

3745-400-14

Wording of the financial instruments.**(A) Trust agreement.**

- (1) ~~A~~ The trust agreement for a the trust fund as specified in paragraph (B) of rule 3745-400-13 of the Administrative Code and the trust fund agreement for the trust fund specified in paragraph (B) of rule 3745-400-18 of the Administrative Code ~~must~~ shall be worded as follows on forms prescribed by the director, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

"Trust agreement

Trust agreement. The "agreement", entered into as of [date] by and between [name of the owner or operator], a [state] [corporation, partnership, association, proprietorship], the "grantor", and [name of corporate trustee], ["incorporated in the state of _____" or "a national bank"], the "trustee".

Whereas, the Ohio Environmental Protection Agency, ("Ohio EPA"), has established certain rules applicable to the grantor, requiring that the owner or operator of a construction and demolition debris disposal facility provide assurance that funds will be available when needed for final closure of the facility or post-closure care.

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

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

Now, therefore, the grantor and the trustee agree as follows:

Section 1. Definitions. As used in this agreement:

- (a) The term "grantor" means the owner or operator who enters into this agreement and any successors or assigns of the grantor.
- (b) The term "trustee" means the trustee who enters into this agreement and any successor trustee.
- (c) The term "licensing authority" means a city or general health district as created by or under authority of Chapter 3709. of the Revised Code, which is on the approved list in accordance with section 3714.09 of the Revised Code, or the director where the health district is not on the approved list.

Section 2. Identification of facilities and amount for final closure or

post-closure care. This agreement pertains to the facilities and amount for final closure or post-closure care identified on attached schedule A [on Schedule A, for each facility list the name, address, and the amount for final closure or post-closure care, 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 licensing authority. The grantor and the trustee intend that no third party have access to the fund except as herein provided. The fund is established initially as consisting of the property, which is acceptable to the trustee, described in schedule B attached hereto. Such property and any other property subsequently transferred to the trustee is referred to as the fund, together with all earnings and profits thereon, less any payments or distributions made by the trustee pursuant to this agreement. The fund will 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 licensing authority.

Section 4. Payment for final closure or post-closure care. The trustee will make such payments from the fund as the licensing authority will direct, in writing, to provide for the payment of the costs of final closure or post-closure care of the facilities covered by this agreement. The trustee will reimburse the grantor or other persons as specified by the licensing authority from the fund for final closure or post-closure care expenditures in such amounts as the licensing authority will direct, in writing. In addition, the trustee will refund to the grantor such amounts as the licensing authority specifies in writing. Upon refund, such funds will no longer constitute part of the fund as defined herein.

Section 5. Payments comprising the fund. Payments made to the trustee for the fund will consist of cash or securities acceptable to the trustee.

Section 6. Trustee management. The trustee will 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 periodically, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the fund, the trustee will discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(a) Securities or other obligations of the grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the ~~investment company act~~ Investment Company Act of 1940, as amended through July 2010, ~~15 USC section 80A-2(A)~~ U.S.C. section 80a-2(a), will not be acquired or held, unless they are securities or other obligations of the federal or a state government;

[Comment: The text of the incorporated materials is not included in this rule and are hereby made a part of this rule. Only the specific version specified in this rule is incorporated. Any amendment or revision to a referenced document is not incorporated until this rule has been amended to specify the new version. The Investment Company Act is available at The full text is available in electronic format at <http://www.gpo.gov/fdsys/browse/collectionUScode.action>.]

(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 in its discretion:

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

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

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

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the trustee will 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 will at all times show that all such securities are part of the fund;

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

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

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

Section 10. Annual valuation. The trustee will annually, not later than thirty days prior to the anniversary date of the establishment of the fund, furnish to the grantor and to the licensing authority a statement confirming the value of the trust. Any securities in the fund will be valued at market value as of no more than sixty days prior to the anniversary date of establishment of the fund. The failure of the grantor to object in writing to the trustee not later than ninety days after the statement has been furnished to the grantor and the licensing authority will 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 periodically consult with

counsel, who may be counsel to the grantor, with respect to any question arising as to the construction of this agreement or any action to be taken hereunder. The trustee will be fully protected, to the extent licensed by law, in acting upon the advice of counsel.

Section 12. Trustee compensation. The trustee will be entitled to reasonable compensation for its service as agreed upon in writing periodically 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 will have the same powers and duties as those conferred upon the trustee hereunder. Upon the successor trustee's acceptance and the licensing authority's written approval of the appointment, the trustee will assign, transfer, and pay over to the successor trustee the funds and properties then constituting the fund. If for any reason the grantor cannot or does not act in the event of the resignation of the trustee, the trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the grantor, the licensing authority, and the present trustee by certified mail or other form of mail accompanied by a receipt not later than ten days before such change becomes effective. Any expenses incurred by the trustee as a result of any of the acts contemplated by this section will be paid as provided in section 9.

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

Section 15. Notice of nonpayment. The trustee will notify the grantor and the licensing authority by certified mail or other form of mail accompanied by a

receipt not later than ten days after the expiration of the thirty-day period following the anniversary of the establishment of the trust, if no payment is received from the grantor during the period. After the pay-in period is completed the trustee is not 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 licensing authority, or by the trustee and the licensing 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 will be irrevocable and will continue until termination at the written agreement of the grantor, the trustee, and the licensing authority, or by the trustee and the licensing authority if the grantor ceases to exist. Upon termination of the trust, all remaining trust property, less final trust administration expenses, will be delivered to the grantor, unless the trust is a "standby trust" fund created in accordance with paragraph (C), (D), or (E) of rule 3745-400-13 of the Administrative Code or paragraph (C), (D), or (E) of rule 3745-400-18 of the Administrative Code, in which case all remaining trust property, less final trust administration expenses, will be delivered to the provider of the financial assurance.

Section 18. Immunity and indemnification. The trustee will not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this trust, or in carrying out any directions by the grantor or the licensing authority issued in accordance with this agreement. The trustee will be indemnified and saved harmless by the grantor or from the trust fund, or both, from and against any personal liability to which the trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the grantor fails to provide such defense.

Section 19. Choice of law. This agreement will be administered, construed, and enforced according to the laws of the state of Ohio.

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 will not affect the interpretation or the legal efficacy of this agreement.

In witness whereof the parties have caused this agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written: the parties below certify that the wording of this agreement is identical to the wording specified in paragraph (A)(1) of rule 3745-400-14 of the Administrative Code

as such rule was constituted on the date first above written.

[Signature of grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of trustee]

Attest:

[Title]

[Seal]"

- (2) The following is an example of the certification of acknowledgment, which must accompany the trust agreement for a trust fund as specified in paragraph (B) of rule 3745-400-13 of the Administrative Code or paragraph (B) of rule 3745-400-18 of the Administrative Code:

"State of _____

County of _____

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

[Signature of notary public]"

~~{Comment: As required in paragraph (B)(2) of rule 3745-400-13 of the Administrative Code, the trust agreement must be accompanied by a formal certification of acknowledgment. This is an example only.}~~

- (B) ~~A~~ The surety bond guaranteeing payment into a the trust fund, ~~as specified in paragraph (C) of rule 3745-400-13 of the Administrative Code and the surety bond~~

guaranteeing payment into the trust fund specified in paragraph (C) of rule 3745-400-18 of the Administrative Code, ~~must shall~~ be worded as follows on forms prescribed by the director, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

"Financial guarantee bond

Date bond executed: _____

Effective date: _____

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

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

State of incorporation: _____

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

Name, address, and final closure or post-closure care amount(s) for each facility guaranteed by this bond [indicate amount of final closure or post-closure care]:
\$ _____

Total penal sum of bond: \$ _____

Surety's bond number: _____

Know all persons by these presents, that we, the principal and surety(ies) hereto are firmly bound to the licensing authority, in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally; provided that, where the surety(ies) are corporations acting as co-sureties, we, the sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each surety binds itself, jointly and severally with the principal, for the payment of such sum only as is set forth opposite the name of such surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas, said principal is required to have a valid license, in order to operate each construction and demolition debris facility(ies) identified above, and

Whereas, said principal is required to provide financial assurance for final closure or post-closure care of the facility(ies) as a condition of Chapter 3714. of the Revised Code; and

Whereas said principal shall establish a standby trust fund as specified by rule

3745-400-13 or 3745-400-18 of the Administrative Code,

Now, therefore, the conditions of the obligation are such that if the principal shall faithfully, before the beginning of final closure of each facility identified above, fund the standby trust fund in the amount(s) identified above for the facility.

Or, if the principal shall fund the standby trust fund in such an amount(s) not later than fifteen days after an order to begin final closure is issued by the licensing authority, or an Ohio court, or a U.S. district court, or other court of competent jurisdiction, or not later than fifteen days after a notice of revocation of the construction and demolition debris facility license, or, if the principal shall provide ~~alternate~~ alternative financial assurance as specified in rule 3745-400-13 or 3745-400-18 of the Administrative Code as applicable, and obtain the licensing authority's written approval of such ~~alternate~~ alternative financial assurance, not later than ninety days after the first day that notice of cancellation has been received by both the principal and the licensing authority from the surety(ies), then this obligation will be null and void; otherwise it is to remain in full force and effect.

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

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

The surety(ies) may cancel the bond by sending notice of cancellation by certified mail or other form of mail accompanied by a receipt to the principal and to the licensing authority, provided, however, that cancellation shall not occur during the one hundred twenty day period beginning on the first day of receipt of the notice of cancellation by both the principal and the licensing authority as evidenced by the return receipt(s) or while a compliance procedure is pending, as defined in rule 3745-400-13 or 3745-400-18 of the Administrative Code.

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

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

Principal and surety(ies) hereby agree to adjust the penal sum of the bond annually so that it guarantees a new final closure or post-closure care amount, and no decrease in the penal sum takes place without the written permission of the licensing authority.

In witness whereof, the principal and surety(ies) have executed this financial guarantee bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the principal and surety(ies) and that the wording of this surety bond is identical to the wording specified in paragraph (B) of rule 3745-400-14 of the Administrative Code as such rule was constituted on the date this bond was executed.

Principal

Signature(s): _____

Name(s) and title(s) [typed]: _____

Corporate seal:

Corporate surety(ies)

Name and address: _____

State of incorporation: _____

Liability limit: \$_____

Signature(s): _____

Name(s) and title(s) [typed]: _____

Corporate seal:

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

Bond premium: \$_____ "

- (C) A The surety bond guaranteeing performance of final closure, as specified in paragraph (D) of rule 3745-400-13 of the Administrative Code and the surety bond guaranteeing performance of post-closure care specified in paragraph (D) of rule 3745-400-18 of the Administrative Code, must shall be worded as follows on forms prescribed by the director, except that instructions in brackets are to be replaced by

the relevant information and the brackets deleted:

"Performance bond

Date bond executed: _____

Effective date: _____

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

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

State of incorporation: _____

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

Name, address, and final closure or post-closure care amount for each facility guaranteed by this bond [indicate final closure or post-closure care amount]:

\$ _____

Total penal sum of bond: \$ _____

Surety's bond number: _____

Know all persons by these presents, that we, the principal and surety(ies) hereto are firmly bound to the licensing authority, in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the surety(ies) are corporations acting as co-sureties, we, the sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each surety binds itself, jointly and severally with the principal, for the payment of such sum only as is set forth opposite the name of such surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas, said principal is required to have an Ohio EPA license or licenses in order to operate each construction and demolition debris facility(ies) identified above, and

Whereas said principal is required to provide financial assurance for final closure or post-closure care, as a condition of the license(s), and

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

Now, therefore, the conditions of this obligation are such that if the principal shall faithfully perform final closure or post-closure care, whenever required to do so, of each facility for which this bond guarantees final closure or post-closure care, in accordance with rule 3745-400-12 or 3745-400-16 of the Administrative Code and other requirements of the license as such license may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended.

Or, if the principal shall provide ~~alternate~~ alternative financial assurance as specified in rule 3745-400-13 or 3745-400-18 of the Administrative Code and obtain the licensing authority's written approval of such ~~alternate~~ alternative financial assurance not later than ninety days after the date notice of cancellation is received by both the principal and the licensing authority from surety(ies), then this obligation will be null and void, otherwise it is to remain in full force and effect.

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

Upon notification by the licensing authority that the principal has been found in violation of the final closure requirements of rule 3745-400-12 of the Administrative Code or post-closure care requirements of rule 3745-400-16 of the Administrative Code, for a facility for which this bond guarantees performance of final closure or post-closure care, the surety(ies) shall either perform final closure in accordance with ~~Chapters 3745-400 and 3745-37~~ rule 3745-400-12 of the Administrative Code or post-closure care in accordance with rule 3745-400-16 of the Administrative Code and other license requirements or place the final closure or post-closure care amount guaranteed for the facility into the standby trust fund as directed by the licensing authority.

Upon notification by the licensing authority that the principal has failed to provide ~~alternate~~ alternative financial assurance as specified in rule 3745-400-13 or 3745-400-18 of the Administrative Code and obtain written approval of such ~~alternate~~ alternative financial assurance from the licensing authority not later than ninety days after receipt by both the principal and the licensing authority of a notice of cancellation of the bond, the surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the licensing authority.

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

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

the surety(ies) hereunder exceed the amount of said penal sum.

The surety(ies) may cancel the bond by sending notice of cancellation by certified mail or other form of mail accompanied by a receipt to the owner or operator and to the licensing authority, provided, however, that cancellation cannot occur during the ~~one hundred twenty day~~ one hundred twenty day period beginning on the first day of receipt of the notice of cancellation by both the principal and the licensing authority as evidenced by the return receipts.

The principal may terminate this bond by sending written notice to the surety(ies), provided, however, that no such notice shall become effective until the surety(ies) ~~receive(s)~~ receives written approval for termination of the bond by the licensing authority.

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

Principal and surety(ies) hereby agree to adjust the penal sum of the bond annually so that it guarantees a new final closure or post-closure care amount, and no decrease in the penal sum occurs without the written approval of the licensing authority.

In witness whereof, the principal and surety(ies) have executed this performance bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the principal and surety(ies) and that the wording of this surety bond is identical to the wording specified in paragraph (C) of rule 3745-400-14 of the Administrative Code, as such rule was constituted on the date this bond was executed.

Principal

Signature(s):_____

Name(s) and title(s) [typed]:_____

Corporate seal:_____

Corporate surety(ies)

Name and address:_____

State of incorporation:_____

Liability limit: \$_____

Signature(s): _____

Name(s) and title(s) [typed]: _____

Corporate seal:

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

Bond premium: \$ _____ "

- (D) ~~A~~ The letter of credit ~~as~~ specified in paragraph (E) of rule 3745-400-13 ~~of the Administrative Code and the letter of credit specified in paragraph (E) of rule 3745-400-18 of the Administrative Code~~ ~~must~~ shall be worded as follows on forms prescribed by the director, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted [note: a letter of credit may also contain provisions used by the issuing institution in its regular course of business, provided that such provisions do not alter the terms and conditions in this paragraph]:

"Irrevocable standby letter of credit

[Licensing authority]

Dear sir or madam: We hereby establish our irrevocable standby letter of credit no. _____ ~~in~~ in your favor, at the request and for the account of [owner's or operator's name and address] up to the aggregate amount of [in words] U.S. Dollars (\$ _____), available upon presentation of

- (1) Your sight draft, bearing reference to this letter of credit no. _____, ~~And~~ and
- (2) Your signed statement reading as follows: 'I certify that the amount of the draft is payable pursuant to regulations issued under the authority of Chapter 3714. of the Revised Code ~~as amended~~.'

This letter of credit is effective as of [date] and will expire on [date of at least one year later], but such expiration date will be automatically extended for a period of [at least one year] on [date] and on each successive expiration date, unless, at least one hundred twenty days prior to the current expiration date, we notify both you and [owner's or operator's name] by certified mail or other form of mail accompanied by a receipt that we have decided not to extend this letter of credit beyond the current expiration date. In the event that you are so notified, any unused portion of the credit will be available upon presentation of your sight draft for one hundred twenty days after the first day

of receipt by both you and [owner's or operator's name] as evidenced by the return receipts.

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

We certify that the wording of this letter of credit is identical to the wording specified in paragraph (D) of rule 3745-400-14 of the Administrative Code as such rule was constituted on the date shown immediately below.

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

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

[Comment: In the event that the owner or operator ceases to exist, any unused portion of the credit will be available for the ~~one hundred twenty day~~ one hundred twenty day period after the date of receipt by the licensing authority, as evidenced by the return receipt.]

- (E) ~~A~~ The certificate of insurance, as specified in paragraph (F) of rule 3745-400-13 of the Administrative Code and the certificate of insurance specified in paragraph (F) of rule 3745-400-18 of the Administrative Code, ~~must~~ shall be worded as follows on forms prescribed by the director, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

"Certificate of insurance for final closure or post-closure care.

Name and address of insurer

(Herein called the "insurer"): _____

Name and address of insured

(Herein called the "insured"): _____

Facilities covered: [List for each facility: name, address, county in which the facility is located, and the amount of insurance for final closure or post-closure care provided under the insurance policy (~~these amounts~~ the aggregate amount for all facilities covered must total the face amount shown below).]

Face Amount: \$ _____

Policy Number: _____

Effective date: _____

The insurer hereby certifies that it has issued to the insured ~~the policy of insurance~~ policy identified above to provide financial assurance for [insert "final closure or post-closure care"] for the facilities identified above. The insurer further warrants that such insurance policy conforms in all respects with the requirements of paragraph (F) of rule 3745-400-13 of the Administrative Code or paragraph (F) of rule 3745-400-18 of the Administrative Code, as applicable as such rules were constituted on the date shown immediately below. It is agreed that any provision of the insurance policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the licensing authority the insurer agrees to furnish to the licensing authority a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in paragraph (E) of rule 3745-400-14 of the Administrative Code as such rule was constituted on the date shown immediately below.

[Authorized signature for insurer]

[Name of person signing]

[Title of person signing]

Signature of witness or notary: _____

[Date]"

~~(F) A letter from the chief financial officer, as specified in paragraph (G) of rule 3745-400-13 of the Administrative Code must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:~~

~~"Letter from chief financial officer~~

~~{Address to licensing authority.}~~

~~I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance, as specified in rule 3745-400-13 of the Administrative Code.~~

~~[Fill out the following three paragraphs regarding facilities and associated amounts~~

~~for final closure. If your firm has no facilities that belong in a particular paragraph, write "none" in the space indicated. For each facility, include its name, address, county, and amount for final closure. Identify each amount as to whether it is for final closure.]~~

- ~~(1) This firm is the owner or operator of the following facilities for which financial assurance for final closure is demonstrated through the financial test specified in rule 3745-400-13 of the Administrative Code. The amount for final closure provided for by the test are shown for each facility: \$_____.~~
- ~~(2) This firm guarantees, through the corporate guarantee specified in rule 3745-400-13 of the Administrative Code, the final closure of the following facilities licensed by subsidiaries of this firm. The amount for final closure so guaranteed are shown for each facility: \$_____.~~
- ~~(3) This firm is the owner or operator of the following facilities for which financial assurance for final closure, is not demonstrated to the licensing authority through the financial test or any other financial assurance mechanism specified in rule 3745-400-13 of the Administrative Code. The amount for final closure 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 most recent 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 most recently completed fiscal year, ended [date].~~

~~[Fill in Alternative I if the criteria of paragraph (G)(1)(b) of rule 3745-400-13 of the Administrative Code is used. Fill in alternative II if the criteria of paragraph (G)(1)(c) of rule 3745-400-13 of the Administrative Code is used.]~~

~~Alternative I~~

- ~~1. Sum of amount for final closure (total of all amounts shown in the three paragraphs above): \$_____~~
- ~~*2. Total liabilities [if any portion of the amount for final closure is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4]: \$_____~~
- ~~*3. Tangible net worth: \$_____~~
- ~~*4. Net worth: \$_____~~

- *5. Current assets: \$ _____
- *6. Current liabilities: \$ _____
- *7. Net working capital [line 5 minus line 6]: \$ _____
- *8. The sum of net income plus depreciation, depletion, and amortization:
\$ _____
- *9. Total assets in U.S. (Required only if less than 90% of firm's assets are located in
the U.S.): \$ _____

Yes no

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

Alternative II

1. Sum of amount for final closure (total of all amounts shown in the three
paragraphs above): \$ _____
2. Current bond rating of most recent issuance of this firm and name of rating
service: _____
3. Date of issuance of bond: _____
4. Date of maturity of bond: _____
- *5. Tangible net worth [if any portion of the amount for final closure is included in
"total liabilities" on your firm's financial statements, you may add the amount of
that portion to this line]: \$ _____
- *6. Total assets in U.S. (Required only if less than 90% of firm's assets are located
in the U.S.): \$ _____

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% of firm's assets located in the U.S.? If not, complete line 10
10. Is line 6 at least 6 times line 1?

I hereby certify that the wording of this letter is identical to the wording specified in paragraph (F) of rule 3745-400-14 of the Administrative Code as such rule was constituted on the date shown immediately below.

{Signature}

{Name}

{Title}

{Date}"

~~(G) A corporate guarantee, as specified in paragraph (G) of rule 3745-400-13 of the Administrative Code, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:~~

~~"Corporate guarantee for final closure~~

~~Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the state of [insert name of state], herein referred to as guarantor, to the licensing authority, obligee on behalf of our subsidiary [owner or operator] of [business address].~~

~~Recitals~~

~~1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in paragraph (G) of rule 3745-400-13 of the Administrative Code.~~

~~2. [Owner or operator] responsible for the following construction and demolition debris facility(ies) covered by this guarantee: [list for each facility: name and address].~~

~~3. For value received from [owner or operator], guarantor guarantees to the licensing authority that in the event that [owner or operator] fails to perform final~~

~~closure of the above facility(ies) in accordance with the Chapters 3745-400 and 3745-37 of the Administrative Code and any other license requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in Chapter 3745-400 of the Administrative Code, as applicable, in the name of [owner or operator] in the amount for final closure as specified in Chapter 3745-400 of the Administrative Code.~~

~~4. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send not later than ninety days after the end of such fiscal year, by certified mail, notice to the licensing authority, and to [owner or operator] that he intends to provide alternate financial assurance as specified in Chapter 3745-400 of the Administrative Code, as applicable, in the name of [owner or operator]. Not later than one hundred twenty days after the end of such fiscal year, the guarantor shall establish such alternate financial assurance unless [owner or operator] has done so.~~

~~5. The guarantor agrees to notify the licensing authority by certified mail of a voluntary or involuntary proceeding under Title 11: Bankruptcy, U.S. Code, naming guarantor as debtor, not later than ten days after commencement of the proceeding.~~

~~6. Guarantor agrees that not later than thirty days after being notified by the licensing authority of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of final closure, he shall establish alternate financial assurance as specified in Chapter 3745-400 of the Administrative Code, as applicable, in the name of [owner or operator] unless [owner or operator] has done so.~~

~~7. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: change to the license, modification of the facility, the extension or reduction of the time of performance of final closure, or any other modification or alteration of an obligation of the owner or operator pursuant to Chapter 3745-400 of the Administrative Code.~~

~~8. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] shall comply with the applicable financial assurance requirements of Chapter 3745-400 of the Administrative Code for the above listed facilities, except that guarantor may cancel this guarantee by sending notice by certified mail to the licensing authority and [owner or operator], such cancellation to become effective not earlier than one hundred twenty days after receipt of such notice by both the licensing authority and [owner or operator], as evidenced by the return receipts.~~

~~9. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance as specified in Chapter 3745-400 of the Administrative Code, as applicable, and obtain written approval of such alternate financial assurance from~~

~~the licensing authority not later than ninety days after a notice of cancellation by the guarantor is received by the licensing authority from guarantor, guarantor shall provide such alternate financial assurance in the name of [owner or operator].~~

~~10. Guarantor expressly waives notice of acceptance of this guarantee by the licensing authority or by [owner or operator]. Guarantor also expressly waives notice of amendments or modifications of the facility license(s).~~

~~I hereby certify that the wording of this guarantee is identical to the wording specified in paragraph (G) of rule 3745-400-14 of the Administrative Code as such rule was constituted on the date first above written.~~

~~Effective date: _____~~

~~[Name of guarantor]~~

~~[Authorized signature for guarantor]~~

~~[Name of person signing]~~

~~[Title of person signing]~~

~~Signature of witness or notary: _____"~~

Effective:

R.C. 119.032 review dates: 11/30/2011

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 3714.02
Rule Amplifies: 3714.02
Prior Effective Dates: 8/31/02, 4/4/99