

**(1) A trust agreement for a trust fund, as requested by the Georgia EPD, 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 responsible party], 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 Georgia Environmental Protection Division of the State of Georgia Department of Natural Resources, has entered into an [Insert one of the following: Administrative Order, Consent Order, Prospective Purchaser Corrective Action Plan, Voluntary Remediation Plan] with the Grantor, requiring that the responsible party perform corrective action at a site(s) shall provide assurance that funds will be available when needed,

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the site(s) 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 responsible party 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 “Georgia EPD” means the Environmental Protection Division of the Georgia Department of Natural Resources.

(d) The term “Director of Georgia EPD” means the Director of the Environmental Protection Division of the Georgia Department of Natural Resources or his duly appointed representative or designee.

Section 2. Identification of Site(s) and Cost Estimate(s). This Agreement pertains to the site(s) and cost estimate(s) identified on attached Schedule A [on Schedule A, for each site list the Hazardous Site Inventory Number, name, address, and the current corrective action cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the “Fund,” for the benefit of Georgia EPD. 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 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 Georgia EPD.

Section 4. Payment for Corrective Action. The Trustee shall make payments from the Fund as the Director of Georgia EPD shall direct, in writing, to provide for the payment of the costs of corrective action at the site(s) covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the Director of Georgia EPD from the Fund for corrective action expenditures in such amounts as the Director of Georgia EPD shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Director of Georgia EPD 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 responsible party for the site(s), 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 of Georgia EPD 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 of Georgia EPD 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 of Georgia EPD, 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 of Georgia EPD to the Trustee shall be in writing, signed by the Director of Georgia EPD, 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 Georgia EPD 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 Georgia EPD, except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor and the Director of Georgia EPD, 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 of Georgia EPD, or by the Trustee and the Director of Georgia EPD, 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 of Georgia EPD, or by the Trustee and the Director of Georgia EPD, 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 of Georgia EPD 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.

Any suit by either party against the other on a claim arising from or related to this Trust Agreement must be brought in the Superior Court of Fulton County, Georgia. Nothing in this Trust Agreement is intended to waive Eleventh Amendment immunity to the State of Georgia or its sovereign immunity. No officer, employee, counsel, advisor or other representative or agent of the State of Georgia or any other agency or instrumentality of the State of Georgia will be individually liable in regard to any claim under or in regard to this Trust Agreement.

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

This Trust Agreement is made under the laws of the State of Georgia and deemed executed in Georgia. It will be enforced according to Georgia law without regard to its conflict of laws rules or any other rules directing referral to foreign law or forums.

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:

[Signature of Grantor]  
[Title]

Attest:

[Title]  
[Seal]

[Signature of Trustee]

Attest:

[Title]  
[Seal]

**The following are examples of the certification of acknowledgment, which must accompany the trust agreement for a trust fund.**

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

On this [date], before me personally came [Name] 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]

**or,**

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

On this [date], before me personally came [responsible party] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is the person described in and who executed the above instrument; that she/he acknowledges the signature affixed to such instrument as her/his own; that it was so affixed by her/his hand or at her/his command.

[Signature of Notary Public]

**(2) A surety bond guaranteeing payment into Georgia’s Hazardous Waste Trust Fund, as requested by Georgia EPD, 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 responsible party]

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

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

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

Hazardous Site Inventory number, name, address and corrective action amount(s) for each facility guaranteed by this bond [indicate each corrective action amount separately]: \_\_\_\_\_

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

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

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the Environmental Protection Division, Georgia Department of Natural Resources (hereinafter called Georgia EPD), 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 [Insert type of instrument: Administrative Order, Consent Order, Prospective Purchaser Corrective Action Plan, Voluntary Remediation Plan], to perform certain corrective action for each site identified above, and

Whereas said Principal is required to provide financial assurance for the corrective action, as a condition of the [Insert type of instrument], and

Now, Therefore, the conditions of this obligation are such that if the Principal shall provide alternate financial assurance, as permitted by Georgia EPD, and obtain written approval of such assurance from the Director of Georgia EPD, within 90 days after the date notice of cancellation is received by both the Principal and the Director of Georgia EPD 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 of Georgia EPD that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the site(s) into Georgia’s Hazardous Waste Trust Fund as directed by the Director of Georgia EPD .

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to

the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the Director of Georgia EPD , 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 Director of Georgia EPD , 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 of Georgia EPD .

Upon notification by the Director of Georgia EPD that the Principal has failed to provide alternate financial assurance as permitted by Georgia EPD, and obtain written approval of such assurance from the Director of Georgia EPD during the 90 days following receipt by both the Principal and the Director of Georgia EPD of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the site(s) into Georgia's Hazardous Waste Trust Fund as directed by the Director of Georgia EPD.

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

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new corrective action amount, which is reflective of revised cost estimates for the corrective action and is at no time lower than the revised estimated cost of corrective action, 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 of Georgia EPD.

Any suit by either party against the other on a claim arising from or related to this Financial Gurantee Bond must be brought in the Superior Court of Fulton County, Georgia. Nothing in this Financial Gurantee bond is intended to waive the Eleventh Amendment immunity of the State of Georgia or its sovereign immunity. No officer, employee, counsel, advisor or other representative or agent of the State of Georgia will be individually liable in regard to any claim under or in regard to this Financial Gurantee Bond.

This Financial Gurantee Bond is made under the laws of the State of Georgia and deemed executed in Georgia. It will be enforced according to Georgia law without regard to its conflict of laws rules or any other rules directing referral to foreign laws or forums.

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Gurantee 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 this instrument is effective as of the date of its execution.

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 corrective action, as requested by Georgia EPD, 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 responsible party]

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

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

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

Hazardous Site Inventory Number, name, address, and corrective action amount(s) for each site guaranteed by this bond [indicate each corrective action amount separately]: \_\_\_\_\_

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

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

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the Environmental Protection Division of the Georgia Department of Natural Resources (hereinafter called Georgia EPD), 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 to provide financial assurance for corrective action to be performed, as a condition of the [insert type of instrument: Administrative Order, Consent Order, Prospective Purchaser Corrective Action Plan, Voluntary Remediation Plan], and

Now, Therefore, the conditions of this obligation are such that if the Principal shall faithfully perform corrective action, whenever required to do so, of each site for which this bond guarantees performance, in accordance with the [insert type of instrument], pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

And, if the Principal shall faithfully perform corrective action at each site for which this bond guarantees performance of corrective action, in accordance with the [Insert type of instrument], as such 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 permitted by Georgia EPD, and obtain written approval of such assurance from the Director of Georgia EPD, within 90 days after the date notice of cancellation is received by both the Principal and the Director of Georgia

EPD 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 Director of Georgia EPD that the Principal has been found in violation of the requirements of the [insert type of instrument] for a site for which this bond guarantees performance of corrective action, the Surety(ies) shall either perform the corrective action in accordance with the [insert type of instrument], or place the amount guaranteed for the site into Georgia's Hazardous Waste Trust Fund as directed by the Director of Georgia EPD.

Upon notification by the Director of Georgia EPD that the Principal has failed to provide alternate financial assurance as permitted by Georgia EPD, and obtain written approval of such assurance from the Director of Georgia EPD during the 90 days following receipt by both the Principal and the Director of Georgia EPD of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the site(s) into Georgia's Hazardous Waste Trust Fund as directed by the Director of Georgia EPD.

The surety(ies) hereby waive(s) notification of amendments to the [insert type of instrument], 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 responsible party and to the Director of Georgia EPD, 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 Director of Georgia EPD, as evidenced by the return receipts. Nor shall cancellation become effective in the absence of approval by the Director of Georgia EPD of an alternative financial assurance instrument.

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 of Georgia EPD.

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new corrective action amount, which is reflective of the revised cost estimates for the corrective action and is at no time lower than the revised estimated cost of corrective action, 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 of Georgia EPD .

Any suit by either party against the other on a claim arising from or related to this Performance Bond must be brought in the Superior Court of Fulton County, Georgia. Nothing in this Performance Bond is intended to waive the Eleventh Amendment immunity of the State of Georgia or its sovereign immunity. No officer, employee, counsel, advisor or other representative or agent of the State of Georgia or any other agency or instrumentality of the State of Georgia will be individually liable in regard to any claim under or in regard to this Performance Bond.

This Performance Bond is made under the laws of the State of Georgia and deemed executed in Georgia. It will be enforced according to Georgia law without regard to its conflict of laws or any other rules directing to foreign law or forums.

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).

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: \$ \_\_\_\_\_

**(4) A letter of credit, as requested by the Georgia EPD, 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, Environmental Protection Division  
Georgia Department of Natural Resources.

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 [responsible party's name and address] up to the aggregate amount of [in words] U.S. dollars \$\_\_\_\_\_, available upon presentation by the Director of Georgia EPD 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 authority of the [insert type of instrument: Administrative Order, Consent Order, Prospective Purchaser Corrective Action Plan, Voluntary Remediation Plan]."

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 [responsible party'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 [responsible party's name], as shown on the signed return receipt.

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 Georgia's Hazardous Waste Trust Fund in accordance with your instructions.

Any suit by either party against the other on a claim arising from or related to this Letter of Credit must be brought in the Superior Court of Fulton County, Georgia. Nothing in this Letter of Credit is intended to waive the Eleventh Amendment immunity of the State of Georgia or its sovereign immunity. No officer, employee, counsel, advisor or other representative or agent of the State of Georgia or any other agency or instrumentality of the State of Georgia will be individually liable in regard to any claim under or in regard to this Letter of Credit.

This Letter of Credit is made under the laws of the State of Georgia and deemed executed in Georgia. It will be enforced according to Georgia law without regard to its conflict of laws rules or any other rules directing referral to foreign law or forums.

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"].

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

**(5) Providing financial assurance through the use of a financial test requires that the following documents be provided: a) A letter signed by the responsible party's Chief Financial Officer, b) A copy of the independent certified public accountant's report on examination of the responsible party's financial statements for the latest completed fiscal year, c) A special report from the responsible party's independent certified public accountant. If a corporate guarantee is used by a parent company to provide financial assurance for its subsidiary, then the additional documentation found in part (d) below must be included as well.**

**(5)(a) A letter from the Chief Financial Officer, as required by the Georgia EPD to show financial assurance, 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, Environmental Protection Division of the Georgia Department of Natural Resources].

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 corrective action, as specified in [insert type of instrument: Administrative Order, Consent Order, Prospective Purchaser Corrective Action Plan, Voluntary Remediation Plan].

[Fill out the following four paragraphs regarding sites and associated cost estimates. If your firm has no sites that belong in a particular paragraph, write "None" in the space indicated. For each site, include its Hazardous Site Inventory Number, name, address, and current corrective action cost estimates. Identify each cost estimate by associated activity].

1. This firm is a responsible party of the following site(s) for which financial assurance for corrective action is demonstrated through the financial test approved by Georgia EPD. The current corrective action cost estimates covered by the test are shown for each site: \_\_\_\_\_.

2. This firm guarantees, through the guarantee included herein and attached hereto, the corrective action for the following facilities owned or operated by the guaranteed party. The current cost estimates for the corrective action so guaranteed are shown for each site: \_\_\_\_\_. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the responsible party; (2) owned by the same parent corporation as the parent corporation of the responsible party, and receiving the following value in consideration of this guarantee \_\_\_\_\_; or (3) engaged in the following substantial business relationship with the responsible party \_\_\_\_\_, 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. This firm, as a responsible party or guarantor, is demonstrating financial assurance for the corrective action at the site through the use of [insert Alternative I or Alternative II] as approved

by the Georgia EPD. The current corrective action cost estimates covered by such a test are shown for each facility: \_\_\_\_\_.

4. This firm is a responsible party or a generator at the following site(s) for which financial assurance for corrective action is not demonstrated to the Environmental Protection Division, Georgia Department of Natural Resources through an approved financial test or any other financial assurance mechanism permitted by Georgia EPD. The current corrective action cost estimates not covered by such financial assurance are shown for each site: \_\_\_\_\_.

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].

[Insert the appropriate test from section 5(a)(i) here.]

6. Any suit by either party against the other on a claim arising from or related to this Financial Test must be brought in the Superior Court of Fulton County, Georgia. Nothing in this Financial Test is intended to waive the Eleventh Amendment immunity of the State of Georgia or its sovereign immunity. No officer, employee, counsel, advisor or other representative or agent of the State of Georgia or any other agency or instrumentality of the State of Georgia will be individually liable in regard to any claim under or in regard to this Financial Test.

This Financial Test is made under the laws of the State of Georgia and deemed executed in Georgia. It will be enforced according to Georgia law without regard to its conflict of laws or any other rules directing referral to foreign law or forums.

**(5)(a)(i). A responsible party showing financial assurance through a letter from their chief financial officer must include either the test alternative I or II in the letter.**

[A responsible party should use Alternative I if he meets the following criteria:

The responsible party must have:

- A) Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; a ratio of current assets to current liabilities greater than 1.5; AND
- B) Net working capital and tangible net worth each at least six times the sum of the current corrective action cost estimates; AND
- C) Tangible net worth of at least \$10 million; AND
- D) Assets located in Georgia amounting to at least 90 percent of the total assets or at least six times the corrective action cost estimates.]

Alternative I

1. Sum of current corrective action cost estimate [total of all cost estimates shown in the four paragraphs above] \$\_\_\_\_\_

\*2. Total liabilities [if any portion of the corrective action 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 Georgia (required only if less than 90% of firm's assets are located in Georgia) \$\_\_\_\_\_

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 Georgia? 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) \_\_\_\_\_

[Signature] \_\_\_\_\_

[Name] \_\_\_\_\_

[Title] \_\_\_\_\_

[Date] \_\_\_\_\_



[A responsible party should use Alternative II if he meets the following criteria:

The responsible party must have:

- A) A current rating for his most recent bond issuance of AAA, AA, A, or Aaa, Aa, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; AND
- B) Tangible net worth at least six times the sum of the current corrective action cost estimates; AND
- C) Tangible net worth of at least \$10 million; AND
- D) Assets located in Georgia amounting to at least 90 percent of total assets or at least six times the sum of the current corrective action cost estimates.]

### Alternative II

1. Sum of current corrective action cost estimates [total of all cost estimates shown in the four 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 corrective action 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 Georgia (required only if less than 90% of firm's assets are located in Georgia) \$ \_\_\_\_\_

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 Georgia? (Yes/No) \_\_\_\_\_ If not, complete line 10

10. Is line 6 at least 6 times line 1? (Yes/No) \_\_\_\_\_

[Signature] \_\_\_\_\_

[Name] \_\_\_\_\_

[Title] \_\_\_\_\_

[Date] \_\_\_\_\_

**(5)(b) A copy of the independent certified public accountant's report on examination of the responsible party's financial statements for the latest completed fiscal year should be in the same form as delivered to the responsible party.**

An original copy of the company's the most recent 10K filing or Annual Report satisfies this requirement if the financial statement contains an independent certified public accountant's report.

**(5)(c) A special report from the responsible party's independent certified public accountant must include the following information.**

i) A statement that the independent CPA has compared the data contained in the letter from the Chief Financial Officer (submitted under 5(a) and 5(a)(i) or 5(a)(ii) above), which the Chief Financial Officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year, with the reported amounts in the independently audited, year-end financial statements for the latest fiscal year (these statements may have been submitted as 5(b) above); AND

ii) In connection with that procedure, no matters came to the independent CPA's attention that caused him to believe that the data in the Chief Financial Officer's letter (5(a) above) should be adjusted.

**(5)(d). A corporate guarantee, required by Georgia EPD when providing financial assurance for a related corporate entity, 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 Corrective Action

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 [responsible party] 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 40 CFR [either 264.141(h) or 265.141(h)]” to the Environmental Protection Division of the Georgia Department of Natural Resources (Georgia EPD).

#### Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in 40 CFR 264.143(f), 264.145(f), 265.143(e), and 265.145(e).
2. [Responsible party] is required to perform corrective action at the following site(s) covered by this guarantee: [List for each site: Hazardous Site Inventory Number, name, and address.]
3. “Corrective Action” as used below refers to the plans maintained as required by the [insert type of instrument: Administrative Order, Consent Order, Prospective Purchaser Corrective Action Plan, Voluntary Remediation Plan] for the clean up of the site(s) identified above.
4. For value received from [responsible party], guarantor guarantees to Georgia EPD that in the event that [responsible party] fails to perform corrective action at the above site(s) in accordance with the [insert type of instrument], whenever required to do so, the guarantor shall do so or deposit the money in Georgia’s Hazardous Waste Trust Fund as directed by the Director of Georgia EPD in the amount of the current corrective action cost estimates.
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 Georgia EPD and to [responsible party] that he intends to provide alternate financial assurance as permitted by Georgia EPD, in the name of [responsible party]. Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [responsible party] has done so.
6. The guarantor agrees to notify the Director of Georgia EPD 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 Georgia EPD of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of the corrective action, he shall establish alternate financial assurance as permitted by Georgia EPD, in the name of [responsible party] unless [responsible party] has done so.
8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the [insert type of instrument], the extension or

reduction of the time of performance of corrective action, or any other modification or alteration of an obligation of the responsible party pursuant to [insert type of instrument].

9. Guarantor agrees to remain bound under this guarantee for as long as [responsible party] must comply with the applicable financial assurance requirements of Georgia EPD for the above-listed site(s), 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 responsible party]:

Guarantor may terminate this guarantee by sending notice by certified mail to the Director of Georgia EPD and to [responsible party], provided that this guarantee may not be terminated unless and until [the responsible party] obtains, and the Director of Georgia EPD approve(s), alternate corrective action coverage permitted by Georgia EPD.

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

Guarantor may terminate this guarantee 120 days following the receipt of notification, through certified mail, by the Director of Georgia EPD and by [the responsible party].

11. Guarantor agrees that if [responsible party] fails to provide alternate financial assurance as permitted by Georgia EPD, and obtain written approval of such assurance from the Director of Georgia EPD within 90 days after a notice of cancellation by the guarantor is received by the Director of Georgia EPD from guarantor, guarantor shall provide such alternate financial assurance in the name of [responsible party].

12. Guarantor expressly waives notice of acceptance of this guarantee by the Georgia EPD or by [responsible party]. Guarantor also expressly waives notice of amendments or modifications of the [insert type of instrument].

Any suit by either party against the other on a claim arising or related to this Financial Guarantee must be brought in the Superior Court of Fulton County, Georgia. Nothing in this Financial Guarantee is intended to waive the Eleventh Amendment immunity of the State of Georgia or its sovereign immunity. No officer, employee, counsel, advisor or other representative or agent of the State of Georgia or any other agency or instrumentality of the State of Georgia will be individually liable in regard to any claim under or in regard to this Financial Guarantee.

This Financial Guarantee is made under the laws of the State of Georgia and deemed executed in Georgia. It will be enforced according to Georgia law without regard to its conflict of laws rules or any other rules directing referral to foreign law or forums.

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

[Name of guarantor] \_\_\_\_\_

[Authorized signature for guarantor] \_\_\_\_\_

[Name of person signing] \_\_\_\_\_

[Title of person signing] \_\_\_\_\_

Signature of witness or notary: \_\_\_\_\_