



**CLAY AND SHALE
IRREVOCABLE LETTER OF CREDIT**

State Form 54964 (3-12)
Approved by State Board of Accounts, 2011

INDIANA DEPARTMENT OF NATURAL RESOURCES
DIVISION OF RECLAMATION

FOR OFFICIAL USE

INSTRUCTIONS: 1. Submit One (1) Original and One (1) Copy

Irrevocable Letter of Credit Number _____ Date (month, day, year) _____

Name and Address of Issuing Bank:

Name and Address of Permittee:

Beneficiary: Department of Natural Resources
Division of Reclamation
14619 W State Road 48
Jasonville, IN 47438

WHEREAS, _____ (hereinafter "Permittee") desires to conduct surface clay and shale mining and reclamation activities within the State of Indiana under Permit Number: _____, Pit Name: _____, and

WHEREAS, I.C. 14-36-1 requires the Permittee to post a performance bond in favor of the Indiana Department of Natural Resources, Division of Reclamation (hereinafter "DNR") prior to the Permittee's commencement of surface clay and shale mining and reclamation activities under the above-referenced permit; and

WHEREAS, the Permittee desires to utilize an Irrevocable Letter of Credit issued by _____ (hereinafter "Issuing Bank") as the performance bond for the above-referenced permit,

NOW THEREFORE, in consideration of the premises, the mutual covenants contained herein and each act done pursuant hereto, the Issuing Bank hereby issues to the DNR this Irrevocable Letter of Credit Number: _____ (hereinafter "Letter of Credit") in the amount of:

(\$ _____) for the Permittee this _____ day of _____, 20____,
under the following terms and conditions:

Clay and Shale Irrevocable Letter Of Credit

- 1) This Letter of Credit is a binding obligation of the Issuing Bank, independent of the acts and omissions of the Permittee, and is payable to the DNR by sight draft presented to the Issuing Bank for payment pursuant to the terms and conditions of this Agreement.
- 2) The Issuing Bank engages with drawers and/or bona fide holders that drafts drawn and negotiated in conformity with the terms and conditions of this Letter of Credit will be duly honored on presentation. This Letter of Credit shall be deemed to be executed in Greene County, Indiana, for the purposes of enforcement and any actions hereon shall be enforceable in the courts of Indiana and shall be construed under Indiana Law.
- 3) The Issuing Bank warrants and covenants that it is organized or authorized to do business in the United States.
- 4) This Letter of Credit is irrevocable prior to total release by the Director of the Department of Natural Resources.
- 5) Partial releases and drawings are permitted under this Letter of Credit.
- 6) This Letter of Credit is effective for the duration of one of the following terms (please select one of the following):
_____ a) Liability of the Issuing Bank under this Letter of Credit commences upon execution of this Letter of Credit and expires one (1) year following said date of execution. This Letter of Credit will automatically extend for additional successive terms of one (1) year each, unless the Issuing Bank provides the DNR with written notice, at least ninety (90) days prior to the expiration date, that the Issuing Bank does not wish to extend this Letter of Credit for an additional one (1) year term.
_____ b) Liability of the Issuing Bank under this Letter of Credit commences upon execution of this Letter of Credit and shall continue until all reclamation, restoration and abatement work required of the Permittee under I.C. 14-36-1 and provisions of the above-referenced permit and/or any other lawful requirements imposed by the DNR have been completed and the above-referenced permit is terminated by a release of the Permittee from any further reclamation liability.
- 7) If a term option under Paragraph 6 of this Letter of Credit is not selected, the provisions of Paragraph 6(b) shall apply.
- 8) This Letter of Credit is payable to the DNR in part or in full upon demand and receipt from the Director of the DNR, or one of the Director's duly authorized representatives, of a notice of forfeiture issued in accordance with I.C. 14-36-1-31.
- 9) The Director of the DNR, or one of the duly authorized representatives, is hereby authorized to draw upon this Letter of Credit, in full, to obtain cash collateral in the event that the Permittee has failed to furnish to the Director a replacement bond consistent with I.C. 14-36-1-21 at least 30 days prior to the expiration of this Letter of Credit, and any such draft need not be accompanied by a notice of forfeiture in accordance with I.C. 14-36-1-31.
- 10) The Issuing Bank warrants and covenants that the total amount of Letters of Credit (including the present Letter of Credit) issued by the Issuing Bank to the Permittee on all permits held by the Permittee, does not exceed the Issuing Bank's maximum legal lending limit as required by the appropriate Indiana or Federal banking regulatory agency.
- 11) The Issuing Bank will give prompt notice to the Permittee and the Director of the DNR of any notice received or action filed alleging the insolvency or bankruptcy of the Issuing Bank, or alleging any violations of regulatory requirements that could result in suspension or revocation of the Issuing Bank's charter or license to do business.
- 12) In the event the Issuing Bank becomes unable to fulfill its obligations under this Letter of Credit for any reason, notice shall be given immediately to the Permittee and the Director of the DNR.
- 13) Upon the incapacity of a bank by reason of bankruptcy, insolvency, suspension or revocation of its charter or license, the Permittee shall be deemed to be without performance bond coverage in violation of I.C. 14-36-1-21.

Printed Name and Official Title
Authorized Representative of Issuing Bank

Signature
Authorized Representative of Issuing Bank

Accepted: _____
Date (month, day, year)

Authorized Signature
Division of Reclamation
Department of Natural Resources

INSTRUCTIONS FOR COMPLETING CLAY AND SHALE IRREVOCABLE LETTER OF CREDIT

This form may only be used for bonding permanent program permits issued in accordance with I.C. 14-36-1. Bond for permits issued in accordance with I.C. 14-34 must be submitted on a different form. Do not make any entries in the space identified "FOR OFFICIAL USE".

The following explanations are numbered to correspond to the numbered items on the attached Form:

- (1) Letter of Credit Number - This number is to be selected and assigned by the financial institution.
- (2) Date – Insert the date this Letter of Credit is signed.
- (3) Name and Address of Issuing Bank – Type or print the name and address of the bank issuing the Letter of Credit. This is the address to which the Division of Reclamation will send all correspondence concerning this Letter of Credit.
- (4) Name and Address of Permittee – Type or print the name and address of the Permittee. The name must be identical to the name used in the permit. This is the address to which the Division of Reclamation will send all correspondence concerning this Letter of Credit.
- (5) Permittee – Type or print the name of the Permittee.
- (6) Permit Number – This number is assigned by the Division of Reclamation and should be inserted in this blank.
- (7) Pit Name – Type or print the name of the mine.
- (8) Issuing Bank – Type or print the name of the bank issuing this Letter of Credit.
- (9) Letter of Credit Number – This number must be the same as in (1) above.
- (10) Amount – Type in words the amount of the Letter of Credit.
- (11) Amount – Type in figures the amount of the Letter of Credit.
- (12) Date – Type in the date of the issuance of the Letter of Credit.
- (13) Selection of Term of Letter of Credit – Check this box IF the Letter of Credit is to be issued for one year and automatically renewed thereafter.
- (14) Selection of Term of Letter of Credit – Check this box IF Letter of Credit is to continue in force from execution until termination of the Permit.
- (15 and 16) Must be completed by an authorized responsible official of the bank.

Please be sure to SUBMIT ONE (1) ORIGINAL AND ONE (1) COPY of the fully executed document.

Upon acceptance of the document, the Division of Reclamation will retain the original document, a copy will be returned to the bank and a copy will be sent to the permittee.



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INSTRUCTIONS: 1. Submit One (1) Original and One (1) Copy

Irrevocable Letter of Credit Number _____ (1) _____ Date (month, day, year) _____ (2) _____

Name and Address of Issuing Bank: _____ (3) _____

Name and Address of Permittee: _____ (4) _____

Beneficiary: Department of Natural Resources
Division of Reclamation
14619 W. State Road 48
Jasonville, Indiana 47438

WHEREAS, _____ (5) _____ (hereinafter "Permittee") desires to
conduct surface clay and shale and reclamation activities within the State of Indiana under Permit
Number: _____ (6) _____, Pit Name: _____ (7) _____, and

WHEREAS, I.C. 14-36-1 requires the Permittee to post a performance bond in favor of the Indiana Department of
Natural Resources, Division of Reclamation (hereinafter "DNR") prior to the Permittee's commencement of surface clay
and shale mining and reclamation activities under the above-referenced permit; and

WHEREAS, the Permittee desires to utilize an Irrevocable Letter of Credit issued by _____ (8) _____
_____ (hereinafter "Issuing Bank") as the performance bond for the above-referenced permit,

NOW THEREFORE, in consideration of the premises, the mutual covenants contained herein and each act done
pursuant hereto, the Issuing Bank hereby issues to the DNR this Irrevocable Letter of Credit Number: _____ (9) _____
(hereinafter "Letter of Credit") in the amount of _____ (10) _____ (\$ _____ (11) _____) for the
Permittee this _____ (12) _____ day of _____, 20 _____, under the following terms and conditions:

Clay and Shale Irrevocable Letter Of Credit

- 1) This Letter of Credit is a binding obligation of the Issuing Bank, independent of the acts and omissions of the Permittee, and is payable to the DNR by sight draft presented to the Issuing Bank for payment pursuant to the terms and conditions of this Agreement.
- 2) The Issuing Bank engages with drawers and/or bona fide holders that drafts drawn and negotiated in conformity with the terms and conditions of this Letter of Credit will be duly honored on presentation. This Letter of Credit shall be deemed to be executed in Greene County, Indiana, for the purposes of enforcement and any actions hereon shall be enforceable in the courts of Indiana and shall be construed under Indiana Law.
- 3) The Issuing Bank warrants and covenants that it is organized or authorized to do business in the United States.
- 4) This Letter of Credit is irrevocable prior to total release by the Director of the Department of Natural Resources.
- 5) Partial releases and drawings are permitted under this Letter of Credit.
- 6) This Letter of Credit is effective for the duration of one of the following terms (please select one of the following):
(13) a) Liability of the Issuing Bank under this Letter of Credit commences upon execution of this Letter of Credit and expires one (1) year following said date of execution. This Letter of Credit will automatically extend for additional successive terms of one (1) year each, unless the Issuing Bank provides the DNR with written notice, at least ninety (90) days prior to the expiration date, that the Issuing Bank does not wish to extend this Letter of Credit for an additional one (1) year term.
(14) b) Liability of the Issuing Bank under this Letter of Credit commences upon execution of this Letter of Credit and shall continue until all reclamation, restoration and abatement work required of the Permittee under I.C. 14-36-1, provisions of the above-referenced permit and/or any other lawful requirements imposed by the DNR have been completed and the above-referenced permit is terminated by a release of the Permittee from any further reclamation liability.
- 7) If a term option under Paragraph 6 of this Letter of Credit is not selected, the provisions of Paragraph 6(b) shall apply.
- 8) This Letter of Credit is payable to the DNR in part or in full upon demand and receipt from the Director of the DNR, or one of the Director's duly authorized representatives, of a notice of forfeiture issued in accordance with I.C. 14-36-1-31.
- 9) The Director of the DNR, or one of the duly authorized representatives, is hereby authorized to draw upon this Letter of Credit, in full, to obtain cash collateral in the event that the Permittee has failed to furnish to the Director a replacement bond consistent with I.C. 14-36-1-21 at least 30 days prior to the expiration of this Letter of Credit, and any such draft need not be accompanied by a notice of forfeiture in accordance with I.C. 14-36-1-31.
- 10) The Issuing Bank warrants and covenants that the total amount of Letters of Credit (including the present Letter of Credit) issued by the Issuing Bank to the Permittee on all permits held by the Permittee, does not exceed the Issuing Bank's maximum legal lending limit as required by the appropriate Indiana or Federal banking regulatory agency.
- 11) The Issuing Bank will give prompt notice to the Permittee and the Director of the DNR of any notice received or action filed alleging the insolvency or bankruptcy of the Issuing Bank, or alleging any violations of regulatory requirements that could result in suspension or revocation of the Issuing Bank's charter or license to do business.
- 12) In the event the Issuing Bank becomes unable to fulfill its obligations under this Letter of Credit for any reason, notice shall be given immediately to the Permittee and the Director of the DNR.
- 13) Upon the incapacity of a bank by reason of bankruptcy, insolvency, suspension or revocation of its charter or license, the Permittee shall be deemed to be without performance bond coverage in violation of I.C. 14-36-1-21.

(15)

Printed Name and Official Title
Authorized Representative of Issuing Bank

(16)

Signature
Authorized Representative of Issuing Bank

Accepted: _____
Date (month, day, year)

Authorized Signature
Division of Reclamation
Department of Natural Resources