

7035.9150 FORMS.

Subpart 1. **Surety bond.** A surety bond as specified in part 7035.9120, subpart 7, must be worded as specified in this part, except that the instructions in brackets must be replaced with the relevant information and the brackets deleted.

PERFORMANCE 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)]

Identification number, name, address, and estimated costs of final waste disposal for each facility guaranteed by this bond: \$.....

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

Surety's bond number:

The Principal and Surety(ies) hereto are firmly bound to the Minnesota Pollution Control Agency (hereinafter called Agency), 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 the 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 the sum only as is set forth opposite the name of the Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

The Principal is required to provide financial assurance for the final disposal of wastes accepted at the facility(ies) named above.

The conditions of this obligation are such that if the Principal properly disposes of all wastes accepted at the facility(ies), in accordance with the Principal's approved infectious waste management plan and all applicable laws, statutes, rules, and regulations, as these laws, statutes, rules, and regulations may be amended,

Or, if the Principal provides alternate financial assurance as specified in Minnesota Rules, part 7035.9120, subpart 7, and obtains the Agency Commissioner's written approval of the financial assurance, within 90 days after the date notice of cancellation is received by

both the Principal and the Agency Commissioner 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 Agency Commissioner that the Principal has been found in violation of the requirements of Minnesota Rules, part 7035.9120, for a facility for which this bond guarantees proper waste disposal, the Surety(ies) shall pay the penal sum of the bond to the Agency as directed by the Agency Commissioner.

Upon notification by the Agency Commissioner that the Principal has failed to provide alternate financial assurance as specified in Minnesota Rules, part 7035.9120, subpart 7, and obtain written approval of the financial assurance from the Agency Commissioner during the 90 days following receipt by both the Principal and Agency of a notice of cancellation of the bond, the Surety(ies) shall pay the penal sum of the bond to the Agency as directed by the Agency Commissioner.

The Surety(ies) hereby waive(s) notification of amendments to infectious waste management plans and applicable laws, statutes, rules, and regulations and agree(s) that no amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until the 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 owner or operator and to the Agency Commissioner, 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 Agency Commissioner, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the Agency Commissioner.

(The following paragraph is an optional rider that may be included but is not required.)

Principal and Surety(ies) agree to adjust the penal sum of the bond yearly so that it guarantees a new final waste disposal cost estimate, 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 Agency Commissioner.

The Principal and Surety(ies) have signed this Performance Bond 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 in Minnesota Rules, part 7035.9150, subpart 1, as the rule was 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)]
[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: \$.....

Subp. 2. **Letter of credit.** A letter of credit, as specified in part 7035.9120, subpart 7, must be worded as specified in this part, except that the instructions in brackets must be replaced with the relevant information and the brackets deleted.

IRREVOCABLE STANDBY LETTER OF CREDIT

[Agency Commissioner]

Minnesota Pollution Control Agency

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. in your favor, at the request and for the account of [owner's or operator's name and address] up to the aggregate amount of [in words] United States dollars \$....., available upon presentation of:

1. your sight draft, bearing reference to this letter of Credit No. ...; and
2. your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to the infectious waste rules, Minnesota Rules, parts 7035.9100 to 7035.9150."

This letter of credit is effective as of [date] and shall expire on [date at least one year later], but the expiration date shall be automatically extended for a period of [at least one year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by you, as shown on the signed return receipt.

Whenever this letter of credit is drawn on, under, and in compliance with the terms of this credit, we shall duly honor the draft upon presentation to us and we shall deposit the amount of the draft directly to the Minnesota Pollution Control Agency in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in Minnesota Rules, part 7035.9150, subpart 2, as the rules were constituted on the date shown immediately below.

[SIGNATURE(S) AND TITLE(S) OF OFFICIAL(S) OF ISSUING INSTITUTION]

[DATE]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code published in Minnesota Statutes, chapter 336"].

Statutory Authority: *MS s 116.75*

History: *15 SR 836*

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