

AST FR – 2 Guidance

IRREVOCABLE LETTER OF CREDIT

A letter of credit is a guarantee from a bank that can be drawn on by the agency to cover the cost of corrective action/cleanup activities if the owner or operator is unable to do so. The letter of credit must be issued by a bank organized or authorized to do business in the State of West Virginia.

It must be irrevocable during its term and any bank issuing a letter of credit must notify the Secretary in writing at least 90 days prior to the maturity date of the letter or the expiration of the letter of credit agreement.

The letter of credit must be payable to the Secretary in part or full upon demand and receipt of the Secretary of a notice of forfeiture.

The Secretary may not accept a letter of credit in excess of 10 percent of the bank's capital surplus account as shown on a balance sheet certified by a certified public accountant.

The letter of credit must provide that the bank will give prompt notice to the owner or operator and the Secretary of any notice received or action filed alleging the insolvency or bankruptcy of the bank, or alleging any violation of regulatory requirements which could result in suspension or revocation of the bank's charter or license to do business. Additionally, in the event the bank becomes unable to fulfill its obligations under the letter of credit for any reason, notice must be given to the owner or operator and the Secretary.

An example of a letter of credit should be worded as provided in Form AST FR-2. AST FR-2 has been pre-approved by the West Virginia Attorney General's office.

Note: The officer executing a Letter of Credit should be the president or vice-president. However, another bank official may execute the Letter of Credit so long as it is accompanied by proof of board of directors' action authorizing such official to execute such documents on behalf of the bank.

All Letters of Credit must be supported by the customer's unqualified obligation to reimburse the issuer for monies paid under the terms of the Letter of Credit.