

Trust Fund/Standby Trust Fund
OAC 1301:7-9-05(Q&R)

[Note (Trust Fund): An owner or operator may satisfy the requirements of paragraphs (H) to (H)(2) of this rule by establishing a trust fund that conforms to the requirements of paragraphs (Q)(1) to (Q)(7) of this rule. Refer to OAC 1301:7-9-05(Q) for additional requirements.]

[Note (Standby Trust Fund): An owner or operator using any one of the mechanisms authorized by paragraphs (M) to (M)(5), (O) to (O)(5), (P) to (P)(5), or (U)(4)(a) to (U)(4)(b) of this rule shall establish a standby trust fund that conforms to the requirements of paragraph (R) to (R)(5) of this rule when the mechanism is acquired..]

[Note: The standby trust agreement, or trust agreement, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.]

“Trust Agreement.

Trust agreement, the "Agreement", entered into as of [date] by and between [name of the owner or operator], a/an [name of state] [corporation, partnership, association, or proprietorship], the Grantor, and [name of corporate trustee], ["incorporated in the state of [name of state]" or a "national bank":], the Trustee.

Whereas, the Fire Marshal, a division of the state of Ohio, has established certain regulations applicable to the Grantor, requiring that an owner or operator of an underground storage tank shall provide assurance that funds will be available when needed for corrective action and third-party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases from underground storage tanks. **The attached Schedule A lists the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located that are covered by this trust agreement.**

[Whereas, the Grantor has elected to establish a ["**guarantee**", "**surety bond**", or "**letter of credit**"] to provide all or part of such financial assurance for the underground storage tanks identified herein and is required to establish a standby trust fund able to accept payments from the instrument (this paragraph is only applicable to the standby trust agreement.);

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 owner or operator who enters into this Agreement and any successor 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 the Financial Assurance Mechanism.

This Agreement pertains to the **[identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments (this paragraph is only applicable to the standby trust agreement.)]**.

Section 3. Establishment of Fund.

[The following paragraph is only applicable to the standby trust fund.]

The Grantor and Trustee hereby establish a standby trust fund, the "Fund", for the benefit of the Ohio Fire Marshal. 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 a standby to receive payments and shall not consist of any property. Payments made by the provider of financial assurance pursuant to the Ohio Fire Marshal's instruction are transferred to the Trustee and are 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 provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the Ohio Fire Marshal.

[The following paragraph is only applicable to the trust fund.]

The Grantor and Trustee hereby establish a trust fund, the "Fund", for the benefit of the Ohio Fire Marshal. The Fund shall at all times have a minimum value of **[applicable dollar amount from paragraphs (H)(1) to (H)(1)(b) of rule 1301:7-9-05 of the Ohio Administrative Code.]** The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. 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 liability of the Grantor established by the Ohio Fire Marshal.

Section 4. Payment for Corrective Action and Third-party Liability Claims.

The Trustee shall make payments from the Fund as the Ohio Fire Marshal shall direct, in writing, to provide for the payment of the costs of taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases from the tanks covered by the financial assurance mechanism identified in this Agreement.

The Fund may not be drawn upon to cover any of the following:

- (A) Any obligation of **[owner or operator]** under a worker's compensation, disability benefits, or unemployment compensation law or other similar law;
- (B) Bodily injury to an employee of **[owner or operator]** arising from, and in the course of employment by **[owner or operator]**;
- (C) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(D) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by **[owner or operator]** that is not the direct result of a release from a petroleum underground storage tank; or

(E) Bodily injury or property damage for which **[owner or operator]** is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of paragraphs (H) to (H)(2) of rule 1301:7-9-05 of the Ohio Administrative Code.

The Trustee shall reimburse the Grantor, or other persons as specified by the Ohio Fire Marshal, from the Fund for corrective action expenditures and third-party liability claims in such amounts as the Ohio Fire Marshal shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Ohio Fire Marshal 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 and 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 beneficiaries 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:

(I) Securities or other obligations of the Grantor, or any other owner or operator of the tanks, 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;

(II) 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

(III) 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, 15 U.S.C. 80A-1 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 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;

(E) To compromise or otherwise adjust all claims in favor of or against the Fund; and

(F) To distribute income of the Fund to the Grantor, but only to an extent which assures that the Fund retains a minimum value equal to [insert: applicable dollar amount from paragraphs (H) to (H)(1)(b) of rule 1301:7-9-05 of the Ohio Administrative Code.]

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. Advice of Counsel.

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions 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 11. Trustee Compensation.

The Trustee shall be entitled to reasonable compensation for its services as set forth in the attached Schedule B and as agreed upon in writing from time to time with the Grantor.

Section 12. 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 and shall provide the Grantor and successor trustee with a final accounting of the Fund within thirty days. 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 writing sent to the Grantor and the present Trustee by certified mail ten 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 13. 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. All orders, requests, and instructions by the Ohio Fire Marshal to the Trustee shall be in writing, signed by the Ohio Fire Marshal, 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 the Ohio Fire Marshal 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 the Ohio Fire Marshal, except as provided for herein.

Section 14. Amendment of Agreement.

This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and the Ohio Fire Marshal if the Grantor ceases to exist.

Section 15. Irrevocability and Termination.

Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the Ohio Fire

Marshal 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 16. 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 Ohio Fire Marshal issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, 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 17. Choice of Law.

This Agreement shall be administered, construed, and enforced according to the laws of the state of **[name of state]**, or the Comptroller of the Currency in the case of National Association banks.

Section 18. 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.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) 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 in paragraph (R)(2)(a) of rule 1301:7-9-05 of the Ohio Administrative Code as such regulations were constituted on the date written above.

[Printed Name, Title, and Signature of Grantor].

Attest:

[Printed Name, Title, and Signature of Trustee].
[Seal].

[Printed Name, Title, and Signature of Witness].
[Seal]."

[The standby trust agreement or trust agreement shall be accompanied by a formal certification of acknowledgment worded as follows:]

"State of **[name of state]**
County of **[name of county]**

On this **[date]**, before me personally came **[owner or operator]** to me known, who, being by me duly sworn, did depose and say that she/he resides at **[address]**, that she/he is **[title]** of **[corporation]**, the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; 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 corporation; and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]
[Printed Name of Notary Public]"