

7035.2805 LANGUAGE REQUIRED FOR FINANCIAL INSTRUMENTS.

Subpart 1. **Trust agreement.** A trust agreement for a trust fund as specified in part 7035.2705 must be worded as specified in this subpart, except that instructions in brackets must be replaced with the relevant information and the brackets deleted.

TRUST AGREEMENT

Trust Agreement, the "Agreement," entered into on [date] by [name of the owner or operator], a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee,], [insert "incorporated in the state of _____" or "a national bank"], the "Trustee."

The Minnesota Pollution Control Agency (Agency), an agency of the state of Minnesota, has established rules applicable to the Grantor, requiring that an owner or operator of a solid waste management facility shall provide assurance that funds will be available when needed for closure and/or postclosure care of, and/or contingency action for, the facility.

The Grantor has chosen a trust to provide the financial assurance for the facilities identified herein.

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.

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 "Beneficiary" means the Minnesota Pollution Control Agency and any successor agency.

Section 2. Identification of Facilities and Cost Estimates. This agreement pertains to the facilities and cost estimates, if any, identified on attached Schedule A [on Schedule A, for each facility list the identification number, name, address, and the current contingency action, closure, and/or postclosure cost estimates, 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 Agency. 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. This property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings, and profits on earnings, less any payments or distributions made by the Trustee under this Agreement. The Fund shall 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 Agency.

Section 4. Payment for Contingency Action, Closure, and Postclosure Care. The Trustee shall make payments from the Fund as the Agency Commissioner shall specify, in writing, to provide for the payment of the costs of contingency action, closure, and/or postclosure care of the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the Agency Commissioner from the Fund for contingency action, closure, and postclosure expenditures in amounts the Agency Commissioner shall specify in writing. In addition, the Trustee shall refund to the Grantor the amounts the Agency Commissioner specifies in writing. Upon refund, these funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his or her 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 of 1940, United States Code, title 15, section 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or state government;

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 from time to time 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 others participating therein; and

b. to purchase shares in any investment company registered under the Investment Company Act of 1940, United States Code, title 15, sections 80a-1 et seq. 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 may be bound to see to the application of the purchase money or to inquire into the validity or expediency of a 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 the securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of the securities in a qualified central depository even though, when so deposited, the securities may be merged and held in bulk in the name of the nominee of the 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 shall at all times show that all these 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.

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 shall 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 shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the Agency Commissioner a statement confirming the value of the Trust. Any securities in the fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the Agency Commissioner shall 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 from time to time consult with counsel, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but the resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reasons 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 Agency Commissioner and the present Trustee by certified mail ten days before the change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Agency to the Trustee shall be in writing, signed by the Agency Commissioner; and the Trustee shall act and shall be fully protected in acting in accordance with the orders, requests, and instructions. The Trustee shall 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 Agency hereunder has occurred. The Trustee shall have no duty to act in the absence of orders, requests, and instructions from the Agency Commissioner, except as provided herein.

Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor and the Agency Commissioner by certified mail within ten days if no payment is received from

the grantor by the end of the month. After the pay-in period is completed, the Trustee shall not be 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 Agency Commissioner, or by the Trustee and the Agency Commissioner 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 13 and in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Agency Commissioner, or by the Trustee and the Agency Commissioner, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor or to any successors or assigns of the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall 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 Agency Commissioner issued in accordance with this Agreement. The Trustee shall 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 a defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the state of Minnesota.

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 shall 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 Minnesota Rules, part 7035.2805, subpart 1, as such rules were constituted on the date of signing.

[SIGNATURE OF GRANTOR]

[TITLE]

Attest:

[TITLE]

[SEAL]

[SIGNATURE OF TRUSTEE]

Attest:

[TITLE]

[SEAL]

Subp. 2. **Certification of acknowledgment.** This part contains an example of the certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in part 7035.2705.

CERTIFICATION OF ACKNOWLEDGMENT

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, proprietorship, local government entity], the entity described in and which executed the above instrument; [that she/he knows the seal of said [corporation, local government entity]; that the seal affixed to the instrument is the [corporate, local government entity's] seal; that it was so affixed by order of the [Board of Directors, Board of Commissioners, City Council] of said [corporation, local government entity], and that she/he signed her/his name thereto by like order:

(signature of Notary Public)

Subp. 3. **Surety bond guaranteeing payment into a trust fund.** A surety bond guaranteeing payment into a trust fund as specified in part 7035.2725 must be worded as described in this part, except that instructions in brackets must 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)]

Identification number, name, address and contingency action, closure, and/or postclosure amount(s) for each facility guaranteed by this bond (indicate contingency action, closure, and postclosure amounts separately): \$ _____

Total penal sum of bond: \$ _____

Surety's bond number: _____

The Principal and Surety(ies) are firmly bound to the Minnesota Pollution Control Agency (hereinafter called Agency), in the above penal sum for the payment we bind ourselves to, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as cosureties, we, the Sureties, bind ourselves in the 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 the sum only as is set forth opposite the name of the Surety; but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

The Principal is required to have a permit in order to own or operate each waste facility identified above, and

The Principal is required to provide financial assurance for closure; closure and postclosure care; closure and contingency action; or closure, postclosure care and contingency action as a condition of the permit, and

The Principal shall establish a standby trust fund as required when a surety bond is used to provide financial assurance:

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 closure and/or postclosure care of the facility,

Or, if the Principal shall fund the standby trust fund in the amount(s) identified above for closure and/or postclosure care of the facility within 15 days after an order to begin closure is issued by the Agency Commissioner, the Agency, or court of competent jurisdiction,

Or, if the Principal shall faithfully, before beginning contingency action at any facility identified above, fund the standby trust fund in the amount identified above for contingency action at the facility,

Or, if the Principal shall fund the standby trust fund in the amount identified above for contingency action at the facility within 15 days after an order to begin contingency action is issued by the Agency Commissioner, the Agency, or a court of competent jurisdiction,

Or, if the Principal shall provide alternate financial assurance, as authorized in part 7035.2725, and obtain the Agency Commissioner's written approval of assurance within 90 days after the date notice of cancellation is received by both the Principal and the Agency

Commissioner from the Surety(ies), then this obligation shall 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 Agency Commissioner 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 Agency Commissioner.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until 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 to the Principal and to the Agency Commissioner, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Agency Commissioner, 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) written authorization for termination of the bond by the Agency Commissioner.

(The following paragraph is an optional rider that may be included but is not required.)

Principal and Surety(ies) agree to adjust the penal sum of the bond yearly so that it guarantees a new contingency action, closure and/or postclosure amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the Agency Commissioner.

The Principal and Surety(ies) have signed this Financial Guarantee Bond 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 Minnesota Rules, part 7035.2805, subpart 3, as the rules were constituted on the date this bond was executed.

Principal

[SIGNATURE(S)]

[NAMES(S)]

[TITLE(S)]

[CORPORATE SEAL]

Corporate Surety(ies)

[NAME AND ADDRESS]

State of incorporation: _____

Liability limit: \$_____

[SIGNATURE(S)]

[NAME(S) AND TITLE(S)]

[CORPORATE SEAL]

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

Bond premium: \$_____

Subp. 4. **Surety bond guaranteeing performance.** A surety bond guaranteeing performance of contingency action, closure and/or postclosure care, as specified in part 7035.2735, must be worded as specified in this part, except that the instructions in brackets must be replaced with 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)]

Identification number, name, address and contingency action, closure, and/or postclosure amount(s) for each facility guaranteed by this bond [indicate contingency action, closure, and postclosure amounts separately]: \$_____

Total penal sum of bond: \$_____

Surety's bond number: _____

The Principal and Surety(ies) hereto are firmly bound to the Minnesota Pollution Control Agency (hereinafter called Agency), 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 cosureties, we, the Sureties, bind ourselves in the 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 the sum only as is set forth opposite the name of the Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

The Principal is required to provide financial assurance for closure; closure and postclosure care; closure and contingency action; or closure, postclosure care, and contingency action as a condition of the permit; and

The Principal shall establish a standby trust fund as is required when a surety bond is used to provide financial assurance.

The conditions of this obligation are such that if the Principal faithfully performs closure, whenever required to do so, of each facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as the plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as these laws, statutes, rules, and regulations may be amended,

And, if the Principal faithfully performs postclosure care of each facility for which this bond guarantees postclosure care, in accordance with the postclosure plan and other requirements of the permit, as the plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as these laws, statutes, rules, and regulations may be amended,

And, if the Principal faithfully performs contingency action for each facility for which this bond guarantees contingency action, when required by and in accordance with the contingency action plan and other requirements of the permit, as the plan and permit 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 provides alternate financial assurance as specified in Minnesota Rules, parts 7035.2705 to 7035.2750, and obtains the Agency Commissioner's written approval of the assurance, within 90 days after the date notice of cancellation is received by both the Principal and the Agency Commissioner from the Surety(ies), then this obligation shall 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 Agency Commissioner that the Principal has been found in violation of the closure requirements of Minnesota Rules, part 7035.2635 for a facility for which this bond guarantees performance of closure, the Surety(ies) shall place the closure amounts guaranteed for the facility into the standby trust fund as directed by the Agency Commissioner.

Upon notification by the Agency Commissioner that the Principal has been found in violation of the postclosure requirements of Minnesota Rules, part 7035.2655 for a facility for which this bond guarantees performance of postclosure care the Surety(ies) shall place

the postclosure amount guaranteed for the facility into the standby trust fund as directed by the Agency Commissioner.

Upon notification by the Agency Commissioner that the Principal has been found in violation of contingency action requirements of Minnesota Rules, part 7035.2615 for a facility for which this bond guarantees performance of contingency action, the Surety(ies) shall place the contingency action amount guaranteed for the facility into the standby trust fund as directed by the Agency Commissioner.

Upon notification by the Agency Commissioner that the Principal has failed to provide alternate financial assurance as specified in Minnesota Rules, part 7035.2735 and obtain written approval of the assurance from the Agency Commissioner during the 90 days following receipt by both the Principal and Agency 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 Agency Commissioner.

The Surety(ies) hereby waive(s) notification of amendments to closure, postclosure, and contingency action plans, permits, applicable laws, statutes, rules, and regulations and agrees that no 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 the 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 to the owner or operator and to the Agency Commissioner, provided however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the Agency Commissioner, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the Agency Commissioner.

(The following paragraph is an optional rider that may be included but is not required.)

Principal and Surety(ies) agree to adjust the penal sum of the bond yearly so that it guarantees a new contingency action, closure, and postclosure amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the Agency Commissioner.

The Principal and Surety(ies) have signed this Performance Bond 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 in Minnesota Rules, part 7035.2805, subpart 4, as the rule was constituted on the date this bond was executed.

Principal

[SIGNATURE(S)]

[NAMES(S)]

[TITLE(S)]

[CORPORATE SEAL]

Corporate Surety(ies)

[NAME AND ADDRESS]

State of incorporation: _____

Liability limit: \$_____

[SIGNATURE(S)]

[NAME(S) AND TITLE(S)]

[CORPORATE SEAL]

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

Bond premium: \$_____

Subp. 5. **Letter of credit.** A letter of credit, as specified in part 7035.2745, must be worded as specified in this part, except that the instructions in brackets must be replaced with the relevant information and the brackets deleted.

IRREVOCABLE STANDBY LETTER OF CREDIT

[Agency Commissioner]

Minnesota Pollution Control Agency

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. _____ 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

2. your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to the solid waste rules, Minnesota Rules, parts 7035.0300 to 7035.2875."

This letter of credit is effective as of [date] and shall expire on [date at least one year later], but the 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 both you 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. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by you, as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor the draft upon presentation to us and we shall deposit the amount of the draft directly into the standby trust fund of [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 Minnesota Rules, part 7035.2805, subpart 5, as the rules 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 by the International Chamber of Commerce," or "the Uniform Commercial Code published in chapter 336").

Subp. 6. **Letter from the chief financial officer of a private firm.** A letter from the chief financial officer of a private firm as specified in part 7035.2750 must be worded as specified in this subpart, except that the instructions in brackets must be replaced with the relevant information and the brackets deleted.

LETTER FROM CHIEF FINANCIAL OFFICER

[Agency Commissioner]

Minnesota Pollution Control Agency

Dear Sir or Madam:

I am the chief financial officer of _____. This letter is in support of this firm's use of the financial test to demonstrate financial assurance, as specified in Minnesota Rules, parts 7035.0300 to 7035.2875.

[Fill out the following four paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None"]

in the space indicated. For each facility, include its identification number, name, address, and current corrective action, closure, or postclosure cost estimates. Identify each cost estimate as to whether it is for corrective action, closure, or postclosure care.]

1. This firm is the owner or operator of the following facilities for which financial assurance for corrective action, closure, or postclosure care is demonstrated through the financial test specified in Minnesota Rules, parts 7035.0300 to 7035.2875, and other rules applicable to other types of waste facilities. The current corrective action, closure, or postclosure cost estimates for the facilities covered by the text of this letter are shown for each facility:

2. This firm guarantees, through the corporate guarantee specified in Minnesota Rules, parts 7035.0300 to 7035.2875, and other rules applicable to other types of waste facilities, the corrective action, closure, or postclosure care of the following facilities owned or operated by subsidiaries of this firm. The current cost estimates for the corrective action, closure, or postclosure care guaranteed are shown for each facility:

3. In states other than Minnesota, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the corrective action, closure, or postclosure care of the following facilities either to the United States Environmental Protection Agency through the use of the financial tests specified in Code of Federal Regulations, title 40, part 264 or 265, subpart H, or to an authorized state through the use of a test equivalent or substantially equivalent to the specified financial test. The current corrective action, closure, or postclosure cost estimates covered are shown for each facility:

4. This firm owns or operates, or owns subsidiaries that own or operate, the following waste management facilities for which financial assurance for corrective action, if required, closure, or, if a disposal facility, postclosure care, is not demonstrated either to the United States Environmental Protection Agency or a state through a financial test or any other financial assurance mechanism specified in relevant federal or state regulations. The current corrective action, closure, or postclosure cost estimates 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 latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with a single asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

I have enclosed with this letter the bonds that provide collateral for the [closure, postclosure care, corrective action] expenses that will be incurred at the sites listed in paragraphs numbered 1 and 2 above.

[Fill in Alternative I if the criteria of Minnesota Rules, part 7035.2750, item B, subitem (1), are used. Fill in Alternative II if the criteria of Minnesota Rules, part 7035.2750, item B, subitem (2), are used.]

Alternative I

1. Sum of the current cost estimates (total of all cost estimates shown in the four numbered paragraphs above) \$ _____

Current values of the bonds used to demonstrate financial assurance:

	Maturity date	Estimated market values	Face values
2. Closure	_____	\$ _____	\$ _____
3. Postclosure care	_____	\$ _____	\$ _____
4. Corrective action	_____	\$ _____	\$ _____
5. TOTALS		\$ _____	\$ _____

[Indicate the source of the market value estimates and provide details of estimating methods]: _____

*6. Total liabilities (if any portion of the cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 7 and 8) \$ _____

*7. Tangible net worth \$ _____

*8. Net worth \$ _____

*9. Current assets \$ _____

*10. Current liabilities \$ _____

11. Net working capital (line 9 minus line 10) \$ _____

*12. The sum of net income plus depreciation depletion and amortization \$ _____

*13. Total assets in U.S. (required only if less than 90 percent of firm's assets are located in U.S.) \$ _____

14. Is the market value total on line 5 at least equal to the total costs listed in line 1 above? YES NO _____

15. Is line 8 at least \$10,000,000? _____

16. Is line 8 at least six times line 1? _____

17. Is line 11 at least six times line 1? _____

*18. Are at least 90 percent of the firm's assets located in the U.S.? If not, complete line 19. _____

19. Is line 13 at least six times line 1? _____

20. Is line 6 divided by line 8 less than 2.0? _____

21. Is line 12 divided by line 6 greater than 0.1? _____

22. Is line 9 divided by line 10 greater than 1.5? _____

Alternative II

1. Sum of the current cost estimates (total of all cost estimates shown in the four numbered paragraphs above) \$ _____

Current values of the bonds used to demonstrate financial assurance:

Table with 4 columns: Description, Maturity date, Estimated market values, Face values. Rows include Closure, Postclosure care, Corrective action, and TOTALS.

[Indicate the source of the market value estimates and provide details of estimating methods]: _____

6. Current bond rating of the most recent issuance of this firm and the name of the rating service: _____

7. Date of issuance of bonds [if the bonds are different than those listed in lines 2 to 4]: _____

8. Date of maturity of bonds [if different than lines 2 to 4]: _____

*9. Tangible net worth [if any portion of the corrective action, closure, or postclosure cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line] \$ _____

*10. Total assets in U.S. (required only if less than 90 percent of the firm's assets are located in the U.S.) \$ _____

	YES	NO
11. Is the market value total on line 5 at least equal to the total costs listed in line 1 above?	_____	_____
12. Is line 9 at least \$10,000,000?	_____	_____
13. Is line 9 at least six times line 1?	_____	_____
*14. Are at least 90 percent of the firm's assets located in the U.S.? If not, complete line 5.	_____	_____
15. Is line 10 at least six times line 1?	_____	_____

I hereby certify that the wording of this letter is identical to the wording specified in Minnesota Rules, part 7035.2805, subpart 6, as such rules were constituted on the date shown immediately below.

Signature

Typed name

Chief financial officer

Date

Subp. 7. **Corporate guarantee for corrective action, closure, or postclosure care.** A corporate guarantee, as specified in part 7035.2750, item C, must be worded as specified in this subpart, except that instructions in brackets must be replaced with relevant information and the brackets deleted.

CORPORATE GUARANTEE FOR CORRECTIVE ACTION, CLOSURE, OR
POSTCLOSURE CARE

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 Minnesota Pollution Control Agency (Agency), obligee, on behalf of our subsidiary [facility 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 specified in Minnesota Rules, part 7035.2750, item C.

2. [Facility owner or operator] owns or operates the following solid waste disposal facilities covered by this guarantee: [List for each facility: identification number, name, and address. Indicate for each whether the guarantee is for corrective action, closure, postclosure care, or any combination of the three.]

3. "Closure plans," "postclosure plans," and "contingency action plans" as used below refer to the plans maintained as required by Minnesota Rules, parts 7035.2615, 7035.2625, and 7035.2645 for the closure, postclosure care, and corrective action needs of facilities identified above.

4. For value received from [facility owner or operator], guarantor guarantees to the Agency that in the event the [facility owner or operator] fails to perform [insert "corrective action," "closure," "postclosure care," or any combination of the three] of the above facilities in accordance with the corrective action, closure, or postclosure plans and other permit requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in Minnesota Rules, part 7035.2705, in the name of [facility owner or operator] in the amount of the current corrective action, closure, or postclosure cost estimates as specified in Minnesota Rules, part 7035.2705.

5. Guarantor guarantees 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 within 90 days, by certified mail, notice to the agency and [facility owner or operator] that he or she

intends to provide financial assurance as specified in Minnesota Rules, parts 7035.2665 to 7035.2805, as applicable, in the name of [facility owner or operator]. Within 120 days after the end of the fiscal year, the guarantor shall establish financial assurance unless [facility owner or operator] has done so.

6. The guarantor agrees to notify the Agency Commissioner by certified mail of a voluntary or involuntary proceeding under title 11 or title 7 of the United States Bankruptcy Code, naming guarantor as debtor, within ten days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the Agency Commissioner of a determination that guarantor no longer meets the financial test criteria or that he or she is disallowed from continuing as a guarantor of corrective action, closure, or postclosure care, guarantor shall establish alternate financial assurance as specified in Minnesota Rules, parts 7035.2665 to 7035.2805, as applicable, in the name of [facility owner or operator] unless [facility owner or operator] has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the corrective action, closure, or postclosure plan; amendment or modification of the permit; extension or reduction of the time of performance of corrective action, closure, or postclosure care; or any other modification or alteration of an obligation of the facility owner or operator pursuant to Minnesota Rules, parts 7001.0200 to 7001.1220; and 7001.1400 to 7001.3550; or 7035.0300 to 7035.2875.

9. Guarantor agrees to remain bound under this guarantee for so long as [facility owner or operator] must comply with the applicable financial assurance requirements of Minnesota Rules, parts 7035.2665 to 7035.2805, for the above-listed facilities, except that guarantor may cancel this guarantee by sending notice by certified mail to the Agency Commissioner and [facility owner or operator], the cancellation to become effective no earlier than 120 days after receipt of notice by the Agency Commissioner, as evidenced by return receipt.

10. Guarantor agrees that if [facility owner or operator] fails to provide alternate financial assurance as specified in Minnesota Rules, parts 7035.2665 to 7035.2805, as applicable, and obtain written approval of such assurance from the Agency Commissioner within 90 days after a notice of cancellation by the guarantor is received by the Agency Commissioner, guarantor shall provide alternate financial assurance in the name of [facility owner or operator].

11. Guarantor expressly waives notice of acceptance of this guarantee by the Agency or by [facility owner or operator]. Guarantor also expressly waives notice of amendments or modifications of the contingency action, closure, or postclosure care plan and of amendments or modifications of the facility permits.

I hereby certify that the wording of this guarantee is identical to the wording specified in Minnesota Rules, part 7035.2805, subpart 7, as such rules were 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]

Subp. 8. **Letter from the head of an elected or publicly appointed body.** A letter from the head of an elected or publicly appointed body as specified in part 7035.2750 must be worded as specified in this subpart, except that the instructions in brackets must be replaced with the relevant information and the brackets deleted.

LETTER FROM THE HEAD OF AN ELECTED OR PUBLICLY APPOINTED BODY

[Agency commissioner]

Minnesota Pollution Control Agency

Dear Sir or Madam:

I am the [chair, mayor] of [the _____ County Board of commissioners, city of _____, the _____ landfill authority, the _____ sanitary district]. This letter is in support of this [county's, city's, authority's, district's] use of the financial test to demonstrate financial assurance as specified in Rules, parts 7035.0300 to 7035.2875. This letter is to demonstrate financial assurance for the following sites:

Operator _____

Name _____

Address _____

City _____

Current cost estimates:

Closure _____

Postclosure care _____

Corrective action _____

TOTAL _____

Operator _____

Name _____

Address _____

City _____

Current cost estimates:

Closure _____

Postclosure care _____

Corrective action _____

TOTAL _____

Operator _____

Name _____

Address _____

City _____

Current cost estimates:

Closure _____

Postclosure care _____

Corrective action _____

TOTAL _____

I have enclosed with this letter the [bonds, warrant] that provide(s) collateral for the [closure, postclosure care, corrective action] expenses that will be incurred at the site(s) listed above.

Financial Test

1. Sum of the current cost estimates (total of all cost estimates shown in the paragraphs above) \$ _____

Current value(s) of the [bonds, warrant] used to demonstrate financial assurance:

	Issuance and Maturity dates	Estimated market value(s)	Face value(s)
2. Closure	_____	\$ _____	\$ _____
3. Postclosure care	_____	\$ _____	\$ _____

4. Corrective action _____ \$ _____ \$ _____
 5. TOTALS \$ _____ \$ _____

[Indicate the source of the market value estimates and provide details of estimating methods]: _____

6. Current bond rating of the most recent issuance of the county and the name of the rating service _____
 7. Date of issuance of the bond _____
 8. Date of maturity of the bond (if different than lines 2 to 4 above) _____
 9. Total assessed value of the [county, city] _____
 10. Limit on total debt, as calculated under Minnesota Statutes, section 475.53 \$ _____
 11. Current total long-term debt \$ _____
 12. Total ad valorem taxes levied for the current fiscal year \$ _____
 13. Limit on current total ad valorem taxes, as calculated under Minnesota Statutes, section 275.51 \$ _____

YES NO

14. Is line 10 minus line 11 greater than the total face value on line 5? _____
 15. For bonds:
 Is the market value total on line 5 at least equal to line 1? _____
 For warrants:
 Is the face value total on line 5 at least equal to line 1? _____
 16. Is line 13 minus line 12 greater than zero? _____
 17. Will any circumstances expected in the coming year change the answers on lines 14 to 16? (provide evidence in support of this answer) _____

I hereby certify that the wording of this letter is identical to the wording specified in Minnesota Rules, part 7035.2805, subpart 8, as such rules were constituted on the date shown below.

Signature

Typed name

(Chair, Mayor)

Date

Signature

Typed name

(Auditor, City Manager) (County, City) seal

Date

Subp. 9. **Resolution establishing a dedicated long-term care trust fund.** A resolution establishing a dedicated long-term care trust fund, as specified in part 7035.2720, must be worded as specified in this part, except that the instructions in brackets must be replaced with the relevant information and the brackets deleted.

RESOLUTION ESTABLISHING A DEDICATED

LONG-TERM CARE TRUST FUND

WHEREAS the [county, city, authority] of [name], as [owner, operator] of the [facility name] mixed municipal solid waste land disposal facility, is required under Minnesota Statutes, section 116.07, subdivision 4h, and Minnesota Rules, part 7035.2695, to provide evidence of financial assurance for the [name(s)] mixed municipal solid waste land disposal facility, and the [county, city, authority] of [name] acknowledges the jurisdiction of the Minnesota Pollution Control Agency in this matter;

NOW THEREFORE BE IT RESOLVED that there is created in the [name] [county, city, authority] treasury a dedicated long-term care trust fund, and that money in this fund shall be held in trust and may only be used to pay for closure, postclosure care, or contingency actions as specified in Minnesota Rules, parts 7035.2605 to 7035.2655, and in the permit(s) that apply to the facility(ies) referenced above, and that deposits into the fund shall conform with the requirements of Minnesota Rules, part 7035.2720, and that no disbursements from the fund shall be made without the written permission of the commissioner of the Minnesota Pollution Control Agency, and that the [county, city, authority] of [name] is bound to reimburse the Minnesota Pollution Control Agency for any legal and administrative costs incurred in actions taken to force the [county, city, authority] to act on this resolution, and that the money needed to make such reimbursements shall not be taken from the dedicated long-term care trust fund, and that [name and title] and [his, her] successors in office shall be the fund's trustee and shall be responsible for making all reports required under Minnesota Rules, part 7035.2720.

[title]

STATE OF MINNESOTA

[County, city, authority] of [name]

I, [name], [title] of [name] [county, city, authority] certify that the above resolution was adopted at the regular meeting of the [name] [county, city, authority] [name of appropriate body, e.g., Board of Commissioners] on the ____ day of _____, 20__.

Attest: _____

[name]

[title]

Statutory Authority: *MS s 115.03; 116.07*

History: *13 SR 1150; 18 SR 614; L 1998 c 254 art 1 s 107; 30 SR 529*

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