

## NOTICE OF INTENT

Department of Environmental Quality  
Office of the Secretary  
Legal Affairs Division

Standards for the Use or Disposal of Sewage Sludge and Biosolids  
(LAC 33:IX.7301, 7303, 7305, 7307, 7309, 7313, and 7395) (WQ076)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Water Quality regulations, LAC 33:IX. 7301, 7303, 7305, 7307, 7309, 7313, and 7395 (Log #WQ076).

This rule implements Act 56 of the 2008 Regular Session of the Louisiana Legislature, which transferred the registration program for haulers of domestic septage from the Department of Health and Hospitals to the Department of Environmental Quality. The transportation requirements contain standards for vehicles that are utilized for the transportation of sewage sludge. Once promulgated, the vehicle standards will become part of the Sewage Sludge and Biosolids Use or Disposal Permits. This rule includes transportation requirements to allow for the proper regulation of sewage sludge haulers and registration of domestic septage haulers, removes the Exceptional Quality option for closure of sanitary wastewater treatment facilities in order not to be in conflict with EPA treatment requirements for Exceptional Quality (EPA Class A) pathogen standards, removes unnecessary post-closure requirements for sewage sludge treatment facilities, changes or modifies nutrient sampling/reporting and labeling requirements carried over from the Solid Waste regulations allowing language to parallel EPA requirements, adds requirements to post certain signs at all Class B land application sites as part of the site restrictions, and makes a major revision to the financial assurance requirements. Additionally, wording is rearranged and typographical errors corrected to provide for better readability and clarification of the regulations. The removal of the Exceptional Quality certification option for closure of facilities that treat sanitary wastewater or sewage sludge, as well as the other changes in this rule, will not take effect until the date of final promulgation of the rule. The basis and rationale for this rule are to provide for the proper regulation of sewage sludge and biosolids activities for better protection of human health and the environment. This proposed rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

A public hearing will be held on March 31, 2009, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Christopher A. Ratcliff at the address given below or at (225) 219-3471. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by WQ076. Such comments must be received no later than April 7, 2009, at 4:30 p.m., and should be sent to Christopher A. Ratcliff, Attorney Supervisor, Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to FAX (225) 219-3398 or by e-mail to [chris.ratcliff@la.gov](mailto:chris.ratcliff@la.gov). Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of WQ076. This regulation is available on the Internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx).

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson, CPM  
Executive Counsel

**Title 33  
ENVIRONMENTAL QUALITY  
Part IX. Water Quality**

**Subpart 3. Louisiana Sewage Sludge and Biosolids Program**

**Chapter 73. Standards for the Use or Disposal of Sewage Sludge and Biosolids**

**Subchapter A. Program Requirements**

**§7301. General Provisions**

A. - A.1.b. ...

i. general requirements and other requirements for bulk biosolids, general management practices and other management practices for bulk biosolids, pollutant limits, pathogen and vector attraction reduction requirements, and ~~optional~~operational standards;

ii. sampling and monitoring requirements, recordkeeping and reporting requirements, specific exclusions, and prohibitions and restrictions regarding the use and disposal of sewage sludge and biosolids; ~~and~~

iii. the siting, operation, and financial assurance requirements for commercial preparers of sewage sludge or land applicators of biosolids; ~~and~~

iv. requirements and standards for transporters and vehicles utilized for the transporting of sewage sludge.

1.c. – 2.b.iii. ...

B. General Definitions. The following terms used in this Chapter shall have the meanings listed below, unless the context clearly indicates otherwise, or the term is specifically redefined in a particular Section.

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*Commercial Preparer of Sewage Sludge*—any person who prepares sewage sludge for monetary profit or other financial consideration and either the person is not the generator of the sewage sludge or the sewage sludge was obtained from a facility or facilities not owned by or associated with the applicator ~~person~~.

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*Owner or Operator*—the owner or operator of any facility or activity subject to these regulations.

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*Person*—any individual, municipality, public or private corporation, partnership, firm, the United States Government and any agent or subdivision thereof, or any other juridical person, which shall include, but not be limited to, trusts, joint stock companies, associations, the state of Louisiana, political subdivisions of the state, commissions, and interstate bodies.

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*Transporter of Sewage Sludge*—a person who pumps or moves sewage sludge off-site by means of land-based vehicles, barges, ships, rails, pipelines, or other modes of transportation. For oxidation ponds/lagoons/surface impoundments, this includes the removal of the sewage sludge from the oxidation ponds/lagoons/surface impoundments to the levees surrounding the oxidation ponds/lagoons/surface impoundments.

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## C. Compliance Period

1. – 3.b.iii. ...

## D. Permits and Permitting Requirements

1. Except as exempted in Paragraph D.2 of this Section, no person shall prepare sewage sludge or biosolids, ~~prepare sewage sludge and~~ dispose of the prepared sewage sludge in a permitted landfill, apply biosolids to the land, or own or operate a sewage sludge incinerator without first obtaining a permit in accordance with the deadlines set forth in Subparagraphs D.1.a-c of this Section. The permit shall identify and regulate the specific use, or disposal practice, the storage, and the treatment, and the appropriate transportation requirements of sewage sludge described in the permit application.

a. – b.v. ...

c. ~~At least 180 days prior to the expiration of the permit described in Clause D.1.b.ii of this Section~~ a permit issued under these regulations, the owner/operator of the facility or the land applier shall submit an application for permit issuance under this Chapter if the owner/operator or land applier intends to continue operations after that date.

1.d. – 3.b. ...

4. Closure requirements for sanitary wastewater treatment facilities that were utilized for the preparation of sewage sludge, ~~and~~ or for sewage sludge disposal ponds/lagoons/surface impoundments that ~~must comply~~ with the requirements of Subparagraph C.3.b of this Section, are as follows.

a. ~~In closing a facility that was utilized for sanitary wastewater treatment or for the disposal of sewage sludge,~~ The liquid portion must be removed in a manner that meets the requirements of LAC 33:IX.Chapters 23-71.

b. ~~The use or disposal options for the closure of a facility that was utilized for the treatment of sanitary wastewater or the disposal of sewage sludge shall consist of:~~ After removal of the liquid, the sewage sludge shall be used or disposed through one of the options in Clause D.4.b.i or ii of this Section as follows:

i. the submittal of a closure plan to the Office of Environmental Services for the total removal of the sewage sludge and subsequent disposal of the remaining biosolids/sewage sludge in a permitted landfill; Approval or disapproval of the closure plan shall be rendered by the Office of Environmental Services after receipt and review of the plan. The closure plan shall include the following:

(a). the name, mailing address, physical address, and contact person of the facility that is proposed for closure;

(b). an aerial photograph showing the location of the facility that is proposed for closure;

(c). the approximate amount of sewage sludge that will be removed and disposed at a permitted landfill;

(d). sampling and analysis for the following parameters:

(i). toxicity characteristics leaching procedure (TCLP);

(ii). liquid paint filter test; and  
(iii). any other parameter required by the chosen permitted landfill;

(e). either a schematic drawing or an aerial photograph that indicates where the samples for the parameters in Subclause D.4.b.i.(d) of this Section will be taken in the facility;

(f). the laboratory methods to be utilized for the sampling and analysis of the parameters in Subclause D.4.b.i.(d) of this Section;

(g). the name of the laboratory where the samples for the parameters in Subclause D.4.b.i.(d) of this Section will be analyzed;

(h). the name, location, and contact person of the site where the sewage sludge will be disposed; and

(i). any other information the department may require;  
or

~~ii. obtaining an Exceptional Quality biosolids certification without further soil or site restrictions for the material; or~~

iii. obtaining approval for a permit for the land application of the material sewage sludge as a Class B biosolids with soil or site restrictions by submittal of a Sewage Sludge and Biosolids Use or Disposal Permit application to the Office of Environmental Services utilizing the application form that can be accessed on the department's website or by contacting the Office of Environmental Services.

c. ~~For removal and disposal in a permitted landfill, a closure plan shall be submitted to the Office of Environmental Services prior to site closure. The closure plan shall include, but not be limited to, the following information: Upon completion of the use or disposal option selected in either Clause D.4.b.i or ii of this Section, if the facility is a pond/lagoon/surface impoundment, the levees shall be broken and leveled and the pond/lagoon/surface impoundment shall be filled with soil that includes a minimum of at least 6 inches of topsoil to support vegetative growth.~~

~~i. the name, mailing address, physical address, and contact person of the facility that is proposed for closure;~~

~~ii. an aerial photograph showing the location of the facility that is proposed for closure;~~

~~iii. the amount of sewage sludge that will be removed and disposed at a permitted landfill;~~

~~iv. the name, location, and contact person at the site where the sewage sludge will be disposed; and~~

~~v. a sampling and analysis plan for the sewage sludge, which shall include:~~

~~(a). either a schematic drawing or an aerial photograph that indicates where the samples will be taken;~~

(b).— the lab methods to be utilized;  
 (c).— the name of the laboratory where the samples will be analyzed; and

(d).— any other information the department may require.

d. — Approval or disapproval of the closure plan required in Subparagraph D.4.c of this Section shall be granted by the administrative authority after receipt and review of the plan.

e. — For an Exceptional Quality biosolids certification without further soil or site restrictions, a request shall be submitted to the Office of Environmental Services. The request shall include, but not be limited to, the following information:

i. — A sampling and analysis plan shall be submitted to the administrative authority in accordance with Subsection I of this Section. The sewage sludge shall be sampled and analyzed in a laboratory that is certified by the state of Louisiana. The minimum sampling and analysis requirements are as follows:

(a). — toxicity characteristic leaching procedure (TCLP) — one composite sample;

(b). — pollutants listed in Table 1 of LAC 33:IX.7303.E — at least four separate, random, representative samples of pollutants listed in the table;

(c). — pathogens —  
 (i). — the sewage sludge shall be sampled and analyzed in accordance with the requirements in Subsection I of this Section;

(ii). — results of the analysis must indicate that fecal coliform levels are 1,000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in the sewage sludge shall be less than 3 Most Probable Number per 4 grams of total solids (dry weight basis);

(iii). — if the reduction of pathogens is a necessity, it shall be achieved by utilizing either Exceptional Quality biosolids — Alternative 2, as described in LAC 33:IX.7309.C.1.d, Exceptional Quality biosolids — Alternative 3, as described in LAC 33:IX.7309.C.1.e, Exceptional Quality biosolids — Alternative 4, as described in LAC 33:IX.7309.C.1.f, or Exceptional Quality biosolids — Alternative 5, as described in LAC 33:IX.7309.C.1.g;

(iv). — for analysis of fecal coliform or *Salmonella sp.*, a minimum of four separate, random, representative samples shall be utilized. The geometric mean of the separate samples collected and analyzed must be reported;

(d). — vector attraction reduction — first, utilize the procedure described in LAC 33:IX.7309.D.2.d or e.ii. Proof of vector attraction reduction shall then be made by the collection and analysis of four separate, random, representative samples for the indicator parameter of the selected procedure (i.e., pH or Percent Solids). If specific sampling and analysis methods are listed in Subsection I of this Section for vector attraction reduction, then the methods listed must be used for the determination of vector attraction reduction;

~~(e).— PCBs— one composite sample; and  
 (f).— total nitrogen, total nitrates, total phosphorus, total potassium, and pH— one composite sample from four or more separate samples collected from the treatment facility or from each cell of an oxidation pond, lagoon, or surface impoundment.~~

~~ii. — Results of the analyzed samples, along with QA/QC documentation, must be submitted to the administrative authority, along with the following additional information:~~

~~(a). — the name of the facility that utilized the treatment facility;~~

~~(b). — the LPDES (sanitary wastewater discharge) permit number for the treatment facility;~~

~~(c). — the design capacity of the treatment facility (If the facility was an oxidation pond, include the size of the pond (in acres) and the number of cells of the pond, e.g., 1 cell, 2 cell, or 3 cell.);~~

~~(d). — the approximate tons of sewage sludge to be disposed;~~

~~(e). — the location of the facility, delineated on an aerial photograph;~~

~~(f). — the future plans for the site where the treatment plant is located;~~

~~(g). — the demographics within the area of the facility (businesses, hospitals, nursing homes, day care centers, schools, walk in clinics, etc.);~~

~~(h). — potable water wells within a 1-mile radius of the facility, including private and public potable water wells, designated on an aerial photograph; and~~

~~(i). — the name of the drinking water aquifer.~~

~~iii. — After receipt and review of the results of the laboratory analysis and the additional information required in Clause D.4.e.ii of this Section, a decision shall be rendered by the administrative authority regarding Exceptional Quality biosolids certification.~~

~~f. — For closure through land application of the sewage sludge as Class B biosolids, a Sewage Sludge and Biosolids Use or Disposal Permit application form must be submitted to the Office of Environmental Services utilizing the application form that can be accessed on the department’s website or by contacting the Office of Environmental Services.~~

D.5. – E.2. ...

3. The person who prepares sewage sludge that is disposed in a landfill shall provide the following to the Office of Environmental Services on an annual basis on or before February 19 of each year, or at a frequency designated in the permit:

a. – b. ...

F. Reserved-Registration Requirements and Standards for Transporters of Sewage Sludge Who Are Not Required to Obtain a Permit Under LAC 33:IX.7301.D.1 and Standards for Vehicles Used in the Transport of Sewage Sludge

1. Registration Requirements

a. A transporter of sewage sludge and/or grease mixed with sewage sludge who is not required to obtain a permit under Paragraph D.1 of this Section shall not transport any sewage sludge and/or grease mixed with sewage sludge without first registering such activity with the Office of Environmental Services in writing and paying all associated fees. A form to be used for registration shall be obtained from the Office of Environmental Services or through the department's website. The method of payment of fees shall be in accordance with LAC 33:IX.1309.

b. Registration shall be through a form obtained from the Office of Environmental Services or through the department's website. All the information required by the form shall be provided. The method of payment of fees shall be in accordance with LAC 33:IX.1309.

c. The registration period shall be for one state fiscal year period of July 1 to June 30. All registrations shall expire on June 30 of each year. If a person wishes to continue the operation of transporting sewage sludge, he or she shall apply for re-registration to the Office of Environmental Services at least 60 days prior to June 30 of each year.

d. The fee for registration shall be an annual fee of \$100.

e. The Office of Environmental Services shall be notified prior to any modification to the information submitted for registration, including, but not limited to, the following:

i. the removal and/or addition of information about the facility to which the sewage sludge is being transported; and

ii. the removal and/or addition of a vehicle that will be utilized for the transporting of sewage sludge.

2. Standards for All Transporters of Sewage Sludge

a. All transporters of sewage sludge and/or grease mixed with sewage sludge shall transport the sewage sludge and/or grease mixed with sewage sludge only to a facility permitted to receive sewage sludge or mixtures thereof, and shall maintain a daily log or record of activities containing the following information regarding the sewage sludge and/or grease mixed with sewage sludge:

i. the date the transported material was obtained, pumped, or removed;

ii. the origin or source of the material;

iii. the volume of material generated at each site;

iv. the transfer and/or disposal site; and

v. the total amount of material that was transported or disposed.

b. Standards Applicable to Vehicles Used to Transport Sewage Sludge

i. The bodies of vehicles transporting sewage sludge must be covered at all times, except during loading and unloading, in a manner that prevents rain from reaching the sewage sludge, inhibits access by disease vectors, prevents the sewage sludge from falling or blowing from the vehicle, minimizes escape of odors, and does not create a nuisance.

ii. The bodies of vehicles that are utilized to transport liquefied sewage sludge or a sewage sludge that is capable of producing a leachate shall be constructed and/or enclosed with an appropriate material that will completely prevent the leakage or spillage of the liquid.

iii. The exterior and interior of the body of a vehicle that is transporting sewage sludge shall be washed down, at a designated washdown area, as often as needed to ensure against accumulation of sewage sludge or biosolids, and for the prevention of odors and disease vector attraction.

iv. The vehicle washdown area shall be designed, constructed, and operated to prevent groundwater contamination and stormwater run-on and runoff.

v. All water and leachate generated at the designated washdown area shall be contained and discharged in accordance with all applicable state and federal regulations.

c. Standards for Sewage Sludge Pipelines and Containment Areas

i. Transfer points, pumping stations, and other facilities with a potential for spillage shall be located above grade, or in watertight compartments, and shall be in containment areas constructed to hold the maximum potential spill.

ii. Containment areas shall consist of a base and dikes constructed of concrete, compacted clay, or other impervious materials. All joints must be sealed.

d. Other Standards. The administrative authority may provide appropriate standards for transporters of sewage sludge that utilize modes of transportation not covered by Subparagraphs F.2.b and c of this Section.

e. These regulations do not relieve the transporter from the responsibility of complying with other applicable regulations and licensing requirements, including, but not limited to, those of the Louisiana Department of Transportation and Development, and with applicable ordinances governing types, sizes, and weights of vehicles used to transport sewage sludge on roads and streets that must be traveled during the transporting of the sewage sludge and with any other applicable requirements.

G. – I.2.k. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1)(c) and (B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:781 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2516 (October 2005), LR 33:2366 (November 2007), repromulgated LR 34:1028 (June 2008), amended LR 35:\*\*.

**§7303. Land Application**

A. – D.5.b. ...

i. the information required in Clauses L.1.f.i-~~viii~~ix of this Section, and if the biosolids are compost, the information in Clauses L.1.g.i-vi of this Section; and

D.5.b.ii. – I.2. ...

J. Recordkeeping

1. All *Class I sludge management facilities*, as defined in LAC 33:IX.7301.B, that prepare sewage sludge shall keep a record of the ~~annual production of sewage sludge (i.e., dry ton or dry metric tons) and of the sewage sludge management practice used and retain such record~~ following for a period of five years:

a. annual production of sewage sludge (i.e., dry tons or dry metric tons);

b. the sewage sludge management practice used;

c. sampling results for hazardous characteristics; and

d. sampling results for PCBs.

2. – 2.e.ii.(b).certification. ...

K. Reporting

1. All *Class I sludge management facilities*, as defined in LAC 33:IX.7301.B, that prepare sewage sludge shall submit the information in Paragraph J.1 of this Section to the administrative authority on or before February 19 of each year.

K.2. – L.1.a. ...

b. the laboratory analysis for percent dry solids, percent ammonia nitrogen, percent nitrate-~~nitrite~~, percent nitrite, ~~percent total Kjeldahl nitrogen~~, percent organic nitrogen, percent phosphorus, percent potassium, and percent organic matter; and, ~~pH~~ if the sewage sludge or biosolids underwent or ~~was~~were subjected to any type of alkaline stabilization and/or alkaline treatment, the pH of the sewage sludge or biosolids;

c. – d. ...

e. the vector attraction reduction requirement in LAC 33:IX.7309.D.2.a-e that will be utilized; ~~and~~

f. – f.ii....

iii. ~~total~~percent nitrogen;

iv. percent ammonia nitrogen(as-N);

v. percent phosphorus;

vi. percent potassium;

vii. pH;

viii. the concentration of PCBs in mg/kg of total solids (dry wt.); and

~~viii.~~ application instructions and a statement that application of the biosolids to the land is prohibited except in accordance with the instructions on the label or information sheet; and

g. in addition to the label requirements in Clauses L.1.f.i-ix of this Section, an example of the label that must accompany all compost sold or given away either in bulk or in a bag or other container, having the following information:

- i. soluble salt content;
- ii. water holding capacity;
- iii. bulk density (lbs/yd<sup>3</sup>);
- iv. particle size;
- v. moisture content; and
- vi. percent organic matter content.

2. – 4. ...

5. For the term of the permit, the preparer of the biosolids shall conduct continued sampling at a frequency of monitoring ~~of once per quarter~~ indicated in Table 1 of LAC 33:IX.7303.L. The samples shall be analyzed for the parameters specified in Subparagraphs L.1.a-c of this Section, and for the pathogen and vector attraction reduction requirements in Subparagraphs L.1.d and e of this Section, as required by LAC 33:IX.7309.

<b><u>Table 1 of LAC 33:IX.7303.L</u></b>	
<b><u>Frequency of Monitoring—Exceptional Quality Biosolids</u></b>	
<b><u>Amount of Biosolids<sup>1</sup></u></b> <b><u>(metric tons per 365-day period)</u></b>	<b><u>Frequency</u></b>
<u>Greater than zero but less than 15,000</u>	<u>Once per quarter</u> <u>(four times per year)</u>
<u>Equal to or greater than 15,000</u>	<u>Once per month</u> <u>(12 times per year)</u>
<u><sup>1</sup>The amount of biosolids sold or given away either in bulk or in a bag or other container.</u>	

6. – 9.b.certification. ...

10. The person who prepares Exceptional Quality biosolids shall forward the information required in Paragraph L.9 of this Section to the administrative authority ~~on a~~

quarterly basis. The schedule for quarterly submission is contained in the following table as follows.

<b>Schedule for Quarterly Submission</b>	
<b>Monitoring Period</b>	<b>DMR Due Date</b>
January, February, March	May 28
April, May, June	August 28
July, August, September	November 28
October, November, December	February 28

a. For facilities having a frequency of monitoring in Table 1 of LAC 33:IX.7303.L of once per quarter (four times per year), the reporting periods and the report due dates shall be as specified in Table 2 of LAC 33:IX.7303.L.

<b>Table 2 of LAC 33:IX.7303.L</b>	
<b>Reporting—Exceptional Quality Biosolids</b>	
<b>Monitoring Period<sup>1</sup> (Once per Quarter)</b>	<b>Report Due Date</b>
January, February, March	August 28
April, May, June	
July, August, September	February 28
October, November, December	
<sup>1</sup> Separate reports must be submitted for each monitoring period.	

b. For facilities having a frequency of monitoring in Table 1 of LAC 33:IX.7303.L of once per month (12 times per year), the reporting periods and the report due dates shall be as specified in Table 3 of LAC 33:IX.7303.L.

<b>Table 3 of LAC 33:IX.7303.L</b>	
<b>Reporting—Exceptional Quality Biosolids</b>	
<b>Monitoring Period<sup>1</sup> (Once per Month)</b>	<b>Report Due Date</b>
January	May 28
February	
March	
April	August 28
May	
June	
July	November 28

<b>Table 3 of LAC 33:IX.7303.L</b>	
<b>Reporting—Exceptional Quality Biosolids</b>	
<b>Monitoring Period<sup>1</sup> (Once per Month)</b>	<b>Report Due Date</b>
<u>August</u>	<u>February 28</u>
<u>September</u>	
<u>October</u>	
<u>November</u>	
<u>December</u>	
<sup>1</sup> <u>Separate reports must be submitted for each monitoring period.</u>	

M. – N.3. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2074(B)(1)(c) and (B)(3)(e).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:785 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2374 (November 2007), LR 35:\*\*.

**§7305. Siting and Operation Requirements for Commercial Preparers of Sewage Sludge**

A. – B.2.a.iv. ...

b. Fire Protection and Medical Care. All facilities shall have access to required fire protection and medical care with access gates that are wide enough to allow easy access for emergency vehicles, or such services shall be provided internally.

~~c. Receiving and Monitoring Sewage Sludge, Other Materials, Feedstock, or Supplements Used~~

~~i. Any facility used to prepare sewage sludge shall be equipped with a device or method to determine quantity (by wet weight tonnage), sources (whether the sewage sludge, other materials, feedstock, or supplements to be mixed with the sewage were generated in-state or out-of-state), and types of other materials, feedstock, or supplements. The facility shall also be equipped with a device or method to control entry of sewage sludge, other materials, feedstock, or supplements coming on-site and prevent entry of unrecorded or unauthorized deliverables (i.e., hazardous, industrial, unauthorized, or unpermitted solid waste).~~

~~ii. Any facility used to prepare sewage sludge shall be equipped with a central control and recordkeeping system for tabulating the information required in Clause B.2.c.i of this Section.~~

3. Facility Surface Hydrology

3.a. – 5. ...

6. ~~Facility Administrative Procedures~~Notification of Completion. Within 10 days of completion of the facility or completion of a facility modification, the owner of the facility shall submit to the administrative authority:

a. ~~Permit Modifications.~~ Permit modifications shall be in accordance with the requirements of this Chapter.notification of completion; and

b. ~~Personnel.~~ All facilities shall have the personnel necessary to achieve the operational requirements of the facility.a site inspection request.

C. – C.1.a.i. ...

ii. The facility operations and maintenance manual shall describe, in specific detail, how the sewage sludge and the other feedstock or supplements to be blended, composted, or mixed with the sewage sludge (if applicable) will be managed during all phases of the preparation process and, if applicable, the land application process ~~processing operations~~. At a minimum, the manual shall address the following:

(a). preparation facility site and project description;

(b). regulatory interfaces;

(c). preparation process management plan;

~~(d).~~ pathogen treatment plan;

~~(e)-(d).~~ odor management plan;

(e). methods utilized for managing the biological conditions during the composting procedure (i.e., carbon/nitrogen ratio, moisture, O<sub>2</sub> levels, free air space), when composting is utilized as a preparation process;

(f). – (j). ...

(k). monitoring, sampling, recordkeeping, and reporting procedures;

(l). – (m). ...

(n). pollutant reduction plan (for land application of biosolids);

(o). pathogen treatment plan (for land application of biosolids);

(p). vector attraction reduction plan (for land application of biosolids);

(q). site application records (for land application of biosolids);

(r). description of how the land application management practices are met (for land application of biosolids);

(s). description of how the land application site and soil restrictions are met (for land application of biosolids);

~~(n)-(t).~~ operator certification; and

~~(e)-(u)~~ administration of the operations and maintenance manual.

a.iii. – b.vii.(b). ...

viii. ~~Other feedstock and supplements that are blended, composted, or mixed with sewage sludge shall be treated for the effective removal of sharps including, but not limited to, sewing needles, straight pins, hypodermic needles, telephone wires, and metal bracelets.~~ Receiving and Monitoring Sewage Sludge, Other Materials, Feedstock, or Supplements Used

(a). Any facility used to prepare sewage sludge shall be equipped with a device or method to determine quantity (by wet-weight tonnage), sources (whether the sewage sludge, other materials, feedstock, or supplements to be mixed with the sewage were generated in-state or out-of-state), and types of other materials, feedstock, or supplements. The facility shall also be equipped with a device or method to control entry of sewage sludge, other materials, feedstock, or supplements coming on-site and prevent entry of unrecorded or unauthorized deliverables (i.e., hazardous, industrial, unauthorized, or unpermitted solid waste).

(b). Other feedstock and supplements that are blended, composted, or mixed with sewage sludge shall be treated for the effective removal of sharps including, but not limited to, sewing needles, straight pins, hypodermic needles, telephone wires, and metal bracelets.

(c). Any facility used to prepare sewage sludge shall be equipped with a central control and recordkeeping system for tabulating the information required in Subclause C.1.b.viii.(a) of this Section.

ix. Personnel. All facilities shall have the personnel necessary to achieve the operational requirements of the facility.

## 2. Additional Operational Requirements for Composters

~~a. The facility operations and maintenance manual shall include the methods utilized for managing the biological conditions during the composting procedure (i.e., carbon/nitrogen ratio, moisture, O<sub>2</sub> levels, free air space).~~

~~b.a.~~ The composting procedure shall begin within 24 hours of receipt of the material to be prepared as a compost.

b. Adequate covers shall be provided for windrows during the curing stage to protect the compost from rainwater.

~~c. The facility shall have a storage capacity designed for the finished compost for a quantity not to exceed 18 months' production.~~ Covered areas shall be provided where feedstock is prepared.

d. Any compost made from sewage sludge that cannot be used according to these regulations shall be reprocessed or disposed of in an approved facility.

e. Composted sewage sludge shall be used, sold, or disposed of at a permitted disposal facility within 36 months of completion of the composting process.

f. The final composted product shall be stable and mature. In addition to meeting the applicable time and temperature for pathogen and vector attraction reduction requirements, proof of the stability and maturity of the final composted product shall be provided by utilizing the applicable methods in the source referenced in LAC 33:IX.7301.I.2.j.

~~g. In addition to the label requirements in LAC 33:IX.7303.L.1.f.i-viii, the label that must accompany all compost sold or given away either in bulk or in a bag or other container shall contain the following information:~~

- ~~i. soluble salt content;~~
- ~~ii. water holding capacity;~~
- ~~iii. bulk density (lbs/yd<sup>3</sup>);~~
- ~~iv. particle size;~~
- ~~v. moisture content; and~~
- ~~vi. organic matter content.~~

~~h. Adequate covers shall be provided for windrows during the curing stage to protect the compost from rainwater.~~

~~i. Covered areas shall be provided where feedstock is prepared.~~

### 3. Facility Closure Requirements

a. – c.i....

ii. If contamination exists, in order to satisfy the closure requirements of this Section the permit holder must utilize the Risk Evaluation/Corrective Action Program (RECAP) standards in accordance with LAC 33:I.Chapter 13 to the fullest extent possible. Any residual contamination must meet the RECAP standards approved by the administrative authority, including any residual contamination in the underlying and surrounding soils and/or groundwater. Otherwise, the permit holder shall enter into a cooperative agreement with the administrative authority to perform corrective action (i.e., additional closure activities including site investigation, remedial investigation, a corrective action study, and/or remedial action). a remediation/removal program developed to meet the requirements of Subparagraph C.3.d of this Section must be provided to the administrative authority.

~~d. Remediation/Removal Program~~

~~i. If a clean closure is achieved, there are no further post-closure requirements. The plan for clean closure must reflect a method for determining that all waste has been removed, and such a plan shall, at a minimum, include the following:~~

~~(a). identification (analysis) of the sewage sludge, other materials, feedstock, and supplements that have entered the facility;~~

~~(b). selection of the indicator parameters to be sampled that are intrinsic to the sewage sludge, other materials, feedstock, and supplements that have entered the facility in order to establish clean closure criteria. Justification of the parameters selected shall be provided in the closure plan;~~

~~(c).— sampling and analyses of the uncontaminated soils in the general area of the facility for a determination of background levels using the indicator parameters selected. A diagram showing the location of the area proposed for the background sampling, along with a description of the sampling and testing methods, shall be provided;~~

~~(d).— a discussion of the sampling and analyses of the "clean" soils for the selected parameters after the waste and contaminated soils have been excavated. Documentation regarding the sampling and testing methods (i.e., including a plan view of the facility, sampling locations, and sampling quality assurance/quality control programs) shall be provided;~~

~~(e).— a discussion of a comparison of the sample(s) from the area of the excavated facility to the background sample. Concentrations of the selected parameter(s) of the bottom and side soil samples of the facility must be equal to or less than the background sample to meet clean closure criteria;~~

~~(f).— submission of the analyses to the Office of Environmental Services confirming that the requirements of Subparagraph C.3.b of this Section have been satisfied;~~

~~(g).— identification of the facility to be used for the disposal of the excavated waste.; and~~

~~(h).— a statement from the permit holder indicating that, after the closure requirements have been met, the permit holder will file a request for a closure inspection with the Office of Environmental Services before backfilling takes place. The administrative authority will determine whether the facility has been closed properly.~~

~~ii. — If the permit holder demonstrates that removal of most of the biosolids, untreated sewage sludge, other materials, feedstock, and supplements in order to achieve an alternate level of contaminants based on indicator parameters in the contaminated soil will be adequately protective of human health and the environment (including groundwater) in accordance with LAC 33:I.Chapter 13, the administrative authority may decrease or eliminate the post closure requirements.~~

~~(a). — If levels of contamination at the time of closure meet applicable standards as specified in LAC 33:I.Chapter 13 and approval of the administrative authority is granted, the requirements of Clause C.3.e.ii of this Section shall not apply.~~

~~(b). — Excepting those sites closed in accordance with Subclause C.3.e.ii.(a) of this Section, within 90 days after a closure is completed, the permit holder must have entered in the mortgage and conveyance records of the parish in which the property is located, a notation stating that solid waste remains at the site and providing the indicator levels obtained during closure.~~

d. Closure Inspection. After the closure requirements have been met, the permit holder shall file a request for a closure inspection with the Office of Environmental Services.

e. — iii. Release of Closure Funds. UponAfter the closure inspection and subsequent determination by the administrative authority that a facility has

completed closure ~~in accordance with an approved plan~~, the administrative authority shall release the closure fund to the permit holder.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1)(c) and (B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:794 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2516 (October 2005), LR 33:2382 (November 2007), LR 35:\*\*.

### **§7307. Financial Assurance Requirements for Commercial Preparers of Sewage Sludge and Commercial Land Appliers of Biosolids**

A. ~~Financial Responsibility during Operation. Commercial preparers of sewage sludge and commercial land appliers of biosolids have the following financial responsibilities while their facilities are in operation.~~ Purpose and Applicability. The purpose of this Section is to establish the financial assurance (the word *security* may be used interchangeably with *assurance*) requirements for:

1. ~~Commercial preparers of sewage sludge and commercial land appliers of biosolids have the same financial assurance requirements as privately owned sewage treatment facilities (LAC 33:IX. Chapter 67) if the amount of sewage sludge prepared or the amount of biosolids applied to the land is less than 15,000 metric tons per year. If these requirements cannot be met, an alternative financial assurance mechanism shall be submitted for review and approval by the administrative authority. Such an alternative financial assurance mechanism shall not result in a value of financial assurance that is less than the amount provided as a written cost estimate for closure of the facility in the permit application.~~ for meeting the requirements applicable during operation and closure; and

2. ~~All other commercial preparers of sewage sludge and commercial land appliers of biosolids shall maintain liability insurance, or its equivalent, for sudden and accidental occurrences in the amount of \$1 million per occurrence and \$1 million annual aggregate, per site, exclusive of legal defense costs, for claims arising from injury to persons or property, owing to the operation of the site. Evidence of this coverage shall be updated annually and provided to the Office of Environmental Services. This financial responsibility may be established by any one or a combination of the following during operation and closure.~~

B. This Section shall be applicable to the entities listed in Subsection A of this Section when the following actions are taken by the department:

1. issuance of a new permit;
2. renewal of an existing permit;
3. modification of an existing permit; and
4. transfer of an existing permit to a different permittee.

C. Financial assurance mechanisms and instruments shall be submitted as follows.

1. The permit holder must submit to the administrative authority for approval a financial assurance mechanism drafted in accordance with this Section to cover the cost estimate for the closure requirements in LAC 33:IX.7305.C.3. The financial assurance mechanism shall be submitted with the application under separate cover and be approved by the administrative authority as part of the permit issuance process. The financial assurance

mechanism must be approved by the administrative authority prior to the permit holder's operating the facility.

2. All instruments used in this Section shall be submitted in the following manner.

a. The instrument shall be addressed to the Office of Environmental Services.

b. The original instrument shall be submitted.

c. The instrument shall be accompanied with a cover letter identifying the facility, agency interest number, and any other identifying information deemed necessary by the administrative authority.

D. Commercial preparers of sewage sludge and commercial land applicers of biosolids, hereinafter referred to in this Section as *affected persons*, have the following liability insurance responsibilities while their facilities are in operation.

1. All affected persons shall maintain liability insurance, or its equivalent, for sudden and accidental occurrences in the amount of \$1 million per occurrence and \$1 million annual aggregate, per site, exclusive of legal defense costs, for claims arising from injury to persons or property, owing to the operation of the site. Commercial preparers of sewage sludge and commercial land applicers of biosolids are exempt from these requirements if the amount of sewage sludge prepared or the amount of biosolids applied to the land is less than 15,000 metric tons per year. Evidence of this coverage shall be updated annually and provided to the Office of Environmental Services. This financial assurance may be established by any one or a combination of the following mechanisms.

a. ~~Evidence of Liability Insurance.~~ Evidence of liability insurance may consist of either a signed duplicate original of a ~~commercial preparer of sewage sludge or commercial land applicer of biosolids~~ liability endorsement in favor of the affected person, or a certificate of insurance. The wording of a liability endorsement shall be identical to the wording in LAC 33:IX.7395.Appendix A, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted. The wording of a certificate of insurance shall be identical to the wording in LAC 33:IX.7395.Appendix B, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted. All liability endorsements and certificates of insurance must include:

i. a statement of coverage relative to environmental risks;

ii. a statement of all exclusions to the policy; and

iii. a certification by the insurer that the insurance afforded with respect to such sudden accidental occurrences is subject to all of the terms and conditions of the policy, provided, however, that any provisions of the policy inconsistent with Subclauses ~~A.2D.1.a.iii.(a)-(f)~~ of this Section are amended to conform with said Subclauses:

(a). bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy;

(b). the insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in Subparagraphs ~~A.2.d, e or f~~ D.1.b-d of this Section;

(c). whenever requested by the administrative authority, the insurer agrees to furnish to the administrative authority a signed duplicate original of the policy and all endorsements;

(d). cancellation of the policy, whether by the insurer or the insured, will be effective only upon written notice and upon lapse of 60 days after a copy of such written notice is received by the Office of Environmental Services;

(e). any other termination of the policy will be effective only upon written notice and upon lapse of 30 days after a copy of such written notice is received by the Office of Environmental Services; and

(f). the insurer is admitted, authorized, or eligible to conduct insurance business in the state of Louisiana.

~~b. Wording of Liability Endorsement. The wording of a liability endorsement shall be identical to the wording in LAC 33:IX.7395.Appendix A, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.~~

~~c. Wording of Certificate of Insurance. The wording of a certificate of insurance shall be identical to the wording in LAC 33:IX.7395.Appendix B, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.~~

~~db.~~ Letter of Credit. An permit holder or applicantaffected person may satisfy the requirements of this Subsection by obtaining an irrevocable ~~standby~~ letter of credit that conforms to all of the following requirements and submitting the letter to the administrative authority.

i. The issuing institution must be an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

ii. An permit holder or applicantaffected person who uses a letter of credit to satisfy the requirements of this Subsection must also provide to the administrative authority evidence of the establishment of a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the administrative authority will be deposited by the issuing institution directly into the standby trust fund. The wording of the standby trust fund agreement shall be as specified in Subparagraph B.3.i of this Section identical to the wording in LAC 33:IX.7395.Appendix D, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted. The trust agreement shall be accompanied by a formal certification of acknowledgement, as in the example in LAC 33:IX.7395.Appendix D.

iii. The letter of credit must be accompanied by a letter from the permit holder or applicantaffected person referring to the letter of credit by number, name of issuing institution, and date, and providing the following information:

- (a). the agency interest number;
- (b). the site name, if applicable;
- (c). the facility name;
- (d). the facility permit number; and

(e). the amount of funds assured for liability coverage of the facility by the letter of credit.

iv. The letter of credit must be irrevocable and issued for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the ~~permit holder~~affected person and the administrative authority by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the ~~permit holder~~affected person and the Office of Environmental Services receive the notice, as evidenced by the return receipts.

v. The wording of the letter of credit shall be identical to the wording in LAC 33:IX.7395.Appendix C, except that the instructions in brackets are to be replaced with the relevant information (i.e., type of affected person), and the brackets deleted.

ec. Financial Test

i. To meet this test, the ~~applicant, permit holder, affected person~~ or parent corporation of the ~~applicant~~ (corporate guarantor) or ~~permit holder~~ of the affected person must submit to the Office of Environmental Services the documents required by ~~Paragraph B.8~~Subparagraph E.2.h of this Section demonstrating that the requirements of ~~Paragraph B.8 of this Section~~Subparagraph E.2.h of this Section have been met. Use of the financial test may be disallowed on the basis of the accessibility of the assets of the ~~permit holder, applicant, affected person~~ or parent corporation (corporate guarantor). If the ~~applicant, permit holder, affected person~~ or parent corporation is using the financial test to demonstrate liability coverage and closure ~~and post-closure care~~, only one letter from the chief financial officer is required.

ii. The assets of the parent corporation of the ~~applicant or permit holder~~affected person shall not be used to determine whether the ~~applicant or permit holder~~affected person satisfies the financial test, unless the parent corporation has supplied a corporate guarantee as authorized in ~~Subparagraph A.2.fD.1.d~~ of this Section.

iii. The wording of the financial test shall be as specified in ~~Subparagraph B.8.d of this Section~~Clause E.2.h.iv of this Section.

fd. Corporate Guarantee

i. An ~~permit holder or applicant~~affected person may meet the requirements of ~~Paragraph A.2D.1~~ of this Section for liability coverage by obtaining a written guarantee, hereafter referred to as a *corporate guarantee*. The guarantor must demonstrate to the administrative authority that the guarantor meets the requirements in this Subsection and must comply with the terms of the corporate guarantee. The corporate guarantee must accompany the items sent to the administrative authority specified in ~~Subparagraphs B.8.b~~Clauses E.2.h.ii and d.iv of this Section. The terms of the corporate guarantee must be in an authentic act signed and sworn to by an authorized officer of the corporation before a notary public and must provide that:

(a). the guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in ~~Paragraph B.8~~Subparagraph E.2.h of this Section;

(b). the guarantor is the parent corporation of the ~~permit holder or applicant of the commercial preparer of sewage sludge or land applier of~~

~~biosolids~~affected person to be covered by the guarantee, and the guarantee extends to certain facilities;

(c). if the ~~permit holder or applicant~~affected person fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden and accidental occurrences (or both as the case may be), arising from the operation of facilities covered by the corporate guarantee, or fails to pay an amount agreed to in settlement of the claims arising from or alleged to arise from such injury or damage, the guarantor will do so up to the limits of coverage;

(d). the guarantor agrees that if, at the end of any fiscal year before termination of the guarantee, the guarantor fails to meet the financial test criteria, the guarantor shall send within 90 days, by certified mail, notice to the Office of Environmental Services and to the ~~permit holder or applicant~~affected person, that he intends to provide alternative financial assurance as specified in this Subsection, in the name of the ~~permit holder or applicant~~affected person, and that within 120 days after the end of said fiscal year the guarantor shall establish such financial assurance, unless the ~~permit holder or applicant~~affected person has done so;

(e). the guarantor agrees to notify the Office of Environmental Services by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the guarantor as debtor, within 10 days after commencement of the proceeding;

(f). the guarantor agrees that within 30 days after being notified by the administrative authority of a determination that the guarantor no longer meets the financial test criteria or that he or she is disallowed from continuing as a guarantor of closure-~~or post-closure care~~, he or she shall establish alternate financial assurance as specified in this Subsection in the name of the ~~permit holder or applicant~~affected person unless the ~~permit holder or applicant~~affected person has done so;

(g). the guarantor agrees to remain bound under the guarantee notwithstanding any or all of the following: amendment or modification of the permit, or any other modification or alteration of an obligation of the ~~permit holder or applicant~~affected person in accordance with these regulations;

(h). the guarantor agrees to remain bound under the guarantee for as long as the ~~permit holder or applicant~~affected person must comply with the applicable financial assurance requirements of ~~Subsection B~~Paragraph E.2 of this Section for the ~~above-listed~~ facilities covered by the guarantee, except that the guarantor may cancel this guarantee by sending notice by certified mail to the administrative authority and the ~~permit holder or applicant~~affected person. Such a cancellation will become effective no earlier than 90 days after receipt of such notice by both the administrative authority and the ~~permit holder~~affected person, as evidenced by the return receipts;

(i). the guarantor agrees that if the ~~permit holder or applicant~~affected person fails to provide alternate financial assurance, as specified in this Subsection, and obtain written approval of such assurance from the administrative authority within 60 days after the administrative authority receives the guarantor's notice of cancellation,

the guarantor shall provide such alternate financial assurance in the name of the ~~permit holder or applicant~~affected person;

(j). the guarantor expressly waives notice of acceptance of the guarantee by the administrative authority or by the ~~permit holder or applicant~~affected person. ~~The~~ Guarantor also expressly waives notice of amendments or modifications of the facility permit(s); and

(k). the wording of the corporate guarantee shall be as specified in ~~Subparagraph B.8.i~~Clause E.2.h.ix of this Section.

ii. A corporate guarantee may be used to satisfy the requirements of this Section only if the attorney general(s) or insurance commissioner(s) of the state in which the guarantor is incorporated, and the state in which the facility covered by the guarantee is located, has submitted a written statement to the Office of Environmental Services that a corporate guarantee is a legally valid and enforceable obligation in that state.

~~2. — g.~~ The use of a particular financial ~~responsibility~~assurance mechanism is subject to the approval of the administrative authority.

~~3. — h.~~ ~~Permit holders of existing facilities must submit, on or before February 20, 1995, financial responsibility documentation that complies with the requirements of this Subsection. Applicants for permits for new facilities~~Affected persons must submit evidence of financial assurance in accordance with this Section at least 60 days before the date on which sewage sludge, other materials, feedstock, or supplements are first received for processing.

~~BE.~~ Financial Assurance Responsibility for Closure and Post-Closure Care for a Commercial Preparers of Sewage Sludge and Commercial Land Appliers of Biosolids

1. ~~Permit holders or applicants have the following financial responsibilities for closure and post-closure care. Commercial preparers of sewage sludge and commercial land appliers of biosolids, hereinafter referred to in this Section as *affected persons*, shall maintain financial assurance in the amount of \$25,000 per site for closure if the amount of sewage sludge prepared or the amount of biosolids applied to the land is less than 15,000 metric tons per year. Evidence of this coverage shall be updated annually and provided to the Office of Environmental Services. This financial assurance may be established by any one or a combination of the methods in Subparagraph E.2.b of this Section. If these requirements cannot be met, an alternative financial assurance mechanism shall be submitted for review and approval by the administrative authority. Such an alternative financial assurance mechanism shall not result in a value of financial assurance that is less than the amount provided as a written cost estimate for closure of the facility in the permit application.~~

~~a. — Permit holders or applicants shall establish and maintain financial assurance for closure and post-closure care.~~

~~2. — b.~~ ~~The applicant or permit holder~~All affected persons not covered in Paragraph E.1 of this Section shall establish and maintain financial assurance for closure in accordance with LAC 33:IX.7305.C.3, and shall submit to the Office of Environmental Services the estimated closure date and the estimated cost of closure and post-closure care in accordance with the following ~~procedures~~requirements.

~~a. — i.~~ ~~The applicant or permit holder~~affected person must have a written estimate, in current dollars, of the cost of closing the facility in accordance with the

requirements in these ~~rules~~ regulations. The estimate must equal the cost of closure at the point in the facility's operating life when the extent and manner of its operation would make closure the most expensive, as indicated by the closure plan, and shall be based on the cost of hiring a third party to close the facility in accordance with the closure plan.

~~ii. The applicant or permit holder of a facility subject to post-closure monitoring or maintenance requirements must have a written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the provisions of these rules. The estimate of post-closure costs is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required, and shall be based on the cost of hiring a third party to conduct post-closure activities in accordance with the closure plan.~~

~~iii. The cost estimates must be adjusted within 30 days after each anniversary of the date on which the first cost estimate was prepared, on the basis of either the inflation factor derived from the Annual Implicit Price Deflator for Gross Domestic Product, as published by the U.S. Department of Commerce in its *Survey of Current Business*, or a re-estimation of the closure and post-closure costs in accordance with Clauses B.1.b.i-ii ~~Subparagraph E.2.a~~ of this Section. The ~~permit holder or applicant~~ affected person must revise the cost estimate whenever a change in the closure/~~post-closure~~ plans increases or decreases the cost of the closure plan. The ~~permit holder or applicant~~ affected person must submit a written notice of any such adjustment to the Office of Environmental Services within 15 days following such adjustment.~~

~~iv.ii. For trust funds, the first payment must be at least equal to the current closure and post-closure cost estimate, divided by the number of years in the pay-in period. Subsequent payments must be made no later than 30 days after each annual anniversary of the date of the first payment. The amount of each subsequent payment must be determined by subtracting the current value of the trust fund from the current closure and post-closure cost estimates and dividing the result by the number of years remaining in the pay-in period. The initial pay-in period is based on the estimated life of the facility.~~

~~2. b. Financial Assurance Mechanisms~~ Instruments. The financial assurance ~~mechanism~~ instrument must be one or a combination of the following: a trust fund, a financial guarantee bond ensuring closure funding, a performance bond, a letter of credit, an insurance policy, or the financial test. The financial assurance mechanism is subject to the approval of the administrative authority and must fulfill the following criteria.

~~a. i. Except when a financial test, trust fund, or certificate of insurance is used as the financial assurance mechanism, a standby trust fund naming the administrative authority as beneficiary must be established at the time of the creation of the financial assurance mechanism into which the proceeds of such mechanism could be transferred should such funds be necessary for either closure or post-closure of the facility, and a signed copy must be furnished to the administrative authority with the mechanism.~~

~~b. ii. An permit holder or applicant~~ affected person may use a financial assurance mechanism specified in this Section for more than one facility, if all such facilities are located within the state of Louisiana and are specifically identified in the mechanism.

~~e.~~ iii. The amount covered by the financial assurance mechanism(s) must equal the total of the current closure ~~and post-closure~~ cost estimates for each facility covered.

~~d.~~ iv. When all closure ~~and post-closure~~ requirements have been satisfactorily completed, the administrative authority shall execute an approval to terminate the financial assurance mechanism(s).

~~3.~~ c. Trust Funds. An ~~permit holder or applicant~~ affected person may satisfy the requirements of this Section by establishing a closure trust fund that conforms to the following requirements and submitting an originally-signed duplicate of the trust agreement to the Office of Environmental Services.

~~a.~~ i. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

~~b.~~ ii. Trusts must be accomplished in accordance with and subject to the laws of the state of Louisiana. The beneficiary of the trust shall be the administrative authority.

~~e.~~ iii. Trust fund earnings may be used to offset required payments into the fund, to pay the fund trustee, or to pay other expenses of the funds, or may be reclaimed by the ~~permit holder or applicant~~ affected person upon approval of the administrative authority.

~~d.~~ iv. The trust agreement must be accompanied by an affidavit certifying the authority of the individual signing the trust on behalf of the ~~permit holder or applicant~~ affected person.

~~e.~~ v. The ~~permit holder or applicant~~ affected person may accelerate payments into the trust fund or deposit the full amount of the current closure cost estimate at the time the fund is established. The ~~permit holder or applicant~~ affected person must, however, maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in Clause ~~B.1.b.iv~~ E.2.a.ii of this Section.

~~f.~~ vi. If the ~~permit holder or applicant~~ affected person establishes a trust fund after having used one or more of the alternate ~~mechanisms~~ instruments specified in this Section, ~~his~~ the first payment must be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of Clause E.2.a.ii of this ~~Paragraph~~ Section.

~~g.~~ vii. After the pay-in period is completed, whenever the current cost estimate changes, the ~~permit holder~~ affected person must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the ~~permit holder or applicant~~ affected person, within 60 days after the change in the cost estimate, must either deposit an amount into the fund that will make its value at least equal to the amount of the closure/~~post-closure~~ cost estimate, ~~or it must estimate or~~ obtain other financial assurance as specified in this Section to cover the difference.

~~h.~~ viii. After beginning final closure, an ~~permit holder~~ affected person or any other person authorized by the ~~permit holder~~ affected person to perform closure ~~and/or post-closure~~ may request reimbursement for closure ~~and/or post-closure~~ expenditures by

submitting itemized bills to the Office of Environmental Services. Within 60 days after receiving bills for such activities, the administrative authority will determine whether the closure ~~and/or post-closure~~ expenditures are in accordance with the closure plan or otherwise justified, and, if so, he or she will instruct the trustee to make reimbursement in such amounts as the administrative authority specifies in writing. If the administrative authority has reason to believe that the cost of closure ~~and/or post-closure~~ will be significantly greater than the value of the trust fund, he may withhold reimbursement for such amounts as he deems prudent until he determines that the ~~permit holder~~ affected person is no longer required to maintain financial assurance.

~~i.~~ ix. The wording of the trust agreement shall be identical to the wording in LAC 33:IX.7395.Appendix D, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted. The trust agreement shall be accompanied by a formal certification of acknowledgement, as in the example in LAC 33:IX.7395.Appendix D.

4. d. Surety Bonds. An ~~permit holder or applicant~~ affected person may satisfy the requirements of this Subsection by obtaining a surety bond that conforms to the following requirements and submitting the bond to the Office of Environmental Services.

~~a.~~ i. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury, and be approved by the administrative authority.

~~b.~~ ii. The ~~permit holder or applicant~~ affected person who uses a surety bond to satisfy the requirements of this Subsection must also provide to the administrative authority evidence of the establishment of a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the administrative authority. The wording of the standby trust fund shall be ~~as specified in Subparagraph B.3.i of this Section~~ identical to the wording in LAC 33:IX.7395.Appendix D, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted. The standby trust agreement shall be accompanied by a formal certification of acknowledgement, as in the example in LAC 33:IX.7395.Appendix D.

~~c.~~ iii. The bond must guarantee that the ~~operator~~ affected person will:

~~i.~~ (a). fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility;

~~ii.~~ (b). fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin closure ~~or post-closure~~ is issued; or

~~iii.~~ (c). provide alternate financial assurance, as specified in this Section, and obtain the administrative authority's written approval of the assurance provided, within 90 days after receipt by both the ~~permit holder~~ affected person and the administrative authority of a notice of cancellation of the bond from the surety.

~~d.~~ iv. ~~Under the terms of the bond must provide that,~~ the surety will become liable on the bond obligation when the ~~permit holder~~ affected person fails to perform as guaranteed by the bond.

~~e.~~ v. The penal sum of the bond must be at least equal to the current closure ~~and post-closure~~ cost estimates.

~~f.~~ vi. Whenever the current closure cost estimate increases to an amount greater than the penal sum, the ~~permit holder~~ affected person, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure ~~and post-closure~~ cost estimate and submit evidence of such increase to the Office of Environmental Services, or obtain other financial assurance as specified in this Section to cover the increase. Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the administrative authority.

~~g.~~ vii. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the ~~permit holder~~ affected person and to the Office of Environmental Services. Cancellation may not occur, however, before 120 days have elapsed, beginning on the date that both the ~~permit holder~~ affected person and the administrative authority have received the notice of cancellation, as evidenced by the return receipts.

~~h.~~ viii. The wording of the surety bond guaranteeing payment into a standby trust fund shall be identical to the wording in LAC 33:IX.7395.Appendix E, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted.

~~5.~~ e. Performance Bonds. An ~~permit holder or applicant~~ affected person may satisfy the requirements of this Subsection by obtaining a surety bond that conforms to the following requirements and submitting the bond to the Office of Environmental Services.

~~a.~~ i. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury, and be approved by the administrative authority.

~~b.~~ ii. The ~~permit holder or applicant~~ affected person who uses a surety bond to satisfy the requirements of this Subsection must also provide to the administrative authority evidence of establishment of a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the administrative authority. The wording of the standby trust fund agreement shall be as specified in Subparagraph B.3.i of this Section identical to the wording in LAC 33:IX.7395.Appendix D, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted. The standby trust agreement shall be accompanied by a formal certification of acknowledgement, as in the example in LAC 33:IX.7395.Appendix D.

~~c.~~ iii. The bond must guarantee that the ~~permit holder or applicant~~ affected person will:

~~i.~~ (a). perform final closure ~~and post-closure~~ in accordance with the closure plan and other requirements of the permit for the facility whenever required to do so; or

~~ii.~~ (b). provide alternate financial assurance, as specified in this Section, and obtain the administrative authority's written approval of the assurance provided,

within 90 days after the date both the permit holder affected person and the administrative authority receive notice of cancellation of the bond from the surety.

~~d.~~ iv. Under ~~the~~ terms of the bond must provide that, the surety will become liable on the bond obligation when the permit holder affected person fails to perform as guaranteed by the bond. Following a determination by the administrative authority that the permit holder affected person has failed to perform final closure ~~and post-closure~~ in accordance with the closure plan and other permit requirements when required to do so, under the terms of the bond the surety will perform final closure ~~and post-closure~~ as guaranteed by the bond or will deposit the amount of the penal sum into the standby trust fund.

~~e.~~ v. The penal sum of the bond must be at least equal to the current closure ~~and post-closure~~ cost estimates.

~~f.~~ vi. Whenever the current closure cost estimate increases to an amount greater than the penal sum, the permit holder affected person, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure ~~and post-closure~~ cost estimates and submit evidence of such increase to the Office of Environmental Services, or obtain other financial assurance as specified in this Section. Whenever the current cost estimate decreases, the penal sum may be reduced to the amount of the current cost estimate after written approval of the administrative authority.

~~g.~~ vii. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the permit holder affected person and to the Office of Environmental Services. Cancellation may not occur before 120 days have elapsed, beginning on the date that both the permit holder affected person and the administrative authority have received the notice of cancellation, as evidenced by the return receipts.

~~h.~~ viii. The wording of the performance bond shall be identical to the wording in LAC 33:IX.7395.Appendix F, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted.

~~6.~~ f. Letter of Credit. An permit holder or applicant affected person may satisfy the requirements of this Subsection by obtaining an irrevocable standby letter of credit that conforms to the following requirements and submitting the letter to the Office of Environmental Services.

~~a.~~ i. The issuing institution must be an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

~~b.~~ ii. ~~A~~The permit holder or applicant affected person who uses a letter of credit to satisfy the requirements of this Subsection must also provide to the administrative authority evidence of the establishment of a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the administrative authority will be deposited by the issuing institution directly into the standby trust fund. The wording of the standby trust fund shall be as specified in Subparagraph B.3.i of this Section identical to the wording in LAC 33:IX.7395.Appendix D, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted. The standby trust agreement shall be accompanied by a formal certification of acknowledgement, as in the example in LAC 33:IX.7395.Appendix D.

~~e.~~ iii. The letter of credit must be accompanied by a letter from the ~~permit holder or applicant~~ affected person referring to the letter of credit by number, issuing institution, and date, and providing the following information:

- ~~i.~~ (a). the agency interest number;
- ~~ii.~~ (b). the site name, if applicable;
- ~~iii.~~ (c). the facility name;
- ~~iv.~~ (d). the facility permit number; and
- ~~v.~~ (e). the amount of funds assured for closure ~~and/or post closure~~ of the facility by the letter of credit.

~~d.~~ iv. The letter of credit must be irrevocable and issued for a period of at least one year; unless, at least 120 days before the current expiration date, the issuing institution notifies both the ~~permit holder~~ affected person and the Office of Environmental Services by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the ~~permit holder~~ affected person and the administrative authority have received the notice, as evidenced by the return receipts.

~~e.~~ v. The letter of credit must be issued in an amount at least equal to the current closure ~~and post-closure~~ cost estimates.

~~f.~~ vi. Whenever the current cost estimates increase to an amount greater than the amount of the credit, the ~~permit holder~~ affected person, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current closure ~~and post-closure~~ cost estimates and submit evidence of such increase to the Office of Environmental Services, or obtain other financial assurance as specified in this Subsection to cover the increase. Whenever the current cost estimate decreases, the amount of the credit may be reduced to the amount of the current closure ~~and post-closure~~ cost estimates upon written approval of the administrative authority.

~~g.~~ vii. Following a determination by the administrative authority that the ~~permit holder~~ affected person has failed to perform final closure ~~or post-closure~~ in accordance with the closure plan and other permit requirements when required to do so, the administrative authority may draw on the letter of credit.

~~h.~~ viii. The wording of the letter of credit shall be identical to the wording in LAC 33:IX.7395. Appendix G, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted.

~~7.~~ g. Insurance. An ~~permit holder or applicant~~ affected person may satisfy the requirements of this Subsection by obtaining insurance that conforms to the following requirements and submitting a certificate of such insurance to the Office of Environmental Services.

~~a.~~ i. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess- or surplus-lines insurer in one or more states, and authorized to transact insurance business in the state of Louisiana.

~~b.~~ ii. The insurance policy must be issued for a face amount at least equal to the current closure ~~and post-closure~~ cost estimates.

~~e.~~ iii. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

~~e.~~ iv. The insurance policy must guarantee that funds will be available to close the facility ~~and provide post-closure care once final closure occurs~~. The policy must also guarantee that, once final closure begins, the insurer will be responsible for paying out funds up to an amount equal to the face amount of the policy, upon the direction of the administrative authority, to such party or parties as the administrative authority specifies.

~~e.~~ v. After beginning final closure, an ~~permit holder~~affected person or any other person authorized by the ~~permit holder~~affected person to perform closure ~~and post-closure~~ may request reimbursement for closure ~~or post-closure~~ expenditures by submitting itemized bills to the Office of Environmental Services. Within 60 days after receiving such bills, the administrative authority will determine whether the expenditures are in accordance with the closure plan or otherwise justified, and if so, he or she will instruct the insurer to make reimbursement in such amounts as the administrative authority specifies in writing.

~~f.~~ vi. The ~~permit holder~~affected person must maintain the policy in full force and effect until the administrative authority consents to termination of the policy by the ~~permit holder~~affected person.

~~g.~~ vii. Each policy must contain a provision allowing assignment of the policy to a successor ~~permit holder~~of an affected person. Such assignment may be conditional upon consent of the insurer, provided consent is not unreasonably refused.

~~h.~~ viii. The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the ~~permit holder~~affected person and the Office of Environmental Services. Cancellation, termination, or failure to renew may not occur, however, before 120 days have elapsed, beginning on the date that both the administrative authority and the ~~permit holder~~affected person have received the notice of cancellation, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur, and the policy will remain in full force and effect in the event that, on or before the date of expiration:

~~i.~~ (a). the administrative authority deems the facility abandoned;

~~ii.~~ (b). the permit is terminated or revoked or a new permit is denied;

~~iii.~~ (c). closure ~~and/or post-closure~~ is ordered;

~~iv.~~ (d). the ~~permit holder~~affected person is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or

~~v.~~ (e). the premium due is paid.

~~i.~~ ix. Whenever the current cost estimate increases to an amount greater than the face amount of the policy, the ~~permit holder~~affected person, within 60 days after

the increase, must either increase the face amount to at least equal to the current closure ~~and post-closure~~ cost estimates and submit evidence of such increase to the Office of Environmental Services, or obtain other financial assurance as specified in this Subsection to cover the increase. Whenever the current cost estimate decreases, the face amount may be reduced to the amount of the current closure ~~and post-closure~~ cost estimates following written approval by the administrative authority.

~~j.~~ x. The wording of the certificate of insurance shall be identical to the wording in LAC 33:IX.7395. Appendix H, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted.

~~g.~~ h. Financial Test. An ~~permit holder, applicant, affected person or a parent corporation of the permit holder or applicant~~ affected person, which will be responsible for the financial obligations, may satisfy the requirements of this Section by demonstrating that ~~he or she~~ passes a financial test as specified in this ~~Paragraph is met~~. The assets of the parent corporation of the ~~applicant or permit holder~~ affected person shall not be used to determine whether the ~~applicant or permit holder~~ affected person satisfies the financial test, unless the parent corporation has supplied a corporate guarantee as outlined in ~~Paragraph A.2.f~~ Subparagraph D.1.d and/or ~~B.8.i~~ Clause E.2.h.ix of this Section.

~~a.~~ i. To pass this test, the ~~permit holder, applicant, affected person or parent corporation of the permit holder or applicant~~ affected person must meet either of the following criteria:

~~i.~~ (a). the ~~permit holder, applicant, affected person or parent corporation of the permit holder or applicant~~ affected person must have:

~~(a).~~ (i). tangible net worth of at least six times the sum of the current closure ~~and post-closure~~ cost estimates to be demonstrated by this test and the amount of liability coverage to be demonstrated by this test;

~~(b).~~ (ii). tangible net worth of at least \$10 million;

and

~~(c).~~ (iii). assets in the United States amounting to either at least 90 percent of ~~his~~ its total assets, or at least six times the sum of the current closure ~~and post-closure~~ cost estimates, to be demonstrated by this test, and the amount of liability coverage to be demonstrated by this test; or

~~ii.~~ (b). the ~~permit holder, applicant, affected person or parent corporation of the permit holder or applicant~~ affected person must have:

~~(a).~~ (i). a current rating for ~~his~~ its most recent bond issuance of AAA, AA, A, or BBB, as issued by *Standard and Poor's*, or Aaa, Aa, or Baa, as issued by *Moody's*;

~~(b).~~ (ii). tangible net worth of at least \$10 million;

and

~~(c).~~ (iii). assets in the United States amounting to either 90 percent of ~~his~~ its total assets or at least six times the sum of the current closure ~~and post-closure~~ cost estimates, to be demonstrated by this test, and the amount of liability coverage to be demonstrated by this test.

~~b.~~ ii. To demonstrate that ~~he or she meets this test is met~~, the ~~permit holder, applicant, affected person~~ or parent corporation of the ~~permit holder or applicant affected person~~ must submit the following three items to the Office of Environmental Services:

~~i.~~ (a). a letter signed by the chief financial officer of the ~~permit holder, applicant, affected person~~ or parent corporation demonstrating and certifying the criteria in ~~Subparagraph B.8.a Clause E.2.h.i~~ of this Section and including the information required by ~~Subparagraph B.8.d Clause E.2.h.iv~~ of this Section. If the financial test is provided to demonstrate both assurance for closure ~~and/or post-closure care~~ and liability coverage, a single letter to cover both forms of financial ~~responsibility~~ assurance is required;

~~ii.~~ (b). a copy of the report of the independent certified public accountant's (CPA's) ~~report~~ on the financial statements of the ~~permit holder, applicant, affected person~~ or parent corporation of the ~~permit holder or applicant affected person~~ for the latest completed fiscal year; and

~~iii.~~ (c). a special report from the independent CPA to the ~~permit holder, applicant, affected person~~ or parent corporation of the ~~permit holder or applicant affected person~~ stating that:

~~(a).~~ (i). the CPA has computed the data specified by the chief financial officer as having been derived from the independently audited, year-end financial statements with the amounts for the latest fiscal year in such financial statements; and

~~(b).~~ (ii). in connection with that procedure, no matters came to his attention that caused him to believe that the specified data should be adjusted.

~~e.~~ iii. The administrative authority may disallow use of this test on the basis of the opinion expressed by the independent CPA in his report on qualifications based on the financial statements. An adverse opinion or a disclaimer of opinion will be cause for disallowance. The administrative authority will evaluate other qualifications on an individual basis. The administrative authority may disallow the use of this test on the basis of the accessibility of the assets of the parent corporation (corporate guarantor), ~~permit holder, or applicant affected person~~. The ~~permit holder, applicant, affected person~~ or parent corporation must provide evidence of insurance for the entire amount of required liability coverage, as specified in this Section, within 30 days after notification of disallowance.

~~d.~~ iv. The ~~permit holder, applicant, affected person~~ or parent corporation (if a corporate guarantor) of the ~~permit holder or applicant affected person~~ shall provide to the Office of Environmental Services a letter from the chief financial officer, the wording of which shall be identical to the wording in LAC 33:IX.7395. Appendix I, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted. The letter shall certify the following information:

~~i.~~ (a). a list of ~~commercial~~ facilities, whether in the state of Louisiana or not, owned or operated by the ~~permit holder or applicant affected person~~ of the facility, for which financial assurance for liability coverage is demonstrated through the use of financial tests, including the amount of liability coverage;

~~ii. (b).~~ a list of ~~commercial~~ facilities, whether in the state of Louisiana or not, owned or operated by the ~~permit holder or applicant~~ affected person, for which financial assurance for the closure ~~or post-closure care~~ is demonstrated through the use of a financial test or self-insurance by the ~~permit holder or applicant~~ affected person, including the cost estimates for the closure ~~and post-closure care~~ of each facility;

~~iii. (c).~~ a list of the ~~commercial~~ facilities, whether in the state of Louisiana or not, owned or operated by any subsidiaries of the parent corporation for which financial assurance for closure ~~and/or post-closure~~ is demonstrated through the financial test or through use of self-insurance, including the current cost estimate for the closure ~~or post-closure care~~ for each facility and the amount of annual aggregate liability coverage for each facility; and

~~iv. (d).~~ a list of ~~commercial~~ facilities, whether in the state of Louisiana or not, for which financial assurance for closure ~~or post-closure care~~ is not demonstrated through the financial test, self-insurance, or other substantially equivalent state ~~mechanisms~~ instruments, including the estimated cost of closure ~~and post-closure~~ of such facilities.

~~e. — v.~~ For the purposes of this Subsection the phrase *tangible net worth* shall mean the tangible assets that remain after liabilities have been deducted; such assets would not include intangibles such as good will and rights to patents or royalties.

~~f. — vi.~~ The phrase *current closure and post-closure cost estimates*, as used in ~~Subparagraph B.8.a~~ Clause E.2.h.i of this Section, includes the cost estimates required to be shown in ~~Subclause B.8.a.i.(a)~~ Division E.2.h.i.(a).(i) of this Section.

~~g. — vii.~~ After initial submission of the items specified in ~~Subparagraph B.8.b~~ Clause E.2.h.ii of this Section, the ~~permit holder, applicant, affected person~~ or parent corporation of the ~~permit holder or applicant~~ affected person must send updated information to the Office of Environmental Services within 90 days after the close of each succeeding fiscal year. This information must include all three items specified in ~~Subparagraph B.8.b~~ Clause E.2.h.ii of this Section.

~~h. — viii.~~ The administrative authority may, on the basis of a reasonable belief that the ~~permit holder, applicant, affected person~~ or parent corporation of the ~~permit holder or applicant~~ affected person may no longer meet the requirements of ~~this~~ Subparagraph B.8 of this Section, require reports of financial condition at any time in addition to those specified in ~~Subparagraph B.8.b~~ Clause E.2.h.ii of this Section. If the administrative authority finds, on the basis of such reports or other information, that the ~~permit holder, applicant, affected person~~ or parent corporation of the ~~permit holder or applicant~~ affected person no longer meets the requirements of ~~Subparagraph B.8.b~~ Clause E.2.h.ii of this Section, the ~~permit holder or applicant, affected person~~ or parent corporation of the ~~permit holder or applicant~~ affected person must provide alternate financial assurance as specified in this Subsection within 30 days after notification of such a finding.

~~i. — ix.~~ An ~~permit holder or applicant~~ affected person may meet the requirements of ~~this~~ Subparagraph B.8 of this Section for closure ~~and/or post-closure~~ by obtaining a written guarantee, hereafter referred to as a *corporate guarantee*. The guarantor must be the parent corporation of the ~~permit holder or applicant~~ affected person. The guarantor must

meet the requirements and submit all information required for ~~permit holders or applicants~~ affected persons in ~~Subparagraphs B.8.a-h~~ Clauses E.2.h.i-viii of this Section and must comply with the terms of the corporate guarantee. The corporate guarantee must accompany the items sent to the administrative authority specified in ~~Subparagraphs B.8.b~~ Clauses E.2.h.ii and iv of this Section. The wording of the corporate guarantee must be identical to the wording in LAC 33:IX.7395. Appendix J, except that instructions in brackets are to be replaced with the relevant information, and the brackets deleted. The terms of the corporate guarantee must be in an authentic act signed and sworn by an authorized officer of the corporation before a notary public and must provide that:

i. (a). the guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in ~~Paragraph B.8~~ Clauses E.2.h.ii and iv of this Section;

ii. (b). the guarantor is the parent corporation of the ~~permit holder or applicant~~ affected person of the ~~commercial preparer of sewage sludge or land applier of biosolids~~ facilities to be covered by the guarantee, and the guarantee extends to certain facilities;

iii. (c). *closure plans*, as used in the guarantee, refers to the plans maintained as required by the state of Louisiana ~~commercial preparer of sewage sludge or land applier of biosolids~~ rules and regulations for the closure and post-closure care of commercial preparers of sewage sludge facilities or commercial land appliers of biosolids sites, as identified in the guarantee;

iv. (d). for value received from the ~~permit holder or applicant~~ affected person, the guarantor guarantees to the Office of Environmental Services that the ~~permit holder or applicant~~ affected person will perform closure, ~~post-closure care, or closure and post-closure care~~ of the facility or facilities listed in the guarantee, in accordance with the closure plan and other permit or regulatory requirements whenever required to do so. In the event that the ~~permit holder or applicant~~ affected person fails to perform as specified in the closure plan, the guarantor shall do so or establish a trust fund as specified in ~~Paragraph B.3~~ Subparagraph E.2.c of this Section, in the name of the ~~permit holder or applicant~~ affected person, in the amount of the current closure ~~or post-closure~~ cost estimates or as specified in ~~Subparagraph B.1.b~~ Clause E.2.b.ii of this Section;

v. (e). the guarantor agrees that if, at the end of any fiscal year before termination of the guarantee, the guarantor fails to meet the financial test criteria, the guarantor shall send within 90 days after the end of the fiscal year, by certified mail, notice to the Office of Environmental Services and to the ~~permit holder or applicant~~ affected person that he intends to provide alternative financial assurance as specified in this Subsection, in the name of the ~~permit holder or applicant~~ affected person, and that within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless the ~~permit holder or applicant~~ affected person has done so;

vi. (f). the guarantor agrees to notify the Office of Environmental Services by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the guarantor as debtor, within 10 days after commencement of the proceeding;

~~vii.~~ (g). the guarantor agrees that within 30 days after being notified by the administrative authority of a determination that the guarantor no longer meets the financial test criteria or that the guarantor is disallowed from continuing as a guarantor of closure ~~or post-closure care~~, the guarantor shall establish alternate financial assurance as specified in this Subsection in the name of the permit holder or applicant ~~affected person~~, unless the permit holder or applicant ~~affected person~~ has done so;

~~viii.~~ (h). the guarantor agrees to remain bound under the guarantee, notwithstanding any or all of the following: amendment or modification of the closure plan, amendment or modification of the permit, extension or reduction of the time of performance of closure ~~or post-closure~~, or any other modification or alteration of an obligation of the permit holder or applicant ~~affected person~~ in accordance with these regulations;

~~ix.~~ (i). the guarantor agrees to remain bound under the guarantee for as long as the permit holder ~~affected person~~ must comply with the applicable financial assurance requirements of this Subsection for the ~~above-listed~~ facilities covered by the corporate guarantee, except that the guarantor may cancel this guarantee by sending notice by certified mail to the Office of Environmental Services and the permit holder or applicant ~~affected person~~. The cancellation will become effective no earlier than 90 days after receipt of such notice by both the administrative authority and the permit holder or applicant ~~affected person~~, as evidenced by the return receipts;

~~x.~~ (j). the guarantor agrees that if the permit holder or applicant ~~affected person~~ fails to provide alternative financial assurance as specified in this Subsection, and to obtain written approval of such assurance from the administrative authority within 60 days after the administrative authority receives the guarantor's notice of cancellation, the guarantor shall provide such alternate financial assurance in the name of the ~~owner or operator~~ affected person; and

~~xi.~~ (k). the guarantor expressly waives notice of acceptance of the guarantee by the administrative authority or by the permit holder ~~affected person~~. ~~The~~ Guarantor also expressly waives notice of amendments or modifications of the closure plan and of amendments or modifications of the facility permit(s).

~~9.~~ i. Local Government Financial Test. An ~~owner or operator~~ affected person that is a local government and that satisfies the requirements of Subparagraphs B.9.a-e ~~Clauses E.2.i-i-iii~~ of this Section may demonstrate financial assurance up to the amount specified in ~~Subparagraph B.9.d~~ Clause E.2.i.iv of this Section.

~~a.~~ i. Financial Component

~~i.~~ (a). The ~~owner or operator~~ affected person must satisfy the following conditions, as applicable:

~~(a).~~ (i). if the ~~owner or operator~~ affected person has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, he must have a current rating of Aaa, Aa, A, or Baa, as issued by *Moody's*, or AAA, AA, A, or BBB, as issued by *Standard and Poor's*, on all such general obligation bonds; or

~~(b).~~ (ii). the ~~owner or operator~~ affected person must ~~satisfy the~~ have a ratio of cash plus marketable securities to total expenditures ~~being~~ greater than

or equal to 0.05 and ~~the~~ the ratio of annual debt service to total expenditures less than or equal to 0.20 based on the ~~owner or operator~~ affected person's most recent audited annual financial statement.

~~ii.~~ (b). The ~~owner or operator~~ affected person must prepare its financial statements in conformity with *Generally Accepted Accounting Principles* for governments and have ~~his~~ the financial statements audited by an independent certified public accountant (or appropriate state agency).

~~iii.~~ (c). A local government is not eligible to assure its obligations under this ~~PSubparagraph B.9 of this Section~~ if it:

~~(a).~~ (i). is currently in default on any outstanding general obligation bonds;

~~(b).~~ (ii). has any outstanding general obligation bonds rated lower than Baa as issued by *Moody's* or BBB as issued by *Standard and Poor's*;

~~(c).~~ (iii). operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or

~~(d).~~ (iv). receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant (or appropriate state agency) auditing its financial statement as required under ~~Subclause B.9.a.iiE.2.i.i.(b)~~ Subclause B.9.a.iiE.2.i.i.(b) of this Section. The administrative authority may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the administrative authority deems the qualification insufficient to warrant disallowance of use of the test.

~~iv.~~ (d). The following terms used in this ~~Subsection~~ Paragraph are defined as follows.

~~(a).~~ (i). *Deficit*—total annual revenues minus total annual expenditures.

~~(b).~~ (ii). *Total Revenues*—revenues from all taxes and fees, but not including the proceeds from borrowing or asset sales, excluding revenue from funds managed by local government on behalf of a specific third party.

~~(c).~~ (iii). *Total Expenditures*—all expenditures, excluding capital outlays and debt repayment.

~~(d).~~ (iv). *Cash Plus Marketable Securities*—all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions.

~~(e).~~ (v). *Debt Service*—the amount of principal and interest due on a loan in a given time period, typically the current year.

~~b.~~ ii. *Public Notice Component*. The local government ~~owner or operator~~ affected person must place a reference to the closure ~~and post-closure care~~ costs assured through the financial test into its next comprehensive annual financial report (CAFR) after the effective date of this Section or prior to the initial receipt of sewage sludge, other feedstock, or supplements at the facility, whichever is later. Disclosure must include the nature and source of closure ~~and post-closure care~~ requirements, the reported liability at the balance sheet date, the

estimated total closure ~~and post-closure care~~ cost remaining to be recognized, the percentage of landfill capacity used to date, and the estimated landfill life in years. For closure ~~and post-closure~~ costs, conformance with *Governmental Accounting Standards Board Statement 18* assures compliance with this public notice component.

e. iii. Recordkeeping and Reporting Requirements

i. (a). The local government ~~owner or operator~~ affected person must place the following items in the facility's operating record:

~~(a).~~ (i). a letter signed by the local government's chief financial officer that lists all the current cost estimates covered by a financial test, as described in ~~Subparagraph B.9.d~~ Clause E.2.i.iv of this Section. It must provide evidence that the local government meets the conditions of ~~Subclauses B.9.a.i-iii~~ E.2.i.i.(a)-(c) of this Section, and certify that the local government meets the conditions of ~~Subclauses B.9.a.i-iii~~ E.2.i.i.(a)-(c) and ~~Subparagraphs B.9.b~~ Clauses E.2.i.ii and div of this Section;

~~(b).~~ (ii). the local government's independently audited year-end financial statements for the latest fiscal year (except for local governments where audits are required every two years, and unaudited statements may be used in years when audits are not required), including the unqualified opinion of the auditor, who must be an independent certified public accountant or an appropriate state agency that conducts equivalent comprehensive audits;

~~(c).~~ (iii). a report to the local government from the local government's independent certified public accountant or the appropriate state agency based on performing an agreed-upon procedures engagement relative to the financial ratios required by ~~Subclause B.9.a.i.(b)~~ Division E.2.i.i.(a).(i) of this Section, if applicable, and the requirements of ~~Clause B.9.a.ii~~ Subclause E.2.i.i.(b) and ~~Subclauses B.9.a.iii.(c)-(d)~~ Divisions E.2.i.i.(c).(i)-(iv) of this Section. The report by the certified public accountant or state agency's report should state the procedures performed and the findings of the certified public accountant or state agency's findings; and

~~(d).~~ (iv). a copy of the comprehensive annual financial report (CAFR) used to comply with ~~Subparagraph B.9.b~~ Clause E.2.i.ii of this Section (certification that the requirements of *General Accounting Standards Board Statement 18* have been met).

ii. (b). The items required in ~~Clause B.9.c.i~~ Subclause E.2.i.iii.(a) of this Section must be placed in the facility operating record, in the case of closure ~~and post-closure care~~, either before the effective date of this Section or prior to the initial receipt of sewage sludge, other feedstock, or supplements at the facility, whichever is later.

iii. (c). After the initial placement of the items in the facility's operating record, the local government ~~owner or operator~~ affected person must update the information and place the updated information in the operating record within 180 days following the close of the ~~owner or operator's~~ affected person's fiscal year.

iv. (d). The local government ~~owner or operator~~ affected person is no longer required to meet the requirements of ~~Subparagraph B.9.c~~ Subclause E 2.i.iii.(c) of this Section when:

~~(a).~~ (i). the ~~owner or operator~~affected person substitutes alternate financial assurance, as specified in this Section; or

~~(b).~~ (ii). the ~~owner or operator~~affected person is released from the requirements of ~~this Section~~maintaining financial assurance in accordance with ~~Subsection A or B~~ of this Section.

~~v.~~ (e). A local government must satisfy the requirements of the financial test at the close of each fiscal year. If the local government ~~owner or operator~~affected person no longer meets the requirements of the local government financial test, it must, within 210 days following the close of the ~~owner or operator's~~affected person's fiscal year, obtain alternative financial assurance that meets the requirements of this Section, place the required submissions for that assurance in the operating record, and notify the Office of Environmental Services that the ~~owner or operator~~affected person no longer meets the criteria of the financial test and that alternate assurance has been obtained.

~~vi.~~ (f). The administrative authority, based on a reasonable belief that the local government ~~owner or operator~~affected person may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the administrative authority finds, on the basis of such reports or other information, that the ~~owner or operator~~affected person no longer meets the local government financial test, the local government must provide alternate financial assurance in accordance with this Section.

~~iv.~~ iv. Calculation of Costs to be Assured. The portion of the closure, ~~post-closure~~, and corrective action costs for which an ~~owner or operator~~that a local government affected person can assure under ~~Paragraph B.9~~Subparagraph E.2.i of this Section is determined as follows:

~~i.~~ (a). if the local government ~~owner or operator~~affected person does not assure other environmental obligations through a financial test, it may assure closure, ~~post-closure~~, and corrective action costs that equal up to 43 percent of the local government's total annual revenue; or

~~ii.~~ (b). if the local government assures other environmental obligations through a financial test, including those associated with underground injection control (UIC) facilities under 40 CFR 144.62, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, ~~and/or~~ hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, or any applicable corresponding state programs, it must add those costs to the closure, ~~post-closure~~, and corrective action costs it seeks to assure under ~~Paragraph B.9 of this Section~~this Subparagraph, and the total that may be assured must not exceed 43 percent of the local government's total annual revenue; and

~~iii.~~ (c). the ~~owner or operator~~affected person must obtain an alternate financial assurance instrument for those costs that exceed the limits set in ~~Clauses B.9.d.i-ii~~ of this SectionClause.

~~10.~~ j. Local Government Guarantee. An ~~owner or operator~~affected person may demonstrate financial assurance for closure ~~and post-closure~~, as required by ~~Subsections A and B~~ of this Section, by obtaining a written guarantee provided by a local

government. The guarantor must meet the requirements of the local government financial test in ~~Paragraph B.9~~Subparagraph E.2.i of this Section, and must comply with the terms of a written guarantee.

~~a.~~ i. Terms of the Written Guarantee. The guarantee must be effective before the initial receipt of sewage sludge, other material, feedstock, or supplements or before the effective date of this Section, whichever is later, in the case of closure ~~and post-closure care~~. The guarantee must provide that:

~~i.~~ (a). if the ~~owner or operator~~affected person fails to perform closure ~~and post-closure care~~, of a facility covered by the guarantee, the guarantor will:

~~(a).~~ (i). perform closure, or pay a third party to perform; closure ~~and post-closure care as required~~; or

~~(b).~~ (ii). establish a fully funded trust fund as specified in ~~Paragraph B.3~~Subparagraph E.2.c of this Section in the name of the ~~owner or operator~~affected person; and

~~ii.~~ (b). the guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the ~~owner or operator~~affected person and to the Office of Environmental Services. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the ~~owner or operator~~affected person and the administrative authority, as evidenced by the return receipts; ~~and~~.

~~iii.~~ ii. If a guarantee is canceled, the ~~owner or operator~~affected person must, within 90 days following receipt of the cancellation notice by the ~~owner or operator~~affected person and the administrative authority, obtain alternate financial assurance, place evidence of that alternate financial assurance in the facility operating record, and notify the Office of Environmental Services. If the ~~owner or operator~~affected person fails to provide alternate financial assurance within the 90-day period, then the guarantor must provide that alternate assurance within 120 days following the guarantor's notice of cancellation, place evidence of the alternate assurance in the facility operating record, and notify the Office of Environmental Services.

~~b.~~ ii. Recordkeeping and Reporting

~~i.~~ (a). The ~~owner or operator~~affected person must place a certified copy of the guarantee, along with the items required under ~~Subparagraph B.9.e~~Clause E.2.i.iii of this Section, into the facility's operating record before the initial receipt of sewage sludge, other material, feedstock, or supplements or before the effective date of this Section, whichever is later, ~~in the case of closure or post-closure care~~.

~~ii.~~ (b). The ~~owner or operator~~affected person is no longer required to maintain the items specified in ~~Clause B.10.b.i~~Subclause E.2.j.ii.(a) of this Section when:

~~(a).~~ (i). the ~~owner or operator~~affected person substitutes alternate financial assurance as specified in this Section; or

~~(b).~~ (ii). the ~~owner or operator~~affected person is released from the requirements of maintaining financial assurance ~~of this Section~~ in accordance with ~~Subsections A and B~~ of this Section.

~~iii.~~ (c). If a local government guarantor no longer meets the requirements of ~~Paragraph B.9~~Subparagraph E.2.i of this Section, the ~~owner or operator~~affected person must, within 90 days, obtain alternate assurance, place evidence of the alternate assurance in the facility operating record, and notify the Office of Environmental Services. If the ~~owner or operator~~affected person fails to obtain alternate financial assurance within that 90-day period, the guarantor must provide that alternate assurance within the next 30 days.

~~11.~~ k. ~~Use of Multiple Mechanisms~~Instruments. An ~~owner or operator~~affected person may demonstrate financial assurance for closure, ~~post-closure~~, and corrective action, as required by ~~Subsections A and B~~ of this Section, by establishing more than one financial mechanism per facility, except that ~~mechanisms~~instruments guaranteeing performance, rather than payment, may not be combined with other instruments. The ~~mechanisms~~instruments must be as specified in ~~Paragraphs B.3-8~~Subparagraphs E.2.c-h of this Section, except that financial assurance for an amount at least equal to the current cost estimate for closure, ~~post-closure care~~, and/or corrective action may be provided by a combination of ~~mechanisms~~instruments, rather than a single mechanism.

~~12.~~ l. ~~Discounting.~~ The administrative authority may allow discounting of closure ~~and post-closure~~ cost estimates in this Subsection up to the rate of return for essentially risk-free investments, net of inflation, under the following conditions:

~~a.~~ i. the administrative authority determines that cost estimates are complete and accurate and the ~~owner or operator~~affected person has submitted a statement from a registered professional engineer to the Office of Environmental Services so stating;

~~b.~~ ii. the state finds the facility in compliance with applicable and appropriate permit conditions;

~~c.~~ iii. the administrative authority determines that the closure date is certain and the ~~owner or operator~~affected person certifies that there are no foreseeable factors that will change the estimate of site life; and

~~d.~~ iv. discounted cost estimates ~~must be~~are adjusted annually to reflect inflation and years of remaining life.

#### F. Incapacity of Affected Persons, Guarantors, or Financial Institutions

1. All affected persons subject to this Section must notify the Office of Environmental Services by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the affected person as debtor, within 10 days after commencement of the proceeding. A guarantor of a corporate guarantee as specified in Subparagraph D.1.d or Clause E.2.h.ix of this Section must make such a notification if he is named as debtor, as required under the terms of the corporate guarantee set forth in LAC 33:IX.7395.Appendix J.

2. An affected person who fulfills the requirements of Subsection D or E of this Section by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The affected person must establish other financial assurance or liability coverage within 60 days after such an event.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1)(c) and (B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:796 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2516 (October 2005), LR 33:2386 (November 2007), LR 35:\*\*.

**§7309. Pathogens and Vector Attraction Reduction**

A. – C.1.f.i. ...

ii. The density of enteric viruses in the biosolids shall be less than 1 Plaque-forming Unit per 4 grams of total solids (dry weight basis) at the time the biosolids are used or disposed, at the time the biosolids are prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements ~~in LAC 33:IX.7303.A.2.a and 3.a, unless otherwise specified by the permitting authority of~~ Exceptional Quality biosolids as defined in LAC 33:IX.7301.B.

f.iii. – g.i. ...

ii. Sewage sludge that is used or disposed shall be treated in one of the Processes to Further Reduce Pathogens described in LAC 33:IX.7399.~~Appendix B.~~

1.h. – 2.b.ii. ...

c. Class B Biosolids—Alternative 2. Biosolids that are used or disposed shall be treated in one of the Processes to Significantly Reduce Pathogens described in LAC 33:IX.7399.~~Appendix LA.~~

d. – e.viii. ...

ix. Signs shall be posted at all entrances to the Class B biosolids land application site, having at the minimum the following content:

(a). the name of the land application site or facility;

(b). wording that indicates that the area is a biosolids land application site; and

(c). emergency contact telephone numbers.

D. – D.2.g.ii. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1)(c) and (B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:806 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2395 (November 2007), LR 35:\*\*.

**§7313. Standard Conditions Applicable to All Sewage Sludge and Biosolids Use or Disposal Permits**

A. – B.3.b. ...

C. Monitoring and Reports

1. Inspection and Entry. The conditions set forth in LAC 33:IX.65132701.I for inspection and entry shall apply to all permits issued in accordance with these regulations.

C.2. – D.8.c. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2074(B)(1)(c) and (B)(3)(e).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:2406 (November 2007), amended LR 35:\*\*.

**Subchapter B. Appendices**

**§7395. Financial Assurances Documents—Appendices A, B, C, D, E, F, G, H, I, and J**

NOTE: Within this Section, affected person means a commercial preparer of sewage sludge or a commercial land applier of biosolids, as applicable.

A. Appendix A—Liability Endorsement

[Insert, as applicable: “COMMERCIAL PREPARER OF SEWAGE SLUDGE” FACILITY  
~~OR~~or “COMMERCIAL LAND APPLIER OF BIOSOLIDS”] LAND APPLICATION SITE

LIABILITY ENDORSEMENT

Secretary  
 Louisiana Department of Environmental Quality  
 Post Office Box 4313  
 Baton Rouge, Louisiana 70821-4313  
 Attention: Office of Environmental Services,  
~~Water Permits Division~~

Dear Sir:

(A). This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with [name of the insured, which must be either the permit holder, the applicant, affected person or the operator. (Note: The operator will provide the liability-insurance documentation only when the permit holder/applicant/affected person is a public governing body and the public governing body is not the operator.)] The insured's obligation to demonstrate financial ~~responsibility~~ assurance is required in accordance with *Louisiana Administrative Code* (LAC), Title 33, Part IX.7307.A.2. The coverage applies at [list ~~the~~ site identification number, site name, facility name, facility permit number, and facility address] for sudden and accidental occurrences. The limits of liability are per occurrence, and annual aggregate, per site, exclusive of legal-defense costs.

(B). 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 Subclauses (1)-(5), below, are hereby amended to conform with Subclauses (1)-(5), below:

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

(2). 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 LAC 33:IX.7307.A.2.d, e, or f ~~D.1.b-d.~~

(3). Whenever requested by the administrative authority, the insurer agrees to furnish to the administrative authority a signed duplicate original of the policy and all endorsements.

(4). Cancellation of this endorsement, whether by the insurer or the insured, will be effective only upon written notice and upon lapse of 60 days after a copy of such written notice is received by the administrative authority.

(5). Any other termination of this endorsement will be effective only upon written notice and upon lapse of 30 days after a copy of such written notice is received by the administrative authority.

(C). Attached is the endorsement which forms part of the policy [policy number] issued by [name of insurer], herein called the insurer, of [address of the insurer] to [name of the insured] of [address of the insured], this [date]. The effective date of said policy is [date].

(D). I hereby certify that the wording of this endorsement is identical to the wording specified in LAC 33:IX.7307.A.2.b ~~7395.Appendix A~~, effective on the date first written above and that the insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states, and is admitted, authorized, or eligible to conduct insurance business in the sState of Louisiana.

[Signature of authorized representative of insurer]  
 [Typed name of authorized representative of insurer]  
 [Title of authorized representative of insurer]  
 [Address of authorized representative of insurer]

B. Appendix B—Certificate of Insurance

[Insert, as applicable: “COMMERCIAL PREPARER OF SEWAGE SLUDGE” FACILITY  
~~OR “COMMERCIAL LAND APPLIER OF BIOSOLIDS”] LAND APPLICATION SITE~~

CERTIFICATE OF LIABILITY INSURANCE

Secretary  
 Louisiana Department of Environmental Quality

Post Office Box 4313  
 Baton Rouge, Louisiana 70821-4313  
 Attention: Office of Environmental Services,  
~~Water Permits Division~~

Dear Sir:

(A). [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, which must be either the permit holder or applicant of affected person or the facility], the "insured," of [address of insured] in connection with the insured's obligation to demonstrate financial responsibility assurance under *Louisiana Administrative Code* (LAC), Title 33, Part IX.7307.A-2. The coverage applies at [list agency interest number(s), site name(s), facility name(s), facility permit number(s), and site address(es)] for sudden and accidental occurrences. The limits of liability are each occurrence and annual aggregate, per site, exclusive of legal-defense costs. The coverage is provided under policy number [policy number], issued on [date]. The effective date of said policy is [date].

(B). The insurer further certifies the following with respect to the insurance described in Paragraph (A):

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

(2). 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 LAC 33:IX.7307.A-2.d, e, or f ~~D.1.b - d.~~

(3). Whenever requested by the administrative authority, the insurer agrees to furnish to him a signed duplicate original of the policy and all endorsements.

(4). Cancellation of the insurance, whether by the insurer or the insured, will be effective only upon written notice and upon lapse of 60 days after a copy of such written notice is received by the administrative authority.

(5). Any other termination of the insurance will be effective only upon written notice and upon lapse of 30 days after a copy of such written notice is received by the administrative authority.

(C). I hereby certify that the wording of this certificate is identical to the wording specified in LAC 33:IX.7307.A-2.e ~~7395~~. Appendix B, as such regulations were constituted on the date first written above, and that the insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states, and is admitted, authorized, or eligible to conduct insurance business in the sState of Louisiana.

[Signature of authorized representative of insurer]  
 [Typed name of authorized representative of insurer]  
 [Title of authorized representative of insurer]  
 [Address of authorized representative of insurer]

## C. Appendix C—Letter of Credit

[Insert, as applicable: “COMMERCIAL PREPARER OF SEWAGE SLUDGE” FACILITY  
OR “COMMERCIAL LAND APPLIER OF BIOSOLIDS”] LAND APPLICATION SITE

## IRREVOCABLE LETTER OF CREDIT

Secretary  
Louisiana Department of Environmental Quality  
Post Office Box 4313  
Baton Rouge, Louisiana 70821-4313  
Attention: Office of Environmental Services,  
~~Water Permits Division~~

Dear Sir:

We hereby establish our Irrevocable Standby Letter of Credit No. [number] at the request and for the account of [~~permit holder's or applicant's~~ affected person's name and address] for its [list site identification number(s), site name(s), facility name(s), and facility permit number(s)] at [location(s)], Louisiana, in favor of any governmental body, person, or other entity for any sum or sums up to the aggregate amount of U.S. dollars [amount] upon presentation of:

(A). A final judgment issued by a competent court of law in favor of a governmental body, person, or other entity and against [~~permit holder's or applicant's~~ affected person's name] for sudden and accidental occurrences for claims arising out of injury to persons or property due to ~~the operations of the commercial preparer of sewage sludge facility or commercial land applier of Biosolids land application site at the [name of permit holder or applicant]~~ by the affected person at [site location(s)] as set forth in the *Louisiana Administrative Code* (LAC), Title 33, Part IX.7307.A.

(B). A sight draft bearing reference to the Letter of Credit No. [number] drawn by the governmental body, person, or other entity, in whose favor the judgment has been rendered as evidenced by documentary requirement in Paragraph (A).

The Letter of Credit is effective as of [date] and will expire on [date], but such expiration date will be automatically extended for a period of at least one year on the above expiration date [date] and on each successive expiration date thereafter, unless, at least 120 days before the then-current expiration date, we notify both the administrative authority and [name of ~~permit holder or applicant~~ affected person] by certified mail that we have decided not to extend this Letter of Credit beyond the then-current expiration date. In the event we give such notification, any unused portion of this Letter of Credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both the Department of Environmental Quality and [name of ~~permit holder or applicant~~ affected person] as shown on the signed return receipts.

Whenever this Letter of Credit is drawn 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 [name of ~~permit holder or applicant~~ affected person] in accordance with the administrative authority's instructions.

Except to the extent otherwise expressly agreed to, the Uniform Customs and Practice for Documentary Letters of Credit (1983), International Chamber of Commerce Publication No. 400, shall apply to this Letter of Credit.

We certify that the wording of this Letter of Credit is identical to the wording specified in LAC 33:IX.7307.A.2.d.v7395.Appendix C, effective on the date shown immediately below.

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

#### D. Appendix D—Trust Agreement

[Insert, as applicable: "COMMERCIAL PREPARER OF SEWAGE SLUDGE" FACILITY  
OR "COMMERCIAL LAND APPLIER OF BIOSOLIDS" LAND APPLICATION SITE]

#### TRUST AGREEMENT/STANDBY TRUST AGREEMENT

This Trust Agreement (the "Agreement") is entered into as of [date] by and between [name of ~~permit holder or applicant~~affected person], a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the sState of" or "a national bank" or a "a state bank"], the "Trustee."

WHEREAS, the Department of Environmental Quality of the State of Louisiana, an agency of the sState of Louisiana, has established certain regulations applicable to the Grantor, requiring that an ~~an permit holder or applicant for a permit for a commercial preparer of sewage sludge facility~~affected person 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 facility 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 ~~permit holder or applicant~~affected person 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 "Secretary" means the Secretary of the Louisiana Department of Environmental Quality.

(d). The term "Administrative Authority" means the Secretary or a person designated by him to act therefor.

## 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, list the agency interest number, site name, facility name, facility permit number, and the annual aggregate amount of liability coverage or current closure ~~and/or post-closure~~ cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement.]

## SECTION 3. ESTABLISHMENT OF FUND

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Louisiana Department of Environmental Quality. The Grantor and the Trustee intend that no third party shall 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. [Note: Standby Trust Agreements need not be funded at the time of execution. In the case of Standby Trust Agreements, Schedule B should be blank except for a statement that the Agreement is not presently funded, but shall be funded by the financial assurance document used by the Grantor in accordance with the terms of that document.] 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 administrative authority.

## SECTION 4. PAYMENT FOR CLOSURE ~~AND/OR POST-CLOSURE CARE OR~~ LIABILITY COVERAGE

The Trustee shall make payments from the Fund as the administrative authority shall direct, in writing, to provide for the payment of the costs of [liability claims, or closure ~~and/or post-closure~~ care] of the facility covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the administrative authority from the Fund for [liability claims, or closure ~~and/or post-closure~~] expenditures in such amounts as the administrative authority shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the administrative authority specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

## SECTION 5. PAYMENTS COMPRISED BY 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 like character and with like aims, except that:

(a). Securities or other obligations of the Grantor, or any owner of the [facility or 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.

(b). 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

(c). 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, at 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 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, or underwritten, or one to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares at its discretion.

#### SECTION 8. EXPRESS POWERS OF TRUSTEE

Without in any way limiting the powers and discretion 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 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 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 administrative authority 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 administrative authority, 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 questions 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, in writing, specify to the Grantor, the administrative authority, and the present Trustee by certified mail, 10 days before such change becomes effective, the date on which it assumes administration of the trust. 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 the persons designated in the attached Exhibit A or such other persons 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 administrative authority to the Trustee shall be in writing and signed by the administrative authority. 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 termination of the authority of any person to act on behalf of the Grantor or administrative authority 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 administrative authority, except as provided for herein.

#### SECTION 15. NOTICE OF NONPAYMENT

The Trustee shall notify the Grantor and the administrative authority, 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 administrative authority, or by the Trustee and the administrative authority, 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 administrative authority, or by the Trustee and the administrative authority, 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 direction by the Grantor or the administrative authority 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 reasonable expenses incurred in its defense in the event that 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 sState of Louisiana.

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 to as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in *Louisiana Administrative Code* (LAC), Title 33, Part IX. ~~7307.B.3.1~~ 7395.Appendix D, on the date first written above.

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

GRANTOR:

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
[Seal]

TRUSTEE:

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
[Seal]

THUS DONE AND PASSED in my office in \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, in the presence of \_\_\_\_\_ and \_\_\_\_\_, competent witnesses, who hereunto sign their names with the said appearers and me, Notary, after reading the whole.

\_\_\_\_\_  
Notary Public

(The following is an example of the certification of acknowledgement that must accompany the trust agreement.)

STATE OF LOUISIANA  
PARISH OF \_\_\_\_\_

BE IT KNOWN, that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned Notary Public, duly commissioned and qualified within the State and Parish aforesaid, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared \_\_\_\_\_, to me well known, who declared and acknowledged that he had signed and executed the foregoing instrument as his act and deed, and as the act and deed of the \_\_\_\_\_, a corporation, for the consideration, uses, and purposes and on terms and conditions therein set forth.

And the said appearer, being by me first duly sworn, did depose and say that he is the \_\_\_\_\_ of said corporation and that he signed and executed said instrument in his said capacity, and under authority of the Board of Directors of said corporation.

Thus done and passed in the State and Parish aforesaid, on the day and date first hereinabove written, and in the presence of \_\_\_\_\_ and \_\_\_\_\_, competent witnesses, who have hereunto subscribed their name as such, together with said appearer and me, said authority, after due reading of the whole.

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOTARY PUBLIC

E. Appendix E—Surety Bond

[Insert, as applicable: “COMMERCIAL PREPARER OF SEWAGE SLUDGE” FACILITY OR “COMMERCIAL LAND APPLIER OF BIOSOLIDS”] ~~LAND APPLICATION SITE~~

FINANCIAL GUARANTEE BOND

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

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

Principal: [legal name and business address of ~~permit holder or applicant~~ affected person]

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

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

Surety: [name and business address]

[agency interest number, site name, facility name, facility permit number, and current closure ~~and/or post-closure~~ amount(s) for each facility guaranteed by this bond]

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

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

Know All Persons By These Presents, That we, the Principal and Surety hereto, are firmly bound to the Louisiana Department of Environmental Quality 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 Sureties are corporations acting as cosureties, 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 or liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS, said Principal is required, under the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and specifically Section 2074(B)(4), to have a permit in order to own or operate the ~~commercial preparer of sewage sludge facility~~ [insert type of permitted operation] identified above; and

WHEREAS, the Principal is required by law to provide financial assurance for closure ~~and/or post-closure care~~, as a condition of the permit; and

WHEREAS, said Principal shall establish a standby trust fund as is required by the *Louisiana Administrative Code* (LAC), Title 33, Part IX.7307.E.2.d.ii, 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 the 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 close is issued by the administrative authority or a court of competent jurisdiction,

OR, if the Principal shall provide alternate financial assurance as specified in LAC 33:IX.7307.~~BD~~ or E and obtain written approval from the administrative authority of such assurance, within 90 days after the date of notice of cancellation is received by both the Principal and the administrative authority from the Surety,

THEN, this obligation shall be null and void; otherwise it is to remain in full force and effect.

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

The Surety hereby waives notification or amendments to closure plans, permits, applicable laws, statutes, rules, and regulations, and agrees that no such amendment shall in any way alleviate its obligation on this bond.

The liability of the Surety 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 hereunder exceed the amount of the penal sum.

The Surety may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the administrative authority. Cancellation shall not occur before 120 days have elapsed beginning on the date that both the Principal and the administrative authority received the notice of cancellation, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety and to the administrative authority, provided, however, that no such notice shall become effective until the Surety has received written authorization for termination of the bond by the administrative authority.

The Principal and Surety hereby agree to adjust the penal sum of the bond yearly in accordance with LAC 33:IX.7307.BE.2.d.vi and the conditions of the ~~commercial preparer of sewage sludge facility~~ permit so that it guarantees a new closure ~~and/or post-closure~~ amount, provided that the penal sum does not increase or decrease without the written permission of the administrative authority.

The Principal and Surety hereby agree that no portion of the penal sum may be expended without prior written approval of the administrative authority.

IN WITNESS WHEREOF, the Principal and the Surety have executed this FINANCIAL GUARANTEE BOND and have affixed their seals on the date set forth above.

Those persons whose signatures appear below hereby certify that they are authorized to execute this FINANCIAL GUARANTEE BOND on behalf of the Principal and Surety, that each Surety hereto is authorized to do business in the ~~s~~State of Louisiana, and that the wording of this surety bond is identical to the wording specified in LAC 33:IX.7307.B.4.h7395.Appendix E, effective on the date this bond was executed.

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

CORPORATE SURETIES  
[Name and Address]  
State of incorporation: \_\_\_\_\_  
Liability limit: \$ \_\_\_\_\_  
[Signature(s)]  
[Name(s) and title(s)]  
[Corporate seal]  
[This information must be provided for each cosurety]  
Bond Premium: \$ \_\_\_\_\_

F. Appendix F—Performance Bond

[Insert, as applicable: “COMMERCIAL PREPARER OF SEWAGE SLUDGE” FACILITY ~~OR~~ “COMMERCIAL LAND APPLIER OF BIOSOLIDS”] ~~LAND APPLICATION SITE~~

PERFORMANCE BOND

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

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

Principal: [legal name and business address of ~~permit holder or applicant~~ affected person]

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

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

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

[agency interest number, site name, facility name, facility permit number, facility address, and closure ~~and/or post-closure~~ amount(s) for each facility guaranteed by this bond ~~(indicate closure and/or post-closure costs separately)~~]

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

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

Know All Persons by These Presents, That we, the Principal and Surety hereto, are firmly bound to the Louisiana Department of Environmental Quality 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 Sureties are corporations acting as cosureties, 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 Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and specifically Section 2074(B)(4), to have a permit in order to own or operate the ~~commercial preparer of sewage sludge facility~~ [insert type of permitted operation] identified above; and

WHEREAS, the Principal is required by law to provide financial assurance for closure ~~and/or post-closure care~~, as a condition of the permit; and

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

THEREFORE, the conditions of this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of the 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 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 financial assurance as specified in *Louisiana Administrative Code* (LAC), Title 33, Part IX.7307.~~BE~~ and obtain written approval of the administrative authority of such assurance, within 90 days after the date of notice of cancellation is received by both the Principal and the administrative authority, then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described hereinabove.

Upon notification by the administrative authority that the Principal has been found in violation of the closure requirements of the LAC 33:IX.7305.C.3, or of its permit for the facility for which this bond guarantees performance of closure, the Surety 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 administrative authority.

~~Upon notification by the administrative authority that the Principal has been found in violation of the post closure requirements of the LAC 33:IX.7305.C.3, or of its permit for the facility for which this bond guarantees performance of post closure, the Surety shall either perform post closure in accordance with the 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 administrative authority.~~

Upon notification by the administrative authority that the Principal has failed to provide alternate financial assurance, as specified in LAC 33:IX.7307.~~BE~~.2.e.iii.(b), and obtain written approval of such assurance from the administrative authority during the 90 days following receipt by both the Principal and the administrative authority of a notice of cancellation of the bond, the Surety shall place funds in the amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

The Surety hereby waives notification of amendments to closure plans, permit, applicable laws, statutes, rules, and regulations, and agrees that no such amendment shall in any way alleviate its 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 hereunder exceed the amount of the penal sum.

The Surety may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the administrative authority. Cancellation shall not occur before 120 days have lapsed beginning on the date that both the Principal and the administrative authority received the notice of cancellation, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety and to the administrative authority, provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond by the administrative authority.

The Principal and Surety hereby agree to adjust the penal sum of the bond yearly in accordance with LAC 33:IX.7307.~~BE~~.2.d.vi and the conditions of the ~~commercial preparer of sewage sludge facility~~ permit so that it guarantees a new closure ~~and/or~~

~~post-closure~~ amount, provided that the penal sum does not increase or decrease without the written permission of the administrative authority.

The Principal and Surety hereby agree that no portion of the penal sum may be expended without prior written approval of the administrative authority.

IN WITNESS WHEREOF, the Principal and the Surety have executed this PERFORMANCE BOND and have affixed their seals on the date set forth above.

Those persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety, that each Surety hereto is authorized to do business in the sState of Louisiana, and that the wording of this surety bond is identical to the wording specified in LAC 33:IX.7307.B.5.h 7395.Appendix F, effective on the date this bond was executed.

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

CORPORATE SURETY  
[Name and address]  
State of incorporation: \_\_\_\_\_  
Liability limit: \$ \_\_\_\_\_  
[Signature(s)]  
[Name(s) and title(s)]  
[Corporate seal]  
[For every cosurety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]  
Bond premium: \$ \_\_\_\_\_

G. Appendix G—Letter of Credit

[Insert, as applicable: “COMMERCIAL PREPARER OF SEWAGE SLUDGE” FACILITY ~~OR~~ ~~or~~ “COMMERCIAL LAND APPLIER OF BIOSOLIDS”] ~~LAND APPLICATION SITE~~

IRREVOCABLE LETTER OF CREDIT

Secretary  
Louisiana Department of Environmental Quality  
Post Office Box 4313  
Baton Rouge, Louisiana 70821-4313  
Attention: Office of Environmental Services,  
———~~Water Permits Division~~

Dear Sir:

We hereby establish our Irrevocable Standby Letter of Credit No. \_\_\_\_\_ in favor of the Department of Environmental Quality of the State of Louisiana at the request and for the account of [~~permit holder's or applicant's~~ affected person's name and address] for the [~~closure and/or post-closure~~] fund for its [list agency interest number, site name, facility name, facility permit number] at [location], Louisiana, for any sum or sums up to the aggregate amount of U.S. dollars \$\_\_\_\_\_ upon presentation of:

- (i). A sight draft, bearing reference to the Letter of Credit No. \_\_\_\_\_ drawn by the administrative authority, together with;
- (ii). A statement, signed by the administrative authority, declaring that the amount of the draft is payable into the standby trust fund pursuant to the Louisiana Environmental Quality Act, R.S. 30:2001 et seq.

The Letter of Credit is effective as of [date] and will expire on [date], but such expiration date will be automatically extended for a period of at least one year on the above expiration date [date] and on each successive expiration date thereafter, unless, at least 120 days before the then-current expiration date, we notify both the administrative authority and [name of ~~permit holder or applicant~~ affected person] by certified mail that we have decided not to extend this Letter of Credit beyond the then-current expiration date. In the event that we give such notification, any unused portion of this Letter of Credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both the Department of Environmental Quality and [name of ~~permit holder or applicant~~ affected person], as shown on the signed return receipts.

Whenever this Letter of Credit is drawn 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 [name of ~~permit holder or applicant~~ affected person] in accordance with the administrative authority's instructions.

Except to the extent otherwise expressly agreed to, the [insert "the most recent addition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code"], shall apply to this Letter of Credit.

We certify that the wording of this Letter of Credit is identical to the wording specified in *Louisiana Administrative Code* (LAC), Title 33, Part ~~IX.7307.B.6.h~~ 7395.Appendix G, effective on the date shown immediately below.

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

H. Appendix H—Certificate of Insurance

~~[Insert, as applicable: "COMMERCIAL PREPARER OF SEWAGE SLUDGE" FACILITY OR "COMMERCIAL LAND APPLIER OF BIOSOLIDS"] LAND APPLICATION SITE~~

~~CERTIFICATE OF INSURANCE FOR CLOSURE AND/OR POST-CLOSURE CARE~~

Name and Address of Insurer: \_\_\_\_\_  
(hereinafter called the "Insurer")

Name and Address of Insured: \_\_\_\_\_

(hereinafter called the "Insured")

(Note: Insured must be the ~~permit holder or applicant~~ affected person.)

Facilities covered: [list the agency interest number(s), site name(s), facility name(s), facility permit number(s), address(es), and amount(s) of insurance for closure ~~and/or post-closure care~~] (These amounts for all facilities 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 and/or post-closure care"]~~ for the facilities identified above. The Insurer further warrants that such policy conforms in all respects to the requirements of LAC 33:IX.7307.BD.1.a or E.2.g, 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 administrative authority, the Insurer agrees to furnish to the administrative authority a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the Insurer is admitted, authorized, or eligible to conduct insurance business in the sState of Louisiana and that the wording of this certificate is identical to the wording specified in LAC 33:IX.7307.B-7; 7395.Appendix H, effective on the date shown immediately below.

[Authorized signature of Insurer]

[Name of person signing]

[Title of person signing]

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

[Date]

I. Appendix I—Letter from the Chief Financial Officer

~~[Insert, as applicable: "COMMERCIAL PREPARER OF SEWAGE SLUDGE" FACILITY OR "COMMERCIAL LAND APPLIER OF BIOSOLIDS"] LAND APPLICATION SITE~~

LETTER FROM THE CHIEF FINANCIAL OFFICER  
(LIABILITY COVERAGE, AND/OR CLOSURE, AND/OR POST-CLOSURE)

Secretary  
Louisiana Department of Environmental Quality  
Post Office Box 4313  
Baton Rouge, Louisiana 70821-4313  
Attention: Office of Environmental Services,  
~~Water Permits Division~~

Dear Sir:

I am the chief financial officer of [name and address of firm, which may be either the ~~permit holder, applicant, affected person~~ or parent corporation of the ~~permit holder or applicant affected person~~]. This letter is in support of this firm's use of the financial test to demonstrate financial responsibility for [insert "liability coverage," and/or "closure," and/or "post-closure," as applicable] as specified in [insert "Louisiana Administrative Code (LAC), Title 33, Part IX.[insert "7307.D.1.c," "7307.E.2.h," or "7307.D.1.c and E.2.h"]7307.A," "LAC 33:IX.7307.B," or "LAC 33:IX.7307.A and B"]].

[Fill out the following four paragraphs regarding facilities and associated liability coverage, and closure ~~and post-closure~~ cost estimates. If your firm does not have facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, list the agency interest number, site name, facility name, and facility permit number.]

(A). The firm identified above is the [insert "~~permit holder," "applicant for a standard permit," "affected person"~~ or "parent corporation of the ~~permit holder or applicant for a standard permit affected person~~"] of the following ~~commercial preparer of sewage sludge facility~~, whether in the sState of Louisiana or not, for which liability coverage is being demonstrated through the financial test specified in LAC 33:IX.7307.AD.1.c. The amount of annual aggregate liability coverage covered by the test is shown for each facility:

(B). The firm identified above is the [insert "~~permit holder," "applicant for a standard permit," "affected person"~~ or "parent corporation of the ~~permit holder or applicant for a standard permit affected person~~"] of the following ~~commercial preparer of sewage sludge facility~~, whether in the sState of Louisiana or not, for which financial assurance for [insert "closure," "post-closure care," or "closure and post-closure care"] is demonstrated through a financial test similar to that specified in LAC 33:IX.7307.BE.2.h or other forms of self-insurance. The current [insert "closure," "post-closure," or "closure and post-closure"] cost estimates covered by the test are shown for each facility:

(C). This firm guarantees through a corporate guarantee similar to that specified in [insert "~~LAC 33:IX.7307.B" or "LAC 33:IX.7307.A and B"~~"LAC 33:IX.7307.D.1.d," "LAC 33:IX.7307.E.2.h.ix," or "LAC 33:IX.7307.D.1.d and E.2.h.ix""], [insert "liability coverage," and/or "closure," "post-closure care," or "closure and post-closure care"] of the following ~~commercial preparer of sewage sludge facility~~, whether in the sState of Louisiana or not, of which [insert the name of the ~~permit holder or applicant affected person~~] are/is a subsidiary of this firm. The amount of annual aggregate liability coverage covered by the guarantee for each facility and/or the current cost estimates for the closure ~~and/or post-closure care~~ so guaranteed is shown for each facility:

(D). This firm is the owner or operator of the following ~~commercial preparer of sewage sludge facility~~ facilities, whether in the sState of Louisiana or not, for which financial assurance for liability coverage, and/or closure ~~and/or post-closure care~~ is not demonstrated either to the U.S. Environmental Protection Agency or to a state through a financial test or any other financial assurance mechanism similar to those specified in LAC 33:IX.7307.AD and/or BE. 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 statements for the latest completed 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 LAC 33:IX.7307.B.8.a.i.E.2.h.i.(a) are used.]

<b>Alternative I</b>		
1. Amount of annual aggregate liability coverage to be demonstrated	\$ _____	
*2. Current assets	\$ _____	
*3. Current liabilities	\$ _____	
*4. Tangible net worth	\$ _____	
*5. If less than 90 percent of assets are located in the U.S., give total U.S. assets	\$ _____	
	YES	NO
6. Is line 4 at least \$10 million?	___	___
7. Is line 4 at least 6 times line 1?	___	___
*8. Are at least 90 percent of assets located in the U.S.? If not, complete line 9.	___	___
9. Is line 4 at least 6 times line 1?	___	___

[Fill in Alternative II if the criteria of LAC 33:IX.7307.B.8.a.iiE.2.h.i.(b) are used.]

<b>Alternative II</b>		
1. Amount of annual aggregate liability coverage to be demonstrated	\$ _____	
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	\$ _____	
*6. Total assets in U.S. (required only if less than 90 percent of assets are located in the U.S.)	\$ _____	
	YES	NO
7. Is line 5 at least \$10 million?	___	___
8. Is line 5 at least 6 times line 1?	___	___
*9. Are at least 90 percent of assets located in the U.S.? If not, complete line 10.	___	___
10. Is line 6 at least 6 times line 1?	___	___

[Fill in Part B if you are using the financial test to demonstrate assurance only for closure and/or post-closure care.]

**PART B. CLOSURE AND/OR POST CLOSURE**

[Fill in Alternative I if the criteria of LAC 33:IX.7307.B-8.a.iE.2.h.i.(a) are used.]

<b>Alternative I</b>		
1. Sum of current closure <del>and/or post-closure</del> estimates (total all cost estimates shown above)	\$ _____	
*2. Tangible net worth	\$ _____	
*3. Net worth	\$ _____	
*4. Current Assets	\$ _____	
*5. Current liabilities	\$ _____	
*6. The sum of net income plus depreciation, depletion, and amortization	\$ _____	
*7. Total assets in U.S. (required only if less than 90 percent of firm's assets are located in the U.S.)	\$ _____	
	YES	NO
8. Is line 2 at least \$10 million?	___	___
9. Is line 2 at least 6 times line 1?	___	___
*10. Are at least 90 percent of the firm's assets located in the U.S.? If not, complete line 11.	___	___
11. Is line 7 at least 6 times line 1?	___	___

[Fill in Alternative II if the criteria of LAC 33:IX.7307.B.8.a.E.2.h.i.(b) are used.]

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

[Fill in Part C if you are using the financial test to demonstrate assurance for liability coverage, ~~and/or closure, and/or post-closure care.~~]

**PART C. LIABILITY COVERAGE;  
AND/OR CLOSURE AND/OR POST-CLOSURE**

[Fill in Alternative I if the criteria of LAC 33:IX.7307.B.8.a.i.E.2.h.i.(a) are used.]

<b>Alternative I</b>		
1. Sum of current closure <del>and/or post-closure</del> cost estimates (total of all cost estimates listed above)	\$ _____	
2. Amount of annual aggregate liability coverage to be demonstrated	\$ _____	
3. Sum of lines 1 and 2	\$ _____	
*4. Total liabilities (If any portion of your closure <del>and/or post-closure</del> cost estimates is included in your "total liabilities" in your firm's financial statements, you may deduct that portion from this line and add that amount to lines 5 and 6.)	\$ _____	
*5. Tangible net worth	\$ _____	
*6. Net worth	\$ _____	
*7. Current assets	\$ _____	
*8. Current liabilities	\$ _____	
*9. The sum of net income plus depreciation, depletion, and amortization	\$ _____	
*10. Total assets in the U.S. (required only if less than 90 percent of assets are located in the U.S.)	\$ _____	
	YES	NO
11. Is line 5 at least \$10 million?	_____	_____
12. Is line 5 at least 6 times line 3?	_____	_____
*13. Are at least 90 percent of assets located in the U.S.? If not, complete line 14.	_____	_____
14. Is line 10 at least 6 times line 3?	_____	_____

[Fill in Alternative II if the criteria of LAC 33:IX.7307.B.8.a.iiE.2.h.i.(b) are used.]

<b>Alternative II</b>		
1. Sum of current closure <del>and/or post-closure</del> cost estimates (total of all cost estimates listed above)	\$ _____	
2. Amount of annual aggregate liability coverage to be demonstrated	\$ _____	
3. Sum of lines 1 and 2	\$ _____	
4. Current bond rating of most recent issuance of this firm 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 <del>and/or post-closure</del> cost estimates is included in the "total liabilities" in your firm's financial statements, you may add that portion to this line.)	\$ _____	
*8. Total assets in U.S. (required only if less than 90 percent of assets are located in the U.S.)	\$ _____	
	YES	NO
9. Is line 7 at least \$10 million?	_____	_____
10. Is line 7 at least 6 times line 3?	_____	_____
*11. Are at least 90 percent of assets located in the U.S.? If not, complete line 12.	_____	_____
12. Is line 8 at least 6 times line 3?	_____	_____

{The following is to be completed by all firms providing the financial test}

I hereby certify that the wording of this letter is identical to the wording specified in LAC 33:IX.7307.B.8.d7395.Appendix

I.

[Signature of chief financial officer for the firm]  
 [Typed name of chief financial officer]  
 [Title]  
 [Date]

J. Appendix J—Corporate Guarantee

[Insert, as applicable: “COMMERCIAL PREPARER OF SEWAGE SLUDGE” FACILITY ~~OR~~ ~~or~~ “COMMERCIAL LAND APPLIER OF BIOSOLIDS”] ~~LAND APPLICATION SITE~~

**CORPORATE GUARANTEE FOR LIABILITY COVERAGE, AND/OR CLOSURE, ~~AND/OR~~ ~~POST-CLOSURE CARE~~**

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the sState of [insert name of state], hereinafter referred to as guarantor, to the Louisiana Department of Environmental Quality, obligee, on behalf of our subsidiary [insert the name of the ~~permit holder or applicant~~ affected person] of [business address].

Recitals

(A). The guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in *Louisiana Administrative Code* (LAC), Title 33, Part IX.7307.~~B.8~~D.1.d and/or E.2.h.ix.

(B). [Subsidiary] is the [~~insert "permit holder," or "applicant for a permit"~~], hereinafter referred to as [~~insert "permit holder" or "applicant"~~], for the following ~~commercial preparer of sewage sludge facility~~ affected person covered by this guarantee: [List the agency interest number, site name, facility name, and facility permit number. Indicate for each facility whether guarantee is for liability coverage, and/or closure, ~~and/or post-closure~~ and the amount of annual aggregate liability coverage, and/or closure, ~~and/or post-closure~~ costs covered by the guarantee.]

[Fill in Paragraphs (C) and (D) below if the guarantee is for closure ~~and/or post-closure~~.]

(C). "Closure plans" as used below refers to the plans maintained as required by LAC 33:IX.7305.C.3, for the closure ~~and/or post-closure care~~ of the facility identified in Paragraph (B) above.

(D). For value received from [~~insert "permit holder" or "applicant"~~] the affected person, guarantor guarantees to the Louisiana Department of Environmental Quality that in the event that [~~insert "permit holder" or "applicant"~~] the affected person fails to perform [~~insert "closure," "post-closure care," or "closure and post-closure care"~~] of the above facility in accordance with the closure plan and other permit requirements whenever required to do so, the guarantor shall do so or shall establish a trust fund as specified in LAC 33:IX.7307.~~B.3~~E.2.c, as applicable, in the name of [~~insert "permit~~

~~holder" or "applicant"]~~the affected person in the amount of the current closure ~~and/or post-closure~~ estimates as specified in LAC 33:IX.7307.~~BE.2~~.

[Fill in Paragraph (E) below if the guarantee is for liability coverage.]

(E). For value received from ~~insert "permit holder" or "applicant"]~~the affected person, guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by sudden and accidental occurrences arising from operations of the facility covered by this guarantee that in the event that ~~insert "permit holder" or "applicant"]~~the affected person fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by sudden and accidental occurrences arising from the operation of the above-named facility, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s), or settlement agreement(s) up to the coverage limits identified above.

(F). The 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, the guarantor shall send within 90 days, by certified mail, notice to the administrative authority, and to ~~insert "permit holder" or "applicant"]~~the affected person, that he intends to provide alternative financial assurance as specified in [~~insert "LAC 33:IX.7307.AD" and/or "LAC 33:IX.7307.BE"~~], as applicable, in the name of the ~~insert "permit holder" or "applicant"]~~affected person. Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless ~~insert "permit holder" or "applicant"]~~the affected person has done so.

(G). The guarantor agrees to notify the administrative authority, 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.

(H). The guarantor agrees that within 30 days after being notified by the administrative authority of a determination that the guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of [~~insert "liability coverage" and/or "closure and/or post-closure care"~~] he shall establish alternate financial assurance as specified in [~~insert "LAC 33:IX.7307.AD" and/or "LAC 33:IX.7307.BE"~~], as applicable, in the name of ~~insert "permit holder" or "applicant"]~~the affected person unless ~~insert "permit holder" or "applicant"]~~the affected person has done so.

(I). The guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: [if the guarantee is for closure ~~and post-closure~~, insert "amendment or modification of the closure ~~and/or post-closure care~~plan, the extension or reduction of the time of performance of closure ~~and/or post-closure~~", or"] any other modification or alteration of an obligation of the ~~insert "permit holder" or "applicant"]~~affected person pursuant to LAC 33:IX.7305.C.3.

(J). The guarantor agrees to remain bound under this guarantee for as long as the ~~insert "permit holder" or "applicant"]~~affected person must comply with the applicable financial assurance requirements of [~~insert "LAC 33:IX.7307.AD" and/or "LAC~~

33:IX.7307.~~BE~~] for the above-listed facility, except that the guarantor may cancel this guarantee by sending notice by certified mail, to the administrative authority and to the ~~insert "permit holder" or "applicant"~~affected person, such cancellation to become effective no earlier than 90 days after receipt of such notice by both the administrative authority and the ~~insert "permit holder" or "applicant"~~affected person, as evidenced by the return receipts.

(K). The guarantor agrees that if the ~~insert "permit holder" or "applicant"~~affected person fails to provide alternative financial assurance as specified in ~~insert "LAC 33:IX.7307.AD"~~ and/or "LAC 33:IX.7307.~~BE~~", as applicable, and obtain written approval of such assurance from the administrative authority within 60 days after a notice of cancellation by the guarantor is received by the administrative authority from the guarantor, the guarantor shall provide such alternate financial assurance in the name of the ~~insert "permit holder" or "applicant"~~affected person.

(L). The guarantor expressly waives notice of acceptance of this guarantee by the administrative authority or by the ~~insert "permit holder" or "applicant"~~affected person. Guarantor 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 LAC 33:IX.~~7307.B.8~~7395.Appendix J, effective on the date first above written.

Effective date: \_\_\_\_\_  
[Name of Guarantor]  
[Authorized signature for guarantor]  
[Typed name and title of person signing]  
Thus sworn and signed before me this [date].

\_\_\_\_\_  
Notary Public

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(1)(c), (B)(3), and (B)(4).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:818 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of Environmental Assessment, LR 30:2028 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2519 (October 2005), LR 33:2409 (November 2007), LR 35:\*\*.

FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES

LOG #: WQ076

Person Preparing Statement: J. Kilren Vidrine  
Kilren.Vidrine@LA.GOV Dept.: Department of Environmental Quality  
(email address)  
Phone: (225) 219-3012 Office: Office of Environmental Services

Return Address: P.O. Box 4313 Rule Title: Standards for the Use or Disposal of  
Baton Rouge, Louisiana 70821-4313 Sewage Sludge & Biosolids  
(LAC 33:IX.7301, 7303, 7305, 7307,  
7309, 7313, 7395)

Date Rule Takes Effect: Upon Promulgation

SUMMARY  
(Use complete sentences)

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule changes will have no implementation cost or savings to state or local government units. Funding will be covered under established Louisiana Pollutant Discharge Elimination System (LPDES) permit fees and the fees for the registration of domestic septage haulers. Equivalent state and federal regulations, including permitting requirements, regarding sewage sludge use and disposal currently exist, so no additional impact is anticipated on local governmental agencies.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The only effect on revenue collections is the transfer of the registration of haulers of domestic septage from the Louisiana Department of Health and Hospitals (LDHH) to the Louisiana Department of Environmental Quality (LDEQ) and the associated transfer of the annual fee collection also from LDHH to LDEQ. The monetary amount that will be collected by LDEQ will be the same as what is presently being collected by LDHH. Therefore, there will be no increase in revenues beyond that tendered by haulers who register after the effective date of this rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

There is no anticipated effect upon individuals or non-governmental groups. These regulations have been in effect at the federal level since 1993 and at the state level since the Louisiana final rule was promulgated on November 20, 2007. Licensing/registration of haulers/pumpers of sewage sludge has previously been conducted by LDHH. The new registration requirements in this rule are necessary to allow LDEQ to implement the registration of haulers of domestic

septage that has been transferred from LDHH to LDEQ commencing on July 2009, by Act 56 of the 2008 Legislative session.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No significant effect on competition or employment from this proposed rule is anticipated because equivalent regulations of the area currently exist at both the state and federal levels.

\_\_\_\_\_  
Signature of Agency Head or Designee

Legislative Fiscal Officer or Designee

Herman Robinson, CPM, Executive Counsel  
Typed Name and Title of Agency Head or Designee

\_\_\_\_\_  
Date of Signature

Date of Signature

FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES

The following information is requested in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption, or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

This proposed rule will modify the standards for the use or disposal of sewage sludge and biosolids that were promulgated on November 20, 2007.

This rulemaking includes transportation requirements to allow for the proper regulation of sewage sludge haulers and registration of domestic septage haulers, removes the *Exceptional Quality* option for closure of sanitary wastewater treatment facilities in order not to be in conflict with EPA treatment requirements for Exceptional Quality (EPA class A) pathogen standards, removes unnecessary post-closure requirements for sewage sludge treatment facilities, changes or modifies nutrient sampling/reporting and labeling requirements carried over from the LDEQ solid waste regulations, allowing language to parallel EPA requirements, adds requirements to post certain signs at all class B land application sites as part of the site restrictions, and makes a major revision to the biosolids financial assurance requirements and associated appendices.

The rulemaking also restructures some wording and paragraphing and corrects instances of improper spelling and regulation citation.

The removal of the *Exceptional Quality* option, which is presently at LAC 33:IX.7301.D.4.b.ii and 4.e, as well as all the other changes in this rule, will not take effect until the date of final promulgation of the rule.

- B. Summarize the circumstances which require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation.

Periodic updating and clarification of the state biosolids regulations are necessary to fully implement the federal rules on this subject. This proposed rule implements Act 56 of the 2008 Louisiana legislative session, which transferred the registration program for haulers of domestic septage from LDHH to LDEQ. The transportation requirements also contain standards for vehicles that are utilized for the transportation of sewage sludge. Once promulgated, the vehicle standards will become part of all sewage sludge and biosolids use or disposal permits.

The Exceptional Quality certification option for closure of facilities that treat sanitary wastewater or sewage sludge is removed. The option is not in accordance with the EPA pathogen treatment requirements for Exceptional Quality (EPA class A) sewage sludge.

The action will also make a major revision to the biosolids financial assurance requirements and associated appendices and correct omissions and typographical errors within the body of the regulation that were inadvertently overlooked in the final rule of 2007. Additionally, wording is rearranged to provide for better readability and clarification of the Rule.

- C. Compliance with Act 11 of the 1986 First Extraordinary Session  
(1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

No expenditure of funds is expected.

(2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

(a) \_\_\_ Yes. If yes, attach documentation.

(b) \_\_\_ No. If no, provide justification as to why this rule change should be published at this time.

This question is not applicable.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

COSTS	FY08-09	FY09-10	FY10-11
PERSONAL SERVICES	-0-	-0-	-0-
OPERATING EXPENSES	-0-	-0-	-0-
PROFESSIONAL SERVICES	-0-	-0-	-0-
OTHER CHARGES	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-
MAJOR REPAIR & CONSTR	-0-	-0-	-0-
POSITIONS (#)	-0-	-0-	-0-

2. Provide a narrative explanation of the costs or savings shown in "A.1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

This question is not applicable.

3. Sources of funding for implementing the proposed rule or rule change.

SOURCE	FY08-09	FY09-10	FY10-11
STATE GENERAL FUND	-0-	-0-	-0-
AGENCY SELF-GENERATED	-0-	-0-	-0-
DEDICATED	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-
OTHER (Specify)	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

No additional funding will be needed. Funding will be covered under established LPDES permit fees, and the fees for the registration of domestic septage haulers.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

Equivalent state and federal regulations, including permitting requirements, regarding sewage sludge use and disposal currently exist, so no additional impact is anticipated on local governmental agencies.

2. Indicate the sources of funding of the local governmental unit which will be affected by these costs or savings.

This question is not applicable.

FISCAL AND ECONOMIC IMPACT STATEMENT  
WORKSHEET

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

A. What increase (decrease) in revenues can be anticipated from the proposed action?

REVENUE INCREASE/DECREASE	FY08-09	FY09-10	FY10-11
STATE GENERAL FUND	-0-	-0-	-0-
AGENCY SELF-GENERATED	Minimal	Minimal	Minimal
RESTRICTED FUNDS*	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-
LOCAL FUNDS	-0-	-0-	-0-
TOTAL	Minimal	Minimal	Minimal

\*Specify the particular fund being impacted.

B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

The monetary amount that will be collected by LDEQ will be the same as what is presently being collected by LDHH. Therefore, there will be no increase in revenues beyond that tendered by haulers who register after the effective date of this rule.

New facilities coming into the universe of affected facilities will submit the standard fees assessed under the program. An estimate of these revenues would be difficult to calculate due to an uncertainty of the number of new sources that may begin operation after promulgation of the proposed rule.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS

A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

There is no anticipated effect upon individuals or non-governmental groups. These regulations have been in effect at the federal level since 1993 and at the state level since November 20, 2007. Additionally, the domestic septage haulers registration program has been in existence (and handled annually by LDHH).

B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

There is no anticipated impact on receipts and/or income. Registration of domestic septage haulers is a requirement that has previously been handled by LDHH and now will be handled under an already-established LDEQ registration and certification program.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

No significant effect on competition or employment from this proposed rule is anticipated because equivalent regulations of the area currently exist at both the state and federal level.