**Section 848.411 Surety Bond Guaranteeing Payment**

a) An owner or 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, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

c) The surety bond must be on standardized forms prescribed by the Agency and must contain provisions concerning, at a minimum, the penal sum and term of the bond, conditions upon which the bond is payable and cancellable and payments into the standby trust fund.

d) An owner or operator who uses a surety bond must also establish a standby trust fund. Under the terms of the bond, all payments made under the surety bond must be deposited by the surety directly into the standby trust fund in accordance with instructions from the Agency. The standby trust fund must meet the requirements of a trust fund specified in Section 848.410, except that:

1) the owner or operator must submit an originally signed duplicate of the trust agreement to the Agency with the surety bond; and

2) until the standby trust is funded pursuant to the requirements of this Section, none of the following are required:

A) payments into the trust fund as specified in Section 848.410;

B) updating the trust agreement schedule in Section 848.410(c) to show the current approved removal cost estimates;

C) annual valuations as required by the trust agreement; or

D) notices of nonpayment as required by the trust agreement.

e) Conditions

1) The bond must guarantee that the owner or operator will either:

A) perform removal in accordance with the removal plan; or

B) within 90 days after receipt by both the owner or operator and the Agency of a notice of cancellation of the bond from the surety, provide alternate financial assurance in accordance with this Subpart and obtain the Agency's written approval of the assurance provided.

2) The surety will become liable on the bond obligation when, under the terms of the bond, the owner or operator fails to perform as guaranteed by the bond. The owner or operator fails to perform when the owner or operator does any one or more of the following:

A) abandons the site;

B) is adjudicated bankrupt;

C) within 30 days after the date on which the known final volume of used or waste tires is received, either fails to complete removal or fails to submit a removal plan that is approved by the Agency in accordance with Section 848.506;

D) fails to initiate removal when ordered to do so by the Board pursuant to Title VIII of the Act, or when ordered to do so by a court of competent jurisdiction;

E) fails to complete removal in accordance with the approved removal plan; or

F) fails, within 90 days after receipt by both the owner or operator and the Agency of a notice of cancellation of the surety bond, to provide alternate financial assurance and obtain the Agency's written approval of the assurance provided.

f) Penal Sum

1) The penal sum of the bond must be in an amount at least equal to the current approved removal cost estimate, except as provided in Section 848.407.

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

3) If the current removal cost estimate increases to an amount greater than the penal sum and if that increase is not due to an increase in the maximum accumulation of used or waste tires at the site, the owner or operator must, within 60 days after the increase in the removal cost estimate, either:

A) cause the penal sum to be increased to an amount at least equal to the current removal cost estimate and submit evidence of the increase to the Agency; or

B) obtain alternate financial assurance in accordance with this Subpart to cover the increase in the removal cost estimate and submit evidence of the alternate financial assurance to the Agency.

4) If the current removal cost estimate increases to an amount greater than the penal sum and if that increase is due to an increase in the maximum accumulation of used or waste tires at the site, the owner or operator must, within 60 days after the increase in the removal cost estimate:

A) remove the excess tires to meet the current approved removal cost estimate;

B) cause the penal sum to be increased to an amount at least equal to the current removal cost estimate and submit evidence of the increase to the Agency; or

C) obtain other financial assurance, as specified in this Subpart, to cover the increase in the removal cost estimate and submit evidence of the alternative financial assurance to the Agency.

g) Terms

1) 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 Agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Agency, as evidenced by the return receipts.

2) The Agency must release the surety by providing the owner or operator and the surety with written authorization for termination of the bond as soon as practicable after any of the following occur:

A) an owner or operator substitutes alternate financial assurance that meets the requirements of this Subpart such that the total financial assurance for the site is equal to or greater than the current approved removal cost estimate, without counting the amounts to be released; or

B) the Agency releases the owner or operator from the requirements of this Subpart following completion of removal.

(Source: Added at 39 Ill. Reg. 12934, effective September 8, 2015)