



Junta  
de Calidad  
Ambiental



AÑO INTERNACIONAL DE LA JUVENTUD  
Participación, Desarrollo, Paz  
1985

Núm. 3288

21 de febrero de 1986 3:30 p.m.  
Fecha:

Aprobado: Héctor Luis Acevedo  
Secretario de Estado

C E R T I F I C A C I O N

Por:

Santos Rohena, Jr.  
Secretaria Auxiliar de Estado

Yo, Santos Rohena, Jr., como Presidente de la Junta de Calidad Ambiental, CERTIFICO que las enmiendas que se acompañan fueron aprobados mediante Resolución de fecha 14 de febrero de 1986 por la Junta de Gobierno compuesta por el Sr. Carlos Jiménez Barber, el Ing. Carl-Axel P. Soderberg y el suscribiente.

Y para que así conste, firmo la presente hoy 21 de febrero de 1986.

  
Santos Rohena, Jr.  
Presidente

**Enmiendas Propuestas a la Regla I-806**  
**Sobre Requisitos Financieros**

1. Se enmienda la Regla I-806 D (5)(a)(i)(D) para que lea como sigue:

"D. Activos en Estados Unidos cuyo valor constituya por lo menos el noventa (90) por ciento del total de sus activos o por lo menos seis veces la suma arrojada por los estimados de costo actuales de cierre y de los que corresponden al periodo de cierre posterior; y"

2. Se enmienda la Regla I-806 D (5)(a)(i) para añadir un párrafo (E) que leerá como sigue:

"E. Activos en Puerto Rico cuyo valor constituya al menos cuatro veces la suma de los costos estimados de cierre y cierre posterior para las facilidades localizadas en Puerto Rico."

3. Se enmienda la Regla I-806 D(5)(a)(ii) A para que en lo sucesivo lea como sigue:

"A. Una cotización actual para su emisión más reciente de bonos AAA, AA ó A, según cotización emitida por la empresa denominada "Standard and Poor's" o Aaa, Aa ó A según cotización emitida por la firma denominada "Moody's"; y"

4. Se enmienda la Regla I-806 D (5)(a)(ii)(D) para que lea como sigue:

"D. Activos en Estados Unidos cuyo valor constituya por lo menos el noventa (90) por ciento del total de sus activos o por lo menos seis veces la suma arrojada por los estimados de costo actuales de cierre y de los que corresponden al periodo de cierre posterior; y"

5. Se enmienda la Regla I-806 D (5)(a)(ii) para añadirle un párrafo (E) que leerá como sigue:

"E. Activos en Puerto Rico cuyo valor constituya al menos cuatro veces la suma de los costos estimados de cierre y cierre posterior para las facilidades localizadas en Puerto Rico."

6. Se enmienda la Regla I-806 F (5)(a)(i)(D) para que lea como sigue:

"D. Activos en Estados Unidos cuyo valor constituya por lo menos el noventa (90) por ciento del total de sus activos o por lo menos seis veces la suma arrojada por los estimados de costo actuales de cierre y de los que corresponden al periodo de cierre posterior; y"

7. Se enmienda la Regla I-806 F (5)(a)(i) para añadir un párrafo (E) que leerá como sigue:

"E. Activos en Puerto Rico cuyo valor constituya al menos cuatro veces la suma de los costos estimados de cierre y cierre posterior para las facilidades localizadas en Puerto Rico."

8. Se enmienda la Regla I-806 F(5)(a)(ii)(A) para que en lo sucesivo lea como sigue:

"A. Una cotización actual para su emisión más reciente de bonos AAA, AA ó A, según cotización emitida por la empresa denominada "Standard and Poor's" ó Aaa, Aa ó A según cotización emitida por la firma denominada "Moody's"; y"

9. Se enmienda la Regla I-806 F (5)(a)(ii)(D) para que lea como sigue:

"D. Activos en Estados Unidos cuyo valor constituya por lo menos el noventa (90) por ciento del total de sus activos o por lo menos seis veces la suma arrojada por los estimados de costo actuales de cierre y de los que corresponden al periodo de cierre posterior; y"

10. Se enmienda la Regla I-806 F (5)(a)(ii) para añadir un párrafo E que lea como sigue:

"E. Activos en Puerto Rico cuyo valor constituya al menos cuatro veces la suma de los costos estimados de cierre y cierre posterior para facilidades localizadas en Puerto Rico."

11. Se enmienda la Regla I-806 H (1)(b) para que en lo sucesivo lea como sigue:

"(b) Un dueño u operador cumplirá con los requisitos de esta Regla si pasa una prueba financiera o utilizando la garantía corporativa para la cubierta de responsabilidad según especificado en el párrafo (6) de esta regla."

12. Se enmienda la Regla I-806 H 1(c) para que en lo sucesivo lea como sigue:

"(c) Un dueño u operador podrá demostrar que cumple con los requisitos de cubierta de responsabilidad utilizando la prueba financiera y la póliza, o la garantía corporativa y la póliza, según estos mecanismos sean especificados en esta regla. La cantidad de cubierta demostrada debe igualar la suma mínima requerida por este párrafo.

13. Se enmienda la Regla I-806 H (2)(b) para que en lo sucesivo lea como sigue:

"(b) Un dueño u operador cumplirá con los requisitos de esta Regla si pasa una prueba financiera o utilizando la garantía corporativa para la cubierta de responsabilidad según especificado en el párrafo (6) de esta regla."

14. Se enmienda la Regla I-806 H(2)(c) para que lea como sigue:

"(c) Un dueño u operador puede demostrar la cubierta de responsabilidad requerida a través del uso de los siguientes mecanismos: la prueba financiera y la póliza de seguro o la garantía corporativa y la póliza de seguro según estos mecanismos son especificados en esta Regla. La suma que arroja dicha cubierta debe totalizar, por lo menos, las sumas mínimas requeridas por este párrafo."

15. Se enmienda la Regla I-806 H(2) eliminando los párrafos (d) y (e).

16. Se enmienda la Regla I-806 H(6) para que se enmiende su título de la siguiente manera:

"(6) Prueba financiera y garantía corporativa para la cubierta de responsabilidad."

17. Se enmienda la Regla I-806 H(6)(a)(i)(C) para que lea como sigue:

"(C) Activos en los Estados Unidos equivalentes a uno de los siguientes:

(1) por lo menos el 90 por ciento del total de sus activos; o

(2) por lo menos seis veces la suma de la cubierta de responsabilidad a ser demostrada por esta prueba; y

18. Se enmienda la Regla I-806 H(6)(a)(i) para añadirle un inciso con la letra (D) que leerá como sigue:

"(D) Activos en Puerto Rico equivalentes a cuatro veces la cantidad de la cubierta de responsabilidad a ser demostrada".

19. Se enmienda la Regla I-806 H(6)(a)(ii)(A) para que en lo sucesivo lea como sigue:

"A. Una cotización actual para su emisión más reciente de bonos AAA, AA ó A, según cotización emitida por la empresa denominada "Standard and Poor's" ó Aaa, Aa ó A según cotización emitida por la firma denominada "Moody's"; y"

20. Se enmienda la Regla I-806 H(6)(a)(ii)(D) para que lea como sigue:

"(D) Activos en Estados Unidos que constituyen al menos uno de los siguientes:

(1) por lo menos el 90 por ciento del total de sus activos; o

(2) al menos 6 veces la suma arrojada por los estimados actuales de costo de cierre y de cierre posterior."

21. Se enmienda la Regla I-806 H(6)(a)(ii) para añadir un párrafo (E) que leerá como sigue:

"(E) Activos en Puerto Rico equivalentes a cuatro veces la cantidad de la cubierta de responsabilidad a ser demostrada".

22. Se enmienda la Regla I-806-H (6) añadiendo un inciso (h) que leerá como sigue:

"(h) Un dueño u operador podrá cumplir con los requisitos de esta regla al obtener una garantía por escrito, denominada en lo sucesivo "garantía corporativa". El garantizador será la corporación matriz del dueño u operador. Dicho garantizador cumplirá con los requisitos correspondientes a dueños u operadores contenidos en los párrafos (6) (a) al (6) (g) de esta regla y tendrá que cumplir con los términos de la garantía corporativa. La fraseología del acuerdo corporativo será igual a la especificada en la Regla II 808 J (8). La garantía corporativa acompañará los documentos enviados a la Junta según especificado en el párrafo (6) (c) de esta Regla. Los términos de la garantía corporativa proveerán que:

- (i) Si el dueño u operador falla en satisfacer el juicio de responsabilidad proveniente de la operación de las facilidades cubiertas por la garantía corporativa, el garantizador lo satisfecerá hasta los límites indicados por la cubierta para los acontecimientos accidentales de carácter súbito o no súbito, o ambos, según sea el caso.
- (ii) Su garantía corporativa se mantendrá en vigor a menos que el garantizador envíe una notificación de cancelación, mediante correo certificado, al dueño u operador y a la Junta. Sin embargo, la cancelación no podrá ocurrir dentro de los 120 días a partir del recibo de la notificación de cancelación para ambos, el dueño u operador y la Junta, según evidenciado por los acuse de recibo.
- (iii) Si el dueño u operador no provee una cubierta de responsabilidad alterna según especificado en esta Regla y no obtiene el consentimiento por escrito de la Junta para tal seguridad alterna, dentro de un plazo de 90 días después que el dueño u operador y la Junta reciban la notificación de cancelación de la cubierta de responsabilidad alterna por parte del garantizador, éste proveerá la cubierta de responsabilidad alterna a nombre del dueño u operador.

**Enmiendas a la Regla II-808 de  
Requisitos Financieros**

1. Se enmienda la Regla II-808 D (6)(a)(i)(D) para que en lo sucesivo lea como sigue:

"D. Activos en Estados Unidos cuyo valor constituya por lo menos el noventa por ciento del total de sus activos o por lo menos seis veces la suma arrojada por los estimados de costo actuales de cierre y de los que corresponden al periodo de cierre posterior; y"

2. Se enmienda la Regla II-808 D (6)(a)(i) para añadir un inciso (E) que leerá de la siguiente manera:

"(E) Activos en Puerto Rico cuyo valor constituya al menos cuatro veces la suma de los costos estimados de cierre y cierre posterior para las facilidades localizadas en Puerto Rico."

3. Se enmienda la Regla II-808 D(6)(a)(ii) A para que en lo sucesivo lea como sigue:

"(A) Una cotización actual para su emisión más reciente de bonos AAA, AA ó A, según cotización emitida por la empresa denominada "Standard and Poor's" o Aaa, Aa ó A según cotización emitida por la firma denominada "Moody's"; y"

4. Se enmienda la Regla II-808 D (6)(a)(ii)(D) para que en lo sucesivo lea como sigue:

"D. Activos en Estados Unidos cuyo valor constituya por lo menos el noventa por ciento del total de sus activos o por lo menos seis veces la suma arrojada por los estimados de costo actuales de cierre y de los que corresponden al periodo de cierre posterior; y"

5. Se enmienda la Regla II-808 D (6)(a)(ii) para añadir un nuevo inciso (E) que leerá como sigue:

"(E) Activos en Puerto Rico cuyo valor constituya al menos cuatro veces la suma de los costos estimados de cierre y cierre posterior para las facilidades localizadas en Puerto Rico."

6. Se enmienda la Regla II-808 F (6)(a)(i)(D) para que en lo sucesivo lea como sigue:

"D. Activos en Estados Unidos cuyo valor constituya por lo menos el noventa por ciento del total de sus activos o por lo menos seis veces la suma arrojada por los estimados de costo actuales de cierre y de los que corresponden al periodo de cierre posterior; y"

7. Se enmienda la Regla II-808 F (6)(a)(i) para añadir un párrafo (E) que leerá como sigue:

"(E) Activos en Puerto Rico cuyo valor constituya al menos cuatro veces la suma de los costos estimados de cierre y cierre posterior para las facilidades localizadas en Puerto Rico."

8. Se enmienda la Regla II-808 F (6)(a)(ii)(A) para que en lo sucesivo lea como sigue:

"(A) Una cotización actual para su emisión más reciente de bonos AAA, AA ó A, según cotización emitida por la empresa denominada "Standard and Poor's" o Aaa, Aa ó A según cotización emitida por la firma denominada "Moody's"; y"

9. Se enmienda la Regla II-808 F (6)(a)(ii)(D) para que en lo sucesivo lea como sigue:

"D. Activos en Estados Unidos cuyo valor constituya por lo menos el noventa por ciento del total de sus activos o por lo menos seis veces la suma arrojada por los estimados de costo actuales de cierre y de los que corresponden al periodo de cierre posterior; y"

10. Se enmienda la Regla II-808 F(6)(a)(ii) para añadir un inciso (E) que leerá como sigue:

"(E) Activos en Puerto Rico cuyo valor constituya al menos cuatro veces la suma de los costos estimados de cierre y cierre posterior para facilidades localizadas en Puerto Rico."

11. Se enmienda la Regla II-808 H(1)(b) para que en lo sucesivo lea como sigue:

"(b) Un dueño u operador cumplirá con los requisitos de esta regla si pasa una prueba financiera o utilizando la garantía corporativa para la cubierta de responsabilidad según especificado en el párrafo (6) de esta regla."

12. Se enmienda la Regla II-808 H 1 (c) para que en lo sucesivo lea como sigue:

"(c) Un dueño u operador podrá demostrar que cumple con los requisitos de cubierta de responsabilidad utilizando la prueba financiera y la póliza de seguro o la garantía corporativa y la póliza de seguro según estos mecanismos son especificados en esta Regla. La cantidad de cubierta demostrada debe igualar la suma mínima requerida por este párrafo."

13. Se enmienda la Regla II-808 H (2)(b) para que en lo sucesivo lea como sigue:

"(b) Un dueño u operador cumplirá con los requisitos de esta regla si pasa una prueba financiera o utilizando la garantía corporativa para la cubierta de responsabilidad según especificado en el párrafo (6) de esta regla."

14. Se enmienda la Regla II-808 H(2)(c) para que en lo sucesivo lea como sigue:

"(c) Un dueño u operador puede demostrar la cubierta de responsabilidad requerida, a través del uso de los siguientes mecanismos: la prueba financiera y la póliza de seguro o la garantía corporativa y la póliza de seguro según estos mecanismos sean especificados en esta Regla. La suma que arroja dicha cubierta debe totalizar, por lo menos, las sumas mínimas requeridas por este párrafo."

15. Se enmienda la Regla II-808 H(2) eliminando el inciso (d).

16. Se enmienda la Regla II-808 H(6) para modificar su título por el siguiente:

"(6) Prueba Financiera y Garantía Corporativa para la Cubierta de Responsabilidad."

17. Se enmienda la Regla II-808 H(6)(a)(i)(C) para que lea como sigue:

"(c) Activos en los Estados Unidos equivalentes a uno de los siguientes:

(1) por lo menos el 90 por ciento del total de sus activos; o

(2) por lo menos seis veces la suma de la cubierta de responsabilidad a ser demostrada por esta prueba; y"

18. Se enmienda la Regla II-808 H(6)(a)(i) para añadirle un inciso (D) que leerá de la siguiente manera:

"(D) Activos en Puerto Rico equivalentes a cuatro veces la cantidad de cubierta de responsabilidad a ser demostrada."

19. Se enmienda la Regla II-808 H(6)(a)(ii)(A) para que en lo sucesivo lea como sigue:

"(A) Una cotización actual para su emisión más reciente de bonos AAA, AA ó A, según cotización emitida por la empresa denominada "Standard and Poor's" o Aaa, Aa ó A según cotización emitida por la firma denominada "Moody's"; y"

20. Se enmienda la Regla II-808 H(6)(a)(ii)(D) para que lea en lo sucesivo como sigue:

"(D) Activos en Estados Unidos que constituyan al menos uno de los siguientes:

(1) por lo menos el 90 por ciento del total de sus activos; o

(2) al menos seis veces la suma de cubierta de responsabilidad a ser demostrada por esta prueba; y"

21. Se enmienda la Regla II-808 H(6)(a)(ii) para añadirle un párrafo (E) que leerá de la siguiente manera:

"(E) Activos en Puerto Rico equivalentes a cuatro veces la cantidad de la cubierta de responsabilidad a ser demostrada."

22. Se enmienda la Regla II-808 (6) añadiendo un inciso (h) que leerá como sigue:

"(h) Un dueño u operador podrá cumplir con los requisitos de esta regla al obtener una garantía por escrito, denominada en lo sucesivo "garantía corporativa". El garantizador será la corporación matriz del dueño u operador. Dicho garantizador cumplirá con los requisitos correspondientes a dueños u operadores contenidos en los párrafos (6) (a) al (6) (g) de esta regla y tendrá que cumplir con los términos de la garantía corporativa. La fraseología del acuerdo corporativo será igual a la especificada en la Regla II 808 J (8). La garantía corporativa acompañará los documentos enviados a la Junta según especificado en el párrafo (6) (c) de esta regla". Los términos de la garantía corporativa proveerán que:

- (i) Si el dueño u operador falla en satisfacer el juicio de responsabilidad proveniente de la operación de las facilidades cubiertas por la garantía corporativa, el garantizador lo satisfecerá hasta los límites indicados por la cubierta para los acontecimientos accidentales de carácter súbito o no súbito, o ambos según sea el caso.
- (ii) Su garantía corporativa se mantendrá en vigor a menos que el garantizador envíe una notificación de cancelación, mediante correo certificado, al dueño u operador y a la Junta. Sin embargo, la cancelación no podrá ocurrir dentro de los 120 días a partir del recibo de la notificación de cancelación para ambos, el dueño u operador y la Junta, según evidenciado por los acuse de recibo.
- (iii) Si el dueño u operador no provee una cubierta de responsabilidad alterna según especificado en esta Regla y no obtiene el consentimiento por escrito de la Junta para tal seguridad alterna, dentro de un plazo de 90 días después que el dueño u operador y la Junta reciban la notificación de cancelación de la cubierta de responsabilidad alterna por parte del garantizador, éste proveerá la cubierta de responsabilidad alterna a nombre del dueño u operador".

23. Se enmienda la Regla II-808 J para que en lo sucesivo lea como sigue:

"La fraseología de los instrumentos será idéntica a lo contenido en el Anejo B 11 de este Reglamento en la manera que se especifica a continuación:

((1)) Acuerdo de Fideicomiso

((2)) Fianza de Seguridad Financiera

((3)) Fianza de Cumplimiento

((4)) Carta de Crédito Auxiliar Irrevocable

((5)) Certificado de Seguro para el Cierre y Cierre Posterior

((6)) Carta del Asesor Financiero Principal (Seguridad Financiera)

((7)) Carta del Asesor Financiero Principal (Cubierta de Responsabilidad)

((8)) Garantía Corporativa para el Cierre y Cierre Posterior o Cubierta de Responsabilidad

((9)) Endoso de Responsabilidad de Facilidades de Desperdicios Peligrosos.

((10)) Certificado de Póliza de Seguro"

24. Se enmienda el anejo B 11 para que en lo sucesivo lea como sigue:

### Wording of the Instruments

((1)) (a) A trust agreement for a trust fund, as specified in Rules II-808 D (1), II-808 F (1), II-806 D (1), II-806 D (1), II-806 F (1) of this part, 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 the 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 E.Q.B., an agency of the Commonwealth of Puerto Rico, 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.

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 EQB. 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 EQB.

Section 4. Payments for Closure and Post-Closure Care. The Trustee shall make payments from the Funds as the EQB Chairman 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 EQB Chairman from the Fund for closure and post-closure expenditures in such amounts as the EQB Chairman shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the EQB Chairman specified 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 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 or the Commonwealth of Puerto Rico;
- (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 or the Commonwealth of Puerto Rico; 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 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, or the Commonwealth of Puerto Rico; 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 EQB 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 EQB Chairman 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 EQB, 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 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 EQB Chairman to the Trustee shall be in writing, signed by the EQB Chairman or its 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 EQB 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 EQB, except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor and the EQB Chairman 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 EQB Chairman, or by the Trustee and the EQB Chairman 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 EQB Chairman, or by the Trustee and the EQB Chairman, 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 EQB Chairman issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

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

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 Regulation for the Control of Hazardous and Non-Hazardous Solid Wastes in Rule II-808 J (1) as such regulations were constituted on the date first above written.

(Signature of Grantor)

(Title)

Attest:

(Title)

(Seal)

(Signature of Trustee)

Attest:

(Title)

(Seal)

(b) The following is an example of the certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in Rules II-808 D (1), I-806 D (1), I-806 F (1) of Part VIII.

Commonwealth of Puerto Rico \_\_\_\_\_

City of \_\_\_\_\_

On this (date), before me personally came (owner or operator) to make 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)

((2)) A surety bond guaranteeing payment into a trust fund, as specified in II-808 D (2), II-808 F (2) or II-806 D (2), II-808 F (2) of Part VIII 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: \_\_\_\_\_

Know All Persons by These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the Environmental Quality Board of the Commonwealth of Puerto Rico (hereinafter called EQB, 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 shall be the full amount of the penal sum.

Whereas said Principal is required, under the Resource Conservation and Recovery Act as amended (RCRA) and the Regulations for the Control of Hazardous and Non-Hazardous Solid Wastes 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 an order to begin closure is issued by the EQB Chairman Regional Administrator or a court of competent jurisdiction.

Or, if the Principal shall provide alternate financial assurance, as specified in Rule II-808 and II-806 of the Regulations as applicable, and obtain the EQB Chairman's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the EQB Chairman 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 EQB Chairman 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 EQB Chairman.

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

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

.(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 EQB Chairman.

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 Rule II-808 J(2) of the Regulation for the Control of Hazardous and Non-Hazardous Solid Waste as such regulation was constituted on the date this bond was executed.

Principal

(Signature(s))

(Name(s))

(Title(s))

(Corporate seal)

Corporate Surety(ies)

(Name and address)

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

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

(Signature(s))

(Name(s) and Title(s))

(Corporate seal)

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

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

((3)) A surety bond guaranteeing performance of closure and/or post-closure care, as specified in Rules II-808 D (3) or II-808 F (3), must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**Performance Bond**

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

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

Principal: (legal name and business address of owner or operator)

Type of organization: (insert "individual," "joint venture,"  
"partnership," or "corporation")

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

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

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

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

Know All Persons by These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the EQB of the Commonwealth of Puerto Rico (hereinafter called EQB), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally: provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties; bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the Resource Conservation and Recovery Act as amended (RCRA), or the Regulations for the Control of Hazardous and Non-Hazardous Solid Wastes, 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, and

Whereas said Principal shall establish a standby trust fund as is required when 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 Rule II-808 of the Regulation for the Control of Hazardous and Non-Hazardous Solid Wastes and obtain the EQB Chairman's written approval of such assurance, within 90 days after the date notice of cancellation is received by both

the Principal and the EQB 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 EQB Chairman that the Principal has been found in violation of the closure requirements of Rule II-808 of the Regulation for the Control of Hazardous and Non-Hazardous Solid Wastes, 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 EQB Chairman.

Upon notification by the EQB Chairman that the Principal has been found in violation of the post-closure requirements of Part VIII-II for a facility for which this bond guarantees performance of 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 EQB Chairman.

Upon notification by the EQB that the Principal has failed to provide alternate financial assurance as specified in Rule II-808 of the Regulations for the Control of Hazardous and Non-Hazardous Solid Wastes, and obtain written approval of such assurance from the EQB during the 90 days following receipt by both the Principal and EQB 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 EQB.

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

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

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

(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 EQB Chairman.

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 Rule II-808 J (3) as such regulation was constituted on the date this bond was executed.

Principal

(Signature(s))

(Name(s))

(Title(s))

(Corporate seal)

Corporate Surety(ies)

(Name and address)

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

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

(Signature(s))

(Name(s) and Title(s))

Corporate seal:

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

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

- (d) A letter of credit, as specified in Rules II-808 D (4) or II-808 F(4) or II-806 D(3) or II-806 F(3) of Part II-VIII 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

Chairman of the EQB of the Commonwealth of Puerto Rico

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

- (1) your sight draft, bearing reference to this letter of credit No. \_\_\_\_\_, and
- (2) your signed statement reading as follows:  
 "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the Environmental Public Policy Act of 1970 as amended.

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

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

amount of the draft directly into the standby trust fund of (owner's or operator's name) in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording required by Rule II-808 J (4) 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 by the International Chamber of Commerce," or "the Uniform Commercial Code").

((5)) A certificate of insurance, as specified in Rules II-808 D (5) or II-808-F (5) or I-806 D (5) of Part II-VIII 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 amount for sure and/or the amount for post-closure care (these amount 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 Rules II-808 D(5), II-808 F(5), I-806 D(4), and I-806 F(4), 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 EQB Chairman, the Insurer agrees to furnish to the EQB 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 Rule II-808 J (5) 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 of notary: \_\_\_\_\_

(Date)

((6)) A letter from the chief financial officer, as specified in Rules II-809 D (6) or II-808 F (6) or I-806 D (5), or I-806 F (5) of Part II-VIII 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 the Chairman of the EQB)

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, as specified in Rules I-806 and II-808.

(Fill out the following four 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 Rules I-806 and II-808. The current closure and/or post-closure cost estimates covered by the test are shown for each facility: \_\_\_\_\_

2. This firm guarantees, through the corporate guarantee specified in Rules II-808 and I-806, the closure or post-closure care of the following facilities owned or operated by subsidiaries of this firm. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: \_\_\_\_\_

3. Where the Commonwealth is not administering the financial requirements of Rules I-806 and II-808, 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 this rules. 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 EQB or a State through the financial test or any other financial assurance mechanism specified in Rules I-806 and II-808 or equivalent or substantially equivalent mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance 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 statement for the latest completed fiscal year, ended (date).

(Fill in Alternative I if the criteria of paragraph (6)(a)(i) of Rule II-808 D or Rule II-808 F or of paragraph (5)(a)(i) of Rule I-806 D or Rule I-806 F of this Part are used. Fill in Alternative II if the criteria of paragraph (6)(a)(ii) of Rule II-808 D or Rule II-808 F, or of paragraph (5)(a)(ii) of Rule I-806 D or Rule I-806 F of this part are used).

**Alternative I**

- 1a. Sum of current closure and post-closure cost estimates (total of all cost estimates shown in the four paragraphs above)..... \$.....
- 1b. Sum of current closure and post-closure cost estimates for all facilities located in Puerto Rico..... \$.....
- \*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. Total assets in Puerto Rico.....
-

Yes

No

- 
11. Is line 3 at least \$10 million?.....
12. Is line 3 at least 6 times line 1?.....
13. Is line 7 at least 6 times line 1?.....
- \*14. Are at least 90% of firm's assets  
located in the U.S.? If not, complete line 14.....
15. Is line 9 at least 6 times line 1a?.....
16. Is line 10 at least 4 times line 1b?.....
17. Is line 2 divided by line 4 less than 2.0?.....
18. Is line 8 divided by line 2 greater than 0.1?.....
19. Is line 5 divided by line 6 greater  
than 1.5?.....
-

## Alternative II

- 1a. Sum of current closure and post-closure cost estimates (total of all cost estimates shown in the four paragraphs above)..... \$.....
- 1b. Sum of current closure and post-closure cost estimates for all facilities located in Puerto Rico.... \$.....
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. Total assets in Puerto Rico..... \$.....
-

Yes No

- 
8. Is line 5 at least \$10 million?.....
9. Is line 5 at least 6 times line 1a?.....
10. Are at least 90% of firm's assets located  
in the U.S.? If not, complete line 11.....
11. Is line 6 at least 6 times line 1a?.....
12. Is line 7 at least 4 times line 1b?.....
- 

I hereby certify that the wording of this letter is identical to the wording specified in Rule II-808 J (6) as such regulations were constituted on the date shown immediately below.

(Signature)

(Name)

(Title)

(Date)

(Editor's note: EQB July-1985)

- ((7)) A letter from the chief financial officer, as specified in Rule II-808 H(6) or Rule I-806 H(6) of this part, 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 (to demonstrate liability coverage or to demonstrate both liability coverage and assurance of closure or post-closure care).

(Address to EQB Chairman)

I am the chief financial officer of (owner's or operator'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 Rules I-806 and II-808.

(Fill out the following paragraphs regarding facilities and liability coverage. For each facility, include its EPA Identification Number, name, and address.)

The owner or operator identified above is the owner or operator of the following facilities for which liability coverage is being demonstrated through the (insert "financial test and/or corporate guarantee") specified in Rules I-806 and II-808. For each facility, indicate if you are using the financial test or corporate guarantee.

(If you are using the financial test or corporate guarantee to demonstrate coverage of both liability and closure and post-closure care, fill in the following four 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 owner or operator identified above owns or operates the following facilities for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in Rules I-806 and II-808. The current closure and/or post-closure cost estimates covered by the test are shown for each facility: \_\_\_\_\_

2. The owner or operator identified above guarantees, through the corporate guarantee specified in Rules I-806 and II-808, the closure and post-closure care of the following facilities owned or operated by its subsidiaries. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: \_\_\_\_\_.

3. Where the Commonwealth of Puerto Rico is not administering the financial requirements of Rules I-806 and II-808, this owner or operator 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 Rules I-806 and II-808. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility: \_\_\_\_\_.

4. The owner or operator 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 mechanism specified in Rule II-808 and Rule I-806 equivalent or substantially equivalent State or Federal mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: \_\_\_\_\_.

This owner or operator (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 owner or operator ends on (month, day). The figures for the following items marked with an asterisk are derived from this owner's or operator's independently audited, year-end financial statements for the latest completed fiscal year, ended (date).

(Fill in part A if you are using the financial test to demonstrate coverage only for the liability requirements.)

### **Part A. Liability Coverage for Accidental Occurrences**

(Fill in Alternative I if the criteria of paragraph (6)(a)(i) of Rule II-808 H or Rule I-806 H are used. Fill in Alternative II if the criteria of paragraph (6)(a)(ii) of Rule II-808 H or Rule I-806 H 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. Total assets in Puerto Rico                                               | \$..... |

|                                                                                   | Yes   | No    |
|-----------------------------------------------------------------------------------|-------|-------|
| 8. Is line 5 at least \$10 million?                                               | _____ | _____ |
| 9. Is line 4 at least 6 times line 1?                                             | _____ | _____ |
| 10. Is line 5 at least 6 times line 1?                                            | _____ | _____ |
| *11. Are at least 90% of assets located<br>in the U.S.? If not, complete line 12? | _____ | _____ |
| 12. Is line 6 at least 6 times line 1?                                            | _____ | _____ |
| 13. Is line 7 at least 4 times line 1?                                            | _____ | _____ |

### Alternative II

|                                                                                                   |          |
|---------------------------------------------------------------------------------------------------|----------|
| 1. Amount of annual aggregate liability<br>coverage to be demonstrated                            | \$ _____ |
| 2. Current bond rating of most recent<br>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<br>if less than 90% of assets are<br>located in the U.S.) | \$ _____ |
| *7. Total assets in Puerto Rico                                                                   | \$ _____ |

|  | Yes | No |
|--|-----|----|
|--|-----|----|

|                                    |       |       |
|------------------------------------|-------|-------|
| 8. Is line 5 at least \$10 million | _____ | _____ |
|------------------------------------|-------|-------|

|                                       |       |       |
|---------------------------------------|-------|-------|
| 9. Is line 5 at least 6 times line 1? | _____ | _____ |
|---------------------------------------|-------|-------|

|                                                                                 |       |       |
|---------------------------------------------------------------------------------|-------|-------|
| 10. Are at least 90% of assets located<br>in the U.S.? If not, complete line 1. | _____ | _____ |
|---------------------------------------------------------------------------------|-------|-------|

|                                        |       |       |
|----------------------------------------|-------|-------|
| 11. Is line 6 at least 6 times line 1? | _____ | _____ |
|----------------------------------------|-------|-------|

|                                        |       |       |
|----------------------------------------|-------|-------|
| 12. Is line 7 at least 4 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 paragraphs (6)(a)(i) of Rule II-808 D or Rule II-808 F and (6)(a)(i) of Rule II-808 H are used or if the criteria of paragraphs (5)(a)(i) of Rule I-806 D or Rule I-806 F and (6)(a)(i) of Rule I-806 H are used. Fill in Alternative II if the criteria of paragraphs (6)(a)(ii) of Rule II-808 D or II-808 F and (6)(a)(ii) of Rule 808-H are used or if the criteria of paragraphs (5)(a)(ii) of Rule I-806 D or Rule I-806 F and (6)(a)(ii) of Rule I-806 H are used.)

## Alternative I

- 1a. Sum of current closure and post-closure  
cost estimates (total of all cost estimates  
listed above) ..... \$.....
- 1b. Sum of current closure and post-closure  
cost estimates for all facilities located  
in Puerto Rico..... \$.....
2. Amount of annual aggregate liability  
coverage to be demonstrated ..... \$.....
- 3a. Sum of line 1(a) and 2 ..... \$.....
- 3b. Sum of line 1(b) and 2 ..... \$.....
- \*4. Total liabilities (if any portion of  
your closure or post-closure cost  
estimates is included in your total  
liabilities, you can 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. Total assets in Puerto Rico \$.....

Yes No

13. Is line 5 at least \$10 million? \_\_\_\_\_

14. Is line 5 at least 6 times line 3(a)? \_\_\_\_\_

15. Is line 9 at least 6 times line 3(a)? \_\_\_\_\_

\*16. Are at least 90% of assets located in the U.S.? If not, complete line 17. \_\_\_\_\_

17. Is line 11 at least 6 times line 3(a)? \_\_\_\_\_

18. Is line 12 at least 4 times line 3(b)? \_\_\_\_\_

19. Is line 4 divided by line 6 less than 2.0? \_\_\_\_\_

20. Is line 10 divided by line 4 greater than 0.1? \_\_\_\_\_

21. Is line 7 divided by line 8 greater than 1.5? \_\_\_\_\_

## Alternative II

- 1(a). Sum of current closure and post-closure cost estimates (total of all cost estimates listed above)..... \$.....
- 1(b). Sum of current closure and post-closure cost estimates for facilities located in Puerto Rico..... \$.....
2. Amount of annual aggregate liability coverage to be demonstrated \$.....
- 3(a). Sum of lines 1(a) and 2 \$.....
- 3(b). Sum of lines 1(b) 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. Total assets in Puerto Rico \$.....

|      |                                                                          | <u>Yes</u> | <u>No</u> |
|------|--------------------------------------------------------------------------|------------|-----------|
| 10.  | Is line 7 at least \$10 million                                          | _____      | _____     |
| 11.  | Is line 7 at least 6 times line 3(a)?                                    | _____      | _____     |
| *12. | Are at lest 90% of assets located in the U.S.? If not, complete line 13. | _____      | _____     |
| 13.  | Is line 8 at least 6 times line 3(a)?                                    | _____      | _____     |
| 14.  | Is line 9 at least 4 times line 3(b)?                                    | _____      | _____     |

I hereby certified that the wording of this letter is identical to the wording specified in Rule II-808 J(7) as such regulations were constituted on the date shown immediately below.

(Signature)

(Name)

(Title)

(Date)

((8)) A corporate guarantee, as specified in Rules II-808 D(6) or II-808 F(6) or Rules I-806 D(5) or I-806 F(5) of Part II-VIII, 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 or Liability Coverage**

Guarantee made this (date) by (name of guaranteeing entity), a business corporation organized under the laws of (insert name of State or Puerto Rico), herein referred to as guarantor, to the EQB oblique, on behalf of our subsidiary (owner or operator) of (business address).

### **Recitals**

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in Rules II-808 D(6), II-808 F(6), I-806 D(5), and I-806 F(5).

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 liability coverage or all.)

3. "Closure plans" and "post-closure plans" as used below refer to the plans maintained as required by Rules II-807 and I-805 for the closure and post-closure care of facilities as identified above.

4(a). (Include if guaranteeing closure and post-closure cost). For value received from (owner or operator), guarantor guarantees to EQB 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 Rules II-808 or I-806 as applicable, in the name of (owner or operator) in the amount of the current closure or post-closure cost estimates as specified in Rules II-808 and I-806.

4(b). (Include if guaranteeing liability coverage). For value received from (owner or operator), the guarantor guarantees to EQB that in the event that (owner or operator) fails to satisfy liability judgements arising from the operations of the above named facility(ies), the guarantor agrees to satisfy such judgement(s), up to the limits required by these regulations for claims arising from the operations of the facilities from (insert coverage that applies: "sudden and accidental occurrences," or "non-sudden accidental occurrences" or "both sudden and accidental and non-sudden and accidental occurrences") that cause injuries to persons or property, or provide alternate liability coverage as specified in Rules I-806 and II-808 in the name of the owner or operator.

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 EQB for facilities located in Puerto Rico and to (owner or operator) that he intends to provide alternate (insert "financial assurance and/or liability coverage") as specified in Rules II-808 or I-806, as applicable, in the name of (owner or operator). Within 120 days after the end of such fiscal year, the guarantor shall establish such (insert "financial assurance and/or liability coverage") unless (owner or operator) has done so.

6. The guarantor agrees to notify the EQB 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 EQB of 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 or liability coverage, he shall establish alternate (insert "financial assurance and/or liability coverage") as specified in Rules II-808 or I-806, as applicable, in the name of (owner or operator) unless (owner or operator) has done so.

8(a). (Include if guaranteeing closure and post-closure cost). Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendments 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 Part VIII-I and II of this regulation.

8(b). (Include if guaranteeing liability coverage). Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the liability requirements set by Rules II-808 H and I-806 H; variances established according to the Rules II-808 H and I-806 H; or any other modification or alteration of an obligation of the owner or operator.

9. Guarantor agrees to remain bound under this guarantee for so long as (owner or operator) must comply with the applicable (insert "financial assurance or liability requirements") of Rules II-808 and I-806 for the above-listed facilities, except that guarantor may cancel this guarantee by sending notice by certified mail to the EQB and to (owner or operator), such cancellation to become effective no earlier than 120 days after receipt of such notice by both EQB and (owner or operator), as evidenced by the return receipts.

10. Guarantor agrees that if (owner or operator) fails to provide alternate (insert "financial assurance and/or liability coverage") as specified in Rules II-808 or I-806, as applicable, and obtain written approval of such assurance from the EQB Chairman within 90 days after a notice of cancellation by the guarantor is received by the EQB from guarantor, guarantor shall provide such alternate (insert "financial assurance and/or liability coverage") in the name of (owner or operator).

11. Guarantor expressly waives notice of acceptance of this guarantee by the EQB 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 Rule II-808 J(8) 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: \_\_\_\_\_

((9)) A hazardous waste facility liability enforcement as required in 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 Rules II-808 H or I-806 H. 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 Rules II-808 H(6) or I-806 H(6).

- (c) Whenever requested by the EQB Chairman, the Insurer agrees to furnish to the Chairman a signed duplicate original of the policy and all endorsements.
- (d) Cancellation of this endorsement, whether by the Insurer or the insured, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the EQB Chairman.
- (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 EQB Chairman.

Attached to and forming part of policy No. \_\_\_\_\_ issued by (name of Insurer), herein called the Insurer, of (address of Insurer) to (name of Insured, of (address) this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_. The effective date of said policy is \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

I hereby certify that the wording of this endorsement is identical to the wording specified in Rule II-808 J(9) 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 the Commonwealth of Puerto Rico or one or more States.

(Signature of Authorized Representative of Insurer)

(Type Name)

(Title), Authorized Representative of (name for Insurer)

(Address of Representative)

- ((10)) A certificate of liability insurance as required in Rules II-808 H or I-806 H 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"), or (address of insured) in connection with the insured's obligation to demonstrate financial responsibility under Rules II-808 H or I-806 H. The coverage applies at (list EPA Identification Number, name, and address for each facility) for (insert "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 or 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 or 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 Rules II-808 H or I-806 H.
- (c) Whenever requested by the Chairman of EQB, the Insurer agrees to furnish to the EQB a signed duplicate original of the policy and all endorsements.
- (d) Cancellation of the insurance, whether by the Insurer or the insured, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the EQB.
- (e) Any other termination of the insurance will be effective only upon written notice and only after a copy of such written notice is received by EQB.

I hereby certify that the wording of this instrument is identical to the wording specified in Rule II-808 J(10) 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 the Commonwealth of Puerto Rico or a state.

(Signature of authorized representative of name of Insurer)

(Type name)

(Title), Authorized Representative of (name of Insurer)

(Address of Representative)