

1301:7-9-05

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APPENDIX D

PERFORMANCE BOND

Date bond executed: _____

Period of coverage: _____

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

Type of organization: [insert individual, joint venture, partnership, or corporation].

State of incorporation (if applicable): _____

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

Scope of Coverage: [list the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, describe the tanks covered and list the name and address of the facility. List the coverage guaranteed by the bond as "taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from operating the underground storage tank"].

Penal sums of bond:

Per occurrence: [insert applicable dollar amounts required under paragraph (H)(1) of rule 1301:7-9-05 of the Ohio Administrative Code].

Annual aggregate: [insert applicable dollar amounts required under paragraph (J)(3) of rule 1301:7-9-05 of the Ohio Administrative Code].

Surety's bond number:

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the State Fire Marshal, in the above penal sums 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 sums 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 sums 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 sums.

Whereas said Principal is required under paragraphs (H) of rule 1301:7-9-05 of the Ohio Administrative Code to provide financial assurance for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from operating the underground storage tanks identified above, and

Whereas said Principal shall establish a standby trust fund as is required by paragraph (O)(4) of rule 1301:7-9-05 of the Ohio Administrative Code 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 take corrective action, in accordance with sections 3737.88 and 3737.882 of the Ohio Revised Code and Chapter 1301:7-9 of the Ohio Administrative Code and the State Fire Marshal's instructions and compensate injured third parties for bodily injury and property damage caused by accidental releases arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in paragraph (X) of rule 1301:7-9-05 of the Ohio Administrative Code, within one hundred twenty days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

- (A) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (B) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
- (C) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (D) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (E) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than

a contract or agreement entered into to meet the requirements of paragraph (H) of rule 1301:7-9-05 of the Ohio Administrative Code.

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 State Fire Marshal that the Principal has failed to take corrective action, in accordance with sections 3737.88 and 3737.882 of the Ohio Revised Code and Chapter 1301:7-9 of the Ohio Administrative Code and the State Fire Marshal's instructions, or compensate injured third parties as guaranteed by this bond, the Surety(ies) shall either perform corrective action in accordance with sections 3737.88 and 3737.882 of the Ohio Revised Code and Chapter 1301:7-9 of the Ohio Administrative Code and the State Fire Marshal's instructions and pay third-party liability compensation or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by the State Fire Marshal under paragraphs (AA)(1) to (AA)(3) of rule 1301:7-9-05 of the Ohio Administrative Code. The surety(ies) shall notify the State Fire Marshal of all payments made under this instrument within ten days of making payment.

Upon notification by the State Fire Marshal that the Principal has failed to provide alternate financial assurance within sixty days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the State Fire Marshal has determined or suspects that a release has occurred, the Surety(ies) shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by the State Fire Marshal under paragraphs (AA)(1) to (AA)(3) of rule 1301:7-9-05 of the Ohio Administrative Code.

The surety(ies) hereby waive(s) notification of amendments to 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 annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, 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 the Principal, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Whereof, the Principal and Surety(ies) have executed this 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 Appendix D of rule 1301:7-9-05 of the Ohio Administrative Code as such regulations were constituted on the date this bond was executed. The persons whose signatures appear below hereby certify that the Surety(ies) are in compliance with all applicable sections of Title 39 of the Ohio Revised Code.

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: \$_____