40 CFR § 280.98  Surety bond.

The regulation text is in blue.

(a) An owner or operator may satisfy the requirements of §280.93 by obtaining a surety bond that conforms to the requirements of this section. The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

(b) The surety bond must be worded as follows, except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

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, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22, or the corresponding state requirement, and the name and address of the facility. List the coverage guaranteed by the bond: “taking corrective action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “nonsudden accidental releases” or “accidental releases” “arising from operating the underground storage tank”].

Penal sums of bond:

Per occurrence $____________________

Annual aggregate $____________________

Surety's bond number: ____________________

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to [the implementing agency], 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 Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended, to provide financial assurance for [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “nonsudden accidental releases” or “accidental releases”]; if coverage is different for different
tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating
the underground storage tanks identified above, 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 [“take
corrective action, in accordance with 40 CFR part 280, subpart F and the Director of the state implementing
agency's instructions for,” and/or “compensate injured third parties for bodily injury and property damage
caused by” either “sudden” or “nonsudden” or “sudden and nonsudden”] accidental releases arising from
operating the tank(s) indentified above, or if the Principal shall provide alternate financial assurance, as
specified in 40 CFR part 280, subpart H, within 120 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 40 CFR 280.93.

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 Director of the implementing agency] that the Principal has failed to [“take
corrective action, in accordance with 40 CFR part 280, subpart F and the Director's instructions,” and/or
“compensate injured third parties”] as guaranteed by this bond, the Surety(ies) shall either perform
[“corrective action in accordance with 40 CFR part 280 and the Director's instructions,” and/or “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 Regional Administrator or the Director] under 40 CFR 280.108.

Upon notification by [the Director] that the Principal has failed to provide alternate financial assurance
within 60 days after the date the notice of cancellation is received by the Principal from the Surety(ies) and
that [the Director] 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

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and
regulations and agrees 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 120 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 Thereof, 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 40 CFR 280.98(b) as such regulations were constituted on the date this bond was executed.

Principal
[Signature(s)]
[Names(s)]
[Title(s)]
[Corporate seal]

Corporate Surety(ies)
[Name and address]
[State of Incorporation: _____]
[Liability limit: $____]
[Signature(s)]
[Names(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: $____

(c) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and annual aggregate penal sums.

(d) The owner or operator who uses a surety bond to satisfy the requirements of §280.93 must establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the Director under §280.108. This standby trust fund must meet the requirements specified in §280.103.