

7035.2725 SURETY BOND GUARANTEEING PAYMENT INTO A TRUST FUND.

Items A to I apply to surety bonds that guarantee payment into a trust fund:

A. An owner or operator may satisfy the requirements of part 7035.2695 by obtaining a surety bond that conforms to the requirements of this part 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.

(1) An owner or operator of a new facility shall submit the bond to the commissioner along with the final permit application. The bond must be effective before the initial receipt of waste.

(2) An owner or operator of an existing facility with a remaining capacity of more than five years or 500,000 cubic yards shall submit the bond to the commissioner, within 180 days of November 15, 1988.

(3) An owner or operator of an existing facility that does not meet the criterion in subitem (2) shall submit the bond to the commissioner within a year of November 15, 1988.

B. The wording of the surety bond must be identical to the wording specified in part 7035.2805, subpart 3.

C. The owner or operator who uses a surety bond to satisfy the requirements of part 7035.2695 shall also establish a standby trust fund. Under the terms of the bond, the surety will deposit all payments made under the bond directly into the standby trust fund in accordance with instructions from the commissioner. This standby trust fund must meet the requirements in part 7035.2705 or 7035.2715, except that an originally signed duplicate of the trust agreement must be submitted to the commissioner with the surety bond. The trust must meet the requirements specified in subitems (1) to (4) if the standby trust is funded under this part:

(1) payments into the trust fund as specified in part 7035.2705;

(2) updating of Schedule A of the trust agreement to show the sum of the current cost estimates;

(3) annual valuations as required by the trust agreement; and

(4) notices of nonpayment as required by the trust agreement.

D. The bond must guarantee that the owner or operator will:

(1) fund the standby trust fund an amount equal to the penal sum of the bond before the beginning of closure of the facility;

(2) pay into the standby trust fund in an amount equal to the penal sum within 15 days after an order to close the facility is issued by the commissioner, the agency, or a court of competent jurisdiction; or

(3) provide alternate financial assurance as specified in parts 7035.2705 to 7035.2750 and obtain the commissioner's written approval of the assurance provided, within 90 days after receipt by both the owner and operator and the commissioner of a notice of cancellation of the bond from the surety.

E. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

F. The penal sum of the bond must equal the sum of the current cost estimates.

G. Whenever the sum of the current cost estimates becomes greater than the penal sum, the owner or operator, within 60 days after the increase, shall either increase the penal sum to an amount at least equal to the sum of the current cost estimates and submit evidence of the increase to the commissioner, or obtain other financial assurance as specified in parts 7035.2705 to 7035.2750 to cover the increase. Whenever the sum of the current cost estimates decreases, the penal sum shall be reduced to the amount of the sum of the current cost estimates following written approval by the commissioner.

H. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the commissioner. However, cancellation is not effective until 120 days after the commissioner has received the notice of cancellation, as evidenced by return receipt.

I. The owner or operator may cancel the bond if the commissioner has given prior written consent based on the commissioner's receipt of evidence of alternate financial assurance as specified in parts 7035.2705 to 7035.2750.

Statutory Authority: *MS s 115.03; 116.07*

History: *13 SR 1150*

Published Electronically: *September 7, 2006*