

**3745-580-24 Wording of financial assurance instruments for a scrap tire transporter.**

(A)

- (1) A trust agreement for a trust fund as specified in paragraph (F) of rule 3745-580-23 of the Administrative Code shall be worded as follows on forms prescribed by the director, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

"Trust agreement"

Trust agreement. The "agreement," entered into as of [date] by and between [name of the owner or operator], a [state] [corporation, partnership, association, proprietorship], the "grantor," and [name of corporate trustee], ["incorporated in the state of \_\_\_\_\_" or "a national bank"], the "trustee."

Whereas, the Ohio Environmental Protection Agency, ("Ohio EPA"), has established certain rules applicable to the grantor, requiring that a scrap tire transporter provide assurance that funds will be available when needed for closure.

Whereas, the grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein.

Whereas, 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,

Now, therefore, 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 "director" means the director of environmental protection or a representative delegated by the director to act on the director's behalf.

Section 2. Identification of scrap tire transporter and closure cost. This agreement pertains to a scrap tire transporter and the closure cost specified in section 3734.74 of the Revised Code, identified on attached schedule A [on schedule A, for the scrap tire transporter list the name, address, and the scrap tire transporter closure cost 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 Ohio EPA. 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. Such property and any other property subsequently transferred to the trustee is referred to as the fund, together with all earnings and profits thereon, less any payments or distributions made by the trustee pursuant to this agreement. The fund will 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 Ohio EPA.

Section 4. Payment for scrap tire transporter closure. The trustee will make such payments from the fund as the director will direct, in writing, to provide for the payment of the scrap tire transporter closure covered by this agreement. The trustee will reimburse the grantor or other persons as specified by the

director from the fund for scrap tire transporter closure in such amounts as the director will direct, in writing. In addition, the trustee will refund to the grantor such amounts as the director specifies in writing. Upon refund, such funds will no longer constitute part of the fund as defined herein.

Section 5. Payments comprising the fund. Payments made to the trustee for the fund will consist of cash or securities acceptable to the trustee.

Section 6. Trustee management. The trustee will invest and reinvest the principal and income of the fund and keep the fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the grantor may communicate in writing to the trustee periodically, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the fund, the trustee will discharge the 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, scrap tire transporter, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. section 80a-2(a), will not be acquired or held, unless they are securities or other obligations of the federal or a 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;
- (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 periodically 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 other trusts participating therein;
- (b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 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 discretion 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 will be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such 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 such securities with certificates of the same issue held by the trustee in other fiduciary capacities, or to deposit or arrange for

the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such 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 will at all times show that all such 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;

(e) To compromise or otherwise adjust all claims in favor of or against the fund.

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 will be paid from the fund. All other expenses, proper charges, and disbursements, 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 will be paid from the fund. Expenses, proper charges, and disbursements include fees for legal services, rendered to the trustee and the compensation of the trustee to the extent the grantor fails to compensate the trustee pursuant to section 12.

Section 10. Annual valuation. The trustee will annually, not later than thirty days prior to the anniversary date of the establishment of the fund, furnish to the grantor and to the director a statement confirming the value of the trust. Any securities in the fund will be valued at market value as of no more than sixty days prior to the anniversary date of establishment of the fund. The failure of the grantor to object in writing to the trustee not later than ninety days after the statement has been furnished to the grantor and the director will 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 periodically consult with counsel, who may be counsel to the grantor, with respect to any question arising as to the construction of this agreement or any action to be taken hereunder. The trustee will be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee compensation. The trustee will be entitled to reasonable compensation from the grantor for the trustee's services as agreed upon in writing periodically with the grantor.

Section 13. Successor trustee. The trustee may resign or the grantor may replace the trustee, but such resignation or replacement shall not be effective until the grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee will have the same powers and duties as those conferred upon the trustee hereunder. Upon the successor trustee's acceptance of the appointment, and upon the director's written approval, the trustee will assign, transfer, and pay over to the successor trustee the funds and properties then constituting the fund. If for any reason 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 director, and the present trustee by certified mail or any other form of mail accompanied by a receipt not later than ten days before such change becomes effective. The director's written approval must be given prior to the ten days notice provided by the successor trustee. Any expenses incurred by the trustee as a result of any of the acts contemplated by this section will be paid as provided in section 9.

Section 14. Instructions to the trustee. All orders, requests, and instructions by the grantor to the trustee will be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the grantor may designate by amendment to Exhibit A. The trustee will be fully protected in acting without inquiry in accordance with the grantor's orders, requests, and instructions. All orders, requests, and instructions by the director to the trustee will be in writing, signed by the director, and the trustee will act and will be fully protected in acting in accordance with such orders, requests, and instructions. The trustee will 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 director hereunder has occurred. The trustee will have no duty to act in the absence of such orders, requests, and instructions from the grantor or the director except as provided for herein.

Section 16. Amendment of agreement. This agreement may be amended by an instrument in writing executed by the grantor, the trustee, and the director, or by the trustee and the director 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 16, this trust will be irrevocable and will continue until termination at the written agreement of the grantor, the trustee, and the director, or by the trustee and the director if the grantor ceases to exist. Upon termination of the trust, all remaining trust property, less final trust administration expenses, will be delivered to the grantor.

Section 18. Immunity and indemnification. The trustee will 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 grantor or the director issued in accordance with this agreement. The trustee will 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 such defense.

Section 19. Choice of law. This agreement will be administered, construed, and enforced according to the laws of the state of Ohio.

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 will 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 rules adopted under Chapter 3734. of the Revised Code concerning financial assurance for a scrap tire transporter as such rules were constituted on the date first above written.

[Signature of grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of trustee]

Attest:

[Title]

[Seal]"

- (2) The following is an example of the certification of acknowledgment, which must accompany the trust agreement for a trust fund as specified in paragraph (F) of rule 3745-580-23 of the Administrative Code:

"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], and the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of notary public]"

[Comment: As specified in paragraph (F)(2) of rule 3745-580-23 of the Administrative Code, the trust agreement must be accompanied by a formal certification of acknowledgment. The previous paragraph is only an example.]

- (B) A surety bond guaranteeing payment into the scrap tire management fund established by division (G) of section 3734.82 of the Revised Code, as specified in paragraph (G) of rule 3745-580-23 of the Administrative Code, must be worded as follows on forms prescribed by the director, except that instructions in brackets are to 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)]

Name, address, and closure amount for the scrap tire transporter guaranteed by this bond:

\$ \_\_\_\_\_

Total penal sum of bond: \$ \_\_\_\_\_

Surety's bond number: \_\_\_\_\_

Know all persons by these presents, that we, the principal and surety(ies) hereto are firmly bound to the Ohio Environmental Protection Agency ("Ohio EPA"), 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 co-sureties, we, the sureties, bind ourselves in such 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 such sum only as is set forth opposite the name of such surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas, said principal is required to have an Ohio EPA scrap tire transporter registration certificate;

Whereas, said principal is required to provide financial assurance for scrap tire transporter closure as a condition of Chapter 3734. of the Revised Code;

Or, if the principal shall provide alternative financial assurance in accordance with rules adopted under Chapter 3734. of the Revised Code concerning financial assurance for a scrap tire transporter, and obtain the director's written approval of such alternative financial assurance, not later than ninety days after the first day that notice of cancellation has been received by both the principal and the director from the surety(ies), then this obligation will 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 director that the principal has failed to perform as guaranteed by this bond, the surety(ies) shall place funds in the amount guaranteed for the scrap tire transporter into the scrap tire management fund established by division (G) of section 3734.82 of the Revised Code.

The liability of the surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such 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 or any other form of mail accompanied by a receipt to the principal and to the director, provided, however, that cancellation shall not occur during the one hundred twenty day period beginning on the first day of receipt of the notice of cancellation by both the principal and the director as evidenced by the return receipt(s).

The principal may terminate this bond by sending written notice to the surety(ies) and to the director, provided, however, that no such notice shall become effective until the surety(ies) receive(s) written authorization for termination of the bond by the director.

In witness whereof, the principal and surety(ies) have executed this financial guarantee bond and have affixed their seals 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 rules adopted under Chapter 3734. of the Revised Code concerning financial assurance for a scrap tire transporter as such rules were constituted on the date this bond was executed.

Principal

Signature(s): \_\_\_\_\_

Name(s) and title(s) [typed]: \_\_\_\_\_

Corporate seal:

Corporate surety(ies)

Name and address: \_\_\_\_\_

State of incorporation: \_\_\_\_\_

Liability limit: \$ \_\_\_\_\_

Signature(s): \_\_\_\_\_

Name(s) and title(s) [typed]: \_\_\_\_\_

Corporate seal:

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

Bond premium: \$ \_\_\_\_\_ "

- (C) A surety bond guaranteeing performance of scrap tire transporter closure, as specified in paragraph (H) of rule 3745-580-23 of the Administrative Code, must be worded as follows on forms prescribed by the director, except that instructions in brackets are to be replaced by 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)]

Name, address, and scrap tire transporter closure amount for the scrap tire transporter guaranteed by this bond: \$ \_\_\_\_\_

Total penal sum of bond: \$ \_\_\_\_\_

Surety's bond number: \_\_\_\_\_

Know all persons by these presents, that we, the principal and surety(ies) hereto are firmly bound to the Ohio Environmental Protection Agency ("Ohio EPA"), 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 co-sureties, we, the sureties, bind ourselves in such 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 such sum only as is set forth opposite the name of such surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas, said principal is required to have an Ohio EPA registration certificate in order to operate the scrap tire transporter identified above, and

Whereas said principal is required to provide financial assurance for closure as a condition of registration issuance and applicable rules,

Now, for a scrap tire transporter, if the principal shall faithfully perform the activities specified in rules

adopted under Chapter 3734. of the Revised Code for which this bond guarantees, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended.

Or, if the principal shall provide alternative financial assurance as specified in rules adopted under Chapter 3734. of the Revised Code and obtain the director's written approval of such alternative financial assurance not later than ninety days after the date notice of cancellation is received by both the principal and the director from surety(ies), then this obligation will 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 director that the principal has failed to remove accumulations of scrap tires, delivered by the scrap tire transporter to a location not authorized to receive scrap tires by rules adopted under Chapter 3734. of the Revised Code, or failed to remove and properly dispose of any scrap tires which have been open dumped by the scrap tire transporter, or has been found to be in violation of rules adopted under Chapter 3734. of the Revised Code, the surety(ies) shall either perform the required activities in accordance with applicable rules or place the amount guaranteed for the scrap tire transporter into the scrap tire management fund as established by division (G) of section 3734.82 of the Revised Code.

Upon notification by the director that the principal has failed to provide alternative financial assurance as specified in rules adopted under Chapter 3734. of the Revised Code concerning financial assurance for a scrap tire transporter and obtain written approval of such alternative financial assurance from the director not later than ninety days after receipt by both the principal and the director of a notice of cancellation of the bond, the surety(ies) shall place funds in the amount guaranteed for the scrap tire transporter into the scrap tire management fund established by division (G) of section 3734.82 of the Revised Code.

The surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such 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 such 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 or any other form of mail accompanied by a receipt to the owner or operator and to the director, provided, however, that cancellation cannot occur during the one hundred twenty day period beginning on the first day of receipt of the notice of cancellation by both the principal and the director as evidenced by the return receipts.

The principal may terminate this bond by sending written notice to the surety(ies) and to the director, provided, however, that no such notice shall become effective until the surety(ies) receive(s) written approval for termination of the bond by the director.

In witness whereof, the principal and surety(ies) have executed this performance bond and have affixed their seals 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 rules adopted under Chapter 3734. of the Revised Code concerning financial assurance for a scrap tire transporter as such rules were constituted on the date this bond was executed.

Principal

Signature(s): \_\_\_\_\_

Name(s) and title(s) [typed]: \_\_\_\_\_

Corporate seal: \_\_\_\_\_

Corporate surety(ies)

Name and address: \_\_\_\_\_

State of incorporation: \_\_\_\_\_

Liability limit: \$ \_\_\_\_\_

Signature(s): \_\_\_\_\_

Name(s) and title(s) [typed]: \_\_\_\_\_

Corporate seal:

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

Bond premium: \$ \_\_\_\_\_ "

- (D) A letter of credit as specified in paragraph (I) of rule 3745-580-23 of the Administrative Code must be worded as follows on forms prescribed by the director, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted [note: A letter of credit may also contain provisions used by the issuing institution in its regular course of business, provided that such provisions do not alter the terms and conditions in this paragraph]:

"Irrevocable standby letter of credit

[Director]

Ohio Environmental Protection 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 regulations issued under the authority of Chapter 3734. of the Revised Code as amended."

This letter of credit is effective as of [date] and will expire on [date of at least one year later], but such expiration date will be automatically extended for a period of [at least one year] on [date] and on each successive expiration date, unless, at least one hundred twenty days prior to the current expiration date, we notify both you and [owner's or operator's name] by certified mail or any other form of mail accompanied by a receipt that we have decided not to extend this letter of credit beyond the current expiration date. In the event that you are so notified, any unused portion of the credit will be available upon presentation of your sight draft for one hundred twenty days after the first day of receipt by both you and [owner's or operator's name] as evidenced by the return receipts.

Whenever this letter of credit is drawn under and in compliance with the terms of this credit, we will duly honor such draft upon presentation to us, and we will deposit the amount of the draft directly into the scrap tire management fund established by division (G) of section 3734.82 of the Revised Code.

We certify that the wording of this letter of credit is identical to the wording specified in rules adopted under Chapter 3734. of the Revised Code concerning financial assurance for a scrap tire transporter as such 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"]."

[Comment: In the event that the owner or operator ceases to exist, any unused portion of the credit will be available for the one hundred twenty day period after the date of receipt by the director, as evidenced by the return receipt.

3745-580-24

Effective: 6/30/2023

Five Year Review (FYR) Dates: 06/30/2028

CERTIFIED ELECTRONICALLY

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Certification

06/16/2023

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Date

Promulgated Under: 119.03  
Statutory Authority: 3734.02, 3734.12  
Rule Amplifies: 3734.02, 3734.12, 3734.71, 3734.72, 3734.73, 3734.74