



State of Florida  
DEPARTMENT OF ENVIRONMENTAL REGULATION

For Routing To Other Than The Addressee	
To: _____	Location: _____
To: _____	Location: _____
To: _____	Location: _____
From: _____	Date: _____

# Interoffice Memorandum

TO: Joe Lurix

FROM: Bill Parker, Engineer  
Solid Waste Section

DATE: July 19, 1989

SUBJECT: Financial Responsibility Document for Florida Tire  
Recycling

RECEIVED  
JUL 20 1989  
Dept. of Environmental Reg.  
West Palm Beach

The irrevocable letter of credit (No. 1989-16) submitted with the application for permit for a waste tire processing facility owned and operated by Florida Tire Recycling is deficient in several respects:

1. The letter of credit should be issued to the Secretary of the Department or his designee for authorization to draw upon the letter of credit.
2. The letter of credit expires on July 1, 1990. There is no provision for renewal specified in the letter of credit.
3. There is no provision for establishment of a standby trust fund via a standby trust fund agreement. If the Department had to draw on these funds, the funds would be deposited to the waste tire account in the Solid Waste Management Trust Fund with no guarantee that they could be used for cleanup of this particular site.
4. The letter of credit does not allow for partial draws. If clean up costs are less than \$15,000, the Department cannot draw on these funds.

The permit could be issued under one of the following conditions:

1. The permit could be issued for 1 year.
2. The permit could be issued with specific conditions requiring amendment of the letter of credit to address these deficiencies at least 60 days prior to its expiration date.

You may determine that the permit is incomplete until such time as appropriate changes are made to the letter of credit. However, we feel that this is not necessary since the applicant has shown a willingness to amend the letter of credit before it will ever be needed for closure.

We are sending you suggested formats for irrevocable letters of credit and standby trust fund agreements. These are not adopted forms as the financial responsibility rules are still under development and still reference landfills specifically. However, if the applicant amends the letter of credit to follow the suggested formats, we will consider it to be acceptable.

BP/rd

STATE OF FLORIDA

SAMPLE WASTE TIRE FACILITY IRREVOCABLE LETTER OF CREDIT

\_\_\_\_\_, Secretary  
Florida Department of Environmental Regulation  
Twin Towers Office Building  
2600 Blair Stone Road  
Tallahassee, Florida 32399-2400

Dear Sir:

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 the requirements of Chapter 17-711, F.A.C."

This letter of credit is effective as of \_\_\_\_\_ and  
(date)  
shall expire on \_\_\_\_\_, but such expiration  
(date at least one year later)  
date shall be automatically extended for a period of \_\_\_\_\_  
on \_\_\_\_\_ and on each successive expiration  
(at least one year) (date)  
date, unless, at least 120 days before the current expiration date,  
we notify both you and \_\_\_\_\_ by  
(Owner's or Operator's Name)  
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 \_\_\_\_\_  
(Owner's or Operator's Name)  
as shown on the signed return receipts.

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 representation to us, and we shall deposit the amount of the draft directly into the standby trust fund of \_\_\_\_\_, in accordance with your instructions.

(Owner's or Operator's Name)

\_\_\_\_\_  
Signature(s), 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").

STATE OF FLORIDA

SAMPLE WASTE TIRE FACILITY STANDBY TRUST FUND AGREEMENT

TRUST AGREEMENT, the "Agreement," entered into as of \_\_\_\_\_ by and between \_\_\_\_\_,  
(Name of the Owner or Operator)  
a \_\_\_\_\_ (insert  
(Name of State)  
"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 Florida Department of Environmental Regulation, "FDER," an agency of the State of Florida, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a waste tire facility shall provide assurance that funds will be available when needed for closure of the facility,

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 "FDER" means the Florida Department of Environmental Regulation, an Agency of the State of Florida or any successor thereof.

Section 2. Identification of Facilities and Cost Estimates.  
This Agreement pertains to the facilities and cost estimates identified on attached Schedule A (on Schedule A, for each facility list the FDER/DER Identification Number, name, address, and the current closure cost estimated, or portions thereof, for which financial assurance is demonstrated by this Agreement).

Section 3. Standby Trust. This Trust shall remain dormant until funded with the proceeds from the \_\_\_\_\_ (insert "Letter of Credit" or "Surety Bond") as listed on Schedule B. The Trustee shall have no duties or responsibilities beyond safekeeping this Document. Upon funding this Trust shall become active and be administered pursuant to the terms of this instrument.

Section 4. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the FDER. 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 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 the FDER.

Section 5. Payment for Closure. The Trustee shall make payments from the Fund as the FDER Secretary shall direct, in writing, to provide for the payment of the costs of closure of the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the FDER Secretary from the Fund for closure expenditures in such amounts as the FDER Secretary shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the FDER Secretary specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 6. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee and shall consist solely of proceeds from the \_\_\_\_\_ (insert "Letter of Credit" or "Surety Bond").

Section 7. 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 other owner or operator of the facilities, or any of their 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 a 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.

(iv) The Trustee shall invest the fund as a single unit adding income to principal on a regular basis. All payments out of the fund shall be out of the principal balance.

Section 8. 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 9. Express Power 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 a State government; and

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

Section 10. 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 11. 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 Secretary of the FDER 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 FDER Secretary 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 12. 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 13. Trustee Compensation. The Trustee is authorized to charge against the principal of the Trust its published Trust fee schedule in effect at the time services are rendered.

Section 14. 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 a writing sent to the Grantor, FDER Secretary, 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 15. 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 FDER Secretary to the Trustee shall be in writing, signed by the FDER Secretary, or the designee, 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 the FDER 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 the FDER, 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 FDER Secretary, or by the Trustee and the FDER Secretary 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 FDER Secretary, or by the Trustee and the FDER Secretary, 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 FDER Secretary 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.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Florida.

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 the respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written.

\_\_\_\_\_  
Signature of Grantor

\_\_\_\_\_  
Title

Attest:

\_\_\_\_\_  
Title

Seal

\_\_\_\_\_  
Signature of Trustee

Attest:

\_\_\_\_\_  
Title

Seal

SAMPLE CERTIFICATION OF ACKNOWLEDGEMENT FOR  
SOLID WASTE FACILITY STANDBY TRUST FUND AGREEMENT

The following is an example of the certification of acknowledgement which must accompany the trust agreement for a trust fund as specified in §§264.143(a) and 264.145(a) or §§265.143(a) or 265.145(a).

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) or (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)

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SAMPLE SCHEDULE A

This Agreement demonstrates financial assurance for the following cost estimate(s) for the following facility(ies):

FDER Identification Number of <u>Facility</u>	Name of <u>Facility</u>	Address of <u>Facility</u>	Cost Estimates for Which Financial Assurance Being Demonstrated by <u>This Agreement</u>
	East Minor Facility	42 Main Street Los Tunas, California 90006	Closure \$110,000

The cost estimates listed here were last adjusted on July 1, 1982.

**SAMPLE SCHEDULE B**

The Fund is established initially as consisting of the following property:

17,200 (seventeen thousand, two hundred dollars),  
as evidenced by Midtown National Bank Cashier's  
Check Number 14,282, dated August 1, 1982.