**Section 807.664 Letter of Credit**

a) An operator may satisfy the requirements of this Subpart by obtaining an irrevocable standby letter of credit that conforms to the requirements of this Section and submitting the letter to the Agency.

b) The issuing institution must be an entity that has the authority to issue letters of credit and:

1) Whose letter-of-credit operations are regulated by the Department of Financial and Professional Regulation; or

2) Whose deposits are insured by the Federal Deposit Insurance Corporation.

c) Forms:

1) The letter of credit must be on the form specified in Appendix A, Illustration E.

2) The letter of credit must be accompanied by a letter from the operator referring to the letter of credit by number, issuing institution and date and providing the following information: name and address of the site and the amount of funds assured for closure and post-closure care of the site by the letter of credit.

d) Any amounts drawn by the Agency pursuant to the letter of credit will be deposited in the Landfill Closure and Post-Closure Fund within the State Treasury.

e) Conditions on which the Agency shall draw on the letter of credit:

1) The Agency shall draw on the letter of credit if the operator fails to perform closure or post-closure care in accordance with the closure and post-closure care plans.

2) The Agency shall draw on the letter of credit when the operator:

A) Abandons the site;

B) Is adjudicated bankrupt;

C) Fails to initiate closure or post-closure care of the site when ordered to do so by the Board or a court of competent jurisdiction;

D) Notifies the Agency that it has initiated closure, or initiates closure, but fails to provide closure and post-closure care in accordance with the closure and post-closure care plans; or

E) Fails to provide alternate financial assurance, as specified in this Subpart, and obtain the Agency's written approval of the assurance provided within 90 days after receipt by both the operator and the Agency of a notice from the issuing institution that the letter of credit will not be extended for another term.

f) Amount:

1) The letter of credit must be issued in an amount at least equal to the current cost estimate.

2) Whenever the current cost estimate decreases, the amount of credit may be reduced to the amount of the current cost estimate, following written approval by the Agency.

3) Whenever the current cost estimate increases to an amount greater than the amount of the credit, the operator, within 90 days after the increase, must either cause the amount of the credit to be increased to an amount at least equal to the current cost estimate and submit evidence of the increase to the Agency or obtain other financial assurance, as specified in this Subpart, to cover the increase and submit evidence of the alternate financial assurance to the Agency.

g) Term:

1) The letter of credit shall be irrevocable and shall be issued for a term of at least one year.

2) The letter of credit must provide that, on the current expiration date and on each successive expiration date, the letter of credit will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the operator and the Agency by certified mail of a decision not to extend the letter of credit for another term. Under the terms of the letter of credit, the 120 days will begin on the date when both the operator and the Agency have received the notice, as evidenced by the return receipts.

3) The Agency must return the letter of credit to the issuing institution for termination when either of the following occurs:

A) An operator substitutes alternate financial assurance, as specified in this Subpart; or

B) The Agency releases the operator from the requirements of this Subpart in accordance with Section 807.606(b) of this Part.

h) Cure of default and refunds:

1) The Agency shall release the financial institution if, after the Agency is allowed to draw on the letter of credit, the operator or another person provides financial assurance for closure and post-closure care of the site, unless the Agency determines that a plan or the amount of substituted financial assurance is inadequate to provide closure and post-closure care as required by this Part.

2) After closure and post-closure care have been completed in accordance with the plans and requirements of this Part, the Agency shall refund any unspent money which was paid to the Agency by the financial institution subject to appropriation of funds by the Illinois General Assembly.

(Source: Amended at 35 Ill. Reg. 10784, effective June 22, 2011)