be identical to the wording specified in § 266.18(m) of this part.

(4) A surety bond may be used to satisfy the requirements of this section only if the Attorneys General or Insurance Commissioners of (i) the State in which the surety is incorporated, and (ii) each State in which a facility covered by the surety bond is located have submitted a written statement to EPA that a surety bond executed as described in this § 266.18(m) of this part is a legally valid and enforceable obligation in that State.

(k) **Trust fund for liability coverage.**

(1) An owner or operator may satisfy the requirements of this section by establishing a trust fund that conforms to the requirements of this subsection and submitting an originally signed duplicate of the trust agreement to the Department. An owner or operator of a new facility must submit a copy of the trust agreement to the Department at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The trust agreement must be effective before this initial receipt of hazardous waste.

(2) The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(3) The trust fund for liability coverage must be funded for the full amount of the liability coverage to be provided by the trust fund before it may be relied upon to satisfy the requirements of this section. If at any time after the trust fund is created the amount of funds in the trust fund is reduced below the full amount of the liability coverage to be provided, the owner or operator, by the anniversary date of the establishment of the fund, must either add sufficient funds to the trust fund to cause its value to equal the full amount of liability coverage to be provided, or obtain other financial assurance as specified in this section to cover the difference. For purposes of this paragraph, "the full amount of the liability coverage to be provided" means the amount of coverage for sudden and/or nonsudden occurrences required to be provided by the owner or operator by this section, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(4) The wording of the trust agreement must be identical to the wording specified in § 266.18(n) of this part.

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

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

(1) A claim results in a reduction in the amount of financial assurance for liability coverage under this section provided by a financial instrument authorized in subsections (f) through (l) of this section; or

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

(3) A final court order establishing a judgment for bodily injury or property damages caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under subsection (f) through (l) of this section.

**§ 266.17 Incapacity of Owners or Operators, Guarantors, or Financial Institutions.**

(a) An owner or operator must notify the Department by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding. A guarantor of a guarantee as specified in § 266.14(i) and § 266.16(g) must make such a notification if the guarantor is named as debtor, as required under the terms of the guarantee (§ 266.18(j) and § 266.18(k)).

(b) An owner or operator who fulfills the requirements of § 266.14 and/or § 266.16 by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or of the issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The owner or operator must establish other financial assurance or liability coverage within 60 days after such an event.

(c)(1) In any case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or where (with reasonable diligence) jurisdiction in State Court or Federal Court cannot be obtained over an owner or operator likely to be solvent at the time of judgement, any claim arising from conduct for which evidence of financial responsibility must be provided under these regulations may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this subsection, such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(2) The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under these regulations. Nothing in this subsection shall be construed to limit another statutory, contractual or common law liability of a guarantor to the owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim.

(3) For the purpose of this subsection, the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under these regulations.

**§ 266.18 Wording of the Instruments.**

(a)(1) A trust agreement for a trust fund, as specified in § 266.14(a) of this section, must be worded as follows, except that instruction in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

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

Whereas, the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division, a regulatory Agency of the State of Colorado, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility shall provide assurance that funds will be available when needed for closure and/or post-closure care of the facility,

Whereas, the Grantor has elected to establish a trust to provide all or a part of such financial assurance for the facilities identified herein,

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

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

**Section 1. Definitions.**

As used in this Agreement:

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

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

**Section 2. Identification of Facilities and Cost Estimates.**

This Agreement pertains to the facilities and cost estimates identified on attached Schedule A [on Schedule A, for each facility list the EPA Identification Number, name, address, and the current closure and/or post-closure cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement].

**Section 3. Establishment of Fund.**

The Grantor and the Trustee hereby establish a trust fund, the "Fund", for the benefit of the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, In Trust, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Department.

**Section 4. Payment for Closure and Post-Closure Care.**

The Trustee shall make payments from the Fund as the Department shall direct, in writing, to provide for the payment of the costs of closure and/or post-closure care of the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the Department from the Fund for closure and post-closure expenditures in such amount as the Department shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Department specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

**Section 5. Payment Comprising the Fund.**

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

**Section 6. Trustee Management.**

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his/her duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; **EXCEPT THAT**:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as

amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

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

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

**Section 7. Commingling and Investment.**

The Trustee is expressly authorized in its discretion:

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

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

**Section 8. Express Powers of Trustee.**

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provision of this Agreement or by law, the Trustee is expressly authorized and empowered:

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

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

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

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

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

**Section 9. Taxes and Expenses.**

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

**Section 10. Annual Valuation.**

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

**Section 11. Advice of Counsel.**

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advise 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 the administration of the trust in a writing sent to the Grantor, the Department, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

**Section 14. Instructions to the Trustee.**

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Department to the Trustee shall be in writing, signed by the Director or his/her designees, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or Department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Department, except as provided for herein.

**Section 15. Notice of Nonpayment.**

The Trustee shall notify the Grantor and the Department, by certified mail within 10 days following the expiration of the 30-days period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

**Section 16. Standby Trust Exemptions.**

Unless this trust fund is funded pursuant to the requirements of Part 266 of the Colorado Hazardous Waste Regulations 6 CCR 1007-3, as amended, updating of Schedule A hereto as to current closure or post-closure costs shall not be required, nor shall annual valuations under Section 10 be required.

**Section 17. Amendment of Agreement.**

This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Department, or by the Trustee and the Department if the Grantor ceases to exist.

**Section 18. Irrevocability and Termination.**

Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee and the Department, or by the Trustee and the Department, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

**Section 19. Immunity and Indemnification.**

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

**Section 20. Choice of Law.**

This Agreement shall be administered, construed, and enforced according to the laws of the State of [insert name of state].

**Section 21. 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 here unto 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 § 266.18(a)(1) as such regulations were constituted on the date first above written.

_____

[Signature of Grantor]
[Title]
[Seal]

_____

Attest: [Signature of Attestor]
[Title]

_____

[Signature of Trustee]
[Name of Trustee]
[Title]
[Seal]

_____

Attest: [Signature of Attestor]
[Title]

(2) The following is an example of the certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in § 266.14(a) of these regulations.

State of _____

County of _____

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

[Signature of Notary Public]

(b) [Reserved]

(c) [Reserved]

(d) [Reserved]

(e) A letter of credit, as specified in § 266.14(e) of these regulations, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**IRREVOCABLE STANDBY LETTER OF CREDIT**

Director
Colorado Department of Public Health and Environment
Hazardous Materials and Waste Management Division
4300 Cherry Creek Drive South
Mail Code: HMWMD-HWC-B2
Denver, CO 80222

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. _____ in your favor, at the request and for the account of [owner's or operator's name and address] up to the aggregate amount of [in words] U.S. dollars $_____, available upon presentation of:

(1) Your sight draft bearing reference to this letter of credit No. ____, and

(2) Your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the Colorado Hazardous Waste Act as amended."

This letter of credit is effective as of [date] and shall expire on [date at least 1 year later], but such expiration date shall be automatically extended for a period of [at least 1 year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft, for 120 days after the date of receipt by both you and [owner's or operator's name], as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner's or operator's name], in accordance with your instructions, unless an alternate mechanism has been established by the State of Colorado to directly receive monies.

We certify that the wording of this letter of credit is identical to the wording specified in § 266.18(e) as such regulations were constituted on the date shown immediately below.

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

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

NOTE: If the EPA Regional Administrator is primary beneficiary of the trust, an amendment to the trust agreement must be made changing the primary beneficiary to the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division.

(f) A surety bond guaranteeing payment into a trust fund, as specified in § 266.14(f) of these regulations, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**FINANCIAL GUARANTEE BOND**

Date bond executed: _____

Effective date: _____

Principal: [legal name and business address of owner or operator]

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

State of incorporation: _____

Surety(ies): [name(s) and business address(es)]

[EPA Identification Number, name, address, and closure and/or post-closure amount(s) for each facility guaranteed by this bond (indicate closure and/or post-closure amount separately)]

Total penal sum of bond: $_____

Surety's bond number: _____

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division 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 action against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the Colorado Hazardous Waste Management Regulations, to have a permit or interim status in order to own or operate each hazardous waste management facility identified above, and

Whereas said Principal is required to provide financial assurance for closure, or closure and post-closure care, as a condition of the permit or interim status, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance, unless an alternate mechanism has been established by the State of Colorado to directly receive monies.

Now, Therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of each facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

Or, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after an order to begin closure is issued by the Department or a U.S. district court or other court of competent jurisdiction,

Or, if the Principal shall provide alternate financial assurance, as specified in these regulations and obtain the Department's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the Department from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the Department that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the Department.

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

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the Department, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the Department, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the Department.

[The following paragraph is an optional rider that may be included but is not required:]

The Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the Department.

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

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in § 266.18(f) as such regulations were constituted on the date this bond was executed.

**Principal**

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

**Corporate Surety(ies)**

[Name and address]

State of incorporation: _____

Liability limit: $_____

[Signature(s)]

[Name(s) and Title(s)]

[Corporate seal]

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

Bond premium: $_____

(g) A surety bond guaranteeing performance of closure and/or post-closure care, as specified in § 266.14(g), must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

**PERFORMANCE BOND**

Date bond executed: _____

Effective date: _____

Principal: [legal name and business address of owner or operator]

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

State of incorporation: _____

Surety(ies): [name(s) and business address(es)]

[EPA Identification Number, name, address, and closure and/or post-closure amount(s) for each facility guaranteed by this bond (indicate closure and post-closure amounts separately]

Total penal sum of bond: $_____

Surety's bond number: _____

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the Colorado Department of Public Health and Environment (hereinafter referred to as 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; provide that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the Colorado Hazardous Waste Act as amended, to have a permit in order to own or operate each hazardous waste management facility identified above, and

Whereas said Principal is required to provide financial assurance for closure, or closure and post-closure care, as a condition of the permit, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance, unless an alternate mechanism has been established by the State of Colorado to directly receive monies;

Now, Therefore, the conditions of this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of each facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended.

And, if the Principal shall faithfully perform post-closure care of each facility for which this bond guarantees post-closure care, in accordance with the post-closure plan and other requirements of the permit, as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended.

Or, if the Principal shall provide alternate financial assurance as specified in these regulations, and obtain the Department's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the Department from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall be come liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the Department that the Principal has been found in violation of the closure requirements of these regulations, for a facility for which this bond guarantees performances of closure, the Surety(ies) shall either perform closure in accordance with the closure plan and other permit requirements or place the closure amount guaranteed for the facility into the standby trust fund as directed by the Department.

Upon notification by the Department that the Principal has failed to provide alternate financial assurance as specified in these regulations, and obtain written approval of such assurance from the Department during the 90 days following receipt by both the Principal and the Department of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the Department.

The surety(ies) hereby waive(s) notification of amendments to closure plans, permits, applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

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

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Department provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the Department, as evidenced by the return receipts.

The principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the Department.

[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the Department.

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

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in § 266.18(g) as such regulation was constituted on the date this bond was executed.

**Principal**

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

**Corporate Surety(ies)**

[Name and address]

State of incorporation: _____

Liability limit: $ _____

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

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

Bond premium: $_____

(h)(1) The standard insurance industry Certificate of Insurance form (Accord Form), as prescribed by the Colorado Insurance Commission, shall be used to evidence Closure and/or Post-Closure Care assurance and Liability coverage. The following information is to be included in the Certificate of Insurance:

a. Name, address, and telephone number of agency; and the underwriter;

b. Name, address, and EPA I.D. number of facility being covered (if list is too long additional pages may be attached);

c. Indication of type of coverage (sudden, non-sudden, or both);

d. Amount of coverage (sudden, non-sudden, or both), policy number, and effective date;

e. A statement of certification, in the comment section, worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

"This Certificate certifies that the policy to which this Certificate applies, provides [insert liability insurance covering bodily injury and property damage and/or Closure and/or Post-Closure Care coverage] in connection with the insured's obligation to demonstrate financial responsibility under section(s) [insert § 266.14 and/or § 266.16] of the Colorado Hazardous Waste Regulations, C.R.S. 1973, as amended."; and

f. Authorized company representatives' signature, and name of authorized company representative.

(2) Cancellation of this policy, whether by the Insurer or the insured, will be effective only upon written notice and only after the expiration of sixty (60) days after a written notice of cancellation is received by the Department.

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

(i) A letter from the chief financial officer, as specified in § 266.14(i) or § 266.16(f) of these regulations, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**Letter from Chief Financial Officer**

[Address to Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division, 4300 Cherry Creek Drive South, Mail Code: HMWMD-HWC-B2, Denver, CO 80222]

[If demonstrating financial assurance for liability coverage only, or liability coverage and closure and/or post-closure care, then you must complete the following numbered paragraphs 1-11. If demonstrating financial assurance for only closure and /or post-closure care, then you must complete the following numbered paragraphs 1, and 4-11.]

1. I am the chief financial officer of [firm's name and address]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance for [insert "closure and/or post-closure costs", "liability coverage", or "liability coverage and closure and/or post-closure costs"] as specified in § 266.14 and/or § 266.16 of the Colorado Hazardous Waste Regulations, 6 CCR 1007-3, as amended.

[For paragraphs 2 and 3, include the EPA Identification Number, name, and address of each facility. If there are no facilities that belong in a particular paragraph write "None" in the space indicated.]

2. The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden" or "non-sudden" or "both sudden and non-sudden"] accidental occurrences is being demonstrated through the financial test specified in § 266.16 of the Colorado Hazardous Waste Regulations, 6 CCR 1007-3, as amended:_____.

3. The firm identified above guarantees liability coverage through the guarantee specified in § 266.16 of the Colorado Hazardous Waste Regulations, 6 CCR 1007-3, as amended for [insert "sudden" or "non-sudden" or "both sudden and non-sudden"] accidental occurrences at the following facilities owned or operated by the following:_____.[Insert if guaranteeing for liability coverage. "The firm identified above is" insert one of the following: (1) "the direct or higher-tier parent corporation of the owner or operator." or (2) "owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee:_____." or (3) "engaged in the following substantial business relationship with the owner or operator_____, and receiving the following value in consideration of this guarantee:_____."] [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.]

[For paragraphs 4-7, include the EPA Identification Number, name, address, and current closure and/or post-closure cost estimates for each facility. Identify each cost estimate as to whether it is for closure or post-closure care. All facilities in the U.S. and its territories must be listed. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated.]

4. This firm is the owner or operator of the following facilities in Colorado for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in § 266.14 of the Colorado Hazardous Waste Regulations, 6 CCR 1007-3, as amended. The current closure and/or post-closure cost estimates covered by the test are shown for each facility:_____.

5. This firm guarantees, through the guarantee specified in § 266.14 of the Colorado Hazardous Waste Regulations, 6 CCR 1007-3, as amended, the closure and post-closure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: _____. [Insert if guaranteeing for closure and/or post-closure care. "The firm identified above is" insert one of the following: (1) "the direct or higher-tier parent corporation of the owner or operator." or (2) "owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee:_____." or (3) "engaged in the following substantial business relationship with the owner or operator_____, and receiving the following value in consideration of this guarantee:_____."] [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.]

6. This firm is demonstrating financial assurance for closure or post-closure care of the following facilities not in Colorado through the use of a test equivalent or substantially equivalent to the financial test specified in Subpart H of 40 CFR Parts 264 and 265. The current closure or post-closure cost estimates covered by such a test are shown for each facility:_____.

7. This firm is the owner or operator of the following UIC facilities for which financial assurance for plugging and abandonment is required under 40 CFR Part 144. The current closure cost estimates as required by 40 CFR § 144.62 are shown for each facility: _____.

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

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

[Fill in paragraph 10A if you are using the financial test to demonstrate assurance of both liability coverage and closure or post-closure care, or only liability coverage .]

**10A Closure or Post-Closure Care and Liability Coverage**

[Fill in Alternative I if the criteria of paragraph (i)(1)(i) of § 266.14 and paragraph (f)(1)(i) of § 266.16 are used as the basis for the required test to demonstrate financial assurance, or if only the criteria of paragraph (f)(1)(i) of § 266.16 is used. Fill in Alternative II if the criteria of paragraphs (i)(1)(ii) of § 266.14 and (f)(1)(ii) of § 266.16 are used as the basis for the required test to demonstrate financial assurance, or if only the criteria of paragraph (f)(1)(ii) of § 266.16 is used.]

ALTERNATIVE I

| | | |
|---|---|---|
| 1. | Sum of current closure and post-closure cost estimates (total of all cost estimates listed above) | $_____ |
| 2. | Amount of annual aggregate liability coverage to be demonstrated | $_____ |
| 3. | Sum of lines 1 and 2 | $_____ |
| *4. | Total liabilities (if any portion of your closure or post-closure cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6) | $_____ |
| *5. | Tangible net worth | $_____ |
| *6. | Net worth | $_____ |
| *7. | Current assets | $_____ |
| *8. | Current liabilities | $_____ |
| 9. | Net working capital (line 7 minus line 8) | $_____ |
| *10. | The sum of net income plus depreciation, depletion, and amortization. | $_____ |
| *11. | Total assets in U.S. (required only if less than 90% of assets are located in the U.S.) | $_____ |

ALTERNATIVE I - continued

| | | YES | NO |
|---|---|---|---|
| 12. | Is line 5 at least $10 million? | __ | __ |
| 13. | Is line 5 at least 6 times line 3? | __ | __ |
| 14. | Is line 9 at least 6 times line 3? | __ | __ |
| *15. | Are at least 90% of assets located in the U.S.? If not, complete line 16 | __ | __ |
| 16. | Is line 11 at least 6 times line 3? | __ | __ |
| 17. | Is line 4 divided by line 6 less than 2.0? | __ | __ |
| 18. | Is line 10 divided by line 4 greater than 0.1? | __ | __ |
| 19. | Is line 7 divided by line 8 greater than 1.5? | __ | __ |

ALTERNATIVE II

| | | |
|---|---|---|
| 1. | Sum of current closure and post-closure cost estimates (total of all costs estimates listed above) | $_____ |
| 2. | Amount of annual aggregate liability coverage to be demonstrated. | $_____ |
| 3. | Sum of lines 1 and 2 | $_____ |
| 4. | Current Senior Debt Rating of most recent issuance of this firm and name of rating service | _____<br>_____ |
| 5. | Date of issuance of bond | _____ |
| 6. | Date of maturity of bond | _____ |

[Fill in paragraph 10B if you are using the financial test to demonstrate assurance for closure and/or post-closure care only.]

**10B Closure and/or Post-Closure Care Only**

[Fill in Alternative I if the criteria of paragraph (i)(1)(i) of § 266.14 is used as the basis for the required test to demonstrate financial assurance. Fill in Alternative II if the criteria of paragraphs (i)(1)(ii) of § 266.14 is used as the basis for the required test to demonstrate financial assurance.]

ALTERNATIVE I

| | | |
|---|---|---|
| 1. | Sum of current closure and post-closure cost estimates (total of all cost estimates listed above) | $_____ |
| *2. | Total liabilities (if any portion of your closure or post-closure cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 3 and 4) | $_____ |
| *3. | Tangible net worth | $_____ |
| *4. | Net worth | $_____ |
| *5. | Current assets | $_____ |
| *6. | Current liabilities | $_____ |
| 7. | Net working capital (line 5 minus line 6) | $_____ |
| *8. | The sum of net income plus depreciation, depletion, and amortization. | $_____ |
| *9. | Total assets in U.S. (required only if less than 90% of assets are located in the U.S.) | $_____ |

| | | YES | NO |
|---|---|---|---|
| 10. | Is line 3 at least $10 million? | __ | __ |
| 11. | Is line 3 at least 6 times line 1? | __ | __ |

ALTERNATIVE I - Continued

| | | | |
|---|---|---|---|
| 12. | Is line 7 at least 6 times line 1? | __ | __ |
| *13. | Are at least 90% of assets located in the U.S.? If not, complete line 14 | __ | __ |
| 14. | Is line 9 at least 6 times line 1? | __ | __ |
| 15. | Is line 2 divided by line 4 less than 2.0? | __ | __ |
| 16. | Is line 8 divided by line 2 greater than 0.1? | __ | __ |
| 17. | Is line 5 divided by line 6 greater than 1.5? | __ | __ |

ALTERNATIVE II

| | |
|---|---|
| 1. Sum of current closure and post-closure cost estimates (total of all cost estimates listed above) | $_____ |
| 2. Current Senior Debt Rating of most recent issuance of this firm and | _____ |
| name of rating service | _____ |
| 3. Date of issuance of bond | _____ |
| 4. Date of maturity of bond | _____ |

11. I hereby certify that the wording of this letter is identical to the wording specified in § 266.18(i) of the Colorado Hazardous Waste Regulations, 6 CCR 1007-3 , as amended, as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

(j) A guarantee, as specified in § 266.14(i) of these regulations, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

## GUARANTEE FOR CLOSURE OR POST-CLOSURE CARE

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the State of [Insert name of State], herein referred to as guarantor, to the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division, oblige, on behalf of [owner or operator] of [business address] which is [one of the following: "our subsidiary"; "a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary"; or "an entity with which guarantor has a substantial business relationship, as defined in § 266.11 of the Colorado Hazardous Waste Regulations 6 CCR 1007-3"].

### Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in § 266.14(i) of the Colorado Hazardous Waste Regulations, 6 CCR 1007-3, as amended.

2. [Owner or operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee: [List for each facility: EPA Identification Number, name, and address. Indicate for each whether guarantee is for closure, post-closure care, or both.]

3. "Closure plans" and "post-closure plans" as used below refer to the plans maintained as required by Subpart G of these regulations for the closure and post-closure care of facilities as identified above.

4. For value received from [owner or operator], guarantor guarantees to the Department that in the event that [owner or operator] fails to perform [insert "closure," "post-closure care" or "closure and post-closure care"] of the above facility(ies) in accordance with the closure or post-closure plans and other permit or interim status requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in Part 266 of the Colorado Hazardous Waste Regulations, 6 CCR 1007-3, as amended, as applicable, in the name of [owner or operator] in the amount of the current closure or post-closure cost estimates as specified in Part 266 of the Colorado Hazardous Waste Regulations, 6 CCR 1007-3, as amended.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the Department and to [owner or operator] that he/she intends to provide alternate financial assurance as specified in Part 266 of the Colorado Hazardous Waste Regulations, 6 CCR 1007-3, as amended, as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [owner or operator] has done so.

6. The guarantor agrees to notify the Department by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the Department of a determination that guarantor no longer meets the financial test criteria or that he/she is disallowed from continuing as a guarantor of closure or post-closure care, he/she shall establish alternate financial assurance as specified in Part 266 of the Colorado Hazardous Waste Regulations 6 CCR 1007-3, as amended, as applicable, in the name of [owner or operator] unless [owner or operator] has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure or post-closure plan, amendment or modification of the permit, the extension or reduction of the time of performance of closure or post-closure, or any other modification or alteration of an obligation of the owner or operator pursuant to Parts 266, 264, or 265 of the Colorado Hazardous Waste Regulations, 6 CCR 1007-3, as amended.

9. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial assurance requirements of Part 266 of the Colorado Hazardous Waste Regulations, 6 CCR 1007-3, as amended, for the above listed facilities, except as provided in paragraph 10 of this agreement.

10. Guarantor may terminate this guarantee by sending notice by certified mail to the Department and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the Department approves, alternate closure and/or post-closure care coverage complying with § 266.14 of the Colorado Hazardous Waste Regulations 6 CCR 1007-3, as amended.

11. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance as specified in Part 266 of the Colorado Hazardous Waste Regulations, 6 CCR 1007-3, as amended, as applicable, and obtain written approval of such assurance from the Department within 90 days after a notice of cancellation by the guarantor is received by the Department from guarantor, guarantor shall provide such alternate financial assurance in the name of [owner or operator]

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

I hereby certify that the wording of this guarantee is identical to the wording specified in § 266.18(j) of the Colorado Hazardous Waste Regulations, 6 CCR 1007-3, as amended, as such regulations were constituted on the date first above written.

Effective date: _____

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary: _____

(k) A guarantee, as specified in § 266.16(g) of these regulations, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

## GUARANTEE FOR LIABILITY COVERAGE

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of [if incorporated within the United States insert "the State of_____" and insert name of State; if incorporated outside the United States insert the name of the country in which incorporated, the principal place of business within the United States, and the name and address of the registered agent in the state of the principal place of business], herein referred to as guarantor. This guarantee is made on behalf of [owner or operator] of [business address], which is [one of the following: "our subsidiary"; "a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary"; or "an entity with which guarantor has a substantial business relationship, as defined in § 266.11 of the Colorado Hazardous Waste Regulations 6 CCR 1007-3"] to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

### Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in § 266.16(g), of the Colorado Hazardous Waste Regulations, 6 CCR 1007-3.

2. [Owner or Operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee: [List for each facility: EPA identification number, name and address; and if guarantor is incorporated outside the United States list the name and address of the guarantor's registered agent in each State.] This guarantee satisfies Colorado Hazardous Waste Regulations third party liability requirements for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences in above-named owner or operator facilities for coverage in the amount of [insert dollar amount] for each occurrence and [insert dollar amount] annual aggregate.

3. For value received from [owner or operator], guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operations of the facility(ies) covered by this guarantee that in the event that [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [sudden and/or nonsudden] accidental occurrences, arising from the operation of the above-named facilities, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage identified above.

4. Such obligation does not apply to any of the following:

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

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

(c) Bodily injury to:

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

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

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

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

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

(e) Property damage to:

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

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

(3) Property loaned to [insert owner or operator];

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

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

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the Department and to [owner or operator] that he/she intends to provide alternate liability coverage as specified in § 266.16 of the Colorado Hazardous Waste Regulations, 6 CCR 1007-3, as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless [owner or operator] has done so.

6. The guarantor agrees to notify the Department by certified mail of a voluntary or involuntary proceeding under Title II (Bankruptcy), U.S. Code, naming guarantor as debtor, within ten (10) days after commencement of the proceeding.

7. Guarantor agrees that within thirty (30) days after being notified by the Department of a determination that the guarantor no longer meets the financial test criteria or that he/she is disallowed from continuing as a guarantor, he/she shall establish alternate liability coverage as specified in Part 266 of the Colorado Hazardous Waste Regulations 6 CCR 1007-3, as applicable, in the name of [owner or operator], unless [owner or operator] has done so.

8. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability requirements set by Part 266 of the Colorado Hazardous Waste Regulations, provided that such modification shall become effective only if the Department does not disapprove the modification within thirty (30) days of receipt of notification of the modification.

9. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable requirements of Part 266 of the Colorado Hazardous Waste Regulations for the above-listed facility(ies), except as provided in paragraph 10 of this agreement.

10. Guarantor may terminate this guarantee by sending notice by certified mail to the Department and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the Department approve(s) alternate liability coverage complying with Part 266 of the Colorado Hazardous Waste Regulations.

11. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.

12. Guarantor agrees that this guarantee is in addition to and does not affect any other responsibility or liability of the guarantor with respect to the covered facilities.

13. The Guarantor shall satisfy a third-party liability claim only on receipt of one of the following documents:

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

**Certification of Valid Claim**

The undersigned, as parties [insert Principal] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or non-sudden] accidental occurrence arising from operating [Principal's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $[ ].

[Signatures]

Principal

[Notary] Date_____

[Signatures]

Claimant(s)

[Notary] Date_____

**or**

(b) A valid final court order establishing a judgement against the Principal for bodily injury or property damage caused by sudden or non-sudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

14. In the event of combination of this guarantee with another mechanism to meet liability requirements, this guarantee will be considered [insert "primary" or "excess"] coverage.

I hereby certify that the wording of this guarantee is identical to the wording specified in § 266.18(k) of the Colorado Hazardous Waste Regulations, 6 CCR 1007-3, as amended, as such regulations were constituted on the date first above written.

Effective Date:_____

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:_____

(l) A letter of credit, as specified in § 266.16(i) of these regulations, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**IRREVOCABLE STANDBY LETTER OF CREDIT**

[Name and Address of Issuing Institution]

Director
Colorado Department of Public Health and Environment
Hazardous Materials and Waste Management Division
4300 Cherry Creek Drive South
Mail Code HMWMD-HWC-B2
Denver, CO 80222

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No._____ in the favor of any and all third-party liability claimants, at the request and for the account of [owner's or operator's name and address] for third-party liability awards or settlements up to [in words] U.S. dollars $_____ per occurrence and the annual aggregate amount of [in words] U.S. dollars $_____ for sudden accidental occurrences and/or for third-party liability awards or settlements up to the amount of [in words] U.S. dollars $_____ per occurrence, and the annual aggregate amount of [in words] U.S. dollars $ _____ for nonsudden accidental occurrences available upon presentation of a sight draft, bearing reference to this letter of credit No._____ and 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 caused by a [sudden or nonsudden] accidental occurrence arising from operations of [principal's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $_____ . We hereby certify that the claim does not apply to any of the following:

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

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

(c) Bodily injury to:

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

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

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

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

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

(e) Property damage to:

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

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

(3) Property loaned to [insert principal];

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

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

[Signature]

Principal

[Signatures]

Claimant(s)

**or**

2. A valid final court order establishing a judgment against the principal for bodily injury or property damage caused by a sudden or nonsudden accidental occurrence arising from operation of the principal's facility or group of facilities.

This letter of credit is effective as of [date] and shall expire on [date at least one year later], but such expiration date shall be automatically extended for a period of [at least one year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you, the Department and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date.

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

[Insert the following language if a standby trust fund is not being used: "In the event that this letter of credit is used in combination with another mechanism for liability coverage, this letter of credit shall be considered [insert "primary" or "excess"] coverage."]

We certify that the wording of this letter of credit is identical to the wording specified in § 266.18(l) of the Colorado Hazardous Waste Regulations 6 CCR 1007-3, as amended, as such regulations were constituted on the date shown immediately below.

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

Date _____

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

(m) A surety bond, as specified in § 266.16(j) of these regulations, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**PAYMENT BOND**

Surety Bond No. [Insert number]

Parties [Insert name and address of owner or operator], Principal, incorporated in [Insert State of incorporation] of [Insert city and State of principal place of business] and [Insert name and address of surety company(ies)], Surety Company(ies), of [Insert surety(ies) place of business].

EPA Identification Number, name, and address for each facility guaranteed by this bond:_____

| | Sudden accidental occurrences | Nonsudden accidental occurrences |
|---|---|---|
| Penal Sum Per Occurrence, | [insert amount] | [insert amount] |
| Annual Aggregate, | [insert amount] | [insert amount] |

Purpose: This is an agreement between the Surety(ies) and the Principal under which the Surety(ies), its (their) successors and assignees, agree to be responsible for the payment of claims against the Principal for bodily injury and/or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental occurrences arising from operations of the facility or group of facilities in the sums prescribed herein: subject to the governing provisions and the following conditions.

Governing Provisions:

1. The Colorado Hazardous Waste Act, as amended.

2. Rules and regulations of the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division, particularly The Colorado Hazardous Waste Regulations 6 CCR 1007-3 § 266.16(j).

Conditions:

1. The Principal is subject to the applicable governing provisions that require the Principal to have and maintain liability coverage for bodily injury and property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental occurrences arising from operations of the facility or group of facilities. Such obligation does not apply to any of the following:

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

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

(c) Bodily injury to:

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

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

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

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

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

(e) Property damage to:

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

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

(3) Property loaned to [insert principal];

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

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

operations.

2. This bond assures that the Principal will satisfy valid third party liability claims, as described in condition 1.
3. If the Principal fails to satisfy a valid third party liability claim, as described above, the Surety(ies) becomes liable on this bond obligation.

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

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

**Certification of Valid Claim**

The undersigned, as parties [insert name of Principal] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operation [Principal's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of [$_____].

[Signature]

Principal

[Notary] Date _____

[Signature(s)]

Claimant(s)]

[Notary] Date _____

**or**

(b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

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

6. The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum, provided that the Surety(ies) furnish(es) notice to the Department forthwith of all claims filed and payments made by the Surety(ies) under this bond.

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

8. The Principal may terminate this bond by sending written notice to the Surety(ies) and to the Department.

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

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

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

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in § 266.18(m) of the Colorado Hazardous Waste Regulations 6 CCR 1007-3, as amended, as such regulations were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate Seal]

CORPORATE SURETY(IES)

[Name and address]

State of incorporation:_____

Liability Limit:$_____

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

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

Bond premium:$_____

(n)(1) A trust agreement, as specified in § 266.16(k) of these regulations, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

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

Whereas, the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division, a regulatory Agency of the State of Colorado, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility or group of facilities must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

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

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

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

**Section 1. Definitions.**

As used in this Agreement:

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

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

**Section 2. Identification of Facilities.**

This agreement pertains to the facilities identified on attached schedule A [on schedule A, for each facility, list the EPA Identification Number, name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more that one instrument affords combined coverage as demonstrated by this Agreement].

**Section 3. Establishment of Fund.**

The Grantor and the Trustee hereby establish a trust fund, hereinafter the "Fund" for the benefit of any and all third parties injured or damaged by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of _____ [up to $1 million] per occurrence and _____ [up to $2 million] annual aggregate for sudden accidental occurrences and _____ [up to $3 million] per occurrence and _____ [up to $6 million] annual aggregate for nonsudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

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

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

(c) Bodily injury to:

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

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

This exclusion applies:

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

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

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

(e) Property damage to:

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

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

(3) Property loaned to [insert Grantor];

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

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

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

The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Department.

**Section 4. Payment for Bodily Injury or Property Damage.**

The Trustee shall satisfy a third party liability claim by making payments from the Fund only upon receipt of one of the following documents:

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

**Certification of Valid Claim**

The undersigned, as parties [insert Grantor] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Grantor's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $[_____].

[Signatures]

Grantor

[Signatures]

Claimant(s)

**or**

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

**Section 5. Payments Comprising the Fund.**

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

**Section 6. Trustee Management.**

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

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

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

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

**Section 7. Commingling and Investment.**

The Trustee is expressly authorized in its discretion:

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

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

**Section 8. Express Powers of Trustee.**

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

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

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

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

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

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

**Section 9. Taxes and Expenses.**

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

**Section 10. Annual Valuations.**

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

**Section 11. Advice of Counsel.**

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advise of counsel.

**Section 12. Trustee Compensation.**

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

**Section 13. Successor Trustee.**

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or

for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Department, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

**Section 14. Instructions to the Trustee.**

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Department to the Trustee shall be in writing, signed by the Director, or his/her designees, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Department, except as provided for herein.

**Section 15. Notice of Nonpayment.**

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

**Section 16. Amendment of Agreement.**

This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Department, or by the Trustee and the Department if the Grantor ceases to exist.

**Section 17. Irrevocability and Termination.**

Subject to the right of the parties to amend this agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Department, or by the Trustee and the Department, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor. The Department will agree to termination of the Trust when the owner or operator substitutes alternate financial assurance as specified in this section.

**Section 18. Immunity and Indemnification.**

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

**Section 19. Choice of Law.**

This Agreement shall be administered, construed, and enforced according to the laws of the State of [enter name of State].

**Section 20. Interpretation.**

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of the 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 § 266.18(m) of the Colorado Hazardous Waste Regulations 6 CCR 1007-3, as amended, as such regulations were constituted on the date first above written.

_____

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

_____

[Signature of Trustee]

[Name of Trustee]

[Title]

Attest:

[Title]

[Seal]

(2) The following is an example of the certification of acknowledgement which must accompany the trust agreement for a trust fund as specified in § 266.16(k) of these regulations. State requirements may differ on the proper content of this acknowledgement.

State of _____

County of _____

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

[Signature of Notary Public]

(n)(3) A standby trust agreement, as specified in § 266.16(k) of these regulations, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**STANDBY TRUST AGREEMENT**

Trust Agreement, the "Agreement", entered into as of [date] by and between [name of the owner or operator] a [name of 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 Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division, a regulatory Agency of the State of Colorado, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility or group of facilities must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the Grantor has elected to establish a standby trust into which the proceeds from a letter of credit may be deposited to assure all or part of such financial responsibility for the facilities identified herein.

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

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

**Section 1. Definitions.**

As used in this Agreement:

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

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

**Section 2. Identification of Facilities.**

This agreement pertains to the facilities identified on attached schedule A [on schedule A, for each facility, list the EPA Identification Number, name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more that one instrument affords combined coverage as demonstrated by this Agreement].

**Section 3. Establishment of Fund.**

The Grantor and the Trustee hereby establish a trust fund, hereinafter the "Fund" for the benefit of any and all third parties injured or damaged by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of _____ [up to $1 million] per occurrence and _____ [up to $2 million] annual aggregate for sudden accidental occurrences and _____ [up to $3 million] per occurrence and _____ [up to $6 million] annual aggregate for nonsudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

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

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

(c) Bodily injury to:

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

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

This exclusion applies:

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

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

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

(e) Property damage to:

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

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

(3) Property loaned to [insert Grantor];

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

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

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

The Fund is established initially as consisting of the proceeds of the letter of credit deposited into the Fund. Such proceeds and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Department.

**Section 4. Payment for Bodily Injury or Property Damage.**

The Trustee shall satisfy a third party liability claim by 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 placed with the relevant information and the brackets deleted:

**Certification of Valid Claim**

The undersigned, as parties [insert Grantor] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Grantor's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $[_____].

[Signatures]

Grantor

[Signatures]

Claimant(s)

**or**

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

**Section 5. Payments Comprising the Fund.**

Payments made to the Trustee for the Fund shall consist of the proceeds form the letter of credit drawn upon by the Trustee in accordance with the requirements of the Colorado Hazardous Waste Regulations 6 CCR 1007-3 § 266.18(e) and Section 4 of this Agreement.

**Section 6. Trustee Management.**

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

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

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

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

**Section 7. Commingling and Investment.**

The Trustee is expressly authorized in its discretion:

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

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

**Section 8. Express Powers of Trustee.**

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

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

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

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

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

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

**Section 9. Taxes and Expenses.**

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

**Section 10. Advice of Counsel.**

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advise of counsel.

**Section 11. Trustee Compensation.**

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

**Section 12. Successor Trustee.**

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

**Section 13. Instructions to the Trustee.**

All orders, requests, certifications of valid claims, and instructions to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Department, except as provided for herein.

**Section 14. Amendment of Agreement.**

This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Department, or by the Trustee and the Department if the Grantor ceases to exist.

**Section 15. Irrevocability and Termination.**

Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Department, or by the Trustee and the Department, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor. The Department will agree to termination of the Trust when the owner or operator substitutes alternate financial assurance as specified in this section.

**Section 16. Immunity and Indemnification.**

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

**Section 17. Choice of Law.**

This Agreement shall be administered, construed, and enforced according to the laws of the State of [enter name of State].

**Section 18. Interpretation.**

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of the 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 § 266.18(m) of the Colorado Hazardous Waste Regulations 6 CCR 1007-3, as amended, as such regulations were constituted on the date first above written.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

[Name of Trustee]

[Title]

Attest:

[Title]

[Seal]

(4) The following is an example of the certification of acknowledgement which must accompany the trust agreement for a trust fund as specified in § 266.16(k) of these regulations. State requirements may differ on the proper content of this acknowledgement.

State of _____

County of _____

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

[Signature of Notary Public]

Statement of Basis and Purpose
Part 266-Colorado Financial Requirements

Purpose

The purpose of Part 266 of these regulations, which are promulgated pursuant to C.R.S. 1973, 25-15-302(2), is to provide assurance that funds will be available when needed for adequate closure and post-closure care of hazardous waste management facilities; and liability coverage for the compensation of third parties for bodily injury or property damage caused by accidents or improper hazardous waste management techniques. The need for assurance of financial responsibility for closure and post-closure care is indicated by the many instances of environmental damage resulting from abandonment of hazardous waste facilities and by failures of owners and operators to adequately provide for closure and post-closure care. The likelihood of such a failure is increased by the fact that the economic value of the facility is either nonexistent or at a minimum when closure and post-closure care commences. For most disposal facilities, post-closure care must extend for 30 years beyond the operating life of the facility; resulting, a significant number of owners and operators will lack the ability to provide for adequate closure and post-closure care unless effective requirements for financial assurance are established. These regulations require the owners or operators to estimate the costs of closure and post-closure care of hazardous waste management facilities and assure financial responsibility for those costs through any of five mechanisms: trust fund, letter of credit, surety bond, financial test/corporate guarantee, and insurance.

Assurance that funds will be available from which third parties, injured by accidents or improper hazardous waste management techniques at a facility, can seek compensation is also necessary because of the inherent potential for injury arising from the operation of those facilities. Therefore, these regulations require owners and operators to secure liability insurance covering personal injury and property damage resulting from their facilities, or use the financial test/corporate guarantee to meet this requirement.

The requirements for financial assurance for closure and post-closure care and liability insurance contain a range of options. The principal consideration in selecting these mechanisms was the effectiveness of the mechanism in assuring availability of sufficient funds when needed. Avoidance of unnecessary costs to the regulated community, desired flexibility in the requirements, administrative burden and availability of the mechanisms were also considered.

A number of changes have been made in the Financial Assurance Requirements in the Colorado Hazardous Waste Regulations from the financial requirements in the Federal regulations. All of the changes made are believed to be equivalent (equal in effect) to the Federal regulations.

BASIS

These regulations are based upon a "cradle-to-grave" system of regulation of hazardous waste. Under this system, hazardous waste is tracked and regulated from the point of generation through storage and transportation to the point of treatment and/or disposal. In this manner, a major portion of the hazardous waste generated in the State is regulated and accounted for, thereby minimizing the potential for public health and environmental problems resulting from improper management, handling, transportation and disposal of these wastes. The great potential for public health and environmental problems, including hazards associated with fire, explosion, direct contact, and air, surface water and groundwater contamination resulting from inadequate management of hazardous wastes has been documented at hundreds of sites throughout the nation and has spurred the development of hazardous waste regulations pursuant to the Resource Conservation and Recovery Act (RCRA) of 1976, Public Law 94-580.

These regulations are based, for the most part, on those developed by the EPA under Subtitle C of RCRA. This was done for the reasons discussed below. Because the Federal hazardous waste regulations are comprehensive and technically complex, it was felt that adopting the Federal format and amending specific sections to the needs of the State, as opposed to developing State regulations "from scratch", would save substantial amounts of time and financial resources. Also, it was felt that the process of determination of initial program equivalency would be greatly simplified through adoption of the Federal format. Further, because the Federal regulations are presently subject to frequent amendment, adoption of the Federal format greatly enhances maintaining equivalency of the State regulations to the Federal program.

As stated above, much of the scientific basis for these regulations was developed in the course of EPA research and investigations over a period of several years. Therefore, all information utilized by EPA in developing and proposing these regulations, including that referenced in the Federal Register Volume 45, Number 98, May 19, 1980 p. 33066 et seq. is hereby incorporated in this statement by reference.

The basis for these regulations was further developed through a series of twelve public meetings at which comments were received from interested parties. Accordingly, certain changes from the Federal regulations have been incorporated in these regulations where it was deemed advisable as a result of public comment and study of the issues, in order to tailor the regulations more to Colorado's needs. Such departures from the approach taken in the Federal regulations are discussed in this document under the pertinent topics.

The Regulations

## APPLICABILITY

The financial requirements for closure and the liability requirements would apply to owners and operators of all hazardous waste facilities, and the requirements for post-closure care would apply only to owners and operators of disposal facilities.

States and the Federal government are exempt from the financial requirements.

## DEFINITIONS

The definitions as used in Part 266 of these regulations will be included in that part due to the specialized language of the financial community and ease of reference.

## COST ESTIMATE FOR FACILITY CLOSURE

An owner or operator of each hazardous waste facility must prepare a closure plan for the facility. The owner or operator must also prepare a cost estimate for closure of his/her facility at the point in the facility's operating life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan; he/she must adjust the estimate for inflation annually, by using an inflation factor derived from the annual Implicit Price Deflator for Gross National Product as published by the U.S. Department of Commerce in its Survey of Current Business, and prepare a new estimate whenever a change in the closure plan affects the cost of closure.

The owner or operator must also keep the latest closure cost estimate and the adjusted closure cost estimate if applicable at the facility during its operating life.

## COST ESTIMATE FOR POST-CLOSURE CARE

An owner or operator of each hazardous waste facility must prepare a post-closure plan for the facility. The owner or operator must also prepare a cost estimate for post-closure of his/her facility at the point in the facility's operating life when the extent and manner of its operation would make post-closure the most expensive, as indicated by its post-closure plan; he/she must adjust the estimate for inflation annually, by using an inflation factor derived from the annual Implicit Price Deflator for Gross National Product as published by the U.S. Department of Commerce in its Survey of Current Business, and prepare a new estimate whenever a change in the post-closure plan affects the cost of post-closure.

The owner or operator must also keep the latest post-closure cost estimate and the adjusted post-closure cost estimate if applicable at the facility during its operating life.

FINANCIAL ASSURANCE FOR CLOSURE AND/OR POST-CLOSURE CARE

Five mechanisms will be available to owners and operators of hazardous waste management facilities: trust funds, surety bonds, letters of credit, insurance, and a financial test/corporate guarantee.

For added flexibility, these regulations allow an owner or operator to combine the mechanisms (instruments), cover more than one facility with a single mechanism, or cover more than one facility with a single mechanism, or cover both closure and post-closure care with a single mechanism.

**Trust Funds**

**1. The Trust Agreement.**

The identification of facilities and cost estimates will be listed on a separate Schedule A instead of in the agreement itself; this avoids amending the entire agreement when a cost estimate changes. The trustee must furnish the valuations at least 30 days prior to the anniversary date of establishment of the fund, with securities valued as of no more than 60 days prior to the anniversary date. The Federal regulations require the owner or operator to adjust the closure cost estimate for inflation within 30 days after each anniversary of the preparation date of the first closure cost estimate. These two dates may fall months apart. In order to facilitate operator compliance and Department implementation, these regulations allow inflation adjustment to be made and deflator used just before anniversary date of trust fund payment. Application of inflation deflator should be made using deflator closest to the anniversary date of financial assurance mechanisms and the one closest to fiscal year end for companies using the financial test.

Trustees must be banks or other financial institutions that have authority to act as trustees and whose trust operations are regulated and examined by Federal or State agencies. These institutions are examined and regulated by Federal or State agencies and must meet certain standards that increase the reliability and security of trustee institutions. Trustees may resign without first obtaining written agreement from the Regional Administrator and the owner or operator but with resignation effective only after a successor is appointed and accepts the trust.

The trust agreement prohibits investment in the securities of the owner or operator and their affiliates, but otherwise generally allows investments in accordance with a "prudent man" rule. The rule requires the trustee to invest with the judgment and care that persons of prudence would exercise in managing an enterprise of like character and aims. Investment in certificates of deposits with the trustee institution is specifically allowed to the extent they are insured by an agency of the State or Federal government.

**2. Updating Cost Estimates in the Trust Agreement.**

The trust agreement must show the current cost estimate or portion thereof for which financial assurance is being demonstrated through the trust fund. The owner or operator must keep this information up to date. This information must be up to date in order for the Department to monitor the amount of funds being assured through the trust fund and the adequacy of payments. Whenever the amount of the cost estimate being assured through the trust fund changes, the owner or operator must update Schedule A of the trust agreement, which contains this information, within 60 days after the change.

**3. The Pay-in Period.**

The trust must be fully funded over the term of the initial permit or the remaining operating life of the facility, whichever is shorter, to assure that the money to provide proper closure and post-closure care will be available.

**4. Initial Payment into a Trust for a New Facility.**

The federal regulations require an owner or operator to submit the trust agreement to the Agency at least 60 days before hazardous waste is first received. Since the annual trust fee is most likely assessed at the time the trust is established, these regulations have been changed to require the trust be submitted at least 10 business days before waste is first received.

**5. Payments for Closure.**

If the cost of closure appears to be significantly greater than the value of the trust fund, the Department may withhold such amounts from payment as it deems prudent until it receives satisfactory certifications of closure. The Federal regulations allow the Regional Administrator 60 days after receiving a request for release of surplus funds in the trust or receiving bills for closure activities to instruct the trustee to release or disburse funds from the trust. Since the standard payment practices involve paying correct invoices within 30 days of receipt or acceptance of the goods or services, whichever is later, to avoid interest penalties, these regulations will require 30 days to approve payments from trust funds.

**Surety Bonds.**

**1. Time of Funding.**

The financial guarantee bond for closure guarantees funding of the standby trust fund before the beginning of final closure. Alternatively, the standby trust must be funded 15 days after an order to begin closure is issued by the Department or a court of competent jurisdiction.

**2. Limits on Use of Performance Bonds.**

Financial guarantee bonds may be used as a financial assurance instrument during interim status and permitted status, and they may be used to cover part of all of the closure or post-closure cost estimate. Performance bonds are allowed only for permitted status.

The performance bond may be used in combination with other instruments. This is a change from the Federal regulations. The Department believes that the use of this instrument in combination with one or more other instruments will adequately assure closure and/or post-closure care.

**3. Submittal of Bonds.**

As in the trust fund submittal, bonds were required in the Federal Regulations to be submitted at least 60 days prior to the initial receipt of hazardous waste. These regulations have been changed to require receipt of bond at least 10 business days before waste is received.

**4. Standby Trust Fund Requirement.**

At the present time, the Department cannot receive monies directly from a bond or letter of credit. Colorado is now trying to receive statutory authority to receive funds directly, so the additional burden of an unnecessary trust fee is not placed upon the owner or operator. Therefore, if and when Colorado does receive the authority a provision will be made in the regulations to do so.

**Letters of Credit.**

**1. Cancellation Provisions.**

Notices of cancellation must be delivered to both the owner or operator and the Department at least 120 days before actual cancellation. A compliance procedure will not be instituted because a cancellation notice is received. Owners or operators will have 90 days to provide alternate financial assurance and obtain written approval from the Department based on its determination that the mechanism is in accordance with the required specifications. If the owner or operator fails to provide such assurance and obtain such approval within the 90 days, the Department will direct the issuing institution to make payment into the owner's or operator's standby trust, if a standby trust is necessary.

This provision is necessary to prevent expiration from taking place without the knowledge of the Department or the owner or operator and to prevent shortening of the effective notification period due to delays between mailing and actual receipt.

**2. Standby Trust Fund Requirement.**

As in the surety bond, a provision was made to receive monies directly, if Colorado is allowed to do so.

**3. Facilities in Different Regions.**

Owner and operators will be allowed to cover facilities in different Regions with one letter of credit.

**4. Submittal of Letters of Credit.**

As in the trust funds and surety bonds owners and operators must submit letters of credit at least 10 business days before hazardous waste is received.

**Closure and Post-Closure Insurance.**

**1. Face Amount of the Policy.**

The policy will be issued with a face amount (the total amount the insurer is obligated to pay under the policy) equal to at least the current cost estimate for closure or post-closure care unless the policy covers only part of the estimated cost and the rest is covered by another instrument. When the cost estimate increases, the face amount of the policy must be increased by the owner or operator, unless the increase is covered by another instrument. When the estimate decreases, the face amount may be decreased following written approval by the Department.

During the post-closure period, the face amount of the post-closure policy will increase annually to reflect earnings of the funds remaining under the policy. The minimum increase must be equal to the face amount, less any payments by the insurer for post-closure expenses, multiplied by 85 percent of the most recent investment rate or the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week Treasury securities. The Department believes this provision ensures a rate of return that is reasonable compared with other low-risk investments and allows for compensation to the insurer for administrative costs. A higher rate of return may be agreed upon by insurer and insured.

**2. Maintenance of Coverage.**

The owner or operator must continue to make premium payments which are due unless alternate financial assurance as specified in the regulations is substituted. Failure to pay the premium without alternate financial assurance will constitute a serious violation of these regulations, a violation that begins upon receipt by the Department of a notice of cancellation, termination, or nonrenewal.

The insurer may cancel, terminate, or fail to renew the policy only if the premium is not paid. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If the cost estimates to which the policy applies have increased, the insurer and insured may agree to cover that increase in the renewal policy.

In order to cancel, terminate, or not renew the policy upon nonpayment of premium, the insurer must provide 120 days' notice to the owner or operator and the Department, by certified mail. Cancellation, termination, or nonrenewal may not occur, however, if by the expiration date: the Department deems the facility to be abandoned; the Department terminates interim status or the permit, whichever is in effect; closure is ordered by the Department or a U.S. district court or other court of competent jurisdiction; the owner or operator is named as a debtor in bankruptcy proceedings; or the premium is paid.

The owner or operator may cancel the policy if the Department gives written consent based on its receipt of alternate financial assurance that meets the requirements of the regulations or on completion of the closure or post-closure obligations.

**3. Payment Provisions.**

The insurer will make available the face amount of the policy for closure whenever closure occurs. The amount for post-closure care will be made available whenever post-closure care begins. These funds for closure and post-closure care will be made available regardless of the owner's or operator's ability to pay these costs. The insurer will pay out the funds at the direction of the Department to the owner or operator or any other party authorized to conduct closure or post-closure care. The Department will approve payments when they are in accordance with the closure or post-closure plan or otherwise justified.

The Department may withhold reimbursement of a portion of closure expenditures as it deems prudent if it determines that the cost of closure appears to be significantly greater than the face amount of the policy. The purpose of such withholding is to extend financial assurance until completion of closure. Any funds withheld will be released when satisfactory certifications of closure are received by the Department. These provisions for payment are the same as those for the trust fund.

**4. Closure and Post-Closure Insurance Submittal.**

As with the other instruments, these regulations require submittal at least 10 business days before initial waste is received.

**5. Requirements for Insurers.**

The requirements for this insurance include qualifications of the insurer. The insurer must, at a minimum, be licensed to transact the business of insurance, or be eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

**Financial Test/Corporate Guarantee.**

**1. The Financial Test.**

An owner or operator may satisfy the financial assurance requirements by demonstrating that he/she meets either of the following sets of criteria.

**Alternative I:**

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

(B) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates; and

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

(D) Assets in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates.

**Alternative II:**

A current senior debt rating of AAA, AA or A as issued by Standard and Poor's or Aaa, Aa, or A as issued by Moody's. Senior debt includes bonds, notes and debentures.

Alternative II of these regulations differs from the Federal regulations in that the sole test for this alternative is a current senior debt rating of A or better. This change was made for two reasons; a study done by EPA's Region VIII Office showing that companies with a rating of A or better demonstrated sufficient financial strength to be allowed to pass Alternative II solely on the basis of the rating and the Colorado Mined Land Reclamation Board allows self-insurance through a senior debt rating of A or better.

**2. The Closure and Post-Closure Cost Estimates.**

An owner or operator may use the test to demonstrate financial assurance for closure, post-closure care, or both closure and post-closure care of one or more facilities.

The "current closure and post-closure cost estimates: referred to in the test criteria must include, first, all such estimates for facilities of which the firm using the test is the owner or operator and for which it is demonstrating financial assurance through the financial test. Second, if the firm is providing one or more guarantees as specified in these regulations the cost estimates of the facilities for which closure or post-closure care is being guaranteed must be included.

The sum should include all estimated closure and post-closure costs which the firm is obligated to cover, minus those covered by acceptable financial assurance mechanisms other than the financial test.

**3. Reporting Requirements.**

As evidence of satisfying the financial test, a firm must submit:

(1) A letter to the Department signed by its chief financial officer that includes the required data from the firm's independently audited, year-end financial statements and the cost estimates for closure and post-closure care; and

(2) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(3) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that the accountant has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements and, in connection with this procedure, no matters came to his/her attention which caused him/her to believe that the specified data should be adjusted.

The Department believes that the independent accountant's reports add significantly to the reliability of the data submitted and therefore must be required. Independent accountants are guided by standards set by the Securities and Exchange Commission for auditors within the scope of the Federal securities laws and by a Code of Professional Ethics promulgated by the American Institute of Certified Public Accountants. In addition, the profession is regulated, to differing extents, by State licensing boards and State societies of certified public accountants.

If the auditor's opinion that is included in his/her report on examination of the owner's or operator's financial statements is an adverse opinion or contains a disclaimer of opinion, the owner or operator will be disallowed from using the financial test to satisfy the financial requirements. An adverse opinion states that the financial statements do not present fairly the financial condition of the firm in conformity with generally accepted accounting principles. A disclaimer of opinion states that the auditor does not express an opinion on the financial statements. The Department believes that

in either case it cannot rely on data from such financial statements to determine whether the firm passes the financial test.

The Department may disallow use of the financial test based on other qualifications expressed in the auditor's opinion of the firm's financial statements. If the opinion raises questions as to whether the firm will continue as a "going concern," the Department will disallow use of the financial test. Other qualified opinions will be evaluated on a case-by-case basis. The owner or operator must provide alternative financial assurance within 30 days after disallowance.

After the initial submission of the letter from the chief financial officer and the accountant's reports, a new letter and new reports for each subsequent fiscal year must be submitted to the Department within 90 days after the end of the firm's fiscal year. Alternatively, the owner or operator must deliver to the Department, by the end of this 90-day period, a notice of intent to provide substitute financial assurance as specified in the regulations and, within 120 days after the end of the fiscal year, establish the substitute financial assurance.

If the Department has reason to believe that the owner or operator may no longer meet the test criteria, it may request additional financial reports or other relevant information from the owner or operator. Upon a finding by the Department that the owner or operator no longer meets the criteria, the owner or operator will be required to establish other financial assurance. Failure to provide alternate assurance when required, after disallowance or after no longer passing the test, will be considered a violation of these regulations and cause for issuance of a compliance order or initiation of legal proceedings.

**4. The Corporate Guarantee.**

If the owner or operator fails to perform closure or post-closure care as required, the guarantor must do so or fund a trust fund in the full amount of the cost estimates in the name of the owner or operator. If the guarantor falls below the test criteria or is disallowed from continuing as a guarantor because of qualification in the auditor's opinion of the guarantor's financial statements, the guarantor must provide alternate assurance financial assurance in the name of the owner or operator if the owner or operator himself/herself does not do so.

The cancellation provisions are comparable to those of the surety bonds and letters of credit. The guarantor must give a 120-day notice of cancellation to the owner or operator and the Department by certified mail. If the owner or operator does not establish alternate financial assurance and obtain the Department's written approval of this assurance within 90 days after the notice is received, the guarantor must provide alternate assurance in the name of the owner or operator.

Several changes have been made in the Colorado Hazardous Waste Regulations from the Federal regulations. In these regulations any business entity that meets the financial test requirements. This change was made because it is conceivable a firm

acting as guarantor may be financially stronger than a parent corporation. Any firm acting as guarantor is acting in the same capacity as a surety, and if "financially sound" should be allowed to act as guarantor.

The current Federal regulations do not allow the corporate guarantee for use in covering liability insurance requirements as they do for closure/post-closure. The justification for this restriction does not seem to be valid. In January, 1983, Region VIII surveyed facilities required to carry non-sudden liability insurance. The results showed a range of annual premiums ranging from $90,000 to $750,000. These premiums are fixed costs. When firms face economic hardships, variable costs are cut: labor is a variable cost. To relieve industry of this economic burden, the corporate guarantee has been extended to allow coverage of the liability insurance requirement, without sacrificing adequate financial assurance. Also, if the Department has subscribed to an automated system containing audited financial data on the owner or operator, the owner or operator will only be required to submit a closure and/or post-closure cost estimate. Passage of the financial test will then be determined by the Department.

USE OF MULTIPLE FINANCIAL MECHANISMS

The current Federal regulations allow a combination of mechanisms for coverage of closure/post-closure, i.e. a trust fund, surety bond guaranteeing payment into a trust and letter of credit may be used to cover closure. These regulations allow use of the financial test along with an insurance policy to cover liability insurance. However, a financial test may not be used in combination with any other closure mechanism, nor do the regulations allow combination with a surety bond guaranteeing performance of closure. These requirements are inconsistent and arbitrary. Combination of any of these mechanisms present no problems for access to necessary funds when closure/post-closure begins. Therefore, the Colorado Hazardous Waste Regulations allow the combination of any acceptable financial assurance mechanism to provide for closure and post-closure care of a facility.

**The Liability Requirements**

The financial test may be used as a means of demonstrating liability coverage to satisfy the requirements. In order to demonstrate that he/she meets the financial test, the owner or operator must submit to the Department statements from his/her chief financial officer and from an independent certified public accountant.

In order to demonstrate that he/she has obtained insurance, the owner or operator can submit to the Department a certificate of insurance. The insurance industry has used a standard Certificate of Insurance form called the Accord form. This form includes the pertinent information regarding the policy and with the minor changes shown on the example are acceptable for these regulations. Use of this form for the Colorado hazardous waste program was discussed with the Colorado Insurance Commission. No problems were foreseen using the Accord form, providing the noted changes were made. The Federal regulations require a lengthy certificate/endorsement which states various insurer responsibilities. These statements are regulations and were

included in the rule, not in the form submitted as part of compliance. Placing insurer responsibilities in the regulation itself and allowing use of the standard Accord form will ease compliance and implementation of these regulations.

Insurers must give the Department 60 days notice of cancellation of the insurance policy and at least 30 days notice of any other termination of the policy including nonrenewal. Liability coverage must be maintained until certifications of closure are received by the Department.

The required amounts of coverage are for sudden accidental occurrences, $1 million per occurrence with a $2 million annual aggregate; for non-sudden accidental occurrences, $3 million per occurrence with a $6 million annual aggregate. Liability insurance is required on an owner or operator basis rather than a facility basis because the use of an annual aggregate coverage requirement takes into account the risk of multiple occurrences among facilities belonging to one owner or operator. Also, a variance for liability coverage may be obtained.

Minimum qualifications help assure the integrity of insurers whose policies are used by owners or operators to meet the liability requirements. Therefore these regulations require owners or operators to obtain insurance from insurers licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States. These qualifications assure that insurers are subject to some regulatory oversight by State insurance departments but will still permit broad participation in providing the insurance.

**Incapacity of Owners or Operators, Guarantors, or Financial Institutions**

An owner or operator must notify the Department of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), where the owner or operator is named debtor. This notification also applies to guarantors of a corporate guarantee.

Also an owner or operators who obtained a trust fund, surety bond, letter of credit, or an insurance policy is deemed without financial assurance or liability coverage if the issuing institution files a Chapter 11. The owner or operator must then establish other financial assurance or liability coverage within 60 days.

**Wording of the Instruments**

These regulations require all financial assurance mechanisms and liability requirements be worded as specified in Sec. 266.18, for consistency in individual mechanisms and requirements and facilitation of Department review.

**Note:** The following Basis and Purpose was copied from the Statement of Basis and Purpose for the Rule-making Hearing of March 15, 1994. (See § 8.9 of Part 8 of these regulations)

Basis and Purpose.

These amendments to 6 CCR 1007-3, Part 266 are made pursuant to the authority granted to the Hazardous Waste Commission in section 25-15-302(2), C.R.S.

Financial Responsibility for Third-Party Liability, Closure, and Post-Closure

Effective September 16, 1992, the Environmental Protection Agency adopted amendments to its financial assurance requirements under subtitle C of the Resource Conservation and Recovery Act (RCRA) that finalized modifications proposed on July 1, 1991. This final rule amends the regulations related to third-party liability coverage, corrects errors and clarifies the language in the regulations of the July 1, 1991 proposed rule. The proposed amendments affect the claims reporting provisions and provisions for obtaining a letter of credit. The amendments expand the use of non-parent corporate guarantees to owners and operators of hazardous waste facilities for demonstrating financial responsibility for closure and post-closure care. These amendments provide state equivalency with the regulatory requirements of the Environmental Protection Agency.

In addition these amendments remove the trust fund pay-in period for permitted or existing interim status facilities and require the trust fund be fully funded within 30 days of the effective date of these regulations. The previous lengthy pay-in period had resulted in inadequate funding for closure and/or post-closure when the facility entered into bankruptcy prior to the completion of the pay-in period. To lessen the possibility of inadequate coverage the Commission, after extensive discussion, decided to abolish the pay-in period.

This Basis and Purpose incorporates by reference the preamble language for the Environmental Protection Agency regulations published in the Federal Register at 56 FR 30201-30227, July 1, 1991, and at 57 FR 42832-42844, September 16, 1992.