



# NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

## ENVIRONMENTAL GUIDANCE DOCUMENT

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05-174d

August, 2005

### Financial Guarantee Bond

40 CFR § 264.151 (b) A surety bond guaranteeing payment into a trust fund, as specified in Sec. 264.143(b) or Sec. 264.145(b) or Sec. 265.143(b) or Sec. 265.145(b), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### Financial Guarantee Bond

Date bond executed: \_\_\_\_\_

Effective date: \_\_\_\_\_

Principal: *[legal name and business address of owner or operator]*

Type of Organization: *[insert "individual," "joint venture," "partnership," or "corporation"]*

State of incorporation: \_\_\_\_\_

Surety(ies): *[name(s) and business address(es)]*

NDEQ Identification Number, name, address and closure and/or post-closure amount(s) for each facility guaranteed by this bond *[indicate closure and post-closure amounts separately]:* \_\_\_\_\_

Total penal sum of bond: \$ \_\_\_\_\_

Surety's bond number: \_\_\_\_\_

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the Nebraska Department of Environmental Quality (hereinafter called NDEQ), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such

Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the Resource Conservation and Recovery Act as amended (RCRA) and Title 128 – Nebraska Hazardous Waste Regulations, to have a permit or interim status in order to own or operate each hazardous waste management facility identified above, and

Whereas said Principal is required to provide financial assurance for closure, or closure and post-closure care, as a condition of the permit or interim status, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of each facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

Or, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after a final order to begin closure is issued by the NDEQ Director or a U.S. district court or other court of competent jurisdiction,

Or, if the Principal shall provide alternate financial assurance, as specified in subpart H of 40 CFR part 264 or 265, as applicable, and obtain the NDEQ Director's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the NDEQ Director from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the NDEQ Director that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the NDEQ Director.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the NDEQ Director provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the NDEQ Director as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s)

written authorization for termination of the bond by the NDEQ Director for the Nebraska facility(ies).

*[The following paragraph is an optional rider that may be included but is not required.]*

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the NDEQ Director.

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 40 CFR 264.151(b) as such regulations were constituted on the date this bond was executed.

Principal

*[Signature(s)]* \_\_\_\_\_

*[Name(s)]* \_\_\_\_\_

*[Title(s)]* \_\_\_\_\_

*[Corporate seal]* \_\_\_\_\_

Corporate Surety(ies)

*[Name and address]*

*State of incorporation:* \_\_\_\_\_

Liability limit: \$ \_\_\_\_\_

*[Signature(s)]*

*[Name(s) and title(s)]*

*[Corporate seal]*

*[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]*

Bond premium: \$ \_\_\_\_\_

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*Produced by: Nebraska Department of Environmental Quality, P.O. Box 98922, Lincoln, NE 68509-8922; phone (402) 471-2186. To view this, and other information related to our agency, visit our web site at <http://deq.ne.gov/>*