

Closure Plan for Land Application of Domestic Septage Facilities

REQUIRED INFORMATION

The Rules and Regulations for Water Quality Control, Chapter 391-3-6-.23(4)(d) state that prior to the issuance of a land disposal permit, the applicant shall have submitted and the Division shall have approved a detailed closure plan for clean up and closure of the facility. The closure plan shall include a schedule for completion of closure within six months after the facility is removed from service. During the review process, the need for additional information will be determined on a case-by-case basis and EPD reserves the right to not make a final decision until all requested information has been submitted. This plan shall be updated with future reissuances of the permit.

CLOSURE PLAN SUBMITTAL

EPD will not proceed with processing of the permit application until the proposed plan for closure of the site has been received and has been approved.

The closure plan must include the following:

1. The method of cleaning the site, including any necessary removal and disposal of stored material;
2. A detailed estimate of the cost of hiring a third party to clean up and close the septage land application operation; and
3. Financial assurance requirements (required for non-governmentally owned facilities).

SITE CLEAN UP

What is required to satisfactorily clean up the site can be highly variable due to the type of system installed and the condition of the application area at closure. The applicant must include a written procedure, signed and sealed by a professional engineer that is registered in the State of Georgia, defining how the site will be decommissioned. In addition to any other items required, the procedure must include the following paragraphs:

"All non-biodegradable material will be removed from the application site(s) and a permanent cover crop will be established if one does not already exist.

All pretreatment equipment will be removed, the pretreatment facility will be demolished, and a permanent cover crop will be established covering the pretreatment facility site that was demolished. All stored septage and demolished materials will be properly disposed in a manner acceptable to EPD and in a manner that will not adversely impact the environment.

Cover crops will be considered established when a viable stand of crop covers at least 98% of the total area with no bare spots exceeding one square foot, and the ground surface is fully stabilized against erosion."

An exception will be made for the requirement to demolish the pretreatment facility if land application of septage will continue at new sites on property contiguous to the pretreatment facility site.

Since the condition of the site to be closed cannot be determined before closure, it is necessary to establish a minimum basis for the closure plan and the closure plan cost estimate. At a minimum the closure plan is to include:

1. For the application sites:
 - a. Chisel point plowing;
 - b. Coverage with a minimum of 4 inches of topsoil;
 - c. Grassing; and
 - d. Crop watering and maintenance (straw and fertilizer application) for at least one year.
2. For the pretreatment facility:
 - a. Disposal of stored septage (assume whatever storage volume provided will be full at closure);
 - b. Removal and disposal of all equipment, piping, and appurtenances;
 - c. Demolition and disposal of all structures;
 - d. Disposal of all demolished materials offsite at an approved landfill or by another approved method; and
 - e. Topsoil application and grassing of the demolished area with watering and maintenance of the grassed area for one year.

After notification that closure has been completed, EPD may conduct an inspection to determine if the septage disposal operation has been closed in accordance with the approved closure plan and permit requirements, and any additional activities required to close the site in a satisfactory manner will be identified at that time.

COST ESTIMATE

The applicant must have a detailed written estimate in current dollars of the cost of hiring a third party to clean up and close the septage disposal operation.

1. The "third party" must have the capability to properly clean up and close the septage receiving facility site(s) in accordance with all applicable State rules, regulations, and laws and must be neither a parent company nor a subsidiary of the owner or operator. The "third party" must be familiar with the codes applicable to the work and have the skill, knowledge, and competence to execute the work.
2. During the active life of the facility, the applicant **must adjust the closure cost estimate for inflation at each reissuance of the permit.**
3. The applicant must increase the closure cost estimate and the amount of financial assurance if changes to the closure plan increase the maximum cost of closure at any time during the remaining active life.
4. The applicant may reduce the amount of financial assurance, provided adequate justification is provided to the Director, and written approval is received from the Director for the reduction.

FINANCIAL ASSURANCE REQUIREMENTS

Non-governmental applicants must establish continuous financial assurance for closure of the septage disposal operation until released from financial assurance requirements by the Director. The applicant may choose one or more of the options as specified in paragraphs 1 through 4 of this section to provide financial assurance. The mechanism for financial assurance must be submitted to the Division for approval. The mechanism for financial assurance must allow the Director, or such party or parties as the Director specifies in writing, access to the funds in the event of failure of the applicant to close the facility in accordance with Chapter 391-3-6-.23(4)(d). During the active life of the facility, the applicant **must adjust the amount of financial assurance for inflation at each reissuance of the permit.**

1. LETTER OF CREDIT WITH STANDBY TRUST FUND

- a. An applicant may satisfy the requirements of this section by establishing a standby trust fund and by obtaining an irrevocable standby letter of credit and submitting the trust agreement that establishes the standby trust fund and letter of credit to the Director. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or State agency. The issuing institution must be licensed in the State of Georgia.
- b. The letter of credit must be accompanied by an original signed copy of a trust agreement that establishes a standby trust fund, including all the necessary schedules and exhibits and a letter from the applicant referring to the letter of credit by number, issuing institution, and date, and providing the following information: The type of facility, name, and address of the facility, and the amount of funds assured for closure of the facility by the letter of credit.
- c. The letter of credit must be irrevocable and automatically renewable and issued for a period of at least 1 year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least 1 year unless, at least 120 days before the current expiration date, the issuing institution notifies both the applicant and the Director by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the applicant or operator and the Director have received the notice, as evidenced by the return receipts.
- d. The amount of the letter of credit must be reviewed with each permit renewal and cost estimate revision and at no time can the amount be less than the most recent cost estimate.
- e. If the letter of credit is cancelled by the issuing institution or the applicant, the applicant must obtain alternate financial assurance as specified in this section.
- f. The Letter of Credit must be in accordance with Appendix A and the Trust Agreement to establish the Standby Trust Fund must be in accordance with Appendix B.

2. TRUST FUND

- a. An applicant may satisfy the requirements of this section by establishing a trust agreement for a closure trust fund and submitting the trust agreement and trust fund details to the Director.
- b. For a trust fund used to demonstrate financial assurance for closure, the first payment into the fund must be at least equal to the initial cost estimate for closure.
- c. The amount in the trust fund must be adjusted with each permit renewal and cost estimate revision and at no time can the amount in the trust fund be less than the most recent cost estimate.
- d. The initial payment into the trust fund must be prior to waste being received at the facility. Proof of the trust fund payments must be furnished prior to authorization to initiate operation.
- e. The trustee should be a governmental entity. In the event that no governmental entity is willing to be the trustee, as verified in writing by authorized representatives of those entities, then an entity which has the authority to act as a trustee or surety and whose operations are regulated and examined by a Federal or State agency may be considered for approval by the Division.
- f. The Trust Agreement to establish the Closure Trust Fund must be in accordance with Appendix B.

3. INSURANCE WITH STANDBY TRUST FUND.

- a. An applicant may satisfy the requirements of this section by establishing a trust agreement that establishes a standby trust fund and obtaining insurance, and by submitting the trust agreement and a certificate of such insurance to the Director. At a minimum, the insurer must be licensed to transact the business of insurance in Georgia and have a certificate of authority from the Georgia Office of Insurance and Safety Fire Commissioner to sell this line of coverage.
- b. The insurance policy must be issued for a face amount at least equal to the current closure cost estimate. The term "face amount" means the total amount the insurer is obligated to pay under the policy. The amount of the certificate of insurance must be reviewed with each permit renewal and cost estimate revision and adjusted as necessary.
- c. The insurance policy must guarantee that funds will be available to close the facility whenever final closure occurs. The policy must also guarantee that once final closure begins, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Director, to such party or parties as the Director specifies.
- d. The insurer must provide 120 days advance notice of the failure to renew, cancel, or terminate the policy. If the applicant fails to renew the policy or provide alternate financial assurance approved by the Director, not less than 90 days before the expiration date of the policy, the insurer shall immediately pay, to the Director, or to the Trustee if so directed in writing by the Director, the full face value of the policy to properly close the facility.
- e. The Trust Agreement to establish the Standby Trust Fund must be in

accordance with Appendix B and a Certificate of Insurance must be in accordance with Appendix C.

4. SURETY BOND WITH STANDBY TRUST FUND.

- a. An applicant may demonstrate financial assurance for closure by establishing a standby trust fund and obtaining a surety bond, which conforms to the requirements of this paragraph and by submitting the trust agreement and surety bond to the Director. The applicant must notify the Director that a copy of the bond has been placed in the operating record. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury. The surety bond company must be licensed in the State of Georgia.
- b. The bond must be in an amount at least equal to the current closure cost estimate.
- c. Under the terms of the bond, the surety will become liable on the bond obligation when:
 - i. The applicant fails to perform as guaranteed by the bond; or
 - ii. The Director notifies the applicant that they have failed to meet the requirements of 391-3-6-.23(4)(d).
- d. If the surety cancels the bond, the applicant must obtain alternate financial assurance as specified in this section.
- e. The Trust Agreement to establish the Standby Trust Fund must be in accordance with Appendix B and the Surety Bond must be in accordance with Appendix D.

RELEASE FROM THE FINANCIAL REQUIREMENTS OF THIS SECTION:

Within 60 days after receiving certifications from the permittee and their registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Director will notify the permittee in writing that he is no longer required by this section to maintain financial assurance for final closure of the facility, unless the Director has been shown through an inspection by EPD that final closure has not been in accordance with the approved closure plan. The Director shall provide the applicant a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan.

FORFEITURE OF FUNDS

Failure of the permittee to close the facility in accordance with Chapter 391-3-6-.23(4)(d) and the approved closure plan shall constitute forfeiture of the funds retained in the financial assurance mechanism and the Director, or such party or parties as the Director specifies in writing, shall be allowed access to the funds to close the facility.

NOTE: Division means the Environmental Protection Division (EPD) of the Georgia Department of Natural Resources and Director means the Director of EPD.

ALL CLOSURE PLAN DOCUMENTS (CLOSURE PLANS, COST ESTIMATES, TRUST AGREEMENTS, LETTERS OF CREDIT, ETC.) MUST BE MAILED TO:

Mrs. Jane Hendricks, Program Manager
Georgia Environmental Protection Division
Wastewater Regulatory Program
4220 International Parkway, Suite 101
Atlanta, Georgia 30354

APPENDIX A

An irrevocable standby letter of credit, as requested by Georgia EPD, 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

(Use letterhead of issuing institution)

F. Allen Barnes, Director
Environmental Protection Division
Georgia Department of Natural Resources
4220 International Parkway, Suite 101
Atlanta, Georgia 30354.

Dear Director:

We hereby establish our Irrevocable Standby Letter of Credit No. _____ in your favor, at the request and for the account of [owner's name and address] regarding [Name of Facility] up to the aggregate amount of [in words] U.S. dollars \$_____, available upon presentation by the Director of

(1) Your sight draft, or demand for payment, 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 the Georgia Water Quality Act, O.C.G.A. 12-5-20, et seq., and regulations issued pursuant there to."

This letter of credit is effective as of [date] and shall expire on [date at least 1 year later], but such expiration date shall be automatically extended for a period of [at least 1 year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you and [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 both you and [responsible party's name], as shown on the signed return receipt.

The credit established by this letter and our obligation to pay same shall not be affected by the receivership, bankruptcy or insolvency of debtor or the attachment or other agreements between (operator's name) and our bank.

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 pay the amount of the draft directly to you, as Director of the Division or in accordance with your instructions.

Any suit by either party against the other on a claim arising from or related to this Letter of Credit must be brought in the Superior Court of Fulton County, Georgia. Nothing in this

Letter of Credit is intended to waive the Eleventh Amendment immunity of the State of Georgia or its sovereign immunity. No officer, employee, counsel, advisor or other representative or agent of the State of Georgia or any other agency or instrumentality of the State of Georgia will be individually liable in regard to any claim under or in regard to this Letter of Credit.

This Trust Agreement is made under the laws of the State of Georgia and deemed executed in Georgia. It will be enforced according to Georgia law without regard to its conflict of laws, rules or any other rules directing referral to foreign laws or forums.

This letter of credit is subject to the Uniform Customs and Practice of Documentary Credits International Chamber of Commerce Publication No. 500 or Uniform Commercial Code, latest edition.

Sincerely,

[Signature(s), and title(s) of official(s) or issuing institution]
[Date]

APPENDIX B

A trust agreement for a trust fund or standby trust fund (with letter of credit, closure insurance, or surety bond) as requested by Georgia EPD, must be worded as follows, 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 responsible party], 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."

Whereas, the Georgia Environmental Protection Division of the State of Georgia Department of Natural Resources, has established certain rules applicable to the Grantor requiring that an owner or operator of a septage land application system shall provide assurance that funds will be available when needed for closure of the facility,

Whereas, the Grantor has elected to establish a [trust fund, standby trust fund] to provide all or part of such financial assurance for the site(s) 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 responsible party 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 "Georgia EPD" means the Environmental Protection Division of the Georgia Department of Natural Resources.

(d) The term "Director" means the Director of the Environmental Protection Division of the Georgia Department of Natural Resources or his duly appointed representative or designee.

Section 2. Identification of Site(s) and Cost Estimate(s). This Agreement pertains to the site(s) and cost estimate(s) identified on attached Schedule A [on Schedule A, for each site list the facility name, address, and the current closure 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, standby trust fund], the "Fund," for the benefit of Georgia EPD. 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 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 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 Georgia EPD.

Section 4. Payment for Closure. The Trustee shall make payments from the Fund as the Director shall direct, in writing, to provide for the payment of the costs of closure at the site(s) covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the Director from the Fund for closure expenditures in such amounts as the Director shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Director specifies in writing. Upon refund, such 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. The Trustee shall 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 from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his 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:

(i) Securities or other obligations of the Grantor or any of its affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) 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

(iii) 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 other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 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 shall 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 shall 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; and

(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 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 Director 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 Director 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, 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 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 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 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 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 writing sent to the Grantor, the Director, and the present Trustee by certified mail 10 days before such 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 Grantor to the Trustee shall 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 shall 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 shall be in writing, signed by the Director, and the Trustee shall act and shall be fully protected in acting in accordance with such 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 Georgia EPD hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or Georgia EPD, except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor and the Director, by certified mail within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. 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 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 shall be irrevocable and shall continue until terminated 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, shall be delivered to 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 Grantor or the Director 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 such defense.

Any suit by either party against the other on a claim arising from or related to this Trust Agreement must be brought in the Superior Court of Fulton County, Georgia. Nothing in this Trust Agreement is intended to waive the Eleventh Amendment immunity to the State of Georgia or its sovereign immunity. No officer, employee, counsel, advisor or other representative or agent of the State of Georgia or any other agency or instrumentality of the State of Georgia will be individually liable in regard to any claim under or in regard to this Trust Agreement.

Section 19. Choice of Law. This Trust Agreement is made under the laws of the State of Georgia and deemed executed in Georgia. It will be enforced according to Georgia law without regard to its conflict of laws, rules or any other rules directing referral to foreign laws or forums.

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:

Grantor:

[Name]

[Signature of Grantor]

[Title]

[Corporate Seal]

Attested by

[[Name]

[Signature]

[Title]

Trustee:

[Name]

[Signature]

[Title]

[Corporate Seal]

Attested by:

[Name]

[Signature]

[Title]

The following are examples of the certification of acknowledgment, which must accompany the trust agreement for a trust fund.

State of _____
County of _____

On this [date], before me personally came [Name] to me known, who, being by me duly sworn, did depose and say that she/he resides at [full address], that she/he is [title] of [corporation], 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]

or,

State of _____
County of _____

On this [date], before me personally came [responsible party] to me known, who, being by me duly sworn, did depose and say that she/he resides at [full address], that she/he is the person described in and who executed the above instrument; that she/he acknowledges the signature affixed to such instrument as her/his own; that it was so affixed by her/his hand or at her/his command.

[Signature of Notary Public]

EXCEPTIONS FOR STANDBY TRUST FUNDS:

A standby trust fund must meet the requirements of a trust fund specified above except that:

- (1) An originally signed duplicate of the trust agreement must be submitted to the Director with the letter of credit, certificate of insurance, or surety bond; and
- (2) Unless the Director requires the standby trust fund to be funded the following are not required:
 - (a) Payments into the trust fund;
 - (b) Updating of Schedule A to show current closure cost estimates;
 - (c) Annual valuations of the value of the trust fund; and
 - (d) Notices of nonpayment.

APPENDIX C

Closure Insurance, as requested by Georgia EPD, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certificate of Insurance

Name and Address of Insurer
(herein called the "Insurer"): _____
Name and Address of Insured
(herein called the "Insured"): _____
Facilities Covered: [List for each facility: The EPD Identification Number, name, address, and the amount of insurance for closure (these amounts for all facilities covered must total the face amount shown below).]
Face Amount: _____
Policy Number: _____
Effective Date: _____

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for closure for the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of EPD's "Closure Plan of Land Application of Domestic Septage Facilities", as applicable. It is agreed that any provision of the policy inconsistent with such guidance is hereby amended to eliminate such inconsistency.

Whenever requested by the Director, the Insurer agrees to furnish to the Director a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in EPD's "Closure Plan for Land Application of Domestic Septage Facilities", Appendix C, as such regulations were constituted on the date shown immediately below.

[Authorized signature for Insurer]
[Name of person signing]
[Title of person signing]
Signature of witness or notary: _____
[Date]

APPENDIX D

A surety bond guaranteeing performance of corrective action, as requested by Georgia EPD, must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Performance Bond

Date bond executed: _____

Effective date: _____

Principal: [legal name and business address (es)]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation: _____

Surety (ies): [name(s) and business address(es)] _____

Facility name, address, and closure amount(s) for each site guaranteed by this bond [indicate each closure amount separately]: _____

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 Environmental Protection Division of the Georgia Department of Natural Resources (hereinafter called EPD), 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 provide financial assurance for closure to be performed as a condition of the Closure Plan and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of this obligation are such that if the Principal shall faithfully perform the closure, whenever required to do so, of each site for which this bond

guarantees closure, in accordance with the Closure Plan, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

And, if the Principal shall faithfully perform closure at each site for which this bond guarantees closure, in accordance with the Closure Plan, as such 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 shall provide alternate financial assurance as permitted by Georgia EPD, and obtain written approval of such assurance from the Director, within 90 days after the date notice of cancellation is received by both the Principal and the Director 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 Director that the Principal has been found in violation of the requirements of the Closure Plan for a site for which this bond guarantees performance of closure, the Surety(ies) shall either perform the closure in accordance with the Closure Plan and other permit requirements or place the closure amount guaranteed for the site into a standby trust fund as directed by the Director.

Upon notification by the Director that the Principal has failed to provide alternate financial assurance as permitted by Georgia EPD, and obtain written approval of such assurance from the Director during the 90 days following 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 site(s) into the standby trust fund as directed by the Director.

The Surety(ies) hereby waive(s) notification of amendments to the closure plan, permits, 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 to the responsible party and to the Director, 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 Director, as evidenced by the return receipts. Nor shall cancellation become effective in the absence of approval by the Director of an alternative financial assurance instrument.

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 Director.

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond with each permit reissuance so that it guarantees a new closure plan amount, which is reflective of the revised cost estimates for the closure and is at no time lower than the revised estimated cost of corrective action, provided that the penal sum does not increase by more than 20 percent with any reissuance, and no decrease in the penal sum takes place without the written permission of the Director.

Any suit by either party against the other on a claim arising from or related to this Performance Bond must be brought in the Superior Court of Fulton County, Georgia. Nothing in this Performance Bond is intended to waive the Eleventh Amendment immunity of the State of Georgia or its sovereign immunity. No officer, employee, counsel, advisor or other representative or agent of the State of Georgia or any other agency or instrumentality of the State of Georgia will be individually liable in regard to any claim under or in regard to this Performance Bond.

This Performance Bond is made under the laws of the State of Georgia and deemed executed in Georgia. It will be enforced according to Georgia law without regard to its conflict of laws, rules or any other rules directing referral to foreign laws or forums.

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).

Principal

[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate seal]

Corporate Surety(ies)

[Name and full address]
State of incorporation: _____
Liability limit: \$ _____

[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]

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

Bond premium: \$ _____