

NEBRASKA

DEPT. OF ENVIRONMENT AND ENERGY

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05-174E

Revised June, 2021

Performance Bond

40 CFR § 264.151 (c) A surety bond guaranteeing performance of closure and/or post- closure care, as specified in Sec. 264.143(c) or Sec. 264.145(c), must be worded as follows, except that the instructions in brackets are to 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)]* _____

NDEE 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 Environment and energy (hereinafter called NDEE), 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 Nebraska Administrative Code [Title 128 – Nebraska Hazardous Waste Regulations](#), to have a permit 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, 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 this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of each facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

And, if the Principal shall faithfully perform post-closure care of each facility for which this bond guarantees post-closure care, in accordance with the post-closure plan and other requirements of the permit, as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

Or, if the Principal shall provide alternate financial assurance as specified in subpart H of 40 CFR part 264, and obtain the NDEE Director's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the NDEE 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 NDEE Director that the Principal has been found in violation of the closure requirements of 40 CFR part 264, for a facility for which this bond guarantees performance of closure, the Surety(ies) shall either perform closure in accordance with the closure plan and other permit requirements or place the closure amount guaranteed for the facility into the standby trust fund as directed by the NDEE Director.

Upon notification by an NDEE Director that the Principal has been found in violation of the post-closure requirements of 40 CFR part 264 for a facility for which this bond guarantees performance of post-closure care, the Surety(ies) shall either perform post-closure care in accordance with the post-closure plan and other permit requirements or place the post-closure amount guaranteed for the facility into the standby trust fund as directed by the NDEE Director.

Upon notification by the NDEE Director that the Principal has failed to provide alternate financial assurance as specified in subpart H of 40 CFR part 264, and obtain written approval of such assurance from the NDEE Director during the 90 days following receipt by both the Principal and the NDEE Director of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the NDEE Director.

The surety(ies) hereby waive(s) notification of amendments to closure plans, permits, applicable laws, statutes, rules, and regulations and agrees that no such 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 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 owner or operator and to the NDEE 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 NDEE 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 NDEE Director.

[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 NDEE Director.

In Witness Whereof, The Principal and Surety(ies) have executed this Performance 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(c) as such regulation 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) 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: \$_____

Produced by: Nebraska Department of Environment and Energy, 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://dee.ne.gov>.