Solid Waste Financial Assurance Rule Re-Adoption Initial Meeting – 3/1/17

Environmental Quality

Presenter: Sarah Rice, Division of Waste Management

Meeting Attendees: Shawn Carroll, WM – MWRA
Phil Carter, WM
Stephanie Garehan, Wake Co. for John Roberson
Joe Hack, Meck Co. – SWANA,
Anarosa Jones, Wake Co.
Butch Joyce, NWRA

Meeting Attendees Cont.: Chelie Lacrosse, Smith Manus
James Law, SCS – SWANA
Jenny Lopp, NCDEQ – DWM, HWS
Dan Moore, WM – NWRA
Vance Moore, Garrett and Moore
Chris Stahl, Macon Co – SWANA

Objective: To move financial assurance rules into a central location for all solid waste management facilities (.1800 Rule). To update existing mechanism templates to current financial industry standards. To potentially come up with an equation for financial assurance calculation of closure for non-sanitary landfill facilities. For example: (tonnage stored on site for a working week + additional storage piles) x tipping fee for closest disposal facility x cost for third party removal. All cost estimates are calculated based upon hiring a third party to perform the required action. To address additional financial concerns of group.

Financial Assurance: Financial Assurance is a federal requirement under RCRA Subtitle D as well as the North Carolina General Statute. Financial assurance demonstrations ensure proper long term financial planning by owner/operators so that sites will be closed properly and maintained and monitored in a manner that protects human health and the environment. The fundamentals of Financial Assurance are set out under 40 CFR 258.

Financial Assurance Mechanisms: There are several allowable financial assurance mechanisms described in the regulations (see 40 CFR §258.74) that an owner/operator may use alone, or in combination, to demonstrate that they meet the closure and post-closure care financial assurance requirements. These mechanisms are put in place to protect the North Carolina tax payer from taking on the burden of costs for cleaning up a facility left by the owner/operator.

Currently allowed Mechanisms in NC:

- Trust Fund (40 CFR §258.74(a))
- Surety Bond Guaranteeing Payment or Performance (40 CFR §258.74(b))
- Letter of Credit (40 CFR §258.74(c))
- Insurance (40 CFR §258.74(d))
- Corporate Financial Test (40 CFR §258.74(e))
- Local Government Financial Test (40 CFR §258.74(f))
- Corporate Guarantee (40 CFR §258.74(g))
- Local Government Guarantee (40 CFR §258.74(h)) ** In NC, this is the Capital Reserve.*

Questions raised regarding Financial Assurance.

1. Is there a better way to calculate scrap tire financial assurance than 2.50 a tire?
2. How is financial assurance going to be accounted for during a life of site permit?
3. Does the group want to have some type of equation in Rule or on the Website for calculating PACA?
4. The group wants a clearer understanding on what the Department deems as "may do." The example used was when the PACA was allowed to have monitoring costs and then was not allowed to have them for PC.
5. Other States only require 1 Mill to be put up for Current Corrective Action. Would NC ever do this?
6. The connotation of "Potential" is not liked. When does the requirement for "Potential" end?

Financial Assurance Rule Re-Adoption Action Items

- Re-evaluate Scrap Tire Rules .1111
    1. $2.50 per tire and insurance
- Re-evaluate the due date of the Local Government Test as well as the AFIR references.
- Create an equation that will account for Closure estimates for Solid Waste Management Facilities that are not Sanitary Landfills.
- Potential Assessment and Corrective Action (PACA) – Address it in Rule?
- Re-evaluate Mechanism language and minimums per statute and CFR.

Future Meeting – if someone would like to host or to have the meeting somewhere else, please suggest.

- April 26th, Green Sq. 3rd Floor Room 3001 and call in # 919-733-2451 from 1:30 - 3:30 EST.
  Topic – <u>One isn't the loneliest number. Discuss how we are going to incorporate Financial Assurance into one Rule set.</u>

Proposed Future Meeting Topics – if you would like to discuss other topics, please suggest.

- **Topic** – <u>The LF Minimums. Sanitary Landfill Financial Assurance Requirements per Rule.</u> (closure, post-closure, current corrective action) – *invite DEQ permitting and compliance hydros*
- **Topic** – <u>WTO? The Other - Solid Waste Management Facilities.</u> (non-sanitary landfill; create equation; scrap tire, etc.) – *invite DEQ permitting*
- **Topic** – <u>Mechanism reference, language, and cleanup.</u>
- **Topic** – <u>Potential Assessment and Corrective Action.</u> (PACA). Bring ideas on how to put into rule or guidance. Equations, Matrix, use of RACER, etc based on Statute.

Attachment: Financial Assurance Rule Re-adoption 2017.pdf
Which includes: NCGS Article 9, 130A-290
NCGS 130A-295.2
15A NCAC 13B 0100, .0546, .1111, and .1628

Article 9.

Solid Waste Management.

Part 1. Definitions.

§ 130A-290. Definitions.

(a) Unless a different meaning is required by the context, the following definitions shall apply throughout this Article:

(1) "Affiliate" has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).

(1a) "Business entity" has the same meaning as in G.S. 55-1-40(2a).

(1b) "CERCLA/SARA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601 et seq., as amended, and the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613, as amended.

(1c) "Chemical or portable toilet" means a self-contained mobile toilet facility and holding tank and includes toilet facilities in recreational vehicles.

(1d) "Chlorofluorocarbon refrigerant" means any of the following when used as a liquid heat transfer agent in a mechanical refrigeration system: carbon tetrachloride, chlorofluorocarbons, halons, or methyl chloroform.

(2) "Closure" means the cessation of operation of a solid waste management facility and the act of securing the facility so that it will pose no significant threat to human health or the environment.

(2a) Recodified as subdivision (a)(2d) at the direction of the Revisor of Statutes. See note.

(2b) "Coal combustion residuals" means residuals, including fly ash, bottom ash, boiler slag, mill rejects, and flue gas desulfurization residue produced by a coal-fired generating unit destined for disposal. The term does not include coal combustion products as defined in G.S. 130A-309.201(4).

(2c) "Coal combustion residuals landfill" means a facility or unit for the disposal of combustion products, where the landfill is located at the same facility with the coal-fired generating unit or units producing the combustion products, and where the landfill is located wholly or partly on top of a facility that is, or was, being used for the disposal or storage of such combustion products, including, but not limited to, landfills, wet and dry ash ponds, and structural fill facilities.

(2d) "Coal-fired generating unit" means a coal-fired generating unit, as defined by 40 Code of Federal Regulations § 96.2 (1 July 2001 Edition), that is located in this State and has the capacity to generate 25 or more megawatts of electricity.

(3) "Commercial" when applied to a hazardous waste facility, means a hazardous waste facility that accepts hazardous waste from the general public or from another person for a fee.

(3a) "Commission" means the Environmental Management Commission.

(4) "Construction" or "demolition" when used in connection with "waste" or "debris" means solid waste resulting solely from construction, remodeling, repair, or demolition operations on pavement, buildings, or other structures, but does not include inert debris, land-clearing debris or yard debris.

(4a) "Department" means the Department of Environmental Quality.

(5) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 1.

(6) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

(7) "Garbage" means all putrescible wastes, including animal offal and carcasses, and recognizable industrial by-products, but excluding sewage and human waste.

(8) "Hazardous waste" means a solid waste, or combination of solid wastes, which because of its quantity, concentration or physical, chemical or infectious characteristics may:

a. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

b. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed.

(8a) "Hazardous waste constituent" has the same meaning as in 40 Code of Federal Regulations § 260.10 (1 July 2006).

(9) "Hazardous waste facility" means a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste. Hazardous waste facility does not include a hazardous waste transfer facility that meets the requirements of 40 Code of Federal Regulations § 263.12 (1 July 2006).

(10) "Hazardous waste generation" means the act or process of producing hazardous waste.

(11) "Hazardous waste disposal facility" means any facility or any portion of a facility for disposal of hazardous waste on or in land in accordance with rules adopted under this Article.

(12) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous wastes.

(13) "Hazardous waste management program" means the program and activities within the Department pursuant to Part 2 of this Article, for hazardous waste management.

(13a) "Hazardous waste transfer facility" means a facility or location where a hazardous waste transporter stores hazardous waste for a period of more than 24 hours but less than 10 days.

(13b) "Industrial solid waste" means solid waste generated by manufacturing or industrial processes that is not hazardous waste.

(14) "Inert debris" means solid waste which consists solely of material that is virtually inert and that is likely to retain its physical and chemical structure under expected conditions of disposal.

(15) "Land-clearing debris" means solid waste which is generated solely from land-clearing activities.

(16) "Landfill" means a disposal facility or part of a disposal facility where waste is placed in or on land and which is not a land treatment facility, a surface impoundment, an injection well, a hazardous waste long-term storage facility or a surface storage facility.

(16a) "Leachate" means a liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste. The term "leachate" does not include liquid adhering to tires of vehicles leaving a sanitary landfill and transfer stations.

(17) "Manifest" means the form used for identifying the quantity, composition and the origin, routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage.

(17a) "Medical waste" means any solid waste which is generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals, but does not include any hazardous waste identified or listed pursuant to this Article, radioactive waste, household waste as defined in 40 Code of Federal Regulations § 261.4(b)(1) in effect on 1 July 1989, or those substances excluded from the definition of "solid waste" in this section.

(18) "Motor vehicle oil filter" means a filter that removes impurities from the oil used to lubricate an internal combustion engine in a motor vehicle.

(18a) "Municipal solid waste" means any solid waste resulting from the operation of residential, commercial, industrial, governmental, or institutional establishments that would normally be collected, processed, and disposed of through a public or private solid waste management service. Municipal solid waste does not include hazardous waste, sludge, industrial waste managed in a solid waste management facility owned and operated by the generator of the industrial waste for management of that waste, or solid waste from mining or agricultural operations.

(18b) "Municipal solid waste management facility" means any publicly or privately owned solid waste management facility permitted by the Department that receives municipal solid waste for processing, treatment, or disposal.

(19) "Natural resources" means all materials which have useful physical or chemical properties which exist, unused, in nature.

(20) "Open dump" means any facility or site where solid waste is disposed of that is not a sanitary landfill and that is not a coal combustion residuals surface impoundment or a facility for the disposal of hazardous waste.

(21) "Operator" means any person, including the owner, who is principally engaged in, and is in charge of, the actual operation, supervision, and maintenance of a solid waste management facility and includes the person in charge of a shift or periods of operation during any part of the day.

(21a) "Parent" has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).

(22) "Person" means an individual, corporation, company, association, partnership, unit of local government, State agency, federal agency or other legal entity.

(22a) "Pre-1983 landfill" means any land area, whether publicly or privately owned, on which municipal solid waste disposal occurred prior to 1 January 1983 but not thereafter, but does not include any landfill used primarily for the disposal of industrial solid waste.

(23) "Processing" means any technique designed to change the physical, chemical, or biological character or composition of any solid waste so as to render it safe for transport; amenable to recovery, storage or recycling; safe for disposal; or reduced in volume or concentration.

(24) "Recovered material" means a material that has known recycling potential, can be feasibly recycled, and has been diverted or removed from the solid waste stream for sale, use, or reuse. In order to qualify as a recovered material, a material must meet the requirements of G.S. 130A-309.05(c).

(25) "RCRA" means the Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, 90 Stat. 2795, 42 U.S.C. § 6901 et seq., as amended.

(26) "Recyclable material" means those materials which are capable of being recycled and which would otherwise be processed or disposed of as solid waste.

(27) "Recycling" means any process by which solid waste, or materials which would otherwise become solid waste, are collected, separated, or processed, and reused or returned to use in the form of raw materials or products.

(28) "Refuse" means all nonputrescible waste.

(28a) "Refuse-derived fuel" means fuel that consists of municipal solid waste from which recyclable and noncombustible materials are removed so that the remaining material is used for energy production.

(29) "Resource recovery" means the process of obtaining material or energy resources from discarded solid waste which no longer has any useful life in its present form and preparing the solid waste for recycling.

(30) "Reuse" means a process by which resources are reused or rendered usable.

(31) "Sanitary landfill" means a facility for disposal of solid waste on land in a sanitary manner in accordance with the rules concerning sanitary landfills adopted under this Article.

(31a) "Secretary" means the Secretary of Environmental Quality.

(32) "Septage" means solid waste that is a fluid mixture of untreated and partially treated sewage solids, liquids, and sludge of human or domestic origin which is removed from a wastewater system. The term septage includes the following:

a. Domestic septage, which is either liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works receiving only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar treatment works receiving either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap at a restaurant.

b. Domestic treatment plant septage, which is solid, semisolid, or liquid residue generated during the treatment of domestic sewage in a treatment works where the designed disposal is subsurface. Domestic treatment plant septage includes, but is not limited to, scum or solids removed in primary, secondary, or advanced wastewater treatment processes and a material derived from domestic treatment plant septage. Domestic treatment plant septage does not include ash generated during the firing of domestic treatment plant septage in an incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

c. Grease septage, which is material pumped from grease interceptors, separators, traps, or other appurtenances used for the purpose of removing cooking oils, fats, grease, and food debris from the waste flow generated from food handling, preparation, and cleanup.

d. Industrial or commercial septage, which is material pumped from septic tanks or other devices used in the collection, pretreatment, or treatment of any water-carried waste resulting from any process of industry, manufacture, trade, or business where the design disposal of the wastewater is subsurface. Domestic septage mixed with any industrial or commercial septage is considered industrial or commercial septage.

e. Industrial or commercial treatment plant septage, which is solid, semisolid, or liquid residue generated during the treatment of sewage that contains any waste resulting from any process of industry, manufacture, trade, or

business in a treatment works where the designed disposal is subsurface. Industrial or commercial treatment plant septage includes, but is not limited to, scum or solids removed in primary, secondary, or advanced wastewater treatment processes and a material derived from domestic treatment plant septage. Industrial or commercial treatment plant septage does not include ash generated during the firing of industrial or commercial treatment plant septage in an incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

(33) "Septage management firm" means a person engaged in the business of pumping, transporting, storing, treating or disposing septage. The term does not include public or community wastewater systems that treat or dispose septage.

(34) "Sludge" means any solid, semisolid or liquid waste generated from a municipal, commercial, institutional or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility, or any other waste having similar characteristics and effects.

(35) "Solid waste" means any hazardous or nonhazardous garbage, refuse or sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, domestic sewage and sludges generated by the treatment thereof in sanitary sewage collection, treatment and disposal systems, and other material that is either discarded or is being accumulated, stored or treated prior to being discarded, or has served its original intended use and is generally discarded, including solid, liquid, semisolid or contained gaseous material resulting from industrial, institutional, commercial and agricultural operations, and from community activities. Notwithstanding sub-sub-subdivision b.3. of this subdivision, the term includes coal combustion residuals. The term does not include:

a. Fecal waste from fowls and animals other than humans.

b. Solid or dissolved material in:

1. Domestic sewage and sludges generated by treatment thereof in sanitary sewage collection, treatment and disposal systems which are designed to discharge effluents to the surface waters.
2. Irrigation return flows.
3. Wastewater discharges and the sludges incidental to and generated by treatment which are point sources subject to permits granted under Section 402 of the Water Pollution Control Act, as amended (P.L. 92-500), and permits granted under G.S. 143-215.1 by the Commission, including coal combustion products. However, any sludges that meet the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article.

c. Oils and other liquid hydrocarbons controlled under Article 21A of Chapter 143 of the General Statutes. However, any oils or other liquid hydrocarbons that meet the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article.

d. Any source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011).

e. Mining refuse covered by the North Carolina Mining Act, G.S. 74-46 through 74-68 and regulated by the North Carolina Mining Commission (as defined under G.S. 143B-293.1). However, any specific mining waste that meets the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article.

f. Recovered material.

g. Steel slag that is a product of the electric arc furnace steelmaking process; provided, that such steel slag is sold and distributed in the stream of commerce for consumption, use, or further processing into another desired commodity and is managed as an item of commercial value in a controlled manner and not as a discarded material or in a manner constituting disposal.

(36) "Solid waste disposal site" means any place at which solid wastes are disposed of by incineration, sanitary landfill or any other method.

(37) "Solid waste generation" means the act or process of producing solid waste.

(38) "Solid waste management" means purposeful, systematic control of the generation, storage, collection, transport, separation, treatment, processing, recycling, recovery and disposal of solid waste.

(39) "Solid waste management facility" means land, personnel and equipment used in the management of solid waste.

(40) "Special wastes" means solid wastes that can require special handling and management, including white goods, whole tires, used oil, lead-acid batteries, and medical wastes.

(41) "Storage" means the containment of solid waste, either on a temporary basis or for a period of years, in a manner which does not constitute disposal.

(41a) "Subsidiary" has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).

(41b) "Tire-derived fuel" means a form of fuel derived from scrap tires.

(42) "Treatment" means any method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage or reduced in volume. "Treatment" includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

(43) "Unit of local government" means a county, city, town or incorporated village.

(44) "White goods" includes refrigerators, ranges, water heaters, freezers, unit air conditioners, washing machines, dishwashers, clothes dryers, and other similar domestic and commercial large appliances.

(44a) "Wooden pallet" means a wooden object consisting of a flat or horizontal deck or platform supported by structural components that is used as a base for assembling, stacking, handling, and transporting goods.

(45) "Yard trash" means solid waste consisting solely of vegetative matter resulting from landscaping maintenance.

(b) Unless a different meaning is required by the context, the following definitions shall apply throughout G.S. 130A-309.15 through G.S. 130A-309.24:

(1) "Public used oil collection center" means:

a. Automotive service facilities or governmentally sponsored collection facilities, which in the course of business accept for disposal small quantities of used oil from households; and

b. Facilities which store used oil in aboveground tanks, which are approved by the Department, and which in the course of business accept for disposal small quantities of used oil from households.

(2) "Reclaiming" means the use of methods, other than those used in rerefining, to purify used oil primarily to remove insoluble contaminants, making the oil suitable

for further use; the methods may include settling, heating, dehydration, filtration, or centrifuging.

(3) "Recycling" means to prepare used oil for reuse as a petroleum product by rerefining, reclaiming, reprocessing, or other means or to use used oil in a manner that substitutes for a petroleum product made from new oil.

(4) "Rerefining" means the use of refining processes on used oil to produce high-quality base stocks for lubricants or other petroleum products. Rerefining may include distillation, hydrotreating, or treatments employing acid, caustic, solvent, clay, or other chemicals, or other physical treatments other than those used in reclaiming.

(5) "Used oil" means any oil which has been refined from crude oil or synthetic oil and, as a result of use, storage, or handling, has become unsuitable for its original purpose due to the presence of impurities or loss of original properties, but which may be suitable for further use and is economically recyclable.

(6) "Used oil recycling facility" means any facility that recycles more than 10,000 gallons of used oil annually. (1969, c. 899; 1975, c. 311, s. 2; 1977, 2nd Sess., c. 1216; 1979, c. 464, s. 1; 1981, c. 704, s. 4; 1983, c. 795, ss. 1, 8.1; c. 891, s. 2; 1983 (Reg. Sess., 1984), c. 973, s. 2; 1985, c. 738, s. 1; 1987, c. 574, s. 1; 1987 (Reg. Sess., 1988), c. 1020, s. 1; c. 1058, s. 1; 1989, c. 168, s. 11; c. 742, s. 5; c. 784, s. 1; 1991, c. 342, s. 7; c. 621, s. 1; 1991 (Reg. Sess., 1992), c. 1013, s. 7; 1993, c. 173, ss. 1-3; c. 471, ss. 1, 2; 1995 (Reg. Sess., 1996), c. 594, ss. 1-5; 1997-27, s. 1; 1997-330, s. 3; 1997-443, s. 11A.81; 2005-362, s. 1; 2007-107, ss. 1.1(c), 1.8(a), (b); 2007-550, ss. 7(a), 12(a), (b); 2012-143, s. 1(d); 2013-413, s. 59.3; 2014-4, s. 5(c); 2014-115, s. 17; 2014-122, s. 3(d); 2015-1, s. 2(a); 2015-241, ss. 14.30(u), (v).)

§ 130A-295.2. Financial responsibility requirements for applicants and permit holders for solid waste management facilities.

(a) As used in this section:

(1) "Financial assurance" refers to the ability of an applicant or permit holder to pay the costs of assessment and remediation in the event of a release of pollutants from a facility, closure of the facility in accordance with all applicable requirements, and post-closure monitoring and maintenance of the facility.

(2) "Financial qualification" refers to the ability of an applicant or permit holder to pay the costs of proper design, construction, operation, and maintenance of the facility.

(3) "Financial responsibility" encompasses both financial assurance and financial qualification.

(b) The Commission may adopt rules governing financial responsibility requirements for applicants for permits and for permit holders to ensure the availability of sufficient funds for the proper design, construction, operation, maintenance, closure, and post-closure monitoring and maintenance of solid waste management facilities and for any corrective action the Department may require during the active life of a facility or during the closure and post-closure periods.

(c) The Department may provide a copy of any filing that an applicant for a permit or a permit holder submits to the Department to meet the financial responsibility requirements under this section to the State Treasurer. The State Treasurer shall review the filing and provide the Department with a written opinion as to the adequacy of the filing to meet the purposes of this section, including any recommended changes.

(d) The Department may, in its sole discretion, require an applicant for a permit to construct a facility to demonstrate its financial qualification for the design, construction, operation, and maintenance of a facility. The Department may require an applicant for a permit for a solid waste management facility to provide cost estimates for site investigation; land acquisition, including financing terms and land ownership; design; construction of each five-year phase, if applicable; operation; maintenance; closure; and post-closure monitoring and maintenance of the facility to the Department. The Department may allow an applicant to demonstrate its financial qualifications for only the first five-year phase of the facility. If the Department allows an applicant for a permit to demonstrate its financial qualification for only the first five-year phase of the facility, the Department shall require the applicant or permit holder to demonstrate its financial qualification for each successive five-year phase of the facility when applying for a permit to construct each successive phase of the facility.

(e) If the Department requires an applicant for a permit or a permit holder for a solid waste management facility to demonstrate its financial qualification, the applicant or permit holder shall provide an audited, certified financial statement. An applicant who is required to demonstrate its financial qualification may do so through a combination of cash deposits, insurance, and binding loan commitments from a financial institution licensed to do business in the State and rated AAA by Standard & Poor's, Moody's Investor Service, or Fitch, Inc. If assets of a parent, subsidiary, or other affiliate of the applicant or a permit holder, or a joint venturer with a direct or indirect interest in the applicant or permit holder, are proposed to be used to demonstrate financial qualification, then the party whose assets are to be used must be designated as a joint permittee with the applicant on the permit for the facility.

(f) The applicant and permit holder for a solid waste management facility shall establish financial assurance by a method or combination of methods that will ensure that sufficient funds for closure, post-closure maintenance and monitoring, and any corrective

action that the Department may require will be available during the active life of the facility, at closure, and for any post-closure period of time that the Department may require even if the applicant or permit holder becomes insolvent or ceases to reside, be incorporated, do business, or maintain assets in the State. Rules adopted by the Commission shall allow a business entity that is an applicant for a permit or a permit holder to establish financial assurance through insurance, irrevocable letters of credit, trusts, surety bonds, corporate financial tests, or any other financial device as allowed pursuant to 40 Code of Federal Regulations § 258.74 (July 1, 2010 Edition), or any combination of the foregoing shown to provide protection equivalent to the financial protection that would be provided by insurance if insurance were the only mechanism used. Assets used to meet the financial assurance requirements of this section shall be in a form that will allow the Department to readily access funds for the purposes set out in this section. Assets used to meet financial assurance requirements of this section shall not be accessible to the permit holder except as approved by the Department. Where a corporate financial test is used that is substantially similar to that allowed under 40 Code of Federal Regulations § 258.74 (July 1, 2010 Edition), the assets shall be presumed both to be readily accessible by the Department and not otherwise accessible to the permit holder.

(g) In order to continue to hold a permit under this Article, a permit holder must maintain financial responsibility and must provide any information requested by the Department to establish that the permit holder continues to maintain financial responsibility. A permit holder shall notify the Department of any significant change in the: (i) identity of any person or structure of the business entity that holds the permit for the facility; (ii) identity of any person or structure of the business entity that owns or operates the facility; or (iii) assets of the permit holder, owner, or operator of the facility. The permit holder shall notify the Department within 30 days of a significant change. A change shall be considered significant if it has the potential to affect the financial responsibility of the permit holder, owner, or operator, or if it would result in a change in the identity of the permit holder, owner, or operator for purposes of either financial responsibility or environmental compliance review. Based on its review of the changes, the Department may require the permit holder to reestablish financial responsibility and may modify or revoke a permit, or require issuance of a new permit.

(h) To meet the financial assurance requirements of this section, the owner or operator of a sanitary landfill, other than a sanitary landfill for the disposal of construction and demolition debris waste, shall establish financial assurance sufficient to cover a minimum of two million dollars ($2,000,000) in costs for potential assessment and corrective action at the facility. The Department may require financial assurance in a higher amount and may increase the amount of financial assurance required of a permit holder at any time based upon the types of waste disposed in the landfill, the projected amount of waste to be disposed in the landfill, the location of the landfill, potential receptors of releases from the landfill, and inflation. The financial assurance requirements of this subsection are in addition to the other financial responsibility requirements set out in this section.

(h1) To meet the financial assurance requirements of this section, the owner or operator of a sanitary landfill for the disposal of construction and demolition debris waste shall establish financial assurance sufficient to cover a minimum of one million dollars ($1,000,000) in costs for potential assessment and corrective action at the facility. The financial assurance requirements of this subsection are in addition to the other financial responsibility requirements set out in this section.

(i) The Commission may adopt rules under which a unit of local government and a solid waste management authority created pursuant to Article 22 of Chapter 153A of the General Statutes may meet the financial responsibility requirements of this section by either a local government financial test or a capital reserve fund requirement.

(j) In addition to the other methods by which financial assurance may be established as set forth in subsection (f) of this section, the Department may allow the owner or operator of a sanitary landfill permitted on or before August 1, 2009, to meet the financial assurance requirement set forth in subsection (h) of this section by establishing a trust fund which conforms to the following minimum requirements:

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

(2) A copy of the trust agreement shall be placed in the facility's operating record.

(3) Payments into the trust fund shall be made annually by the owner or operator over a period not to exceed five years. This period is referred to as the pay-in period.

(4) Payments into the fund shall be made in equal annual installments in amounts calculated by dividing the current cost estimate for potential assessment and corrective action at the facility, which, for a sanitary landfill, other than a sanitary landfill for the disposal of construction and demolition debris waste, shall not be less than two million dollars ($2,000,000) in accordance with subsection (h) of this section, by the number of years in the pay-in period.

(5) The trust fund may be terminated by the owner or operator only if the owner or operator establishes financial assurance by another method or combination of methods allowed under subsection (f) of this section.

(6) The trust agreement shall be accompanied by a formal certification of acknowledgement. (2007-550, s. 5(a); 2011-262, s. 1; 2014-120, s. 27.)

SUBCHAPTER 13B - SOLID WASTE MANAGEMENT

SECTION .0100 - GENERAL PROVISIONS

Rules .0101 - .0108 of Title 15A Subchapter 13B of the North Carolina Administrative Code (T15A.13B .0101 - .0108); have been transferred and recodified from Rules .0101 - .0108 of Title 10 Subchapter 10G of the North Carolina Administrative Code (T10.10G .0101 - .0108), effective April 4, 1990.

15A NCAC 13B .0101 DEFINITIONS

The definitions in G.S. 130A-290 and the following definitions shall apply throughout this Subchapter:

(1) "Agricultural Waste" means waste materials produced from the raising of plants and animals, including animal manures, bedding, plant stalks, hulls, and vegetable matter.

(2) "Airport" means public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

(3) "Backyard Composting" means the on-site composting of yard waste from residential property by the owner or tenant for non-commercial use.

(4) "Blood products" means all bulk blood and blood products.

(5) "Cell" means compacted solid waste completely enveloped by a compacted cover material.

(6) "Compost" means decomposed, humus-like organic matter, free from pathogens, offensive odors, toxins or materials harmful at the point of end use. Compost is suitable for use as a soil conditioner with varying nutrient values.

(7) "Compost Facility" means a solid waste facility which utilizes a controlled biological process of degrading non-hazardous solid waste. A facility may include materials processing and hauling equipment; structures to control drainage; and structures to collect and treat leachate; and storage areas for the incoming waste, the final products, and residual materials.

(8) "Composting" means the controlled decomposition of organic waste by naturally occurring bacteria, yielding a stable, humus-like, pathogen-free final product resulting in volume reduction of 30 - 75 percent.

(9) "Composting Pad" means a surface, whether soil or manufactured, where the process of composting takes place, and where raw and finished materials are stored.

(10) "Curing" means the final state of composting, after the majority of the readily metabolized material has been decomposed, in which the compost material stabilizes and dries.

(11) "Demolition landfill" means a sanitary landfill that was limited to receiving stumps, limbs, leaves, concrete, brick, wood, uncontaminated earth or other solid wastes approved by the Division, which either ceased operation or was converted to a Land Clearing and Inert Debris Landfill pursuant to Rule .0563.

(12) "Division" means the Director of the Division of Waste Management or the Director's authorized representative.

(13) "Erosion control measure, structure, or device" means physical devices constructed, and management practices utilized, to control sedimentation and soil erosion such as silt fences, sediment basins, check dams, channels, swales, energy dissipation pads, seeding, mulching and other similar items.

(14) "Explosive gas" means Methane (CH_4).

(15) "Federal act" means the Resource Conservation and Recovery Act of 1976, P.L. 94-580, as amended.

(16) "Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, which are inundated by the 100-year flood.

(17) "Foreign Matter" means metals, glass, plastics, rubber, bones, and leather, but does not include sand, grit, rocks or other similar materials.

(18) "Hazardous waste landfill facility" means any facility or any portion of a facility for disposal of hazardous waste on or in land in accordance with rules promulgated under this article.

(19) "Incineration" means the process of burning solid, semi-solid or gaseous combustible wastes to an inoffensive gas and a residue containing little or no combustible material.

(20) "Industrial Process Waste" means any solid, semi-solid, or liquid waste generated by a manufacturing or processing plant which is a result of the manufacturing or processing process. This definition does not include packaging materials associated with such activities.

(21) "Industrial Solid Waste Landfill" means a facility for the land disposal of "industrial solid waste" as defined in Item (11) of Rule .1602 of this Subchapter, and is not a land application unit, surface impoundment, injection well, or waste pile, as defined under 40 CFR Part 257.

(22) "Land clearing and inert debris landfill" means a facility for the land disposal of land clearing waste, concrete, brick, concrete block, uncontaminated soil, gravel and rock, untreated and unpainted wood, and yard trash.

(23) "Land clearing waste" means solid waste which is generated solely from land clearing activities such as stumps, trees, limbs, brush, grass, and other naturally occurring vegetative material.

(24) "Leachate" means any liquid, including any suspended components in liquid, that has percolated through or drained from solid waste.

(25) "Lower explosive limit" means the lowest percent by volume of a mixture of explosive gases which will propagate a flame in air at 25 degrees Celsius and atmospheric pressure.

(26) "Microbiological wastes" means and includes cultures and stocks of etiologic agents. The term includes cultures of specimens from medical, pathological, pharmaceutical, research, commercial, and industrial laboratories.

(27) "Mulch" means a protective covering of various substances, especially organic, to which no plant food has been added and for which no plant food is claimed. Mulch is generally placed around plants to prevent erosion, compaction, evaporation of moisture, freezing of roots, and weed growth.

(28) "One-hundred year flood" means a flood that has a one percent or less chance of recurring in any year or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

(29) "Open burning" means any fire wherein the products of combustion are emitted directly into the outdoor atmosphere and are not directed thereto through a stack or chimney, incinerator, or other similar devices.

(30) "Pathogens" means organisms that are capable of producing infection or diseases, often found in waste materials.

(31) "Pathological wastes" means and includes human tissues, organs, body parts, secretions and excretions, blood and body fluids that are removed during surgery and autopsies; and the carcasses and body parts of all animals that were exposed to pathogens in research, were used in the production of biologicals or in the in vivo testing of pharmaceuticals, or that died of known or suspected infectious disease.

(32) "Putrescible" means solid waste capable of being decomposed by microorganisms with sufficient rapidity as to cause nuisances from odors and gases, such as kitchen wastes, offal and carcasses.

(33) "Radioactive waste material" means any waste containing radioactive material as defined in G.S. 104E-5(14).

(34) "Regulated Medical Waste" means blood and body fluids in individual containers in volumes greater than 20 ml, microbiological waste, and pathological waste that have not been treated pursuant to Rule .1207 of this Subchapter.

(35) "Residues from Agricultural Products and Processing" means solids, semi-solids or liquid residues from food and beverage processing and handling; silviculture; agriculture; and aquaculture operations that are non-toxic, non-hazardous, and contain no domestic wastewater.

(36) "Respondent" means the person against whom an administrative penalty has been assessed.

(37) "Runoff" means the portion of precipitation that drains from an area as surface flow.

(38) "Sediment" means solid particulate matter both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site of origin.

(39) "Sharps" means and includes needles, syringes, and scalpel blades.

(40) "Siltation" means sediment resulting from accelerated erosion which is settleable or removable by properly designed, constructed, and maintained control measures and which has been transported from its point of origin within the site land-disturbing activity and which has been deposited, or is in suspension in water.

(41) "Silviculture Waste" means waste materials produced from the care and cultivation of forest trees, including bark and woodchips.

(42) "Soil Group I" means soil group I as defined in 15A NCAC 13B .0807(a)(1)(A) of the Septage Management Rules.

(43) "Soil Scientist" means an individual who is a North Carolina Licensed Soil Scientist, a Certified Professional Soil Scientist or Soil Specialist by American Registry of Certified Professional in Agronomy, Crops, and Soils (ARCPACS) or an individual that demonstrates equivalent experience or education.

(44) "Solid waste collector" means any person who collects or transports solid waste by whatever means, including but not limited to, highway, rail, and navigable waterway.

(45) "Solid waste generator" means any person who produces solid waste.

(46) "Spoiled food" means any food which has been removed from sale by the United States Department of Agriculture, North Carolina Department of Agriculture, Food and Drug Administration, or any other regulatory agency having jurisdiction in determining that food is unfit for consumption.

(47) "Steam sterilization" means treatment by steam at high temperatures for sufficient time to render infectious waste non-infectious.

(48) "Transfer facility" means a permanent structure with mechanical equipment used for the collection or compaction of solid waste prior to the transportation of solid waste for final disposal.

(49) "Treatment and processing facility" means a facility used in the treatment and processing of solid waste for final disposal or for utilization by reclaiming or recycling.

(50) "Vector" means a carrier, usually an arthropod, that is capable of transmitting a pathogen from one organism to another.

(51) "Water supply watershed" means an area from which water drains to a point or impoundment, and the water is then used as a source for a public water supply.

(52) "Water table" means the upper limit of the portion of the ground wholly saturated with water.

(53) "Windrow" means an elongated compost pile (typically eight feet wide by ten feet high).

(54) "Working face" means that portion of the land disposal site where solid wastes are discharged, spread, and compacted prior to the placement of cover material.

(55) "Yard trash" means solid waste resulting from landscaping and yard maintenance such as brush, grass, tree limbs, and similar vegetative material.

(56) "Yard Waste" means "Yard Trash" and "Land-clearing Debris" as defined in G.S. 130A-290, including stumps, limbs, leaves, grass, and untreated wood.

History Note: *Authority G.S. 130A-294;*
Eff. April 1, 1982;
Amended Eff. August 1, 2008; October 1, 1995; January 4, 1993; December 1, 1991; February 1, 1991.

CONSTRUCTION AND DEMOLITION DEBRIS LANDFILLS

15A NCAC 13B .0546 FINANCIAL ASSURANCE REQUIREMENTS FOR C&DLF FACILITIES AND UNITS

(a) Owners and operators of C&DLF facilities and units must provide proof of financial assurance in accordance with the financial responsibility for landfills adopted pursuant to G.S. 130A-294(b) and 130A-309.27.

(b) Owners and operators of C&DLF facilities and units permitted under these Rules must provide proof of financial assurance to ensure closure of the site in accordance with these Rules and to cover closure, post-closure, and corrective action of the landfill. Financial assurance may be demonstrated through surety bonds, insurance, letters of credit, a funded trust, or local government financial test. Documentation of financial assurance must be kept current, and updated annually as required by changes in these Rules, changes in operation of the site, and inflation.

(c) Owners and operators of C&DLF facilities and units must demonstrate the following minimum amounts of financial assurance for closure and post-closure care:

(1) The owner and operator must have a written estimate, in current dollars, of the cost of hiring a third party to close the entire area of all C&DLF units, which have received permits to operate, at any time during the active life in accordance with the closure plan required under Rule .0543 of this Section. A copy of the closure cost estimate must be placed in the C&DLF's closure plan and the operating record.

(A) The cost estimate must equal the cost of closing the entire area of all C&DLF units, which have received permits to operate, at any time during the active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan as set forth in Rule .0543 of this Section.

(B) During the active life of the C&DLF, the owner and operator must annually adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s). For owners and operators using the local government financial test, the closure cost estimate must be updated for inflation within 30 days after the close of the local government's fiscal year and before submission of updated information to the Division.

(C) The owner and operator must increase the closure cost estimate and the amount of financial assurance provided under Subparagraph (2) of this Paragraph if changes to the closure plan or C&DLF unit conditions increase the maximum cost of closure at any time during the remaining active life.

(D) The owner or operator may reduce the closure cost estimate and the amount of financial assurance provided under Subparagraph (2) of this Paragraph if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of the C&DLF unit. Prior to any reduction of the closure cost estimate or the amount of financial assurance by the owner or operator, a written justification for the reduction must be submitted to the Division for review. The Division shall date and stamp the justification "approved" if the conditions of this paragraph are met. The reduction justification and the Division approval must be placed in the C&DLF's operating record. No reduction of the closure cost estimate or the amount of financial assurance shall be allowed without Division approval.

(2) The owner and operator of each C&DLF unit must establish financial assurance for closure of the C&DLF unit in compliance with Paragraph (a) of this Rule. The owner and operator must provide continuous coverage for closure until released from financial assurance requirements by demonstrating compliance with Rule .0543 of this Section for final closure certification.

(3) The owner and operator must have a written estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care for the C&DLF unit(s) in compliance with the post-closure plan developed under Rule .0543 of this Section. The post-closure cost estimate used to demonstrate financial assurance in Subparagraph (2) of this Paragraph must account for the total costs of conducting post-closure care, including annual and periodic costs as described in the post-closure plan over the entire post-closure care period. The post-closure cost estimate must be placed in the operating record.

(A) The cost estimate for post-closure care must be based on the most expensive costs of post-closure care during the post-closure care period.

(B) During the active life of the C&DLF unit(s) and during the post-closure care period, the owner and operator must annually adjust the post-closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s). For owners and operators using the local government financial test, the post-closure cost estimate must be updated for inflation within 30 days after the close of the local government's fiscal year and before submission of updated information to the Division.

(C) The owner and operator must increase the post-closure care cost estimate and the amount of financial assurance provided under Subparagraph (2) of this Paragraph if changes in the post-closure plan or C&DLF unit(s) conditions increase the maximum costs of post-closure care.

(D) The owner or operator may reduce the post-closure cost estimate and the amount of financial assurance provided under Subparagraph (2) of this Paragraph if the cost estimate exceeds the maximum costs of post-closure care remaining over the post-closure care period. Prior to any reduction of the post-closure cost estimate by the owner or operator, a written justification for the reduction shall be submitted to the Division for review. The Division shall date and stamp the justification "approved" if the conditions of this paragraph are met. The written justification and the Division approval must be placed in the C&DLF operating record. No reduction of the post-closure cost estimate shall be allowed without Division approval.

(4) The owner and operator of each C&DLF unit must establish, in a manner in accordance with Paragraph (a) of this Rule, financial assurance for the costs of post-closure care as required under Rule .0543 of this Section. The owner and operator must provide continuous coverage for post-closure care until released from financial assurance requirements for post-closure care by demonstrating compliance with Rule .0543 of this Section. Maintenance of financial assurance in the required amounts in Subparagraphs (c)(1) and(c)(2) of this Rule does not in any way limit the responsibility of owners and operators for the full costs of site closure and clean-up, the expenses of any on-site or off-site environmental restoration necessitated by activities at the site, and liability for all damages to third parties or private or public properties caused by the establishment and operation of the site.

(5) An owner and operator of a C&DLF unit required to undertake a corrective action program under Rule .0545 of this Section must have a written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action. The corrective action cost estimate must account for the total costs of corrective action activities as described in the corrective action program for the entire corrective action period. The owner and operator must notify the Division that the estimate has been placed in the operating record.

(A) The owner and operator must annually adjust the estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) until the corrective action program is completed in accordance with Rule .0545(m) of this Section. For owners and operators using the local government financial test, the corrective action cost estimate must be updated for inflation within 30 days after the close of the local government's fiscal year and before submission of updated information to the Division.

(B) The owner and operator must increase the corrective action cost estimate and the amount of financial assurance provided under Subparagraph (2) of this Paragraph if changes in the corrective action program or C&DLF unit conditions increase the maximum costs of corrective action.

(C) The owner or operator may reduce the corrective action cost estimate and the amount of financial assurance provided under Subparagraph (2) of this Paragraph if the cost estimate exceeds the maximum remaining costs of corrective action. Prior to any reduction of the corrective action cost estimate by the owner or operator, a written justification for the reduction must be submitted to the Division for review. The Division shall date and stamp the justification "approved" if the conditions of this Paragraph are met. The reduction justification and the Division approval must be placed in the C&DLF's operating record. No reduction of the corrective action cost estimate shall be allowed without Division approval. The reduction justification and the Division approval must be placed in the C&DLF's operating record.

(6) The owner and operator of each C&DLF unit required to undertake a corrective action program under Rule .0545 of this Section must establish, in a manner in accordance with Paragraph (a) of this Rule, financial assurance for the most recent corrective action program. The owner or operator must provide

continuous coverage for corrective action until released from financial assurance requirements for corrective action by demonstrating compliance with Rule .0545(m) of this Section.

History Note: *Authority G.S. 130A-294;*
Eff. January 1, 2007.

SCRAP TIRES

15A NCAC 13B .1111 FINANCIAL RESPONSIBILITY REQUIREMENTS

(a) Owners and operators of scrap tire disposal sites shall provide proof of financial responsibility in accordance with the financial responsibility rules for landfills adopted pursuant to G.S. 130A-294(b) and 130A-309.27.

(b) Owners and operators of scrap tire collection sites permitted under these Rules shall provide proof of financial responsibility to ensure closure of the site in accordance with these Rules and to cover property damage or bodily injury to third parties which may result from fire or other public health hazard occurring at the site. Financial responsibility may be demonstrated through surety bonds, insurance, letters of credit, a funded trust, or other documents which show that the owner or operator has sufficient resources to meet the requirements of this Rule, including the guarantee of a corporate parent with sufficient resources to meet the requirements of this Rule. Documentation of financial responsibility shall be kept current, and updated as required by changes in these Rules, changes in operation of the site, and inflation.

(c) Owners and operators of scrap tire collection sites shall demonstrate the following minimum amounts of financial responsibility:

(1) For site closure: one dollar and fifty cents ($1.50) per tire for the maximum number of tires permitted to be stored on the site at any one time.

(2) For property damage and bodily injury to third parties and public property: two thousand five hundred dollars ($2,500) worth of coverage per occurrence for each 1,000 tires permitted to be stored on-site, with an annual aggregate of five thousand dollars ($5,000) worth of coverage for each 1,000 tires permitted to be stored on-site.

Maintenance of financial responsibility in the required amounts in Paragraphs (c)(1) and (2) does not in any way limit the responsibility of owners and operators for the full costs of site closure and clean-up, the expenses of any on-site or off-site environmental restoration necessitated by activities at the site, and liability for all damages to third parties or private or public properties caused by the establishment and operation of the site.

History Note: *Authority G.S. 130A-294(b); 130A-309.27;*
Eff. October 1, 1990.

15A NCAC 13B .1628 FINANCIAL ASSURANCE RULE

(a) Applicability and Effective Date.

(1) The requirements of this Rule apply to owners and operators of all MSWLF units that receive waste on or after October 9, 1993, except owners or operators who are State or Federal government entities whose debts and liabilities are the debts and liabilities of a State or the United States.

(2) The requirements of this Rule are effective April 9, 1994.

(3) MSWLF units owned and operated by units of local government or public authorities may elect to use a Capital Reserve Fund as described in Paragraph (e)(1)(I) of this Rule.

(4) Owners and operators of all MSWLF units shall submit detailed cost estimates for closure and post-closure in accordance with Rule .1629 of this Section and this Rule; and, if necessary, for corrective action programs in accordance with Rule .1637 of this Section and this Rule.

(5) Under this Rule, when documents are required to be placed in the operating record of a MSWLF unit, three copies shall be forwarded to the Division.

(6) When allowable mechanisms as specified in Paragraph (e) of this Rule are used in combination to provide financial assurance for closure, post-closure or corrective action, no more than one allowable mechanism shall be provided by the same financial institution or its corporate entities.

(b) Financial Assurance for Closure.

(1) The owner or operator shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to close the largest area of all MSWLF units at any time during the active life in accordance with the closure plan required under Rule .1629 of this Section. A copy of the closure cost estimate shall be placed in the MSWLF's closure plan and the operating record.

(A) The cost estimate shall equal the cost of closing the largest area of all MSWLF units at any time during the active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan as set forth in Rule .1629 of this Section.

(B) During the active life of the MSWLF unit, the owner or operator shall annually adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s). For owners and operators using the local government financial test, the closure cost estimate shall be updated for inflation within 30 days after the close of the local government's fiscal year and before submission of updated information to the Division.

(C) The owner or operator shall increase the closure cost estimate and the amount of financial assurance provided under Subparagraph (2) of this Paragraph if changes to the closure plan or MSWLF unit conditions increase the maximum cost of closure at any time during the remaining active life.

(D) The owner or operator may reduce the closure cost estimate and the amount of financial assurance provided under Subparagraph (2) of this Paragraph if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of the MSWLF unit. Prior to any reduction of the closure cost estimate by the owner or operator, a written justification for the reduction shall be submitted to the Division. No reduction of the closure cost estimate shall be allowed without Division approval. The reduction justification and the Division approval shall be placed in the MSWLF's operating record.

(2) The owner or operator of each MSWLF unit shall establish financial assurance for closure of the MSWLF unit in compliance with Paragraph (e) of this Rule. The owner or operator shall provide continuous coverage for closure until released from financial assurance requirements by demonstrating compliance with Rule .1627(c) of this Section for final closure certification.

(c) Financial Assurance for Post-Closure Care.

(1) The owner or operator shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care for the MSWLF unit in compliance with the post-closure plan developed under Rule .1629 of this Section. The post-closure cost estimate used to demonstrate financial assurance in Subparagraph (2) of this Paragraph shall account for the total costs of conducting post-closure care, including annual and periodic costs as described in the post-closure plan over the entire post-closure care period and be placed in the operating record.

(A) The cost estimate for post-closure care shall be based on the most expensive costs of post-closure care during the post-closure care period.

(B) During the active life of the MSWLF unit and during the post-closure care period, the owner or operator shall annually adjust the post-closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s). For owners and operators using the local government financial test, the post-closure cost estimate shall be updated for inflation within 30 days after the close of the local government's fiscal year and before submission of updated information to the Division.

(C) The owner or operator shall increase the post-closure care cost estimate and the amount of financial assurance provided under Subparagraph (2) of this Paragraph if changes in the post-closure plan or MSWLF unit conditions increase the maximum costs of post-closure care.

(D) The owner or operator may reduce the post-closure cost estimate and the amount of financial assurance provided under Subparagraph (2) of this Paragraph if the cost estimate exceeds the maximum costs of post-closure care remaining over the post-closure care period. Prior to any reduction of the post-closure cost estimate by the owner or operator, a written justification for the reduction shall be submitted to the Division. No reduction of the post-closure cost estimate shall be allowed without Division approval. The reduction justification and the Division approval shall be placed in the MSWLF's operating record.

(2) The owner or operator of each MSWLF unit shall establish, in a manner in accordance with Paragraph (e) of this Rule, financial assurance for the costs of post-closure care as required under Rule .1629 (c) of this Section. The owner or operator shall provide continuous coverage for post-closure care until released from financial assurance requirements for post-closure care by demonstrating compliance with Rule .1627(d) of this Section.

(d) Financial Assurance for Corrective Action.

(1) An owner or operator of a MSWLF unit required to undertake a corrective action program under Rule .1637 of this Section shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action. The corrective action cost estimate shall account for the total costs of corrective action activities as described in the corrective action program for the entire corrective action period. The owner or operator shall notify the Division that the estimate has been placed in the operating record.

(A) The owner or operator shall annually adjust the estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) until the corrective action program is completed in accordance with Rule .1637(f) of this Section. For owners and operators using the local government financial test, the corrective action cost estimate shall be updated for inflation within 30 days after the close of the local government's fiscal year and before submission of updated information to the Division.

(B) The owner or operator shall increase the corrective action cost estimate and the amount of financial assurance provided under Subparagraph (2) of this Paragraph if changes in the corrective action program or MSWLF unit conditions increase the maximum costs of corrective action.

(C) The owner or operator may reduce the corrective action cost estimate and the amount of financial assurance provided under Subparagraph (2) of this Paragraph if the cost estimate exceeds the maximum remaining costs of corrective action. Prior to any reduction of the corrective action cost estimate by the owner or operator, a written justification for the reduction shall be submitted to the Division. No reduction of the corrective action cost estimate shall be allowed without Division approval. The reduction justification and the Division approval shall be placed in the MSWLF's operating record.

(2) The owner or operator of each MSWLF unit required to undertake a corrective action program under Rule .1637 of this Section shall establish, in a manner in accordance with Paragraph (e) of this Rule, financial assurance for the most recent corrective action program. The owner or operator shall provide continuous coverage for corrective action until released from financial assurance requirements for corrective action by demonstrating compliance with Rule .1637(f) and (g) of this Section.

(e) Allowable Mechanisms.

(1) The mechanisms used to demonstrate financial assurance under this Rule shall ensure that the funds necessary to meet the costs of closure, post-closure care, and corrective action for known releases shall

be available whenever they are needed. Owners and operators shall choose from the options specified in Parts (A) through (I) of this Paragraph.

(A) Trust Fund.

(i) An owner or operator may satisfy the requirements of this Paragraph by establishing a trust fund which conforms to the requirements of this Part. The trustee shall 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. A copy of the trust agreement shall be placed in the facility's operating record.

(ii) Payments into the trust fund shall be made annually by the owner or operator over the term of the initial permit or over the remaining life of the MSWLF unit, in the case of a trust fund for closure or post-closure care, or over one-half of the estimated length of the corrective action program in the case of corrective action for known releases. This period is referred to as the pay-in period.

(iii) For a trust fund used to demonstrate financial assurance for closure and post-closure care, the first payment into the fund shall be at least equal to the current cost estimate for closure or post-closure care, except as provided in Part (J) of this Paragraph, divided by the number of years in the pay-in period as defined in Part (A)(ii) of this Paragraph. The amount of subsequent payments shall be determined by the following formula:

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

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

(iv) For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund shall be at least equal to one-half of the current cost estimate for corrective action, except as provided in Part (J) of this Paragraph. The amount of subsequent payments shall be determined by the following formula:

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

where CE is the current cost estimate for corrective action (updated for inflation or other changes), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(v) The initial payment into the trust fund shall be made before the initial receipt of waste or before the effective date of this Rule (April 9, 1994), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of Rule .1636 of this Section. Subsequent payments shall be made no later than 30 days after each anniversary date of the first payment.

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

(vii) The owner or operator, or other person authorized to conduct closure, post-closure care, or corrective action activities may request reimbursement from the trustee and Division for these expenditures. Requests for reimbursement shall be granted only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure, post-closure care, or corrective action, and if justification and documentation of the cost is placed in the operating record. The owner or operator shall document in the operating record that reimbursement has been received.

(viii) The trust fund may be terminated by the owner or operator only if the owner or operator substitutes alternate financial assurance as specified in this Rule or if no longer required to demonstrate financial responsibility in accordance with the requirements of Paragraph (b)(2), (c)(2) or (d)(2) of this Rule.

(ix) The trust agreement shall be accompanied by a formal certification of acknowledgement. Schedule A of the trust agreement shall be updated within 60 days after any change in the amount of the current cost estimate covered by the agreement.

(B) Surety Bond Guaranteeing Payment or Performance.

(i) An owner or operator may demonstrate financial assurance for closure or post-closure care by obtaining a payment or performance surety bond which conforms to the requirements of this Part. An owner or operator may demonstrate financial assurance for corrective action by obtaining a performance bond which conforms to the requirements of this Part. The bond shall be effective before the initial receipt of waste or before the effective date of this Rule, (April 9, 1994), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of Rule .1636 of this Section. The owner or operator shall place a copy of the bond in the operating record. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury which is incorporated by reference including subsequent amendments and editions. Copies of this material may be inspected or obtained at the Department of Environment, Health, and Natural Resources, Division of Solid Waste Management, 401 Oberlin Road, Raleigh, North Carolina at no cost.

(ii) The penal sum of the bond shall be in an amount at least equal to the current closure, post-closure care or corrective action cost estimate, whichever is applicable, except as provided in Paragraph (e)(1)(J) of this Rule.

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

(iv) The owner or operator shall establish a standby trust fund. The standby trust fund shall meet the requirements of Paragraph (e)(1) (A) of this Rule except the requirements for initial payment and subsequent annual payments specified in Paragraph (e)(1)(A)(ii), (iii), (iv) and (v) of this Rule.

(v) Payments made under the terms of the bond shall be deposited by the surety directly into the standby trust fund. Payments from the trust fund shall be approved by the trustee and Division.

(vi) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner and operator and to the Division 120 days in advance of cancellation. If the surety cancels the bond, the owner or operator shall obtain alternate financial assurance as specified in this Rule.

(vii) The owner or operator may cancel the bond only if alternate financial assurance is substituted as specified in this Rule or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with Paragraph (b)(2), (c)(2) or (d)(2) of this Rule.

(C) Letter of Credit.

(i) An owner or operator may satisfy the requirements of this Paragraph by obtaining an irrevocable standby letter of credit which conforms to the requirements of this Part. The letter of credit shall be effective before the initial receipt of waste or before the effective date of this Rule (April 9, 1994), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of Rule .1636 of this Section. The owner or operator shall place a copy of the letter of credit in the operating record. The issuing institution shall be an entity which has the authority

to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency.

(ii) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: name and address of the facility, and the amount of funds assured, shall be included with the letter of credit in the operating record.

(iii) The letter of credit shall be irrevocable and issued for a period of at least one year in an amount at least equal to the current cost estimate for closure, post-closure care or corrective action, whichever is applicable, except as provided in Paragraph (e)(1)(J) of this Rule. The letter of credit shall provide that the expiration date shall be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner and operator and to the Division 120 days in advance of cancellation. If the letter of credit is canceled by the issuing institution, the owner or operator shall obtain alternate financial assurance.

(iv) The owner or operator may cancel the letter of credit only if alternate financial assurance is substituted as specified in this Rule or if the owner or operator is released from the requirements of Paragraph (b)(2), (c)(2) or (d)(2) of this Rule.

(v) The owner or operator shall establish a standby trust fund. The standby trust fund shall meet the requirements of Paragraph (e)(1)(A) of this Rule except the requirements for initial payment and subsequent annual payments specified in Paragraph (e)(1)(A)(ii), (iii), (iv) and (v) of this Rule.

(vi) Payments made under the terms of the letter of credit shall be deposited by the issuing institution directly into the standby trust fund. Payments from the trust fund shall be approved by the trustee and the Division.

(D) Insurance.

(i) An owner or operator may demonstrate financial assurance for closure and post-closure care by obtaining insurance which conforms to the requirements of this Part. The insurance shall be effective before the initial receipt of waste or before the effective date of this Rule, (April 9, 1994), whichever is later. At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in North Carolina. The owner or operator shall place a copy of the insurance policy in the operating record.

(ii) The closure or post-closure care insurance policy shall guarantee that funds shall be available to close the MSWLF unit whenever final closure occurs or to provide post-closure care for the MSWLF unit whenever the post-closure care period begins, whichever is applicable. The policy shall also guarantee that once closure or post-closure care begins, the insurer shall be responsible for the paying out of funds to the owner or operator or other person authorized to conduct closure or post-closure care, up to an amount equal to the face amount of the policy.

(iii) The insurance policy shall be issued for a face amount at least equal to the current cost estimate for closure or post-closure care, whichever is applicable, except as provided in (e)(1)(J) of this Rule. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer shall not change the face amount, although the insurer's future liability shall be lowered by the amount of the payments.

(iv) An owner or operator, or any other person authorized to conduct closure or post-closure care, may receive reimbursements for closure or post-closure expenditures, whichever is applicable. Requests for reimbursement shall be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure or post-closure care, and if justification and documentation of the cost is placed in the operating record. The owner or operator shall document in the operating record that reimbursement and Division approval has been received.

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

(vi) The insurance policy shall provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner and operator and to the Division 120 days in advance of cancellation. If the insurer cancels the policy, the owner or operator shall obtain alternate financial assurance as specified in this Rule.

(vii) For insurance policies providing coverage for post-closure care, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer shall thereafter annually increase the face amount of the policy. Such increase shall be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 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.

(viii) The owner or operator may cancel the insurance policy only if alternate financial assurance is substituted as specified in this Rule or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements of Paragraph (b)(2), (c)(2) or (d)(2) of this Rule.

(E) Corporate Financial Test.

[Reserved]

(F) Local Government Financial Test. An owner or operator of a MSWLF which is a unit of local government may satisfy the requirements of this Paragraph by demonstrating that it meets the requirements of the local government financial test as specified in this Part. Financial terms used in this Part are to be interpreted consistent with generally accepted accounting principles. The test consists of a financial component, a public notice component, and a record-keeping and reporting component. A unit of local government shall satisfy each of the three components annually to pass the test.

(i) Financial Component. In order to satisfy the financial component of the test, a unit of local government shall meet the criteria of either (I) or (II) of this Subpart and in addition shall meet the conditions outlined in (III) of this Subpart.

(I) A ratio of the current cost estimates for closure, post-closure, corrective action, or the sum of the combination of such costs to be covered, and any other environmental obligations assured by a financial test, to total revenue [as stated on the Local Government Commission's Annual Financial Information Report (AFIR) Part 2] less than or equal to 0.43; a ratio of operating cash plus investments (as stated on the AFIR Part 7) to total operating expenditures (as stated on the AFIR Part 4 Columns a and b and Part 5 for municipalities or Part 5 excluding educational capital outlays for counties) greater than or equal to 0.05; and a ratio of annual debt service (as stated on the AFIR Part 4 Section I) to total operating expenditures less than or equal to 0.20.

(II) A current bond rating of Baa or above as issued by Moody's, BBB or above as issued by Standard & Poor's, BBB or above as issued by Fitch's, or 75 or above as issued by the Municipal Council; a ratio of the current cost estimates for closure, post-closure, corrective action, or the sum of the combination of such costs to be covered, and any other environmental obligations assured by a financial test to total revenue less than or equal to 0.43.

(III) A unit of local government shall not have operated at a total operating fund deficit equal to five percent or more of total annual revenue in either of the past two fiscal years; it shall not currently be in default on any

outstanding general obligation bonds or any other long-term obligations; and it shall not have any outstanding general obligation bonds rated lower than Baa as issued by Moody's, BBB as issued by Standard & Poor's, BBB as issued by Fitch's or lower than 75 as issued by the Municipal Council.

(ii) Public Notice Component. In order to satisfy the Public Notice Component of the test, a unit of local government shall disclose its closure, post-closure, and corrective action cost estimates and relevant information in accordance with generally accepted accounting principles.

(iii) Record-keeping and Reporting Component. To demonstrate that the unit of local government meets the requirements of this test, a letter signed by the unit of local government's chief financial officer (CFO) and worded as specified in Part (e)(2)(G) of this Rule shall be placed in the operating record in accordance with the deadlines of Subpart (iv) of this Part. The letter shall:

(I) List all the current cost estimates covered by a financial test, as described in Subpart (v) of this Part;

(II) Provide evidence and certify that the unit of local government meets the conditions of either Subpart (i)(I) or (i)(II) of this Part; and

(III) Certify that the unit of local government meets the conditions of Subpart (i)(III) of this Part.

(iv) In the case of closure and post-closure care, the Chief Financial Officer's letter shall be placed in the operating record before the initial receipt of waste or by April 9, 1994, whichever is later. In the case of corrective action, the CFO's letter shall be placed in the operating record no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of Rule .1636.

(v) When calculating the "current cost estimates for closure, post-closure, corrective action, or the sum of the combination of such costs to be covered, and any other environmental obligations assured by a financial test" referred to in Part (F)(i) of this Paragraph, the unit of local government shall include cost estimates required for municipal solid waste management facilities under 15A NCAC 13B .1600, as well as cost estimates required for all other environmental obligations it assures through a financial test, including but not limited to those associated with hazardous waste treatment, storage, and disposal facilities under 15A NCAC 13A .0009 and .0010, petroleum underground storage tank facilities under 15A NCAC 2N .0100 through .0800, Underground Injection Control facilities under 15A NCAC 2D .0400 and 15A NCAC 2C .0200, and PCB storage facilities under 15A NCAC 2O .0100 and 15A NCAC 2N .0100.

(vi) Annual updates of the financial test letter shall be placed in the operating record within 120 days after the close of each succeeding fiscal year.

(vii) If the unit of local government no longer meets the requirements of Parts (i), (ii), and (iii) of this Paragraph, the unit of local government shall notify the Division of intent to establish alternate financial assurance within 120 days after the end of the fiscal year for which the year-end financial data show that the unit of local government no longer meets the requirements. The unit of local government shall provide alternate financial assurance within 150 days after the end of said fiscal year.

(viii) The unit of local government is no longer required to comply with the requirements of this Part if alternate financial assurance is substituted as specified in this Rule or if the unit of local government is no longer required to demonstrate financial responsibility in accordance with Paragraph (b)(2), (c)(2) or (d)(2) of this Rule.

(G) Corporate Guarantee.
[Reserved]

(H) Local Government Guarantee.
[Reserved]

(I) Capital Reserve Fund.

(i) MSWLF units owned or operated by units of local government or public authority may satisfy the requirements of this Paragraph by establishing a capital reserve fund which conforms to the requirements of this Part. The unit of local government or public authority shall be an entity which has the authority to establish a capital reserve fund under authority of G.S. 159 and whose financial operations are regulated and examined by a State agency. The capital reserve fund shall be established consistent with auditing, budgeting and government accounting practices as prescribed in G.S. 159 and by the Local Government Commission. A copy of the capital reserve fund ordinance or resolution with a certified copy of the meeting minutes and a copy of documentation of initial and subsequent year's deposits shall be placed in the MSWLF's operating record.

(ii) Payments into the capital reserve fund shall be made annually by the unit of local government or public authority over the term of the initial permit or over the remaining life of the MSWLF unit, in the case of a capital reserve fund for closure or post-closure care, or over one-half of the estimated length of the corrective action program in the case of corrective action for known releases. This period is referred to as the pay-in period. The pay-in period shall not extend beyond December 31, 1997 for an existing MSWLF unit not designed and constructed with a base liner system approved by the Division.

(iii) For a capital reserve fund used to demonstrate financial assurance for closure and post-closure care, the first payment into the fund shall be at least equal to the current cost estimate for closure or post-closure care, divided by the number of years in the pay-in period as defined in Subpart (ii) of this Part. The amount of subsequent payments shall be determined by the following formula:

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

where CE is the current cost estimate for closure or post-closure care (updated for inflation or other changes), CV is the current value of the capital reserve fund, and Y is the number of years remaining in the pay-in period.

(iv) For a capital reserve fund used to demonstrate financial assurance for corrective action, the first payment into the capital reserve fund shall be at least equal to one-half of the current cost estimate for corrective action. The amount of subsequent payments shall be determined by the following formula:

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

where CE is the current cost estimate for corrective action (updated for inflation or other changes), CV is the current value of the capital reserve fund, and Y is the number of years remaining in the pay-in period.

(v) The initial payment into the capital reserve fund shall be made before the initial receipt of waste or before the effective date of this Rule (April 9, 1994), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of Rule .1636 of this Section. Subsequent payments shall be made no later than 30 days after each anniversary date of the first payment.

(vi) If the unit of local government or public authority establishes a capital reserve fund after having used one or more alternate mechanisms specified in this Paragraph, the initial payment into the capital reserve fund shall be at least the amount that the fund would contain if the capital reserve fund were established initially and annual payments made according to the specifications of this Part.

(vii) The unit of local government or public authority authorized to conduct closure, post-closure care or corrective action activities may expend capital reserve funds to

cover the remaining costs of closure, post-closure care, corrective action activities or for the debt service payments on financing arrangements for closure, post-closure care or corrective action activities. Monies in the capital reserve fund can only be used for these purposes unless the fund is terminated in accordance with Paragraph (e)(1)(I)(viii) of this Rule. The unit of local government or public authority shall document justifying expenditures and place a copy in the operating record.

(viii) The capital reserve fund may be terminated by the unit of local government or public authority only if it substitutes alternate financial assurance as specified in this Rule or if no longer required to demonstrate financial responsibility in accordance with the requirements of Paragraph (b)(2), (c)(2) or (d)(2) of this Rule.

(J) Use of Multiple Financial Mechanisms. An owner or operator may satisfy the requirements of this Paragraph by establishing more than one financial mechanism per facility. The mechanisms shall be as specified in Parts (A), (B), (C), (D), (E), (F), (G), (H) and (I) of this Paragraph, except that it is the combination of mechanisms, rather than the single mechanism, which shall provide financial assurance for an amount at least equal to the current cost estimate for closure, post-closure care or corrective action, whichever is applicable. The financial test and a guarantee provided by a corporate parent, sibling, or grandparent may not be combined if the financial statements of the two firms are consolidated. Mechanisms guaranteeing performance, rather than payment, may not be combined with other instruments.

(K) The wording of the instruments shall be identical to the wording specified in Paragraph (e)(2) of this Rule.

(2) Wording of Instruments.

(A) Trust Agreement.

(i) A trust agreement for a trust fund, as specified in Paragraph (e)(1)(A) of this Rule, shall 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 Division of Solid Waste Management, the "Division," an agency of the State of North Carolina, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a solid waste management facility shall provide assurance that funds shall be available when needed for closure, post-closure care, or corrective action of the facility,

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the 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 Schedule A [on Schedule A, for each facility list the Solid Waste Section Permit Number, name, address, and the current closure, post-closure, or corrective action cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the 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.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 Division.

Section 4. Payment for Closure, Post-Closure Care, and Corrective Action. The Trustee shall make payments from the Fund as the Division of Solid Waste Management (the "Division") shall direct, in writing, to provide for the payment of the costs of closure, post-closure care, or corrective action of the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the Division from the Fund for closure, post-closure, and corrective action expenditures in such amounts as the Division shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Division specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

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

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 10. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the Division 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 Division shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

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

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor, the Division, 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 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 Division to the Trustee shall be in writing, signed by the Division, or his designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or Division hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor or Division, except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor and the Division by certified mail within 10 days following expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Division, or by the Trustee and the Division 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 Division, or by the Trustee and the Division, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Division 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 North Carolina.

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

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written: The parties below certify that the wording of this Agreement is identical to the wording specified in Paragraph (e)(2)(A)(i) of 15A NCAC 13B .1628 as were constituted on the date first above written.

[Signature of Grantor]
[Title]

Attest:
[Title]
[Seal]

[Signature of Trustee]

Attest:
[Title]
[Seal]

(ii) The following is an example of the certification of acknowledgment which shall accompany the trust agreement for a trust fund.

State of
County of

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

[Signature of Notary Public]

(B) A surety bond guaranteeing payment into a trust fund, as specified in Paragraph (e)(1)(B) of this Rule, shall 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)]
Solid Waste Section Permit Number, name, address, and closure 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 North Carolina Division of Solid Waste Management (hereinafter called the 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 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 Solid Waste Management Rule .0201 as amended, to have a permit in order to own or operate each solid waste management facility identified above, and

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

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

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

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

Or, if the Principal shall provide alternate financial assurance and obtain the Division's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the Division 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 Division 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 Division.

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 Division, 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 Division, 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 Division.

[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 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 Division.

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 Paragraph (e)(2)(B) of 15A NCAC 13B .1628 as were constituted on the date this bond was executed.

Principal

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

Corporate Surety(ies)

[Name and address]
State of incorporation:

Liability limit: $
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]
[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]
Bond premium: $

(C) A surety bond guaranteeing performance of closure, post-closure care, or corrective action, as specified in Paragraph (e)(1)(B) of this Rule, shall be worded as follows, except that 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)]
Solid Waste Section Permit Number, name, address, and closure, post-closure, or corrective action amount(s) for each facility guaranteed by this bond [indicate closure, post-closure, and corrective action amounts separately]:
Total penal sum of bond: $
Surety's bond number:

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the North Carolina Division of Solid Waste Management (hereinafter called the 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 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 Solid Waste Management Rule .0201 as amended, to have a permit in order to own or operate each solid waste management facility identified above, and
Whereas, said Principal is required to provide financial assurance for closure, post-closure care, or corrective action as a condition of the permit, and
Whereas, said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;
Now, Therefore, the conditions of this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of each facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit, as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,
And, if the Principal shall faithfully perform post-closure care of each facility for which this bond guarantees post-closure care, in accordance with the post-closure plan and other requirements of the permit, as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations as such laws, statutes, rules, and regulations may be amended,
And, if the Principal shall faithfully perform corrective action of each facility for which this bond guarantees corrective action, in accordance with the corrective action program and other requirements of the permit, as such program 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 and obtain the Division's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the Division 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 Division that the Principal has been found in violation of the closure requirements for a facility for which this bond guarantees performance of closure, the Surety(ies) shall either perform closure in accordance with the closure plan and other permit requirements or place the closure amount guaranteed for the facility into the standby trust fund as directed by the Division.

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

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

Upon notification by the Division that the Principal has failed to provide alternate financial assurance and obtain written approval of such assurance from the Division during the 90 days following receipt by both the Principal and the Division 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 Division.

The Surety(ies) hereby waive(s) notification of amendments to closure and post-closure plans, and corrective action programs, 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 Division, 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 Division, 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 Division.

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

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

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 Paragraph (e)(2)(C) of 15A NCAC 13B .1628 as was constituted on the date this bond was executed.

Principal

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

Corporate Surety(ies)

[Names and address]
State of incorporation:
Liability limit: $
[Signature(s)]

[Names(s) and title(s)]
[Corporate seal]
[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]
Bond premium: $

(D) A letter of credit, as specified in Paragraph (e)(1)(C) of this Rule, shall 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

North Carolina Department of Environment, Health, and Natural Resources
Solid Waste Management Division
Solid Waste Section
P.O. Box 27687
Raleigh, North Carolina 27611-7687

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 requirements of 15A NCAC 13B .1628 as amended."

This letter of credit is effective as of [date] and shall expire on [date at least 1 year later], but such expiration date shall be automatically extended for a period of [at least 1 year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and [owner's or operator's name], as shown on the signed return receipts.
Whenever this letter of credit is drawn on, under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner's or operator's name] in accordance with your instructions.
We certify that the wording of this letter of credit is identical to the wording specified in Paragraph (e)(2)(D) of 15A NCAC 13B .1628 as 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 by the International Chamber of Commerce," or "the Uniform Commercial Code"].

(E) A certificate of insurance, as specified in Paragraph (e)(1)(D) of this Rule, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATE OF INSURANCE FOR CLOSURE OR POST-CLOSURE CARE

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

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

Facilities Covered: [List for each facility: The Solid Waste Section Permit Number, name, address, and the amount of insurance for closure or the amount for post-closure care (these amounts for all facilities covered shall total the face amount shown below).]

Face Amount:
Policy Number:
Effective Date:

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for [insert "closure" or "closure and post-closure care" or "post-closure care"] for the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of Paragraph (e)(1) of 15A NCAC 13B .1628, as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.
Whenever requested by the North Carolina Division of Solid Waste Management (Division), the Insurer agrees to furnish to the Division a duplicate original of the policy listed above, including all endorsements thereon.
I hereby certify that the wording of this certificate is identical to the wording specified in Paragraph (e)(2)(E) of 15A NCAC 13B .1628 as were constituted on the date shown immediately below.

[Authorized signature for Insurer]
[Name of person signing]
[Title of person signing]
Signature of witness or notary:

[Date]

(F) A capital reserve fund, as specified in Paragraph (e)(1)(I) of this Rule, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CAPITAL RESERVE FUND RESOLUTION

ESTABLISHMENT AND MAINTENANCE
OF THE MUNICIPAL SOLID WASTE LANDFILL
CAPITAL RESERVE FUND

WHEREAS, there is a need in [location of landfill site, (e.g. City of Raleigh, County of Wake)] to provide funds for [closure, post-closure, or corrective action] for the [permit number], [name] landfill; and

WHEREAS, the [location] shall bear the cost of [closure, post-closure, or corrective action] for the landfill at an estimated cost of [cost estimate].

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD THAT:

Section 1. The Governing Board hereby creates a Capital Reserve Fund for the purpose of [closure, post-closure, or corrective action] for the [permit number] landfill.

Section 2. This Fund shall remain operational during the life of the landfill and the post-closure care period beginning [date] and ending [date] as estimated at the time of annual update of this Resolution.

Section 3. The Board shall appropriate or transfer an amount of no less than [annual payment] each year to this Fund.

Section 4. This Resolution shall become effective and binding upon its adoption.

[Signature of County Commissioner]

[Signature of Chief Financial Officer]

[Date]

(G) A local government financial test, as specified in Part (e)(1)(F) of this Rule, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

[Address to the Department of Environment, Health, and Natural Resources, Solid Waste Section, Post Office Box 27687, Raleigh, North Carolina 27611-7687.]

I am the chief financial officer of [name and address of unit of local government]. This letter is in support of this unit of local government's use of the financial test to demonstrate financial assurance, as specified in 15A NCAC 13B .1628(e)(1)(F).

[Fill out the following paragraph regarding the municipal solid waste facilities and associated cost estimates. For each facility, include its permit number, name, address and current closure, post-closure, or corrective action cost estimates. Identify each cost estimate as to whether it is for closure, post-closure care, or corrective action.]

This unit of local government is the owner or operator of the following facilities for which financial assurance for closure, post-closure, or corrective action is demonstrated through the financial test specified in 15A NCAC 13B .1628(e)(1)(F). The current closure, post-closure, or corrective action cost estimates covered by the test are shown for each facility: _____.

The fiscal year of this unit of local government ends on [month, day, year]. The figures for the following items marked with an asterisk are derived from this unit of local government's Annual Financial Information Report (AFIR) for the latest completed fiscal year, ended [date].

[Fill in the Ratio Indicators of Financial Strength section if the criteria of 15A NCAC 13B .1628 (e)(1)(F)(i)(I) are used. Fill in Bond Rating Indicator of Financial Strength section if the criteria of 15A NCAC 13B .1628(e)(1)(F)(i)(II) are used.]

RATIO INDICATORS OF FINANCIAL STRENGTH

1.	Sum of current closure, post-closure and corrective action cost estimates [total of all cost estimates shown in the paragraphs above]	$.....
*2.	Sum of cash and investments (AFIR Part 7)	$.....
*3.	Total expenditures (AFIR Part 4 Columns a & b and Part 5 for municipalities or Part 5 excluding educational capital outlays for counties)	$.....
*4.	Annual debt service (AFIR Part 4 Section I)	$.....
5.	Assured environmental costs to demonstrate financial responsibility in the following amounts under Division rules:	
	MSWLF under 15A NCAC 13B .1600	$.....
	Hazardous waste treatment, storage and disposal facilities under 15A NCAC 13A .0009 and .0010	$.....
	Petroleum underground storage tanks under 15A NCAC 2N .0100 - .0800	$.....
	Underground Injection Control System facilities under 15A NCAC 2D .0400 and 15A NCAC 2C .0200	$.....

	PCB commercial storage facilities under 15A NCAC 2O .0100 and 15A NCAC 2N .0100	$.....
	Total assured environmental costs	$.....
*6.	Total Annual Revenue (AFIR Part 2)	$.....

Circle either "yes" or "no" to the following questions.

7.	Is line 5 divided by line 6 less than or equal to 0.43?	yes/no
8.	Is line 2 divided by line 3 greater than or equal to 0.05?	yes/no
9.	Is line 4 divided by line 3 less than or equal to 0.20?	yes/no

BOND RATING INDICATOR OF FINANCIAL STRENGTH

1.	Sum of current closure, post-closure and corrective action cost estimates [total of all cost estimates shown in the paragraphs above]	$.....
2.	Current bond rating of most recent issuance and name of rating service	.....
3.	Date of issuance bond	.....
4.	Date of maturity of bond	.....
5.	Assured environmental costs to demonstrate financial responsibility in the following amounts under Division rules:	
	MSWLF under 15A NCAC 13B .1600	$.....
	Hazardous waste treatment, storage and disposal facilities under 15A NCAC 13A .0009 and .0010	$.....
	Petroleum underground storage tanks under 15A NCAC 2N .0100 - .0800	$.....
	Underground Injection Control System facilities under 15A NCAC 2D .0400 and 15A NCAC 2C .0200	$.....
	PCB commercial storage facilities under 15A NCAC 2O .0100 and 15A NCAC 2N .0100	$.....
	Total assured environmental costs	$.....
*6.	Total Annual Revenue (AFIR Part 2)	$.....

Circle either "yes" or "no" to the following question.

7.	Is line 5 divided by line 6 less than or equal to 0.43?	yes/no

I hereby certify that the wording of this letter is identical to the wording specified in 15A NCAC 13B .1628(e)(2)(G) as such rules were constituted on the date shown immediately below. I further certify the following: (1) that the unit of local government has not operated at a total operating fund deficit equal to five percent or more of total annual revenue in either of the past two fiscal years, (2) that the unit of local government is not in default on any outstanding general obligations bonds or long-term obligations, and (3) does not have any outstanding general obligation bonds rated lower than Baa as issued by Moody's, BBB as issued by Standard & Poor's, BBB as issued by Fitch's, or 75 as issued by the Municipal Council.

[Signature]

[Name]

[Title]

[Date]

History Note: *Filed as a Temporary Rule Eff. November 9, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*
Authority G.S. 130A-294;
Eff. April 9, 1994;
Amended Eff. October 1, 1994.