

CITY OF CHICAGO
DEPARTMENT OF ENVIRONMENT
REGULATIONS -- SECURITY REQUIREMENTS

WHEREAS, the security requirements of Chapter 11-4 of the Municipal Code of Chicago were amended in March of 1996; and

WHEREAS, conditions pertinent to the function and scope of, and procedures applicable to, the security are set forth in Chapter 11-4 of the Municipal Code of Chicago; and

WHEREAS, applicants for a permit under Chapter 11-4 of the Municipal Code of Chicago and other interested parties have indicated a wish for a more detailed recitation of the conditions pertinent to the function and scope of, and procedures applicable to, the security; and

WHEREAS, pursuant to the authority granted by section 2-30-030 of the Municipal Code of Chicago, the Commissioner of Environment of the City of Chicago is authorized to issue rules and regulations necessary or proper to accomplish the purposes of Chapter 11-4 of the Municipal Code of Chicago, and is further authorized to make reasonable administrative and procedural regulations or rules interpreting or clarifying the requirements which are specifically prescribed in Chapter 11-4 of the Municipal Code of Chicago; now, therefore,

I, WILLIAM ABOLT, Commissioner of Environment of the City of Chicago, issue the following regulations pursuant to section 2-30-030 and Chapter 11-4 of the Municipal Code of Chicago.

REGULATIONS

SECURITY REQUIREMENTS

I. Introduction

The purpose of these regulations is to provide explanatory details, guidelines and requirements regarding the function and scope of, and procedures applicable to, the security required by Chapter 11-4 of the Municipal Code of Chicago (the "Code").

II. Conditions For Accessing Security

- A. With respect to the security required by section 11-4-370 (Par. 1) of the Code, the City may access that security as necessary under the following conditions:
- (1) To assure compliance by the equipment, process, or operation with the provisions of the Code and the rules and regulations promulgated thereunder;

- (2) To assure compliance with the conditions of the installation permit and/or certificate of operation issued pursuant to Article I of Chapter 11-4;
 - (3) To secure payment of the City's expenses in correcting any dangerous condition or defect existing in the equipment, process or operation permitted pursuant to Article I of Chapter 11-4;
 - (4) To respond to any emergency created as a result of the equipment, process, or operation permitted pursuant to Article I of Chapter 11-4;
 - (5) If the permittee is adjudicated bankrupt; or
 - (6) As otherwise specifically provided in these regulations.
- B. With respect to the security required by section 11-4-370 (Par. 2) of the Code, the City may access that security as necessary under the following conditions:
- (1) To assure the facility's compliance with the provisions of the Code and the rules and regulations promulgated thereunder;
 - (2) To assure compliance with the conditions of the permit issued pursuant to section 11-4-250;
 - (3) To secure payment of the City's expenses in correcting any dangerous condition or defect existing in the facility permitted pursuant to section 11-4-250;
 - (4) To respond to any emergency created as a result of the operation of the facility permitted pursuant to section 11-4-250;
 - (5) To insure facility and site closure and post-closure care in accordance with the Code and the rules and regulations promulgated thereunder;
 - (6) To pay for actions related to facility and site closure and post-closure care appropriate to protect the public health and safety;
 - (7) If the permittee is adjudicated bankrupt; or
 - (8) As otherwise specifically provided in these regulations.
- C. With respect to the security required by section 11-4-2020 of the Code, the City may access that security as necessary under the following conditions:

- (1) To assure the facility's compliance with the provisions of the Code and the rules and regulations promulgated thereunder;
- (2) To assure compliance with the conditions of the permit issued pursuant to Article XIV of Chapter 11-4;
- (3) To secure payment of the City's expenses in correcting any dangerous condition or defect existing in the facility permitted pursuant to Article XIV of Chapter 11-4;
- (4) To respond to any emergency created as a result of the operation of the facility permitted pursuant to Article XIV of Chapter 11-4;
- (5) To insure facility and site closure and post-closure care in accordance with section 11-4-2020 and section 11-4-2000 and the rules and regulations promulgated thereunder;
- (6) To pay for actions related to facility and site closure and post-closure care appropriate to protect the public health and safety;
- (7) If the permittee is adjudicated bankrupt; or
- (8) As otherwise specifically provided in these regulations.

III. Types Of Security

A. Letter Of Credit

- (1) A letter of credit shall be required for liquid waste handling facilities, sanitary landfills, transfer stations, resource recovery facilities, solid waste incinerators and reprocessable construction/demolition material facilities.
- (2) The applicant shall furnish an original irrevocable, unconditional, standby letter of credit naming the City of Chicago ("the City") as beneficiary. The letter of credit shall be a clean letter of credit, requiring only sight drafts and the original letter of credit for proper presentment, shall permit partial and multiple draws, and shall follow, as to both form and content, the sample provided as Appendix A. The expiry date and time of the letter of credit shall be as specified by the Commissioner of Environment ("the Commissioner").
- (3) The financial institution issuing the letter of credit shall be an insured depository institution (as defined in 12 U.S.C. § 1813) and may be subject to the prior approval of the City Comptroller ("the Comptroller").

- (4) The financial institution issuing the letter of credit shall preferably be located within the Chicago metropolitan area and shall preferably carry an investment grade rating from one of the major rating agencies.
- (5) The letter of credit shall be accompanied by a certificate signed by an officer of the financial institution, certifying that all persons executing the letter of credit on behalf of the issuer are authorized to do so, and certifying the genuineness of all such signatures on the letter of credit. The person signing the certificate shall be a different person than the person or persons executing the letter of credit, and the certificate shall follow, as to both form and content, the sample provided as Appendix B.
- (6) If circumstances occur that cause the financial institution that issues the letter of credit to fail financially, or no longer to meet the approval of the Comptroller, or otherwise no longer to meet the minimum requirements described above, the permittee shall promptly notify the Commissioner in writing of such circumstances and shall promptly arrange for a replacement letter of credit to be issued by a second financial institution meeting the minimum requirements, such replacement letter of credit to be subject to the approval of the Commissioner and the Comptroller.
- (7) The letter of credit shall be maintained by the permittee at the amount specified in section 11-4-370 or section 11-4-2020, as appropriate. In the event that the City draws from the letter of credit, the permittee shall take any action required to restore the letter of credit to its full amount within fifteen (15) days of written notice by the City of its withdrawal against the letter of credit. The City shall send such notice by overnight mail and the fifteen-day period shall commence on the day of mailing. Upon expiration of the fifteen-day period, if the permittee has not provided proof that the letter of credit has been restored to the satisfaction of the City, the City may draw upon the letter of credit, up to the full remaining amount of the letter of credit, without further notice to the permittee, in addition to pursuing any other remedies authorized by applicable law.
- (8) The following notice provisions shall apply to a draw upon the letter of credit:
 - (a) If a condition, defect, failure to comply or other circumstance making a draw on the letter of credit appropriate pursuant to section 11-4-370 or section 11-4-2020 ("Condition for Draw") is not of a dangerous or emergency nature requiring immediate action, the Commissioner shall provide the permittee with notice of the Condition for Draw. In such notice, the Commissioner shall allow the permittee an amount of time that, in the Commissioner's judgment, is adequate to correct the Condition for Draw and to report such correction to the Commissioner. The

Commissioner may, if in the Commissioner's judgment good cause is shown, grant one or more extensions of time beyond the original time period specified. The notice specified herein shall describe the Condition for Draw with as much specificity as is reasonable under the circumstances. Upon the permittee's failure to correct the Condition for Draw to the satisfaction of the Commissioner within the time period provided, the City may correct, or arrange for the correction of, the Condition for Draw, and may draw upon the letter of credit in an amount or amounts necessary to cover the City's actual or estimated expenses. If feasible, the Commissioner shall provide the permittee with a tabulation or estimate of the expenses incurred by the City.

- (b) If a Condition for Draw is of a dangerous or emergency nature requiring immediate action, the Commissioner may, if the Commissioner deems it feasible, provide the permittee with notice of the Condition for Draw and a demand for immediate correction. Any such notice shall describe the Condition for Draw with as much specificity as is reasonable under the circumstances. If the Commissioner deems it infeasible to provide such notice, or if, pursuant to such notice, immediate correction does not result, the City may correct, or arrange for the correction of, the Condition for Draw. Following, or in conjunction with, such correction, the City may draw upon the letter of credit in an amount or amounts necessary to cover the City's actual or estimated expenses. If feasible, the Commissioner shall provide the permittee with a tabulation or estimate of the expenses incurred by the City.
 - (c) The determination as to whether a Condition for Draw is of a dangerous or emergency nature requiring immediate action shall be made by the Commissioner.
- (9) With respect to a letter of credit issued pursuant to Chapter 11-4 of the Code, the City, upon receipt of notification that the expiry of the letter of credit will not be extended, and upon the City's determination that such expiry is improper, may draw upon the letter of credit, up to the full amount of the letter of credit, after providing the permittee with five (5) days written notice and opportunity to correct. Such notice shall be sent by overnight mail and the five-day period shall commence on the day of mailing.
 - (10) A letter of credit issued pursuant to Chapter 11-4 must be maintained unchanged from the terms initially approved by the City and must be maintained uninterrupted for the duration of the permit. In the event of a facility closure, such a letter of credit must be maintained for at least ninety (90) days after the notice of the official closure of the facility has been given in writing to the

Commissioner. If a permittee allows the letter of credit to be canceled or to expire or otherwise lapse, or allows any term of the letter of credit to be altered in any way, other than an amendment agreed to in writing by the Commissioner, then the Commissioner may render the permit void, in which event the former permittee must reapply for a new permit and pay a new permit fee in order to be considered for a valid permit.

- (11) An original and one copy of: (1) each letter of credit in question, and (2) each certificate of authority, should be sent for review and approval to:

CITY OF CHICAGO
Department of Environment
Attn: Commissioner of Environment
30 North LaSalle Street
25th Floor
Chicago, Illinois 60602

APPENDIX A

IRREVOCABLE STANDBY LETTER OF CREDIT

(Date)

City of Chicago
Commissioner of Environment
25th Floor
30 North LaSalle Street
Chicago, Illinois 60602

City of Chicago
City Comptroller
~~City Hall, Room 501~~ 7TH FLOOR
33 ~~111~~ North LaSalle Street
Chicago, Illinois 60602

Gentlemen:

We hereby issue our Irrevocable Standby Letter of Credit No. _____ in favor of the City of Chicago for the account of _____ [name of permittee] up to the aggregate amount of _____ Dollars (\$ _____). This Letter of Credit is issued, presentable and payable at our offices at _____ Attention: _____, and expires at 5:00 PM Chicago time on DECEMBER 31, [date].

Funds under this Letter of Credit are available to you unconditionally against your notarized sight drafts for any sum or sums not exceeding a total of _____ Dollars (\$ _____) drawn on us mentioning our Letter of Credit No. _____ and signed by the Commissioner of Environment of the City of Chicago or the City Comptroller of the City of Chicago (whether acting or actual). Drafts must be accompanied by this original Letter of Credit. Funds drawn under this Letter of Credit shall be paid in the form of a check made payable to "City of Chicago" and shall be sent by overnight delivery service or courier to the Commissioner of Environment of the City of Chicago or the City Comptroller of the City of Chicago at the appropriate address listed above.

Our obligations hereunder are primary obligations to the City of Chicago and shall not be affected by the performance or non-performance by _____ [name of permittee] under any license agreement or other agreement or contract with the City of Chicago or by any bankruptcy or other insolvency proceeding, or enforcement or other proceeding, initiated by or against _____ [name of permittee]. _____ [name of permittee] is not the owner of or beneficiary under this Letter of Credit and possesses no interest whatsoever in this Letter of Credit or proceeds of same. We engage with you that any draws under this Letter of Credit shall be duly honored by us on sight if presented to us on or before the date and time of expiry.

This Letter of Credit sets forth in full the terms of our undertaking, and this undertaking shall not in any way be modified, amended, amplified or limited by any document, instrument or

APPENDIX A

agreement referred to herein, or in which this Letter of Credit is referred to, or to which this Letter of Credit relates; and no such reference shall be deemed to incorporate herein by reference any such document, instrument or agreement.

This is a clean Letter of Credit and no documents except for sight drafts and this original Letter of Credit are required.

Partial and multiple drawings are permitted.

The expiry of this Letter of Credit will be deemed to be automatically extended without amendment for one year from the expiry date hereof, or any future expiration date, unless at least 30 days prior to any expiration date we notify the Commissioner of Environment of the City of Chicago, at the address listed above, by overnight delivery service or courier that we will not extend the expiry of this Letter of Credit for any such additional period.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision) of the International Chamber of Commerce Publication No. 500 (UCP) and to the Uniform Commercial Code - Letters of Credit, 810 ILCS 5/5-101 et seq., as amended, as in effect in the State of Illinois (UCC). To the extent the provisions of the UCP and the UCC conflict, the provisions of the UCC shall control.

Name of Issuer

By: _____
(signature)

Name: _____

Title: _____

APPENDIX B

SAMPLE CERTIFICATE

[BANK LETTERHEAD]

[Date]

To: City of Chicago
Commissioner of Environment
25th Floor
30 North LaSalle Street
Chicago, Illinois 60602

City of Chicago
City Comptroller
~~City Hall, Room 507~~ 7th Floor
33 ~~33~~ North LaSalle Street
Chicago, Illinois 60602

Re: Letter of Credit No. _____

Gentlemen:

[Name of Bank], at the request of

[Name and address of Account Party],

has provided its irrevocable standby Letter of Credit which is attached hereto in the amount of [amount of Letter of Credit] dated [date of Letter of Credit] in your favor.

This will certify that [Name and title of bank official signing Letter of Credit] is authorized to provide and execute the attached irrevocable standby Letter of Credit, that the signature appearing on said Letter of Credit is authentic, and that the Bank has complied with all FDIC requirements and other applicable laws in connection with the issuance of said Letter of Credit.

Sincerely,

[Signature of certifying bank officer -- Different person than signer of L.of C.]

[Printed name of certifying bank officer]

[Title of certifying bank officer]