**Section 848.413 Letter of Credit**

a) An owner or operator may satisfy the requirements of this Subpart by obtaining an irrevocable standby letter of credit that conforms to the requirements of this Section and submitting the letter of credit to the Agency.

b) The issuing institution must be an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

c) Forms:

1) The letter of credit must be on standardized forms prescribed by the Agency.

2) The letter of credit must be accompanied by a letter from the owner or operator, referring to the letter of credit by number, issuing institution and date, and providing, at a minimum, the following information: the Agency designated site number, the name and address of the site, and the amount of funds assured for removal from the site by the letter of credit.

d) An owner or operator who uses a letter of credit to satisfy the requirements of this Subpart must also establish a standby trust fund. Any amounts drawn by the Agency pursuant to the letter of credit must be deposited in the standby trust fund. The standby trust fund must meet the requirements of a trust fund specified in Section 848.410, except that:

1) the owner or operator must submit an originally signed duplicate of the trust agreement to the Agency with the letter of credit; and

2) unless the standby trust is funded pursuant to the requirements of this Section, none of the following are required:

A) payments into the trust fund as specified in Section 848.410;

B) updating the trust agreement schedule in Section 848.410(c) to show the current approved removal cost estimates;

C) annual valuations as required by the trust agreement; or

D) notices of nonpayment as required by the trust agreement.

e) Conditions on which the Agency may draw on the letter of credit:

1) The Agency may draw on the letter of credit if the owner or operator fails to perform removal in accordance with the removal plan.

2) The Agency may draw on the letter of credit when the owner or operator does any one or more of the following:

A) abandons the site;

B) is adjudicated bankrupt;

C) within 30 days after the date on which the known final volume of used or waste tires is received, either fails to complete removal or fails to submit a removal plan that is approved by the Agency in accordance with Section 848.506;

D) fails to initiate removal when ordered to do so by the Board pursuant to Title VIII of the Act, or when ordered to do so by a court of competent jurisdiction;

E) notifies the Agency that it has initiated removal, or initiates removal, but fails to provide removal in accordance with the removal plan; or

F) within 90 days after receipt by both the owner or operator and the Agency of a notice from the issuing institution that the letter of credit will not be extended for another term, fails to provide additional or substitute financial assurance under this Subpart.

f) Amount:

1) The letter of credit must be issued in an amount at least equal to the current approved removal cost estimate, except as provided in Section 848.407.

2) If the current removal cost estimate decreases, the penal sum may be reduced to the amount of the current approved removal cost estimate following written approval by the Agency.

3) If the current removal cost estimate increases to an amount greater than the credit and if that increase is not due to an increase in the maximum accumulation of used or waste tires at the site, the owner or operator must, within 60 days after the increase in the removal cost estimate, either:

A) cause the amount of the credit to be increased to an amount at least equal to the current removal cost estimate and submit evidence of the increase to the Agency; or

B) obtain alternate financial assurance in accordance with this Subpart to cover the increase in the removal cost estimate and submit evidence of the alternate financial assurance to the Agency.

4) If the current removal cost estimate increases to an amount greater than the credit and if that increase is due to an increase in the maximum accumulation of used or waste tires at the site, the owner or operator must, within 60 days after the increase in the removal cost estimate:

A) remove the excess tires to meet the current approved removal cost estimate;

B) cause the amount of the credit to be increased to an amount at least equal to the current removal cost estimate and submit evidence of the increase to the Agency; or

C) obtain other financial assurance, as specified in this Subpart, to cover the increase in the removal cost estimate and submit evidence of the alternative financial assurance to the Agency.

g) Term:

1) The letter of credit must be irrevocable and issued for a period of at least one year.

2) The letter of credit must provide that, on its current expiration date and on each successive expiration date, the letter of credit 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 owner and operator and the Agency, by certified mail, of a decision not to extend the letter of credit for another term. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the Agency have received the notice, as evidenced by the return receipts.

3) The Agency must return the letter of credit to the issuing institution for termination as soon as practicable after any of the following occur:

A) an owner or operator substitutes alternate financial assurance that meets the requirements of this Subpart such that the total financial assurance for the site is equal to or greater than the current approved removal cost estimate, without counting the amounts to be released; or

B) the Agency releases the owner or operator from the requirements of this Subpart following completion of removal.

(Source: Amended at 39 Ill. Reg. 12934, effective September 8, 2015)