

**9220.0630 LETTER OF CREDIT.**

Subpart 1. **Scope.** Subparts 2 to 11 apply to letters of credit. For letters of credit held by a county under part 9220.0600, provisions in this part that refer to the commissioner apply to both the commissioner and the county.

Subp. 2. **Letter of credit requirements.** An owner or operator may satisfy the requirements of part 9220.0560 by obtaining an irrevocable letter of credit that conforms to the requirements of subparts 2 to 11, and by submitting the letter to the commissioner. 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. An owner or operator of a waste tire facility shall submit the letter of credit to the commissioner with the facility permit application.

Subp. 3. **Wording of letter of credit.** The commissioner shall approve the form of a letter of credit that contains terms adequate to ensure that financial assurance is provided. The commissioner shall provide a copy of the approved letter of credit instrument with the permit application. The owner or operator of the waste tire facility shall use the form provided by the commissioner when establishing a letter of credit financial assurance mechanism.

Subp. 4. **Establishment of standby trust fund.** An owner or operator who uses a letter of credit to satisfy the requirements of part 9220.0560 shall also establish a standby trust fund. Under the terms of the letter of credit, the issuing institution shall deposit all amounts paid directly into the standby trust fund in accordance with instructions from the commissioner. An originally signed duplicate of the standby trust fund agreement must be submitted to the commissioner with the letter of credit. The standby trust fund agreement must meet the requirements in part 9220.0610, except that compliance with the following is not required until the standby trust fund is funded under this part:

- A. payments into the trust fund as specified in part 9220.0610;
- B. updating of Schedule A of the trust agreement to show current closure cost estimates;
- C. annual valuations as required by the trust agreement; and
- D. notices of nonpayment as required by the trust agreement.

Subp. 5. **Notification.** 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 must begin on the date when the commissioner received the notice, as evidenced by the return receipt. For a letter of credit held by a

county under part 9220.0600, the letter of credit must provide a 150-day expiration period rather than a 120-day period.

Subp. 6. **Amount of credit.** The letter of credit must be issued in an amount at least equal to the applicable current closure cost estimate.

Subp. 7. **Changes to amount of credit.** Within 60 days of an increase in the current closure cost estimate to an amount greater than the amount of the credit, the owner or operator shall either cause the amount of the credit to be increased to an amount at least equal to the sum of the current closure cost estimate and submit evidence of the increase to the commissioner, or obtain other financial assurance as specified in parts 9220.0610 to 9220.0640 to cover the increase. Whenever the current closure cost estimate decreases, the amount of the credit may be reduced to the sum of the current closure cost estimate following written approval by the commissioner.

Subp. 8. **Failure to perform.** The letter of credit must provide that the commissioner may draw on the letter of credit, when the commissioner has determined that the owner or operator has failed to perform closure when required to do so in accordance with the closure plan or part 9220.0500.

Subp. 9. **Failure to establish alternate financial assurance.** The commissioner shall draw on the letter of credit if the owner or operator does not establish alternate financial assurance as specified in parts 9220.0610 to 9220.0640 and obtain written approval of the alternate assurance from the commissioner within 90 days after the commissioner receives notice that the issuing institution 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 9220.0610 to 9220.0640 and obtain written approval of the assurance from the commissioner.

Subp. 10. **Termination of letter of credit.** The commissioner shall return the letter of credit to the issuing institution for termination if:

A. an owner or operator substitutes alternate financial assurance as specified in parts 9220.0610 to 9220.0640; or

B. the commissioner releases the owner or operator from the requirements of this part in accordance with part 9220.0670.

**Statutory Authority:** *MS s 115A.914*

**History:** *12 SR 2513; L 1999 c 73 s 5*

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