

## **Trust Agreement**

**Check One:**       Standby Trust       Funded Trust

**Trust Account Number:** \_\_\_\_\_

"Trust agreement. The "agreement", entered into as of \_\_\_\_\_  
Effective date

by and between \_\_\_\_\_,  
Name of owner or operator

a(n) \_\_\_\_\_, the "grantor",  
State where business is located      Choose one: Corporation, association, partnership, proprietorship

and \_\_\_\_\_  
Name and address of financial institution acting as trustee

\_\_\_\_\_ the "trustee".  
Insert "a national bank" or "incorporated in the state of (state)"

Whereas, the Ohio Environmental Protection Agency, ("Ohio EPA"), has established certain rules applicable to the grantor, requiring that the owner or operator of a solid waste facility or a scrap tire transporter provide assurance that funds will be available when needed for final closure, post-closure care, and/or corrective measures at the facility, or for scrap tire transporter final closure.

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, 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 "director" means the director of the Ohio EPA, or his designee.

**Section 2. Identification of facilities and cost estimates.** This agreement pertains to a solid waste facility and/or a scrap tire transporter and cost estimates identified on attached *Schedule A*.

**Section 3. Establishment of fund.** The grantor and the trustee hereby establish a trust fund, the "fund", for the benefit of the Ohio EPA. 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 will 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 the Ohio EPA.

**Section 4. Payment for final closure and post-closure care, scrap tire transporter final closure, and corrective measures.** The trustee will make such payments from the fund as the director will direct, in writing, to provide for the payment of the costs of final closure, post-closure care, and/or corrective measures at the facility or scrap tire transporter final closure covered by this agreement. The trustee will reimburse the grantor or other persons as specified by the director from the fund for final closure, post-closure care, scrap tire transporter final closure, and/or corrective measures expenditures in such amounts as the director will direct, in writing. In addition, the trustee will refund to the grantor such amounts as the director specifies in writing. Upon refund, such funds will no longer constitute part of the fund as defined herein.

**Section 5. Payments comprising the fund.** Payments made to the trustee for the fund will consist of cash or securities acceptable to the trustee.

**Section 6. Trustee management.** The trustee will 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 periodically, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the fund, the trustee will 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 scrap tire transporter, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. section 80a-2(a), will 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;
- (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 periodically 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. sections 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 discretion 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 will 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 will 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.

**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 will be paid from the fund. All other expenses, proper charges, and disbursements, 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 will be paid from the fund. Expenses, proper charges, and disbursements include fees for legal services, rendered to the trustee and the compensation of the trustee to the extent the grantor fails to compensate the trustee pursuant to section 12.

**Section 10. Annual valuation.** The trustee will annually, not later than thirty days prior to the anniversary date of the establishment of the fund, furnish to the grantor and to the director a statement confirming the value of the trust. Any securities in the fund will be valued at market value as of no more than sixty days prior to the anniversary date of establishment of the fund. The failure of the grantor to object in writing to the trustee not later than ninety days after the statement has been furnished to the grantor and the director will 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 periodically 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 will be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

**Section 12. Trustee compensation.** The trustee will be entitled to reasonable compensation from the grantor for the trustee's services as agreed upon in writing periodically 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 will have the same powers and duties as those conferred upon the trustee hereunder. Upon the successor trustee's acceptance of the appointment, the trustee will 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 director, and the present trustee by certified mail not later than 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 will be paid as provided in section 9.

**Section 14. Instructions to the trustee.** All orders, requests, and instructions by the grantor to the trustee will 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 trustee will be fully protected in acting without inquiry in accordance with the grantor's orders, requests, and instructions. All orders, requests, and instructions by the director to the trustee will be in writing, signed by the director, and the trustee will act and will be fully protected in acting in accordance with such orders, requests, and instructions. The trustee will 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 director hereunder has occurred. The trustee will have no duty to act in the absence of such orders, requests, and instructions from the grantor and/or the director except as provided for herein.

**Section 15. Notice of nonpayment.** The trustee will notify the grantor and the director by certified mail not later than ten days after the expiration of the thirty-day period following the anniversary of the establishment of the trust, if no payment is received from the grantor during the period. After the pay-in period is completed the trustee is not 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 director, or by the trustee and the 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 will be irrevocable and will continue until termination at the written agreement of the grantor, the trustee, and the

director, or by the trustee and the director if the grantor ceases to exist. Upon termination of the trust, all remaining trust property, less final trust administration expenses, will be delivered to the grantor, unless the trust is a "standby trust" fund created in accordance with paragraph (G), (H), or (I) of rule 3745-27-15, 3745-27-16, or paragraph (H), (I), or (J) of 3745-27-18 of the Administrative Code, in which case all remaining trust property, less final trust administration expenses, will be delivered to the provider of the financial assurance.

**Section 18. Immunity and indemnification.** The trustee will 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 director issued in accordance with this agreement. The trustee will 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 will be administered, construed, and enforced according to the laws of the state of Ohio.

**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 will 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 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 (A)(1) of rule 3745-27-17 of the Administrative Code as such rule was constituted on the date first above written.

**Grantor**

**Trustee**

\_\_\_\_\_  
Signature(s) of grantor(s)

\_\_\_\_\_  
Signature(s) of Trustee(s)

\_\_\_\_\_  
Title(s) of grantor(s)

\_\_\_\_\_  
Title(s) of Trustee(s)

Attest :

Attest :

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Title of Witness

\_\_\_\_\_  
Title of Witness

Grantor Seal (if available)

Trustee Seal (if available)

**Certification of Acknowledgment**

State of \_\_\_\_\_, County of \_\_\_\_\_

on this \_\_\_\_\_, before me personally came \_\_\_\_\_  
Date Name of Owner or Operator (grantor)

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

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

that she/he is \_\_\_\_\_ of \_\_\_\_\_,  
Title of owner/operator Name of Business

and 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

Seal:

# SCHEDULE A

On Schedule A, for each facility and scrap tire transporter list the name, address, unit(s), and the current final closure, post-closure care, scrap tire transporter final closure, and/or corrective measures, cost estimates, or portions thereof, for which financial assurance is demonstrated by this agreement.

Name and address of Facility or Scrap Tire Transporter business address:

Name: \_\_\_\_\_

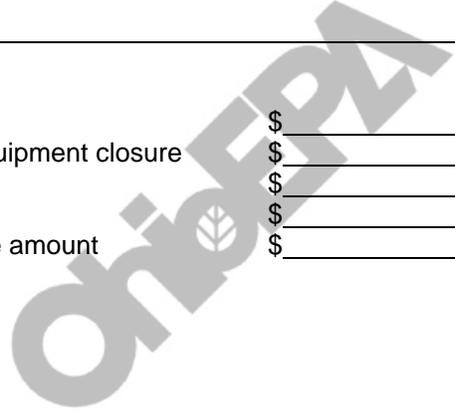
Address: \_\_\_\_\_

City, State, Zip, County: \_\_\_\_\_

Business Contact person: \_\_\_\_\_

Contact phone: \_\_\_\_\_

Final closure amount	\$	_____
Scrap tire portable processing equipment closure	\$	_____
Post-closure care amount	\$	_____
Corrective measures amount	\$	_____
Scrap tire transporter final closure amount	\$	_____



On Schedule B, list the amount the trust is funded. If the trust is a standby trust, list the amount the trust would have in it, if it were funded. Select from **one** of the options below according to the type of financial assurance used. If none of the options pertain, then submit Schedule B in accordance with Ohio Administrative Code 3745-27-17.

**Option 1**

**SCHEDULE B-Fully Funded**

This trust fund is funded on \_\_\_\_\_ in the amount of  
(date)

\_\_\_\_\_ U.S. dollars (\$\_\_\_\_\_ ).  
(dollar amount spelled out)

**Option 2**

**SCHEDULE B-Surety Bond**

The corpus of this trust is now empty and when funded the amount will be

\_\_\_\_\_ U.S. dollars (\$\_\_\_\_\_ ) from  
(dollar amount spelled out)

\_\_\_\_\_. The surety bond number is \_\_\_\_\_.  
(name of surety bond company)

**Option 3**

**SCHEDULE B-Letter of Credit**

The corpus of this trust is now empty and when funded the amount will be

\_\_\_\_\_ U.S. dollars (\$\_\_\_\_\_ ) from  
(dollar amount spelled out)

\_\_\_\_\_. The letter of credit number is \_\_\_\_\_.  
(name of financial institution)

On Exhibit A, list the name of the person(s) the grantor has authorized to sign all orders, requests, and instructions by the grantor to the trustee.

**EXHIBIT A**

All orders, requests, and instructions by the grantor to the trustee will be in writing, signed by such persons as are designated below:

_____	_____
(name)	(Title)
_____	_____
(name)	(Title)
_____	_____
(name)	(Title)

