

## **CONDITIONS FOR APPROVAL OF IRREVOCABLE STANDBY LETTER OF CREDIT**

To satisfy the surety/financial assurance requirements of the Engineered Control (EC) Application, the Applicant must submit for the Commissioner's review and written approval the amount and format of the proposed financial instrument. Regulations of Connecticut State Agencies §22a-133k-2(f)(2)(B)(vi). The following instructions set forth the terms and conditions to be included in an Irrevocable Standby Letter of Credit that will be acceptable to the Commissioner.

### Issuing Institution:

The irrevocable standby letter of credit (letter of credit) must be issued from a bank or other financial entity authorized to issue irrevocable letters of credit, regulated by a Federal or State agency and licensed to do business in the State of Connecticut. Documentation of compliance with this requirement must be submitted to the Commissioner with the originally signed duplicate of the letter of credit. The issuing financial institution must be unrelated to the owner or operator of the Applicant.

### Letter of Credit Requirements

1. The wording of the letter of credit must be identical to the wording specified in the DEEP Financial Assurance Letter of Credit template.
2. The amount of the irrevocable letter of credit shall be at least equal to the amount determined in accordance with the Appendix C, *Guidance Document Engineered Controls, Financial Assurance Guidance, February 2009 (Rev. November 2010)*. The amount shall be in current dollars.

### Revised Cost Estimates

Any required revised cost estimate must be submitted no later than 30 days prior to the anniversary date of the letter of credit in accordance with the applicable provisions of the above-noted Appendix C.

### Proof of Financial Assurance

1. An originally-signed duplicate of the letter of credit and a cover letter from the Applicant referring to the letter of credit by number, issuing institution, the DEEP Remediation ID number, name and address of the property, and the amount of funds assured for the EC by the letter of credit shall be submitted to DEEP as proof of financial assurance in accordance with the schedule outlined in the approved EC. The cover letter must also expressly indicate that the Applicant is authorized to assent to the terms and conditions contained in the letter of credit and does assent by signing the cover letter.
2. The Applicant will be required to submit an originally signed duplicate of the letter of credit, or other documentation acceptable to the Commissioner, with appropriate amendments in accordance with the *Uniform Customs and Practices for Documentary Credits* as proof of financial assurance within 60 days of DEEP approval of any revised cost estimate.

### Terms of Letter of Credit

1. The letter of credit must indicate that it is irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the Applicant and DEEP 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 and DEEP have received the notice, as evidenced by the later of the two dates shown on the return receipts.
2. The letter of credit must also indicate that, in the event that the issuing institution notifies the Applicant and the Commissioner of its decision not to extend the letter of credit, the unused portion of the credit will be available to the Commissioner on presentation of a sight draft. In such a circumstance, the funds will be deposited in a dedicated account to be accessed by the Commissioner for the same purpose, ensuring the maintenance and monitoring requirements of the approved EC in the event of the Applicant's failure to do so.
3. Whenever the current cost estimate increases to an amount greater than the existing financial assurance, the Applicant shall within 60 days either cause the financial assurance to be increased to an amount at least equal to the current cost estimate and submit evidence of such increase to DEEP, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current estimate decreases, the financial assurance may be reduced to the amount of the current cost estimate following written approval by the Commissioner.

### Termination of Financial Assurance

DEEP will return the letter of credit to the issuing institution for termination when:

- (a) the Applicant receives the Commissioner's approval of an alternate form of financial assurance; or
- (b) DEEP releases the Applicant from the requirements of the EC.