



ADMINISTRATIVE RULES OF MONTANA

17.56.811 LETTER OF CREDIT

- (1) An owner or operator may satisfy the requirements of ARM 17.56.805 by obtaining an irrevocable standby letter of credit that conforms to the requirements of this rule. The issuing institution must be an entity that has the authority to issue letters of credit in each state where used and whose letter-of-credit operations are regulated and examined by a federal or state agency.
- (2) The letter of credit 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

Montana Department of Environmental Quality

PO Box 200901, Metcalf Building

Helena, Montana 59620-0901

Attn: UST Program

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 or operator name] of [address] up to the aggregate amount of [in words] US dollars (\$[insert dollar amount]), available upon presentation by you 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 regulations issued under authority of Subtitle I to the Resource Conservation and Recovery Act (RCRA) amending the Solid Waste Disposal Act, as amended and the applicable state laws and rules."

This letter of credit may be drawn on to cover [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the underground storage tank(s) identified below in the amount of [in words] \$[insert dollar amount] per occurrence and [in words] \$[insert dollar amount] annual aggregate:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22, or the corresponding state requirement, and the name and address of the facility.]

The letter of credit may not be drawn on to cover any of the following:

- (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of ARM 17.56.805.

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless at least 120 days before the current expiration date, we notify [owner or operator] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that [owner or operator] is 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 [owner or operator], 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 such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner or operator] in accordance with your instruction.

We certify that the wording of this letter of credit is identical to the wording specified in ARM 17.56.811(2) as such rule was 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"].

- (3) An owner or operator who uses a letter of credit to satisfy the requirements of ARM 17.56.805 must also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the director will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the director under ARM 17.56.824. This standby trust fund must meet the requirements specified in ARM 17.56.817.
- (4) The letter of credit must be irrevocable with a term specified by the issuing institution. The letter of credit must provide that credit be automatically renewed for the same term as the original term, unless, at least 120 days before the current expiration date, the issuing institution notifies the owner or operator by certified mail of its decision not to renew the letter of credit, the 120 days will begin on the date when the owner or operator receives the notice, as evidenced by the return receipt.

Authorizing statute(s): 75-11-505, MCA

Implementing statute(s): 75-11-505, MCA

History: NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2018 MAR p. 1954, Eff. 10/6/18.