



### PERFORMANCE BOND

This document provides instructions on the use of a Performance Bond to fulfill the requirements for financial assurance pursuant to Section 20114d(4)(b) of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.20101 *et seq.* This document and attached model document are provided to the public as preliminary guidance as to the content, format, and terms of the Financial Assurance Mechanism and are not intended, nor can they be relied upon to create any substantive or procedural rights by any other party.

Pursuant to Section 20114d of the NREPA, upon completion of remedial actions that satisfy the requirements of Part 201, a person may submit a No Further Action Report (NFA Report) to the Michigan Department of Environmental Quality (MDEQ). If a postclosure agreement (Agreement) is required as part of the NFA Report, Section 20114d(4)(b) requires financial assurance to pay for monitoring, operation and maintenance, oversight, and other costs determined by the MDEQ to be necessary to assure the effectiveness and integrity of the remedial action unless the financial assurance is de minimis. The de minimis threshold is \$2,500 per year in 2001 dollars. A link to a Consumer Price Index Inflation Calculator is provided to determine if the current annual costs exceed the 2001 dollar value: [CPI Inflation Calculator](#). Section 20101(u) of the NREPA, defines financial assurance as a performance bond, escrow, cash, certificate of deposit, irrevocable letter of credit, corporate guarantee, or other equivalent security, or combination thereof.

If a person elects to use a Performance Bond to meet their financial assurance obligations, the Performance Bond must be executed between the MDEQ and the Surety and provide the following:

1. That the Surety is an insurer who is authorized to transact the business of surety and fidelity insurance in the State of Michigan and is an acceptable surety on federal bonds as listed in Circular 570 of the United States Department of Treasury.
2. Worded in accordance with the model Performance Bond. Any modification to the model language may only be made with the concurrence of the MDEQ.
3. Executed on the letterhead of the Surety and be between the MDEQ, the Surety, and the person or entity submitting the NFA Report. It must also name the MDEQ as the sole beneficiary.
4. In an amount at least equal to, or greater than, the amount necessary to fund all monitoring, operation and maintenance, oversight, and other costs required to assure the effectiveness and integrity of the remedial action for the time frame(s) specified in the Agreement.
5. Approved by the MDEQ and can be replaced at the direction of the MDEQ.
6. The Performance Bond can only be terminated at the direction of the MDEQ.

Please contact Mr. Leonard Lipinski, Compliance and Enforcement Section, Remediation and Redevelopment Division (RRD), MDEQ, at lipinskil@michigan.gov or 517-284-5128 for any questions relating to this document or the attached model document; or you may call the RRD main number at 517-284-5087 for assistance.

Drafting Instructions: Copy and paste the text portion of the attached model document onto appropriate letterhead. Drafting notes and examples appear as ***italicized bold font***, insertion directions appear as **[*italicized bold font within bold brackets*]**, and word choices appear as **[regular bold font within bold brackets]**.

--END OF GUIDANCE AND INSTRUCTIONS--

**PERFORMANCE BOND MODEL**

**PERFORMANCE BOND**

Surety Name: ***[insert name of Surety]***

Surety Address: ***[insert Surety address]***

Surety Bond Number: ***[insert bond number]***

Total Amount of Bond: ***[\$\_\_\_\_\_,\_\_\_ ]***

Effective Date: ***[insert effective date]***

Principal: ***[insert name of Principal]***

Principal's Business Address: ***[insert Principal's address]***

Facility Name: ***[insert Facility name]***

Facility Address: ***[insert Facility address]***

MDEQ Site ID Number: ***[insert Site ID number]***

## RECITALS

1. Section 20114d of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.20101, *et seq.* states that upon completion of remedial actions that satisfy the requirements of Part 201, a person may submit a No Further Action Report (NFA Report) to the Michigan Department of Environmental Quality (MDEQ). If a postclosure agreement (Agreement) is required as part of the NFA Report, Section 20114d(4)(b) requires financial assurance to pay for monitoring, operation and maintenance, oversight and other costs determined by the MDEQ to be necessary to assure the effectiveness and integrity of the remedial action (NFA Requirements). Section 20101(u) of the NREPA, defines financial assurance as a performance bond, escrow, cash, certificate of deposit, irrevocable letter of credit, corporate guarantee, or other equivalent security, or combination thereof. On [insert date that NFA Report was submitted to MDEQ], [insert name of person submitting the NFA Report] (Principal) submitted a NFA Report to the MDEQ for [name and address of Facility]. The Principal is required to provide financial assurance, in a mechanism acceptable to the MDEQ, to pay for the NFA Requirements.
2. The estimate to pay for the performance of the NFA Requirements (Cost Estimate) is: **#[insert numeric amount#]**.
3. The Principal is providing this Performance Bond (Bond) to the MDEQ to fulfill its obligations under Part 201. **[Insert name of insurer#]** (Surety) is an insurer who is authorized to transact the business of surety and fidelity insurance in the State of Michigan and is an acceptable surety on federal bonds as listed in Circular 570 of the United States Department of Treasury. The Principal and Surety, and their heirs, executors, administrators, successors, and assigns, jointly and severally, are firmly bound unto the MDEQ to fulfill their obligations as set forth in the Bond.
4. The definitions of the terms used in this Bond are the same as those used in Part 201 and the Agreement.

NOW, THEREFORE, the Principal and Surety agree to the following:

5. This Bond as issued is sufficient to cover the Cost Estimate for performing the NFA Requirements. Adjustments to the amount of the Bond may only be made as follows:
  - (a) If there is an increase in the Cost Estimate for performing the NFA Requirements, the Principal, within sixty (60) days of becoming aware of the increased costs, shall increase the amount of financial assurance by making arrangements with the Surety for an increase in this Bond to an amount at least equal to the increased Cost Estimate and submitting evidence of such increase to the MDEQ, by submitting a replacement performance bond, or by establishing an alternative financial assurance mechanism that is acceptable to the MDEQ to assure the performance of the NFA Requirements.

The Surety acknowledges that the Principal is obligated to provide increased financial assurance to pay for the performance of the NFA Requirements if either of the following occur: (i) the Principal's five (5)-year Cost Estimate update for performing the NFA Requirements, which the Principal is required to conduct pursuant to the Agreement, shows that the Principal will incur costs in excess of the Cost Estimate; or (ii) the

Principal is required to implement a modification to the remedial action pursuant to the Agreement and that modification affects the NFA Requirements such that the Principal will incur costs in excess of the Cost Estimate.

- (b) If any five (5)-year Cost Estimate conducted by the Principal is less than the Cost Estimate amount provided for by this Bond, the amount of this Bond may be reduced to that lesser amount following the Principal and Surety's receipt of written approval for such reduction by the MDEQ.
6. This Bond shall continue in full force and effect for a period beginning with the effective date of this Bond and ending only when this Bond is terminated or cancelled. This Bond may only be terminated or cancelled when the Principal has satisfied one of the following conditions (a) through (c) below and the Principal and Surety have received written authorization for such termination or cancellation from the MDEQ.
- (a) The performance of the NFA Requirements is no longer necessary and the Principal has paid all of the MDEQ response activity costs in accordance with the Agreement.
  - (b) The MDEQ has determined that a financial assurance mechanism is no longer necessary and the Principal has paid all of the MDEQ response activity costs in accordance with the Agreement.
  - (c) The Principal has provided an alternative financial assurance mechanism acceptable to the MDEQ to assure the performance of the NFA Requirements.
7. The Surety shall become liable as provided for in this Bond only when the Principal has failed to perform the NFA Requirements; has failed to pay the MDEQ response activity costs as required by the Agreement; or has failed to provide alternative financial assurance acceptable to the MDEQ as provided for in this Bond or the Agreement. If the Principal fails to meet any of these obligations and the MDEQ authorized representative (Part 201 implementing Division Chief) has issued a written notification to the Principal and Surety regarding the Principal's failure to comply, the Surety shall do the following as directed by the MDEQ within thirty (30) days.
- (a) If the Principal has failed to perform the NFA Requirements, the Surety shall either perform those requirements in accordance with the remedial action or make payment to the MDEQ for the full amount guaranteed by this Bond.
  - (b) If the Principal has failed to pay the MDEQ response activity costs, the Surety shall make payment to the MDEQ for the full amount of the MDEQ response activity costs that the Principal has not paid.
  - (c) If the Principal has failed to provide an alternative financial assurance mechanism within sixty (60) days of receipt of the Surety's intent to cancel this Bond as specified in Paragraph 10 of this Bond, the Surety shall make payment to the MDEQ for the full amount guaranteed by this Bond.
8. The liability of the Surety shall not be discharged by any payment or succession of payments hereunder unless and until such payment or payments amount in the aggregate to the amount of this Bond; however, in no event shall the Surety's obligation hereunder exceed the amount of this Bond.

9. The Surety agrees that any amendments to the remedial action or to any applicable laws, statutes, rules, or regulations shall not affect its obligations with respect to this Bond, except that any modifications of the remedial action that cause an increase or decrease in the amount of financial assurance shall be handled in accordance with Paragraph 5.
10. The Surety may initiate the process to cancel this Bond by sending written notice of its intent to cancel by certified mail to the Principal and to the MDEQ. Within sixty (60) days of the MDEQ receipt of the Surety's intent to cancel this Bond, the Principal must either provide an extension of this Bond or provide an alternative financial assurance mechanism to the MDEQ. The Surety shall not cancel this Bond during the one hundred and twenty (120)-day period after the Principal and the MDEQ receive the notice of intent to cancel. However, the Surety may cancel this Bond after the one hundred and twenty (120)-day period or upon its receipt of written authorization for such cancellation from the MDEQ.
11. The Principal may terminate this Bond by sending written notice to the Surety and the MDEQ, provided; however, such termination shall only become effective if the Principal has met the requirements of Paragraph 6. The Surety may then terminate this Bond when the Principal and Surety have received written authorization for such termination from the MDEQ.
12. If the MDEQ determines that either the Principal or Surety has not complied with any of the terms or conditions of this Bond, the MDEQ shall have recourse to the rights created under this Bond. The MDEQ reserves all its other rights against the Principal under the applicable statutes.

In witness whereof, the Principal and Surety have executed this Bond, affixed their seals, and attached their justification for power of attorney as of the effective date written above.

The persons whose signatures appear below hereby certify that they are authorized to execute this Bond on behalf of the Principal and Surety and that the wording of this Bond is identical to the wording provided by the MDEQ.

Sealed with our seals, dated **[insert date of execution]**.

**[insert NAME OF PRINCIPAL]**

PRINCIPAL

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Type or print name

Title: \_\_\_\_\_  
Type or print

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

**[insert NAME OF SURETY]**

SURETY

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Type or print name

Title: \_\_\_\_\_  
Type or print

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

STATE OF MICHIGAN

By: \_\_\_\_\_  
Signature

**[insert name of Division Chief]**, Division Chief  
Remediation and Redevelopment Division  
Michigan Department of Environmental Quality

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