

7035.2735 SURETY BOND GUARANTEEING PERFORMANCE.

Items A to J apply to surety bonds that guarantee performance:

A. An owner or operator may satisfy the requirements of part 7035.2695 by obtaining a surety bond that conforms to the requirements of items A to J 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 4.

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 must meet the requirements specified in part 7035.2705, except that an originally signed duplicate of the trust agreement must be submitted to the commissioner with the surety bond. The requirements in subitems (1) to (4) must be met if the standby trust fund 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 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) perform closure, postclosure care, or corrective action in accordance with the appropriate plans and other requirements of the permit for the facility whenever required to do so; or

(2) 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 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. Following a determination by the commissioner that the owner or operator has failed to perform final closure, postclosure care, or corrective action in accordance with the appropriate plan and other permit requirements when required to do so, under the terms of the bond the surety shall deposit the amount of the penal sum into the standby trust fund.

F. The penal sum of the bond must at least 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 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. Whenever the sum of the current cost estimates decreases, the penal sum shall be reduced to 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 the return receipt.

I. The owner or operator may cancel the bond if the commissioner has given prior written consent. The commissioner shall provide such written consent if:

(1) an owner or operator substitutes alternate financial assurance as specified in parts 7035.2705 to 7035.2750; or

(2) the agency releases the owner or operator from the requirements of part 7035.2695 in accordance with part 7035.2775.

J. The surety will not be liable for deficiencies in the performance of closure, postclosure care, or corrective actions by the owner or operator after the agency releases the owner or operator from the requirements of part 7035.2695 in accordance with part 7035.2775.

Statutory Authority: *MS s 115.03; 116.07*

History: *13 SR 1150*

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