

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 264.1

HAZARDOUS WASTE MANAGEMENT:  
STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE  
TREATMENT, STORAGE, AND DISPOSAL FACILITIES

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Historical note: This chapter is based substantially upon chapter 11-264. [Eff 6/18/94; am 3/13/99; comp 9/20/99; R 7/17/17]

**§11-264.1-1 Incorporation of 40 C.F.R. part 264.**

Title 40, part 264 of the Code of Federal Regulations (C.F.R.), published by the Office of the Federal Register, as amended as of July 1, 2022, is made a part of this chapter subject to the substitutions and amendments set forth in sections 11-264.1-2 to 11-264.1-24. [Eff 7/17/17; am and comp 9/30/18; am and comp 6/25/20; am and comp 6/7/21; am and comp  
JAN 29 2024 ] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

**§11-264.1-2 Substitution of state terms and citations for federal terms and citations.** (a) The following federal terms are replaced by the indicated state terms in all provisions of 40 C.F.R. part 264, as incorporated and amended in this chapter, except as listed in subsection (b):

- (1) "Administrator", "Assistant Administrator", "Assistant Administrator for Solid Waste and

Emergency Response", "EPA Administrator", "EPA Regional Administrator", "Regional Administrator", "Regional Administrator or State Director", and "State Director" shall be replaced with "director".

- (2) "Agency", "appropriate regional EPA office", "Environmental Protection Agency", "EPA", "EPA Headquarters", "EPA regional office", "EPA Regions", "U.S. Environmental Protection Agency", and "United States Environmental Protection Agency" shall be replaced with "state department of health" except in references to "EPA Acknowledgment of Consent", "EPA form(s)", "EPA guidance", "EPA hazardous waste numbers(s)", "EPA ID number", "EPA identification number(s)", "EPA manual(s)", "EPA publication(s)", and "EPA test methods".
- (3) "Section 3008 of RCRA" shall be replaced with "42 U.S.C. section 6928 or section 342J-7, HRS".
- (4) "RCRA Section 3008(h)" and "RCRA 3008(h)" shall be replaced with "42 U.S.C. section 6928(h) or section 342J-36, HRS".

(b) The federal terms listed in subsection (a) are not replaced with state terms in the following sections of 40 C.F.R. part 264, as incorporated and amended in this chapter:

- (1) 40 C.F.R. sections 264.12 and 264.71.
- (2) 40 C.F.R. part 264, subpart FF.
- (3) The second occurrence of "EPA" in 40 C.F.R. section 264.1082(c)(4)(ii).

(c) All references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 264, as incorporated and amended in this chapter, shall mean the Hawaii Administrative Rules analog of the referenced federal regulation, as incorporated and amended in chapters 11-260.1 to 11-279.1, except as listed in subsection (d). The Hawaii Administrative Rules analogs are as follows:

Federal citation	State analog
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<u>40 C.F.R. part</u>	<u>chapter 11-</u>
124	271.1
260	260.1
261	261.1
262	262.1
263	263.1
264	264.1
265	265.1
266	266.1
268	268.1
270	270.1
273	273.1
279	279.1

(d) The following references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 264, as incorporated and amended in this chapter, refer to the federal regulations in the Code of Federal Regulations:

- (1) The references in 40 C.F.R. sections 264.1033(n)(1)(i), 264.1033(n)(2)(i), 264.1033(n)(3)(i), 264.1082(c)(2)(vii)(A), 264.1082(c)(2)(viii)(A), and 264.1087(c)(5)(i)(D).
- (2) References to 40 C.F.R. sections 262.25, 268.5, 268.6, and 268.42(b). [Eff 7/17/17; comp 9/30/18; am and comp 6/25/20; am and comp 6/7/21; am and comp <sup>JAN 29 2024</sup> ]  
(Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

**§11-264.1-3 Amendments to the incorporation of 40 C.F.R. part 264, subpart A.** (a) The incorporation by reference of 40 C.F.R. section 264.1 is amended as follows:

- (1) In 40 C.F.R. section 264.1(a), replace "national standards" with "state standards".
- (2) Replace 40 C.F.R. section 264.1(d) in its entirety to read: "(d) Underground injection

of hazardous waste is prohibited in the State of Hawaii.”

- (3) 40 C.F.R. section 264.1(f) is excluded from incorporation.
- (4) In 40 C.F.R. section 264.1(g)(1), replace “a State” with “the State”.
- (5) In 40 C.F.R. section 264.1(g)(8)(iii), replace “parts 122 through 124 of this chapter” with “chapter 11-55”.
- (6) In 40 C.F.R. section 264.1(g)(11)(iv), delete “and”.
- (7) In 40 C.F.R. section 264.1(g)(11)(v), replace the period at the end of the subparagraph with a semicolon.
- (8) In 40 C.F.R. section 264.1(g)(11), add a subparagraph (vi) to read: “(vi) Electronic items as described in 40 C.F.R. section 273.6.1, as incorporated and amended in section 11-273.1-1; and”.
- (9) In 40 C.F.R. section 264.1(g)(11), add a subparagraph (vii) to read: “(vii) Solar panels as described in 40 C.F.R. section 273.6.2, as incorporated and amended in section 11-273.1-1.”
- (10) 40 C.F.R. section 264.1(g)(12) is excluded from incorporation.

(b) The incorporation by reference of 40 C.F.R. section 264.4 is amended as follows: insert “or section 342J-8, HRS” after “RCRA”. [Eff 7/17/17; am and comp 9/30/18; am and comp 6/25/20; am and comp 6/7/21; comp JAN 29 2024 ] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

**§11-264.1-4 Amendments to the incorporation of 40 C.F.R. part 264, subpart B.** (a) The incorporation by reference of 40 C.F.R. section 264.12 is amended as follows: add a new subsection (d) to read: “(d) Any person who imports hazardous waste into the State from

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a foreign country or from any state must comply with section 11-262.1-16."

(b) The incorporation by reference of 40 C.F.R. section 264.13 is amended as follows:

(1) In 40 C.F.R. section 264.13(b)(3), delete the entire Comment.

(2) In 40 C.F.R. section 264.13(b)(7)(iii), delete "under §260.22 of this chapter".

(c) The incorporation by reference of 40 C.F.R. section 264.15 is amended as follows:

(1) In 40 C.F.R. section 264.15(b)(4), insert "264.273," after "264.254,".

(2) 40 C.F.R. section 264.15(b)(5) is excluded from incorporation.

(d) The incorporation by reference of 40 C.F.R. section 264.18 is amended as follows: in 40 C.F.R. section 264.18(c), delete ", except for the Department of Energy Waste Isolation Pilot Project in New Mexico". [Eff 7/17/17; am and comp 9/30/18; am and comp 6/25/20; comp 6/7/21; comp JAN 29 2024 ] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

**§11-264.1-5 (Reserved).**

**§11-264.1-6 Amendments to the incorporation of 40 C.F.R. part 264, subpart D.** (a) The incorporation by reference of 40 C.F.R. section 264.52 is amended as follows: in 40 C.F.R. section 264.52(d), replace "names, addresses, and phone numbers (office and home)" with "names and emergency telephone numbers".

(b) The incorporation by reference of 40 C.F.R. section 264.56 is amended as follows: in 40 C.F.R. section 264.56(d)(2), replace "either the government official designated as the on-scene coordinator for that geographical area, or" with "the government official designated as the on-scene coordinator from the Hawaii department of health's Hazard Evaluation

and Emergency Response Office via the State Hospital at (808) 247-2191 after business hours or directly at (808) 586-4249 during business hours and". [Eff 7/17/17; comp 9/30/18; am and comp 6/25/20; comp 6/7/21; comp JAN 29 2024 ] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

**§11-264.1-7 Amendments to the incorporation of 40 C.F.R. part 264, subpart E.** (a) The incorporation by reference of 40 C.F.R. section 264.70 is amended as follows: 40 C.F.R. section 264.70(b) is excluded from incorporation.

(b) The incorporation by reference of 40 C.F.R. section 264.73 is amended as follows:

- (1) In 40 C.F.R. section 264.73(b)(4), replace "§ 264.56(j);" with "40 C.F.R. section 264.56(i), as incorporated and amended in this chapter;".
- (2) In 40 C.F.R. section 264.73(b)(10), replace ", a petition" with "or a petition" and delete "or a certification under §268.8 of this chapter,".
- (3) In 40 C.F.R. section 264.73(b)(11) and 264.73(b)(12) delete ", and the certification and demonstration, if applicable," and "or §268.8".
- (4) In 40 C.F.R. section 264.73(b)(13), delete ", and the certification and demonstration if applicable,", one § symbol, and "and 268.8, whichever is applicable".
- (5) In 40 C.F.R. section 264.73(b)(14), delete ", and the certification and demonstration if applicable, required under §268.8, whichever is applicable".
- (6) In 40 C.F.R. section 264.73(b)(15) and 264.73(b)(16), delete ", and the certification and demonstration if applicable," and "or §268.8".

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(c) The incorporation by reference of 40 C.F.R. section 264.75 is amended as follows: replace "the following" with "each".

(d) The incorporation by reference of 40 C.F.R. section 264.77 is amended as follows: in 40 C.F.R. section 264.77(a), replace "\$ 264.56(j);" with "40 C.F.R. section 264.56(i), as incorporated and amended in this chapter;". [Eff 7/17/17; am and comp 9/30/18; am and comp 6/25/20; comp 6/7/21; am and comp  
JAN 29 2024 ] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

**§11-264.1-8 (Reserved) .**

**§11-264.1-9 Amendments to the incorporation of 40 C.F.R. part 264, subpart G.** (a) The incorporation by reference of 40 C.F.R. section 264.113 is amended as follows: 40 C.F.R. section 264.113(e)(7)(v) is excluded from incorporation.

(b) The incorporation by reference of 40 C.F.R. section 264.116 is amended as follows: replace "local zoning authority" with "county and local zoning authority" in both instances. [Eff 7/17/17; comp 9/30/18; comp 6/25/20; comp 6/7/21; comp  
JAN 29 2024 ] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

**§11-264.1-10 Amendments to the incorporation of 40 C.F.R. part 264, subpart H.** (a) The incorporation by reference of 40 C.F.R. section 264.143 is amended as follows: in 40 C.F.R. section 264.143(h), replace "Region, identical evidence of financial assurance must be submitted to and maintained with the Regional Administrators of all such Regions" with "state,



identical evidence of financial assurance must be submitted to and maintained with the state agency regulating hazardous waste in all such states or with the appropriate Regional Administrator if the facility is located in an unauthorized state".

(b) The incorporation by reference of 40 C.F.R. section 264.145 is amended as follows: in C.F.R. section 264.145(h), replace "Region, identical evidence of financial assurance must be submitted to and maintained with the Regional Administrators of all such Regions" with "state, identical evidence of financial assurance must be submitted to and maintained with the state agency regulating hazardous waste in all such states or with the appropriate Regional Administrator if the facility is located in an unauthorized state".

(c) The incorporation by reference of 40 C.F.R. section 264.147 is amended as follows:

- (1) In 40 C.F.R. section 264.147(a)(1)(i) and (b)(1)(i), replace ", or Regional Administrators if the facilities are located in more than one Region" with ". If the facilities are located in more than one state, identical evidence of financial assurance must be submitted to and maintained with the state agency regulating hazardous waste in all such states or with the appropriate Regional Administrator if the facility is located in an unauthorized state". Replace "a Regional Administrator" with "the director".
- (2) In 40 C.F.R. section 264.147(g)(2)(i) and (ii), replace "each State in which a facility covered by the guarantee is located" with "the State of Hawaii" and replace "in that State" with "in their respective states".
- (3) In 40 C.F.R. section 264.147(i)(4), replace "each state in which a facility covered by the surety bond is located" with "the State of Hawaii" and replace "in that State" with "in their respective states".

(d) 40 C.F.R. sections 264.149 and 264.150 are excluded from the incorporation by reference of 40 C.F.R. part 264.

(e) The incorporation by reference of 40 C.F.R. section 264.151 is amended as follows: replace 40 C.F.R. section 264.151 in its entirety to read:

"§264.151 Wording of the instruments.

(a) (1) A trust agreement for a trust fund, as specified in 40 C.F.R. section 264.143(a) or 264.145(a), as incorporated and amended in this chapter, or 40 C.F.R. section 265.143(a) or 265.145(a), as incorporated and amended in section 11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### TRUST AGREEMENT

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

Whereas, the Department of Health, State of Hawaii, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility shall provide assurance that funds will be available when needed for closure and/or post-closure care of the facility,

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

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

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

Section 1. Definitions. As used in this Agreement:

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

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

(c) The term "department" means the Department of Health, State of Hawaii.

(d) The term "director" means the director of the Department of Health, State of Hawaii.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and cost estimates identified on attached Schedule A [on Schedule A, for each facility list the EPA Identification Number, name, address, and the current closure and/or post-closure cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement].

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

Section 4. Payment for Closure and Post-Closure Care. The Trustee shall make payments from the Fund as the director shall direct, in writing, to provide for the payment of the costs of closure and/or post-closure care of the facilities covered by this

Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the director from the Fund for closure and post-closure expenditures in such amounts as the director shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the director specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

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

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

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

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

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested

for a reasonable time and without liability for the payment of interest thereon.

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

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

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

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

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

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

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange

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

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

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

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

Section 10. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the director a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the director shall

constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

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

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

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

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or

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

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

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

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



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

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

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

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written: The parties below certify that the wording of this Agreement is identical to the wording specified in the incorporated version of 40 C.F.R. section 264.151(a)(1), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date first above written.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

(2) The following is an example of the certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in 40 C.F.R. section 264.143(a) or 264.145(a), as incorporated and amended in this chapter, or 40 C.F.R. section 265.143(a) or 265.145(a), as incorporated and amended in section 11-265.1-1.

State of \_\_\_\_\_  
County of \_\_\_\_\_

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

[Signature of Notary Public]

(b) A surety bond guaranteeing payment into a trust fund, as specified in 40 C.F.R. section 264.143(b) or 264.145(b), as incorporated and amended in this chapter, or 40 C.F.R. section 265.143(b) or 265.145(b), as incorporated and amended in section 11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

FINANCIAL GUARANTEE BOND

Date bond executed:

Effective date:

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

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

State of incorporation: \_\_\_\_\_

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

Total penal sum of bond: \$ \_\_\_\_\_

Surety's bond number: \_\_\_\_\_

As used in this instrument:

(a) The term "department" means the Department of Health, State of Hawaii.

(b) The term "director" means the director of the Department of Health, State of Hawaii.

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the state department of health, 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 chapter 342J, Hawaii Revised Statutes, to have a permit or interim status in order to own or operate each hazardous waste management facility identified above, and

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

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

Now, Therefore, the conditions of the obligation are such that if the Principal shall faithfully,

before the beginning of final closure of each facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

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

Or, if the Principal shall provide alternate financial assurance, as specified in the incorporated version of subpart H of 40 C.F.R. part 264 or 265, as amended, in section 11-264.1-1 or 11-265.1-1, Hawaii Administrative Rules, as applicable, and obtain the director's written approval of such assurance, within 90 days after the date notice of cancellation is received by both Principal, the director, and the EPA Regional Administrator from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

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

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

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

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

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

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

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

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in the incorporated version of 40 C.F.R. section 264.151(b), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date this bond was executed.

Principal

[Signature(s)] \_\_\_\_\_

[Name(s)] \_\_\_\_\_

[Title(s)] \_\_\_\_\_

[Corporate seal] \_\_\_\_\_

Corporate Surety(ies)

[Name and address]

State of incorporation: \_\_\_\_\_

Liability limit: \$ \_\_\_\_\_

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

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

Bond premium: \$ \_\_\_\_\_

(c) A surety bond guaranteeing performance of closure and/or post-closure care, as specified in 40 C.F.R. section 264.143(c) or 264.145(c), as incorporated and amended in this chapter, must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

PERFORMANCE BOND

Date bond executed: \_\_\_\_\_

Effective date: \_\_\_\_\_

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

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

State of incorporation: \_\_\_\_\_

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

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

Total penal sum of bond: \$ \_\_\_\_\_

Surety's bond number: \_\_\_\_\_

As used in this instrument:

(a) The term "department" means the Department of Health, State of Hawaii.

(b) The term "director" means the director of the Department of Health, State of Hawaii.

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the Department of Health, State of Hawaii, 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 chapter 342J, Hawaii Revised Statutes, to have a permit in order to own or operate each hazardous waste management facility identified above, and

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

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

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

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

Or, if the Principal shall provide alternate financial assurance as specified in the incorporated version of subpart H of 40 C.F.R. part 264, as amended, in section 11-264.1-1, Hawaii Administrative Rules, and obtain the director's written approval of such assurance, within 90 days after the date notice of cancellation is received by the Principal, the director, and the EPA Regional Administrator from the Surety(ies), then this obligation shall be null and

void, otherwise it is to remain in full force and effect.

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

Upon notification by the director that the Principal has been found in violation of the closure requirements of the incorporated version of 40 C.F.R. part 264, as amended, in section 11-264.1-1, Hawaii Administrative Rules, for a facility for which this bond guarantees performance of closure, the Surety(ies) shall either perform closure in accordance with the closure plan and other permit requirements or place the closure amount guaranteed for the facility into the standby trust fund as directed by the director.

Upon notification by the director that the Principal has been found in violation of the post-closure requirements of the incorporated version of 40 C.F.R. part 264, as amended, in section 11-264.1-1, Hawaii Administrative Rules, for a facility for which this bond guarantees performance of post-closure care, the Surety(ies) shall either perform post-closure care in accordance with the post-closure plan and other permit requirements or place the post-closure amount guaranteed for the facility into the standby trust fund as directed by the director.

Upon notification by the director that the Principal has failed to provide alternate financial assurance as specified in the incorporated version of subpart H of 40 C.F.R. part 264, as amended, in section 11-264.1-1, Hawaii Administrative Rules, and obtain written approval of such assurance from the director during the 90 days following receipt by the Principal, the director, and the EPA Regional Administrator of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the director.

The surety(ies) hereby waive(s) notification of amendments to closure plans, permits, applicable laws,



statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

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

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

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

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

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

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

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in the incorporated version of 40 C.F.R. section 264.151(c), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as

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such regulation was constituted on the date this bond was executed.

Principal

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

Corporate Surety(ies)

[Name and address]

State of incorporation: \_\_\_\_\_

Liability limit: \$ \_\_\_\_\_

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

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

Bond premium: \$ \_\_\_\_\_

(d) A letter of credit, as specified in 40 C.F.R. section 264.143(d) or 264.145(d), as incorporated and amended in this chapter, or 40 C.F.R. section 265.143(c) or 265.145(c), as incorporated and amended in section 11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### IRREVOCABLE STANDBY LETTER OF CREDIT

Director of Health  
Department of Health  
State of Hawaii

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

(1) your sight draft, bearing reference to this letter of credit No. \_\_\_\_, and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of chapter 342J, Hawaii Revised Statutes."

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

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

We certify that the wording of this letter of credit is identical to the wording specified in the incorporated version of 40 C.F.R. section 264.151(d), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

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

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

(e) A certificate of insurance, as specified in 40 C.F.R. section 264.143(e) or 264.145(e), as incorporated and amended in this chapter, or 40 C.F.R.

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section 265.143(d) or 265.145(d), as incorporated and amended in section 11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATE OF INSURANCE FOR CLOSURE OR POST-CLOSURE CARE

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

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

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

Face Amount:

Policy Number:

Effective Date:

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for [insert "closure" or "closure and post-closure care" or "post-closure care"] for the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of the incorporated version of 40 C.F.R. sections 264.143(e), 264.145(e), 265.143(d), and 265.145(d), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the director of the state department of health, the Insurer agrees to furnish to the directors a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in

the incorporated version of 40 C.F.R. section 264.151(e), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Authorized signature for Insurer]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

[Date]

(f) A letter from the chief financial officer, as specified in 40 C.F.R. section 264.143(f) or 264.145(f), as incorporated and amended in this chapter, or 40 C.F.R. section 265.143(e) or 265.145(e), as incorporated and amended in section 11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

[Address to director].

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance for closure and/or post-closure costs, as specified in the incorporated version of subpart H of 40 C.F.R. parts 264 and 265, as amended, in sections 11-264.1-1 and 11-265.1-1, Hawaii Administrative Rules.

[Fill out the following five paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, address, and current closure and/or post-closure cost estimates. Identify each cost estimate as to whether it is for closure or post-closure care].

1. This firm is the owner or operator of the following facilities for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in subpart H of 40 C.F.R.

parts 264 and 265. The current closure and/or post-closure cost estimates covered by the test are shown for each facility: \_\_\_\_\_.

2. This firm guarantees, through the guarantee specified in subpart H of 40 C.F.R. parts 264 and 265, the closure or post-closure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: \_\_\_\_\_. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee \_\_\_\_; or (3) engaged in the following substantial business relationship with the owner or operator \_\_\_\_\_, and receiving the following value in consideration of this guarantee \_\_\_\_]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

3. In States where EPA is not administering the financial requirements of subpart H of 40 C.F.R. part 264 or 265, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in subpart H of 40 C.F.R. parts 264 and 265. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility:

\_\_\_\_\_.  
4. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in subpart H of 40 C.F.R. parts 264 and 265 or equivalent or substantially equivalent State mechanisms. The current closure and/or post-

closure cost estimates not covered by such financial assurance are shown for each facility: \_\_\_\_\_.

5. This firm is the owner or operator of the following UIC facilities for which financial assurance for plugging and abandonment is required under 40 C.F.R. part 144. The current closure cost estimates as required by 40 C.F.R. section 144.62 are shown for each facility: \_\_\_\_\_.

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

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

[Fill in Alternative I if the criteria of 40 C.F.R. section 264.143(f)(1)(i) or 264.145(f)(1)(i), as incorporated and amended in this chapter, or of section 40 C.F.R. section 265.143(e)(1)(i) or 265.145(e)(1)(i), as incorporated and amended in section 11-265.1-1, are used. Fill in Alternative II if the criteria of 40 C.F.R. section 264.143(f)(1)(ii) or 264.145(f)(1)(ii), as incorporated and amended in this chapter, or of 40 C.F.R. section 265.143(e)(1)(ii) or 265.145(e)(1)(ii), as incorporated and amended in section 11-265.1-1, are used.]

Alternative I

1. Sum of current closure and post-closure cost estimate [total of all cost estimates shown in the five paragraphs above] \$ \_\_\_\_\_
- \*2. Total liabilities [if any portion of the closure or post-closure cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4] \$ \_\_\_\_\_
- \*3. Tangible net worth \$ \_\_\_\_\_
- \*4. Net worth \$ \_\_\_\_\_
- \*5. Current assets \$ \_\_\_\_\_
- \*6. Current liabilities \$ \_\_\_\_\_

7. Net working capital [line 5 minus line 6] \$ \_\_\_\_\_
- \*8. The sum of net income plus depreciation, depletion, and amortization \$ \_\_\_\_\_
- \*9. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) \$ \_\_\_\_\_
10. Is line 3 at least \$10 million? (Yes/No) \_\_\_\_\_
11. Is line 3 at least 6 times line 1? (Yes/No) \_\_\_\_\_
12. Is line 7 at least 6 times line 1? (Yes/No) \_\_\_\_\_
- \*13. Are at least 90% of firm's assets located in the U.S.? If not, complete line 14 (Yes/No) \_\_\_\_\_
14. Is line 9 at least 6 times line 1? (Yes/No) \_\_\_\_\_
15. Is line 2 divided by line 4 less than 2.0? (Yes/No) \_\_\_\_\_
16. Is line 8 divided by line 2 greater than 0.1? (Yes/No) \_\_\_\_\_
17. Is line 5 divided by line 6 greater than 1.5? (Yes/No) \_\_\_\_\_

Alternative II

1. Sum of current closure and post-closure cost estimates [total of all cost estimates shown in the five paragraphs above] \$ \_\_\_\_\_
2. Current bond rating of most recent issuance of this firm and name of rating service \_\_\_\_\_
3. Date of issuance of bond \_\_\_\_\_
4. Date of maturity of bond \_\_\_\_\_
- \*5. Tangible net worth [if any portion of the closure and post-closure cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line] \$ \_\_\_\_\_
- \*6. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) \$ \_\_\_\_\_
7. Is line 5 at least \$10 million? (Yes/No) \_\_\_\_\_
8. Is line 5 at least 6 times line 1? (Yes/No) \_\_\_\_\_
- \*9. Are at least 90% of firm's assets located in the U.S.? If not, complete line 10 (Yes/No) \_\_\_\_\_
10. Is line 6 at least 6 times line 1? (Yes/No) \_\_\_\_\_

I hereby certify that the wording of this letter is identical to the wording specified in the incorporated version of 40 C.F.R. section 264.151(f), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as



such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

(g) A letter from the chief financial officer, as specified in 40 C.F.R. section 264.147(f), as incorporated and amended in this chapter, or 40 C.F.R. section 265.147(f), as incorporated and amended in section 11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

LETTER FROM CHIEF FINANCIAL OFFICER

[Address to director].

I am the chief financial officer of [firm's name and address]. This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage [insert "and closure and/or post-closure care" if applicable] as specified in the incorporated version of subpart H of 40 C.F.R. parts 264 and 265, as amended, in sections 11-264.1-1 and 11-265.1-1, Hawaii Administrative Rules.

[Fill out the following paragraphs regarding facilities and liability coverage. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, and address].

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified in the incorporated version of subpart H of 40 C.F.R. parts 264 and 265, as amended, in sections 11-264.1-1 and 11-265.1-1, Hawaii Administrative Rules:\_\_\_\_\_

The firm identified above guarantees, through the guarantee specified in the incorporated version of subpart H of 40 C.F.R. parts 264 and 265, as amended, in sections 11-264.1-1 and 11-265.1-1, Hawaii Administrative Rules, liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the following: \_\_\_\_\_. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee \_\_\_\_; or (3) engaged in the following substantial business relationship with the owner or operator \_\_\_\_\_, and receiving the following value in consideration of this guarantee \_\_\_\_]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.]

[If you are using the financial test to demonstrate coverage of both liability and closure and post-closure care, fill in the following five paragraphs regarding facilities and associated closure and post-closure cost estimates. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA identification number, name, address, and current closure and/or post-closure cost estimates. Identify each cost estimate as to whether it is for closure or post-closure care.]

1. The firm identified above owns or operates the following facilities for which financial assurance for closure or post-closure care or liability coverage is demonstrated through the financial test specified in subpart H of 40 C.F.R. parts 264 and 265. The current closure and/or post-closure cost estimate covered by the test are shown for each facility: \_\_\_\_\_.

2. The firm identified above guarantees, through the guarantee specified in subpart H of 40 C.F.R. parts 264 and 265, the closure and post-closure care or liability coverage of the following facilities

owned or operated by the guaranteed party. The current cost estimates for closure or post-closure care so guaranteed are shown for each facility: \_\_\_\_\_.

3. In States where EPA is not administering the financial requirements of subpart H of 40 C.F.R. parts 264 and 265, this firm is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in subpart H or 40 C.F.R. parts 264 and 265. The current closure or post-closure cost estimates covered by such a test are shown for each facility: \_\_\_\_\_.

4. The firm identified above owns or operates the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanisms specified in subpart H of 40 C.F.R. parts 264 and 265 or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: \_\_\_\_\_.

5. This firm is the owner or operator or guarantor of the following UIC facilities for which financial assurance for plugging and abandonment is required under 40 C.F.R. part 144 and is assured through a financial test. The current closure cost estimates as required by 40 C.F.R. section 144.62 are shown for each facility: \_\_\_\_\_.

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

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

Part A. Liability Coverage for Accidental Occurrences

[Fill in Alternative I if the criteria of 40 C.F.R. section 264.147(f)(1)(i), as incorporated and amended in this chapter, or 40 C.F.R. section 265.147(f)(1)(i), as incorporated and amended in section 11-265.1-1, are used. Fill in Alternative II if the criteria of paragraph of 40 C.F.R. section 264.147(f)(1)(ii), as incorporated and amended in this chapter, or 40 C.F.R. section 265.147(f)(1)(ii), as incorporated and amended in section 11-265.1-1, are used.]

Alternative I

1. Amount of annual aggregate liability coverage to be demonstrated \$\_\_\_\_\_.
- \*2. Current assets \$\_\_\_\_\_.
- \*3. Current liabilities \$\_\_\_\_\_.
4. Net working capital (line 2 minus line 3) \$\_\_\_\_\_.
- \*5. Tangible net worth \$\_\_\_\_\_.
- \*6. If less than 90% of assets are located in the U.S., give total U.S. assets \$\_\_\_\_\_.
7. Is line 5 at least \$10 million? (Yes/No) \_\_\_\_\_.
8. Is line 4 at least 6 times line 1? (Yes/No) \_\_\_\_\_.
9. Is line 5 at least 6 times line 1? (Yes/No) \_\_\_\_\_.
- \*10. Are at least 90% of assets located in the U.S.? (Yes/No) \_\_\_\_\_. If not, complete line 11.
11. Is line 6 at least 6 times line 1? (Yes/No) \_\_\_\_\_.

Alternative II

1. Amount of annual aggregate liability coverage to be demonstrated \$\_\_\_\_\_.
2. Current bond rating of most recent issuance and name of rating service \_\_\_\_\_.
3. Date of issuance of bond \_\_\_\_\_.
4. Date of maturity of bond \_\_\_\_\_.
- \*5. Tangible net worth \$\_\_\_\_\_.
- \*6. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.) \$\_\_\_\_\_.
7. Is line 5 at least \$10 million? (Yes/No) \_\_\_\_\_.
8. Is line 5 at least 6 times line 1? \_\_\_\_\_.
9. Are at least 90% of assets located in the U.S.? If not, complete line 10. (Yes/No) \_\_\_\_\_.
10. Is line 6 at least 6 times line 1? \_\_\_\_\_.

[Fill in part B if you are using the financial test to demonstrate assurance of both liability coverage and closure or post-closure care.]

Part B. Closure or Post-Closure Care and Liability Coverage

[Fill in Alternative I if the criteria of 40 C.F.R. section 264.143(f)(1)(i) or 264.145(f)(1)(i) and 40 C.F.R. section 264.147(f)(1)(i), as incorporated and amended in this chapter, are used or if the criteria of 40 C.F.R. section 265.143(e)(1)(i) or 265.145(e)(1)(i) and 40 C.F.R. section 265.147(f)(1)(i), as incorporated and amended in section 11-265.1-1, are used. Fill in Alternative II if the criteria of 40 C.F.R. section 264.143(f)(1)(ii) or 264.145(f)(1)(ii) and 40 C.F.R. section 264.147(f)(1)(ii), as incorporated and amended in this chapter, are used or if the criteria of 40 C.F.R. section 265.143(e)(1)(i) or 265.145(e)(1)(i) and 40 C.F.R. section 265.147(f)(1)(ii), as incorporated and amended in section 11-265.1-1, are used.]

Alternative I

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

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

Alternative II

1. Sum of current closure and post-closure cost estimates (total of all cost estimates listed above) \$ \_\_\_\_\_
2. Amount of annual aggregate liability coverage to be demonstrated \$ \_\_\_\_\_
3. Sum of lines 1 and 2 \$ \_\_\_\_\_
4. Current bond rating of most recent issuance and name of rating service \_\_\_\_\_
5. Date of issuance of bond \_\_\_\_\_
6. Date of maturity of bond \_\_\_\_\_
- \*7. Tangible net worth (if any portion of the closure or post-closure cost estimates is included in "total liabilities" on your financial statements you may add that portion to this line) \$ \_\_\_\_\_
- \*8. Total assets in the U.S. (required only if less than 90% of assets are located in the U.S.) \$ \_\_\_\_\_
9. Is line 7 at least \$10 million? (Yes/No)
10. Is line 7 at least 6 times line 3? (Yes/No)
- \*11. Are at least 90% of assets located in the U.S.? (Yes/No) If not complete line 12.
12. Is line 8 at least 6 times line 3? (Yes/No)

I hereby certify that the wording of this letter is identical to the wording specified in the incorporated version of 40 C.F.R. section 264.151(g); as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.  
[Signature]

[Name]  
[Title]  
[Date]

(h) (1) A corporate guarantee, as specified in 40 C.F.R. section 264.143(f) or 264.145(f), as incorporated and amended in this chapter, or 40 C.F.R. section 265.143(e) or 265.145(e), as incorporated and amended in section 11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CORPORATE GUARANTEE FOR CLOSURE OR POST-CLOSURE CARE

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the State of [insert name of State], herein referred to as guarantor. This guarantee is made on behalf of the [owner or operator] of [business address], which is [one of the following: "our subsidiary"; "a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary"; or "an entity with which guarantor has a substantial business relationship, as defined in the incorporated version of 40 C.F.R. section [either 264.141(h) or 265.141(h)], as amended, in section [either 11-264.1-1 or 11-265.1-1], Hawaii Administrative Rules,"] to the Department of Health, State of Hawaii.

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in the incorporated version of 40 C.F.R. sections 264.143(f), 264.145(f), 265.143(e), and 265.145(e), as amended, in sections 11-264.1-1 and 11-265.1-1, Hawaii Administrative Rules.

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

for each whether guarantee is for closure, post-closure care, or both.]

3. "Closure plans" and "post-closure plans" as used below refer to the plans maintained as required by the incorporated version of subpart G of 40 C.F.R. parts 264 and 265, as amended, in sections 11-264.1-1 and 11-265.1-1, Hawaii Administrative Rules for the closure and post-closure care of facilities as identified above.

4. For value received from [owner or operator], guarantor guarantees to the Department of Health, State of Hawaii that in the event that [owner or operator] fails to perform [insert "closure," "post-closure care" or "closure and post-closure care"] of the above facility(ies) in accordance with the closure or post-closure plans and other permit or interim status requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in the incorporated version of subpart H of 40 C.F.R. part 264 or 265, as amended, in section 11-264.1-1 or 11-265.1-1, Hawaii Administrative Rules, as applicable, in the name of [owner or operator] in the amount of the current closure or post-closure cost estimates as specified in the incorporated version of subpart H of 40 C.F.R. parts 264 and 265, as amended, in sections 11-264.1-1 and 11-265.1-1, Hawaii Administrative Rules.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the director of health, State of Hawaii, the EPA Regional Administrator, to the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, and to [owner or operator] that he intends to provide alternate financial assurance as specified in the incorporated version of subpart H of 40 C.F.R. part 264 or 265, as amended, in section 11-264.1-1 or 11-265.1-1, Hawaii Administrative Rules, as applicable, in the name of [owner or operator]. Within 120 days after the end of



such fiscal year, the guarantor shall establish such financial assurance unless [owner or operator] has done so.

6. The guarantor agrees to notify the director of health, State of Hawaii, and EPA Regional Administrator by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the director of health, State of Hawaii, of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure or post-closure care, he shall establish alternate financial assurance as specified in the incorporated version of subpart H of 40 C.F.R. part 264 or 265, as amended, in section 11-264.1-1 or 11-265.1-1, Hawaii Administrative Rules, as applicable, in the name of [owner or operator] unless [owner or operator] has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure or post-closure plan, amendment or modification of the permit, the extension or reduction of the time of performance of closure or post-closure, or any other modification or alteration of an obligation of the owner or operator pursuant to the incorporated version of 40 C.F.R. part 264 or 265, as amended, in section 11-264.1-1 or 11-265.1-1, Hawaii Administrative Rules.

9. Guarantor agrees to remain bound under this guarantee for as long as [owner or operator] must comply with the applicable financial assurance requirements of the incorporated version of subpart H of 40 C.F.R. part 264 or 265, as amended, in section 11-264.1-1 or 11-265.1-1, Hawaii Administrative Rules for the above-listed facilities, except as provided in paragraph 10 of this agreement.

10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate

parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:

Guarantor may terminate this guarantee by sending notice by certified mail to the director of health, State of Hawaii, the EPA Regional Administrator, the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the director of health, State of Hawaii, approves, alternate closure and/or post-closure care coverage complying with the incorporated version of 40 C.F.R. sections 264.143, 264.145, 265.143, and/or 265.145, as amended, in section 11-264.1-1 and/or 11-265.1-1, Hawaii Administrative Rules.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with its owner or operator] Guarantor may terminate this guarantee 120 days following the receipt of notification, through certified mail, by the director, the EPA Regional Administrator, the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, and by [the owner or operator].

11. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance as specified in the incorporated version of subpart H of 40 C.F.R. part 264 or 265, as amended, in section 11-264.1-1 or 11-265.1-1, Hawaii Administrative Rules, as applicable, and obtain written approval of such assurance from the director of health, State of Hawaii, within 90 days after a notice of cancellation by the guarantor is received from guarantor by the director, the EPA Regional Administrator, and the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, guarantor shall provide such alternate financial assurance in the name of [owner or operator].

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

I hereby certify that the wording of this guarantee is identical to the wording specified in the incorporated version of 40 C.F.R. section 264.151(h), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date first above written.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

(2) A guarantee, as specified in 40 C.F.R. section 264.147(g), as incorporated and amended in this chapter, or 40 C.F.R. section 265.147(g), as incorporated and amended in section 11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### GUARANTEE FOR LIABILITY COVERAGE

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of [if incorporated within the United States insert "the State of \_\_\_\_" and insert name of State; if incorporated outside the United States insert the name of the country in which incorporated, the principal place of business within the United States, and the name and address of the registered agent in the State of the principal place of business], herein referred to as guarantor. This guarantee is made on behalf of [owner or operator] of [business address], which is [one of the following: "our subsidiary;" "a subsidiary of [name and address

of common parent corporation], of which guarantor is a subsidiary;" or "an entity with which guarantor has a substantial business relationship, as defined in the incorporated version of 40 C.F.R. section [either 264.141(h) or 265.141(h)], as amended, in section [either 11-264.1-1 or 11-265.1-1], Hawaii Administrative Rules,"] to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in the incorporated version of 40 C.F.R. section 264.147(g), as amended, in section 11-264.1-1, Hawaii Administrative Rules, and the incorporated version of 40 C.F.R. section 265.147(g), as amended, in section 11-265.1-1, Hawaii Administrative Rules.

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

3. For value received from [owner or operator], guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operations of the facility(ies) covered by this guarantee that in the event that [owner or operator] fails to satisfy a judgment or award based on a determination of

liability for bodily injury or property damage to third parties caused by [sudden and/or nonsudden] accidental occurrences, arising from the operation of the above-named facilities, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s) or settlement agreement(s) up to the limits of coverage identified above.

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

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

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

(c) Bodily injury to:

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

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

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

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

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or

entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

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

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

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

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

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

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the director of health, State of Hawaii, the EPA Regional Administrator, the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, and to [owner or operator] that he intends to provide alternate liability coverage as specified in the incorporated version of 40 C.F.R. section 264.147, as amended, in section 11-264.1-1, Hawaii Administrative Rules, and the incorporated version of 40 C.F.R. section 265.147, as amended, in section 11-265.1-1, Hawaii Administrative Rules, as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless [owner or operator] has done so.

6. The guarantor agrees to notify the director of health, State of Hawaii, by certified mail of a voluntary or involuntary proceeding under title 11

(Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the director of health, State of Hawaii, of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate liability coverage as specified in the incorporated version of 40 C.F.R. section 264.147, as amended, in section 11-264.1-1, Hawaii Administrative Rules, or the incorporated version of 40 C.F.R. section 265.147, as amended, in section 11-265.1-1, Hawaii Administrative Rules, in the name of [owner or operator], unless [owner or operator] has done so.

8. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability requirements set by the incorporated version of 40 C.F.R. section 264.147, as amended, in section 11-264.1-1, Hawaii Administrative Rules, and the incorporated version of 40 C.F.R. section 265.147, as amended, in section 11-265.1-1, Hawaii Administrative Rules, provided that such modification shall become effective only if the director of health, State of Hawaii, does not disapprove the modification within 30 days of receipt of notification of the modification.

9. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable requirements of the incorporated version of 40 C.F.R. section 264.147, as amended, in section 11-264.1-1, Hawaii Administrative Rules, and the incorporated version of 40 C.F.R. section 265.147, as amended, in section 11-265.1-1, Hawaii Administrative Rules, for the above-listed facility(ies), except as provided in paragraph 10 of this agreement.

10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:

Guarantor may terminate this guarantee by sending notice by certified mail to the director of health, State of Hawaii, the EPA Regional Administrator, the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the director of Health, State of Hawaii, approves, alternate liability coverage complying with the incorporated version of 40 C.F.R. section 264.147, as amended, in section 11-264.1-1, Hawaii Administrative Rules, and/or the incorporated version of 40 C.F.R. section 265.147, as amended, in section 11-265.1-1, Hawaii Administrative Rules.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator]:

Guarantor may terminate this guarantee 120 days following receipt of notification, through certified mail, by the director of health, State of Hawaii, the EPA Regional Administrator, the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, and by [the owner or operator].

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

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

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

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

Certification of Valid Claim



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

[Signatures]  
Principal  
(Notary) Date  
[Signatures]  
Claimant(s)  
(Notary) Date

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

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

I hereby certify that the wording of the guarantee is identical to the wording specified in the incorporated version of 40 C.F.R. section 264.151(h)(2), as amended, in section 11-265.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

Effective date:

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

(i) A hazardous waste facility liability endorsement as required in 40 C.F.R. section 264.147, as incorporated and amended in this chapter, or 40 C.F.R. section 265.147, as incorporated and amended in section 11-265.1-1, must be worded as follows, except

that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

HAZARDOUS WASTE FACILITY LIABILITY ENDORSEMENT

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with the insured's obligation to demonstrate financial responsibility under the incorporated version of 40 C.F.R. section 264.147, as amended, in section 11-264.1-1, Hawaii Administrative Rules, or the incorporated version of 40 C.F.R. section 265.147, as amended, in section 11-265.1-1, Hawaii Administrative Rules. The coverage applies at [list EPA Identification Number, name, and address for each facility] for [insert "sudden accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs.

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

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

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer.

This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in the incorporated version of 40 C.F.R. section 264.147(f), as amended, in section 11-264.1-1, Hawaii Administrative Rules, or the incorporated version of 40 C.F.R. section 265.147(f), as amended, in section 11-265.1-1, Hawaii Administrative Rules.

(c) Whenever requested by the director of health, State of Hawaii, the Insurer agrees to furnish to the director a signed duplicate original of the policy and all endorsements.

(d) Cancellation of this endorsement, whether by the Insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the director of health, State of Hawaii, the EPA Regional Administrator, and the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the policy are located.

(e) Any other termination of this endorsement will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the director of health, State of Hawaii, the EPA Regional Administrator, and the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the policy are located.

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

§11-264.1-10

I hereby certify that the wording of this endorsement is identical to the wording specified in the incorporated version of 40 C.F.R. section 264.151(i), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

[Signature of Authorized Representative of Insurer]

[Type name]

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

[Address of Representative]

(j) A certificate of liability insurance as required in 40 C.F.R. section 264.147, as incorporated and amended in this chapter, or 40 C.F.R. section 265.147, as incorporated and amended in section 11-265.1-1, must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

HAZARDOUS WASTE FACILITY CERTIFICATE OF LIABILITY INSURANCE

1. [Name of Insurer], (the "Insurer"), of [address of Insurer] hereby certifies that it has issued liability insurance covering bodily injury and property damage to [name of insured], (the "insured"), of [address of insured] in connection with the insured's obligation to demonstrate financial responsibility under the incorporated version of 40 C.F.R. section 264.147, as amended, in section 11-264.1-1, Hawaii Administrative Rules, or the incorporated version of 40 C.F.R. section 265.147, as amended, in section 11-265.1-1, Hawaii Administrative Rules. The coverage applies at [list EPA Identification Number, name, and address for each facility] for [insert "sudden accidental occurrences," "nonsudden accidental occurrences," or "sudden and

nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs. The coverage is provided under policy number \_\_\_\_, issued on [date]. The effective date of said policy is [date].

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

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

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in the incorporated version of 40 C.F.R. section 264.147(f), as amended, in section 11-264.1-1, Hawaii Administrative Rules, or the incorporated version of 40 C.F.R. section 265.147(f), as amended, in section 11-265.1-1, Hawaii Administrative Rules.

(c) Whenever requested by the director of health, State of Hawaii, the Insurer agrees to furnish to the director a signed duplicate original of the policy and all endorsements.

(d) Cancellation of the insurance, whether by the insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility, will be effective only upon written notice and only after the expiration of

60 days after a copy of such written notice is received by the director of health, State of Hawaii, the EPA Regional Administrator, and the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the policy are located.

(e) Any other termination of the insurance will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the director of health, State of Hawaii, the EPA Regional Administrator, and the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the policy are located.

I hereby certify that the wording of this instrument is identical to the wording specified in the incorporated version of 40 C.F.R. section 264.151(j), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

[Signature of authorized representative of Insurer]

[Type name]

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

[Address of Representative]

(k) A letter of credit, as specified in 40 C.F.R. section 264.147(h), as incorporated and amended in this chapter, or 40 C.F.R. section 265.147(h), as incorporated and amended in section 11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

IRREVOCABLE STANDBY LETTER OF CREDIT

Name and Address of Issuing Institution  
Director of Health  
State of Hawaii

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. \_\_\_\_\_ in the favor of ["any and all third-party liability claimants" or insert name of trustee of the standby trust fund], at the request and for the account of [owner or operator's name and address] for third-party liability awards or settlements up to [in words] U.S. dollars \$\_\_\_\_\_ per occurrence and the annual aggregate amount of [in words] U.S. dollars \$\_\_\_\_\_, for sudden accidental occurrences and/or for third-party liability awards or settlements up to the amount of [in words] U.S. dollars \$\_\_\_\_\_ per occurrence, and the annual aggregate amount of [in words] U.S. dollars \$\_\_\_\_\_, for nonsudden accidental occurrences available upon presentation of a sight draft bearing reference to this letter of credit No. \_\_\_\_\_, and [insert the following language if the letter of credit is being used without a standby trust fund:

(1) a signed certificate reading as follows:

Certificate of Valid Claim

The undersigned, as parties [insert principal] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operations of [principal's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of \$[\_\_\_\_\_]. We hereby certify that the claim does not apply to any of the following:

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

(b) Any obligation of [insert principal] under a workers' compensation, disability

benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

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

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

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

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

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

(e) Property damage to:

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

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

(3) Property loaned to [insert principal];

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

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

[Signatures]

Grantor

[Signatures]

Claimant(s)

or (2) a valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden



accidental occurrences arising from the operation of the Grantor's facility or group of facilities.]

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

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us. [Insert the following language if a standby trust fund is not being used: "In the event that this letter of credit is used in combination with another mechanism for liability coverage, this letter of credit shall be considered [insert "primary" or "excess" coverage]."]

We certify that the wording of this letter of credit is identical to the wording specified in the incorporated version of 40 C.F.R. section 264.151(k), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below. [Signature(s) and title(s) of official(s) of issuing institution] [Date].

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

(1) A surety bond, as specified in 40 C.F.R. section 264.147(i), as incorporated and amended in this chapter, or 40 C.F.R. section 265.147(i), as incorporated and amended in section 11-265.1-1, must be worded as follows: except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

PAYMENT BOND

Surety Bond No. [Insert number]

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

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

	Sudden accidental occurrences	Nonsudden accidental occurrences
Penal Sum Per Occurrence.	[insert amount] .....	[insert amount]
Annual Aggregate	[insert amount] .....	[insert amount]

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

Governing Provisions:

- (1) Chapter 342J, Hawaii Revised Statutes.
- (2) Administrative Rules of the Hawaii State Department of Health, particularly the incorporated version of ["40 C.F.R. section 264.147, as amended, in section 11-264.1-1" or "40 C.F.R. section 265.147, as amended, in section 11-265.1-1"], Hawaii Administrative Rules (if applicable).

Conditions:

- (1) The Principal is subject to the applicable governing provisions that require the Principal to

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

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

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

(c) Bodily injury to:

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

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

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

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

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

(e) Property damage to:

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

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

(3) Property loaned to [insert principal];

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

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

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

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

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

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

Certification of Valid Claim

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

[Signature]

Principal

[Notary]     Date

[Signature(s)]

Claimant(s)

[Notary]     Date

or

(b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden

accidental occurrences arising from the operation of the Principal's facility or group of facilities.

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

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

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

(8) The Principal may terminate this bond by sending written notice to the Surety(ies) and to the director of health, State of Hawaii, the EPA Regional Administrator, and the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the bond are located.

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

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

§11-264.1-10

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

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in the incorporated version of 40 C.F.R. section 264.151(1), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date this bond was executed.

PRINCIPAL

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

CORPORATE SURETY(IES)

[Name and address]  
State of incorporation:  
Liability Limit: \$  
[Signature(s)]  
[Name(s) and title(s)]  
[Corporate seal]

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

Bond premium: \$

(m)(1) A trust agreement, as specified in 40 C.F.R. section 264.147(j), as incorporated and amended in this chapter, or 40 C.F.R. section 265.147(j), as incorporated and amended in section 11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator] a [name of State] [insert "corporation,"

"partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert, "incorporated in the State of \_\_\_\_" or "a national bank"], the "trustee."

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

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

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

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

Section 1. Definitions. As used in this Agreement:

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

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

(c) The term "department" means the Department of Health, State of Hawaii.

(d) The term "director" means the director of health, State of Hawaii.

Section 2. Identification of Facilities. This agreement pertains to the facilities identified on attached schedule A [on schedule A, for each facility list the EPA Identification Number, name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement].

Section 3. Establishment of Fund.

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

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

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

(c) Bodily injury to:

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

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

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

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

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

(e) Property damage to:



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

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

(3) Property loaned to [insert Grantor];

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

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

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

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

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

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

Certification of Valid Claim

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

[Signatures]

Grantor

[Signatures]

Claimant(s)

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

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

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

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

other obligations of the Federal or a State government;

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

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

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

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

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

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

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

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that

may be necessary or appropriate to carry out the powers herein granted;

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

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

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

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

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

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

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

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

in a writing sent to the Grantor, the director, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

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

Section 15. Notice of Nonpayment. If a payment for bodily injury or property damage is made under Section 4 of this trust, the Trustee shall notify the Grantor of such payment and the amount(s) thereof within five (5) working days. The Grantor shall, on or before the anniversary date of the establishment of the Fund following such notice, either make payments to the Trustee in amounts sufficient to cause the trust to return to its value immediately prior to the payment of claims under Section 4, or shall provide written proof to the Trustee that other financial assurance for liability coverage has been obtained equaling the amount necessary to return the trust to its value prior to the payment of claims. If the

Grantor does not either make payments to the Trustee or provide the Trustee with such proof, the Trustee shall within 10 working days after the anniversary date of the establishment of the Fund provide a written notice of nonpayment to the director.

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

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the director, or by the Trustee and the director, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor. The director will agree to termination of the Trust when the owner or operator substitutes alternate financial assurance as specified in the incorporated version of 40 C.F.R. section 264.147, as amended, in section 11-264.1-1, Hawaii Administrative Rules, or the incorporated version of 40 C.F.R. section 265.147, as amended, in section 11-265.1-1, Hawaii Administrative Rules.

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

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

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

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in the incorporated version of 40 C.F.R. section 264.151(m), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date first above written.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

(2) The following is an example of the certification of acknowledgement which must accompany the trust agreement for a trust fund as specified in 40 C.F.R. section 264.147(j), as incorporated and amended in this chapter, or 40 C.F.R. section 265.147(j), as incorporated and amended in section 11-265.1-1.

State of  
County of

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address],



that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

(n)(1) A standby trust agreement, as specified in 40 C.F.R. section 264.147(h), as incorporated and amended in this chapter, or 40 C.F.R. section 265.147(h), as incorporated and amended in section 11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### STANDBY TRUST AGREEMENT

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

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

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

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

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

Section 1. Definitions. As used in this Agreement:

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

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

(c) The term "department" means the Department of Health, State of Hawaii.

(d) The term "director" means the director of health, State of Hawaii.

Section 2. Identification of Facilities. This agreement pertains to the facilities identified on attached schedule A [on schedule A, for each facility list the EPA Identification Number, name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement].

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

(a) Bodily injury or property damage for which [insert Grantor] is obligated to pay damages by reason of the assumption of liability

in a contract or agreement. This exclusion does not apply to liability for damages that [insert Grantor] would be obligated to pay in the absence of the contract or agreement.

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

(c) Bodily injury to:

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

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

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

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

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

(e) Property damage to:

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

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

(3) Property loaned by [insert Grantor];

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

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

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

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

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by drawing on the letter of credit described in Schedule B and by making payments from the Fund only upon receipt of one of the following documents:

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

Certification of Valid Claim

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

[Signature]

Grantor

[Signatures]

Claimant(s)

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

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of the proceeds from the letter of credit drawn upon by the Trustee in accordance with the requirements of the incorporated version of 40 C.F.R. section 264.151(k), as amended, in section 11-264.1-1, Hawaii Administrative Rules, and Section 4 of this Agreement.

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

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

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

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested

for a reasonable time and without liability for the payment of interest thereon.

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

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

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

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

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

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

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange

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

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

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

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

Section 10. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its

services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the director and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee. All orders, requests, certifications of valid claims, and instructions to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the director hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or department, except as provided for herein.



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

Section 15. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the director, or by the Trustee and the director, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be paid to the Grantor. The director will agree to termination of the Trust when the owner or operator substitutes alternative financial assurance as specified in the incorporated version of 40 C.F.R. section 264.147, as amended, in section 11-264.1-1, Hawaii Administrative Rules, or the incorporated version of 40 C.F.R. section 265.147, as amended, in section 11-265.1-1, Hawaii Administrative Rules.

Section 16. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor and the director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Hawaii.

Section 18. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this

Agreement shall not affect the interpretation of the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in the incorporated version of 40 C.F.R. section 264.151(n), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date first above written.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

(2) The following is an example of the certification of acknowledgement which must accompany the trust agreement for a standby trust fund as specified in 40 C.F.R. section 264.147(h), as incorporated and amended in this chapter, or 40 C.F.R. section 265.147(h), as incorporated and amended in section 11-265.1-1.

State of  
County of

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

[Signature of Notary Public]" [Eff 7/17/17; am and comp 9/30/18; am and comp 6/25/20; am and comp 6/7/21; comp JAN 29 2024 ] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

**§11-264.1-11 Amendments to the incorporation of 40 C.F.R. part 264, subpart I.** Reserved for amendments to 40 C.F.R. part 264, subpart I. [Eff 7/17/17; am and comp 9/30/18; comp 6/25/20; comp 6/7/21; comp JAN 29 2024 ] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

**§11-264.1-12 Amendments to the incorporation of 40 C.F.R. part 264, subpart J.** The incorporation by reference of 40 C.F.R. section 264.191 is amended as follows:

- (1) In 40 C.F.R. section 264.191(a), replace "January 12, 1988" with "January 12, 1988 for HSWA tanks and June 18, 1995 for non-HSWA tanks".
- (2) In 40 C.F.R. section 264.191(c), replace "Tank systems" with "HSWA tank systems" and add the following second sentence: "Non-HSWA tank systems that store or treat materials that become hazardous wastes subsequent to June 18, 1994 must conduct this assessment within twelve months after the date that the waste becomes a hazardous waste." [Eff 7/17/17; am and comp 9/30/18; comp 6/25/20; comp 6/7/21; comp JAN 29 2024 ] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-13

**§11-264.1-13 Amendments to the incorporation of 40 C.F.R. part 264, subpart K.** The incorporation by reference of 40 C.F.R. section 264.221 is amended as follows: in 40 C.F.R. section 264.221(e)(2)(i)(C), replace "RCRA section 3005(c)" with "section 342J-5, HRS". [Eff 7/17/17; comp 9/30/18; comp 6/25/20; comp 6/7/21; comp <sup>JAN 29 2024</sup>] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

**§§11-264.1-14 to 11-264.1-15 (Reserved).**

**§11-264.1-16 Amendments to the incorporation of 40 C.F.R. part 264, subpart N.** The incorporation by reference of 40 C.F.R. section 264.301 is amended as follows:

- (1) In 40 C.F.R. section 264.301(e)(2)(i)(C), replace "RCRA 3005(c)" with "section 342J-5, HRS".
- (2) 40 C.F.R. section 264.301(l) is excluded from incorporation. [Eff 7/17/17; comp 9/30/18; comp 6/25/20; comp 6/7/21; comp <sup>JAN 29 2024</sup>] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

**§§11-264.1-17 to 11-264.1-18 (Reserved).**

**§11-264.1-19 Amendments to the incorporation of 40 C.F.R. part 264, subpart W.** (a) The incorporation by reference of 40 C.F.R. section 264.570 is amended as follows: in 40 C.F.R. section 264.570(a), replace "December 6, 1990" with "December 6, 1990 for HSWA drip pads and June 18, 1994 for non-HSWA drip pads".

Replace "December 24, 1992" with "December 24, 1992 for HSWA drip pads and June 18, 1994 for non-HSWA drip pads".

(b) The incorporation by reference of 40 C.F.R. section 264.573 is amended as follows: in 40 C.F.R. section 264.573(i), replace "section 3010 of RCRA" with "section 342J-6.5, HRS". [Eff 7/17/17; comp 9/30/18; comp 6/25/20; am and comp 6/7/21; comp JAN 29 2024 ] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

**§11-264.1-20 (Reserved) .**

**§11-264.1-21 Amendments to the incorporation of 40 C.F.R. part 264, subpart AA.** (a) The incorporation by reference of 40 C.F.R. section 264.1030 is amended as follows:

- (1) In 40 C.F.R. section 264.1030(b)(3), replace "262.34(a)" with "262.17".
- (2) In 40 C.F.R. section 264.1030(c), replace "when the permit is reissued" with "when a state hazardous waste management permit is issued under chapter 11-270.1 or the EPA-issued RCRA permit is reissued".
- (3) 40 C.F.R. section 264.1030(d) is excluded from incorporation.

(b) The incorporation by reference of 40 C.F.R. section 264.1033 is amended as follows:

- (1) In 40 C.F.R. section 264.1033(a)(2)(iii), delete "EPA".
- (2) In 40 C.F.R. section 264.1033(n)(1)(i), insert "or a state hazardous waste permit under chapter 11-270.1 which implements the requirements of 40 C.F.R. part 264, subpart X, as incorporated and amended in this chapter" before "; or".

- (3) In 40 C.F.R. section 264.1033(n)(2)(i), insert "or a state hazardous waste permit under chapter 11-270.1 which implements the requirements of 40 C.F.R. part 264, subpart O, as incorporated and amended in this chapter" before "; or".
- (4) In 40 C.F.R. section 264.1033(n)(3)(i), insert "or a state hazardous waste permit under chapter 11-270.1 which implements the requirements of 40 C.F.R. part 266, subpart H, as incorporated and amended in section 11-266.1-1" before "; or". [Eff 7/17/17; am and comp 9/30/18; comp 6/25/20; comp 6/7/21; comp JAN 29 2024 ] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

**§11-264.1-22 Amendments to the incorporation of 40 C.F.R. part 264, subpart BB.**

(a) The incorporation by reference of 40 C.F.R. section 264.1050 is amended as follows:

- (1) In 40 C.F.R. section 264.1050(b)(2), replace "262.34(a)" with "262.17".
- (2) In 40 C.F.R. section 264.1050(c), replace "when the permit is reissued" with "when a state hazardous waste management permit is issued under chapter 11-270.1 or the EPA-issued RCRA permit is reissued".
- (3) 40 C.F.R. section 264.1050(g) is excluded from incorporation.

(b) The incorporation by reference of 40 C.F.R. section 264.1060 is amended as follows: in 40 C.F.R. section 264.1060(b)(3), delete "EPA". [Eff 7/17/17; am and comp 9/30/18; comp 6/25/20; comp 6/7/21; comp JAN 29 2024 ] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

**§11-264.1-23 Amendments to the incorporation of 40 C.F.R. part 264, subpart CC.** (a) The incorporation by reference of 40 C.F.R. section 264.1080 is amended as follows:

- (1) In 40 C.F.R. section 264.1080(b)(5), insert "section 342J-36, HRS;" after "CERCLA authorities;".
- (2) In 40 C.F.R. section 264.1080(c), replace "when the permit is reissued" with "when a state hazardous waste management permit is issued under chapter 11-270.1 or the EPA-issued RCRA permit is reissued" in both instances.
- (3) 40 C.F.R. section 264.1080(e) to 264.1080(g) is excluded from incorporation.

(b) The incorporation by reference of 40 C.F.R. section 264.1082 is amended as follows:

- (1) In 40 C.F.R. section 264.1082(c)(2)(vii)(A), insert "or a state hazardous waste management permit under chapter 11-270.1 which implements the requirements of 40 C.F.R. part 264, subpart O, as incorporated and amended in section 11-264.1-1" before "; or".
- (2) In 40 C.F.R. section 264.1082(c)(2)(viii)(A), replace ", or" with "or a state hazardous waste management permit under chapter 11-270.1 which implements the requirements of 40 C.F.R. part 266, subpart H, as incorporated and amended in section 11-266.1-1; or".
- (3) In 40 C.F.R. section 264.1082(c)(4)(ii), insert "and approved by the director" at the end of the sentence.

(c) The incorporation by reference of 40 C.F.R. section 264.1087 is amended as follows: in 40 C.F.R. section 264.1087(c)(5)(i)(D), insert "; or a boiler or industrial furnace burning hazardous waste for which the owner or operator has been issued a state hazardous waste management permit under chapter 11-270.1 and has designed and operates the unit in accordance with the requirements of 40 C.F.R. part

§11-264.1-23

266, subpart H, as incorporated and amended in section 11-266.1-1" before "; or". [Eff 7/17/17; comp 9/30/18; comp 6/25/20; am and comp 6/7/21; comp ] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

**§11-264.1-24 Amendments to the incorporation of 40 C.F.R. part 264, subpart DD.** The incorporation by reference of 40 C.F.R. section 264.1100 is amended as follows: in the introductory paragraph, replace "RCRA section 3004(k)" with "40 C.F.R. section 268.2(c), as incorporated and amended in section 11-268.1-1". [Eff 7/17/17; am and comp 9/30/18; am and comp 6/25/20; comp 6/7/21; comp JAN 29 2024 ] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)