

**PROCEDURE FOR DEMONSTRATING FINANCIAL ASSURANCE AT
PROPERTY WITH ENVIRONMENTAL USE CONTROLS**

**The Kansas Department of Health and Environment
Bureau of Environmental Remediation**

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PROCEDURE FOR DEMONSTRATING FINANCIAL ASSURANCE AT PROPERTY WITH ENVIRONMENTAL USE CONTROLS

INTRODUCTION

Background:

Pursuant to Kansas Statute Annotated (K.S.A.) 65-1,224(b)(3), as amended, and Kansas Administrative Regulations (K.A.R) Article 28 Part 73, the Kansas Department of Health and Environment (KDHE) may require the Applicant for an Environmental Use Control (EUC) for a Category 3 property as defined in K.S.A. 65-1,226(c)(3), as amended, to provide and maintain financial assurance for the EUC based on the potential for long term inspection and maintenance costs of property, protective structures, and the potential for release or migration of environmental contamination from the property. The proposed financial assurance must demonstrate that it is adequate to provide a remedy or remedies which are protective of human health and the environment should the proposed remedial activity fail. The requirements for providing long term inspections, maintenance of protective structures and methods for avoiding the potential for release or migration of environmental contamination from the property is contained in a Long Term Care Agreement (LTCA) which is incorporated into the Environmental Use Control Agreement (EUCA).

Methods:

As set forth in K.S.A. 65-1,224(b)(3), as amended, financial assurance shall be provided by use of one or more of the following methods satisfactory to the department:

- Environmental Insurance;
- Performance or Financial Guarantee Bond (requires standby trust);
- Irrevocable Letter of Credit (requires standby trust);
- Qualification as a Self-Insurer (Financial Test);
- Corporate Guarantee (Financial Test).

In addition, the department has determined that financial assurance may be demonstrated by the use of a trust fund or other methods as approved by the Secretary. Documentation of financial assurance, as described under *Proof of Financial Assurance* for each method, must be provided before the EUCA is effective. All methods and instruments used as financial assurance must be approved by the secretary.

Cost Estimate:

Cost estimates must include line item estimates for each task, responsibility, or activity required or potentially required in the property-specific EUCA and LTCA. All estimates must be provided in current dollars and must be based on the cost for a third party with appropriate environmental remediation experience to perform all required activities. The initial cost estimate approved by the secretary will be documented in the LTCA, along with the approved method of providing financial assurance. Revised cost estimates are required to be submitted annually on or before March 31 of each year. Upon receipt of a revised cost estimate, the secretary will provide written notification of approval, or notification of the requirement to adjust the revised cost estimate and the basis for such requirement. The approved, annually revised cost estimate shall be incorporated into the LTCA by

reference, and will serve as the amount of financial assurance required to be maintained for the EUCA. This estimate will be referred to as the current cost estimate. Examples of potential costs that may be incurred are included in the Appendix to this document.

Use of Multiple Methods:

1. The Applicant may satisfy the requirements for financial assurance by establishing more than one financial method per property. These methods are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, and insurance. The methods must be as specified in this policy, except that it is the combination of methods, rather than the single method, which must provide financial assurance for an amount at least equal to the current EUC cost estimate. If the Applicant uses a trust fund in combination with a surety bond or a letter of credit, the Applicant may use the trust fund as the standby trust fund for the other methods. A single standby trust fund may be established for two or more methods. The Secretary of KDHE may approve the use of any or all of the methods to provide for EUC costs of the property.
2. If the Applicant substitutes other financial assurance methods as specified herein for all or part of the original financial assurance method, the Applicant must submit a written request to KDHE for release of the amount in excess of the current EUCA cost estimate.

Incapacity of Applicant, Guarantor, or Financial Institution:

1. The Applicant must notify the Secretary by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the Applicant as debtor, within 10 days after commencement of the proceeding. A guarantor of a corporate guarantee must make such a notification if the guarantor is named as debtor as required under the terms of the corporate guarantee.
2. The Applicant who utilizes a trust fund, surety bond, letter of credit, or insurance policy as all or part of its financial assurance requirement, will be deemed to be without the required financial assurance in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The Applicant must establish other financial assurance, that meets the Secretary's approval, within 60 days after such an event.

Submittals and/or Notifications to KDHE:

Whenever a submittal, notice, document or other form of information must be provided to KDHE as required in this procedure, such submittal, notice, document or other form of information shall be directed to:

The Kansas Department of Health and Environment
Bureau of Environmental Remediation
Environmental Use Control Program
1000 S.W. Jackson, Suite 410
Topeka, KS 66612-1367

ENVIRONMENTAL INSURANCE

The Applicant may satisfy the requirement of this method by demonstrating it has obtained environmental insurance which conforms to the requirements of this paragraph and submitting an endorsement of such insurance to KDHE. The insurance premiums must be paid in advance for the duration of the EUCA.

Insurer Requirements

The insurer must be licensed to transact the business of insurance in Kansas, or eligible to provide insurance as an excess or surplus lines insurer in Kansas.

Endorsement

1. The wording of the endorsement of insurance must be identical to the wording in the attached environmental insurance format.
2. Within 30 days of written request by KDHE, the Applicant shall supply KDHE with a duplicate original of the insurance endorsement.

Policy Requirements

1. The insurance policy must be issued for a face amount at least equal to the amount required for inspection and maintenance activities and other activities to comply with the requirements of the EUC for the life of the EUCA and/or, as determined by KDHE, the estimated amount of funding necessary to implement contingent remedies which are protective of public health and the environment should the chosen remedy fail in whole or in part. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability may be lowered by the amount of the payments. The amount shall be in current dollars.
2. The insurance policy must guarantee that the Insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Secretary, to such party or parties as the Secretary specifies, whenever the Secretary of KDHE determines that the Applicant has failed to meet any requirement of the EUCA, or in the event of remedy failure.
3. Each policy must contain a provision allowing assignment of the policy to a successor Applicant, as approved by KDHE. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably withheld.
4. The insurance policy must be exclusive of all third party claims.

Reimbursement

The Applicant, or any other person authorized to conduct activities pursuant to the EUCA, may request reimbursements for EUCA expenditures by submitting itemized bills to the Secretary of KDHE. Within 60 days after receiving bills for EUCA events or activities, the Secretary will instruct the insurer to make reimbursements in those amounts as the Secretary specifies in writing, if the Secretary determines that the expenditures are in accordance with the approved EUCA or otherwise justified. If the Secretary does not instruct the insurer to make such reimbursements, the Secretary will provide the Applicant with a written statement of reasons.

Cost Estimate

A revised cost estimate must be submitted no later than March 31 of each calendar year in accordance with the statement on page 4 of the Procedure for Demonstrating Financial Assurance at Property With Environmental Use Controls document.

Proof of Financial Assurance

The Applicant shall submit copies of all riders, endorsements and attachments as proof of financial assurance as required by K.A.R. 28-73-5, as amended, prior to the finalization of the EUCA, and within 45 days of KDHE's approval of the revised cost estimate thereafter. Whenever the current cost estimate increases to an amount greater than the face amount of the policy, the Applicant, within 45 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current cost estimate and submit evidence of such increase to the KDHE, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current estimate decreases, the face amount may be reduced to the amount of the current cost estimate following written approval by KDHE.

Termination

1. The Applicant must maintain the policy in full force and effect until KDHE consents to termination of the policy by the Applicant. Failure to pay the premium, without substitution of alternate financial assurance as specified in this section, will constitute a significant violation of the EUCA and applicable statutes and regulations, warranting such remedy as the KDHE deems necessary. Such violation will be deemed to begin upon receipt by KDHE of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.
2. The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured and KDHE with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the Applicant and KDHE. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the KDHE and the Applicant, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the

event that on or before the date of expiration:

- (a) The Secretary deems the property abandoned;
- (b) The EUCA is terminated or revoked; or
- (c) The Applicant is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or
- (d) The premium due is paid.

3. KDHE will give written consent to the Applicant that the insurance policy may be terminated following:

- (a) KDHE's written approval for the substitute financial assurance method; or
- (b) KDHE releases the Applicant from the requirements of the EUCA.

Required Text for Environmental Insurance

Endorsement for Insurance

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
BUREAU OF ENVIRONMENTAL REMEDIATION
**ENDORSEMENT FOR INSURANCE FOR CATEGORY 3 ENVIRONMENTAL USE
CONTROL**

Endorsement of Insurance, the "Endorsement", issued by

_____,
an insurance company organized and existing under the laws of the state of _____,
referred to herein as the "Insurer", issued to _____, referred to herein as
the "Insured".

Insurer certifies that it has issued to Insured the policy of insurance identified as policy
number _____,
providing insurance coverage effective on _____, and terminating
on _____, for the purpose of providing funds for a Category 3
Environmental Use Control (EUC) as defined by K.S.A. 65-1,224(b)(3) , as amended, and K.A.R.
28-73-5, as amended, to maintain financial assurance for inspection and maintenance activities and
other activities to comply with the requirements of the EUC for the life of the Environmental Use
Control Agreement (EUCA) and/or, as determined by KDHE, the estimated amount of funding
necessary to implement contingent remedies which are protective of public health and the
environment should the chosen remedy fail in whole or in part for the following described
property:

_____, pursuant to
EUCA No. _____ issued by the Kansas Department of Health and Environment.

Face Amount: \$ _____

Insurer certifies that the policy of insurance identified above conforms to the requirements of
K.A.R. 28-73-5 as such regulation was constituted on the effective date of this Endorsement;
KDHE's Procedure for Demonstrating Financial Assurance at Property with Environmental Use
Controls and, that an originally signed copy of said insurance policy, together with all riders and
endorsements, has been supplied to the Kansas Department of Health and Environment (KDHE).

Insurer hereby agrees that any provision of said insurance policy, or of any rider or endorsement,
which is inconsistent with K.A.R. 28-73-5, as amended, is hereby amended to eliminate the
inconsistency.

Insurer certifies that the wording of this endorsement is identical to the wording specified in the
Procedure for Demonstrating Financial Assurance at Property with Environmental Use Controls
document as such document was constituted on the date shown immediately below.

Insurer has caused this Endorsement to be signed by its duly authorized representative, and its corporate seal hereunder affixed and its signature attested, on the date appearing by the signature below.

SIGNED FOR THE INSURANCE COMPANY

/S/_____

Name_____

Title_____

Date_____

Seal

Signature Attested by the Notary

FINANCIAL GUARANTEE BOND

The Applicant may satisfy the requirement of this method by submitting a Financial Guarantee Bond and standby trust agreement. In addition, the following requirements must be met:

Surety Requirements

The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in the most recent version of Circular 570 of the U.S. Department of Treasury and maintain a financial strength rating of B+ as rated by A.M. Best. Documentation of compliance with these requirements must be submitted to KDHE within 30 days of written request.

Bond Requirements

1. The wording of the bond must be identical to the wording specified in the attached financial guarantee bond format.
2. Within 30 days of written request by KDHE, the Applicant shall supply KDHE with a duplicate original of the financial guarantee bond.
3. The bond must guarantee that the Applicant will:
 - (a) Fund the standby trust fund in an amount equal to the required amount within 15 days after an administrative order to enforce the terms of the EUCA; or within 15 days of an order to enforce the terms of the EUCA is issued by a court of competent jurisdiction.
 - (b) Provide alternate financial assurance as specified in this section, and obtain the Secretary's written approval of the assurance provided, within 90 days after receipt by both the Applicant and the Secretary of a notice of cancellation of the bond from the surety.
4. Under the terms of the bond, the surety will become liable on the bond obligation when the Applicant fails to perform as guaranteed by the bond.
5. The amount of the financial guarantee bond shall be in an amount at least equal to the amount required for inspection and maintenance activities and other activities to comply with the requirements of the EUC for the life of the EUCA; and/or, as determined by KDHE, the estimated amount of funding necessary to implement contingent remedies which are protective of human health and the environment should the chosen remedy fail in whole or in part. The amount shall be in current dollars.

Standby Trust

1. A standby trust fund must also be established. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Secretary.
2. The wording of the standby trust agreement must be identical to the wording specified in the

attached standby trust agreement format on page 54 of the Procedure for Demonstrating Financial Assurance at Property with Environmental Use Controls document.

Cost Estimate

A revised cost estimate must be submitted no later than March 31 of each calendar year in accordance with the statement on page 4 of the Procedure for Demonstrating Financial Assurance at Property with Environmental Use Controls document.

Proof of Financial Assurance

1. An originally signed duplicate of the financial guarantee bond and of the standby trust fund agreement shall be submitted to KDHE as proof of financial assurance as required by K.A.R. 28-73-5, as amended, prior to the finalization of the EUCA, and within 45 days of KDHE's annual approval of the revised cost estimate thereafter.
2. Whenever the current cost estimate increases to an amount greater than the existing financial assurance, the Applicant shall, within 45 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 the KDHE, 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 KDHE.

Termination

1. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the Applicant and to the Secretary. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the Applicant and the Secretary, as evidenced by the return receipts.
2. KDHE will give written consent to the Applicant that the bond may be terminated following:
 - (a) KDHE's written approval for the substitute financial assurance method; or
 - (b) KDHE releases the Applicant from the requirements of the EUCA.

Required Text for a Financial Bond

Financial Guarantee Bond

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
BUREAU OF ENVIRONMENTAL REMEDIATION
**FINANCIAL GUARANTEE BOND FOR CATEGORY 3 ENVIRONMENTAL USE
CONTROLS**

Bond Number _____ Penal Sum _____

KNOW ALL PERSONS BY THESE PRESENTS that we,

_____, a [state business form]
organized and existing under the laws of the state of _____, as Principal, and
_____, a business entity
organized and existing under the laws of the state of _____, as Surety, are
firmly bound to the Kansas Department of Health and Environment (KDHE), in the amount of
_____, U.S. Dollars,
(\$ _____) for the payment of which we bind ourselves, our heirs, executors,
administrators, successors, and assigns, jointly and severally.

WHEREAS, Principal is required by K.S.A. 65-1,224(b)(3) and amendments thereto, and K.A.R.
28-73-5, as amended, to maintain financial assurance for inspection, maintenance activities and
other activities to comply with the requirements of the EUC for the life of the EUCA; and/or, as
determined by KDHE, the amount of funding necessary to implement contingent remedies which
are protective of human health and the environment should the chosen remedy for the following
described property:

_____ pursuant to
EUCA No. _____.

WHEREAS, Principal shall establish a standby trust fund as is required when a financial
guarantee bond is used to provide such financial assurance.

NOW THEREFORE, the conditions of this obligation are such that, if Principal shall faithfully
perform the obligations contained in EUCA No. _____,

Or if Principal shall faithfully, within 15 days after an administrative order issued by KDHE to
enforce the terms of the EUCA, or within 15 days after an order enforcing the terms of the EUCA
is issued by a court of competent jurisdiction, fund the standby trust fund in the amount of this
financial guarantee bond;

Or if Principal shall obtain alternative financial assurance as allowed by law, rules and regulations,
and obtain the written approval from KDHE for its use within 90 days following receipt of a notice
of cancellation from Surety by both Principal and KDHE, as evidenced by the certified mail return
receipts;

Then this obligation shall become null and void; otherwise to remain in full force and effect for the
full term of the EUCA and any modifications or extensions thereof.

Surety shall become liable on this financial guarantee bond only when Principal has failed to fulfill the conditions set forth above.

Upon notification by KDHE to Surety that Principal has failed to perform as guaranteed by this financial guarantee bond, Surety shall place the amount of the penal sum into the standby trust fund according to instructions from KDHE.

The liability of Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment shall amount to the penal sum, but in no event shall the obligation of Surety hereunder exceed the amount of the penal sum.

Surety hereby waives notification of amendments and modifications to the applicable laws, rules and regulations; to the EUCA requirements; and to the terms and conditions of the EUCA. Surety hereby agrees that no such amendments or modifications shall in any way modify or alleviate its obligation under this financial guarantee bond.

Surety may terminate this financial guarantee bond by sending written notice of the effective termination date to both Surety and KDHE. Termination may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the Applicant and the Secretary, as evidenced by the return receipts.

We certify that the wording of this bond is identical to the wording specified in the Procedure for Demonstrating Financial Assurance at Property with Environmental Use Controls document as such document was constituted on the date shown immediately below.

IN WITNESS WHEREOF, Principal and Surety have caused this financial guarantee bond to be executed by their respective officers duly authorized, and their corporate seals to be hereunder affixed and their signatures attested, as of the dates appearing by the signatures below.

Bond Premium _____ Effective Date _____

SIGNED FOR THE PRINCIPAL

SIGNED FOR THE SURETY

/S/ _____

/S/ _____

Date _____

Date _____

Name _____

Name _____

Title _____

Title _____

Signature Attested by the Notary

Signature Attested by the Notary

PERFORMANCE BOND

The Applicant may satisfy the requirement of this method by submitting a Performance Bond and standby trust agreement. In addition the following apply:

Surety Requirements

The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in the most recent version of Circular 570 of the U.S. Department of Treasury and maintain a financial strength rating of B+ as rated by A.M. Best. Documentation of compliance with this requirement must be submitted to KDHE within 45 days of written request.

Bond Requirements

1. The wording of the bond must be identical to the wording specified in the attached Performance Bond format.
2. The amount of the bond shall be in an amount at least equal to the amount required for inspection and maintenance activities and other activities to comply with the requirements of the EUC for the life of the EUCA; and/or, as determined by KDHE, the estimated amount of funding necessary to implement contingent remedies which are protective of human health and the environment should the chosen remedy fail in whole or in part. The amount shall be in current dollars.

Standby Trust

1. A standby trust fund must also be established. The wording of the standby trust agreement must be identical to the wording specified in the attached standby trust agreement format on page 54 of the Procedure for Demonstrating Financial Assurance at Property with Environmental Use Controls document.
2. Under the terms of the bond, all payments thereunder will be deposited by the surety directly into the standby trust fund in accordance with the instruction of the Secretary.

Cost Estimate

A revised cost estimate must be submitted no later than March 31 of each calendar year in accordance with the statement on page 4 of the Procedure for Demonstrating Financial Assurance at Property with Environmental Use Controls document.

Proof of Financial Assurance

An originally signed duplicate of the Performance Bond and of the standby trust agreement must be submitted to the Secretary as proof of financial assurance as required by K.A.R. 28-73-5, as amended, prior to the finalization of the EUCA, and within 45 days of KDHE's approval of the revised cost estimates thereafter. Whenever the current cost estimate increases to an amount greater than the existing financial assurance, the Applicant shall within 45 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 the KDHE, 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 KDHE.

Surety Liability

Under the terms of the bond, the surety will become liable on the bond obligation when the Applicant fails to perform as guaranteed by the bond.

Termination

1. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the Applicant and to the Secretary. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the Applicant and the Secretary, as evidenced by the return receipts.

2. KDHE will give written consent to the Applicant that the bond may be terminated following:
 - (a) KDHE's written approval for the substitute financial assurance method; or
 - (b) KDHE releases the Applicant from the requirements of the EUCA.

Required Text for a Performance Bond

Performance Bond

**KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
BUREAU OF ENVIRONMENTAL REMEDIATION
PERFORMANCE BOND**

Bond Number _____ Penal Sum _____

KNOW ALL PERSONS BY THESE PRESENTS that we _____, a business entity organized and existing under the laws of the state of _____, as Principal, and _____, a business entity organized and existing under the laws of the state of _____, are firmly bound to the Kansas Department of Health and Environment (“KDHE”), in the penal sum of _____ U.S. Dollars, (\$ _____) for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally.

WHEREAS, Principal is required by K.S.A. 65-1,224(b)(3) and amendments thereto, and K.A.R. 28-73-5, as amended, to maintain financial assurance for inspection, maintenance activities and other activities to comply with the requirements of the EUC for the life of the EUCA; and/or, as determined by KDHE, the amount of funding necessary to implement contingent remedies which are protective of human health and the environment should the chosen remedy for the following described property: _____ pursuant to EUCA No. _____.

WHEREAS, Principal shall establish a standby trust fund as is required when a performance guarantee bond is used to provide such financial assurance.

NOW THEREFORE, the conditions of this obligation are such that, if Principal shall faithfully perform the obligations contained in EUCA No. _____,

Or if Principal shall faithfully, within 15 days after an administrative order issued by KDHE to enforce the terms of the EUCA, or within 15 days after an order enforcing the terms of the EUCA is issued by a court of competent jurisdiction, fund the standby trust fund in the amount of this performance guarantee bond;

Or if Principal shall obtain alternative financial assurance as allowed by law, rules and regulations, and obtain the written approval from KDHE for its use within 90 days following receipt of a notice of cancellation from Surety by both Principal and KDHE, as evidenced by the certified mail return receipts;

Then this obligation shall become null and void; otherwise to remain in full force and effect for the full term of the EUCA and any modifications or extensions thereof.

Surety shall become liable on this performance bond only when Principal has failed to fulfill the conditions set forth above.

Upon notification by KDHE to Surety that Principal has failed to perform as guaranteed by this performance guarantee bond, Surety shall place the amount of the penal sum into the standby trust fund according to instructions from KDHE.

The liability of Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment shall amount to the penal sum, but in no event shall the obligation of Surety hereunder exceed the amount of the penal sum.

Surety hereby waives notification of amendments and modifications to the applicable laws, rules and regulations; to the EUCA requirements; and to the terms and conditions of the EUCA. Surety hereby agrees that no such amendments or modifications shall in any way modify or alleviate its obligation under this performance guarantee bond.

Surety may terminate this financial guarantee bond by sending written notice of the effective termination date to both Surety and KDHE. Termination may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the Applicant and the Secretary, as evidenced by the return receipts.

We certify that the wording of this bond is identical to the wording specified in the Procedure for Demonstrating Financial Assurance at Property with Environmental Use Controls document as such document was constituted on the date shown immediately below.

IN WITNESS WHEREOF, Principal and Surety have caused this performance guarantee bond to be executed by their respective officers duly authorized, and their corporate seals to be hereunder affixed and their signatures attested, as of the dates appearing by the signatures below.

Bond Premium _____ Effective Date _____

SIGNED FOR THE PRINCIPAL

SIGNED FOR THE SURETY

/S/ _____

/S/ _____

Date _____

Date _____

Name _____

Name _____

Title _____

Title _____

Signature Attested by the Notary

Signature Attested by the Notary

IRREVOCABLE LETTER OF CREDIT

The Applicant may satisfy the requirement of this method by obtaining an irrevocable standby letter of credit and standby trust agreement. In addition the following apply:

Issuer

The issuing institution shall be an entity which has the authority to issue irrevocable letters of credit and whose irrevocable letter of credit operations are regulated and examined by a Federal or State agency. Documentation of compliance with this requirement must be submitted to KDHE within 30 days of written request. The issuer must be unrelated to the owner or operator of the Applicant.

Letter of Credit Requirements

1. The wording of the irrevocable letter of credit must be identical to the wording specified in the attached irrevocable letter of credit format.
2. The amount of the irrevocable letter of credit shall be in an amount at least equal to the amount required for inspection and maintenance activities and other activities to comply with the requirements of the EUC for the life of the EUCA; and/or, as determined by KDHE, the estimated amount of funding necessary to implement contingent remedies which are protective of human health and the environment should the chosen remedy fail in whole or in part. The amount shall be in current dollars.
3. Upon a determination by the Secretary of KDHE that the Applicant has failed to meet any requirements of the EUCA, the KDHE may draw on the letter of credit.

Standby Trust

A standby trust fund must also be established. Under the terms of the letter of credit, all amounts paid pursuant to a draft by KDHE will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from KDHE. An originally signed duplicate of the standby trust agreement shall be submitted to KDHE with the irrevocable letter of credit. The wording of the standby trust agreement must be identical to the wording specified in the attached standby trust agreement format on page 54 of the Procedure for Demonstrating Financial Assurance at Property with Environmental Use Controls document.

Cost Estimate

A revised cost estimate must be submitted no later than March 31 of each calendar year in accordance with the statement on page 4 of the Procedure for Demonstrating Financial Assurance at Property with Environmental Use Controls document.

Proof of Financial Assurance

1. An originally signed duplicate of the irrevocable letter of credit and a letter from the Applicant referring to the irrevocable letter of credit by number, issuing institution, the KDHE EUCA number, name and address of the property, and the amount of funds assured for the EUCA by the irrevocable letter of credit shall be submitted to the Secretary as proof of financial assurance as required by K.A.R. 28-73-5, as amended, prior to the finalization of the EUCA. An originally signed duplicate of the standby trust agreement must also be submitted with the letters referenced above.
2. Thereafter, the Applicant shall submit a notarized statement that the irrevocable letter of credit remains in effect as proof of financial assurance as required by K.A.R. 28-73-5, as amended, within 45 days of KDHE's approval of the revised cost estimate. Whenever the current cost estimate increases to an amount greater than the existing financial assurance, the Applicant shall within 45 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 the KDHE, 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 KDHE.

Termination

1. The letter of credit must be 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 KDHE 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 KDHE have received the notice, as evidenced by the return receipts, whichever is later.
2. If the Applicant does not establish alternate financial assurance and obtain written approval of such alternate assurance from KDHE within 90 days after receipt by both the Applicant and KDHE of a notice from issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, KDHE will draw on the letter of credit. The KDHE may delay the drawing if the issuing institution grants an extension of the term of the credit. Once the funds have been drawn, the funds will be deposited into the Standby Trust. During the last 30 days of any such extension the KDHE will draw on the letter of credit if the Applicant has failed to provide alternate financial assurance and obtain written approval of such assurance from KDHE.
3. KDHE will return the letter of credit to the issuing institution for termination when:
 - (a) The Applicant substitutes alternate financial assurance; or
 - (b) KDHE releases the Applicant from the requirements of the EUCA.

Required Text for an Irrevocable Letter of Credit

Irrevocable Standby Letter of Credit

IRREVOCABLE STANDBY LETTER OF CREDIT

Secretary
Kansas Department of Health and Environment

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. ____ in your favor, at the request and for the account of [Applicant'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 statutes and regulations issued under authority of the K.S.A. 2004 Supp. 65-1,224(b)(3) and K.S.A. 2004 Supp. 65-1,226(c)(3).

This letter of credit is effective as of [date] and shall expire on [date at least 1 year later], but such expiration date shall be automatically extended for a period of [at least 1 year] on [date] and on such successive expiration date, unless, at least 120 days before the current expiration date, we notify both you and [Applicant's name] by 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 [Applicant'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 presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [Applicant's name] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in KDHE's Procedure for Demonstrating Financial Assurance at Property with Environmental Use Controls as such document was constituted on the date shown immediately below.

Signature and Title of Official of Issuing Institution

Date:

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice of Documentation Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code]."

TRUST FUND

The Applicant may establish financial assurance for an EUCA by establishing a trust fund as set forth below:

Trust Fund Requirements

1. The Applicant may satisfy the requirements of financial assurance by establishing an EUCA trust fund which conforms to the requirements of the Procedure for Demonstrating Financial Assurance at Property with Environmental Use Controls document and submitting an originally signed duplicate of the trust agreement to KDHE. Documentation that the trustee is an entity who has the authority to act as a trustee and is regulated and examined by a State or Federal agency must be submitted to KDHE within 30 days of written request.
2. The wording of the trust agreement must be substantially similar to the wording specified in the attached trust fund format, and the trust agreement must be accompanied by a formal certification of acknowledgment. Each Schedule A of the trust agreement must be updated within 45 days after a change in the amount of the current EUCA cost estimate covered by the agreement.
3. The amount of the trust fund shall be fully funded in an amount at least equal to the amount required for inspection and maintenance activities and other activities to comply with the requirements of the EUC for the life of the EUCA; and/or, as determined by KDHE, the estimated amount of funding necessary to implement contingent remedies which are protective of human health and the environment should the chosen remedy fail in whole or in part. The amount shall be in current dollars.

Cost Estimate

A revised cost estimate must be submitted no later than March 31 of each calendar year in accordance with the statement on page 4 of the Procedure for Demonstrating Financial Assurance at Property with Environmental Use Controls document.

Proof of Financial Assurance

1. The Applicant must submit an originally signed duplicate of the trust agreement and a statement from the Trustee which states the value of the fund to the Secretary as proof of financial assurance as required by K.A.R. 28-73-5, as amended, prior to the finalization of the EUCA. I
2. Thereafter, the Applicant shall submit proof via notarized statement that the Trust Fund remains in effect as proof of financial assurance within 45 days of KDHE's approval of the revised cost estimate. Whenever the current cost estimate increases to an amount greater than the value of the trust fund, as evidenced by the trustee's most recent valuation of the trust fund, the Applicant shall within 45 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 the KDHE, or obtain other financial assurance as specified in this section to cover the increase.

Whenever the current estimate decreases below the current value of the trust, as evidenced by the trustee's most recent valuation of the trust fund, the financial assurance may be reduced to the amount of the current cost estimate following written approval by KDHE.

Reimbursements

The Applicant may request reimbursements for EUCA expenditures by submitting itemized bills to the Secretary. Within 60 days after receiving bills for EUCA activities, the Secretary will instruct the trustee to make reimbursements in those amounts as the Secretary specifies in writing, if the Secretary determines that the EUCA expenditures are in accordance with the approved EUCA or otherwise justified. If the Secretary does not instruct the trustee to make such reimbursements, he will provide the Applicant with a written statement of reasons.

Termination

KDHE will give written consent to the Applicant that the trust may be terminated following:

- (a) KDHE's written approval for the substitute financial assurance method; or
- (b) KDHE releases the Applicant from the requirements of the EUCA.

Required Text for a Trust Fund

Trust Agreement

Schedule A to the Trust Agreement

Schedule B to the Trust Agreement

Schedule C to the Trust Agreement

**KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
BUREAU OF ENVIRONMENTAL REMEDIATION
TRUST AGREEMENT**

Trust Agreement, the “Agreement”, made effective on _____ by and between [Applicant], a [state the type of business entity] organized in the state of _____, as Grantor, and _____, organized in the state of _____, as Trustee.

WHEREAS, the Kansas Department of Health and Environment (“KDHE”), an administrative agency of the State of Kansas, has established certain regulations and procedures implementing the Environmental Use Control Act, K.S.A. 65-1,241 *et seq.*, as amended, applicable to the Grantor, requiring that the Applicant for a Category 3 Environmental Use Control shall provide assurance that funds will be available to pay the costs required to assure implementation of the Environmental Use Control Agreement (“EUCA”).

WHEREAS, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the EUCA identified in Schedule A to this Agreement; and

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:

1. The term “Grantor” means the Applicant, as that term is used in the Environmental Use Control Act, who enters into this Agreement and any successors or assigns of the Grantor;
2. The term “Trustee” means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Property and Cost Estimates: This Agreement pertains to the property identified in EUCA #_____and cost estimates identified on attached Schedule A. A separate Schedule A should be submitted for each property covered by this trust agreement.

Section 3. Establishment of the Fund. The Grantor and the Trustee hereby establish a trust fund, “the Fund”, for the benefit of KDHE. 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 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 KDHE.

Section 4. Payment for Requirements of the EUCA. The Trustee shall make payments from the Fund as KDHE shall direct, in writing, to provide for the payment of the costs of any required actions pursuant to the EUCA covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by KDHE from the Fund for activities conducted pursuant to the EUCA in such amounts as KDHE shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as KDHE shall specify in writing. The amounts duly reimbursed or refunded shall no longer constitute a part of the Fund as defined herein.

Section 5. 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 its duties with respect to the trust fund solely in the interest of KDHE, and with care, skill prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in 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:

- (a) Securities or other obligations of the Grantor, or of any other Applicant or of any of their affiliates as defined in the Investment Company Act of 1940, 15 U.S.C. 80a-2.(a), as amended, shall not be acquired or held, unless they are securities or other obligations of the federal or a state government.
- (b) The Trustee is authorized to invest the Fund in any time or demand deposits of the Trustee, to the extent insured by an agency of the federal or a state government, and
- (c) The Trustee is authorized to hold cash awaiting investment or distribution for a reasonable time and without liability for the payment of interest thereon.

Section 6. Payments Comprising the Fund. Payments made to the Trustee for deposit into the Fund shall consist of cash or securities acceptable to the Trustee.

Section 7. 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.*, as amended, 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 8. Express powers of the 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 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 any 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 and 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 a part of the Fund;
- (d) To deposit 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 any 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 9. 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 10. Annual Valuation. The Trustee shall furnish on or before January 31 of each calendar year to the Grantor and to KDHE a statement confirming the value of the Fund held in trust. Any securities in the Fund shall be valued at market value no earlier than November 30 of the previous year. 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 to KDHE 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. Annual valuation statements sent to KDHE shall be addressed to the Kansas Department of Health and Environment, Bureau of Environmental Remediation, at the bureau's current address.

Section 11. Advice of Counsel. The Trustee may from time to time consult with 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 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. 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 a 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 assume administration of the trust in a writing sent to the Grantor, KDHE 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 14. 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 Schedule C or such other designees as the Grantor may designate by amendment to Schedule C. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions, provided that the acts required by such orders, requests, and instructions are not contrary to this Agreement. All orders, requests and instructions by KDHE shall be signed by the Secretary of KDHE and the Trustee 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 KDHE has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, or instructions from the Grantor or KDHE, except as provided for herein.

Section 15. Amendment of the Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and KDHE, or by the Trustee and KDHE if the Grantor ceases to exist.

Section 16. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 15, this Trust shall be irrevocable and shall continue until terminated by the written agreement of the Grantor, the Trustee, and KDHE, or by the Trustee and KDHE if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final administrative expenses, shall be delivered to the Grantor.

Section 17. 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 KDHE 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 18. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the state of Kansas.

Section 19. 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.

We hereby certify that the wording of this bond is identical to the wording specified in the Procedure for Demonstrating Financial Assurance at Property with Environmental Use Controls document as such document was constituted on the date shown immediately below.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers duly authorized, and their corporate seals to be hereunder affixed and their signatures attested, as of the dates appearing by the signatures below.

SIGNED FOR THE GRANTOR

/S/_____

Date_____

Name_____

Title_____

SIGNED FOR THE TRUSTEE

/S/_____

Date_____

Name_____

Title_____

Signature Attested by the Notary

Signature Attested by the Notary

SCHEDULE A FOR A TRUST AGREEMENT

Identification of Property Subject to EUC and Cost Estimates

Schedule A is referenced in the trust agreement dated _____ by and between

_____, the "Grantor", and
(name of Applicant) _____, the "Trustee".

(name of trustee)

KDHE EUC Number _____

Site Name _____

Address of property _____

Current EUC cost estimate _____

Date of estimate _____

SCHEDULE B TO THE TRUST AGREEMENT DATED _____

THIS SCHEDULE B, being an attachment to the Trust Agreement made effective on the date first written above, identifies the property transferred, or to be transferred, to the Fund if this is a funded trust fund; or identifies the dedicated financial instrument which will be the source of monies deposited into the Fund, if this is a standby trust fund.

Identification of Funds or the Source of Funds

Amounts

SCHEDULE B Amendment Date _____

SCHEDULE C TO THE TRUST AGREEMENT DATED _____

THIS Schedule C, being an attachment to the Trust Agreement made effective on the date first written above, identifies the officers of the Grantor who are authorized to provide written instructions to the Trustee.

NAME(S)

TITLE(S)

Schedule C Amendment Date _____

QUALIFICATION AS A SELF INSURER THROUGH A FINANCIAL TEST

The Applicant may satisfy the requirements of this method by demonstrating that it passes a financial test as specified in this document. To pass this test the Applicant must meet the criteria of either 1 or 2 listed below. In addition, the information required in 3 listed below must be submitted to KDHE to satisfy the requirements of this method. The corporate guarantee form is attached.

Definitions used are listed as follows:

EUCA Cost Estimates: Those costs described in K.A.R. 28-73-5(e), as amended.

Current EUCA Cost Estimates: The most recently approved, annually-revised cost estimate.

Independent audit: An audit performed by an independent certified public accountant in accordance with generally accepted auditing standards. An independent certified public account shall not be an employee of the Applicant, its parent or affiliate subsidiary companies, if any, the Applicant's guarantor or have any conflict of interest. The standard of due professional care must be exercised in performing and reporting on the review.

Amounts covered: All liabilities associated with the current EUCA, in addition to liabilities associated with environmental obligations which utilize a financial test or financial assurance method equivalent or substantially equivalent to the KDHE financial test method.

Financial Requirements

1. The Applicant must have:
 - (a) Two of the following three ratios: A ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and
 - (b) Net working capital and tangible net worth each at least six times the sum of the amounts covered; and
 - (c) Tangible net worth of at least \$10 million; and
 - (d) Assets in the United States amounting to at least 90 percent of its total assets or at least six times the sum of all cost estimates assured with the financial test, or
2. The Applicant must have:
 - (a) A current rating of its most recent bond issuance of AAA, AA, A or BBB as issued by Standard & Poor's or Aaa, Aa, A or Baa as issued by Moody's; and
 - (b) Tangible net worth at least six times the sum of the all cost estimates assured with the financial test; and

- (c) Tangible net worth of at least \$10 million; and
- (d) Assets located in the United States amounting to at least 90 percent of its total assets or at least six times the sum of the current EUCA cost estimates.

Proof of Financial Assurance

To demonstrate the financial test requirements are met, the Applicant must submit the following:

- (a) A letter signed by the Applicant's chief financial officer and worded as specified in the attached letter from chief financial officer format.
- (b) A copy of the independent certified public accountant's report on examination of the Applicant's financial statements for the latest completed fiscal year; and
- (c) A special report from the Applicant 's independent certified public accountant to the Applicant stating that:
 - (i) It has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited year/fiscal year financial statements with the amounts in such financial statements.
 - (ii) In connection with that procedure, no matters came to the independent certified public accountants attention which caused the independent certified public accountant to believe that the specified data should be adjusted.

Update of Information

1. After the initial submission of items specified in *Proof of Financial Assurance*, the Applicant must send updated information to the Secretary within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in *Proof of Financial Assurance* above.
2. If the Applicant is merged or sold, the reformed company must meet the criteria of the financial test or provide alternate financial assurance.

Cost Estimate

A revised cost estimate must be submitted no later than March 31 of each calender year in accordance with the statement on page 4 of the Procedure for Demonstrating Financial Assurance at Property With Environmental Use Controls document.

Alternate Financial Assurance

If the Applicant no longer meets the criteria listed in *Financial Requirements* above, the Applicant must send notice to the Secretary of intent to establish alternate financial assurance. The notice must be sent by certified mail within 45 days of KDHE's approval of the revised cost estimate for which the year-end financial data show that the Applicant no longer meets the

requirements. The Applicant must provide the alternate financial assurance, approved by the Secretary, within 120 days after the end of such date.

Termination of Self-insurance

1. The Secretary may, based on a reasonable belief that the Applicant may no longer meet the criteria listed in *Financial Requirements*, require reports of financial condition at any time from the Applicant in addition to those specified in *Proof of Financial Assurance*. If the Secretary finds, on the basis of such reports or other information that the Applicant no longer meets the criteria of Financial Requirements, the Applicant must provide alternate financial assurance as specified in this section within 45 days after notification of such a finding.
2. The Secretary may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in its report on examination of the Applicants financial statements (See *Proof of Financial Assurance*). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Secretary will evaluate other qualifications on an individual basis. The Applicant must provide alternate financial assurance within 45 days after notification of the disallowance.
3. The Applicant is no longer required to submit the items specified in Proof of Financial Assurance when:
 - (a) The Applicant substitutes alternate financial assurance as approved by the Secretary;
 - (b) The Secretary releases the Applicant from the requirements of the EUCA.

Required Text for Qualification as a Self-Insurer

Chief Financial Officer's Letter from Corporate Applicant

Corporate Financial Test

**KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
BUREAU OF ENVIRONMENTAL REMEDIATION
CHIEF FINANCIAL OFFICER'S LETTER FROM CORPORATE APPLICANT**

TO: Kansas Department of Health and Environment
Attn: Bureau of Environmental Remediation

Date _____

I am the Chief Financial Officer of _____
a [state form of business entity] organized and existing under the laws of the state of _____.

This letter is in support of the use of financial test to demonstrate financial assurance for an Environmental Use Control (EUC), pursuant to Environmental Use Control Agreement (EUCA) # _____ as specified by KDHE.

1. This firm is the Applicant of the following EUCA for which financial assurance is demonstrated through the financial test. The current EUC cost estimate covered by the test is _____.
2. This firm also provides financial assurance for environmental obligations, or provides environmental guarantees to another entity, through a financial test procedure at the following sites and jurisdictions. (If none, enter "None").
List sites, estimates and jurisdictions:

_____.

3. This firm is the Applicant of EUC # _____ for which financial assurance is not demonstrated to KDHE by the financial test or any other financial assurance method equivalent or substantially equivalent to this KDHE method. The current EUC cost estimate not covered by such financial assurance is: _____.

This firm [insert "is required" or "is not required"] to file a Form 10-K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

In support of the amounts presented on the attached financial test, I submit herewith the firm's annual, independently audited, financial statements including report of certified public accountants, Auditor's Special Report, and (if required to be filed with the SEC) Form 10-K, for the latest completed fiscal year.

I hereby certify that the wording of this letter is identical to the wording specified in the Procedure for Demonstrating Financial Assurance at Property with Environmental Use Controls document as such document was constituted on the date shown immediately below.

SIGNED FOR THE CORPORATE APPLICANT

/S/ _____

Name _____

Title _____

Date _____

**KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
BUREAU OF ENVIRONMENTAL REMEDIATION
CORPORATE FINANCIAL TEST**

[Fill in Alternative I if the criteria of Section (1) of the KDHE procedure for the financial test is used. Fill in Alternative II if the criteria of Section (2) of the KDHE procedure for the financial test is used.]

Alternative I

- | | | | |
|----|---|----|--|
| 1. | (a) Current EUCA cost estimate | \$ | |
| | (b) Estimated remedial cost should chosen remedy fail | \$ | |
| | (c) Sum of any other financial responsibilities met using the financial test
or corporate guarantee (list the responsibilities) | \$ | |
| | (d) Total of lines a, b and c | \$ | |
| 2. | Total liabilities [if any portion of the EUC or alternate remedial action
cost is included in total liabilities, you may deduct the amount of that portion
from this line and add that amount to lines 3 and 4] | \$ | |
| 3. | Tangible net worth | \$ | |
| 4. | Net worth | \$ | |
| 5. | Current assets | \$ | |
| 6. | Current liabilities | \$ | |
| 7. | Net working capital [line 5 minus line 6] | \$ | |
| 8. | The sum of net income plus depreciation, depletion and amortization | \$ | |
| 9. | Total assets in U.S. (required only if less than 90% of firm's assets
are located in U.S.) | \$ | |

Yes or No

- | | |
|-----|--|
| 10. | Is line 3 at least \$10 million? _____ |
| 11. | Is line 3 at least 6 times line 1(d)? _____ |
| 12. | Is line 7 at least 6 times line 1(d)? _____ |
| 13. | Are at least 90% of firm's assets located in the U.S.? _____ If not, complete line 14. |
| 14. | Is line 9 at least 6 times line 1(d)? _____ |
| 15. | Is line 2 divided by line 4 less than 2.0? _____ |
| 16. | Is line 8 divided by line 2 greater than 0.1? _____ |
| 17. | Is line 5 divided by line 6 greater than 1.5? _____ |

Alternative II

1. (a) Current EUC cost estimate\$ _____
(b) Estimated remedial cost should the chosen remedy fail in whole or in part ...\$ _____
(c) Sum of any other financial responsibilities met using the financial test or corporate guarantee (list the responsibilities)\$ _____
(d) Total of lines a, b, and c\$ _____
2. Current bond rating of most recent issuance of this firm and name of rating service _____
3. Date of issuance of bond _____
4. Date of maturity of bond _____
5. Tangible net worth [if any portion of the EUC or alternate remedial action cost is included in "total liabilities", on your firm's financial statements, you may add the amount of that portion to this line]\$ _____
6. Total assets in U.S. (required only if less than 90% of firm's assets are located in U.S.)\$ _____

Yes or No

7. Is line 5 at least \$10 million? _____
8. Is line 5 at least 6 times line 1(d)? _____
9. Are at least 90% of the firm's assets located in the U.S.? _____
If not, complete line 10.
10. Is line 6 at least 6 times line 1(d)? _____

I hereby certify that the wording of this document is identical to the wording specified in the Procedure for Demonstrating Financial Assurance at Property with Environmental Use Controls document as such document was constituted on the date shown immediately below.

SIGNED FOR THE [Insert "CORPORATE APPLICANT" or "CORPORATE GUARANTOR"]

/S/ _____

Name _____

Title _____

Date _____

CORPORATE GUARANTEE THROUGH A FINANCIAL TEST

The Applicant may meet the requirements for this section by obtaining a written guarantee. The guarantor is subject to the requirements and conditions listed in the *Qualification as a Self-Insurer through Financial Test* section of this document in addition to the following requirements.

Guarantor Requirements

1. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the Applicant, or a firm with a “substantial business relationship” with the Applicant. Substantial business relationship means the extent of a business relationship necessary under Kansas law to make a guarantee contract issued incident to that relationship valid and enforceable. A “substantial business relationship” must arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the Applicant is demonstrated to the satisfaction of the Secretary.
2. The guarantor must meet the requirements listed in the “Financial Requirements” section of *Qualification as a Self-Insurer through Financial Test* and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in the example provided.

Proof of Financial Assurance

1. A certified copy of the guarantee must accompany the items sent to the Secretary as specified in the “Proof of Financial Assurance” section of *Qualification as a Self-Insurer through Financial Test*. One of these items must be the letter from the guarantor’s chief financial officer.
2. If the guarantor’s parent corporation is also the parent corporation of the Applicant, the letter must describe the value received in consideration of the guarantee.
3. If the guarantor is a firm with a “substantial business relationship” with the Applicant, this letter must describe this “substantial business relationship” and the value received in consideration of the guarantee. The use of “substantial business relationships” must be approved by the Secretary.

Guarantee Requirements

The terms of the guarantee must provide that:

- (a) If the Applicant fails to perform pursuant to the EUCA of the property covered by the guarantee in accordance with the approved EUCA whenever required to do so, the guarantor will establish a trust fund in the name of the Applicant.
- (b) If the Applicant fails to provide alternate financial assurance as specified in this section and obtain the written approval of such alternate assurance from the Secretary within 90 days after receipt by both the Applicant and the Secretary of a notice of cancellation

of the corporate guarantee from the guarantor, the guarantor will provide such alternate financial assurance in the name of the Applicant.

Required Text for Corporate Guarantor Using the Financial Test

Chief Financial Officer's Letter from Corporate Guarantor

Guarantee for Environmental Use Control

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
BUREAU OF ENVIRONMENTAL REMEDIATION
CHIEF FINANCIAL OFFICER'S LETTER FROM CORPORATE GUARANTOR

To: Kansas Department of Health and Environment
Attn: Bureau of Environmental Remediation Date: _____

I am the Chief Financial Officer of _____, a
business entity organized and existing under the laws of the state of _____.

This letter is in support of the use of financial test to demonstrate financial responsibility through the corporate guarantee procedure for Environmental Use Control Agreement requirements for the properties owned or operated by the Applicant identified in the paragraphs following.

1. This firm has provided its guarantee of financial responsibility for environmental use controls, remedial actions, other potential environmental liability, or permitting, including closure and post-closure liability for the following property(ies) or facility(ies): (List sites, estimates and companies).

2. This firm provides financial assurance for environmental obligations utilizing a financial test or financial assurance method equivalent or substantially equivalent to the KDHE financial test method at the following site(s) and jurisdiction(s). (If none, enter "None"). List site(s), estimates and jurisdictions.

This firm [insert "is required" or "is not required"] to file a Form 10-K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

In support of the amounts presented on the attached financial test, I submit herewith the firm's annual, independently audited, financial statements including report of certified public accountants, Auditor's Special Report, and (if required to be filed with the SEC) Form 10-K, for the latest completed fiscal year.

We certify that the wording of this letter is identical to the wording specified in the Procedure for Demonstrating Financial Assurance at Property with Environmental Use Controls document as such document was constituted on the date shown immediately below.

SIGNED FOR THE CORPORATE GUARANTOR

/S/ _____

Name _____

Title _____

Date _____

**KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
BUREAU OF ENVIRONMENTAL REMEDIATION
GUARANTEE FOR ENVIRONMENTAL USE CONTROL**

Guarantee made this _____ day of _____, 20____, by [name of guaranteeing entity], a business entity organized under the laws of the State of _____, herein referred to as guarantor, to the Kansas Department of Health and Environment (KDHE), obligee, This guarantee is made on behalf of the [Applicant] of [address] which is [one of the following: “our subsidiary”; “a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary”; or “an entity which guarantor has a substantial business relationship”].

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified by KDHE.
2. [Applicant] owns property subject to the EUC covered by this guarantee: [Reference EUC agreement number, name and address].
3. "Environmental Use Control Agreement" (EUCA) as used below refers to an environmental use control agreement as set forth at K.S.A. 65-1,221 *et seq.*, as amended, and the rules and regulations promulgated thereunder.
4. For value received from [Applicant], Guarantor guarantees to KDHE that in the event that [Applicant] fails to perform under the EUCA in accordance with said agreement, the guarantor will fund a trust fund as specified by KDHE in the name of [Applicant] in the amount of the current EUCA cost estimates prepared as specified by KDHE.
5. Guarantor agrees that, if at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor will send within 90 days, by certified mail, notice to the Secretary of KDHE and to [Applicant] that it intends to provide alternate financial assurance as specified by KDHE in the name of [Applicant]. Within 45 days after sending such notice, the guarantor will establish such financial assurance if [Applicant] has not done so.
6. The Guarantor agrees to notify the Secretary of KDHE, by certified mail, of a voluntary or involuntary proceeding under Title 11, U.S.Code, naming guarantor as debtor, within 10 days after its commencement.
7. Guarantor agrees that within 45 days after being notified by KDHE of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of the EUCA, he will establish alternate financial assurance, as specified by KDHE, in the name of [Applicant] if [Applicant] has not done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any amendment or modification of the EUCA, or any other modification or alteration of an obligation of [Applicant] pursuant to K.A.R. 28-73-5, as amended.

9. Guarantor agrees to remain bound under this guarantee for so long as [Applicant] must comply with the applicable financial assurance requirements of KDHE for the EUCA, except that guarantor may cancel this guarantee by sending notice by certified mail, to the Secretary of KDHE and to [Applicant], such cancellation to become effective no earlier than 120 days after actual receipt of such notice by both KDHE and [Applicant], whichever is later, as evidenced by the return receipts.

10. Guarantor agrees that if [Applicant] fails to provide alternate financial assurance and obtain written approval of such assurance from the Secretary of KDHE within 90 days after a notice of cancellation by the guarantor is received by both the Secretary of KDHE and [Applicant], guarantor will provide alternate financial assurance as specified by KDHE in the name of [Applicant] within 45 days.

11. Guarantor expressly waives notice of acceptance of this guarantee by KDHE or by [Applicant]. Guarantor also expressly waives notice of amendments or modifications of the EUCA.

I hereby certify that the wording of this guarantee is identical to the wording specified in the Procedure for Demonstrating Financial Assurance at Property with Environmental Use Controls document as such document was constituted on the date shown immediately below.

SIGNED FOR THE GUARANTOR

/S/ _____

Date _____

Name _____

Title _____

Signature Attested by the Notary

Required Text for a Standby Trust Agreement

Standby Trust Agreement

Certificate of Acknowledgment for a Standby Trust Agreement

Schedule B for a Financial Guarantee Bond

Schedule B for a Performance Bond

Schedule B for a Corporate Guarantee

Schedule B for an Irrevocable Standby Letter of Credit

STANDBY TRUST AGREEMENT

Kansas Department of Health and Environment
Environmental Use Control
Financial Responsibility Requirement

TRUST AGREEMENT, the "Agreement," entered into as of [date] by and between [name of the Applicant], a [name of State] [insert "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 Kansas Department of Health and Environment, "KDHE", an agency of the State of Kansas, has established certain statutes, regulations and policies applicable to the Grantor, requiring that the Applicant for an Environmental Use Control (EUC) provide assurance that funds will be available as required by K.S.A. 65-1,224(b)(3), as amended, and K.S.A. 65-1,226(c)(3), as amended, and K.A.R. 28-73-5, as amended, and

Whereas, the Grantor has elected to obtain [insert "a financial guarantee bond", "performance bond", "a letter of credit" or "a corporate guarantee"] and establish a standby trust to provide all or part of such financial assurance for the property(ies) identified herein, and

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 Applicant 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.

Section 2. Identification of Property and Cost Estimates. This Agreement pertains to the property and cost estimates identified on attached Schedule A [on Schedule A, identify the KDHE EUC agreement number, name, address, and the current EUC cost estimate, or portions thereof, for which financial assurance is demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund", for the benefit of KDHE. 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 a total of \$ -0- which is acceptable to the Trustee.

The property as described in Schedule B attached hereto and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earning 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 KDHE.

Section 4. Payment. The Trustee shall make payments from the Fund as the Secretary of KDHE shall direct, in writing, to provide for the payment of the costs of the EUC including, but not limited to, inspection and monitoring of the EUC, the estimated amount of funding necessary to implement contingent remedies which are protective of human health and the environment should the proposed remedy fail. The Trustee shall reimburse the Grantor or other persons as specified by the Secretary of KDHE from the Fund for the payment of the costs of the EUC including, but not limited to the cost of monitoring and inspecting the EUC and the estimated amount of funding necessary to implement contingent remedies which are protective of human health and the environment should the proposed remedy fail in such amounts as the Secretary of KDHE shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Secretary of KDHE specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. 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 person 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:

- (a) Securities or other obligations of the Grantor, or any other Applicant 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;
- (b) 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 State government; and
- (c) 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.

Section 7. 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, as amended, 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 8. Express Powers 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 to 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 endorsements representing such securities with endorsements 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 endorsements 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 State government; and

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

Section 9. 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 to the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall furnish on or before January 31 of each calendar year to the Grantor and to KDHE a statement confirming the value of the Fund held in trust. Any securities in the Fund shall be valued at market value no earlier than November 30 of the previous year. 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 Secretary of KDHE 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 11. Advise 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 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. 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, the Secretary of KDHE, 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 14. Instructions to the Trustee. All orders, requests, and instruction by the Grantor to the Trustee shall be in writing signed by such persons as are designated in the attached Schedule C, or such other designees as the Grantor may designate by amendment to Schedule C. 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 Secretary of KDHE to the Trustee shall be in writing, signed by the Secretary of KDHE, 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 KDHE 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 KDHE, except as provided for herein.

Section 15. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Secretary of KDHE, or by the Trustee and the Secretary of KDHE if the Grantor ceases to exist.

Section 16. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 15, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Secretary of KDHE or by the Trustee and the Secretary of KDHE 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 17. 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 Secretary of KDHE 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 18. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Kansas.

Section 19. 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 of the legal efficacy of this Agreement.

We certify that the wording of this bond is substantially similar to the wording specified in the Procedure for Demonstrating Financial Assurance at Property with Environmental Use Controls document as such document was constituted on the date shown immediately below.

In Witness Whereof, the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written.

By: _____
(Signature of Grantor)

(Title)
Attest: _____

(Title)
(SEAL)
By: _____
(Signature of Trustee)

(Title)
Attest: _____

(Title)
(SEAL)

This bank/institution has the authority to act as a trustee and its trust activities are examined and regulated by a State or Federal agency.

**CERTIFICATE OF ACKNOWLEDGMENT FOR
STANDBY TRUST FUND AGREEMENT**

STATE OF _____

COUNTY OF _____

On this _____ day of _____, 20_____, before me personally
came

_____ to me known, who, being
by (Applicant) me duly sworn, did depose and say that she/he resides at

_____, (address)

that she/he is _____ (Title) of _____
_____, the business entity described in

and which executed the above instrument; that she/he knows the seal of said business entity; 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 business entity, and that she/he signed her/his name thereto by like order.

(Notary Public)

(Seal)

SCHEDULE B FOR A FINANCIAL GUARANTEE BOND

Schedule B is referenced in the Standby Trust Agreement dated _____ by and between _____, the “Grantor”, and _____, the “Trustee”.

Funds drawn pursuant to the Financial Guarantee Bond No. _____, whereby _____, as surety, guarantees the payment by _____, of up to _____ dollars (\$ _____) for EUC costs of the property described on Schedule A hereof dated as of _____ as said Financial Guarantee Bond may be amended, supplemented or otherwise modified from time to time, and deposited in the Fund established herewith.

SCHEDULE B FOR A PERFORMANCE BOND

Schedule B is referenced in the Standby Trust Agreement dated _____ by and between _____, the "Grantor", and _____, the "Trustee".

Funds drawn pursuant to the Performance Bond No. _____, whereby _____, as surety, guarantees the payment by _____, of up to _____ dollars (\$_____) for EUC costs of the property described on Schedule A hereof dated as of _____ as said Performance Bond may be amended, supplemented or otherwise modified from time to time, and deposited in the fund established herewith.

SCHEDULE B FOR A CORPORATE GUARANTEE

Schedule B is referenced in the Standby Trust Agreement dated _____ by and between _____, the "Grantor", and _____, the "Trustee".

Funds deposited pursuant to the Guarantee For Environmental Use Control, EUCA No. _____, whereby _____, as Guarantor, guarantees the payment by _____, of up to _____ dollars (\$ _____) for EUC costs of the property described on Schedule A hereof dated as of _____ as Guarantee for Environmental Remediation may be amended, supplemented or otherwise modified from time to time, and deposited in the fund established herewith.

SCHEDULE B FOR AN IRREVOCABLE STANDBY LETTER OF CREDIT

Schedule B is referenced in the trust agreement dated _____ by and between _____, the "Grantor" and _____, the "Trustee".

With reference to the EUC cost estimates of _____ detailed in SCHEDULE A, _____ issued Irrevocable Letter of Credit No. _____, valid from _____ until _____, with possible one-year extensions. This Letter of Credit was established for the amount of _____, and for the beneficiary, SECRETARY OF THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT. A copy of the above referenced Irrevocable Standby Letter of Credit No. _____ is attached to this STANDBY TRUST AGREEMENT.

Appendix: List of Potential Costs Associated with the EUCA

Note: This list is merely an example of some of the costs associated with inspection and maintenance activities and other activities to comply with the requirements of the EUC for the life of the EUCA. It is not to be interpreted as a list encompassing all possible costs associated with the EUC or LTCA.

Financial assurance may be required by the Secretary at a category 3 property for one or both of the following categories.

Routine administrative, inspection and maintenance costs as provided by K.A.R. 28-73-4 such as:

- ◆ Costs associated with performing inspections and document reviews of the property at the required frequency to ensure property use is in compliance with each EUCA.
- ◆ Costs associated with routine maintenance tasks, including, but not limited to:
 - Erosion repair
 - Sustaining vegetative cover
 - Resealing pavement
 - Patching cracks or pot holes in asphalt or concrete caps
 - Reconditioning or replacement of monitoring or remedial wells
 - Repair or replacement of pumps
 - Maintaining required fencing or signs
 - Access fees as necessary
- ◆ Costs to prepare reports on required inspections and maintenance activities
- ◆ Direct and indirect KDHE oversight costs, for inspection and tracking of EUCs, as estimated by KDHE
- ◆ Costs to collect and analyze soil, groundwater, surface water or sediment samples to evaluate the effectiveness and progress of each EUC and implemented remedy
- ◆ 10% contingency based on routine costs

The estimated amount of funding based on the potential for release or migration of contamination associated with remedy failure

- ◆ Costs associated with implementing contingency remedies such as:
 - Installing or replacing an engineered cap
 - Installing and operating recovery wells
 - Redesigning and implementing an alternative remedy, as approved by KDHE
- ◆ Costs to prepare all work plans, design documents, and reports associated with contingency remedies
- ◆ Direct and indirect KDHE oversight costs, such as document review and collection and analysis of samples, as estimated by KDHE
- ◆ Costs to collect and analyze soil, groundwater, surface water or sediment samples to evaluate the effectiveness and progress of the implemented remedy or contingency remedies
- ◆ 25% contingency based on remedy failure costs