**Section 807.663 Surety Bond Guaranteeing Performance**

a) An operator may satisfy the requirements of this Subpart by obtaining a surety bond that conforms to the requirements of this Section and submitting the bond to the Agency.

b) The surety company issuing the bond must be licensed by the Illinois Department of Insurance, pursuant to the Illinois Insurance Code [215 ILCS 5], or at a minimum the insurer must be licensed to transact the business of insurance, or approved to provide insurance as an excess or surplus lines insurer, by the insurance department in one or more states, and approved by the U.S. Department of the Treasury as an acceptable surety.

BOARD NOTE: The U.S. Department of the Treasury lists acceptable sureties in its Circular 570.

c) The surety bond must be on the form specified in Appendix A, Illustration D.

d) Any payments made under the bond will be placed in the Landfill Closure and Post-Closure Fund within the State Treasury.

e) Conditions:

1) The bond must guarantee that the operator will:

A) Provide closure and post-closure care in accordance with the closure and post-closure care plans in the permit; and

B) Provide alternate financial assurance, as specified in this Subpart, and obtain the Agency's written approval of the assurance provided within 90 days after receipt by both the operator and the Agency of a notice from the surety that the bond will not be renewed for another term.

2) The surety will become liable on the bond obligation when, during the term of the bond, the operator fails to perform as guaranteed by the bond. The operator fails to perform when the operator:

A) Abandons the site;

B) Is adjudicated bankrupt;

C) Fails to initiate closure of the site or post-closure care when ordered to do so by the Board or a court of competent jurisdiction;

D) Notifies the Agency that it has initiated closure, or initiates closure, but fails to close the site or provide post-closure care in accordance with the closure and post-closure care plans; or

E) Fails to provide alternate financial assurance, as specified in this Subpart, and obtain the Agency's written approval of the assurance provided within 90 days after receipt by both the operator and the Agency of a notice from the surety that the bond will not be renewed for another term.

3) Upon the failure of the operator to perform as guaranteed by the bond, the surety shall have the option of providing closure and post-closure care in accordance with the closure and post-closure care plans, or of paying the penal sum.

f) Penal sum:

1) The penal sum of the bond must be in an amount at least equal to the current cost estimate.

2) Whenever the current cost estimate decreases, the penal sum may be reduced to the amount of the current cost estimate, following written approval by the Agency.

3) Whenever the current cost estimate increases to an amount greater than the penal sum, the operator, within 90 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current cost estimate and submit evidence of the increase to the Agency or obtain other financial assurance, as specified in this Subpart, and submit evidence of the alternate financial assurance to the Agency.

g) Term:

1) The bond shall be issued for a term of at least one year and shall not be cancelable during that term.

2) The surety bond must provide that, on the current expiration date and on each successive expiration date, the term of the surety bond will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the surety notifies both the operator and the Agency by certified mail of a decision not to renew the bond. Under the terms of the surety bond, the 120 days will begin on the date when both the operator and the Agency have received the notice, as evidenced by the return receipts.

3) The Agency shall release the surety by providing written authorization for termination of the bond to the operator and the surety when either of the following occurs:

A) An operator substitutes alternate financial assurance, as specified in this Subpart; or

B) The Agency releases the operator from the requirements of this Subpart in accordance with Section 807.606(b) of this Part.

h) Cure of default and refunds:

1) The Agency shall release the surety if, after the surety becomes liable on the bond, the operator or another person provides financial assurance for closure and post-closure care of the site, unless the Agency determines that a plan or the amount of substituted financial assurance is inadequate to provide closure and post-closure care as required by this Part.

2) After closure and post-closure care have been completed in accordance with the plans and requirements of this Part, the Agency shall refund any unspent money that was paid to the Agency by the surety subject to appropriation of funds by the Illinois General Assembly.

i) The surety will not be liable for deficiencies in the performance of closure by the operator after the Agency releases the operator from the requirements of this Subpart.

(Source: Amended at 35 Ill. Reg. 18867, effective October 24, 2011)