

9220.0640 SURETY BOND GUARANTEEING PERFORMANCE OF CLOSURE FOR PERMITTED FACILITIES.

Subpart 1. **Scope.** Subparts 2 to 11 apply to surety bonds that guarantee performance of closure. Surety bonds that guarantee performance of closure can only be used for permitted facilities with approved closure plans. For surety bonds held by a county under part 9220.0600, provisions in this part that refer to the commissioner apply to both the commissioner and the county.

Subp. 2. **Surety bond requirements.** An owner or operator may satisfy the requirements of part 9220.0560 by obtaining a surety bond that conforms to the requirements of subparts 2 to 11 and by submitting the bond to the commissioner. The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in Circular 570, issued by the United States Department of the Treasury, as published annually in the Federal Register on July 1. The owner or operator of a waste tire facility shall submit the bond to the commissioner with the permit application.

Subp. 3. **Wording of performance bond.** The commissioner shall approve the form of a surety bond guaranteeing performance of closure that contains terms adequate to ensure that financial assurance is provided. The commissioner shall provide a copy of the approved performance bond instrument with the permit application forms. The owner or operator of the waste tire facility shall use the form provided by the commissioner when establishing a surety bond guaranteeing performance of closure financial assurance mechanism.

Subp. 4. **Establishment of standby trust fund.** The owner or operator who uses a surety bond to satisfy the requirements of part 9220.0560 shall also establish a standby trust fund. The bond must require the surety to deposit all payments made under the bond directly into the standby trust fund in accordance with instructions from the commissioner. An originally signed duplicate of the standby trust fund agreement must be submitted to the commissioner with the surety bond. The standby trust fund must meet the requirements of part 9220.0610, except that compliance with the following requirements is not required until the standby trust fund is funded under this part:

- A. payments into the trust fund as specified in part 9220.0610;
- B. updating of the trust agreement to show current closure cost estimates;
- C. annual valuations as required by the trust agreement; and
- D. notices of nonpayment as required by the trust agreement.

Subp. 5. **Performance guarantee.** The bond must guarantee that the owner or operator will:

- A. perform closure in accordance with the closure plan, and other requirements of the permit for the facility whenever required to do so; or

B. provide alternate financial assurance as specified in parts 9220.0610 to 9220.0640 and obtain the commissioner's written approval of the assurance provided, within 90 days after receipt by the commissioner of a notice of cancellation of the bond from the surety.

Subp. 6. **Failure to perform.** Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond as determined by the commissioner.

Subp. 7. **Penal sum.** The penal sum of the bond must be at least equal to the applicable current closure cost estimate.

Subp. 8. **Changes to penal sum.** Within 60 days of an increase in the sum of the current closure cost estimate to an amount greater than the penal sum, the owner or operator shall either cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of the increase to the commissioner, or obtain other financial assurance specified in parts 9220.0610 to 9220.0640. Whenever the sum of the current closure cost estimate decreases, the penal sum may be reduced to the current closure cost estimate following written approval of the commissioner.

Subp. 9. **Notification.** The bond must provide that the surety may cancel the bond only by sending notice of cancellation by certified mail to the owner or operator and to the commissioner. The bond must also provide that cancellation shall not be effective until 120 days after the commissioner has received the notice of cancellation as evidenced by the return receipt. For a surety bond held by a county under part 9220.0600, the bond must provide a 150-day cancellation period rather than a 120-day period.

Subp. 10. **Cancellation of surety bond.** The owner or operator may cancel the bond if the commissioner has given prior written consent. The commissioner shall provide written consent if:

A. an owner or operator substitutes alternate financial assurance as specified in parts 9220.0610 to 9220.0640; or

B. the commissioner releases the owner or operator from the requirements of this part in accordance with part 9220.0680.

Subp. 11. **Limitation on liability.** The surety is not liable for deficiencies in the owner's or operator's performance of closure after the commissioner releases the owner or operator from the requirements of this part in accordance with part 9220.0670.

Statutory Authority: *MS s 115A.914*

History: *12 SR 2513; L 1999 c 73 s 5*

Published Electronically: *October 2, 2007*