

§ 264.151 Wording of the instruments.

(k) A letter of credit, as specified in § 264.147(h) or § 265.147(h) of this regulation, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

IRREVOCABLE STANDBY LETTER OF CREDIT

Name and Address of Issuing Institution

DIRECTOR
ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY
8001 NATIONAL DRIVE, P.O. BOX 8913
LITTLE ROCK, ARKANSAS 72219-8913

DEAR SIR: WE HEREBY ESTABLISH OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____ IN THE FAVOR OF ANY AND ALL THIRD-PARTY LIABILITY CLAIMANTS, AT THE REQUEST AND FOR THE ACCOUNT OF [OWNER'S OR OPERATOR'S NAME AND ADDRESS] FOR THIRD-PARTY LIABILITY AWARDS OR SETTLEMENTS UP TO [IN WORDS] U.S. DOLLARS \$____ PER OCCURRENCE AND THE ANNUAL AGGREGATE AMOUNT OF [IN WORDS] U.S. DOLLARS \$____, FOR SUDDEN ACCIDENTAL OCCURRENCES AND/OR FOR THIRD-PARTY LIABILITY AWARDS OR SETTLEMENTS UP TO THE AMOUNT OF [IN WORDS] U.S. DOLLARS \$____ PER OCCURRENCE, AND THE ANNUAL AGGREGATE AMOUNT OF [IN WORDS] U.S. DOLLARS \$____, FOR NONSUDDEN ACCIDENTAL OCCURRENCES AVAILABLE UPON PRESENTATION OF A SIGHT DRAFT, BEARING REFERENCE TO THIS LETTER OF CREDIT NO. _____, AND (1) A SIGNED CERTIFICATE READING AS FOLLOWS:

CERTIFICATION OF VALID CLAIM

THE UNDERSIGNED, AS PARTIES [INSERT PRINCIPAL] AND [INSERT NAME AND ADDRESS OF THIRD-PARTY CLAIMANTS], HEREBY CERTIFY THAT THE CLAIM OF BODILY INJURY [AND/OR] PROPERTY DAMAGE CAUSED BY A [SUDDEN OR NONSUDDEN] ACCIDENTAL OCCURRENCE ARISING FROM OPERATIONS OF [PRINCIPAL'S] HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITY SHOULD BE PAID IN THE AMOUNT OF \$____. WE HEREBY CERTIFY THAT THE CLAIM DOES NOT APPLY TO ANY OF THE FOLLOWING:

(A) BODILY INJURY OR PROPERTY DAMAGE FOR WHICH [INSERT PRINCIPAL] IS OBLIGATED TO PAY DAMAGES BY REASON OF THE ASSUMPTION OF LIABILITY IN A CONTRACT OR AGREEMENT. THIS EXCLUSION DOES NOT APPLY TO LIABILITY FOR DAMAGES THAT [INSERT PRINCIPAL] WOULD BE OBLIGATED TO PAY IN THE ABSENCE OF THE CONTRACT OR AGREEMENT.

(B) ANY OBLIGATION OF [INSERT PRINCIPAL] UNDER A WORKERS' COMPENSATION, DISABILITY BENEFITS, OR UNEMPLOYMENT COMPENSATION LAW OR ANY SIMILAR LAW.

(C) BODILY INJURY TO:

(1) AN EMPLOYEE OF [INSERT PRINCIPAL] ARISING FROM, AND IN THE COURSE OF, EMPLOYMENT BY [INSERT PRINCIPAL]; OR

(2) THE SPOUSE, CHILD, PARENT, BROTHER OR SISTER OF THAT EMPLOYEE AS A CONSEQUENCE OF, OR ARISING FROM, AND IN THE COURSE OF EMPLOYMENT BY [INSERT PRINCIPAL].

THIS EXCLUSION APPLIES:

(A) WHETHER [INSERT PRINCIPAL] MAY BE LIABLE AS AN EMPLOYER OR IN ANY OTHER CAPACITY; AND

(B) TO ANY OBLIGATION TO SHARE DAMAGES WITH OR REPAY ANOTHER PERSON WHO MUST PAY DAMAGES BECAUSE OF THE INJURY TO PERSONS IDENTIFIED IN PARAGRAPHS (1) AND (2).

(D) BODILY INJURY OR PROPERTY DAMAGE ARISING OUT OF THE OWNERSHIP, MAINTENANCE, USE, OR ENTRUSTMENT TO OTHERS OF ANY AIRCRAFT, MOTOR VEHICLE OR WATERCRAFT.

(E) PROPERTY DAMAGE TO:

(1) ANY PROPERTY OWNED, RENTED, OR OCCUPIED BY [INSERT PRINCIPAL];

(2) PREMISES THAT ARE SOLD, GIVEN AWAY OR ABANDONED BY [INSERT PRINCIPAL] IF THE PROPERTY DAMAGE ARISES OUT OF ANY PART OF THOSE PREMISES;

(3) PROPERTY LOANED TO [INSERT PRINCIPAL];

(4) PERSONAL PROPERTY IN THE CARE, CUSTODY OR CONTROL OF [INSERT PRINCIPAL];

(5) THAT PARTICULAR PART OF REAL PROPERTY ON WHICH [INSERT PRINCIPAL] OR ANY CONTRACTORS OR SUBCONTRACTORS WORKING DIRECTLY OR INDIRECTLY ON BEHALF OF [INSERT PRINCIPAL] ARE PERFORMING OPERATIONS, IF THE PROPERTY DAMAGE ARISES OUT OF THESE OPERATIONS.

[SIGNATURES]

PRINCIPAL

[SIGNATURES]

CLAIMANT(S)

OR (2) A VALID FINAL COURT ORDER ESTABLISHING A JUDGMENT AGAINST THE PRINCIPAL FOR BODILY INJURY OR PROPERTY DAMAGE CAUSED BY A SUDDEN OR NONSUDDEN ACCIDENTAL OCCURRENCE ARISING FROM OPERATION OF THE PRINCIPAL'S FACILITY OR GROUP OF FACILITIES.

THIS LETTER OF CREDIT IS EFFECTIVE AS OF [DATE] AND SHALL EXPIRE ON [DATE AT LEAST ONE YEAR LATER], BUT SUCH EXPIRATION DATE SHALL BE AUTOMATICALLY EXTENDED FOR A PERIOD OF [AT LEAST ONE YEAR] ON [DATE] AND ON EACH SUCCESSIVE EXPIRATION DATE, UNLESS, AT LEAST 120 DAYS BEFORE THE CURRENT EXPIRATION DATE, WE NOTIFY YOU, THE ADEQ DIRECTOR, AND [OWNER'S OR OPERATOR'S NAME] BY CERTIFIED MAIL THAT WE HAVE DECIDED NOT TO EXTEND THIS LETTER OF CREDIT BEYOND THE CURRENT EXPIRATION DATE.

WHENEVER THIS LETTER OF CREDIT IS DRAWN ON UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS CREDIT, WE SHALL DULY HONOR SUCH DRAFT UPON PRESENTATION TO US.

[INSERT THE FOLLOWING LANGUAGE IF A STANDBY TRUST FUND IS NOT BEING USED:

"IN THE EVENT THAT THIS LETTER OF CREDIT IS USED IN COMBINATION WITH ANOTHER MECHANISM FOR LIABILITY COVERAGE, THIS LETTER OF CREDIT SHALL BE CONSIDERED [INSERT "PRIMARY" OR "EXCESS"] COVERAGE.""]

WE CERTIFY THAT THE WORDING OF THIS LETTER OF CREDIT IS IDENTICAL TO THE WORDING SPECIFIED IN APC&EC REGULATION NO. 23 § 264.151(K) AS SUCH REGULATIONS WERE 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 AND COPYRIGHTED BY THE INTERNATIONAL CHAMBER OF COMMERCE” OR “THE UNIFORM COMMERCIAL CODE”].