**Surety Bond**

A. **Guarantee Bond**. If you are using a surety bond guaranteeing payment into a trust fund as specified in NDAC Subsection 33.1-20-14-07(2) it must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted. In addition, you must establish a standby trust fund and the trust agreement must be submitted to the Department with the surety bond. Wording for the trust agreement in this document should be used.

**FINANCIAL GUARANTEE BOND**

Date bond executed:

Effective date:

Surety's bond number:

Principal: [Legal name and business address of owner or operator]

Type of organization: [Choose *one*: "individual", "joint venture," "partnership" or "corporation"]

State of incorporation:

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

Permit number, name, address, and closure or post-closure, or both, amount for each facility guaranteed by this bond:

[List each facility separately]

Closure cost estimate: $

Post-closure cost estimate: $

Total penal sum of bond: $

Know all persons by these presents that we the PRINCIPAL and SURETY(IES) hereto are firmly bound to the North Dakota Department of Environmental Quality (hereinafter called the DEPARTMENT) in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assignors jointly and severally: provided that where the SURETY(IES) are corporations acting as cosureties, 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 North Dakota Century Code Chapter 23.1-08-09 to have a permit in order to own or operate each solid waste management facility identified above, and

Whereas said PRINCIPAL is required to provide financial assurance for closure or closure and post-closure care as required by North Dakota Administrative Code (NDAC) Article 33.1-20 or 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 the obligation are such that if the PRINCIPAL shall faithfully, before the beginning of final closure of each facility identified above, fund the standby trust fund in the amounts identified above for the facility,

Or, if the PRINCIPAL shall fund the standby trust fund in such amounts within fifteen days after an order to begin closure is issued by the DEPARTMENT or a state or other court of competent jurisdiction,

Or, if the PRINCIPAL shall provide alternate financial assurance as specified in NDAC Chapter 33.1-20-14, as applicable, and obtain the DEPARTMENT'S written approval of such assurance within ninety days after the date of notice of cancellation is received by both the PRINCIPAL and the DEPARTMENT 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 DEPARTMENT that the PRINCIPAL has failed to perform as guaranteed by this bond, the SURETY(IES) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the DEPARTMENT.

The liability of the SURETY(IES) shall not be discharged by any payment or any 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 PRINCIPAL and to the DEPARTMENT, provided, however, that cancellation shall not occur during the one hundred twenty days beginning on the date of receipt of the notice of cancellation by both the PRINCIPAL and the DEPARTMENT 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 DEPARTMENT.

\*\*The following paragraph is an optional rider that may be included, but is not required.

*The PRINCIPAL and SURETY(IES) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure or post-closure, or both, amount, provided that the penal sum does not increase by more than twenty percent in any one year, and no decrease in the penal sum takes place without the written permission of the DEPARTMENT.*

In witness whereof, the PRINCIPAL and SURETY(IES) have executed this financial guarantee 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 meets the requirements specified in NDAC Subsection 33.1-20-14-07(2) as such rule was constituted on the date this bond was executed.

PRINCIPAL CORPORATE SURETY(IES)

[Signature(s)] [Name and address]

[Name(s)] State of Incorporation:

[Title(s)] Liability limit: $

[Corporate seal] [Signature(s)]

[Name(s) and Title(s)]

[Corporate seal]

Bond premium: $

[For every cosurety, provide signature(s), corporate seal, and other information in the same manner as for surety above.]

B. **Performance Bond**. If you are using a surety bond guaranteeing performance of closure or post-closure care as specified in NDAC Subsection 33.1-20-14-07(2) it must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted. In addition, you must establish a standby trust fund and the trust agreement must be submitted to the Department with the surety bond. Wording for the trust agreement in this document should be used.

**PERFORMANCE BOND**

Date bond executed:

Effective Date:

Surety's bond number:

PRINCIPAL: [Legal name and business address of owner or operator]

Type of organization: [Choose *one*: "Individual," "joint venture," "partnership," or "corporation"]

State of Incorporation:

SURETY(IES): [Name(s) and business address(es)]

Permit number, name, address and closure or post-closure, or both, amount(s) for each facility guaranteed by this bond:

[List each facility separately]

Closure cost estimate: $

Post-closure cost estimate: $

Total penal sum of bond: $

Know all persons by these presents, that we the PRINCIPAL and SURETY(IES) hereto are firmly bound to the North Dakota Department of Environmental Quality (hereinafter called the DEPARTMENT), 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 cosureties, 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 each 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 North Dakota Century Code Chapter 23.1-08-09 to have a permit to own or operate each solid waste management facility identified above, and

Whereas said PRINCIPAL is required to provide financial assurance for closure, or closure and post-closure care as required by North Dakota Administrative Code (NDAC) Article 33.1-20 or 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 that if the PRINCIPAL shall faithfully perform closure, when 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 NDAC Chapter 33.1-20-14 and obtain the DEPARTMENT'S written approval of such assurance within ninety days after the date notice of cancellation is received by both the PRINCIPAL and the DEPARTMENT 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 DEPARTMENT that the PRINCIPAL has been found in violation of the closure requirements of NDAC Article 33.1-20 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 DEPARTMENT.

Upon notification by the DEPARTMENT that the PRINCIPAL has been found in violation of the post-closure requirements of NDAC Article 33.1-20 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 a standby trust fund as directed by the DEPARTMENT.

Upon notification by the DEPARTMENT that the PRINCIPAL has failed to provide alternate financial assurance as specified in NDAC Chapter 33.1-20-14 and obtain written approval of such assurance from the DEPARTMENT during the ninety days following receipt by both the PRINCIPAL and the DEPARTMENT 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 DEPARTMENT.

The SURETY(IES) hereby waive(s) notification of amendments to closure plans, permits, applicable laws, statutes, rules, and regulations and agree(s) 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 the notice of cancellation by certified mail to the PRINCIPAL and to the DEPARTMENT, provided, however, that cancellation shall not occur during the one hundred twenty days beginning on the date of receipt of the notice of cancellation by both the PRINCIPAL and the DEPARTMENT 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 DEPARTMENT.

\*\*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 or post-closure, or both, amount, provided that the penal sum does not increase by more than twenty percent in any one year, and no decrease in the penal sum takes place without the written permission of the DEPARTMENT.*

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 the SURETY(IES) and that the wording of this surety bond meets the requirements in NDAC Subsection 33.1-20-14-07(2) as such rule was constituted on the date this bond was executed.

PRINCIPAL CORPORATE SURETY(IES)

[Signature(s)] [Name and Address]

[Name(s)] State of Incorporation:

[Title(s)] Liability Limit: $

[Corporate Seal] [Signature(s)]

[Name(s) and Title(s)]

[Corporate Seal]

Bond premium: $

[For every cosurety, provide signature(s), corporate seal, and other information in the same manner as for surety above].