

Surety Bond No. \_\_\_\_\_  
Permit No. \_\_\_\_\_

## **PERFORMANCE BOND**

Date Bond Executed: \_\_\_\_\_ Effective Date: \_\_\_\_\_

Principal: (Legal Name and business address of owner/operator)

Type of Organization: (Insert "individual", "joint venture", "partnership", or "corporation")

State of Incorporation: \_\_\_\_\_

Surety(ies): [(names(s) and business address(es))]

The Surety issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

Solid Waste Permit Number, Arkansas Facility Identification Number (AFIN), Consent Administrative Order (CAO), [if applicable], 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 PRESENT**, that we, (insert full legal name and address of permit holder) as Principal, and (insert full name and address or legal title of Surety) as Surety, and licensed to do business in the State of Arkansas, hereinafter called Surety, are held and firmly bound unto the Arkansas Department of Energy and Environment, Division of Environmental Quality (hereinafter called DEQ), in the amount of \_\_\_\_\_ (dollars) (\$ \_\_\_\_\_),

for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these present.

**WHEREAS**, said Principal is required, under the Arkansas Solid Waste Management Act as amended, to have a permit, a consent administrative order, and/or a closure plan to operate each solid waste management facility identified above, and

**WHEREAS**, said Principal has been issued permit number \_\_\_\_\_ in the name of (insert complete name and address on permit) \_\_\_\_\_

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to operate a solid waste management facility, and

**WHEREAS**, said Principal is required to provide financial assurance for closure, post-closure and/or corrective action as a condition of the permit or CAO;

**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 Regulation 22.1402(b), 22.1403(b), or 22.1404(b), as applicable, and obtain the Director's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the 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 Director that the Principal has been found in violation of the closure requirements of APC&EC Regulation No. 22 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 Director.

Upon notification by the Director that the Principal has been found in violation of the post-closure requirements of APC&EC Regulation 22 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 Director.

Upon notification by the Director that the Principal has failed to provide alternate financial assurance as specified in 22.1405 (b)(7) of APC&EC Regulation No. 22, and obtain written approval of such assurance from the Director during the 90 days following receipt by both the Principal and the 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 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 Director one hundred twenty (120) days in advance of cancellation.

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 Director.

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 Director.

For any and all disputes arising out of, in connection with, or relating to this Performance Bond, the Principal and Surety expressly agree and consent that the exclusive jurisdiction and venue for any proceeding shall be in Pulaski County Circuit Court for the State of Arkansas in Little Rock, Arkansas, and the Principal and Surety waive any argument that the venue in such a forum is not convenient and any rights under any Federal or State law establishing jurisdiction or venue in another forum.

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 APC&EC Regulation 22 as such regulation was constituted on the date this bond was executed.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

**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 \$ \_\_\_\_\_

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Witness)

Countersigned:

\_\_\_\_\_  
Arkansas Licensed Resident Agent

**FINANCIAL ASSURANCE CHECKLIST**  
**SURETY BOND GUARANTEEING PERFORMANCE OF CLOSURE AND/OR POST-CLOSURE CARE**

Company Name: \_\_\_\_\_ Permit No.: \_\_\_\_\_

YES    NO    QUESTION

<input type="checkbox"/>	<input type="checkbox"/>	Is the surety company listed as an acceptable surety on Federal bonds in Circular 570 of the U.S. Department of the Treasury?
<input type="checkbox"/>	<input type="checkbox"/>	Does the bond use wording approved by DEQ?
<input type="checkbox"/>	<input type="checkbox"/>	Does the bond make the surety liable if the owner or operator fails to perform as guaranteed by the bond?
<input type="checkbox"/>	<input type="checkbox"/>	Is the penal sum of the bond in an amount at least equal to the current closure cost and post-closure cost estimates?
<input type="checkbox"/>	<input type="checkbox"/>	Has the owner or operator established a standby trust fund?
<input type="checkbox"/>	<input type="checkbox"/>	Was the bond submitted at least 60 days before the date on which solid waste was first received for treatment, storage or disposal?
<input type="checkbox"/>	<input type="checkbox"/>	Has an originally signed duplicate of the standby trust agreement been submitted?
<input type="checkbox"/>	<input type="checkbox"/>	Have initial and updated estimates to the Director been provided to the Director?

Comments: \_\_\_\_\_

\_\_\_\_\_

Reviewed by: \_\_\_\_\_

Date: \_\_\_\_\_

## **WHAT IS REQUIRED AT A MINIMUM:**

- ✓ The surety must be listed by the U.S. Department of the Treasury on its Circular 570. The circular can be accessed at: <http://fms.treas.gov/c570/index.html>.
- ✓ The text of the surety bond must be filed on forms developed by DEQ and provided to the Director for approval.
- ✓ A standby trust fund must be established with a qualified financial institution according to the requirements for trust funds stipulated in Reg.22.1405 (a).
- ✓ The penal sum of the bond must be equal to the current closure, post-closure care or corrective action cost estimates.

The owner/operator must provide the regulator with the surety bond and an originally signed copy of the standby trust agreement.