

TRUST AGREEMENT

TRUST AGREEMENT, the “Agreement,” entered into as of *[date]* by and between *[name of the owner or operator]*, 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 Arkansas Pollution Control and Ecology Commission has established certain regulations applicable to the Grantor, requiring that an owner or operator of a solid waste management facility shall provide assurance that funds will be available when needed for the closure and/or post-closure facility monitoring, maintenance, and care of the facility, hereinafter referred to as “Closure and Post-Closure”, and the Arkansas Department of Environmental Quality, hereinafter referred to as “ADEQ”, an agency of the State of Arkansas, enforces those established regulations, and

WHEREAS, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein,

WHEREAS, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, subject to the final approval by the ADEQ Director, and the Trustee is willing to act as trustee,

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

- (a) The term “**Grantor**” means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.
- (b) The term “**Trustee**” means the Trustee who enters into this Agreement and any successor Trustee.
- (c) The term “**ADEQ**” means the Arkansas Department of Environmental Quality.
- (d) The term “**Director**” means the current Director of the Arkansas Department of Environmental Quality, his successors, designees, and any subsequent entity of the State of Arkansas upon whom the duties of regulation and enforcement of regulations governing solid waste landfills may devolve.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and cost estimates identified on attached Schedule A. Schedule A contains, for each facility: ADEQ permit numbers, Arkansas Facility Identification Numbers (AFIN), names, address, and the costs, as established or approved by ADEQ, per facility for Closure and Post-Closure, 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, (hereinafter referred to as the “Fund”) for the benefit of ADEQ. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto.

Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided.

The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by ADEQ.

Section 4. Payment for Closure and Post-Closure Care. The Trustee shall make payments from the Fund as the ADEQ Director shall direct, in writing, to provide for the payment of the costs of closure and/or post-closure care of the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the ADEQ Director from the Fund for closure and post-closure expenditures in such amounts as the ADEQ Director specifies in writing. In addition, the Trustee shall refund to the Grantor such amounts as the ADEQ Director 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, and shall conform to the requirements of ADEQ Regulation 22 regarding the dollar amount of the Fund.

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 persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- (a) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;
- (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 not invested 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, 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 of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;
- (d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or 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 annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the ADEQ Director a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the ADEQ Director 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. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 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 ADEQ Director, 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 Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The ADEQ Director shall also receive copies of all instructions to the Trustee from the Grantor.

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 ADEQ Director to the Trustee shall be in writing, signed by the ADEQ Director or his designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or ADEQ 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 ADEQ, except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor and the Director, by certified mail within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the ADEQ Director, or by the Trustee and the ADEQ Director if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the ADEQ Director, or by the Trustee and the ADEQ Director, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the ADEQ Director issued in accordance with this Agreement.

The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

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

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

Section 21. Jurisdiction and Venue For any and all disputes arising out of, in connection with, or relating to this Trust Agreement, the Grantor and Trustee expressly agree and consent that the exclusive jurisdiction and venue for any proceeding shall be in Pulaski County Circuit Court for the State of Arkansas in Little Rock, Arkansas, and the Grantor and Trustee waive any argument that the venue in such a forum is not convenient and any rights under any Federal or State law establishing jurisdiction or venue in another forum.

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: The parties below certify that the wording of this Agreement is identical to the wording specified by ADEQ.

GRANTOR: _____

By: _____

TRUSTEE: _____

By: _____

CERTIFICATION OF ACKNOWLEDGEMENT

ACKNOWLEDGMENT BY TRUSTEE.

(Bank Name)
STATE OF ARKANSAS
COUNTY OF _____

On this _____ day of _____, 200_ before me, the undersigned officer, personally appeared _____, who acknowledged himself/herself to have been on the relevant date the _____(title, officer, etc.) of _____(bank), and that he/she, as such, being authorized so to do, executed the Trust Agreement for the purposes therein contained, by signing his/her name in his/her official capacity on the date reflected on the pages where his/her signature appears.

IN WITNESS Whereof I hereunto set my hand and official seal.

NOTARY PUBLIC
(Seal)

My Commission Expires:

ACKNOWLEDGMENT BY GRANTOR.

(Corporation, Partnership, Association, Proprietorship Name)
STATE OF ARKANSAS
COUNTY OF _____

On this _____ day of _____, 200_ before me, the undersigned officer, personally appeared _____, who acknowledged himself/herself to have been on the relevant date the _____(title, officer, etc.) of _____(Corporation, Partnership, Association, Proprietorship), and that he/she, as such, being authorized so to do, executed the Trust Agreement for the purposes therein contained, by signing his/her name in his/her official capacity on the date reflected on the pages where his/her signature appears.

IN WITNESS Whereof I hereunto set my hand and official seal.

NOTARY PUBLIC
(Seal)

My Commission Expires:

APPROVAL FORM BY THE ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY (ADEQ)

We have reviewed this Trust wording and payment schedule and will approve the establishment of this Trust as meeting our financial assurance requirements.

By: _____

By: _____

Title: _____
Legal Division

Title: _____
Becky Keogh, Director

TRUST PAYMENT FORMULA

Regulation 22.1405 – Allowable Mechanisms

(a) Trust Fund

Section (2) Payments into the trust fund must be made annually by the owner or operator (Grantor) over the term of the initial permit or over the remaining life of the permitted facility, whichever is shorter, in the case of a trust fund for closure or post-closure care, or over one-half of the estimated length of the corrective action program in the case of corrective action for known releases. This period is referred to as the pay-in period.

Section (3) For a trust fund used to demonstrate financial assurance for closure and post-closure care, the first payment into the fund must be at least equal to the current cost estimate for closure or post-closure care, except as provided in paragraph (1) of Regulation 22.1405, divided by the number of years in the pay-in period as defined in the aforementioned paragraph. The amount of subsequent payments must be determined by the following formula:

$$\text{NEXT PAYMENT} = \frac{\text{CE} - \text{CV}}{\text{Y}}$$

Where CE is the current cost estimate for closure or post-closure care (updated for inflation or other changes), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

SCHEDULE A

The following information in this schedule relates to the original trust agreement between the _____ (Grantor) and _____ (Trustee). It is intended to give specifics about the facility covered by the trust agreements.

Facility Permit Number:

Facility AFIN:

Facility Name and Address:

*
*
*

The following are taken from the most recent AEIR:

Amount of Closure:

Amount of Post-Closure:

**Total Estimated Post-Closure costs are _____. The amount of post-closure required for financial assurance is 20% of this amount.*

SCHEDULE B

The following information in this schedule relates to the original trust agreement between the Grantor and the Trustee. It is intended to give specifics about the facility covered by the trust agreement.

First Initial Cash Deposit into Fund made on _____:

*2011 Cash Deposit into Fund: \$

Fund Balance on or about December 31, 2011: \$

A copy of the initial payments into the fund are attached.

*Amount calculated based on funding 100% of estimated closure costs and 20% of estimated post-closure costs over a remaining life of the landfill of _____ years. This amount will be funded by the _____-(Grantor) on or about December 31, 2011.

*(Not applicable to Class 3 Landfills)

**FINANCIAL ASSURANCE CHECKLIST
TRUST AGREEMENT**

Company Name: _____ Permit No.: _____

Trust Agreement: A trust agreement allows and owner or operator to set aside money in increments according to a pay-in period. At the end of the pay-in period, the facility will have enough money set aside to cover its financial assurance costs, and will have funds specifically earmarked for closure, post-closure care, and corrective action requirements.

Trustee Name: _____

Trustee Address: _____

Trustee Contact Person/Title: _____

Trustee Contact Phone No.: _____

Trust Fund Effective Date: _____

Number of Years Remaining in Pay-In Period: _____

Current Value of Trust Agreement: _____

Closure Cost Estimate (Agency Approved): _____

Post-Closure Cost Estimate (Agency Approved): _____

Reviewed by: _____

Date: _____

**FINANCIAL ASSURANCE CHECKLIST
TRUST FUNDS FOR CLOSURE AND POST-CLOSURE**

Company Name: _____ Permit No.: _____

YES NO QUESTION

- | | | |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | Is the trustee an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency? |
| <input type="checkbox"/> | <input type="checkbox"/> | Has an originally signed duplicate of the trust agreement been submitted? |
| <input type="checkbox"/> | <input type="checkbox"/> | Is the trust agreement accompanied by a formal certification of acknowledgment? |
| <input type="checkbox"/> | <input type="checkbox"/> | Does the trust agreement use wording approved by the Department? |
| <input type="checkbox"/> | <input type="checkbox"/> | Has a copy of the trust agreement been placed in the facility's operating record? |
| <input type="checkbox"/> | <input type="checkbox"/> | Was the first payment into the trust agreement made before the initial receipt of waste at the facility or before April 9, 1997, whichever was later? |
| <input type="checkbox"/> | <input type="checkbox"/> | If the pay-in period is not yet complete, have subsequent payments been made within 30 days after each anniversary date of the first payment? |
| <input type="checkbox"/> | <input type="checkbox"/> | If the pay-in period is complete and closure cost estimates have changed, is the value of the trust agreement at least equal to the amount of the current closure cost estimate, or are other financial assurance mechanisms used to cover the difference? |

Comments: _____

Reviewed by: _____

Date: _____

WHAT IS REQUIRED AT A MINIMUM:

- ✓ The Trustee must be qualified and authorized to act as a trustee. Its trust operations must be regulated and examined by a federal or state agency.
- ✓ The text of the trust agreement must be filed on forms developed by ADEQ and provided to the Director for approval.
- ✓ The owner/operator must provide ADEQ with an originally signed copy of the trust agreement to the Director for approval.