

MEMORANDUM

TO: Operators and financial institutions

FROM: Kimber Wichmann, DEQ Chief Economist

SUBJECT: Letters of Credit - Coal

Each Letter of Credit issued pursuant to the provisions of W.S. §35-11-418 and Chapter 20 of the Land Quality Division Coal Rules and Regulations shall meet the following criteria:

- a. The Letter of Credit must be irrevocable during its term. It may be automatically renewable from year to year or it may be written for a specific initial term. If necessary, replacement instruments can be prepared within the 90 days prior to expiration.
- b. The Letter of Credit shall be for a sum certain that will correspond to the bond amount determined pursuant to the provisions of W.S. §35-11-417.
- c. The Letter of Credit must designate in whose account it is offered with the specific designation of the mining operation by its name and permit number.
- d. The Letter of Credit must be payable to the Department of Environmental Quality and the United States - Office of Surface Mining in full upon demand and receipt from the director of the department, of an order of forfeiture issued by the Wyoming Environmental Quality Council in accordance with W.S. §35-11-421. The order of forfeiture is the only document needed to draw on the Letter of Credit.
- e. There must be an indemnity agreement between the mine operator and the bank which requires the operator to pay dollar for dollar any amount the bank is required to pay the Department of Environmental Quality on the Letter of Credit.
- f. There must not be any questions whether the letter of credit is a banking transaction as opposed to a surety agreement or other form of insurance. The issuing bank should confirm that its charter allows it to issue letters of credit in the form we require.
- g. The Letter of Credit shall not be in excess of ten percent (10%) of the bank's capital surplus account as shown on a balance sheet certified by a certified public accountant. **Attach a copy of the balance sheet for the current fiscal year.**
- h. The Letter of Credit may only be issued by a bank organized to do business in the U.S. The bank has to be a standalone entity in the U.S. and cannot be just a

branch of a foreign bank.

- i. The Letter of Credit (LOC) should be issued on letterhead and/or bank safety paper. **The page number, number of pages, and LOC number must be on each page of the LOC.**

If you have an email address the attached sample may be emailed to you by contacting Casey Robb at (307)777-6910, email Casey.Robb2@wyo.gov.

The attached sample Letter of Credit contains the necessary language to meet our requirements.

DOCUMENT NEEDS TO BE TYPED VERBATIM

bank letterhead

IRREVOCABLE LETTER OF CREDIT NO. _____

Date of Issue:

Date of Expiry:

Beneficiary: Wyoming Department of
Environmental Quality and the
United States - Office of Surface
Mining

Amount:

Gentlemen:

We hereby establish our irrevocable letter of credit in your favor, available by your drafts at sight drawn on _____ Bank at _____, accompanied by the following document:

1. A signed and dated statement from the Director of the Department of Environmental Quality and the Land Quality Administrator in any one of three following forms:
 - a. "The undersigned hereby advise that an order in an amount identical to the amount of the sight draft which this statement accompanies has been entered by the Environmental Quality Council pursuant to W.S. §35-11-421, forfeiting all or part of the amount of the credit because of any violation of the Wyoming Environmental Quality Act, the state program, the permit, or the Surface Mining Control and Reclamation Act of 1977 pursuant to the terms of the Cooperative Agreement between the State of Wyoming and the United States Department of Interior, by _____, Permit No. _____. A certified copy of the order of forfeiture is attached."
 - b. "The undersigned hereby advise that a Settlement Agreement in an amount identical to the amount of the sight draft which this statement accompanies has been signed on behalf of the Department of Environmental Quality and on behalf of the operator, _____, Permit No. _____, in which the parties have agreed to an amount due to the Department because of a violation of the Wyoming Environmental Quality Act, and that _____ has failed to pay the amount due within the period of time specified in the agreement."

Letter of Credit No. _____

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c. "The undersigned certify that the operator _____, Permit No. _____, has not filed with the Department an extension of this letter of credit, a substitute letter of credit or other acceptable evidence of financial responsibility in the place of the letter of credit; and that it is thirty (30) days or less until the current or any amended expiration date of this Irrevocable Letter of Credit; OR

2. A signed and dated statement from the Department of Interior, Office of Surface Mining, Bond Approving Officer and the Director of the Wyoming Department of Environmental Quality in the following form: "The undersigned hereby advise that the State-Federal Cooperative Agreement between the Governor of the State of Wyoming and the Secretary of the United States Department of the Interior has been terminated under the provisions of 30 CFR 745.15, and the operator, _____, has failed to comply with the provisions of 30 CFR 740.15(b) and/or 30 CFR 800.11(a). The sight drafts which this statement accompanies have been signed in behalf of the U.S. Office of Surface Mining Reclamation and Enforcement (OSM) in an amount due to OSM to the extent that lands covered by the Federal lands program are involved in Permit No. _____ and in behalf of the State of Wyoming in an amount due to the State of Wyoming for the remaining permitted lands."

Pursuant to Chapter 20, Land Quality Division Coal Regulations, the bank shall give immediate notice to the permittee and the director of the Department of Environmental Quality of: (a) any notice received or action filed alleging the insolvency or bankruptcy of the bank; or (b) alleging any violations of regulatory requirements which could result in suspension or revocation of the bank's charter or license to do business; or (c) the bank, for any reason, becomes unable to fulfill its obligation under the letter of credit.

Each draft must bear upon its face the clause "Drawn under Letter of Credit No. _____, dated _____, and the total of this draft and all other drafts previously drawn under this Letter of Credit does not exceed _____ (Fill in Amount) _____."

****NOTE: INSERT EITHER PARAGRAPH A OR B**

****A)** It is a condition of this Letter of Credit that it shall be deemed automatically extended without amendment for one year from the present or any future expiration date hereof, unless ninety (90) days prior to any such date we shall notify the Director of the Wyoming Department of Environmental Quality in writing by overnight courier service at the above mentioned address that we elect not to consider this Letter of Credit renewed for any such additional period. Upon receipt by you of such notice, you may draw hereunder.

****B)** If this Letter of Credit is not extended or replaced by another Letter of Credit of equal or larger amount at least ninety (90) days prior to its expiration, this bank shall so notify the Director of the Wyoming Department of Environmental Quality in writing by overnight courier

service at the above mentioned address at least ninety (90) days prior to the scheduled expiration date.

We hereby agree with you that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the above-mentioned drawee bank on or before (Insert "Expiration Date") .

All questions arising in connection with this letter of credit shall be determined according to the laws of the state of Wyoming.

This letter of credit is subject to the Uniform Customs and Practice for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, except to the extent it is inconsistent with the laws of Wyoming.

Very truly yours,
(FOR ISSUER)

Official Signature

Name: _____

Title: _____

Date: _____