

7035.2745 LETTER OF CREDIT.

Items A to J apply to letters of credit:

A. An owner or operator may satisfy the requirements of part 7035.2695 by obtaining an irrevocable letter of credit which conforms to the requirements of items A to J, and by submitting the letter to the commissioner. The issuing institution must be an entity which has the authority to issue letters of credit. Its letter-of-credit operations must be regulated and examined by a federal or state agency.

(1) An owner or operator of a new facility shall submit the letter of credit to the commissioner along with the final permit application before the date on which waste is first received for disposal. The letter of credit must be effective before the initial receipt of waste.

(2) An owner or operator of an existing facility with a remaining capacity of more than five years or 500,000 cubic yards shall submit the letter of credit to the commissioner within 180 days of November 15, 1988.

(3) An owner or operator of an existing facility that does not meet the criterion in subitem (2) shall submit the letter of credit to the commissioner within a year of November 15, 1988.

B. The wording of the letter of credit must be identical to the wording in part 7035.2805, subpart 5.

C. An owner or operator who uses a letter of credit to satisfy the requirements of part 7035.2695 shall also establish a standby trust fund. Under the terms of the letter of credit, the issuing institution will deposit all amounts paid directly into the standby trust fund in accordance with instructions from the commissioner. This standby trust fund must meet the requirements in part 7035.2705 or 7035.2715 except that an originally signed duplicate of the trust agreement must be submitted to the commissioner with the letter of credit. The requirements in subitems (1) to (4) must be met if the standby trust fund is funded under this part:

- (1) payments into the trust fund as specified in part 7035.2705;
- (2) updating of Schedule A of the trust agreement to show current cost estimates;
- (3) annual valuations as required by the trust agreement; and
- (4) notices of nonpayment as required by the trust agreement.

D. The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: the identification number, name, and address of the facility, and the

amount of funds assured for closure, postclosure care, or corrective action at the facility by the letter of credit.

E. The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be extended automatically for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the commissioner 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 the commissioner has received the notice, as evidenced by the return receipt.

F. The letter of credit must be issued in an amount at least equal to the sum of the current cost estimates.

G. Whenever the sum of the current cost estimates becomes greater than the amount of the credit, the owner or operator, within 60 days after the increase, shall either cause the amount of the credit to be increased so that it at least equals the sum of the current cost estimates and shall submit evidence of the increase to the commissioner or obtain other financial assurance as specified in parts 7035.2705 to 7035.2750 to cover the increase. Whenever the sum of the current cost estimates decreases, the amount of the credit shall be reduced to the amount of the current cost estimate following written approval by the commissioner.

H. Following a determination by the commissioner that the owner or operator has failed to perform final closure, postclosure care, or corrective action in accordance with the appropriate plan and other permit requirements when required to do so, the commissioner shall draw on the letter of credit.

I. The commissioner shall draw on the letter of credit if the owner or operator does not establish alternate financial assurance as specified in parts 7035.2705 to 7035.2750 and obtain written approval of alternate assurance from the commissioner within 90 days after the commissioner receives notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date. The commissioner may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any extension the commissioner shall draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in parts 7035.2705 to 7035.2750 and obtain written approval of the assurance from the commissioner.

J. The commissioner shall return the letter of credit to the issuing institution for termination if:

(1) an owner or operator substitutes alternate financial assurance as specified in parts 7035.2705 to 7035.2750; or

(2) the agency releases the owner or operator from the requirements of part 7035.2705 in accordance with part 7035.2775.

Statutory Authority: *MS s 115.03; 116.07*

History: *13 SR 1150*

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