



**State of New Jersey**  
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION  
SANITARY LANDFILL (CLOSURE) ESCROW ACCOUNT

**ALTERNATIVE FUNDS**  
**STANDARD ESCROW AGREEMENT**

N.J.S.A. 13:1E-100 et seq.  
 N.J.A.C. 7:26-1.4, 2A.9

Name of Financial Institution	Name of Sanitary Landfill Facility
Address	Address
Telephone Number	DEP Facility Registration Number
Escrow Account Number	Name of Owner or Operator
	Address
	Telephone Number

Pursuant to the Sanitary Landfill Facility Closure and Contingency Fund Act, N.J.S.A. 13:1E-100 et. seq. (hereinafter "Act"), and regulations promulgated thereunder, N.J.A.C. 7:26-1.4, 2A.9 (hereinafter "Regulations"), and Order of the Department dated \_\_\_\_\_, in Docket No. \_\_\_\_\_, OAL Docket No. \_\_\_\_\_, a copy of which is attached hereto and made a part thereof, this Escrow Agreement is made on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

between  
 (Owner/Operator Name) \_\_\_\_\_  
 hereinafter called "Depositor",  
 and  
 (Accredited Financial Institution Name) \_\_\_\_\_  
 hereinafter called "Escrow Agent"

(1) **Escrow Account/Purpose**

The sole purpose of the escrow account shall be to insure that funds are set aside and kept available for environmental improvements, closure and post-closure care of the above-designated sanitary landfill facility in accordance with applicable Board of Public Utilities (BPU) Solid Waste Orders, Department of Environmental Protection (DEP) approved Closure Plan (Closure and Post-Closure Care Plan and Closure and Post-Closure Financial Plan) under the terms of the Act and Regulations.

(2) **Approval of the Escrow Agreement**

This Agreement shall be of no force and effect unless approved in writing by the DEP, which approval may be withdrawn at any time by DEP, within its sole discretion. This Agreement may only be amended by a written agreement approved in writing by DEP which the Department may, from time to time, require in its discretion, or as otherwise set forth herein.

(3) **Separation of Funds**

The Depositor and the Escrow Agent agree that the escrow account shall be a separate account apart from all other accounts.

(4) **Escrow Deposits**

The Depositor agrees to make monthly deposits into the alternative funds escrow account as required by the Department of Environmental Protection. The deposits shall be consistent with BPU and/or DEP Orders and with the facility's DEP approved Closure and Post-Closure Plan and, if necessary, according to each two-year plan update thereafter. The Depositor agrees to make no deposits into the escrow account except such funds as are so required. The Escrow Agent shall not be responsible for determining the amount to be deposited into the escrow account. The Depositor agrees to deposit with the Escrow Agent the funds described in N.J.S.A. 13:IE-109 for the sanitary landfill facility described above, an amount equal to \_\_\_\_\_ per cubic yard or \_\_\_\_\_ per ton of all solid waste accepted for disposal at said landfill on and after the date of the rates authorized by said Order are implemented. Said deposits shall be made on a weekly basis out of daily cash (checks and currency) receipts received in payment of said rates for the previous week. The Escrow Agent agrees to hold said funds in escrow in an interest bearing account pursuant to the Act, the Regulations and the terms and conditions of this Agreement. The funds so deposited shall be deemed trust funds and shall be held and utilized to pay for environmental improvements, closure and post-closure maintenance costs of the facility in accordance with the Engineering Design Approval issued by the Department and considered in the above docket and or the DEP approved Closure Plan (Closure and Post-Closure Care Plan and Closure and Post-Closure Financial Plan) under the terms of the Act and Regulations.

(5) **Investment of Escrow Account Funds**

In all cases, the escrow account shall be invested and maintained so as to maximize yield and minimize risk (subject to the approval of DEP). In the event this Agreement contains Investment Guidelines attached hereto, the escrow account shall also be invested and maintained in a manner fully consistent with such Guidelines. These Investment Guidelines may from time to time be revised or modified by DEP, in its discretion, as circumstances regarding the environmental improvements, closure and post-closure care of the above sanitary landfill facility and/or prevailing financial market and economic conditions may change. Any such revisions or modifications by DEP to the Investment Guidelines shall be immediately incorporated into the terms of this Agreement upon receipt by the parties hereto, and thereafter the investment and maintenance of the escrow account shall be fully consistent with such revised or modified Investment Guidelines. Liquidity shall be maintained as directed by the Department. ("Liquidity" shall mean the availability of funds for drawdowns consistent with a landfill's BPU and/or DEP approved Closure Plan, or, if there is no DEP approved Closure Plan, consistent with the Department's closure strategy for the landfill facility.)

(6) **Availability of Escrow Funds**

Subject to paragraph 5, the funds in the escrow account shall be kept readily available for withdrawal, in a manner approved by DEP, should emergency or other circumstances necessitate, in the sole judgment of DEP, partial or total closure or post-closure care of the facility before the time originally contemplated. DEP may, at its discretion, determine that there is a need for environmental improvements, closure or post-closure care expenditures and may, at any time, require the Depositor to withdraw funds from the escrow account to meet such expenses. In the event of such a determination, DEP will give written approval for a withdrawal of funds pursuant to paragraph 11 of this Agreement.

(7) **Interest and Other Income**

The Depositor and the Escrow Agent agree that all interest and other income earned as a result of investment of funds in the escrow account shall be deposited as earned into the escrow account, to be applied toward the cost of environmental improvements, closure, post-closure care and DEP-approved fees charged by the Escrow Agent for administering the account. Such interest and other income shall be subject to the same restrictions applicable to the principal of the escrow account as set forth in the Act, the Regulations and this Agreement.

(8) **Direction of investments**

The Depositor shall have no right to direct the investment of the escrow account funds. Investments shall be directed by the Escrow Agent, subject to the provisions of the Act, the Regulations and the determination of DEP, as set forth in this Agreement.

(9) **Account as Non-Asset**

All funds deposited in the escrow account shall not be considered an asset of the Depositor and shall not be available to any creditor of the Depositor in the event of the bankruptcy, reorganization, insolvency or receivership of the landfill or the Depositor, or for any other reason. Depositor and the Escrow Agent agree that funds deposited in the escrow account are for the sole benefit of the purposes established in paragraphs 1 and 14 of this Agreement and may be withdrawn only pursuant to the express provisions of this Agreement. Funds will only be available for use by the owner/operator, or by a court-appointed receiver or other legal representative of the owner/operator, for closure and post-closure care activities, upon written approval of the DEP.

(10) **Monthly Statement-Financial Institution**

The Escrow Agent hereby agrees to submit monthly statements of the escrow account to the DEP. The statements shall report on all transactions charged and credited to the escrow account and shall include an itemization of all accrued interest and all opening and closing balances of principal and income.

(11) **Withdrawal or Disbursement of Funds**

The Depositor and the Escrow Agent agree that withdrawals or disbursements from the escrow account will not be made or permitted without the written approval or directive of the DEP. Written approval will be given only upon submission and approval of a written request identifying the specific provisions of the BPU Solid Waste Order and/or DEP approved Closure Plan of the sanitary landfill facility for which funding is sought. Written directive may be issued to the Escrow Agent by DEP upon a written request or in the absence of a written request upon a determination by DEP, in its discretion, that there is a need for environmental improvements, closure or post-closure care expenditures. Upon the issuance and delivery to the Escrow Agent of such written approval or directive by DEP, the Escrow Agent shall immediately disburse the funds called for by said approval or directive, for use solely for the purposes and in the manner specified in said written approval or directive. The Utility shall simultaneously file or cause to be so filed with said Department and said Escrow Agent for review, a certification by a licensed New Jersey Professional Engineer, bearing his/her professional seal, certifying that the costs referred to in the certification are reasonable in light of current construction costs for similar work and that the improvements referred to therein are in place and have been performed in a good and workman-like manner and in accordance with said Engineering Design Approval referred to in paragraph 1. Each certification shall be supported by invoices for the materials, supplies, labor, equipment and related costs referred to therein, and copies of which shall be attached to the certifications. Where a certification is for or includes in-house expenses, it shall be supported by statements detailing the costs including, but not limited to labor charges, equipment utilization, supplies and fuel. All certifications and the costs and expenses shall be subject to accountability and audit by the Department at any time. The Utility shall submit two certified submissions to: NJDEP, Solid and Hazardous Waste Program, P.O. Box 414, 401 East State Street, Trenton, New Jersey, 08625-0414. One copy of the certification and all related materials shall be provided to the Escrow Agent.

(12) **Compensation of Escrow Agent**

Notwithstanding the terms of paragraph 11 of this Agreement, the Escrow Agent shall be entitled to take reasonable compensation for its services in administering the escrow account to be established under this Agreement. Such compensation may be deducted by the Escrow Agent directly from the escrow account from time to time, but in no event more frequently than once a month, unless more frequent deductions are approved in writing by DEP. All such deductions shall be fully documented and shown as a debit to the escrow account by the Escrow Agent under the monthly statements to be submitted to DEP, pursuant to paragraph 10 of this Agreement. In all cases, the amount or rate of such compensation shall be reasonable, shall not exceed the amount or rate of compensation customarily charged by the Escrow Agent for like services, and shall be subject to the written approval of DEP. For purposes of this Agreement, and unless and until written approval to modify such compensation is given by DEP, the amount or rate of compensation to be charged by the Escrow Agent hereunder shall be as follows (detailed):

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(13) **Liability of the Escrow Agent (Optional)**

The Depositor agrees to indemnify and hold the Escrow Agent harmless from and against all liabilities, fees, costs and expenses incurred by the Escrow Agent, with respect to the performance of its duties hereunder, unless said liabilities, fees, costs or expenses shall arise from the Escrow Agent's failure to perform its duties hereunder with reasonable cost and care.

(14) **Use of Funds After Closure and Post-Closure**

After the DEP determines that environmental improvements, closure and post-closure activities for the sanitary landfill facility designated above have been completed, any funds remaining in the escrow account, including accumulated interest and other income from investment of funds in the escrow account, shall be returned to the depositor as specified by the State.

(15) **Termination**

This Agreement may be terminated by either party on 90 days written notice to DEP, and to the other party to this Agreement, which notice shall state the reasons for such termination, and the provisions of this Agreement shall remain in full force and effect until the expiration of said 90 days notice. In the case of termination by the Depositor, such termination shall be ineffective in the absence of prior written consent by the DEP on such terms as the Department, in its discretion, may require. In the event of termination where funds remain in the escrow account, the Depositor shall submit a new escrow agreement to DEP for review and approval as set forth in paragraph 2, within 60 days from the notice of termination. Upon such approval, DEP will give the Escrow Agent hereunder written approval to transfer the funds in the escrow account, with accumulated interest and other income from investment of the funds in the escrow account, to the new Escrow Agent under the new escrow agreement, and the Escrow Agent shall immediately transfer all such funds to the new Escrow Agent upon receipt of such written approval. No such transfer shall be made without such written approval by DEP. Such transfer of funds must be through an inter-financial institution transaction and shall not be transferred through the Depositor. Nothing herein shall limit the right of DEP to withdraw its approval of this Agreement at any time, in its discretion, as set forth in paragraph 2 herein.

(16) **Notice and Instruction**

All notices and instructions related to this Agreement shall be in writing and, except monthly bank statements to DEP under paragraph 10, shall be made by certified or registered mail, return receipt requested. All notices and instructions sent to the parties hereto shall be sent to the addresses of the parties set forth at the beginning of this Agreement. For purposes of this Agreement, and until notification of a change of address is supplied by DEP to the parties hereunder, all notices to **NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION** shall be addressed to **Mailcode 401-02C, NJDEP-SHWMP, Financial Management Unit, P. O. Box 420, Trenton, New Jersey 08625-0420.**

In Witness whereof, the parties to this Escrow Agreement have executed same on

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**Owner/Operator Name**

**Accredited Financial Institution Name**

**Attest**

By

By

By

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

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Signature

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**APPROVED BY THE DEPARTMENT OF ENVIRONMENTAL PROTECTION  
SOLID AND HAZARDOUS WASTE MANAGEMENT PROGRAM**

By \_\_\_\_\_

Anthony Fontana, Chief  
Bureau of Transfer Stations and Recycling Facilities

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Date