

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 13A .0101

DEADLINE FOR RECEIPT: June 12, 2020

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

At lines 9-11, please consider deleting the parentheses.

In (c), line 18, do you mean "regulations" instead of "rules?"

In (f)(1), just to be sure, does this language still reflect the current process? In other words, is this still done via mail instead of email?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder
Commission Counsel
Date submitted to agency: June 1, 2020

1 15A NCAC 13A .0101 is amended as published in 34:12 NCR 1141 as follows:

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3 **15A NCAC 13A .0101 GENERAL**

4 (a) The Hazardous Waste Section of the Division of Waste Management shall administer the hazardous waste
5 management program for the State of North Carolina.

6 (b) In applying the federal requirements incorporated by reference throughout this Subchapter, the following
7 substitutions or exceptions shall apply:

8 When used in any of the federal regulations incorporated by reference throughout this Subchapter, except
9 where the context requires references to remain without substitution (including with regard to forms,
10 publications, and regulations concerning international shipments, variances from land disposal restrictions,
11 and other program areas over which the federal government retains sole authority): "United States" shall
12 mean the State of North Carolina; "Environmental Protection Agency," "EPA," and "Agency" shall mean the
13 Department of Environmental Quality; and "Administrator," "Regional Administrator," "Assistant
14 Administrator," and "Director" shall mean the Secretary of the Department of Environmental Quality. The
15 North Carolina Solid Waste Management Act and other applicable North Carolina General Statutes set forth
16 in G.S. 130A shall be substituted for references to "the Solid Waste Disposal Act," "the Resource
17 Conservation and Recovery Act," and "RCRA" where required by context.

18 (c) In the event that there are inconsistencies or duplications in the requirements of those Federal rules incorporated
19 by reference throughout this Subchapter and the State rules set out in this Subchapter, the provisions incorporated by
20 reference shall prevail except where the State rules are more stringent.

21 (d) 40 CFR 260.1 through ~~260.3~~260.5 (Subpart A), "General" are incorporated by reference including subsequent
22 amendments and editions.

23 (e) 40 CFR 260.11, "Incorporation by Reference" is incorporated by reference including subsequent amendments and
24 editions.

25 (f) Copies of all materials in this Subchapter may be inspected or obtained as follows:

26 (1) Persons interested in receiving rule-making notices concerning the North Carolina Hazardous Waste
27 Management Rules shall submit a written request to the Hazardous Waste Section, 1646 Mail
28 Service Center, Raleigh, N.C. 27699-1646. Upon receipt of each request, individuals shall be placed
29 on a mailing list to receive notices.

30 (2) Material incorporated by reference in the Federal Register may be obtained electronically free of
31 charge from the United States Environmental Protection Agency website at
32 <http://www.epa.gov/laws-regulations/regulations>.

33 (3) All material is available for inspection at the Department of Environmental Quality, Hazardous
34 Waste Section, 217 West Jones Street, Raleigh, NC and at [https://deq.nc.gov/about/divisions/waste-](https://deq.nc.gov/about/divisions/waste-management/hw/rules)
35 [management/hw/rules](https://deq.nc.gov/about/divisions/waste-management/hw/rules).

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37 *History Note: Authority G.S. 130A-294(c);*

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Eff. September 1, 1979;
Amended Eff. June 1, 1989; June 1, 1988; August 1, 1987; May 1, 1987;
Transferred and Recodified from 10 NCAC 10F .0001 Eff. April 4, 1990;
Amended Eff. October 1, 1993; April 1, 1993; October 1, 1992; December 1, 1991;
Recodified from 15A NCAC 13A .0001 Eff. December 20, 1996;
Amended Eff. July 1, 2016; August 1, 2004; August 1, 2000; August 1, 1998; August 1, 1997;
Temporary Amendment Eff. May 30, 2017 (replaced by the rule effective March 1, 2018);
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 24,
2017;
Amended Eff. July 1, 2020; March 1, 2018.

1 15A NCAC 13A .0111 is amended as published in 34:12 NCR 1141 as follows:

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3 **15A NCAC 13A .0111 STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS**
4 **WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT**
5 **FACILITIES - PART 266**

6 (a) 40 CFR 266.20 through 266.23 (Subpart C), "Recyclable Materials Used in a Manner Constituting Disposal" are
7 incorporated by reference including subsequent amendments and editions.

8 (b) 40 CFR 266.70 (Subpart F), "Recyclable Materials Utilized for Precious Metal Recovery" is incorporated by
9 reference including subsequent amendments and editions. Off-site recycling facilities that receive materials
10 described in 40 CFR 266.70(a) shall mark or label each container and tank holding recyclable materials at off-site
11 precious metal recycling facilities with the words "Recyclable Material."

12 (c) 40 CFR 266.80 (Subpart G), "Spent Lead-Acid Batteries Being Reclaimed" is incorporated by reference
13 including subsequent amendments and editions.

14 (d) 40 CFR 266.100 through 266.112 (Subpart H), "Hazardous Waste Burned in Boilers and Industrial Furnaces"
15 are incorporated by reference including subsequent amendments and editions.

16 (e) 40 CFR 266.200 through 266.206 (Subpart M), "Military Munitions" are incorporated by reference including
17 subsequent amendments and editions.

18 (f) 40 CFR 266.210 through 266.360 (Subpart N), "Conditional Exemption for Low-Level Mixed Waste Storage,
19 Treatment, Transportation and Disposal" are incorporated by reference including subsequent amendments and
20 editions.

21 (g) 40 CFR 266.500 through 266.510 (Subpart P), "Hazardous Waste Pharmaceuticals" are incorporated by
22 reference including subsequent amendments and editions.

23 ~~(g)~~(h) Appendices to 40 CFR Part 266 are incorporated by reference including subsequent amendments and
24 editions.

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26 *History Note: Authority G.S. 130A-294(c);*
27 *Eff. July 1, 1985;*
28 *Amended Eff. June 1, 1990; June 1, 1988; February 1, 1988; December 1, 1987;*
29 *Transferred and Recodified from 10 NCAC 10F .0039 Eff. April 4, 1990;*
30 *Recodified from 15A NCAC 13A .0012 Eff. August 30, 1990;*
31 *Amended Eff. January 1, 1995; April 1, 1993; August 1, 1991; October 1, 1990;*
32 *Recodified from 15A NCAC 13A .0011 Eff. December 20, 1996;*
33 *Amended Eff. April 1, 2006; April 1, 2003; April 1, 1999; August 1, 1998;*
34 *Temporary Amendment Eff. May 30, 2017 (replaced by the rule effective March 1, 2018);*
35 *Readopted Eff. March 1, ~~2018~~ 2018;*
36 *Amended Eff. July 1, 2020.*
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1 15A NCAC 13B .0546 is readopted as published in 34:16 NCR 1470 as follows:

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3 **15A NCAC 13B .0546 FINANCIAL ASSURANCE REQUIREMENTS FOR C&DLF FACILITIES AND**
4 **UNITS**

5 (a) Owners and operators of construction and demolition landfill facilities permitted by the Division in accordance
6 with this Subchapter shall comply with the financial responsibility requirements set forth in G.S. 130A-295.2.

7 (b) Owners and operators of construction and demolition landfill facilities operating after January 1, 2007 and
8 permitted by the Division in accordance with this Subchapter shall comply with the financial assurance requirements
9 set forth in Section .1800 of this Subchapter.

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

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

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

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

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

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

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

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

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

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

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

23 (B) ~~During the active life of the C&DLF unit(s) and during the post closure care period, the~~
24 ~~owner and operator must annually adjust the post closure cost estimate for inflation within~~
25 ~~60 days prior to the anniversary date of the establishment of the financial instrument(s).~~
26 ~~For owners and operators using the local government financial test, the post closure cost~~
27 ~~estimate must be updated for inflation within 30 days after the close of the local~~
28 ~~government's fiscal year and before submission of updated information to the Division.~~

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

33 (D) ~~The owner or operator may reduce the post closure cost estimate and the amount of~~
34 ~~financial assurance provided under Subparagraph (2) of this Paragraph if the cost estimate~~
35 ~~exceeds the maximum costs of post closure care remaining over the post closure care~~
36 ~~period. Prior to any reduction of the post closure cost estimate by the owner or operator, a~~
37 ~~written justification for the reduction shall be submitted to the Division for review. The~~

1 Division shall date and stamp the justification "approved" if the conditions of this
2 paragraph are met. The written justification and the Division approval must be placed in
3 the C&DLF operating record. No reduction of the post closure cost estimate shall be
4 allowed without Division approval.

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

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

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

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

31 (C) The owner or operator may reduce the corrective action cost estimate and the amount of
32 financial assurance provided under Subparagraph (2) of this Paragraph if the cost estimate
33 exceeds the maximum remaining costs of corrective action. Prior to any reduction of the
34 corrective action cost estimate by the owner or operator, a written justification for the
35 reduction must be submitted to the Division for review. The Division shall date and stamp
36 the justification "approved" if the conditions of this Paragraph are met. The reduction
37 justification and the Division approval must be placed in the C&DLF's operating record.

1 ~~No reduction of the corrective action cost estimate shall be allowed without Division~~
2 ~~approval. The reduction justification and the Division approval must be placed in the~~
3 ~~C&DLF's operating record.~~

4 (6) ~~The owner and operator of each C&DLF unit required to undertake a corrective action program~~
5 ~~under Rule .0545 of this Section must establish, in a manner in accordance with Paragraph (a) of~~
6 ~~this Rule, financial assurance for the most recent corrective action program. The owner or operator~~
7 ~~must provide continuous coverage for corrective action until released from financial assurance~~
8 ~~requirements for corrective action by demonstrating compliance with Rule .0545(m) of this Section.~~

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10 *History Note:* ~~Authority G.S. 130A-294; 130A-295.2(b);~~
11 ~~Eff. January 1, 2007. 2007;~~
12 ~~Readopted Eff. July 1, 2020.~~

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 13B .1105

DEADLINE FOR RECEIPT: June 12, 2020

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

At line 4, please add a comma after "operate."

At line 5, please add a comma after "operated."

At lines 5-6 and 11, the terms "scrap tire collection site," "scrap tire disposal site," and "scrap tire collection facilities" are used. Did you intentionally use different terms and do these terms have different meanings? Does your regulated public understand these terms?

At line 12, should it be "Rule" or "Rules?"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder
Commission Counsel
Date submitted to agency: June 1, 2020

1 15A NCAC 13B .1105 is amended as published in 34:16 NCR 1470 as follows:

2

3 **15A NCAC 13B .1105 PERMIT REQUIRED**

4 (a) No person, other than a person exempted by G.S. 130A-309.57(d), shall establish, operate or maintain, or allow
5 to be established, operated or maintained upon land owned, leased, or otherwise controlled by that person, a scrap tire
6 collection site or scrap tire disposal site unless a permit for the site has been obtained from the Division.

7 (b) Applications for permits submitted in accordance with Rule .1106 of this Section shall be forwarded to the
8 Division of Waste Management, Solid Waste Section, 1646 Mail Service Center, Raleigh, North Carolina 27699-
9 1646.

10 (c) A permit is issued to the permit applicant for a particular site and shall not be transferable.

11 (d) Trailers and covered roll-off containers used as scrap tire collection facilities are exempt from the requirements
12 of Rule .1106(c)(1), (c)(2), (c)(4), and (c)(6) of this Section. ~~.1106(e) of this Section with the exception of~~
13 ~~Subparagraphs (c)(3) and (c)(5) of this Rule.~~

14 (e) Scrap tire collection sites permitted by the Division in accordance with this Subchapter that are not operated by
15 local governments shall comply with the financial responsibility requirements set forth in G.S. 130A-295.2 and the
16 financial assurance requirements set forth in Section .1800 of this Subchapter. A demonstration of financial
17 qualifications for operation of a site shall include documentation that the facility has liability coverage for potential
18 property damage and bodily injury to third parties that may result from a fire occurring at the site. ~~operated by units~~
19 ~~of local government are exempt from the financial responsibility requirements established in Rule .1111 of this~~
20 ~~Section.~~

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22 *History Note: Authority G.S. 130A-309.57;*
23 *Eff. October 1, 1990;*
24 *Readopted Eff. December 1, 2018. 2018;*
25 *Amended Eff. July 1, 2020.*

1 15A NCAC 13B .1111 is readopted as a repeal as published in 34:16 NCR 1470 as follows:

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3 **15A NCAC 13B .1111 FINANCIAL RESPONSIBILITY REQUIREMENTS**

4

5 *History Note: Authority G.S. 130A-294(b); 130A-309.27;*

6 *Eff. October 1, ~~1990~~. 1990;*

7 *Repealed Eff. July 1, 2020.*

1 15A NCAC 13B .1628 is readopted as published in 34:16 NCR 1470 as follows:

2
3 **15A NCAC 13B .1628 FINANCIAL ASSURANCE ~~RULE~~ REQUIREMENTS FOR MSWLF FACILITIES**
4 **AND UNITS**

5 (a) Owners and operators of municipal solid waste landfill facilities permitted by the Division in accordance with this
6 Subchapter that received waste on or after October 9, 1993 shall comply with the financial responsibility requirements
7 set forth in G.S. 130A-295.2.

8 (b) Owners and operators of municipal solid waste landfill facilities permitted by the Division in accordance with this
9 Subchapter shall comply with the financial assurance requirements set forth in Section .1800 of this Subchapter.

10 ~~(a) Applicability and Effective Date.~~

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

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

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

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

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

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

25 ~~(b) Financial Assurance for Closure.~~

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

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

33 (B) ~~During the active life of the MSWLF unit, the owner or operator shall annually adjust the~~
34 ~~closure cost estimate for inflation within 60 days prior to the anniversary date of the~~
35 ~~establishment of the financial instrument(s). For owners and operators using the local~~
36 ~~government financial test, the closure cost estimate shall be updated for inflation within 30~~

1 days after the close of the local government's fiscal year and before submission of updated
2 information to the Division.

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

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

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

18 ~~(e) Financial Assurance for Post-Closure Care.~~

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

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

27 (B) During the active life of the MSWLF unit and during the post-closure care period, the
28 owner or operator shall annually adjust the post-closure cost estimate for inflation within
29 60 days prior to the anniversary date of the establishment of the financial instrument(s).
30 For owners and operators using the local government financial test, the post-closure cost
31 estimate shall be updated for inflation within 30 days after the close of the local
32 government's fiscal year and before submission of updated information to the Division.

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

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

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

13 (d) ~~Financial Assurance for Corrective Action.~~

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

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

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

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

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

7 ~~(e) Allowable Mechanisms.~~

8 (1) The mechanisms used to demonstrate financial assurance under this Rule shall ensure that the funds
9 necessary to meet the costs of closure, post closure care, and corrective action for known releases
10 shall be available whenever they are needed. Owners and operators shall choose from the options
11 specified in Parts (A) through (I) of this Paragraph.

12 (A) Trust Fund.

13 (i) An owner or operator may satisfy the requirements of this Paragraph by
14 establishing a trust fund which conforms to the requirements of this Part. The
15 trustee shall be an entity which has the authority to act as a trustee and whose trust
16 operations are regulated and examined by a Federal or State agency. A copy of
17 the trust agreement shall be placed in the facility's operating record.

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

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

29
30 Next Payment= $\frac{CE - CV}{Y}$
31 Y

32
33 where CE is the current cost estimate for closure or post closure care (updated for
34 inflation or other changes), CV is the current value of the trust fund, and Y is the
35 number of years remaining in the pay in period.

36 (iv) For a trust fund used to demonstrate financial assurance for corrective action, the
37 first payment into the trust fund shall be at least equal to one half of the current

1 cost estimate for corrective action, except as provided in Part (J) of this Paragraph.
2 The amount of subsequent payments shall be determined by the following
3 formula:

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

7
8 where CE is the current cost estimate for corrective action (updated for inflation
9 or other changes), CV is the current value of the trust fund, and Y is the number
10 of years remaining in the pay-in period.

11 (v) The initial payment into the trust fund shall be made before the initial receipt of
12 waste or before the effective date of this Rule (April 9, 1994), whichever is later,
13 in the case of closure and post-closure care, or no later than 120 days after the
14 corrective action remedy has been selected in accordance with the requirements
15 of Rule .1636 of this Section. Subsequent payments shall be made no later than
16 30 days after each anniversary date of the first payment.

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

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

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

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

37 (B) Surety Bond Guaranteeing Payment or Performance.

- 1 (i) ~~An owner or operator may demonstrate financial assurance for closure or~~
2 ~~post closure care by obtaining a payment or performance surety bond which~~
3 ~~conforms to the requirements of this Part. An owner or operator may demonstrate~~
4 ~~financial assurance for corrective action by obtaining a performance bond which~~
5 ~~conforms to the requirements of this Part. The bond shall be effective before the~~
6 ~~initial receipt of waste or before the effective date of this Rule, (April 9, 1994),~~
7 ~~whichever is later, in the case of closure and post closure care, or no later than~~
8 ~~120 days after the corrective action remedy has been selected in accordance with~~
9 ~~the requirements of Rule .1636 of this Section. The owner or operator shall place~~
10 ~~a copy of the bond in the operating record. The surety company issuing the bond~~
11 ~~shall, at a minimum, be among those listed as acceptable sureties on Federal bonds~~
12 ~~in Circular 570 of the U.S. Department of the Treasury which is incorporated by~~
13 ~~reference including subsequent amendments and editions. Copies of this material~~
14 ~~may be inspected or obtained at the Department of Environment, Health, and~~
15 ~~Natural Resources, Division of Solid Waste Management, 401 Oberlin Road,~~
16 ~~Raleigh, North Carolina at no cost.~~
- 17 (ii) ~~The penal sum of the bond shall be in an amount at least equal to the current~~
18 ~~closure, post closure care or corrective action cost estimate, whichever is~~
19 ~~applicable, except as provided in Paragraph (e)(1)(J) of this Rule.~~
- 20 (iii) ~~Under the terms of the bond, the surety shall become liable on the bond obligation~~
21 ~~when the owner or operator fails to perform as guaranteed by the bond.~~
- 22 (iv) ~~The owner or operator shall establish a standby trust fund. The standby trust fund~~
23 ~~shall meet the requirements of Paragraph (e)(1)(A) of this Rule except the~~
24 ~~requirements for initial payment and subsequent annual payments specified in~~
25 ~~Paragraph (e)(1)(A)(ii), (iii), (iv) and (v) of this Rule.~~
- 26 (v) ~~Payments made under the terms of the bond shall be deposited by the surety~~
27 ~~directly into the standby trust fund. Payments from the trust fund shall be~~
28 ~~approved by the trustee and Division.~~
- 29 (vi) ~~Under the terms of the bond, the surety may cancel the bond by sending notice of~~
30 ~~cancellation by certified mail to the owner and operator and to the Division 120~~
31 ~~days in advance of cancellation. If the surety cancels the bond, the owner or~~
32 ~~operator shall obtain alternate financial assurance as specified in this Rule.~~
- 33 (vii) ~~The owner or operator may cancel the bond only if alternate financial assurance~~
34 ~~is substituted as specified in this Rule or if the owner or operator is no longer~~
35 ~~required to demonstrate financial responsibility in accordance with Paragraph~~
36 ~~(b)(2), (c)(2) or (d)(2) of this Rule.~~

37 (C) Letter of Credit.

- 1 (i) ~~An owner or operator may satisfy the requirements of this Paragraph by obtaining~~
2 ~~an irrevocable standby letter of credit which conforms to the requirements of this~~
3 ~~Part. The letter of credit shall be effective before the initial receipt of waste or~~
4 ~~before the effective date of this Rule (April 9, 1994), whichever is later, in the~~
5 ~~case of closure and post closure care, or no later than 120 days after the corrective~~
6 ~~action remedy has been selected in accordance with the requirements of Rule~~
7 ~~.1636 of this Section. The owner or operator shall place a copy of the letter of~~
8 ~~credit in the operating record. The issuing institution shall be an entity which has~~
9 ~~the authority to issue letters of credit and whose letter of credit operations are~~
10 ~~regulated and examined by a Federal or State agency.~~
- 11 (ii) ~~A letter from the owner or operator referring to the letter of credit by number,~~
12 ~~issuing institution, and date, and providing the following information: name and~~
13 ~~address of the facility, and the amount of funds assured, shall be included with the~~
14 ~~letter of credit in the operating record.~~
- 15 (iii) ~~The letter of credit shall be irrevocable and issued for a period of at least one year~~
16 ~~in an amount at least equal to the current cost estimate for closure, post closure~~
17 ~~care or corrective action, whichever is applicable, except as provided in Paragraph~~
18 ~~(e)(1)(J) of this Rule. The letter of credit shall provide that the expiration date~~
19 ~~shall be automatically extended for a period of at least one year unless the issuing~~
20 ~~institution has canceled the letter of credit by sending notice of cancellation by~~
21 ~~certified mail to the owner and operator and to the Division 120 days in advance~~
22 ~~of cancellation. If the letter of credit is canceled by the issuing institution, the~~
23 ~~owner or operator shall obtain alternate financial assurance.~~
- 24 (iv) ~~The owner or operator may cancel the letter of credit only if alternate financial~~
25 ~~assurance is substituted as specified in this Rule or if the owner or operator is~~
26 ~~released from the requirements of Paragraph (b)(2), (c)(2) or (d)(2) of this Rule.~~
- 27 (v) ~~The owner or operator shall establish a standby trust fund. The standby trust fund~~
28 ~~shall meet the requirements of Paragraph (e)(1)(A) of this Rule except the~~
29 ~~requirements for initial payment and subsequent annual payments specified in~~
30 ~~Paragraph (e)(1)(A)(ii), (iii), (iv) and (v) of this Rule.~~
- 31 (vi) ~~Payments made under the terms of the letter of credit shall be deposited by the~~
32 ~~issuing institution directly into the standby trust fund. Payments from the trust~~
33 ~~fund shall be approved by the trustee and the Division.~~

34 (D) ~~Insurance.~~

- 35 (i) ~~An owner or operator may demonstrate financial assurance for closure and~~
36 ~~post closure care by obtaining insurance which conforms to the requirements of~~
37 ~~this Part. The insurance shall be effective before the initial receipt of waste or~~

1 before the effective date of this Rule, (April 9, 1994), whichever is later. At a
2 minimum, the insurer shall be licensed to transact the business of insurance, or
3 eligible to provide insurance as an excess or surplus lines insurer, in North
4 Carolina. The owner or operator shall place a copy of the insurance policy in the
5 operating record.

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

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

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

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

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

1 (vii) For insurance policies providing coverage for post-closure care, commencing on
2 the date that liability to make payments pursuant to the policy accrues, the insurer
3 shall thereafter annually increase the face amount of the policy. Such increase
4 shall be equivalent to the face amount of the policy, less any payments made,
5 multiplied by an amount equivalent to 85 percent of the most recent investment
6 rate or of the equivalent coupon issue yield announced by the U.S. Treasury for
7 26-week Treasury securities.

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

12 (E) Corporate Financial Test.

13 [Reserved]

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

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

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

35 (II) A current bond rating of Baa or above as issued by Moody's, BBB or
36 above as issued by Standard & Poor's, BBB or above as issued by Fitch's,
37 or 75 or above as issued by the Municipal Council; a ratio of the current

1 cost estimates for closure, post closure, corrective action, or the sum of
2 the combination of such costs to be covered, and any other
3 environmental obligations assured by a financial test to total revenue less
4 than or equal to 0.43.

5 (III) — A unit of local government shall not have operated at a total operating
6 fund deficit equal to five percent or more of total annual revenue in either
7 of the past two fiscal years; it shall not currently be in default on any
8 outstanding general obligation bonds or any other long term obligations;
9 and it shall not have any outstanding general obligation bonds rated
10 lower than Baa as issued by Moody's, BBB as issued by Standard &
11 Poor's, BBB as issued by Fitch's or lower than 75 as issued by the
12 Municipal Council.

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

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

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

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

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

28 (iv) In the case of closure and post closure care, the Chief Financial Officer's letter
29 shall be placed in the operating record before the initial receipt of waste or by
30 April 9, 1994, whichever is later. In the case of corrective action, the CFO's letter
31 shall be placed in the operating record no later than 120 days after the corrective
32 action remedy has been selected in accordance with the requirements of Rule
33 .1636.

34 (v) When calculating the "current cost estimates for closure, post closure, corrective
35 action, or the sum of the combination of such costs to be covered, and any other
36 environmental obligations assured by a financial test" referred to in Part (F)(i) of
37 this Paragraph, the unit of local government shall include cost estimates required

1 for municipal solid waste management facilities under 15A NCAC 13B .1600, as
2 well as cost estimates required for all other environmental obligations it assures
3 through a financial test, including but not limited to those associated with
4 hazardous waste treatment, storage, and disposal facilities under 15A NCAC 13A
5 .0009 and .0010, petroleum underground storage tank facilities under 15A NCAC
6 2N .0100 through .0800, Underground Injection Control facilities under 15A
7 NCAC 2D .0400 and 15A NCAC 2C .0200, and PCB storage facilities under 15A
8 NCAC 2O .0100 and 15A NCAC 2N .0100.

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

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

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

23 (G) Corporate Guarantee.

24 [Reserved]

25 (H) Local Government Guarantee.

26 [Reserved]

27 (I) Capital Reserve Fund.

28 (i) MSWLF units owned or operated by units of local government or public authority
29 may satisfy the requirements of this Paragraph by establishing a capital reserve
30 fund which conforms to the requirements of this Part. The unit of local
31 government or public authority shall be an entity which has the authority to
32 establish a capital reserve fund under authority of G.S. 159 and whose financial
33 operations are regulated and examined by a State agency. The capital reserve fund
34 shall be established consistent with auditing, budgeting and government
35 accounting practices as prescribed in G.S. 159 and by the Local Government
36 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:~~

1
2 TRUST AGREEMENT
3

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

7 Whereas, the Division of Solid Waste Management, the "Division," an agency of the State of North Carolina, has
8 established certain regulations applicable to the Grantor, requiring that an owner or operator of a solid waste
9 management facility shall provide assurance that funds shall be available when needed for closure, post closure care,
10 or corrective action of the facility;

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

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

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

16 Section 1. Definitions. As used in this Agreement:

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

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

20 Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and cost estimates
21 identified on Schedule A [on Schedule A, for each facility list the Solid Waste Section Permit Number, name, address,
22 and the current closure, post closure, or corrective action cost estimates, or portions thereof, for which financial
23 assurance is demonstrated by this Agreement].

24 Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit
25 of the Division. The Grantor and the Trustee intend that no third party have access to the Fund except as herein
26 provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described
27 in Schedule B. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund,
28 together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this
29 Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be
30 responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the
31 Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Division.

32 Section 4. Payment for Closure, Post Closure Care, and Corrective Action. The Trustee shall make payments from
33 the Fund as the Division of Solid Waste Management (the "Division") shall direct, in writing, to provide for the
34 payment of the costs of closure, post closure care, or corrective action of the facilities covered by this Agreement. The
35 Trustee shall reimburse the Grantor or other persons as specified by the Division from the Fund for closure, post
36 closure, and corrective action expenditures in such amounts as the Division shall direct in writing. In addition, the

1 ~~Trustee shall refund to the Grantor such amounts as the Division specifies in writing. Upon refund, such funds shall~~
2 ~~no longer constitute part of the Fund as defined herein.~~

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

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

- 13 (i) ~~Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any~~
14 ~~of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-~~
15 ~~2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or~~
16 ~~State government;~~
- 17 (ii) ~~The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent~~
18 ~~insured by an agency of the Federal or State government; and~~
- 19 (iii) ~~The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a~~
20 ~~reasonable time and without liability for the payment of interest thereon.~~

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

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

25 ~~(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C.~~
26 ~~80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered~~
27 ~~or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.~~

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

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

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

35 ~~(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~~
36 ~~in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same~~
37 ~~issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a~~

1 ~~qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the~~
2 ~~name of the nominee of such depository with other securities deposited therein by another person, or to deposit or~~
3 ~~arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality~~
4 ~~thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such~~
5 ~~securities are part of the Fund;~~

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

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

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

15 ~~Section 10. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of~~
16 ~~establishment of the Fund, furnish to the Grantor and to the Division a statement confirming the value of the Trust.~~
17 ~~Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of~~
18 ~~establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the~~
19 ~~statement has been furnished to the Grantor and the Division shall constitute a conclusively binding assent by the~~
20 ~~Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed~~
21 ~~in the statement.~~

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

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

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

1 Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in
2 writing, signed by such persons as are designated in the Exhibit A or such other designees as the Grantor may designate
3 by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the
4 Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Division to the Trustee shall
5 be in writing, signed by the Division, or his designee, and the Trustee shall act and shall be fully protected in acting
6 in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence
7 of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to
8 act on behalf of the Grantor or Division hereunder has occurred. The Trustee shall have no duty to act in the absence
9 of such orders, requests, and instructions from the Grantor or Division, except as provided for herein.

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

14 Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the
15 Grantor, the Trustee, and the Division, or by the Trustee and the Division if the Grantor ceases to exist.

16 Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in
17 Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor,
18 the Trustee, and the Division, or by the Trustee and the Division, if the Grantor ceases to exist. Upon termination of
19 the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

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

26 Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of
27 the State of North Carolina.

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

31 In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized
32 and their corporate seals to be hereunto affixed and attested as of the date first above written: The parties below certify
33 that the wording of this Agreement is identical to the wording specified in Paragraph (e)(2)(A)(i) of 15A NCAC 13B
34 .1628 as were constituted on the date first above written.

35
36 [Signature of Grantor]

37 [Title]

1 Attest:

2 [Title]

3 [Seal]

4

[Signature of Trustee]

6 Attest:

7 [Title]

8 [Seal]

9

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

12

13 State of

14 County of

15

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.

21

[Signature of Notary Public]

23

(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:

28

FINANCIAL GUARANTEE BOND

29

31 Date bond executed:

32 Effective date:

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

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

35 State of incorporation:

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

1 ~~Solid Waste Section Permit Number, name, address, and closure or post-closure amount(s) for each facility guaranteed~~
2 ~~by this bond [indicate closure and post-closure amounts separately]:~~

3 ~~Total penal sum of bond: \$~~

4 ~~Surety's bond number:~~

5
6 ~~Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the North~~
7 ~~Carolina Division of Solid Waste Management (hereinafter called the Division), in the above penal sum for the~~
8 ~~payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and~~
9 ~~severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves~~
10 ~~in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us,~~
11 ~~and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such~~
12 ~~sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability~~
13 ~~shall be the full amount of the penal sum.~~

14 ~~Whereas, said Principal is required, under the Solid Waste Management Rule .0201 as amended, to have a permit in~~
15 ~~order to own or operate each solid waste management facility identified above, and~~

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

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

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

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

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

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

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

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

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

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

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

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

10 ~~The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on~~
11 ~~behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in~~
12 ~~Paragraph (e)(2)(B) of 15A NCAC 13B .1628 as were constituted on the date this bond was executed.~~

13

14 **Principal**

15

16 [Signature(s)]

17 [Name(s)]

18 [Title(s)]

19 [Corporate seal]

20

21 **Corporate Surety(ies)**

22

23 [Name and address]

24 State of incorporation:

25 Liability limit: \$

26 [Signature(s)]

27 [Name(s) and title(s)]

28 [Corporate seal]

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

31 Bond premium: \$

32

33 (C) ~~A surety bond guaranteeing performance of closure, post closure care,~~
34 ~~or corrective action, as specified in Paragraph (e)(1)(B) of this Rule, shall~~
35 ~~be worded as follows, except that instructions in brackets are to be~~
36 ~~replaced with the relevant information and the brackets deleted:~~

37

PERFORMANCE BOND

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~~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~~

1 permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations as such laws, statutes, rules,
2 and regulations may be amended,

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

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

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

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

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

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

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

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

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

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

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

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

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

6 ~~The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on~~
7 ~~behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in~~
8 ~~Paragraph (e)(2)(C) of 15A NCAC 13B .1628 as was constituted on the date this bond was executed.~~

9
10 Principal

11
12 {Signature(s)}

13 {Name(s)}

14 {Title(s)}

15 {Corporate seal}

16
17 Corporate Surety(ies)

18
19 [Names and address]

20 State of incorporation:

21 Liability limit: \$

22 {Signature(s)}

23 {Names(s) and title(s)}

24 {Corporate seal}

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

27 Bond premium: \$

28
29 (D) ~~A letter of credit, as specified in Paragraph (e)(1)(C) of this Rule, shall~~
30 ~~be worded as follows, except that instructions in brackets are to be~~
31 ~~replaced with the relevant information and the brackets deleted:~~

32
33 ~~IRREVOCABLE STANDBY LETTER OF CREDIT~~

34
35 North Carolina Department of Environment, Health, and Natural Resources

36 Solid Waste Management Division

37 Solid Waste Section

1 P.O. Box 27687
2 Raleigh, North Carolina 27611 7687

3
4 Dear Sir or Madam:

5
6 We hereby establish our Irrevocable Standby Letter of Credit No. _____ in your favor, at the request and for the account
7 of [owner's or operator's name and address] up to the aggregate amount of [in words] U.S. dollars \$ _____, available
8 upon presentation of

- 9 (1) your sight draft, bearing reference to this letter of credit No. _____, and
10 (2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant
11 to requirements of 15A NCAC 13B .1628 as amended."

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

18 Whenever this letter of credit is drawn on, under and in compliance with the terms of this credit, we shall duly honor
19 such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of
20 [owner's or operator's name] in accordance with your instructions.

21 We certify that the wording of this letter of credit is identical to the wording specified in Paragraph (e)(2)(D) of 15A
22 NCAC 13B .1628 as were constituted on the date shown immediately below.

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

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

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

29
30 ~~CERTIFICATE OF INSURANCE FOR CLOSURE OR POST CLOSURE CARE~~

31
32 ~~Name and Address of Insurer~~
33 ~~(herein called the "Insurer"):~~

34
35 ~~Name and Address of Insured~~
36 ~~(herein called the "Insured"):~~

37

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

4
5 ~~Face Amount:~~

6 ~~Policy Number:~~

7 ~~Effective Date:~~

8
9 ~~The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial~~
10 ~~assurance for [insert "closure" or "closure and post closure care" or "post closure care"] for the facilities identified~~
11 ~~above.~~

12 ~~The Insurer further warrants that such policy conforms in all respects with the requirements of Paragraph (e)(1) of~~
13 ~~15A NCAC 13B .1628, as applicable and as such regulations were constituted on the date shown immediately below.~~

14 ~~It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such~~
15 ~~inconsistency.~~

16 ~~Whenever requested by the North Carolina Division of Solid Waste Management (Division), the Insurer agrees to~~
17 ~~furnish to the Division a duplicate original of the policy listed above, including all endorsements thereon.~~

18 ~~I hereby certify that the wording of this certificate is identical to the wording specified in Paragraph (e)(2)(E) of 15A~~
19 ~~NCAC 13B .1628 as were constituted on the date shown immediately below.~~

20
21 ~~[Authorized signature for Insurer]~~

22 ~~[Name of person signing]~~

23 ~~[Title of person signing]~~

24 ~~Signature of witness or notary:~~

25
26 ~~[Date]~~

27
28 (F) ~~A capital reserve fund, as specified in Paragraph (e)(1)(I) of this Rule,~~
29 ~~shall be worded as follows, except that instructions in brackets are to be~~
30 ~~replaced with the relevant information and the brackets deleted:~~

31
32 ~~CAPITAL RESERVE FUND RESOLUTION~~

33
34 ~~ESTABLISHMENT AND MAINTENANCE~~

35 ~~OF THE MUNICIPAL SOLID WASTE LANDFILL~~

36 ~~CAPITAL RESERVE FUND~~
37

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

3
4 ~~WHEREAS, the [location] shall bear the cost of [closure, post closure, or corrective action] for the landfill at an~~
5 ~~estimated cost of [cost estimate].~~

6
7 ~~NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD THAT:~~

8
9 ~~Section 1. The Governing Board hereby creates a Capital Reserve Fund for the purpose of [closure, post closure, or~~
10 ~~corrective action] for the [permit number] landfill.~~

11
12 ~~Section 2. This Fund shall remain operational during the life of the landfill and the post closure care period beginning~~
13 ~~[date] and ending [date] as estimated at the time of annual update of this Resolution.~~

14
15 ~~Section 3. The Board shall appropriate or transfer an amount of no less than [annual payment] each year to this Fund.~~

16
17 ~~Section 4. This Resolution shall become effective and binding upon its adoption.~~

18
19 ~~[Signature of County Commissioner]~~

20
21 ~~[Signature of Chief Financial Officer]~~

22
23 ~~[Date]~~

24
25 ~~(G) A local government financial test, as specified in Part (c)(1)(F) of this Rule, shall be worded as~~
26 ~~follows, except that instructions in brackets are to be replaced with the relevant information and the~~
27 ~~brackets deleted:~~

28
29 ~~LETTER FROM CHIEF FINANCIAL OFFICER~~

30
31 ~~[Address to the Department of Environment, Health, and Natural Resources, Solid Waste Section, Post Office Box~~
32 ~~27687, Raleigh, North Carolina 27611 7687.]~~

33 ~~I am the chief financial officer of [name and address of unit of local government]. This letter is in support of this unit~~
34 ~~of local government's use of the financial test to demonstrate financial assurance, as specified in 15A NCAC 13B~~
35 ~~.1628(e)(1)(F).~~

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

4 This unit of local government is the owner or operator of the following facilities for which financial assurance for
5 closure, post-closure, or corrective action is demonstrated through the financial test specified in 15A NCAC 13B
6 .1628(e)(1)(F). The current closure, post-closure, or corrective action cost estimates covered by the test are shown for
7 each facility: _____.

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

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

14
15 **RATIO INDICATORS OF FINANCIAL STRENGTH**

16		
17	1.	Sum of current closure, post-closure and corrective action cost
18		estimates [total of all cost estimates shown in the paragraphs above] — \$.....
19		
20	*2.	Sum of cash and investments (AFIR Part 7) \$.....
21		
22	*3.	Total expenditures (AFIR Part 4 Columns a & b and Part 5 for
23		municipalities or Part 5 excluding educational capital outlays
24		for counties) \$.....
25		
26	*4.	Annual debt service (AFIR Part 4 Section I) \$.....
27		
28	5.	Assured environmental costs to demonstrate financial responsibility
29		in the following amounts under Division rules:
30		
31		MSWLF under 15A NCAC 13B .1600 \$.....
32		
33		Hazardous waste treatment, storage and disposal
34		facilities under 15A NCAC 13A .0009 and .0010 \$.....
35		
36		Petroleum underground storage tanks under
37		15A NCAC 2N .0100 — .0800 \$.....

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~~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~~

1 *Authority G.S. 130A-294; 130A-295.2(b);*
2 *Eff. April 9, 1994;*
3 *Amended Eff. October 1, ~~1994~~. 1994;*
4 *Readopted Eff. July 1, 2020.*

1 15A NCAC 13B .1801 is adopted as published in 34:16 NCR 1470 as follows:

2
3 **SECTION .1800 - FINANCIAL ASSURANCE REQUIREMENTS FOR SOLID WASTE MANAGEMENT**
4 **FACILITIES**
5

6 **15A NCAC 13B .1801 GENERAL REQUIREMENTS**

7 (a) Owners and operators of solid waste management facilities permitted by the Division in accordance with this
8 Subchapter shall establish financial assurance as an environmental liability in accordance with this Section, with the
9 exception of the following:

- 10 (1) municipal solid waste landfill facilities that stopped receiving waste prior to October 9, 1993;
- 11 (2) construction and demolition landfill facilities that closed prior to January 1, 2007;
- 12 (3) scrap tire collection sites and solid waste compost facilities that are owned and operated by local
13 governments;
- 14 (4) solid waste management facilities that accept only yard waste, land clearing waste, or inert debris,
15 unless the owners or operators have a "history of significant or repeated violations" as defined by
16 G.S. 130A-295.3(c);
- 17 (5) septage management facilities permitted by the Division in accordance with Section .0800 of this
18 Subchapter;
- 19 (6) facility owners and operators that are State or federal government entities; and
- 20 (7) Small Type III solid waste compost facilities as defined in Rule .1402 of this Subchapter.

21 (b) For the purposes of this Section, the term "sanitary landfill" shall include the following facilities unless the facility
22 is exempt from establishing financial assurance pursuant to Paragraph (a) of this Rule:

- 23 (1) industrial landfill facilities;
- 24 (2) municipal solid waste landfill facilities;
- 25 (3) construction and demolition landfill facilities; and
- 26 (4) landfills for the exclusive disposal of scrap tires, also known as "tire monofills."

27 (c) Owners and operators required to place documents in the facility's operating record pursuant to this Section shall
28 submit copies of the documents to the Division, except as provided for in Paragraph (d) of this Rule.

29 (d) Owners and operators of solid waste management facilities that are required to establish financial assurance in
30 accordance with this Section shall use the mechanisms provided in Rule .1805 of this Section to provide funding for
31 closure, post-closure care, a corrective action program, and potential assessment and corrective action. The
32 instruments used for financial assurance mechanisms shall be submitted to the Division as original signed hard copies,
33 and unless stated otherwise in Rule .1806 of this Section, the language of the mechanisms shall be identical to the
34 mechanism templates provided in Rule .1806 of this Section.

35 (e) Owners and operators of solid waste management facilities that are required to establish financial assurance in
36 accordance with this Section shall submit itemized cost estimates for closure activities in accordance with Rule .1802
37 of this Section.

1 (f) Owners and operators of sanitary landfills that are required to establish financial assurance in accordance with this
2 Section shall submit itemized cost estimates for post-closure care activities in accordance with Rule .1803 of this
3 Section.

4 (g) Owners and operators of solid waste management facilities that are required to undertake a corrective action
5 program in accordance with the rules of this Subchapter shall submit itemized cost estimates for the corrective action
6 program in accordance with Rule .1804 of this Section.

7 (h) Owners and operators of sanitary landfills permitted by the Division in accordance with Rule .0207 of this
8 Subchapter shall annually submit the following information to the Division no less than 180 calendar days prior to the
9 renewal date of the financial assurance mechanisms for the facility:

10 (1) current description and size in acreage of any active portion of the facility that has closed since the
11 previous financial assurance mechanism renewal; and

12 (2) a description of the acreage proposed to remain active and proposed to be closed in the year
13 following the upcoming financial assurance mechanism renewal.

14 (i) Financial assurance for potential assessment and corrective action shall be established in accordance with G.S.
15 130A-295.2(h) and (h1), and shall be increased for inflation annually, concurrently with cost estimates for closure,
16 post-closure care, and corrective action programs in accordance with Rules .1802(b)(1), .1803(b)(1), and .1804(b)(1)
17 of this Section, respectively.

18 (j) When the owner and operator of a solid waste management facility is required to adjust a cost estimate or the
19 amount of financial assurance for inflation in accordance with the rules of this Section, the adjustment for inflation
20 shall be made by using the US Department of Commerce, Bureau of Economic Analysis Gross Domestic Product,
21 implicit price deflator. The implicit price deflator that shall be used to adjust for inflation shall be published on the
22 Division's website at <http://go.ncdenr.gov/fa> by January 30 of each year. Financial assurance mechanisms that renew
23 in January shall use the previous year's implicit price deflator.

24
25 History Note: Authority G.S. 130A-294; 130A-295.2;
26 Eff. July 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 13B .1802

DEADLINE FOR RECEIPT: June 12, 2020

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

At line 17, please define "largest permitted units." Which units are required to be included in the cost estimate?

In (b)(3), under what circumstances will the Division approve a reduction of the closure cost estimate?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder
Commission Counsel
Date submitted to agency: June 1, 2020

1 15A NCAC 13B .1802 is adopted as published in 34:16 NCR 1470 as follows:

2
3 **15A NCAC 13B .1802 FINANCIAL ASSURANCE COST ESTIMATE REQUIREMENTS FOR**
4 **CLOSURE**

5 (a) Owner and operators shall meet the following requirements for closure cost estimate calculations:

6 (1) Owners and operators of solid waste management facilities other than sanitary landfills that are
7 required to establish financial assurance in accordance with this Section shall submit to the Division
8 with the permit application an itemized cost estimate for financial assurance for closure of the
9 facility. The closure cost estimate shall be adjusted in accordance with Subparagraphs (b)(1) and
10 (b)(2) of this Rule. The closure cost estimate shall be calculated by multiplying the maximum
11 tonnage of waste permitted to be stored on site by the cost per ton for a third party to remove the
12 waste, transport it, and dispose of it at the nearest facility permitted by the Division to receive such
13 waste. The calculations shall include estimates for all waste types that are permitted by the Division
14 in accordance with this Subchapter to be stored on site.

15 (2) Owners and operators of sanitary landfills that are required to establish financial assurance in
16 accordance with this Section shall submit to the Division with the permit application an itemized
17 cost estimate of the cost of hiring a third party to close the largest permitted units of the sanitary
18 landfill during the active life of the permit in accordance with the facility's closure plan required in
19 accordance with this Subchapter. The closure cost estimate shall be adjusted in accordance with
20 Paragraph (b) of this Rule. A copy of the closure cost estimate shall be placed in the closure plan
21 and the facility's operating record.

22 (b) Owners and operators shall meet with the following requirements for adjustments to the cost estimate and the
23 amount of financial assurance:

24 (1) During the active life of the facility, the owner and operator shall annually adjust the closure cost
25 estimate and the amount of financial assurance for inflation. Owners and operators using the local
26 government financial test or capital reserve fund as set forth in Rule .1805(e) of this Section shall
27 submit the adjusted financial assurance mechanism to the Division prior to December 31, after the
28 end of the local government's fiscal year. Owners and operators using the corporate financial test or
29 corporate guarantee as set forth in Rule .1805(e) of this Section shall submit the adjusted financial
30 assurance mechanism to the Division no more than 90 calendar days following the close of the
31 corporate entity's fiscal year that is stated in the mechanism. Owners and operators using a financial
32 assurance mechanism set forth in Rule .1805(e) of this Section other than the local government
33 financial test, capital reserve fund, corporate financial test, or corporate guarantee shall submit the
34 adjusted financial assurance mechanism to the Division no less than 60 calendar days before the
35 anniversary of the initial date that the financial assurance mechanism was established.

36 (2) The owner and operator shall increase the closure cost estimate and the amount of financial
37 assurance and submit the revised closure cost estimate to the Division if changes to the closure plan

1 or facility conditions increase the maximum cost of closure at any time during the remaining active
2 life of the facility.

3 (3) The owner and operator may request to reduce the closure cost estimate and the amount of financial
4 assurance if the cost estimate exceeds the maximum cost of closure at any time during the active
5 life of the facility by submitting a revised closure cost estimate and a written justification for the
6 reduction to the Division for approval no less than 180 calendar days prior to the anniversary of the
7 date the financial assurance mechanism was established. No reduction of the closure cost estimate
8 or the amount of financial assurance shall be allowed without written approval from the Division.
9 The reduction justification and the Division approval shall be placed in the facility's operating
10 record.

11 (c) Owners and operators of solid waste management facilities that are required to establish financial assurance in
12 accordance with this Section shall establish financial assurance for closure of the facility in compliance with G.S.
13 130A-295.2(f). Owners and operators of sanitary landfills shall provide continuous coverage for closure until released
14 from financial assurance requirements for closure by demonstrating compliance with the facility's permit and closure
15 plan, with the closure letter issued to the facility by the Division, and with Rule .0543 of this Subchapter for
16 construction and demolition landfill facilities, Rule .1627(c) of this Subchapter for municipal solid waste landfill
17 facilities, and Rule .0510 of this Subchapter for other sanitary landfills. Owners and operators of solid waste
18 management facilities other than sanitary landfills shall provide continuous coverage for closure until released from
19 financial assurance requirements for closure by demonstrating that the closure requirements for the respective facility
20 type set forth in this Subchapter and the requirements in the facility's permit and closure plan have been met.

21 (d) Maintenance of financial assurance in the amounts required by this Rule does not in any way limit the
22 responsibility of owners or operators for the full cost of site closure and clean up, the expenses of any on-site or off-
23 site environmental restoration necessitated by activities at the facility, and liability for all damages to third parties or
24 private or public properties caused by the establishment and operation of the facility.

25
26 *History Note:* Authority G.S. 130A-294; 130A-295.2;
27 Eff. July 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 13B .1803

DEADLINE FOR RECEIPT: June 12, 2020

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (b)(3), under what circumstances does the Division approve a reduction? What factors are considered?

In (d), line 11, please consider deleting "in any way."

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder
Commission Counsel
Date submitted to agency: June 1, 2020

1 15A NCAC 13B .1803 is adopted as published in 34:16 NCR 1470 as follows:
2

3 **15A NCAC 13B .1803 FINANCIAL ASSURANCE COST ESTIMATE REQUIREMENTS FOR POST-**
4 **CLOSURE CARE**

5 (a) Owners and operators of sanitary landfills that are required to establish financial assurance in accordance with this
6 Section shall submit to the Division with the permit application a cost estimate for financial assurance for post-closure
7 care of the facility that contains an itemized cost estimate of the cost of hiring a third party to conduct post-closure
8 care for the sanitary landfill in compliance with the post-closure care plan developed in accordance with this
9 Subchapter. The post-closure care cost estimate shall be adjusted in accordance with Subparagraphs (b)(1) and (b)(2)
10 of this Rule. The post-closure care cost estimate used to demonstrate financial assurance shall account for the total
11 costs of conducting post-closure care for any closed and active portions of the facility, including annual and periodic
12 costs as described in the post-closure care plan over the entire post-closure care period. The cost estimate for post-
13 closure care shall be based on the most expensive costs of post-closure care during the post-closure care period. The
14 post-closure care cost estimate shall be placed in the operating record.

15 (b) Owners and operators shall meet the following requirements for adjustments to the post-closure care cost estimate
16 and the amount of financial assurance:

17 (1) During the active life of the facility, the owner and operator shall annually adjust the post-closure
18 care cost estimate and the amount of financial assurance for inflation. Owners and operators using
19 the local government financial test or the capital reserve fund as set forth in Rule .1805(e) of this
20 Section shall submit the adjusted financial assurance mechanism to the Division prior to December
21 31, after the end of the local government's fiscal year. Owners and operators using the corporate
22 financial test or corporate guarantee as set forth in Rule .1805(e) of this Section shall submit the
23 adjusted financial assurance mechanism to the Division no more than 90 calendar days following
24 the close of the corporate entity's fiscal year that is stated in the mechanism. Owners and operators
25 using a financial assurance mechanism set forth in Rule .1805(e) of this Section other than the local
26 government financial test, capital reserve fund, corporate financial test, or corporate guarantee shall
27 submit the adjusted financial assurance mechanism to the Division no less than 60 calendar days
28 before the anniversary of the initial date the financial assurance mechanism was established.

29 (2) The owner and operator shall increase the post-closure care cost estimate and the amount of financial
30 assurance and submit the revised post-closure care cost estimate to the Division if changes to the
31 post-closure care plan or facility conditions increase the maximum cost of post-closure care at any
32 time during the remaining active life of the facility.

33 (3) The owner and operator may request to reduce the post-closure care cost estimate and the amount
34 of financial assurance if the cost estimate exceeds the maximum cost of post-closure care at any
35 time during the active life of the facility by submitting a revised post-closure care cost estimate and
36 a written justification for the reduction to the Division for approval no less than 180 calendar days
37 prior to the anniversary of the date the financial assurance mechanism was established. No reduction

1 of the post-closure care cost estimate or the amount of financial assurance shall be allowed without
2 written approval from the Division. The reduction justification and the Division approval shall be
3 placed in the facility's operating record.

4 (c) Owners and operators of solid waste management facilities that are required to establish financial assurance in
5 accordance with this Section shall establish financial assurance for post-closure care of the facility in compliance with
6 G.S. 130A-295.2(f). The owner and operator shall provide continuous coverage for post-closure care until released
7 from financial assurance requirements for post-closure care by demonstrating compliance with the facility's permit
8 and post-closure care plan, with the closure letter issued to the facility by the Division, and with Rule .0543 of this
9 Subchapter for construction and demolition landfill facilities and Rule .1627(d) of this Subchapter for municipal solid
10 waste landfill facilities.

11 (d) Maintenance of financial assurance in the amounts required by this Rule does not in any way limit the
12 responsibility of owners or operators for the full cost of site closure and clean up, the expenses of any on-site or off-
13 site environmental restoration necessitated by activities at the facility, and liability for all damages to third parties or
14 private or public properties caused by the establishment and operation of the facility.

15
16 History Note: Authority G.S. 130A-294; 130A-295.2;
17 Eff. July 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 13B .1804

DEADLINE FOR RECEIPT: June 12, 2020

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (b)(3), under what circumstances does the Division approve a reduction? What factors are considered?

In (c), lines 25-26, are you missing an "and" before "Rule .0545 (m) and (n)?"

In (d), line 27, please consider deleting "in any way."

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder
Commission Counsel
Date submitted to agency: June 1, 2020

1 15A NCAC 13B .1804 is adopted as published in 34:16 NCR 1470 with changes as follows:

2
3 **15A NCAC 13B .1804 FINANCIAL ASSURANCE COST ESTIMATE REQUIREMENTS FOR**
4 **CORRECTIVE ACTION PROGRAMS**

5 (a) Owners and operators shall meet the following requirements for corrective action program cost estimate
6 calculations:

7 (1) The owner and operator of a sanitary landfill required by the Division to undertake a corrective
8 action program in accordance with Rules .0545 or .1637 of this Subchapter shall have an itemized
9 cost estimate of the cost of hiring a third party to implement the corrective action program. The
10 corrective action program cost estimate shall be adjusted in accordance with Subparagraphs (b)(1)
11 and (b)(2) of this Rule. The cost estimate shall include the total costs of the corrective action program
12 for the entire corrective action period. The owner and operator shall submit the cost estimate to the
13 Division for approval and shall place the approved cost estimate in the operating record. The cost
14 estimate shall be approved if it is in compliance with the rules of this Section, Rule .0545 or Rules
15 .1635 through .1637 of this Subchapter, and 15A NCAC 02L. Once every five years, the owner and
16 operator shall update the cost estimate of the corrective action program and submit the following
17 information to the Division in writing:

- 18 (A) a description of the remedial actions selected pursuant to Rule.0545(e) or Rule .1636 of
19 this Subchapter that have not been completed;
20 (B) the number of years remaining for each remedial action until the remedial action is
21 complete; and
22 (C) the updated cost estimate for the remaining remedial actions.

23 (2) In addition to the requirements for the corrective action program set forth in Subparagraph (1) of
24 this Paragraph, the owner and operator of a sanitary landfill required to establish financial assurance
25 in accordance with this Section shall comply with the requirements for potential assessment and
26 corrective action set forth in G.S. 130A-295.2(h) and (h1).

27 (b) Owners and operators shall meet the following requirements for adjustments to the corrective action cost estimate
28 and the amount of financial assurance:

29 (1) During the active life of the facility, the owner and operator shall annually adjust the cost estimates
30 for the corrective action program and potential assessment and corrective action and the amount of
31 financial assurance for inflation. Owners and operators using the local government financial test or
32 capital reserve fund as set forth in Rule .1805(e) of this Section shall submit the adjusted financial
33 assurance mechanism for the corrective action program and potential assessment and corrective
34 action to the Division prior to December 31, after the end of the local government's fiscal year.
35 Owners and operators using the corporate financial test or corporate guarantee as set forth in Rule
36 .1805(e) of this Section shall submit the adjusted financial assurance mechanisms for the corrective
37 action program and potential assessment and corrective action to the Division no more than 90

1 calendar days following the close of the corporate entity's fiscal year that is stated in the mechanism.
2 Owners and operators using a financial assurance mechanism provided in Rule .1805(e) of this
3 Section, other than the local government financial test, capital reserve fund, corporate financial test,
4 or corporate guarantee, shall submit the adjusted financial assurance mechanism to the Division no
5 less than 60 calendar days before the anniversary of the initial date the financial assurance
6 mechanism was established.

7 (2) The owner and operator shall increase the cost estimate for the corrective action program and the
8 amount of financial assurance and submit the revised cost estimate to the Division if changes to the
9 corrective action program or facility conditions increase the maximum cost of corrective action
10 program at any time during the remaining active life of the facility.

11 (3) The owner and operator may request to reduce the cost estimate for the corrective action program
12 and the amount of financial assurance if the cost estimate exceeds the maximum cost of the
13 corrective action program at any time during the active life of the facility by submitting a revised
14 cost estimate for the corrective action program and a written justification for the reduction to the
15 Division for approval no less than 180 calendar days prior to the anniversary of the date the financial
16 assurance mechanism was established. No reduction of the corrective action program cost estimate
17 or the amount of financial assurance shall be allowed without written approval from the Division.
18 The reduction justification and the Division approval shall be placed in the facility's operating
19 record.

20 (c) Owners and operators of sanitary landfills that are required to undertake a corrective action program under Rules
21 .0545 or .1637 of this Subchapter shall establish financial assurance in accordance with this Section for the most recent
22 corrective action program in compliance with G.S. 130A-295.2(f). The owner and operator shall provide continuous
23 coverage for the corrective action program until released from financial assurance requirements for the corrective
24 action program by demonstrating compliance with the facility's permit and corrective action plan, 15A NCAC ~~02L~~
25 02L, Rule .0545(m) and (n) of this Subchapter for construction and demolition landfill facilities, and Rule .1637(f)
26 and (g) of this Subchapter for municipal solid waste landfill facilities.

27 (d) Maintenance of financial assurance in the amounts required by this Rule does not in any way limit the
28 responsibility of owners or operators for the full cost of site closure and clean up, the expenses of any on-site or off-
29 site environmental restoration necessitated by activities at the facility, and liability for all damages to third parties or
30 private or public properties caused by the establishment and operation of the facility.

31
32 *History Note: Authority G.S. 130A-294; 130A-295.2;*
33 *Eff. July 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 13B .1805

DEADLINE FOR RECEIPT: June 12, 2020

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (b), line 10, do you mean "shall not" instead of "may not?"

On page 3, in (e)(6)(A), are you only requiring a copy of the bond rating or are you requiring the bond rating be at least Baa or BBB? See 40 CFR 258.74(f)(1)(A).

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder
Commission Counsel
Date submitted to agency: June 1, 2020

1 15A NCAC 13B .1805 is adopted as published in 34:16 NCR 1470 as follows:
2

3 **15A NCAC 13B .1805 ALLOWABLE MECHANISMS FOR FINANCIAL ASSURANCE**

4 (a) Pursuant to G.S. 130A-295.2, owners and operators of solid waste management facilities that are required to
5 establish financial assurance in accordance with this Section shall choose one of the mechanisms or a combination of
6 mechanisms in Paragraph (e) of this Rule to cover the cost of closure, post-closure care, corrective action programs,
7 and potential assessment and corrective action.

8 (b) When multiple financial assurance mechanisms are established, no more than one allowable mechanism shall be
9 provided by the same financial institution or its corporate entities. The corporate financial test provided by a
10 corporation and the corporate guarantee provided by a corporate parent, sibling, or grandparent may not be combined
11 if the financial statements of the two firms are consolidated. A surety bond mechanism guaranteeing performance
12 shall not be combined with other mechanisms. The mechanisms shall be submitted to the Division as original signed
13 hard copies, and the language of each mechanism shall be identical to the language specified in Rule .1806 of this
14 Section for that mechanism.

15 (c) A corporate seal shall be required to complete the financial assurance mechanism as part of the certification of
16 acknowledgement required in the mechanism language in Rule .1806 of this Section for a corporate owner or operator
17 using a trust fund, surety bond guaranteeing payment or performance, corporate financial test, and corporate guarantee
18 as set forth in Paragraph (e) of this Rule. When a corporate seal is required to certify a financial assurance mechanism
19 but the corporation does not have a corporate seal, a member of the corporation's senior management or a
20 representative of the board of directors shall submit to the Division a copy of the corporation's bylaws, a corporate
21 ownership organization chart describing the relationship of the facility owner and operator to the corporation and its
22 parent companies, contact information for the board of directors or senior management for the corporation, and a
23 statement on corporate letterhead stating the signee has the authority to execute correspondence and financial
24 assurance mechanisms on behalf of the corporation, pursuant to G.S. 130A-295.2(f). The documentation shall be
25 submitted to the Division of Waste Management, Solid Waste Section at 1646 Mail Service Center, Raleigh, NC
26 27699. Senior management for the corporation shall be one of the following positions: the Chief Executive Officer or
27 President, the Chief Operating Officer or Vice President, or the Chief Financial Officer or Treasurer.

28 (d) The July 1, 2010 edition of 40 CFR 258.74 is incorporated by reference and can be obtained free of charge from
29 the Division's website at <http://go.ncdenr.gov/fa>. When used in 40 CFR 258.74, except where the context requires
30 references to remain without substitution, "United States" and "State" shall mean the State of North Carolina;
31 "Agency" shall mean the Department of Environmental Quality; "Director" shall mean the Secretary of the Department
32 of Environmental Quality; "municipal solid waste landfills facility(ies)", "MSWLF(s)", or "MSWLF unit(s)" shall
33 mean solid waste management facility or facilities; and "owner or operator" shall mean the owner and operator of a
34 solid waste management facility.

35 (e) The following mechanisms may be used to meet the requirements of this Section for financial assurance.

- 36 (1) A trust fund as set forth in 40 CFR 258.74(a), including the following requirements.

- 1 (A) The trust fund may be elected as a standby trust mechanism to accompany the surety bond
2 mechanism in Subparagraph (2) of this Paragraph, or the letter of credit mechanism in
3 Subparagraph (3) of this Paragraph; or may be elected as a standalone funded trust
4 mechanism.
- 5 (B) 40 CFR 258.74(a)(7) is revised to state: "The owner or operator, or other person authorized
6 to conduct closure, post-closure care, or corrective action activities may request
7 reimbursement from the trustee for these expenditures. Requests for reimbursement shall
8 be granted only if sufficient funds are remaining in the trust fund to cover the remaining
9 costs of closure, post-closure care, corrective action programs, or potential assessment and
10 corrective action, and if justification and documentation of the cost is submitted to the
11 Division and placed in the operating record."
- 12 (C) The trust agreement shall be accompanied by a certification of acknowledgement as
13 specified following the language of the trust agreement in Rule .1806(1) of this Section.
- 14 (D) Schedule A of the trust agreement shall be updated no less than 60 days after any change
15 in the amount of the current cost estimate covered by the agreement.
- 16 (2) Surety bonds guaranteeing payment or performance as set forth in 40 CFR 258.74(b) including the
17 following requirements.
- 18 (A) The surety company issuing the bond shall be licensed to do business in North Carolina.
- 19 (B) Bonding companies may write bonds with a penal sum over their underwriting limitation
20 if they protect the excess amount with reinsurance, coinsurance, or other methods as
21 specified at 31 CFR 223.10-11 and submit documentation to the Division. The owner and
22 operator shall provide the Division with current contact information for the surety company
23 for the life of the mechanism. 31 CFR 223.10-11 is incorporated by reference including
24 subsequent amendments and editions and can be accessed free of charge at the U.S.
25 Government Publishing Office website at www.ecfr.gov.
- 26 (C) The penal sum of the surety bond shall be adjusted for inflation or any increase or decrease
27 in the amount of financial assurance in accordance with Rule .1802(b), Rule .1803(b), or
28 .1804(b) of this Section.
- 29 (D) The bonded liability limit shall not be less than the penal sum of the surety bond and shall
30 be adjusted annually for inflation or any increase or decrease in the amount of financial
31 assurance in accordance with Rule .1802(b), Rule .1803(b), or .1804(b) of this Section.
- 32 (E) If the owner and operator is no longer required to demonstrate financial responsibility, the
33 owner and operator may cancel the surety bond in accordance with the requirements of
34 Rules .1802(c), .1803(c), or .1804(c) of this Section.
- 35 (3) A letter of credit as set forth in 40 CFR 258.74(c) including the following requirements.
- 36 (A) The owner and operator shall establish a standby trust fund. The standby trust fund shall
37 meet the requirements of 40 CFR 258.74(a) except the requirements for initial payment

1 and subsequent annual payments specified in 40 CFR 258.74(a)(2), (3), (4), and (5).
2 Payments made under the terms of the letter of credit shall be deposited by the financial
3 institution directly into the standby trust fund.

4 (B) No payments shall be made from the trust fund unless approved by the trustee and the
5 Division.

6 (C) The letter of credit shall be adjusted for inflation or any increase or decrease in the amount
7 of financial assurance in accordance with Rule .1802(b), Rule .1803(b), or .1804(b) of this
8 Section.

9 (D) If the owner and operator is no longer required to demonstrate financial responsibility, the
10 owner and operator may cancel the letter of credit in accordance with the requirements of
11 Rules .1802(c), .1803(c), or .1804 (c) of this Section.

12 (4) Insurance as set forth in 40 CFR 258.74(d), and if the owner and operator is no longer required to
13 demonstrate financial responsibility, the owner and operator may cancel the insurance policy in
14 accordance with the requirements of Rules .1802(c), .1803(c), or .1804(c) of this Section.

15 (5) A corporate financial test as set forth in 40 CFR 258.74(e) including the following requirements.

16 (A) The corporate financial test shall be adjusted for inflation or any increase or decrease in the
17 amount of financial assurance in accordance with Rule .1802(b), Rule .1803(b), or .1804(b)
18 of this Section.

19 (B) If the owner and operator is no longer required to demonstrate financial responsibility, the
20 owner and operator may cancel the test in accordance with the requirements of Rules
21 .1802(c), .1803(c), or .1804(c) of this Section.

22 (6) A local government financial test as set forth in 40 CFR 258.74(f) including the following
23 requirements.

24 (A) Owner and operators submitting a local government financial test that utilizes the bond
25 rating indicator of financial strength shall submit a copy of the bond showing proof of the
26 current bond rating of the most recent issuance and name of rating service, date of issuance
27 of the bond, and date of maturity of the bond.

28 (B) The local government test shall be adjusted for inflation or any increase or decrease in the
29 amount of financial assurance in accordance with Rule .1802(b), Rule .1803(b), or .1804(b)
30 of this Section.

31 (C) If the owner and operator is no longer required to demonstrate financial responsibility, the
32 owner and operator may cancel the test in accordance with the requirements of Rules
33 .1802(c), .1803(c), or .1804(c) of this Section.

34 (7) A corporate guarantee as set forth in 40 CFR 258.74(g) including the following requirements.

35 (A) The owner and operator shall submit a corporate ownership organization chart describing
36 the relationship of the owner and operator to the guarantor as defined in 40 CFR
37 258.74(g)(1) when financial assurance is initially established, and annually thereafter.

1 (B) The corporate guarantee shall be adjusted for inflation or any increase or decrease in the
2 amount of financial assurance in accordance with Rule .1802(b), Rule .1803(b), or .1804(b)
3 of this Section.

4 (C) If the owner and operator is no longer required to demonstrate financial responsibility, the
5 owner and operator may cancel the guarantee in accordance with the requirements of Rules
6 .1802(c), .1803(c), or .1804(c) of this Section.

7 (8) A capital reserve fund that meets the following requirements.

8 (A) An owner and operator of a solid waste management facility that is a unit of local
9 government or public authority may satisfy the requirements of this Rule by establishing a
10 capital reserve fund which conforms to the requirements of this Subparagraph. The unit of
11 local government or public authority shall be an entity which has the authority to establish
12 a capital reserve fund under authority of G.S. 159 Part 2 and whose financial operations
13 are regulated and examined by a State agency. The capital reserve fund shall be established
14 consistent with auditing, budgeting, and government accounting practices as prescribed in
15 G.S. 159-30 and by the Local Government Commission. A copy of the capital reserve fund
16 ordinance or resolution with a certified copy of the meeting minutes and a copy of
17 documentation of initial and subsequent years' deposits shall be submitted to the Division
18 and placed in the facility's operating record.

19 (B) Payments into the capital reserve fund shall be made annually by the unit of local
20 government or public authority over the term of the initial permit or over the remaining life
21 of the facility for closure or post-closure care, or over one-half of the estimated length of
22 the corrective action program when a corrective action program is required in accordance
23 with Rules .0545 or .1637 of this Subchapter. This period is referred to as the "pay-in
24 period".

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

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

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

34 (D) For a capital reserve fund used to demonstrate financial assurance for a corrective action
35 program, the first payment into the capital reserve fund shall be at least equal to one-half
36 of the current cost estimate for the corrective action program. The total cost of the second

1 half of the corrective action program period shall be divided into subsequent payments
2 determined by the following formula:

$$3 \text{ Next Payment} = \frac{\text{[RB-CV]}}{\text{Y}}$$

4 where RB is the most recent cost estimate for the corrective action program, updated for
5 inflation or other changes (i.e. the total cost that will be incurred during the second half of
6 the corrective action period), CV is the current value of the capital reserve fund, and Y is
7 the number of years remaining in the pay-in period.

8 (E) The initial payment into the capital reserve fund shall be made before the initial receipt of
9 waste in the case of closure and post-closure care, or no later than 120 calendar days after
10 the corrective action remedy has been selected in accordance with the requirements of this
11 Subchapter. Subsequent payments shall be made no later than 30 calendar days after each
12 anniversary date of the first payment.

13 (F) If the unit of local government or public authority establishes a capital reserve fund after
14 having used one or more alternate mechanisms specified in this Rule, the initial payment
15 into the capital reserve fund shall be at least the amount that the fund would contain if the
16 capital reserve fund had been established on the initial date that the alternate mechanism
17 was established, and annual payments to the fund had been made according to the
18 specifications of this Subparagraph.

19 (G) The unit of local government or public authority authorized to conduct closure, post-
20 closure care, or corrective action programs may expend capital reserve funds to cover the
21 remaining costs of closure, post-closure care, corrective action programs, or for the debt
22 service payments on financing arrangements for closure, post-closure care, or corrective
23 action programs. Monies in the capital reserve fund shall only be used for these purposes
24 unless the fund is terminated in accordance with Part (I) of this Subparagraph. The unit of
25 local government or public authority shall document expenditures and provide a written
26 justification for each expenditure and shall submit a copy to the Division and place a copy
27 in the operating record.

28 (H) The unit of local government or public authority shall adjust for inflation or any increase
29 or decrease in the amount of financial assurance in accordance with Rule .1802(b),
30 .1803(b), or .1804(b) of this Section.

31 (I) To maintain financial assurance, a unit of local government or public authority may only
32 terminate a capital reserve fund if it substitutes alternate financial assurance as specified in
33 this Rule or if no longer required to demonstrate financial responsibility in accordance with
34 the requirements of Rules .1802(c), .1803(c), or .1804(c) of this Section.

35
36 *History Note: Authority G.S. 130A-294; 130A-295.2;*
37 *Eff. July 1, 2020.*

1 15A NCAC 13B .1806 is adopted as published in 34:16 NCR 1470 as follows:

2
3 **15A NCAC 13B .1806 LANGUAGE OF MECHANISMS FOR FINANCIAL ASSURANCE**

4 The financial assurance mechanisms set forth in Rule .1805 of this Section shall use the language provided in this
5 Rule, and shall be in accordance with 40 CFR 258.74(l).

- 6 (1) Trust Agreement. A trust agreement for a trust fund, as specified in Rule .1805(e)(1) of this Section,
7 shall be worded as follows, except that instructions in brackets are to be replaced with the relevant
8 information and the brackets deleted:

9 **TRUST AGREEMENT**

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

13 Whereas, the Division of Waste Management, the "Division," an agency of the State of North Carolina, has established
14 certain regulations applicable to the Grantor, requiring that an owner or operator of a solid waste management facility
15 shall provide assurance that funds shall be available when needed for closure, post-closure care, corrective action
16 programs, or potential assessment and corrective action of the facility,

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

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

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

22 Section 1. Definitions. As used in this Agreement:

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

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

26 Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and cost estimates
27 identified on schedule A [on schedule A, for each facility list the name, address, Solid Waste Section Permit Number,
28 and the current closure, post-closure care, corrective action program cost estimates, or portions thereof, for which
29 financial assurance is demonstrated by this Agreement].

30 Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit
31 of the Division. The Grantor and the Trustee intend that no third party have access to the Fund except as herein
32 provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described
33 in Schedule B. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund,
34 together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this
35 Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be
36 responsible, nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the
37 Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Division.

1 Section 4. Payment for Closure, Post-Closure Care, and Corrective Action Programs. The Trustee shall make
2 payments from the Fund as the Division shall direct, in writing, to provide for the payment of the costs of closure,
3 post-closure care, or corrective action programs of the facilities covered by this Agreement. The Trustee shall
4 reimburse the Grantor or other persons as specified by the Division from the Fund for closure, post-closure care, and
5 corrective action program expenditures in such amounts as the Division shall direct in writing. In addition, the Trustee
6 shall refund to the Grantor such amounts as the Division specifies in writing, upon refund, such funds shall no longer
7 constitute part of the Fund as defined herein.

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

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

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

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

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

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

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

30 (b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C.
31 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered
32 or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

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

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

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

3 (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
4 in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same
5 issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a
6 qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the
7 name of the nominee of such depository with other securities deposited therein by another person, or to deposit or
8 arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality
9 thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such
10 securities are part of the Fund;

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

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

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

20 Section 10. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of
21 establishment of the Fund, furnish to the Grantor and to the Division a statement confirming the value of the Trust.
22 Any securities in the fund shall be valued at market value as of no more than 60 days prior to the anniversary date of
23 establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the
24 statement has been furnished to the Grantor and the Division shall constitute a conclusively binding assent by the
25 Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed
26 in the statement.

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

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

32 Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation
33 or replacement shall not be effective until the Grantor has appointed a successor Trustee and this successor accepts
34 the appointment. The successor Trustee shall have the same powers and duties as those conferred upon the Trustee
35 hereunder. Upon the successor Trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay
36 over to the successor Trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot
37 or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction

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

5 Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in
6 writing, signed by such persons as are designated in the exhibit a or such other designees as the Grantor may designate
7 by amendment to Exhibit A. The trustee shall be fully protected in acting without inquiry in accordance with the
8 Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Division to the Trustee shall
9 be in writing, signed by the Division, or his designee, and the Trustee shall act and shall be fully protected in acting
10 in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence
11 of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to
12 act on behalf of the Grantor or Division hereunder has occurred. The trustee shall have no duty to act in the absence
13 of such orders, requests, and instructions from the grantor or division, except as provided for herein.

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

18 Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the
19 Grantor, the Trustee, and the Division, or by the Trustee and the Division if the Grantor ceases to exist.

20 Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in
21 section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor,
22 the Trustee, and the Division, or by the Trustee and the Division, if the Grantor ceases to exist. Upon termination of
23 the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

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

30 Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of
31 the State of North Carolina.

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

35 In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized
36 and their corporate seals to be hereunto affixed and attested as of the date first above written: The parties below certify

1 that the wording of this agreement is identical to the wording specified in 15A NCAC 13B .1806(1) as were constituted
2 on the date first above written.

3 [Signature of Grantor]

4 [Title]

5 Attest: [insert name of Corporation's Senior Management]

6 [Title]

7 [Seal]

8 State of North Carolina

9 County of [Name of County]

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

15 Witness my hand and official seal this [Day] day of [Month], 20[Year].

16 [insert Signature of Notary]

17 Official Signature of Notary

18 [Notary's printed or typed name]

19 Notary Public

20 [Official Seal]

21 My commission expires: [insert Date of Commission Expiration]

22 [Or for no corporate seal, see 15A NCAC 13B .1805(c) and utilize the certification of acknowledgement below]

23 State of North Carolina

24 County of [Name of County]

25 I, [Name of Officer Taking Acknowledgment], a [Official Title of Officer Taking Acknowledgment], certify that
26 [Name of Corporate Officer] personally came before me this day and acknowledged that he/she is [Title of Corporate
27 Officer] of [insert Legal Name of Corporation], a corporation, and that he/she, as [insert Title of Officer], being
28 authorized to do so, executed the foregoing on behalf of the corporation.

29 Witness my hand and official seal this [Day] day of [Month], 20[Year].

30 [insert Signature of Notary]

31 Official Signature of Notary

32 [Notary's printed or typed name]

33 Notary Public

34 [Official Seal]

35 My commission expires: [insert Date of Commission Expiration]

36 [Signature of Trustee]

37 [Title]

1 Attest: [insert name]
2 [Title]
3 [Seal]
4 State of North Carolina
5 County of [Name of County]
6 I, [Name of Officer Taking Acknowledgment], a [Official Title of Officer Taking Acknowledgment], certify that
7 [Name of Corporate Officer] personally came before me this day and acknowledged that he/she is [Title of Corporate
8 Officer] of [insert Legal Name of Corporation], a corporation, and that he/she, as [insert Title of Officer], being
9 authorized to do so, executed the foregoing on behalf of the corporation.
10 Witness my hand and official seal this [Day] day of [Month], 20[Year].
11 [insert Signature of Notary]
12 Official Signature of Notary
13 [Notary's printed or typed name]
14 Notary Public
15 [Official Seal]
16 My commission expires: [insert Date of Commission Expiration]
17 Schedule A for Trust Agreement
18 [For Each Facility:]
19 Facility Name: [Facility Name]
20 Facility Address: [Facility Address]
21 Permit Number: [Permit Number]
22 Closure Costs: \$ [Amount]
23 Post-Closure Care Costs: \$ [Amount]
24 Corrective Action Program: \$ [Amount]
25 Potential Assessment and Corrective Action: \$ [Amount]
26 Total Aggregate Amount to be Funded by this Trust: \$ [Amount]
27 Schedule B for Trust Agreement
28 [For Standby Trust]
29 Trust Property: This Fund shall consist of funds drawn from [insert type of mechanism] [ex. Letter of credit No. [insert
30 number] dated [date] issued by [name of bank] at such time said funds are directly deposited into the Trust account.
31 [For Funded Trust]
32 Trust Property: This Fund shall consist of cash in the amount of \$[insert cash amount]. [Aggregate full amount of
33 closure, post-closure care, any corrective action program, and potential assessment and corrective action from
34 Schedule A.]
35 OR, for pay-in period over the term of the initial permit or the remaining life of the solid waste management facility,
36 include a payment schedule.
37 Trust Property: This Fund shall consist of annual cash payments made in accordance with the following schedule:

1 [For Funded Trusts: For Each Facility:]
2 Facility Name: [Facility Name]
3 Facility Address: [Facility Address]
4 Permit Number: [Permit Number]
5 Initial Payment of \$[insert dollar amount] on [date of execution] for Cell 1 [insert date Agreement is executed.]
6 Subsequent payment of \$[insert dollar amount], payable on [anniversary date of execution].
7 Subsequent payment of \$[insert dollar amount], payable on [anniversary date of execution].
8 Subsequent payment of \$[insert dollar amount], payable on [anniversary date of execution]
9 Subsequent payment of \$[insert dollar amount], payable on [anniversary date of execution]
10 Subsequent payment of \$[insert dollar amount], payable on [anniversary date of execution]
11 Account Information:
12 Account Number assigned to this Trust Agreement: [Account Number]
13 Amount of Deposit: [Amount of Deposit (zero dollars if used for a standby trust)]
14 Date: [Date]
15 Bank/Branch location for this trust account:
16 Bank/Branch Name: [Bank/Branch Name]
17 Location Address: [Location Address]
18 City & State: [City & State]
19 Contact Person at Bank:
20 Name: [Name]
21 Title: [Title]
22 Phone Number: [Phone Number]
23 Exhibit A for Trust Agreement
24 The following persons, acting singly or collectively, shall have the right to issue instructions to the Trustee pursuant
25 to Section 14 of the Agreement:
26 Name: [insert name]
27 Position: [insert position]
28 (2) A surety bond guaranteeing performance of closure, post-closure care, corrective action programs,
29 and potential assessment and corrective action, as specified in Rule .1805(e)(2) of this Section shall
30 be worded as follows, except that instructions in brackets are to be replaced with the relevant
31 information and the brackets deleted:
32 PERFORMANCE BOND
33 Date bond executed:
34 Effective date:
35 Principal: [legal name and business address of owner or operator]
36 Type of organization: [insert "individual", "joint venture", "partnership", or "corporation"]
37 State of incorporation:

1 Surety(ies): [name(s) and business address(es)]
2 [For Each Facility]
3 Solid Waste Section Permit Number: [insert NCDEQ permit number]
4 Facility name: [insert facility name]
5 Facility address: [insert facility address]
6 Closure cost: [insert approved closure cost]
7 Post-closure care cost: [insert approved post-closure care cost]
8 Corrective action program cost: [insert current corrective action program cost]
9 Potential assessment and corrective action cost: [insert potential assessment and corrective action cost]
10 Total penal sum of bond: \$[insert total sum of bond]
11 Liability Limit: \$ [insert bonding company's liability limit]
12 Surety's bond number: [insert issued bond number]
13 Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the North
14 Carolina Division of Waste Management (hereinafter called the Division), in the above penal sum for the payment of
15 which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided
16 that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly
17 and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other
18 purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set
19 forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full
20 amount of the penal sum.
21 Whereas, said Principal is required, under 15A NCAC 13B as amended, to have a permit in order to own or operate
22 each solid waste management facility identified above, and
23 Whereas, said Principal is required to provide financial assurance for closure, post-closure care, or corrective action
24 programs as a condition of the permit, and
25 Whereas, said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such
26 financial assurance;
27 Now, Therefore, the conditions of this obligation are such that if the Principal shall faithfully perform closure,
28 whenever required to do so, of each facility for which this bond guarantees closure, in accordance with the closure
29 plan and other requirements of the permit, as such plan and permit may be amended, pursuant to all applicable laws,
30 statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,
31 And, if the Principal shall faithfully perform post-closure care of each facility for which this bond guarantees post-
32 closure care, in accordance with the post-closure care plan and other requirements of the permit, as such plan and
33 permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations as such laws, statutes, rules,
34 and regulations may be amended,
35 And, if the Principal shall faithfully perform corrective action of each facility for which this bond guarantees corrective
36 action, in accordance with the corrective action program and other requirements of the permit, as such program and

1 permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations as such laws, statutes, rules,
2 and regulations may be amended.

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

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

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

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

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

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

24 The Surety(ies) hereby waive(s) notification of amendments to closure and post-closure care plans, and corrective
25 action programs, permits, applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in
26 any way alleviate its (their) obligation on this bond.

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

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

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

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

1 Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure,
2 post-closure care, or corrective action program amount, provided that the penal sum does not increase by more than
3 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the Division.
4 In Witness Whereof, The Principal and Surety(ies) have executed this Performance Bond and have affixed their seals
5 on the date set forth above.

6 The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on
7 behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in
8 15A NCAC 13B .1806(2) as was constituted on the date this bond was executed.

9 Principal

10 [Signature(s)]

11 [Name(s)]

12 [Title(s)]

13 [Corporate seal]

14 [For no corporate seal, see Rule .1805(c)]

15 Corporate Surety(ies)

16 [Names and address of contact]

17 State of incorporation: Surety's state of incorporation]

18 Liability limit: \$ [Surety's liability limit]

19 [Signature(s)]

20 [Names(s) and title(s)]

21 [Corporate seal]

22 [For no corporate seal, see Rule .1805(c)]

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

25 Bond premium: \$ [bond premium]

26 (3) A surety bond guaranteeing payment of closure, post-closure care, corrective action programs, and
27 potential assessment and corrective action, as specified in Rule .1805(e)(2) of this Section shall be
28 worded as follows, except that instructions in brackets are to be replaced with the relevant
29 information and the brackets deleted:

30 PAYMENT BOND

31 Date bond executed: [insert date of bond execution]

32 Effective date: [insert effective date]

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

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

35 State of incorporation: [insert state of incorporation]

36 Surety(ies): [name(s), business address(es), and contact information]

37 [For Each Facility]

1 Solid Waste Section Permit Number: [insert NCDEQ permit number]
2 Facility name: [insert facility name]
3 Facility address: [insert facility address]
4 Closure cost: [insert dollar amount for closure]
5 Post-closure care cost: [insert dollar amount for post-closure care]
6 Corrective action program cost: [insert dollar amount for current corrective action program]
7 Potential assessment and corrective action cost: [insert dollar amount for potential assessment and corrective action]
8 Total penal sum of bond: \$[insert total cost of the bond]
9 Liability Limit: \$[insert underwriting limit of the surety company]
10 Surety's bond number: [insert bond number issued by surety]
11 Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the North
12 Carolina Division of Waste Management (hereinafter called the Division), in the above penal sum for the payment of
13 which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided
14 that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly
15 and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other
16 purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set
17 forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full
18 amount of the penal sum.
19 Whereas, said Principal is required, 15A NCAC 13B as amended, to have a permit in order to own or operate each
20 solid waste management facility identified above, and
21 Whereas, said Principal is required to provide financial assurance for closure or post-closure care as a condition of the
22 permit, and
23 Whereas, said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such
24 financial assurance;
25 Now, Therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of
26 final closure and post-closure of each facility identified above, fund the standby trust fund in the amount(s) identified
27 above for the facility,
28 Or, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after a final order to begin
29 closure and post-closure care is issued by the Division or a U.S. district court or other court of competent jurisdiction,
30 Or, if the Principal shall provide alternate financial assurance and obtain the Division's written approval of such
31 assurance, within 90 days after the date notice of cancellation is received by both the Principal and the Division from
32 the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.
33 The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions
34 described above. Upon notification by the Division that the Principal has failed to perform as guaranteed by this bond,
35 the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed
36 by the Division.

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

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

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

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

11 Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure,
12 post-closure care, or corrective action program amount, provided that the penal sum does not increase by more than
13 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the Division.

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

16 The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on
17 behalf of the Principal and Surety(ies) and that the wording of this surety bond has not been changed as were
18 constituted on the date this bond was executed.

19 Principal

20 [Signature(s)]

21 [Name(s)]

22 [Title(s)]

23 [Corporate seal]

24 [For no corporate seal, see Rule .1805(c)]

25 Corporate Surety(ies)

26 [Name and address]

27 State of incorporation: [Surety's state of incorporation]

28 Liability limit: \$[Surety's liability limit]

29 [Signature(s)]

30 [Name(s) and title(s)]

31 [Corporate seal]

32 [For no corporate seal, see Rule .1805(c)]

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

35 Bond premium: \$[bond premium]

36 (4) A letter of credit, as specified in Rule .1805(e)(3) of this Section, shall be worded as follows, except
37 that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

1 IRREVOCABLE STANDBY LETTER OF CREDIT

2 North Carolina Department of Environmental Quality

3 Division of Waste Management

4 Solid Waste Section

5 1646 Mail Service Center

6 Raleigh, North Carolina 27699-1646

7 Dear Sir/Madam:

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

11 (1) your sight draft, bearing reference to this letter of credit No. [insert mechanism number], and

12 (2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to requirements
13 of N.C. General Statute 130A-295.2(f) and 15A NCAC 13B because the applicant has failed to properly close and
14 clean up the solid waste management facility, to perform post-closure maintenance and monitoring at the facility, or
15 to remediate the facility in accordance with applicable statutes, rules and permit conditions."

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

22 Whenever this letter of credit is drawn on, under and in compliance with the terms of this credit, we shall duly honor
23 such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of
24 [owner's or operator's name] in accordance with your instructions.

25 We certify that the wording of this letter of credit is identical to the wording specified in 15A NCAC 13B .1806(4) as
26 were constituted on the date shown immediately below.

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

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

30 (5) A certificate of insurance, as specified in Rule .1805(e)(4) of this Section, shall be worded as
31 follows, except that instructions in brackets are to be replaced with the relevant information and the
32 brackets deleted:

33 CERTIFICATE OF INSURANCE FOR CLOSURE OR POST-CLOSURE CARE

34 Name and Address of Insurer

35 (herein called the "Insurer"):

36 Name and Address of Insured

37 (herein called the "Insured"):

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

4 Face Amount: [insert dollar amount of face value]

5 Policy Number: [insert insurance policy number]

6 Effective Date: [insert effective date]

7 The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial
8 assurance for [insert "closure" or "closure and post-closure care" or "post-closure care"] for the facilities identified
9 above.

10 The Insurer further warrants that such policy conforms in all respects with the requirements of 40 CFR 258.74(d) (July
11 1, 2010 edition) and 15A NCAC 13B .1805, as applicable and as such regulations were constituted on the date shown
12 immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended
13 to eliminate such inconsistency.

14 Whenever requested by the North Carolina Division of Waste Management (Division), the Insurer agrees to furnish
15 to the Division a duplicate original of the policy listed above, including all endorsements thereon.

16 I hereby certify that the wording of this certificate is identical to the wording specified in 15A NCAC 13B .1806(5)
17 as were constituted on the date shown immediately below.

18 [Authorized signature for Insurer]

19 [Name of person signing]

20 [Title of person signing]

21 Signature of witness or notary:

22 [Date]

23 (6) A corporate financial test, as specified in Rule .1805(e)(5) of this Section, shall be worded as
24 follows, except that instructions in brackets are to be replaced with the relevant information and the
25 brackets deleted:

26 CORPORATE FINANCIAL TEST

27 [Date]

28 North Carolina Department of Environmental Quality

29 Division of Waste Management

30 Solid Waste Section Chief

31 1646 Mail Service Center

32 Raleigh, NC 27699-1646

33 Dear Sir/Madam:

34 I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the corporate
35 financial test to demonstrate financial assurance for closure, post-closure care, corrective action programs, and
36 potential assessment and corrective action (if applicable), as specified in the Solid Waste Management Act, North
37 Carolina General Statute 130A-295.2(f) and 40 C.F.R. 258.74(e)(July 1, 2010 edition).

1 [For each solid waste management facility, including its permit identification number, name, address, and closure,
2 post-closure care, corrective action programs, and potential assessment and corrective action (if applicable) cost
3 estimates. Identify for each cost estimate whether it is for closure or post-closure care, corrective action programs, or
4 potential assessment and corrective action.]

5 The firm is the owner or operator of the following solid waste management facilities for which financial assurance for
6 closure, post-closure care, corrective action programs, and potential assessment and corrective action (if applicable),
7 is demonstrated through the corporate financial test. The current cost estimates for closure, post-closure care,
8 corrective action programs, and potential assessment and corrective action (if applicable), covered by the test are
9 shown for each facility:

10 Name: [insert legal entity /principal name]

11 Office Address: [insert physical address of legal entity/principal]

12 Facility Address: [insert physical address of permitted facility]

13 Permit No.: [insert NCDEQ issued permit number]

14 Closure Cost Estimate: [insert dollar amount for closure]

15 Post-Closure Care Cost Estimate: [insert dollar amount for post-closure care]

16 Corrective Action Program Cost Estimate: [insert dollar amount for current corrective action program]

17 Potential Assessment and Corrective Action Cost Estimate: [insert dollar amount for potential assessment and
18 corrective action]

19 Identify any underground injection control (UIC) facilities under 15A NCAC 02D .0400 and 15A NCAC 02C .0200,
20 petroleum underground storage tank (UST) facilities under 15A NCAC 02N .0100 through .0800, polychlorinated
21 biphenyl (PCB) storage facilities under 15A NCAC 02O .0100 and 15A NCAC 02N .0100, and hazardous waste
22 treatment, storage, and disposal facilities (TSDF's) under 15A NCAC 13A .0109 and .0110 that are owned by either
23 the owner/operator or the guarantor and/or are facilities that are covered by a financial test or corporate guarantee.

24 Provide a separate description for each type of facility, if applicable (if not applicable write "None").

25 Name: [insert legal entity/principal name]

26 Office Address: [insert physical address of legal entity/principal]

27 Facility Address: [insert physical address of permitted facility]

28 Permit No.: [insert NCDEQ issued permit number]

29 Closure Cost Estimate: [insert dollar amount for closure]

30 Post-Closure Care Cost Estimate: [insert dollar amount for post-closure care]

31 Corrective Action Program Cost Estimate: [insert dollar amount for current corrective action program]

32 Potential Assessment and Corrective Action Cost Estimate: [insert dollar amount for potential assessment and
33 corrective action]

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

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

4 Fill in all applicable parts of the Financial Test and either Alternative I, or Alternative II, or Alternative III below.

5 Financial Test

6 1. Sum of current closure, post-closure care, corrective action program, and potential assessment and corrective action
7 cost estimates (if applicable) and guarantees from all of the solid waste management facilities in paragraphs 1 or 2
8 above: \$ [insert dollar amount]

9 2. All other cost estimates and guarantees required for UIC facilities, petroleum UST facilities, PCB storage facilities,
10 and TSDf's listed in paragraph 3 above. \$ [insert dollar amount]

11 3. Tangible net worth (defined as tangible assets – liabilities. Tangible assets do not include intangibles such as
12 goodwill or rights to patents and royalties). \$ [insert dollar amount]

13 4. Net Worth \$ [insert dollar amount]

14 5. Total liabilities - If any portion of the current closure, post-closure care, corrective action program, and potential
15 assessment and corrective action cost estimates (if applicable), or guarantees identified above are recognized as
16 liabilities in the audited financial statements, you must submit a special report from the independent certified public
17 accountant (CPA), unless you can answer "yes" to item # 9. \$ [insert dollar amount]

18 6. The sum of net income plus depreciation, depletion, and amortization (Use for Alternative III): \$ [insert dollar
19 amount]

20 7. Total assets in the U.S.: \$ [insert dollar amount]

21 8. Sum of line 1 plus line 2 from above and any other environmental obligations covered by a financial test: \$ [insert
22 dollar amount]

23 9. Is line 3 greater than the sum of line 8 plus \$10 million? [Yes or No]

24 If "No", and you have provided a report from the independent CPA that the environmental obligations have been
25 recognized as liabilities in the audited financial statements, then go to Item 9(a).

26 9a. Is line 3 greater than the sum of \$10 million plus any guarantees not recognized as liabilities? [Yes or No]

27 10. Is line 7 greater than line 8? [Yes or No]

28 If the financial data provided for items 3 through 7 above differs from what was provided in the audited financial
29 statements, a special report from the certified public accountant shall be provided as described in 40 CFR
30 258.74(e)(2)(i)(C).

31 Alternative I

32 1. Current bond rating of most recent senior unsubordinated bond issue of this firm and name of rating service: [current
33 bond rating and name of rating service]

34 2. Date of bond issue: [insert date of bond issued]

35 3. Date of final maturity of bond: [insert final maturity date of bond]

36 Alternative II

37 1. Is the above line 5 divided by the above line 4 less than 1.5? [Yes or No]

1 Alternative III

2 1. Is (the above line 6 minus \$10 million) divided by the above line 5 greater than 0.1? [Yes or No]

3 As evidence that [Firm] meets the conditions of the Corporate Financial Test, attached hereto is a copy of the
4 following:

5 Please check applicable responses.

6 () 1. Independent CPA's unqualified opinion of our financial statements for our latest completed fiscal year.

7 () 2. Special report from CPA, if financial data in this letter is different than in audited financial statements. [See
8 40 CFR 258.74(e)(2)(i)(C)].

9 () 3. Report from CPA (if answer to item #9 of the financial test is No) verifying all of covered environmental
10 obligations covered by test have been recognized as liabilities in the audited financial statements, how the
11 obligations were measured and reported, and that tangible net worth of the firm is at least \$10 million dollars
12 plus the amount of any guarantees not recognized as liabilities. [See 40 CFR 258.74(e)(2)(i)(D)]

13 I hereby certify that [name of firm] meets the requirements of [Fill in Alternative I, Alternative II, or Alternative III]
14 in support of [name of facility(s)] use of the corporate financial test to demonstrate financial assurance as required by
15 the Solid Waste Management Act, North Carolina General Statute 130A-295.2(f) and 40 C.F.R. 258.74(e)(July 1,
16 2010 edition).

17 [Signature]

18 [Name]

19 [Title]

20 [Date]

21 (7) A local government financial test, as specified in Rule .1805(e)(6) of this Section, shall be worded
22 as follows, except that instructions in brackets are to be replaced with the relevant information and
23 the brackets deleted:

24 LETTER FROM CHIEF FINANCIAL OFFICER

25 [Address to the Department of Environmental Quality, Division of Waste Management, Solid Waste Section, 1646
26 Mail Service Center, Raleigh, North Carolina 27699-1646.]

27 I am the chief financial officer of [name and address of unit of local government]. This letter is in support of this unit
28 of local government's use of the financial test to demonstrate financial assurance, as specified in 15A NCAC 13B
29 .1805(e)(6).

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

34 This unit of local government is the owner or operator of the following facilities for which financial assurance for
35 closure, post-closure care, corrective action programs, or potential assessment and corrective action is demonstrated
36 through the financial test specified in 15A NCAC 13B .1805(e)(6). The current closure, post-closure care, corrective

1 action programs, or potential assessment and corrective action cost estimates covered by the test are shown for each
2 facility:

3 [For Each Facility]

4 Solid Waste Section Permit Number: [insert NCDEQ issued permit number]

5 Facility name:[insert facility name]

6 Facility address: [insert physical address of facility]

7 Closure cost: [insert dollar amount of closure]

8 Post-closure care cost: [insert dollar amount of post-closure]

9 Corrective action program cost: [insert dollar amount of current corrective action]

10 Potential assessment and corrective action cost: [insert dollar amount of potential assessment and corrective action]

11 Total Costs to be Assured: [Total Costs to be Assured by this test – include costs for all facilities]:

12 The fiscal year of this unit of local government ends on [month, day, year]. The Indicators of Financial Strength
13 section below is based off of the local government's financial strength of the previous year, as indicated by general
14 accounting practices.

15 [Local Government completing the Local Government Test are to either complete the Ratio Indicator of Financial
16 Strength or the Bond Rating Indicator of Financial Strength section below.]

17 RATIO INDICATORS OF FINANCIAL STRENGTH

18 1. Sum of current closure, post-closure care, and corrective action program cost

19 estimates [total of all cost estimates shown in the paragraphs above] \$[insert dollar amount of all cost
20 estimates/environmental liability for solid waste management facilities]

21 2. Sum of cash and investments: \$ [insert dollar amount]

22 3. Total expenditures: \$ [insert dollar amount]

23 4. Annual debt service: \$ [insert dollar amount]

24 5. Assured environmental costs to demonstrate financial responsibility in the following amounts under Division rules:

25 Solid Waste Management Facilities under 15A NCAC 13B: \$ [insert dollar amount]

26 Hazardous waste treatment, storage, and disposal facilities under 15A NCAC 13A .0109 and .0110: \$ [insert
27 dollar amount]

28 Petroleum underground storage tanks under 15A NCAC 02N .0100 - .0800: \$ [insert dollar amount]

29 Underground injection control system facilities under 15A NCAC 02D .0400 and 15A NCAC 02C .0200: \$
30 [insert dollar amount]

31 PCB commercial storage facilities under 15A NCAC 02O .0100 and 15A NCAC 02N .0100: \$ [insert dollar
32 amount]

33 Total assured environmental costs: \$ [insert total dollar amount]

34 6. Total Annual Revenue: \$ [insert dollar amount]

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

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

37 8. Is line 2 divided by line 3 greater than or equal to 0.05? yes/no

1 9. Is line 4 divided by line 3 less than or equal to 0.20? yes/no

2 BOND RATING INDICATOR OF FINANCIAL STRENGTH

3 1. Sum of current closure, post-closure care, and corrective action program cost estimates [total of all cost estimates
4 shown in the paragraphs above]: \$ [insert dollar amount of all cost estimates/environmental liability for solid waste
5 management facilities]

6 2. Current bond rating of most recent issuance and name of rating service: [insert bond rating and name of rating
7 service]

8 3. Date of issuance bond: [insert date of issuance]

9 4. Date of maturity of bond: [insert date of maturity]

10 5. Assured environmental costs to demonstrate financial responsibility in the following amounts under Division rules:

11 Solid Waste Management Facilities under 15A NCAC 13B: \$ [insert dollar amount]

12 Hazardous waste treatment, storage and disposal facilities under 15A NCAC 13A .0109 and .0110: \$ [insert
13 dollar amount]

14 Petroleum underground storage tanks under 15A NCAC 02N .0100 - .0800: \$ [insert dollar amount]

15 Underground injection control system facilities under 15A NCAC 02D .0400 and 15A NCAC 02C .0200: \$
16 [insert dollar amount]

17 PCB commercial storage facilities under 15A NCAC 02O .0100 and 15A NCAC 02N .0100: \$ [insert dollar
18 amount]

19 Total assured environmental costs: \$ [insert dollar amount]

20 6. Total Annual Revenue: \$ [insert dollar amount]

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

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

23 I hereby certify that the wording of this letter is identical to the wording specified in 15A NCAC 13B .1806(7) as such
24 rules were constituted on the date shown immediately below. I further certify the following: (1) that the unit of local
25 government has not operated at a total operating fund deficit equal to five percent or more of total annual revenue in
26 either of the past two fiscal years, (2) that the unit of local government is not in default on any outstanding general
27 obligations bonds or long-term obligations, and (3) does not have any outstanding general obligation bonds rated
28 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
29 by the Municipal Council.

30 [Signature]

31 [Name]

32 [Title]

33 [Date]

34 (8) A corporate guarantee, as specified in Rule .1805(e)(7) of this Section, shall be worded as follows,
35 except that instructions in brackets are to be replaced with the relevant information and the brackets
36 deleted:

37 CORPORATE GUARANTEE

1 [Date]
2 North Carolina Department of Environmental Quality
3 Division of Waste Management
4 Solid Waste Section Chief
5 1646 Mail Service Center
6 Raleigh, NC 27699-1646

7 Dear Sir/Madam:

8 I am the chief financial officer of [name and address of guarantor]. This letter is in support of this firm's use of the
9 corporate guarantee to demonstrate financial assurance on behalf of [owner or operator name, address, permit number]
10 for current closure, post-closure care, corrective action program, and potential assessment and corrective action cost
11 estimates (if applicable), as specified in the Solid Waste Management Act, North Carolina General Statute 130A-
12 295.2(f) and 40 C.F.R. 258.74(g) (July 1, 2010 edition).

13 [For each solid waste management facility, including its permit identification number, name, address, and current
14 closure, post-closure care, corrective action program, or potential assessment and corrective action cost estimates (if
15 applicable). Identify for each cost estimate whether it is for closure, post-closure care, corrective action programs, or
16 potential assessment and corrective action.]

17 This firm guarantees, through the corporate guarantee attached to this letter as Exhibit A, the current closure, post-
18 closure care, corrective action program, and potential assessment and corrective action cost estimates (if applicable),
19 of the following facilities owned or operated by the guaranteed party. Financial assurance for current closure, post-
20 closure care, corrective action program, and potential assessment and corrective action cost estimates (if applicable),
21 for the listed facilities are demonstrated through the corporate financial test. The current closure, post-closure care,
22 corrective action program, and potential assessment and corrective action cost estimates (if applicable), so guaranteed
23 are shown for each facility:

24 Name: [insert name of legal entity/principal]

25 Office Address: [insert physical address of legal entity/principal]

26 Facility Address: [insert physical address of facility]

27 Permit No.: [insert NCDEQ issued permit number]

28 Closure Cost Estimate: [insert dollar amount for closure]

29 Post-Closure Care Cost Estimate: [insert dollar amount for post-closure care]

30 Corrective Action Program Cost Estimate: [insert dollar amount for current corrective action]

31 Potential Assessment and Corrective Action Cost Estimate: [insert dollar amount for potential assessment and
32 corrective action]

33 The guarantor firm identified above is (please check the applicable relationship):

34 The direct or higher-tier parent corporation of the owner or operator.

35 Owned by the same parent corporation as the parent corporation of the owner or operator.

36 (please attach a description of the value received in consideration of the guarantee)

37 Engaged in a substantial business relationship with the owner or operator.

1 (please attach a written description of the business relationship and the value received in consideration of the
2 guarantee and a copy of the contract establishing such relationship)

3 Identify any underground injection control (UIC) facilities under 15A NCAC 02D .0400 and 15A NCAC 02C .0200,
4 petroleum underground storage tank (UST) facilities under 15A NCAC 02N .0100 through .0800, polychlorinated
5 biphenyl (PCB) storage facilities under 15A NCAC 02O .0100 and 15A NCAC 02N .0100, and hazardous waste
6 treatment, storage, and disposal facilities (TSDF's) under 15A NCAC 13A .0109 and .0110 that are owned by either
7 the owner/operator or the guarantor and/or are facilities that are covered by a financial test or corporate guarantee.
8 Provide a separate description for each type of facility, if applicable (if not applicable write "None").

9 Name: [insert name of facility]

10 Facility Address: [insert physical address of facility]

11 Permit No.: [insert associated permit number]

12 Closure Cost Estimate: [insert dollar amount for closure]

13 Post-Closure Care Cost Estimate: [insert dollar amount for post-closure care]

14 Corrective Action Program Cost Estimate: [insert dollar amount for current corrective action]

15 Potential Assessment and Corrective Action Cost Estimate: [insert dollar amount for potential assessment and
16 corrective action]

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

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

22 Fill in all applicable parts of the Financial Test and either Alternative I, or Alternative II, or Alternative III below.

23 Financial Test

24 1. Sum of current closure, post-closure care, corrective action program, and potential assessment and corrective action
25 cost estimates (if applicable) and guarantees from all of the solid waste management facilities in paragraphs 1 or 2
26 above: \$ [insert dollar amount]

27 2. All other cost estimates and guarantees required for UIC facilities, petroleum UST facilities, PCB storage facilities,
28 and TSDF's listed in paragraph 3 above: \$ [insert dollar amount]

29 3. Tangible net worth (defined as tangible assets – liabilities. Tangible assets do not include intangibles such as
30 goodwill or rights to patents and royalties): \$ [insert dollar amount]

31 4. Net Worth \$ [insert dollar amount]

32 5. Total liabilities - If any portion of the current closure, post-closure care, corrective action program, and potential
33 assessment and corrective action cost estimates (if applicable), or guarantees identified above are recognized as
34 liabilities in the audited financial statements, you must submit a special report from the independent certified public
35 accountant (CPA), unless you can answer "yes" to item # 9: \$ [insert dollar amount]

36 6. The sum of net income plus depreciation, depletion, and amortization (Use for Alternative III.) \$[insert dollar
37 amount]

1 7. Total assets in the U.S.: \$ [insert dollar amount]

2 8. Sum of line 1 plus line 2 from above and any other environmental obligations covered by a financial test: \$ [insert
3 dollar amount]

4 9. Is line 3 greater than the sum of line 8 plus \$10 million? [Yes or No]
5 If " No", and you have provided a report from the independent CPA that the environmental obligations have been
6 recognized as liabilities in the audited financial statements, then go to Item 9(a).

7 9a. Is line 3 greater than the sum of \$10 million plus any guarantees not recognized as liabilities? [Yes or No]

8 10. Is line 7 greater than line 8? [Yes or No]

9 If the financial data provided for items 3 through 7 above differs from what was provided in the audited financial
10 statements, a special report from the certified public accountant shall be provided as described in 40 CFR
11 258.74(e)(2)(i)(C) and (g)(1).

12 Alternative I

13 1. Current bond rating of most recent senior unsubordinated bond issue of this firm and name of rating service: [insert
14 current bond rating and name of rating service]

15 2. Date of bond issue: [insert date of bond issuance]

16 3. Date of final maturity of bond: [insert date of maturity]

17 Alternative II

18 1. Is the above line 5 divided by the above line 4 less than 1.5? [Yes or No]

19 Alternative III

20 1. Is (the above line 6 minus \$10 million) divided by the above line 5 greater than 0.1? [Yes or No]

21 As evidence that [firm] meets the conditions of the Corporate Financial Test, attached hereto is a copy of the following:
22 Please check applicable responses

23 () 1. Independent CPA's unqualified opinion of our financial statements for our latest completed fiscal year.

24 () 2. Special report from CPA [If financial data in this letter is different than in audited financial statements] [See
25 40 CFR 258.74(e)(2)(i)(C) and (g)(1)].

26 () 3. Report from CPA [if answer to item #9 of the financial test is No] verifying all of covered environmental
27 obligations covered by test have been recognized as liabilities in the audited financial statements, how the
28 obligations were measured and reported, and that tangible net worth of the firm is at least \$10 million dollars
29 plus the amount of any guarantees not recognized as liabilities. [See 40 CFR 258.74(e)(2)(i)(D) and (g)(1)]

30 I hereby certify that [name of firm] meets the requirements of [Fill in Alternative I, Alternative II, or Alternative III]
31 in support of [name of facility(s)] use of the corporate financial test to demonstrate financial assurance as required by
32 the Solid Waste Management Act, North Carolina General Statute 130A-295.2(f) and 40 C.F.R. 258.74(e) (July 1,
33 2010 edition).

34 [Signature]

35 [Name]

36 [Title]

37 [Date]

1 Exhibit A
2 Corporate Guarantee Terms For
3 Closure, Post-Closure Care, Corrective Action Program, and/or
4 Potential Assessment and Corrective Action
5 For [Owner/Operator], [Permit Number]
6 Guarantee made this [date] by [name of guaranteeing entity], [address and state of guaranteeing entity], herein referred
7 to as guarantor. The guarantee is made on behalf of the [owner or operator name] of [business address], which is [one
8 of the following: "our subsidiary"; a subsidiary of [name and address of common parent corporation" or "an entity
9 with which the guarantor has a substantial business relationship"] to the North Carolina Division of Environmental
10 Quality (NCDEQ).

11 Recitals:

12 1. Guarantor meets or exceeds the Corporate Financial Test criteria and agrees to comply with the reporting
13 requirements for guarantors, as specified in the Solid Waste Management Act, North Carolina General Statute 130A-
14 295.2(f) and 40 C.F.R. 258.74(g) (July 1, 2010 edition).

15 2. [Owner or Operator] owns or operates the following solid waste management facility(ies) covered by this guarantee:
16 List for each facility the following information

17 Name: [insert facility name]

18 Facility Address: [insert facility address]

19 Permit No.: [insert NCDEQ issued permit number]

20 Closure Cost Estimate: [insert dollar amount for closure]

21 Post-Closure Care Cost Estimate: [insert dollar amount for post-closure care]

22 Corrective Action Program Cost Estimate: [insert dollar amount for current corrective action]

23 Potential Assessment and Corrective Action Cost Estimate: [insert dollar amount for potential assessment and
24 corrective action]

25 3. Closure, Post-Closure Care, Corrective Action Program, and Potential Assessment and Corrective Action Cost
26 Estimates as used above refer to the plans maintained, as required by the Solid Waste Management Act, North Carolina
27 General Statute 130A-295.2(f) and 40 C.F.R. 258.74(g) (July 1, 2010 edition) for closure, post-closure care, corrective
28 action program, and potential assessment and corrective action cost estimates (if applicable), of facilities identified
29 above.

30 4. Pursuant to 40 C.F.R. 258.74(g)(3)(i) (July 1, 2010 edition), guarantor guarantees to NCDEQ that in the event that
31 [insert owner or operator name] fails to perform closure, post-closure care, corrective action program, and/or potential
32 assessment and corrective action of the above facility(ies) in accordance with the closure and post-closure care plans,
33 the corrective action program, and/or potential assessment and corrective action and other permit requirements
34 whenever required to do so, the guarantor shall perform the required activities or pay a third party to do so
35 (performance guarantee) or establish a fully funded trust fund (payment guarantee), in conformance with 40 C.F.R.
36 258.74(a) (July 1, 2010 edition), in the name of the owner or operator in the amount of the current closure or post-
37 closure care or corrective action program or potential assessment and corrective action cost estimates as specified

1 during the permitting process as well as the Solid Waste Management Act, North Carolina General Statute 130A-
2 295.2(f) and 40 C.F.R. 258.74(g) (July 1, 2010 edition).

3 5. Pursuant to 40 C.F.R. 258.74(g)(4) (July 1, 2010 edition), guarantor agrees that if the guarantor fails to meet the
4 Corporate Financial Test criteria or is notified that it is disallowed from continuing as a guarantor, the [owner or
5 operator name] must, within 90 days, provide alternate financial assurance. If the [owner or operator name] fails to
6 provide alternative financial assurance within the 90-day period, the guarantor must provide such alternate financial
7 assurance in the name of [owner or operator name] within the next 30 days thereafter.

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

10 7. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or
11 modifications of the closure and post-closure care plans, corrective action programs, and/or potential assessment and
12 corrective action or amendments or modification of the permit, the extension or reduction of the time of performance
13 of closure or post-closure care or corrective action programs or potential assessment and corrective action, or any
14 other modification or alteration of an obligation of the owner or operator pursuant to the Solid Waste Management
15 Act, North Carolina General Statute 130A-295.2(f) and 40 C.F.R. 258.74 (July 1, 2010 edition).

16 8. Guarantor agrees to remain bound under this guarantee for as long as [owner or operator name] must comply with
17 the applicable financial assurance requirements of the Solid Waste Management Act, North Carolina General Statute
18 130A-295.2(f) and 40 C.F.R. 258.74(g) (July 1, 2010 edition) for the above listed facilities, except as provided in
19 paragraphs 9 and 10 of this agreement.

20 9. Pursuant to 40 C.F.R. 258.74(g)(3)(ii) (July 1, 2010 edition), guarantor may terminate this guarantee 120 days
21 following the receipt of notification of its intended cancellation by certified mail by both the NCDEQ Director and by
22 [owner or operator name].

23 10. Pursuant to 40 C.F.R. 258.74(g)(3)(iii) (July 1, 2010 edition), guarantor agrees that if [owner or operator name]
24 fails to provide alternative financial assurance and obtain written approval of such assurance from the NCDEQ
25 Director within 90 days after receipt of the notice of cancellation by the guarantor, guarantor shall provide such
26 alternative financial assurance in the name of [owner or operator name] within the next 30 days before the guarantee
27 terminates.

28 11. Guarantor expressly waives notice of acceptance of this guarantee by NCDEQ or by [owner or operator name].
29 Guarantor also expressly waives notice of amendments or modifications of the closure and post-closure care plans,
30 corrective action programs, and/or potential assessment and corrective action and of amendments or modifications of
31 the facility permit(s).

32 Effective date: [insert mechanism effective date]

33 [Name of Guarantor]

34 [Corporate Seal]

35 [For no corporate seal, see Rule .1805(c)]

36 [Authorized signature for guarantor]

37 [Name of person signing]

1 [Title of person signing]
2 [Telephone Number]
3 [Email Address]
4 State of North Carolina
5 County of [Name of County]
6 On this [day] day of [month], [year], before me personally came [name signing for Guarantor] to me known, who,
7 being by me duly sworn, did depose and say that she/he resides at [Guarantor address], that she/he is [title at Guarantor
8 Firm] described in and which executed the above instrument; that she/he knows the seal of said corporation; that the
9 seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said
10 corporation, and that she/he signed her/his name thereto by like order.
11 Witness my hand and official seal this [Day] day of [Month], 20[Year].
12 [insert Signature of Notary]
13 Official Signature of Notary
14 [Notary's printed or typed name]
15 Notary Public
16 [Official Seal]
17 My commission expires: [insert Date of Commission Expiration]

18 (9) A special report from a certified public accountant (CPA) is a supplemental report mechanism to
19 the corporate financial test mechanism as specified in Rule .1805(e)(5) and the corporate guarantee
20 mechanism as specified in Rule .1805(e)(7) of this Section, and shall be worded as follows, except
21 that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

22 SPECIAL REPORT
23 INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT'S REPORT
24 ON APPLYING AGREED-UPON PROCEDURES

25 The Board of Directors
26 [Name of Company]
27 [Mailing and location address]
28 [Permit No.]
29 We have performed the procedures enumerated below, which were agreed to by management of [Name of Company]
30 pursuant to the Solid Waste Management Act, North Carolina General Statute 130A-295.2(f) and 40 C.F.R. 258.74(e)
31 (July 1, 2010 edition) with respect to the letter dated [insert date] from the [insert Corporate Official name and title]
32 to the North Carolina Department of Environmental Quality, solely to assist you in filing the Letter (prepared in
33 accordance with the criteria specified therein) for the year ended [insert date of end of corporate fiscal year]. [Name
34 of Company] is responsible for this Letter. This agreed-upon procedures engagement was conducted in accordance
35 with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of
36 the procedures is solely the responsibility of [Name of Company] and the North Carolina Department of

1 Environmental Quality. Consequently, we make no representation regarding the sufficiency of the procedures
2 described below either for the purpose for which this report has been requested or for any other purpose.

3 The procedures, which were limited solely to the identified item numbers, are as follows:

4 We compared the amounts in Item Nos. 3, 5, and 7 of the Financial Test in the CFO's Letter to corresponding amounts
5 reported as total liabilities [amount], Tangible Net Worth [amount], and total assets [amount], respectively, in the
6 audited financial statement as of [insert date of end of corporate fiscal year] and found them [insert either, "not to be
7 in agreement" or "to be in agreement"].

8 We computed the amounts in Item Nos. 4 and 6 of the Financial Test in the CFO's Letter as of [insert date of end of
9 corporate fiscal year] based on amounts reported as Net Worth [amount] and the net income plus depreciation,
10 depletion, and amortization [amount] in the audited financial statements as of [insert date of end of corporate fiscal
11 year], compared them to the amounts in the CFO's Letter and found them [insert either, "not to be in agreement" or
12 "to be in agreement"].

13 We computed the amount of environmental obligations (as determined by current closure, post-closure care, corrective
14 action program, and/or potential assessment and corrective action cost estimates or guarantees) which are recognized
15 as liabilities in the amount of [amount] in the audited financial statement as of [insert date of end of corporate fiscal
16 year], compared them to the amounts in the CFO's Letter and found them [insert either, "not to be in agreement" or
17 "to be in agreement"].

18 We compared the amount in Item No. 7 of the Financial Test in the CFO's Letter and the Company's total assets
19 located in the United States in the amount of [insert amount] in the audited financial statement as of [insert date of
20 end of corporate fiscal year] and found them [insert either, "not to be in agreement" or "to be in agreement"].

21 [If not in agreement, describe the procedures performed in comparing the data in the CFO's letter derived from the
22 audited financial year-end financial statements for the latest fiscal year with the amounts in such financial statements,
23 the findings of that comparison, and the reasons for any differences.]

24 We were not engaged to and did not conduct an examination, the objective of which would be the expression of an
25 opinion on the selected financial information included in the Letter. Accordingly, we do not express such an opinion.
26 Had we performed additional procedures, other matters might have come to our attention that would have been
27 reported to you. This report is intended solely for the use of management of the Company, and is not intended to be
28 and should not be used by anyone other than these specified parties.

29 [Date]

30 [Name of Accounting Firm]

31 (10) A capital reserve fund, as specified in Rule .1805(e)(8) of this Section shall be worded as follows,
32 except that instructions in brackets are to be replaced with the relevant information and the brackets
33 deleted:

34 CAPITAL RESERVE FUND RESOLUTION
35 ESTABLISHMENT AND MAINTENANCE
36 OF THE [FACILITY NAME]
37 CAPITAL RESERVE FUND

1 Whereas, there is a need in [insert location of facility as City, County] to provide funds for [closure, post-closure care,
2 corrective action programs, or potential assessment and corrective action] for the [permit number], [facility name];
3 and

4 Whereas, the [location] shall bear the cost of [closure, post-closure care, corrective action programs, or potential
5 assessment and corrective action] for the solid waste management facility at an estimated cost of [cost estimate].

6 Now, therefore, be it resolved by the governing board that:

7 Section 1. The Board of County Commissioners hereby creates a Capital Reserve Fund for the purpose of [closure,
8 post-closure care, corrective action programs, or potential assessment and corrective action] for the [permit number]
9 solid waste management facility.

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

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

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

14 [Signature of County Commissioner]

15 [Signature of Chief Financial Officer]

16 [Date]

17

18 *History Note: Authority G.S. 130A-294; 130A-295.2;*

19 *Eff. July 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 13C .0301

DEADLINE FOR RECEIPT: June 12, 2020

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (3), this definition repeats 130A-310.65(8). Why is it necessary?

In (6), line 25, what "format" is required for submission? Is this described in another rule?

Throughout (7), please capitalize "State" if you are referring to North Carolina. Please do not capitalize "state" if you are referring to any state.

At line 30, please delete the comma after "State."

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder
Commission Counsel
Date submitted to agency: June 1, 2020

1 15A NCAC 13C .0301 is readopted as published in 34:16 NCR 1614 as follows:

2
3 **SECTION .0300 - VOLUNTARY REMEDIAL ACTION OVERSIGHT BY REGISTERED**
4 **ENVIRONMENTAL CONSULTANTS**

5
6 **15A NCAC 13C .0301 DEFINITIONS**

7 ~~Any word or phrase~~ Words or phrases used in the rules in this Section ~~which is that~~ are defined in G.S. 130A, Article
8 9 shall have the meaning provided therein. The following words and phrases shall have the following meanings:

- 9 (1) "Applicant" means an environmental consulting or engineering firm seeking Department approval
10 to act as a Registered Environmental Consultant.
- 11 (2) "Applicant RSM" means an individual proposed by an applicant to fill the role of Registered Site
12 Manager.
- 13 (3) "Registered Environmental Consultant" or "REC" means an environmental consulting or
14 engineering firm approved to implement and oversee voluntary remedial actions pursuant to G.S.
15 130A-310.9(c).
- 16 (4) "Registered Site Manager" or "RSM" means the ~~key~~ person or persons approved by the Department
17 to manage all site activities and make certifications on behalf of the Registered Environmental
18 Consultant in its role as consultant to ~~responsible~~ remediating parties for implementation and
19 oversight of a voluntary remedial action pursuant to G.S. 130A-310.9(c).
- 20 (5) "Remediating Party" means ~~any~~ site owner, operator, or responsible party engaging in a voluntary
21 remedial action pursuant to G.S. 130A-310.9(c).
- 22 (6) "Request for Approval" means the application and qualifications documentation package ~~which that~~
23 must be submitted by an environmental consulting or engineering firm to the Department so that the
24 Department may determine an applicant's eligibility to operate as a Registered Environmental
25 Consultant. The Department shall make available a format for submission of such information.
- 26 (7) "Sensitive Environments" means state or federal designated park, monument, wilderness area,
27 preserve, wildlife refuge, or wetland; state or federal lands designated for game management, or the
28 protection of natural ecosystems; or habitat for state or federally designated endangered species.
- 29 (8) "Sensitive Populations or Property Uses" means residential property, schools, day care facilities,
30 geriatric centers, State, or federally designated historical sites, or parks owned or maintained by a
31 unit of local government.
- 32 ~~(7)(9)~~ "Source Area" means any area of sludge, soil, sediment, or other solid medium contaminated by a
33 release of one or more hazardous substances.
- 34 ~~(8)(10)~~ "Voluntary Remedial Action" is a remedial action as defined in G.S. ~~130A-310(7)~~ 130A-310(7),
35 conducted voluntarily by ~~an owner, operator, or responsible party~~ a remediating party, and
36 undertaken with the approval of the Department pursuant to G.S. 130A-310.9(c).

- 1 *History Note:* *Authority G.S. 130A-310.12(b);*
- 2 *Eff. April 1, ~~1997~~ 1997;*
- 3 *Readopted Eff. July 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 13C .0302

DEADLINE FOR RECEIPT: June 12, 2020

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (e), line 18, please define "reasonable times."

At line 19, define "reasonable notice."

At line 22, please define "proximate areas."

In (g), line 27, delete or define "directly."

In (g)(1), are you using the term "imminent hazard" as defined in G.S. 130A-2?

In (g)(2), please define "significant public concern."

In (g)(4), under what circumstances is the Department "concerned about material representations?"

In (g)(6), please consider deleting "so warrant."

In (h)(4), please define "sufficient time."

Where is your statutory authority for (i)? Also, why is (i) necessary given G.S. 132-1.2(1)(a)?

Where is your statutory authority for (j)?

In (k), line 30, what information is considered "necessary for an enforcement or cost recovery action?" What is the purpose of (k)? What are you requiring here?

In (l), line 32, please consider deleting "in any way."

At line 33, please delete "but not limited to."

At line 33, define "sufficient detail."

Ashley Snyder
Commission Counsel
Date submitted to agency: June 1, 2020

In (n), what are the deadlines established by the Department? Are they in rule or statute?

In (p), under what circumstances does the Department deem a response action “necessary to protect the public health, safety or welfare or the environment?”

If you keep this language, please consider “protect the public health, safety, welfare, or the environment.”

In (q), line 31, please define “reasonable efforts” and “reasonable access.”

In your history note, why are 132-1, 132-1.2, and 132-6 listed? Do those statutes confer rulemaking authority to EMC?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder
Commission Counsel
Date submitted to agency: June 1, 2020

1 15A NCAC 13C .0302 is readopted as published in 34:16 NCR 1614 as follows:

2
3 **15A NCAC 13C .0302 GENERAL PROVISIONS**

4 (a) The rules in this Section ~~are the rules required by G.S. 130A-310.12(b) to~~ shall govern the selection and use of
5 private environmental consulting and engineering firms to implement and oversee voluntary remedial actions by
6 ~~owners, operators, or other responsible~~ remediating parties under pursuant to G.S. 130A-310.9(c).

7 (b) ~~No provision of the rules in this Section shall be construed to relieve any person of the necessity of complying~~ All
8 remedial actions conducted pursuant to the rules of this Section shall comply with applicable federal, ~~state~~ State, or
9 local laws.

10 (c) ~~Any~~ A person who violates ~~any~~ a provision of this ~~Section~~, Section or any other requirement in connection with
11 the voluntary remedial action program, including making ~~any~~ a false statement, ~~representation~~ representation, or
12 ~~certification~~, certification or knowingly rendering inaccurate ~~any~~ a recording or monitoring device or method, shall
13 be subject to ~~enforcement~~ enforcement, including disqualification as an REC or RSM.

14 (d) A party wishing to conduct a Department-approved voluntary remedial action pursuant to this Section shall enter
15 into a written agreement with the Department pursuant to G.S. 130A-310.9(c).

16 (e) For the purpose of administration and enforcement of the voluntary remedial action program and for protection of
17 human health or the environment, employees, ~~agents~~ agents, and contractors of the Department may enter any site,
18 ~~vessel~~ or other location undergoing a voluntary remedial action pursuant to this Section, at reasonable times and upon
19 reasonable notice, to investigate, ~~sample~~ sample, or inspect any documents, conditions, equipment, ~~practice~~ practice,
20 or property. In the event that the Department ~~reasonably~~ determines as a result of an investigation, ~~sampling~~ sampling,
21 or inspection that there has been a release or that there exists a threat of release of a hazardous substance, the
22 Department may enter a site, ~~vessel~~ or location, and proximate ~~thereto~~, areas, and perform or arrange for the
23 performance of ~~such response actions as it reasonably deems necessary.~~ actions.

24 (f) Remedial Actions conducted pursuant to this Section shall be overseen by an REC. All work performed by an
25 REC shall be under the supervision and direction of an RSM representing the REC. ~~Rule .0306 of this Section specifies~~
26 ~~requirements relating to certifications by RSMs.~~

27 (g) The Department shall have complete discretion to effect cleanup itself, or directly oversee a remediating party's
28 ~~cleanup, if the Department determines that the site poses an imminent hazard, if there is significant public concern, if~~
29 ~~the Department has initiated an enforcement action, if the Department is concerned about material misrepresentations~~
30 ~~or environmental non-compliance on the part of a party seeking to effect or effecting remedial action at a site pursuant~~
31 ~~to this Section, if hazardous substances have migrated to adjoining property, or if other conditions, such as the presence~~
32 ~~of sensitive environments or mixed wastes (commingled radioactive and chemical wastes), so warrant.~~ cleanup if:

- 33 (1) the Department determines that the site poses an imminent hazard;
34 (2) there is significant public concern;
35 (3) the Department has initiated an enforcement action;
36 (4) the Department is concerned about material misrepresentations or environmental non-compliance
37 on the part of a party seeking to effect or affecting remedial action at a site pursuant to this Section;

1 (5) hazardous substances have migrated to adjoining property; or

2 (6) other conditions, such as the presence sensitive environments, sensitive populations or property
3 uses, or radioactive wastes, so warrant.

4 (h) The remedial investigation shall be completed within three years of the effective date of the agreement to conduct
5 a voluntary remedial action. Non-groundwater remedial action shall be completed within eight years of the effective
6 date of that agreement. Groundwater remedial action shall be initiated within two years of completion of the remedial
7 investigation. All document and work phase certifications pursuant to Rule .0306(b) of this Section shall be completed
8 and all documents received by the Department prior to these deadlines. ~~Responsible parties failing to meet these~~
9 ~~deadlines shall be subject to enforcement and loss of approved voluntary remedial action status. The affected sites~~
10 ~~shall no longer be eligible for exemption from the Inactive Hazardous Waste Sites Priority List pursuant to G.S. 130A-~~
11 ~~340.9(b).~~ The Department may approve a remediating party's written request for extension of these deadlines if one
12 or more of the following conditions exists and the remediating party or the REC provides documentation to support
13 the request and a schedule with timelines commensurate with the activities to be performed:

14 (1) documented access delays outside of the remediating party's control;

15 (2) the REC learns of previously unconsidered facts, data, or other information as described in Rule
16 .0305(b)(5) or (6) of this Section, including changes to standards or risk targets;

17 (3) the proposed remedy includes a pilot study to be implemented prior to full-scale remedial action
18 implementation;

19 (4) there has been a change in REC and the new REC does not have sufficient time to meet a deadline;
20 or

21 (5) during and after initiating of a remedial action, a demonstration is made that cleanup standards
22 cannot be achieved by the required deadline due to technical impracticability.

23 (i) Any information, document, or particular part thereof obtained by the Department or its contractors upon request
24 pursuant to this Section shall be confidential, and shall not be considered to be a public record, ~~when it is determined~~
25 ~~by the Department that~~ if such information, if made public, would divulge a trade secret.

26 (j) The Department shall be under no obligation to act ~~upon~~ on any request for confidentiality in relation to this
27 Section that is not made and substantiated in accordance with G.S. 66, Article 24, and such information may be made
28 available to the public by the Department without further notice to the remediating party.

29 (k) The rules in this Section ~~may~~ shall not serve as grounds for refusal to disclose to the Department ~~any~~ information
30 necessary for an enforcement or cost recovery action or to comply with ~~any~~ a provision of law.

31 (l) The REC shall preserve and maintain all documents submitted to the REC on behalf of or by the remediating party,
32 prepared by the REC, or within the REC's possession, ~~custody~~ custody, or control, that in any way relate to work
33 performed pursuant to the rules in this ~~Section~~ Section, including, but not limited to, documents of sufficient detail to
34 substantiate the facts, data, ~~conclusions~~ conclusions, and other information set forth in any REC opinion or
35 certification. Such documents shall be kept at one or more locations ~~reasonably~~ accessible to the Department and in
36 such a form as to enable the Department to ascertain whether the response actions ~~which~~ that are the subject of the
37 REC opinion or certification have been performed in compliance with the provisions of the rules in this Section until

1 such time as the record is provided to the Department for the public file. The REC shall submit to the Department for
2 the public file all work ~~plans~~ plans, and ~~reports~~ reports, and work-phase completion statements within 30 days of their
3 completion. ~~The REC shall submit to the Department for the public file all other site documents at the following~~
4 ~~milestones:~~

- 5 (1) ~~completion of each phase of the remedial investigation;~~
- 6 (2) ~~completion of the remedial investigation;~~
- 7 (3) ~~at the close of the 30-day public comment period which follows notice of the proposed remedial~~
8 ~~action plan;~~
- 9 (4) ~~completion of remedial design and construction; and~~
- 10 (5) ~~completion of all remedial action activities.~~

11 (m) Any person required by Paragraph (l) of this Rule to preserve and maintain any documents shall preserve and
12 maintain those documents ~~for six years after termination of the remediating party's agreement with the Department to~~
13 ~~perform a voluntary remedial action pursuant to the rules in this Section. With the Department's written approval based~~
14 ~~on the likelihood of future need for enforcement or review purposes, documents required to be maintained need no~~
15 ~~longer be maintained, until the REC confirms that the Department has received the records.~~

16 (n) ~~Failure to~~ RECs shall comply with Department site-related requests for information according to deadlines
17 established by or agreed to by the Department. ~~information shall cause revocation of an REC's approval to perform~~
18 ~~work and disapproval of any work product in question. Remediating parties shall lose their eligibility for the voluntary~~
19 ~~remedial action program unless, within 60 days of notice by the Department of revocation of the REC's approval, the~~
20 ~~name of a successor REC is submitted to the Department.~~

21 (o) Within 60 days of notice from the Department of revocation of an REC's approval, remediating parties shall
22 submit the name of a successor REC. ~~Program ineligibility shall also result from failure by a~~ A ~~remediating party to~~
23 ~~shall~~ provide written notice to the Department within 60 days of a change in RECs REC ~~for any other reason.~~

24 ~~(p)~~ (p) Nothing in this Section shall be construed to limit the Department's authority to take or arrange, or to require a
25 responsible party to perform, any response action which the Department deems necessary to protect public health,
26 safety or welfare or the environment.

27 ~~(q)~~ (q) Nothing in this Section shall be construed to imply authorization by the Department to any person other than
28 the ~~Department,~~ Department or the Department's employees, ~~agents~~ agents, or ~~contractors,~~ contractors to enter any
29 property not owned by him or her to carry out a response ~~action,~~ action or otherwise to injure or interfere with any
30 other person's rights or interests in real or personal ~~property,~~ property without that person's consent. After making
31 reasonable efforts to obtain reasonable access to any site or other location to be investigated as a possible site not
32 owned by the remediating party, an REC or remediating party who is unable to obtain such access may request, in
33 writing, that the Department authorize him or ~~her,~~ her or his or her employees, agents, ~~representatives~~ representatives,
34 or ~~contractors,~~ contractors to enter such site or location for the purpose of performing one or more necessary response
35 actions. Each such request for authorization shall include all of the following information:

- 36 (1) the identity of the person making the request and his or her relationship to the site or location;

- 1 (2) the nature and location of the ~~action(s)~~ actions that he or she intends to undertake, the anticipated
2 duration of the ~~action(s)~~ actions and the ~~reasons(s)~~ reasons such access is ~~(are)~~ necessary to perform
3 the ~~action(s)~~; actions;
- 4 (3) the identity of each person who owns or operates the site or location to which access is sought;
5 (4) the results of any and all attempts to obtain such access; and
6 (5) certification that a copy of the request has been sent to each person who owns or operates such sites
7 or locations.

8
9 *History Note:* *Authority G.S. 130A-310.1(c); 130A-310.1(e); 130A -310.3(c); 130A-310.5(a); 130A-310.6; 130A-*
10 *310.12(b); 132-1; 132-1.2; 132-6;*
11 *Eff. April 1, ~~1997~~. 1997;*
12 *Readopted Eff. July 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 13C .0303

DEADLINE FOR RECEIPT: June 12, 2020

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), are the contents or substantive requirements of the Request for Approval form in rule in accordance with 150B-2(8a)(d)?

At line 10, under what circumstances is it necessary to supply additional information?

In (d), consider: "If a Department-approved RSM leaves the employment of an REC or changes employment..."

At line 22, how does the Department determine whether the proposed replacement qualifies?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder
Commission Counsel
Date submitted to agency: June 1, 2020

1 15A NCAC 13C .0303 is readopted as published in 34:16 NCR 1614 as follows:

2
3 **15A NCAC 13C .0303 APPROVAL OF REGISTERED ENVIRONMENTAL CONSULTANTS**

4 (a) To qualify for Department approval as an REC, an applicant shall complete and submit a ~~sworn~~ Request for
5 Approval form, available from the Department, demonstrating that the applicant meets the requirements contained in
6 this Section. The Request for Approval form shall set forth the qualifications of all persons the applicant wishes to
7 qualify as ~~RSMs~~. RSMs and shall contain notarized signatures of representatives of the applicant.

8 (b) Applicants shall supply the names and telephone numbers of previous government and industry clients and copies
9 of actual work products to verify experience, if requested by the Department. The Department may require applicants
10 to supply additional information if necessary to clarify that provided on the Request for Approval form. Those
11 applicants not complying with such requests shall not be approved to perform work pursuant to the rules in this
12 Section.

13 (c) An REC shall ~~promptly~~ notify the Department if the nature of its business changes, if it no longer meets the
14 requirements for approval under this Section ~~due to change in personnel, or for any other reason~~, or if it discovers that
15 any information it submitted in any Request for Approval is or was ~~incorrect~~. incorrect no later than 30 days
16 subsequent to the discovery of the occurrence.

17 (d) Should a Department-approved RSM leave the employment of an REC or change employment within an REC, an
18 REC shall, no later than 30 days prior to the change, submit the name and qualifications of another person to perform
19 the role of the RSM. If an REC does not receive ~~30 days~~ 30 days of notice by an RSM of the RSM's intended change
20 in employment, the REC shall notify the Department within 24 hours of the RSM providing such notice and shall
21 within 30 days of the RSM's notice to the REC, submit to the Department the name and qualifications of another
22 person to perform the role of the RSM. The Department shall determine whether the proposed replacement qualifies
23 as an RSM. An REC may propose amendments to its approval as an REC to add or delete RSMs. An RSM that changes
24 employment from an approved REC shall require a new approval by the Department before working as an RSM with
25 another REC.

26 (e) The Department shall notify applicants in writing whether they are approved to conduct business as an ~~REC~~. REC
27 or RSM. No applicant may represent itself, or work, as an REC or RSM without written Department approval.

28 (f) An REC's approval shall be valid for five years unless revoked earlier by the Department.

29 (g) The Department shall make available to the general public a list of all approved RECs.

30
31 *History Note: Authority G.S. 130A-310.12(b);*

32 *Eff. April 1, 1997. 1997;*

33 *Readopted Eff. July 1, 2020.*

1 15A NCAC 13C .0304 is readopted as published in 34:16 NCR 1614 as follows:

2
3 **15A NCAC 13C .0304 MINIMUM QUALIFICATIONS FOR REGISTERED ENVIRONMENTAL**
4 **CONSULTANTS**

5 In order to be approved to perform work as an REC, an environmental consulting or engineering firm shall meet the
6 following requirements.

7 (1) REC applicants shall demonstrate that one or more persons in their employ individually meet all of
8 the following standards and requirements and therefore qualify to perform the role of RSM for the
9 REC. To qualify as an RSM, an individual shall:

10 (a) Have the following ~~minimum~~ relevant professional experience:

11 (i) five years of experience in investigation and remediation of hazardous substance
12 or waste disposal sites;

13 (ii) three years ~~direct~~ of experience in supervising site investigation and remedial
14 action projects; and

15 (iii) eight years of total relevant professional experience, which shall be work of a
16 professional grade and character performed for at least a minimum an average of
17 20 or more hours per week that indicates the applicant is competent to render
18 waste site cleanup activity opinions. Total relevant professional experience
19 performed for less than ~~a minimum an~~ average of 20 hours per week shall be
20 applied toward the satisfaction of these requirements on a pro rata basis. If an
21 individual works more than 40 hours in a week, even if having multiple jobs, that
22 individual ~~may~~ shall get credit only for one week's worth of work. The
23 Department shall consider the following criteria in evaluating whether an
24 applicant RSM's waste site cleanup decision-making experience and practical
25 experience constitute sufficient relevant experience: the nature of work activities;
26 the field of work activities; the types of reports, ~~studies~~ studies, and documents
27 prepared; the range of methods evaluated and selected; the number of individuals
28 and disciplines of other professionals supervised or coordinated; the extent of
29 review of conclusions, ~~recommendations~~ recommendations, and opinions by
30 supervisors; and the duration of ~~employment; and any other factors the~~
31 ~~Department deems pertinent.~~ employment.

32 (b) Have sufficient training to meet the hazardous waste operations and emergency response
33 training ~~standard,~~ standard set forth in 29 CFR 1910.120.

34 (c) Have a four-year or graduate degree from a college or university accredited by a regional
35 accrediting agency in one of the following fields or a field ~~which the Department~~
36 ~~determines would provide~~ that provides the educational background necessary to oversee
37 a remedial action:

- 1 (i) Biochemistry;
2 (ii) Biology;
3 (iii) Chemical Engineering;
4 (iv) Chemistry;
5 (v) Civil Engineering;
6 (vi) Earth Science;
7 (vii) Environmental Engineering;
8 (viii) Environmental Science;
9 (ix) Epidemiology;
10 (x) Geochemistry;
11 (xi) Geological Engineering;
12 (xii) Geology;
13 (xiii) Geophysics;
14 (xiv) Geotechnical Engineering;
15 (xv) Hydrogeology;
16 (xvi) Hydrology;
17 (xvii) Industrial Hygiene;
18 (xviii) Mechanical Engineering;
19 (xix) Physics;
20 (xx) Soil Science; and
21 (xxi) Toxicology.
- 22 (d) Have a record of professionalism and integrity, demonstrated by the absence of:
23 (i) conviction of a felony;
24 (ii) conviction of a misdemeanor involving fraud, deceit, ~~misrepresentation~~
25 misrepresentation, or forgery;
26 (iii) an adverse civil judgment in an action involving fraud, deceit, misrepresentation,
27 or forgery;
28 (iv) disbarment or disciplinary action relating to any professional license; and
29 (v) disqualification from government contracts for negligent acts or failure to perform
30 required work.
- 31 (2) The applicant shall demonstrate that it has an established environmental consulting practice.

32
33 *History Note: Authority G.S. 130A-310.12(b);*
34 *Eff. April 1, 1997. 1997;*
35 *Readopted Eff. July 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 13C .0305

DEADLINE FOR RECEIPT: June 12, 2020

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a)(1), please delete or define "directly."

In (a)(2), lines 10 and 12, how do you determine which areas are areas of competence for an RSM? Is this known by your regulated public?

What are you requiring in (b)(1)? What is required for an REC to comply with (b)(1)?

At line 19, please add a comma after "safety."

At line 36, under what circumstances does the Department direct that more extensive interim remedial action is necessary? What factors are considered?

On page 2, line 21, please delete or define "promptly."

At line 32, what is "all relevant and pertinent information?" Is this determined by the REC?

At lines 33-34, under what circumstances would an omission lead or "reasonably could lead" to a false conclusion? Is this determination made by the REC?

On page 3, line 1, did you intend to include rules as well?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder
Commission Counsel
Date submitted to agency: June 1, 2020

1 15A NCAC 13C .0305 is readopted as published in 34:16 NCR 1614 as follows:

2
3 **15A NCAC 13C .0305 STANDARDS OF CONDUCT FOR REGISTERED ENVIRONMENTAL**
4 **CONSULTANTS**

5 (a) The REC and its RSMs shall comply with the following standards of professional competence. ~~RECs failing to~~
6 ~~do so shall be disqualified from performing work as an REC pursuant to this Section and shall be subject to any other~~
7 ~~applicable form of enforcement.~~

8 (1) An RSM shall render a waste site cleanup activity opinion only ~~when~~ if he or she has directly
9 reviewed the work to ascertain whether the completed work complies with this Section.

10 (2) The RSM shall perform his or her services only in areas of his or her competence and shall not
11 render a decision on any ~~assessment or~~ assessment, cleanup ~~plan~~ plan, or document dealing with
12 subject matter for which he or she lacks competence by virtue of education or experience. If a site
13 assessment or cleanup activity opinion requires expertise outside the RSM's field of expertise, the
14 RSM shall render such an opinion relying in part upon the advice of one or more professionals
15 having relevant competence.

16 (b) The REC and its RSMs shall comply with the following standards of professional responsibility. ~~RECs failing to~~
17 ~~do so shall be disqualified from performing work as an REC pursuant to this Section and shall be subject to any other~~
18 ~~applicable form of enforcement.~~

19 (1) An REC shall at all times recognize its primary obligation is to protect public health, safety and
20 welfare and the environment in the performance of professional services as an REC.

21 (2) If an REC acting pursuant to this Section identifies an imminent hazard as defined under G.S. 130A-
22 2(3) at a site at which it is providing professional services pursuant to the rules in this Section it
23 shall, unless the REC ~~is certain~~ has documentation the remediating party has provided such notice,
24 within 24 hours of discovery, notify the Department:

25 (A) ~~of the hazard;~~ imminent hazard, including exposures to contaminated vapor, drinking
26 water, and other contaminated media;

27 (B) whether the remediating party has agreed to take corrective action; ~~and~~

28 (C) ~~what action;~~ immediate action to reduce exposure of the imminent hazard, if any, has been
29 taken. Such actions include providing alternate water and treatment systems for
30 contaminated drinking water sources, removal of vessels and containers having explosive
31 conditions, modifications to indoor ventilation systems or installation of air treatment units,
32 stopping the on-going discharge of bulk wastes or unpermitted piped wastes entering
33 surface water, abatement of exposed wastes on residential or school property, removal of
34 discovered above-ground vessels storing wastes, and containment of any hazardous
35 substance spills occurring after execution of the agreement; and

36 (D) that, if in the opinion of the REC or as directed by the Department, more extensive interim
37 remedial action is necessary to abate an imminent hazard prior to development of a

1 remedial action plan pursuant to Rule .0306(n) of this Section the REC shall prepare,
2 certify, and submit an interim remedial action plan that complies with Rule .0306(o) of this
3 Section and contains an implementation schedule.

- 4 (3) If an REC acting pursuant to this Section determines through data evaluation, including review of
5 laboratory analyses, performing fate and transport calculations, or conducting computer modeling
6 that hazardous substances at or above applicable standards have migrated from the property
7 containing a source area to other property ~~determines hazardous substances have migrated to~~
8 ~~property adjoining property containing a source area,~~ or determines there are sensitive environments
9 or ~~mixed wastes (commingled radioactive and chemical wastes)~~ radioactive wastes on the site, it
10 shall, unless the REC ~~is certain~~ has documentation the remediating party has provided such notice,
11 within 24 hours of ~~discovery,~~ the REC's determination, notify the Department.
- 12 (4) In providing professional services all RSMs shall:
- 13 (A) exercise independent professional judgement;
- 14 (B) follow the requirements and procedures set forth in applicable provisions of this Section;
- 15 and
- 16 (C) act with reasonable care and ~~diligence,~~ diligence and apply the knowledge and skill
17 ordinarily required of RSMs in good standing in the State at the time the services are
18 performed.
- 19 (5) If, subsequent to the date an REC renders a waste site cleanup activity opinion, anyone employed
20 by the REC that rendered the opinion learns that previously unconsidered facts, ~~data~~ data, or other
21 information ~~may~~ support or lead to a different opinion, the REC shall promptly notify, in writing,
22 the remediating party and the Department.
- 23 (6) If, subsequent to the date of its engagement, a successor REC learns of material facts, ~~data~~ data, or
24 other information that existed as of the date of any predecessor REC's waste site cleanup activity
25 opinion but was not disclosed in that opinion, the successor REC shall promptly notify, in writing,
26 the remediating party and the Department.
- 27 (7) An REC shall not allow the use of its name or the names of its RSMs by, or associate in a business
28 venture with, any person or firm ~~which~~ that an REC knows or should know is engaging in fraudulent
29 or dishonest business or professional practices relating to the professional responsibilities of the
30 REC.
- 31 (8) The REC shall be objective and truthful in all professional reports, public ~~statements~~ statements, or
32 ~~testimony,~~ testimony and shall include all relevant and pertinent information in the reports,
33 statements, or testimony ~~when~~ if the result of an omission would or reasonably could lead to a
34 ~~fallacious~~ false conclusion.
- 35 (9) An REC shall not falsify or permit misrepresentation of an RSM's academic or professional
36 ~~qualifications,~~ qualifications and shall not misrepresent or exaggerate an RSM's degree of
37 responsibility ~~in, or for,~~ in or for the subject matter of prior assignments.

1 (10) RECs shall comply with all applicable provisions of law and regulation.

2 (11) All RECs shall have knowledge of this Section.

3

4 *History Note:* *Authority G.S. 130A-310.12(b);*

5 *Eff. April 1, ~~1997~~. 1997;*

6 *Readopted Eff. July 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 13C .0306

DEADLINE FOR RECEIPT: June 12, 2020

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On page 2, line 25, what are you referring to as the "preceding paragraph?" Is it "Subparagraph (b)(5) of this Rule?"

In (d)(1), which actions are "scientifically valid?" How is this determination made? Is it within the discretion of the REC?

On page 3, line 21, please delete or define "completely."

On page 4, line 16, do you mean "may" or "shall?"

At lines 16-17, what "procedures to protect health, safety, public welfare, and the environment" are required for approval?

At line 20, do you mean "may" or "shall." If you mean "may," under what circumstances are standardized health and safety plans "appropriate?"

At line 20, define "routine activities."

At line 24, under what circumstances are air monitoring activities "necessary" to protect the public?

On page 5, lines 9-10, please delete or define "to the extent practicable." How is this determination made? What is required?

On page 6, line 32, please capitalize "State" if you are only referring to North Carolina. Please do not capitalize "state" if you are referring to any state.

On page 7, line 12, please replace "quality assurance/quality control" with either "quality assurance and quality control" or "quality assurance or quality control."

At line 18, how is the plan required to demonstrate this? What are you requiring?

Ashley Snyder
Commission Counsel

Date submitted to agency: June 1, 2020

At line 18, define “adversely affected.”

On page 8, line 2, please change “must” to “shall.”

At line 16, please replace “quality assurance/quality control” with either “quality assurance and quality control” or “quality assurance or quality control.”

On page 9, in (k)(3), under what circumstances does the Department concur? What factors are considered?

On page 9, lines 5 and 24, please delete or define “brief.”

At line 35, what is “community acceptance?” What is required of this evaluation?

On page 10, line 3, please delete or define “detailed.”

At line 10, please replace “run-on/run-off” with either “run-on and run-off” or “run-on or run-off.”

At line 22, define “adversely affected.”

In (o), line 24, under what circumstances does the Department “direct” that “remedial action is necessary?”

At line 25, are you using the term “imminent hazard” as defined in G.S. 130A-2?

At line 35, please delete or define “brief.”

On page 11, line 4, please define “adversely affected.”

On page 12, line 11, define “major variances.”

At line 14, define “major problems.” When is a problem considered a “major problem?” Who makes this determination?

At line 21, please replace “quality assurance/quality control” with either “quality assurance and quality control” or “quality assurance or quality control.”

At line 34, please add a comma after “populations.”

On page 13, in (s), what do you mean by “in a manner that provides for the protection of human health and the environment?” What are you requiring here?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder
Commission Counsel
Date submitted to agency: June 1, 2020

1 15A NCAC 13C .0306 is readopted as published in 34:16 NCR 1614 as follows:

2
3 **15A NCAC 13C .0306 TECHNICAL STANDARDS FOR REGISTERED ENVIRONMENTAL**
4 **CONSULTANTS**

5 (a) The REC shall ensure that ~~all documents and plans~~ the documents, plans, and time taken to complete work comply
6 with the remediating party's agreement with the ~~Department and Department,~~ the Inactive Hazardous Sites Response
7 ~~Act Act,~~ and ~~associated rules.~~ the rules of this Section.

8 (b) All work phase completion statements, schedules, ~~work~~ plans, and reports require REC certification. An REC's
9 certification shall comply with the following:

10 (1) REC certification of any document ~~requires inclusion of~~ shall include the following statement,
11 signed by the RSM and notarized:

12 "I certify ~~under penalty of law~~ that I am personally familiar with the information contained in this
13 submittal, including any and all supporting documents accompanying this certification, and that the
14 material and information contained herein is, to the best of my knowledge and belief, true, accurate,
15 and complete and complies with the Inactive Hazardous Sites Response Act G.S. 130A-310, et seq.
16 and the voluntary remedial action program Rules 15A NCAC 13C .0300. I am aware that there are
17 significant penalties for willfully submitting false, ~~inaccurate~~ inaccurate, or incomplete
18 information."

19 (2) Prior to REC certification, ~~The RSM shall certify only~~ documents ~~that~~ shall contain the following
20 notarized declaration signed and dated by, and including the title of, the highest ranking official of
21 the remediating party having day-to-day responsibility for the performance of the response action
22 which is the subject of the submittal:

23 "I certify ~~under penalty of law~~ that I have personally examined and am familiar with the information
24 contained in this submittal, including any and all documents accompanying this certification, and
25 that, based on my inquiry of those individuals immediately responsible for obtaining the
26 information, the material and information contained herein is, to the best of my knowledge and
27 belief, true, accurate and complete. I am aware that there are significant penalties for willfully
28 submitting false, ~~inaccurate~~ inaccurate, or incomplete information."

29 (3) Any work which would constitute the "practice of engineering" as defined by G.S. 89C shall be
30 performed under the responsible charge of, and signed and sealed by, a professional engineer
31 registered in the state of North Carolina. Any work which would constitute the "public practice of
32 geology" as defined by G.S. 89E shall be performed under the responsible charge of, and signed and
33 sealed by, a geologist licensed in the state of North Carolina.

34 (4) RSM certification and submittal to the Department of the following documents shall occur prior to
35 implementation:

36 (A) remedial investigation work plans prepared in accordance with Paragraph ~~(e)~~(h) of this
37 Rule;

1 (B) plans for additional site characterization, pilot studies, or treatability studies to be
2 conducted in relation to the site that are prepared in compliance with Paragraph (j) of this
3 Rule;

4 ~~(B)~~(C) remedial action plans prepared in accordance with Paragraph ~~(n)~~, (o) or (p) of this Rule;
5 and

6 (C) ~~remedial action preconstruction reports prepared in accordance with Paragraph (m) of this~~
7 Rule; and

8 (D) ~~any~~ modifications of work schedules.

9 (5) The RSM shall prepare certified completion statements for the following work phases and provide
10 them to the Department ~~at the times specified in~~ in accordance with Rule .0302(l) of this Section:

11 (A) ~~completion of phase I of the remedial investigation;~~

12 ~~(B)~~(A) completion of the remedial investigation;

13 ~~(C)~~(B) REC approval of the proposed remedial action ~~plan;~~ plan following notice of the proposed
14 remedial action plan, the close of the 30-day public comment period, submission of the
15 comments and the REC's responses to the public comments received during the public
16 comment period, and the Department's written acknowledgement that comments have been
17 addressed;

18 ~~(D)~~ completion of the remedial design and construction; and

19 (C) initiation of all groundwater remedial actions as demonstrated by the first field event
20 associated with implementation of the groundwater remedy;

21 (D) completion of all non-groundwater contamination remedial actions as demonstrated by a
22 confirmatory sampling event and REC certification of a written report pursuant to
23 Paragraph (r) of this Rule summarizing the data; and

24 (E) completion of all remedial action activities.

25 (6) RSM certification pursuant to the preceding paragraph shall include the following statement signed
26 by the RSM and notarized:

27 "The [insert work phase] which is the subject of this certification has, to the best of my knowledge,
28 been completed in compliance with the Inactive Hazardous Sites Response Act G.S. 130A-310, et
29 seq. and the voluntary remedial action program Rules 15A NCAC 13C .0300, and [insert name of
30 the REC] is in compliance with Rules .0305(b)(2) and .0305(b)(3) of this Section. I am aware that
31 there are significant penalties for willfully submitting false, ~~inaccurate~~ inaccurate, or incomplete
32 information."

33 Certification of the completion of all remedial action activities shall also include the following
34 statement:

35 "The approved and certified site remedial action plan has been implemented, and to the best of my
36 knowledge and belief, cleanup levels determined pursuant to Rule .0308 of this Section have been

1 achieved, and no significant or otherwise unacceptable risk or harm to human health or the
2 environment remains at the site."

3 (c) The RSM shall certify and submit to the Department a project status update report annually on the anniversary
4 date of the executed date of the remediating party's administrative agreement with the Department. Annual project
5 status update reports shall be submitted until the REC submits a certified completion statement pursuant to Part
6 (b)(5)(B) of this Rule for all contaminated media. Annual project status update reports shall include an update on
7 meeting the deadlines in Rule .0302(h) of this Section and in the remediating party's agreement with the Department.

8 ~~(e)(d)~~ The REC may approve and certify site activities and documents pursuant to the rules in this Section only ~~when~~
9 if the following environmental sample collection and analyses criteria are met:

10 (1) The REC shall employ analytical and environmental monitoring ~~data,~~ data to support
11 recommendations or conclusions with respect to assessment, removal, treatment, or containment
12 ~~actions, which~~ actions that are scientifically valid and of a level of precision and accuracy
13 commensurate with their stated or intended use.

14 (2) Procedures and ~~methodologies~~ methods employed for the collection and analysis of soil, sediment,
15 water, vapor, air, and waste samples shall be:

16 (A) methods published by the United States Environmental Protection Agency (USEPA), the
17 American Society for Testing and Materials (ASTM), the American Public Health
18 Association (APHA), the National Institute for Occupational Safety and Health (NIOSH),
19 the American Water Works Association (AWWA), or other organizations with expertise
20 in the development of standardized analytical testing methods; or

21 (B) modifications of published methods, provided that all modifications are completely
22 documented.

23 (3) The REC may only use laboratories certified to analyze applicable ~~certifiable~~ parameters ~~under~~
24 pursuant to 15A NCAC ~~2H~~ 02H .0800, or a contract laboratory under the United States
25 Environmental Protection Agency Contract Laboratory Program to analyze samples collected
26 pursuant to rules ~~under~~ in this Section.

27 (4) Laboratory and other reports of analyses of ~~aqueous~~ samples shall be reported ~~as mass per unit~~
28 ~~volume; such reports of analyses of solid samples shall be reported as mass per unit mass.~~ in units
29 applicable to the standards for each media analyzed.

30 (5) The REC shall only allow sample collection and analyses to be performed by persons who are
31 qualified by education, training, and experience.

32 (6) All documents prepared pursuant to the rules in this Section that contain the results of sample
33 collection and analyses shall include the following information:

34 (A) the date, location, and time of ~~sampling,~~ sampling and the name of the individual who
35 collected the sample;

36 (B) specification of all sample filtration or preservation procedures used;

- 1 (C) the date of receipt of the sample at the ~~laboratory,~~ laboratory and the ~~date(s)~~ dates the
- 2 sample was extracted and analyzed;
- 3 (D) the name and address of the ~~laboratory,~~ laboratory and proof of certification ~~under received~~
- 4 pursuant to 15A NCAC 2H 02H .0800 or approval as a contract laboratory under the
- 5 USEPA Contract Laboratory Program;
- 6 (E) the sample matrix description and identification ~~number(s);~~ numbers;
- 7 (F) the sample preparation and analytical method ~~name(s)~~ names and ~~number(s);~~ numbers;
- 8 (G) the results of the analysis ~~, in clearly expressed~~ and concentration units;
- 9 (H) the sample quantitation limit of each reported analyte based upon analytical conditions;
- 10 (I) details of ~~any~~ known conditions or findings ~~which that~~ that may affect the validity of analytical
- 11 data, including ~~but not limited to~~ equipment blank, trip blank, method blank, surrogate,
- 12 spiked sample, ~~or~~ and other quality control data;
- 13 (J) the laboratory's written justification for ~~any~~ all sample dilution, additional sample
- 14 preparation, or deviation from specified analytical methods; and
- 15 (K) a complete chain of custody documentation for each sample.

16 ~~(d)(c)~~ The REC may approve and certify site activities and documents pursuant to this Section only ~~when if~~ if procedures

17 to protect health, safety, public ~~welfare~~ welfare, and the environment during the performance of response actions are

18 being implemented. The scope and detail of health and safety procedures shall be commensurate with the degree and

19 nature of the risks posed to human and ecological populations by the disposal site and response actions. Standardized

20 health and safety plans may be appropriate for routine activities conducted during response actions. Such procedures

21 shall ~~include, without limitation,~~ at least include the following:

- 22 (1) ~~Measures~~ measures to protect human populations from exposure to hazardous ~~substances.~~
- 23 substances;
- 24 (2) ~~Air~~ air monitoring activities, if necessary to protect the public from exposure to gases and air-borne
- 25 ~~particulates.~~ particulates; and
- 26 (3) ~~Measures~~ measures necessary to contain hazardous substances, including:
 - 27 (A) measures to control stormwater ~~runoff;~~ run-off;
 - 28 (B) measures to control dust and other environmental ~~media (e.g., wetting soils);~~ media, such
 - 29 as wetting soils;
 - 30 (C) measures to decontaminate vehicles and equipment to minimize the spread of contaminated
 - 31 soil from the disposal site;
 - 32 (D) measures to secure on-site excavations and stockpiles of contaminated materials; and
 - 33 (E) discontinuance of response actions ~~where~~ if necessary to protect public health and safety.

34 ~~(e) The REC shall plan and implement the remedial investigation so that to the extent practicable the location and~~

35 ~~identity of all hazardous substances discharged to the environment at a site have been established. All areas known,~~

36 ~~suspected, or having a reasonable probability of being contaminated by hazardous substances shall be investigated.~~

1 (f) In planning the remedial investigation, the REC shall identify each area of known or suspected hazardous substance
2 contamination at the site, based on the following:

- 3 (1) then-existing laboratory data;
- 4 (2) readily observable conditions indicative of contamination, such as staining, odors, or visible or other
5 evidence of damage to or leakage from a storage facility or vessel;
- 6 (3) information ascertainable from the public record, site operation records, and information provided
7 by the remediating party; and
- 8 (4) other evidence actually known to the REC.

9 For each such area of concern, the REC shall plan, implement, and complete the remedial investigation so that, to the
10 extent practicable, the location and identity of the hazardous substances related to each area of concern are established.
11 For purposes of this Rule, the presence of chemical storage or other similar facilities shall not alone constitute evidence
12 of known or suspected contamination.

13 ~~(f)(g)~~ The REC shall plan, implement, and complete the remedial investigation so that the areal
14 and vertical extent of hazardous substance contamination is delineated to unrestricted use remedial goals, natural
15 background concentrations, or to concentrations demonstrated by the REC to be unrelated to the contaminant releases
16 comprising the site for each area of concern. The REC may demonstrate, through professional judgement, that the
17 vertical extent of contamination cannot be delineated due to technical impracticability. The technical impracticability
18 demonstration shall include a written evaluation of the usefulness of additional data, including a conclusion that:

- 19 (1) no receptor exposure to the media not sampled will take place by not collecting the data;
- 20 (2) the success of the remedial design will not be affected by not collecting the data; and
- 21 (3) collecting the data will result in additional expense with limited or no associated benefit.

22 ~~(g)(h)~~ The REC shall prepare, certify, and submit, prior to implementation of a remedial investigation,
23 one or more remedial investigation plans which are prepared in compliance with Paragraphs (e), (d), (e), and
24 ~~(f)(d), (e), (f), and (g)~~ of this Rule and any all other applicable requirements. The plan(s) shall and which
25 contain at least the following: following or include an explanation as to why, in the professional judgement of the
26 REC, the component is not relevant to the remedial investigation:

- 27 (1) site location information including street address, longitude and latitude, and site and surrounding
28 property land use;
- 29 (2) a summary of all management practices employed at the site for hazardous wastes and any wastes
30 that may have contained hazardous substances including:
 - 31 (A) a list of types and amounts of waste generated (with RCRA waste codes), treatment and
32 storage methods, and ultimate disposition of wastes;
 - 33 (B) a description of the facility's past and current RCRA status;
 - 34 (C) the location and condition of all identified vessels currently or previously used to store any
35 chemical products, hazardous substances, or wastes; and
 - 36 (D) a summary of the nature of all identified on-site hazardous substance releases, including
37 disposal or spills;

- 1 (3) United States Geological Survey topographic maps sufficient to display topography within a one-
- 2 mile radius of the site;
- 3 (4) ~~a site survey plat including: scale; benchmarks; north arrow; a map, drawn to scale, that includes:~~
- 4 (A) a north arrow;
- 5 (B) a scale;
- 6 (C) the locations of property boundaries, buildings, structures, all perennial and non-perennial
- 7 surface water features, drainage ditches, dense vegetation, known and suspected spill or
- 8 disposal areas, areas identified pursuant to Paragraph (f) of this Rule, underground utilities,
- 9 storage vessels, existing on-site wells; and
- 10 (D) an identification of all adjacent property owners and land uses. usage. As provided in G.S.
- 11 89C-2, it is unlawful for any person to practice land surveying in North Carolina, as defined
- 12 in G.S. 89C, unless such person has been duly registered as a registered land surveyor;
- 13 (5) a description of local geologic and hydrogeologic conditions;
- 14 (6) an inventory and map of all identifiable wells, springs, and surface-water intakes used as sources of
- 15 potable water within a ~~one-half mile~~ 1,500 foot radius of each source area or within a 1,500 foot
- 16 radius of the contaminant perimeter, or, if the source area is unknown, within a ~~one-half mile~~ 1,500
- 17 foot radius of each point where contamination has been identified at the site;
- 18 (7) an evaluation of the site and all adjacent property for the existence ~~of any environmentally sensitive~~
- 19 ~~areas; of the following areas if they may have been affected by the contamination from the site:~~
- 20 (A) sensitive environments;
- 21 (B) sensitive populations or property uses; and
- 22 (C) above and below ground structures and utilities.
- 23 (D) ~~a copy of the current owner's(s') deed(s) to the property;~~
- 24 ~~(9)(8)~~ a chronological listing of all previous owners and each period of ownership since the property was
- 25 originally ~~developed; developed from pristine land;~~
- 26 ~~(10)(9)~~ operational ~~history~~ history, including with aerial photographs and Sanborne Fire Insurance maps if
- 27 used to support land-use history;
- 28 ~~(11)(10)~~ a list of all hazardous substances ~~which that~~ have been used or stored at the ~~site, site~~ and the
- 29 approximate amounts and dates of use or ~~storage~~ storage, as revealed by available written
- 30 documentation and interviews with a representative number of former and current employees or
- 31 occupants possessing relevant information;
- 32 ~~(12)(11)~~ the site environmental permit history, including copies of all federal, state, and local environmental
- 33 permits, past and present, issued to the remediating party or within its custody or control;
- 34 ~~(13)(12)~~ a summary of all previous and ongoing environmental investigations and environmental regulatory
- 35 involvement with the ~~site, site~~ and copies of all associated reports and laboratory data in public
- 36 ~~records, records~~ or within the custody or control of the REC or remediating ~~party; party unless the~~

1 REC confirms that the documents are already present in the Department's electronic document
2 system for REC site records;

3 (13) plans to evaluate the risk of contaminant migration in any media to:

4 (A) wells, springs, and surface-water intakes identified in Subparagraph (6) of this Rule; and

5 (B) sensitive environments, sensitive populations or property uses, or above and below ground
6 structures or utilities identified in Subparagraph (7) of this Rule;

7 (14) intended procedures for characterizing site geologic and hydrogeologic conditions and identifying
8 and delineating each contamination source as to each affected environmental medium, including
9 any ~~plan~~ plans for special assessment such as a geophysical survey;

10 (15) intended methods, locations, depths of, and justification ~~for,~~ for all sample collection points for all
11 media sampled, including monitoring well locations and anticipated screened intervals;

12 (16) proposed field and laboratory procedures for quality assurance/quality control;

13 (17) proposed analytical parameters and analytical methods for all samples;

14 (18) equipment and personnel decontamination procedures; and

15 (19) a description of measures ~~health and safety plan that conforms to the federal Occupational Safety~~
16 and Health Act, 29 U.S.C. ' 651, et seq. and Title 29 of the Code of Federal Regulations, and ~~that~~
17 assures ~~assure~~ that the health and safety of nearby residential and business communities ~~by~~
18 demonstrating that they will not be adversely affected by activities related to the remedial
19 investigation.

20 ~~(h)(i)~~ The REC ~~may certify~~ shall prepare, certify, and submit ~~only~~ remedial investigation reports ~~which are~~ prepared
21 in compliance with ~~Paragraph (c)~~ of this Rule and ~~any all~~ other applicable requirements. The reports shall and which
22 contain at least the following:

23 (1) an update on meeting the deadlines required by Rule .0302(h) of this Section and by the remediating
24 party's agreement with the Department;

25 ~~(1)(2)~~ a narrative description of how the investigation was conducted, including a discussion of ~~any all~~
26 variances from the approved work plan;

27 ~~(2)(3)~~ a description of groundwater monitoring well design and installation procedures, including drilling
28 methods used, completed drilling logs, "as built" drawings of all monitoring wells, well construction
29 techniques and materials, geologic logs, and copies of all well installation permits;

30 ~~(3)(4)~~ a map, drawn to scale, showing all ~~soil sample and monitoring well locations~~ environmental media
31 sample locations, test pits, surficial soil samples, soil borings, soil vapor samples, surface water
32 samples, sediment samples, and monitoring wells in relation to ~~known~~ disposal areas or other
33 sources of contamination identified pursuant to Paragraph (f) of this Rule. ~~Monitoring wells shall~~
34 be surveyed to a known benchmark and groundwater elevations to a known datum. ~~Soil sample~~ All
35 sample locations shall be surveyed to a known benchmark or flagged with a secure marker until
36 after the remedial action is completed. Groundwater elevations shall be surveyed to a known datum.
37 As provided in G.S. 89C 2, it is unlawful for any person to practice land surveying in North

1 ~~Carolina, as defined in G.S. 89C, unless such person has been duly registered as a registered land~~
2 ~~surveyor; Any survey performed pursuant to this Paragraph must be performed by a registered land~~
3 ~~surveyor duly authorized under North Carolina law to conduct such activities;~~

4 ~~(4)(5)~~ a description of all field and laboratory quality control and quality assurance procedures followed
5 during the remedial investigation;

6 ~~(5)(6)~~ a description of procedures used to manage drill cuttings, purge ~~water~~ water, and decontamination
7 water;

8 ~~(6)(7)~~ a summary of site geologic conditions, including a description of soils and vadose zone
9 characteristics;

10 ~~(7)(8)~~ a description of site hydrogeologic conditions if groundwater assessment is determined to be
11 necessary); contamination is known or suspected to be present, including current uses of
12 groundwater, notable aquifer characteristics, a water table elevation contour map with groundwater
13 flow patterns depicted, and tabulated groundwater elevation data;

14 ~~(8)(9)~~ tabulation of analytical results for all sampling (~~including~~ including sampling dates and soil
15 sampling ~~depths~~) depths and copies of all laboratory ~~reports~~ reports, including quality
16 assurance/quality control documentation;

17 ~~(9)(10)~~ soil, groundwater, surface water and sediment contaminant delineation maps and cross sections,
18 including scale and sampling points with contaminant concentrations; if contaminants exceed
19 cleanup levels pursuant to Rule .0308 of this Section, soil, groundwater, surface water, and sediment
20 contaminant delineation maps for each primary constituent of concern, including scale and sampling
21 points with contaminant concentrations;

22 ~~(11)~~ if contaminants exceed cleanup levels pursuant to Rule .0308 of this Section, cross sections,
23 including scale and sampling points with contaminant concentrations;

24 ~~(12)~~ a description of the risk of contaminant migration in any media to:

25 (A) wells, springs, and surface water intakes identified in Subparagraph (h)(6) of this Rule; and

26 (B) sensitive environments, sensitive populations or property uses, or above and below ground
27 structures and utilities identified in Subparagraph (h)(7) of this Rule;

28 ~~(10)(13)~~ a description of procedures and the results of ~~any~~ special assessments such as geophysical surveys,
29 immunoassay testing, soil gas surveys, or test pit excavations; and

30 ~~(11)(14)~~ color copies of site ~~photographs~~, photographs if used to provide documentation of the investigation
31 results.

32 (j) If an REC elects to conduct a pilot study, or further contaminant characterization is needed to evaluate a potential
33 remedy, the REC shall prepare, certify, and submit, prior to implementation, a work plan prepared in compliance with
34 Paragraphs (d) and (e) of this Rule and other applicable requirements. The work plan shall also contain a description
35 of additional site characterization, pilot studies, and treatability studies to be conducted in relation to the site.

36 ~~(k)~~ Any A proposed remedy which that would:

37 (1) be conducted entirely on site and for which a permit waiver is desired under G.S. 130A-310.3(e);

1 (2) ~~involve on site containment or capping;~~ include institutional controls for restricted use of
2 contaminated areas or media; or

3 (3) exceed the ~~three million dollars (\$3,000,000) cost maximum contained~~ set forth in G.S. 130A-
4 310.9(a) ~~without a waiver,~~ shall require Department concurrence prior to implementation. To
5 request Department concurrence. ~~The~~ the REC shall submit to the Department a brief summary of
6 available remedies, their projected costs, and ~~in each case~~ the reasons why a remedy was accepted
7 or rejected.

8 ~~(j)(l)~~ Thirty days prior to approving ~~any~~ a remedial action plan, the REC shall provide notice of the proposed remedial
9 action plan to those who have requested notice that such plans have been developed, as provided in G.S. 130A-
10 310.4(c)(2). The REC shall provide proof of such notice and ~~any~~ of resulting comments from the public to the
11 Department prior to approval of the remedial action plan.

12 ~~(k)(m)~~ Remedial actions that involve the emission or discharge of hazardous substances to the atmosphere shall be
13 conducted in a manner that provides for the protection of human health and the environment, in conformance with
14 this Section and ~~any~~ all applicable permits, approvals, ~~laws~~ laws, or other rules or regulations.

15 ~~(l)(n)~~ The REC ~~may certify~~ shall prepare, certify, and submit, prior to implementation of a contaminant remedy, only
16 remedial action plans ~~which are~~ prepared in compliance with Paragraphs ~~(e), (d), (i), (j), and (k), (d), (e), (k), (l), and~~
17 ~~(m)~~ (m) of this Rule and ~~any~~ all other applicable ~~requirements~~ requirements. ~~The plans shall and which~~ contain ~~at least~~ the
18 following:

19 (1) A ~~a~~ discussion of the results of the remedial ~~investigation~~ investigation, including media
20 contaminated, contaminants of concern, ~~and~~ the areal and vertical extent of ~~contamination.~~
21 contamination, and the risk of contaminant migration in any media to any wells, springs, and
22 surface-water intakes, sensitive environments, sensitive populations or property uses, and above and
23 below ground structures or utilities identified in Subparagraph (i)(12) of this Rule;

24 (2) A ~~a~~ brief statement of objectives for the remedial ~~action.~~ action;

25 (3) ~~An~~ an evaluation of available remedial alternatives using the following feasibility study criteria:

26 (A) protection of human health and the environment, including attainment of cleanup levels;

27 (B) compliance with applicable federal, ~~state~~ State, and local regulations;

28 (C) long-term effectiveness and permanence;

29 (D) reduction of toxicity, mobility and volume;

30 (E) short-term effectiveness, ~~i.e.,~~ such as effectiveness at minimizing the impact of the site
31 remedial action on the environment and the local community;

32 (F) implementability, ~~i.e.,~~ such as technical and logistical ~~feasibility,~~ feasibility and including
33 an estimate of time required for completion;

34 (G) cost; and

35 (H) community ~~acceptance.~~ acceptance;

36 (4) a description of the results of site characterization, pilot studies, or treatability studies that support
37 the design and a description of the procedures and schedule for construction, operation and

maintenance, system monitoring and performance evaluation, and progress reporting for the chosen remedial alternative;

~~(4)(5)~~ A a detailed description and conceptual design of the proposed remedy, including process flow diagrams and pre-design drawings of all major components of ~~the all~~ treatment ~~train~~ ;

~~(5)(6)~~ A a demonstration that the proposed remedy is supported by the remedial alternative feasibility study conducted pursuant to Subparagraph ~~(1)(3)(n)(3)~~ of this ~~Rule~~. Rule;

~~(6)(7)~~ A a description of all activities necessary to implement the proposed ~~method(s)~~ methods of remedial action in compliance with applicable laws and regulations and in such a manner ~~such~~ that cleanup standards are met. These activities shall include, ~~but are not limited to~~, well installation and abandonment, sampling, run-on/run-off control, discharge of treated waste streams, and management of investigation and remedial action derived ~~wastes~~. wastes;

~~(7)~~ A ~~description of any proposed treatability studies and additional site characterization needed to support the final design.~~

~~(8)~~ A ~~description of procedures and a schedule for additional site characterization, treatability studies, final design, construction, operation and maintenance, system monitoring and performance evaluation, and progress reporting.~~

~~(9)(8)~~ A a description of the criteria for remedial action completion, including procedures for ~~post-remedial and confirmatory sampling~~. sampling;

~~(10)(9)~~ A a ~~health and safety plan~~ description of measures that ~~eonforms to the federal Occupational Safety and Health Act, 29 U.S.C. '651, et seq. and Title 29 of the Code of Federal Regulations, and assures protect that~~ the health and safety of nearby residential and business communities by demonstrating they will not be adversely affected by activities related to the remedial ~~action~~. action; and

~~(11)(10)~~ Equipment equipment and personnel decontamination procedures.

(o) If, in the opinion of the REC or as directed by the Department, interim remedial action is necessary to abate an imminent hazard or for removal of waste or chemical sources to protect public health, safety, and welfare and the environment from hazardous substances migrating toward receptors or other properties prior to development of a remedial action plan pursuant to Paragraph (n) of this Rule, the REC shall prepare, certify, and submit, prior to implementation, an interim remedial action plan prepared in compliance with Paragraphs (d), (e), (k), (l), and (m) of this Rule and other applicable requirements that contains the following:

(1) a discussion of the remedial investigation data collected to date, including media contaminated, contaminants of concern, the known areal and vertical extent of contamination, and the risk of contaminant migration in media to any wells, springs, and surface water intakes, sensitive environments, sensitive populations or property uses, and above and below ground structures or utilities identified during the remedial investigation;

(2) a brief statement of objectives for the interim remedial action;

(3) a description and conceptual design of the proposed interim remedial action, including process flow diagrams and pre-design drawings of all major components of all treatments;

1 (4) a description of all activities necessary to implement the proposed methods of interim remedial
2 action in compliance with applicable laws and regulations.

3 (5) a description of measures that assure the health and safety of nearby residential and business
4 communities by demonstrating they will not be adversely affected by activities related to the interim
5 remedial action; and

6 (6) equipment and personnel decontamination procedures.

7

(p) The REC may change an approved remedy. In such cases, the REC shall prepare a revised remedial action plan
8 in compliance with Paragraph (n) of this Rule.

9

~~(m) Prior to beginning construction, the REC shall certify remedial action preconstruction reports which contain at~~
10 ~~least the following:~~

11 ~~(1) the results of all treatability studies and additional site characterization work completed since the~~
12 ~~remedial investigation;~~

13 ~~(2) final engineering design report, including a narrative description of process design, final plans and~~
14 ~~specifications, and an updated project schedule; and~~

15 ~~(3) copies of final registrations, permits and approvals.~~

16

~~(n) The REC may certify only remedial action construction completion reports which contain at least:~~

17 ~~(1) "as built" plans and specifications;~~

18 ~~(2) a summary of major variances from the final design plans; and~~

19 ~~(3) a summary of any problems encountered during construction.~~

20

~~(o) The REC shall prepare and certify quarterly remedial action progress reports for remedial actions of greater than~~
21 ~~three months duration. Groundwater remedial action progress reports may be prepared on an annual basis after the~~
22 ~~first full year of remedial action and the completion of four quarterly monitoring events. The REC may certify only~~
23 ~~remedial action progress reports which are prepared in compliance with Paragraph (c) of this Rule and any other~~
24 ~~applicable requirements and which contain at least the following:~~

25 ~~(1) operation and maintenance results, i.e., summaries of remedial action operating and maintenance~~
26 ~~requirements and a discussion of major problems encountered;~~

27 ~~(2) performance evaluation results, i.e., tabulated and graphical presentations of monitoring data and a~~
28 ~~comparison of remedial action performance to design goals;~~

29 ~~(3) a description of all field and laboratory quality control and quality assurance procedures followed~~
30 ~~during any sampling and analysis;~~

31 ~~(4) tabulation of analytical results for all sampling and copies of all laboratory reports including quality~~
32 ~~assurance/quality control documentation; and~~

33 ~~(5) a map, drawn to scale, showing all soil sample and monitoring well locations.~~

34

(q) The REC shall prepare, certify, and submit remedial action progress reports in compliance with Paragraph (d) of
35 this Rule and all other applicable requirements beginning after the REC has certified approval of the remedial action
36 plan pursuant to Part (b)(5)(B) of this Rule. Remedial action progress reporting shall continue until remedial action is
37 complete. Remedial action progress reports shall be submitted quarterly until one year after the construction of the

1 remedy is complete. After the first year of progress reporting or if a remedy that includes no construction component
2 is being implemented, remedial action progress reports shall be submitted annually until remedial action is complete.
3 Remedial action progress reports shall include, for the reporting period, an update on meeting the deadlines in Rule
4 .0302(h) of this Section and the remediating party's agreement with the Department and the following:

5 (1) a description of the results of all site characterization, pilot studies, or treatability studies completed
6 since certification of the remedial action plan;

7 (2) the final engineering design report, including a narrative description of process design, final plans
8 and specifications, and an updated project schedule;

9 (3) copies of any final registrations, permits, and approvals;

10 (4) "as built" plans and specifications;

11 (5) a summary of all major variances from the original design plans;

12 (6) a summary of all problems encountered during construction;

13 (7) operation and maintenance results of the treatment technology utilized, such as summaries of
14 remedial action operating and maintenance requirements and a discussion of major problems
15 encountered;

16 (8) performance evaluation results, including tabulated and graphical presentations of monitoring data
17 and a comparison of remedial action performance to design goals;

18 (9) a description of all field and laboratory quality control and quality assurance procedures followed
19 during all sampling and analysis;

20 (10) tabulation of analytical results for all sampling and copies of all laboratory reports including quality
21 assurance/quality control documentation;

22 (11) a map, drawn to scale, showing all soil sample and monitoring well locations;

23 (12) if contaminants exceed cleanup levels pursuant to Rule .0308 of this Section, current soil,
24 groundwater, surface water, and sediment contaminant delineation maps for each primary
25 contaminant of concern, including scale and sampling points with contaminant concentrations;

26 (13) if groundwater contamination exists at the site in excess of cleanup levels established pursuant to
27 Rule .0308 of this Section, upon construction completion certification by the REC and at least every
28 five years thereafter until remedial action is complete, an update of the information required
29 pursuant to Subparagraphs (h)(6) and (7) of this Rule shall be included. The update shall also include
30 an evaluation of the necessity to implement additional remedial action, and a remedial action plan
31 if the REC determines a need exists, to address a risk of contaminant migration in any environmental
32 media to any of the following:

33 (A) identified wells, springs, and surface-water intakes;

34 (B) identified sensitive environments, sensitive populations or property uses; and

35 (C) above and below ground structures or utilities; and

36 (14) sampling and analytical results that demonstrate progress toward achieving remedial goals.

1 ~~(p)(r)~~ The REC ~~may certify shall prepare, certify, and submit only~~ final remedial action completion reports ~~which~~
2 ~~that contain at least the following:~~ following, unless provided in a previous progress report:

- 3 (1) a final progress report ~~which that~~ includes all the information required ~~under~~ pursuant to Paragraph
4 ~~(o)(q)~~ of this Rule;
- 5 (2) a summary of remedial action operating experience and effectiveness in meeting design goals, based
6 on all performance monitoring data and progress reporting to date; and
- 7 (3) a discussion of criteria for ~~remedial action completion,~~ completing the remedial action and a
8 demonstration, supported by confirmatory sampling data, that such criteria have been ~~satisfied;~~
9 satisfied. ~~and~~
- 10 ~~(4) a summary of total project costs.~~

11 ~~(q)(s)~~ In the performance of its role pursuant to the rules in this Section, the REC shall manage investigation ~~of~~ and
12 remedial action derived wastes in a manner that provides for the protection of human health and the environment and
13 that complies with all applicable federal, ~~state,~~ State, and local laws, rules, and regulations.

14
15 *History Note: Authority G.S. 130A-310.12(b);*
16 *Eff. April 1, 1997. 1997;*
17 *Readopted Eff. July 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 13C .0307

DEADLINE FOR RECEIPT: June 12, 2020

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

At line 6, do you mean "may" or "shall?"

At line 19, what other actions may be "necessary?"

At line 20, which "other applicable requirements" are you referring to?

Where is your statutory authority for the "administrative fee" in (c)? How much is the fee?

In (d), line 27, do you mean "may" or "shall?" If you mean "may," under what circumstances does the Department terminate a site's eligibility?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder
Commission Counsel
Date submitted to agency: June 1, 2020

1 15A NCAC 13C .0307 is readopted as published in 34:16 NCR 1614 as follows:

2
3 **15A NCAC 13C .0307 DEPARTMENTAL AUDITS AND INSPECTIONS**

4 (a) The Department may conduct random or targeted audits of any REC, remediating party, response action or site
5 ~~which~~ that is subject to this Section.

6 (b) During Departmental audits of voluntary remedial actions, the Department may:

7 (1) request that the person who has performed the response action provide a written ~~explanation,~~
8 explanation or other supporting evidence, to demonstrate compliance with this Section and other
9 applicable requirements;

10 (2) request that the person who has performed the response action or who is the subject of the audit
11 appear at one of the Department's offices for an interview to provide an oral ~~explanation,~~ explanation
12 or other ~~evidence,~~ evidence to demonstrate compliance with this Section and other applicable
13 ~~requirements~~ requirements. ~~(any~~ Any person requested to appear for an interview may be
14 accompanied by an attorney or other ~~representative);~~ representative;

15 (3) visit a site or other location to determine whether an REC, remediating party, response ~~action~~ action,
16 or site is in compliance with this Section and other applicable requirements;

17 (4) investigate, take samples at a ~~site~~ site, and inspect records, conditions, ~~equipment~~ equipment, or
18 practices material to the response ~~action,~~ action or property related to the site; or

19 (5) take any other action ~~the Department deems~~ necessary to determine whether response actions have
20 been performed in compliance with this Section and other applicable requirements.

21 (c) ~~In order to participate in the voluntary remedial action program governed by this Section, Remediating~~ remediating
22 parties shall provide financial ~~assurance,~~ assurance by paying an annual ~~administration~~ administrative fee. ~~cost, to~~
23 ~~participate in the voluntary remedial action program under this Section. This payment~~ The fee shall be set by the
24 Department based on the expected cost of auditing voluntary remedial actions and shall be used to offset that cost.
25 Remediating parties ~~providing such monies who pay this fee~~ shall also annually pay any ~~shortfall,~~ shortfall or be
26 reimbursed any remainder not expended by the ~~Department,~~ Department annually.

27 (d) Based on audit findings, the Department may terminate a site's eligibility for the voluntary remedial action
28 program, disqualify an RSM or REC from work on a site or from the ~~program, and take any~~ program or take other
29 applicable enforcement action.

30
31 *History Note: Authority G.S. 130A-310.9(b); 130A-310.12(b);*

32 *Eff. April 1, 1997. 1997;*

33 *Readopted Eff. July 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 13C .0308

DEADLINE FOR RECEIPT: June 12, 2020

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), how are RECs required to demonstrate this? What information are they required to provide?

In (a), what are the "most nearly applicable cleanup standards? Who makes that determination and what factors are considered?

In (b), line 7, please delete or define "successfully."

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder
Commission Counsel
Date submitted to agency: June 1, 2020

1 15A NCAC 13C .0308 is readopted as published in 34:16 NCR 1614 as follows:

2

3 **15A NCAC 13C .0308 CLEANUP LEVELS**

4 (a) RECs shall ~~ensure~~ demonstrate that the Department's ascertainment of the most nearly applicable cleanup
5 standards as would be applied ~~under~~ pursuant to CERCLA/SARA are met.

6 (b) Characterization of risks to health, safety, public welfare, and the environment is not required ~~under~~ pursuant to
7 this Section for a disposal site, environmental medium, or chemical for which response actions have successfully
8 reduced concentrations of hazardous substances to on-site natural background levels.

9

10 *History Note: Authority G.S. 130A-310.3(d); 130A-310.12(b);*

11 *Eff. April 1, ~~1997~~. 1997;*

12 *Readopted Eff. July 1, 2020.*