



## MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY

Remediation and Redevelopment

### LETTER OF CREDIT PART 201

This document provides instructions on the use of a Letter of Credit (LOC) to fulfill the requirements for financial assurance pursuant to Section 20114d(4)(b) of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.20101 *et seq.* This document and attached model document are provided to the public as preliminary guidance as to the content, format, and terms of the Financial Assurance Mechanism and are not intended, nor can they be relied upon to create any substantive or procedural rights by any other party.

Pursuant to Section 20114d of the NREPA, upon completion of remedial actions that satisfy the requirements of Part 201, a person may submit a No Further Action Report (NFA Report) to the Michigan Department of Environment, Great Lakes, and Energy (EGLE). If a postclosure agreement (Agreement) is required as part of the NFA Report, Section 20114d(4)(b) requires financial assurance to pay for monitoring, operation and maintenance, oversight, and other costs determined by EGLE to be necessary to assure the effectiveness and integrity of the remedial action unless the financial assurance is de minimis. The de minimis threshold is \$2,500 per year in 2001 dollars. A link to a Consumer Price Index Inflation Calculator is provided to determine if the current annual costs exceed the 2001 dollar value: [CPI Inflation Calculator](#). Section 20101(u) of the NREPA, defines financial assurance as a performance bond, escrow, cash, certificate of deposit, irrevocable letter of credit, corporate guarantee, or other equivalent security, or combination thereof.

A Letter of Credit (LOC) is a commitment from a financial institution (Issuing Institution) to substitute its credit for another party's credit and obligates the Issuing Institution to make payment whenever the LOC is presented. The LOC represents an independent obligation of the Issuing Institution.

If a person elects to use a LOC to meet its financial assurance obligations (Designated Party), the LOC must be executed by the Issuing Institution and provide the following:

1. Consistency with the requirements of the Michigan Uniform Commercial Code.
2. Issued by an Issuing Institution that has the appropriate authority and is regulated by a Federal or State agency.
3. Executed on the letterhead of the Issuing Institution; list EGLE as the sole beneficiary; and include the State of Michigan's Federal Tax Identification Number (38-6000134).
4. Worded in accordance with the model Letter of Credit. Any modification to the model language may only be made with the concurrence of EGLE.
5. Irrevocable and issued for a period of at least one year.
6. Automatic extensions of at least one year unless the Issuing Institution provides notice to the Designated Party and the Remediation and Redevelopment Division (RRD) Director (EGLE

Authorized Representative) at least one hundred twenty (120) days prior to the LOC's expiration date via certified mail, that it will not extend the LOC beyond the current expiration date (Notice).

7. If the person or entity submitting the NFA Report fails to provide EGLE Authorized Representative with an acceptable replacement financial assurance mechanism within ninety (90) days of receipt of the above-referenced Notice, EGLE Authorized Representative may draw on the LOC.
8. Be in an amount at least equal to, or greater than, the amount necessary to fund all monitoring, operation and maintenance, oversight, and other costs required to assure the effectiveness and integrity of the remedial action for the time frame(s) specified in the Agreement.

Please contact Mr. Brad Ermisch, Compliance and Enforcement Section, Remediation and Redevelopment Division (RRD), EGLE, at [ermischb@michigan.gov](mailto:ermischb@michigan.gov) or 517-275-1173 for any questions relating to this document or the attached model document; or you may call the RRD main number at 517-284-5087 for assistance.

Drafting Instructions: Copy and paste the text portion of the model document onto appropriate letterhead. Drafting notes and examples appear as ***italicized bold font***, insertion directions appear as ***[italicized bold font within bold brackets]***, and word choices appear as ***[regular bold font within bold brackets]***.

--END OF GUIDANCE AND INSTRUCTIONS--

## LETTER OF CREDIT MODEL

**[insert name of EGLE Authorized Representative]**  
Remediation and Redevelopment Division  
Michigan Department of Environment, Great Lakes, and Energy  
P.O. Box 30426  
Lansing, Michigan 48909-7926  
Federal Tax Identification No. 38-6000134 (State of Michigan)

Dear **[insert name of the EGLE Authorized Representative]**:

SUBJECT: **[insert name and address of facility]**  
Site ID No.: **[insert site ID number]**

1. **[Insert name of issuing institution]** hereby issues this irrevocable Letter of Credit No. **[insert number]** (LOC) in favor of the Michigan Department of Environment, Great Lakes, and Energy (EGLE) on behalf of **[insert name of person submitting the NFA Report]** (Designated Party) for the sum of \$**[insert numeric amount]** **[insert amount in written text]**:  
( \_\_\_\_\_ and \_\_\_\_\_/100 dollars)], effective immediately, available against EGLE draft(s) at sight drawn on our institution and bearing the clause “Drawn under **[insert name of issuing institution]**’s LOC No. **[insert LOC number]** dated **[effective date of LOC]**” and signed by EGLE Authorized Representative. We are a bank or financial institution that has the authority to issue LOCs. Our operation is regulated and examined by **[insert name of federal or state agency]**.
2. The purpose of this LOC is to provide financial assurance to EGLE for monitoring, operation and maintenance, oversight, and other costs determined to be necessary by EGLE to assure the effectiveness and integrity of the remedial action documented in the No Further Action (NFA) Report submitted by the Designated Party on **[insert date of submittal]**.
3. This LOC is effective as of **[insert date]** and shall expire on **[insert expiration date which must be at least one (1) year after the effective date]**, but such LOC shall be automatically extended for a period of at least one year each and every subsequent year unless, not less than one hundred and twenty (120) days before the extended expiration date indicated above, we notify the Designated Party and EGLE Authorized Representative as indicated above. We agree that the one hundred and twenty (120) day period shall begin on the date when both the Designated Party and EGLE Authorized Representative have received the notice, as evidenced by the return certified mail receipts.
4. The EGLE Authorized Representative may make complete or partial drawing(s) on this LOC. When making a partial drawing, the EGLE Authorized Representative must submit the original

LOC to us together with any drawings hereunder for our endorsement of any payments effected by us and/or for cancellation.

- (a) If, within ninety (90) days of both the Designated Party and the EGLE Authorized Representative's receipt of a notice from us that we have decided not to extend the LOC beyond its current expiration date; the Designated Party fails to make arrangements with us to provide the EGLE Authorized Representative with an extension of the current expiration date of this LOC or with an acceptable replacement LOC; or fails to make arrangements for another type of financial assurance mechanism acceptable to the
  - (b) EGLE Authorized Representative, the EGLE Authorized Representative may make a complete drawing on this LOC.
  - (c) If the Designated Party does not provide for monitoring, operation, and maintenance, or other costs determined to be necessary by EGLE to assure the effectiveness and integrity of the remedial action as documented in the NFA Report; and EGLE, after providing a thirty (30) day notice to the Designated Party, implements response activities, the EGLE Authorized Representative may draw on the LOC to reimburse EGLE for its costs.
  - (d) If the Designated Party does not reimburse EGLE within thirty (30) days of the Designated Party's receipt of a summary of costs from EGLE, the EGLE Authorized Representative may draw on the LOC for the amount of costs the Designated Party owes EGLE.
5. This LOC is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision, International Chamber of Commerce Publication No. 600) and the Michigan Uniform Commercial Code, where applicable. Where conflicts exist between the Uniform Customs and Practice for Documentary Credits and the Michigan Uniform Commercial Code, the Michigan Uniform Commercial Code shall control.
6. We shall honor drafts drawn under and in compliance with the terms of this LOC and these drafts shall be duly honored upon presentation if presented on or after **[insert the effective date of the LOC]**, and on or before **[insert the expiration date of the LOC]**, or by any automatically extended date as provided for in Paragraph 3 of this LOC. The amount of each draft must be endorsed on the reverse of this LOC by the negotiating bank or financial institution.
7. We certify that the wording of this LOC is identical to the wording provided by the EGLE Authorized Representative as of the date shown immediately below.

**[insert name of Issuing Institution]**  
**[Address or P.O. Box]**  
**[City], [State] [Zip Code]**

\_\_\_\_\_  
Signature of Authorized Representative of Issuing Institution

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Print or Type Title

\_\_\_\_\_  
Date

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If you need this information in an alternate format, contact [EGLE-Accessibility@Michigan.gov](mailto:EGLE-Accessibility@Michigan.gov) or call 800-662-9278.

EGLE does not discriminate on the basis of race, sex, religion, age, national origin, color, marital status, disability, political beliefs, height, weight, genetic information, or sexual orientation in the administration of any of its programs or activities, and prohibits intimidation and retaliation, as required by applicable laws and regulations. Questions or concerns should be directed to the Nondiscrimination Compliance Coordinator at [EGLE-NondiscriminationCC@Michigan.gov](mailto:EGLE-NondiscriminationCC@Michigan.gov) or 517-249-0906.

This form and its contents are subject to the Freedom of Information Act and may be released to the public.